

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 Wysocki,
Appellants,

Electronically Filed
Feb 03 2020 01:24 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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' APPENDIX VOLUME III

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CHRONOLOGICAL INDEX TO APPELLANTS' APPENDIX

DATE FILED	DOCUMENT	VOLUME	PAGE RANGE
	Docket, Case No. A-17-761364-C	I	0001 – 0011
	Docket Case No. A-17-761884-C	I	0012 – 0020
9/12/2017	Complaint for Breach of Fiduciary Duty, Breach of Contract, and Declaratory Relief in Case No. A-17-761364-C	I	0021 – 0031
9/19/2017	Amended Complaint for Breach of Fiduciary Duty, Breach of Contract, and Declaratory Relief in Case No. A-17-761364-C	I	0032 – 0042
9/21/2017	Summons for Clark County Education Association in Case No. A-17-761884-C	I	0043 – 0047
9/21/2017	Summons for Clark County School District in Case No. A-17-761884-C	I	0048 – 0052
9/21/2017	Complaint for Declaratory and Injunctive Relief in Case No. A-17-761884-C	I	0053 – 0071
9/21/2017	Summons for John Vellardita in Case No. A-17-761884-C	I	0072 – 0076
9/21/2017	Summons for Victoria Courtney Case No. A-17-761884-C	I	0077 – 0081
10/26/2017	Second Amended Complaint for Breach of Fiduciary Duty, Breach of Contract, and Declaratory Relief in Case No. A-17-761364-C	I	0082 – 0092
10/30/2017	Answer to Complaint (including Motion to Dismiss) in Case No. A-17-761884-C	I	0093 – 0126

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11/6/2017	Affidavit of Service re Clark County Education Association in Case No. A-17-761884-C	I	0127
11/6/2017	Affidavit of Service re Clark County School District in Case No. A-17-761884-C	I	0128
11/6/2017	Affidavit of Service re John Vellardita in Case No. A-17-761884-C	I	0129
12/5/2017	Affidavit of Service re Victoria Courtney in Case No. A-17-761884-C	I	0130
2/21/2018	Defendants' Answer to the Second Amended Complaint in Case No. A-17-761364-C	I	0131 – 0140
2/27/2018	Amended Complaint for Declaratory and Injunctive Relief in Case No. A-17- 761884-C	I	0141 – 0175
3/16/2018	Defendants – Counter Plaintiffs Clark County Education Association's, John Vellardita's and Victoria Courtney's Answer to Amended Complaint for Declaratory and Injunctive Relief and Counterclaim in Case No. A-17-761884-C	II	0176 – 0218
3/21/2018	Defendants – Counter Plaintiffs Clark County Education Association's, John Vellardita's and Victoria Courtney's Answer to Amended Complaint for Declaratory and Injunctive Relief and *Amended* Counterclaim in Case No. A-17-761884-C	II	0219 – 0261
4/3/2018	Defendants-Counter Plaintiffs Clark County Education Association's, John Vellardita's and Victoria Courtney's	II	0262 – 0293

DATE FILED	DOCUMENT	VOLUME	PAGE RANGE
	Motion for Injunction and attached Vellardita Declaration in Case No. A-17-761884-C		
4/4/2018	Scheduling Order in Case No. A-17-761884-C	II	0294 – 0296
4/9/2018	Plaintiffs-Counterclaim Defendants Reply/Answer to Amended Counterclaim in Case No. A-17-761884-C	II	0297 – 0326
4/19/2018	Order Setting Civil Non-Jury Trial, Pre-Trial Conference Calendar Call, and Status Check in Case No. A-17-761884-C	II	0327 – 0330
5/2/2018	Hearing Transcript, Hearing on Defendants’ Motion to Dismiss; Motion for Preliminary Injunction; Show Cause Hearing in Case No. A-17-761884-C (04/23/2018)	III	0331 – 0508
5/11/2018	Notice of Entry of Order and Order Denying CCEA Parties’ Motion for Preliminary Injunction in Case No. A-17-761884-C	III	0509 – 0513
5/11/2018	Notice of Entry of Order and Order re Writ of Attachment in Case No. A-17-761884-C	III	0514 – 0520
6/6/2018	Second Amended Complaint for Declaratory and Injunctive Relief in Case No. A-17-761884-C	III	0521 – 0557

DATE FILED	DOCUMENT	VOLUME	PAGE RANGE
6/18/2018	Exhibit 8 to CCEA Parties' Motion for Partial Summary Judgment in Case No. A-17-761364-C ¹	III	0558 – 0560
6/18/2018	Hearing Transcript, Defendants – Counter Plaintiffs CCEA Parties' Motion for Injunction in Case No. A-17-761884-C (05/01/2018)	III	0561 – 0573
7/10/2018	Defendant – Counter Plaintiffs Clark County Education Association's, John Vellardita's and Victoria Courney's Answer to Second Amended Complaint for Declaratory and Injunctive Relief and Second Amended Counterclaim in Consolidated Case	IV	0574 – 0611
7/20/2018	Declaration of Brian Lee in Support of NSEA Defendants' Opposition to Plaintiffs' Motion for Partial Summary Judgment and Exhibits A, and E through H	IV	0613 – 0642
7/20/2018	Declaration of Ruben Murillo in Support of NSEA Defendants' Opposition to Plaintiffs' Motion for Partial Summary Judgment and Exhibit A	IV	0643 – 0650
9/05/2018	Scheduling Order	IV	0651 – 0653
10/11/2018	Order Setting Bench Trial, Calendar Call	IV	0654 – 0659

¹ Where Appellants have included select exhibits to a document filed in the district court, the document's cover page with the file stamp is included as well.

DATE FILED	DOCUMENT	VOLUME	PAGE RANGE
11/9/2018	Affidavit of Brian Lee in Support of NSEA and NEA Plaintiffs' Motion for Partial Summary Judgment	IV	0660 – 0664
11/9/2018	Affidavit of Henry Pines in Support of NSEA and NEA Plaintiffs' Motion for Partial Summary Judgment and Exhibits B, D, F, H, I, and J ²	V	0665 – 0837 (Portions Under Seal)
12/3/2018	Hearing Transcript, All Pending Motions (11/15/18)	VI	0838 – 0953
12/5/2018	Notice of Entry of Order and Order Denying in Part, and Granting in Part, CCEA Parties' Partial Motion to Dismiss Second Amended Complaint of the NSEA Parties	VI	0954 – 0961
12/05/2018	Notice of Entry of Order and Order Granting NSEA Parties' Motion to Dismiss CCEA Parties' Second Amended Counterclaim	VI	0962 – 0967
12/12/2018	CCEA Parties' Opposition to NSEA Parties' Motion for Partial Summary Judgment and Countermotion and Exhibits 8 and 9	VI	0968 – 1010
12/12/2018	Affidavit of John Vellardita in Support of CCEA Parties' Opposition to NSEA Parties' Motion for Partial Summary Judgment and Countermotion for Partial Summary Judgment	VI	1011 – 1017

² Because Exhibits D and J were marked confidential by the CCEA Parties and filed under seal in the district court, on CCEA's request, the NSEA Parties have submitted it under seal in this Court on the understanding that the CCEA Parties will be filing a motion to the Court to keep it under seal.

DATE FILED	DOCUMENT	VOLUME	PAGE RANGE
12/20/2018	Notice of Entry of Findings of Fact, Conclusions of Law, and Order Granting Plaintiffs' Motion for Partial Summary Judgment	VI	1018 – 1029
1/23/2019	Declaration of Robert Benson in Opposition to the CCEA Parties' Countermotion for Partial Summary Judgment	VI	1030 – 1033
01/23/2019	Declaration of Diane DiArchangel in Opposition to the CCEA Parties' Countermotion for Partial Summary Judgment and Exhibits 4A, 4B, and 4C	VI	1034 – 1051
1/23/2019	Declaration of Brian Lee in Support of NSEA and NEA Plaintiffs' Motion for Partial Summary Judgment and Exhibits A, B, and D through H	VII	1052 – 1122
1/23/2019	Declaration of Brian Lee in Opposition to CCEA Parties' Countermotion for Partial Summary Judgment and Exhibit A	VII	1123 – 1130
1/23/2019	Declaration of Henry Pines in Opposition to the CCEA Parties' Countermotion for Partial Summary Judgment and Exhibits A through E, L and M ³	VII	1131 – 1183 (Portions Under Seal)
1/23/2019	Declaration of James P Testerman in Support of Plaintiffs' Motion for Partial Summary Judgment and	VII	1185 – 1221

³ Because Exhibit M was marked confidential by the CCEA Parties and filed under seal in the district court, on CCEA's request, the NSEA Parties have submitted it under seal in this Court on the understanding that the CCEA Parties will be filing a motion to the Court to keep it under seal.

DATE FILED	DOCUMENT	VOLUME	PAGE RANGE
	Opposition to CCEA's Countermotion and Exhibit A		
1/23/2019	Declaration of Jason Wyckoff in Opposition to the CCEA Parties' Countermotion for Partial Summary Judgment and Exhibits 3A, 3B and 3D	VII	1222 – 1236
4/4/2019	CCEA Parties' Reply in Support of Motion for Partial Summary Judgment and Exhibits 16, 17, and 20 through 22	VII	1237 – 1288
5/23/2019	Hearing Transcript, Motion for Reconsideration, Motion for Partial Summary Judgment, Motion to Amend Complaint, Opposition and Countermotion, Motion for Partial Summary Judgment (05/09/2019)	VIII	1289 – 1529
6/28/2019	Notice of Entry of Findings of Fact, Conclusions of Law, and Order Granting in Part and Denying in Part NSEA Parties' Motion for Partial Reconsideration of the December 20, 2018 Findings of Fact, Conclusions of Law, and Order	IX	1530 – 1539
7/3/2019	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	IX	1540 – 1550
7/3/2019	Notice of Entry of Findings of Fact, Conclusions of Law, and Order Granting the Clark County Education Association Parties' Motion for	IX	1551 – 1569

DATE FILED	DOCUMENT	VOLUME	PAGE RANGE
	Partial Summary Judgment and Denying the Nevada State Education Association Parties' Motions for Partial Summary Judgment		
7/15/2019	Notice of Appeal	IX	1570 – 1573
10/17/2019	Notice of Entry of Order on Findings of Fact, Conclusions of Law, and Order Granting NSEA and NEA Plaintiffs' Motion for Stay Pending Appeal	IX	1574 – 1583

ALPHABETICAL INDEX TO APPELLANTS' APPENDIX

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12/12/2018	Affidavit of John Vellardita in Support of CCEA Parties' Opposition to NSEA Parties' Motion for Partial Summary Judgment and Countermotion for Partial Summary Judgment	VI	1011 – 1017
11/6/2017	Affidavit of Service re Clark County Education Association in Case No. A-17-761884-C	I	0127
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7/20/2018	Declaration of Brian Lee in Support of NSEA Defendants’ Opposition to Plaintiffs’ Motion for Partial	IV	0613 – 0642

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9/21/2017	Summons for Victoria Courtney Case No. A-17-761884-C	I	0077 – 0081

AFFIRMATION

Pursuant to NRS 239B.030, the undersigned does hereby affirm that **APPELLANTS' APPENDIX** does not contain the social security number of any person.

Dated this 3rd day of February, 2020.

/s/ Debbie Leonard

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Attorneys for NSEA Appellants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Leonard Law, PC, and that on February 3, 2020, a copy of the foregoing document 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. A flash drive containing Appellants' Appendix was served by first-class mail addressed as follows:

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/s/ Tricia Trevino
An employee of Leonard Law, PC



RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

NEVADA STATE EDUCATION)	
ASSOCIATION,)	
)	CASE NO. A-17-761884-C
Plaintiff,)	
)	
vs.)	DEPT. NO. XXXI
)	
CLARK COUNTY EDUCATION)	
ASSOCIATION,)	
)	
Defendant.)	
)	
)	
)	

BEFORE THE HONORABLE JOANNA S. KISHNER, DISTRICT COURT JUDGE
MONDAY, APRIL 23, 2018
RECORDER'S TRANSCRIPT OF HEARING
HEARING ON DEFENDANT'S MOTION TO DISMISS;
MOTION FOR PRELIMINARY INJUNCTION; SHOW CAUSE HEARING

APPEARANCES:

For the Plaintiffs:	PAUL LAL, ESQ.
	JOHN WEST, ESQ.
	ROBERT ALEXANDER, ESQ.
For the Defendants:	JOEL D'ALBA, ESQ.
	JOHN DELIKANAKIS, ESQ.
	MICHAEL PARETTI, ESQ.

RECORDED BY: PATRICIA SLATTERY, DISTRICT COURT
TRANSCRIBED BY: JUSTYNE JOHNSON, RPR

I N D E X O F W I T N E S S E S

PLAINTIFF'S WITNESSES:

DAY

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DEFENDANT'S WITNESSES:

DAY

PAGE

JOHN VELLARDITA

DIRECT EXAMINATION BY MR. D'ALBA

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CROSS-EXAMINATION BY MR. ALEXANDER

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REDIRECT EXAMINATION BY MR. D'ALBA

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1 LAS VEGAS, NEVADA, MONDAY, APRIL 23, 2018, 1:25 P.M.

2 *****

3
4 THE COURT: It's up to you all if you want to start a
5 few moments early. We can get started a few minutes
6 early. If you want to wait until the 1:30 hour, we can
7 wait until 1:30. What do you all want to do?

8 MR. D'ALBA: We can get started now.

9 MR. DELIKANAKIS: We can start now.

10 MR. ALEXANDER: We're ready to start if you want.

11 THE COURT: Okay. Then let me call the case. Excuse
12 me. My voice may go in and out. My apologies. It's --
13 kind of is what it is. Okay. This is pages 1 through 3
14 on the 1:30 calendar case 761884 Nevada State Education
15 Association, et al vs. Clark County Education Association.

16 Counsel, would you like to make your appearances,
17 please.

18 MR. D'ALBA: Joel D'Alba on behalf of the Defendants
19 plaintiff count- -- counter-plaintiffs.

20 MR. DELIKANAKIS: John Delikanakis from Snell and
21 Wilmer on behalf of the Clark County Education Association
22 with Vellardita.

23 MR. PARETTI: Good morning, your Honor, or good
24 afternoon, your Honor. Michael Paretti on behalf of Clark
25 County Education Association with John Vellardita.

1 THE COURT: Okay.

2 MR. LAL: Good afternoon, your Honor. Paul Lal with
3 Boies Schiller & Flexner on behalf of the Plaintiffs,
4 NSEA, NEA, et al.

5 MR. WEST: And John West for Berghouse and Geyser
6 (phonetic) also on behalf of the Plaintiffs.

7 MR. LAL: And your --

8 THE COURT: Okay.

9 MR. ALEXANDER: Your Honor, my name is
10 Robert Alexander. I have a pro hac vice motion pending if
11 Mr. Lal would like to speak to a few things.

12 MR. LAL: Yes, your Honor. I would like that speak to
13 that. Approximately April 12th or so, Plaintiffs and
14 Defendants stipulated to the addition of Robert Alexander.
15 As part of that stipulation, an order was submitted to the
16 Court.

17 I have not seen that order come back yet, but I
18 do have a copy with me if the Court's inclined to allow
19 Mr. Alexander to be admitted at this point in time. I'd
20 like to approach for that order.

21 THE COURT: Sure. Right. Since -- we just have to
22 review everything, and so it can't be done as this -- that
23 works.

24 So Marshal, would you grab that, please.

25 MR. LAL: Thank you, your Honor. Appreciate it.

1 THE COURT: Thanks so very much.

2 Okay. And Counsel for Defendant and
3 Counter-Claimant, you've had an opportunity to review the
4 proposed order; is that correct?

5 MR. D'ALBA: We have no objection.

6 MR. DELIKANAKIS: No objection.

7 THE COURT: Okay. So the Court's going to review --
8 standing -- okay. The Court is going to sign in open
9 court and return to the Marshal to return -- would you
10 like, now, Madame Clerk to file this in open court so it's
11 effective right now?

12 MR. LAL: If that's not an inconvenience to her, that
13 would be great.

14 THE COURT: Madame clerk would be very glad to assist,
15 won't you, Madame Clerk? Thank you. Okay. So the order
16 admitting the practice of Robert Alexander, signed in open
17 court, handing to Madame Clerk to stamp it -- her -- in
18 open court. Okay.

19 Procedurally, folks, before we start on the three
20 pending motions, one thing. I appreciate you all speaking
21 last week. Can everyone hear me okay? Sorry.

22 MR. D'ALBA: Yes, your Honor.

23 MR. DELIKANAKIS: Yes, your Honor.

24 MR. ALEXANDER: Yes, your Honor.

25 THE COURT: It's a little deep, but it still exists,

1 my voice. Doing the teleconference because of the number
2 of parties that were that teleconference, what I'm just
3 going to restate is, I just want to confirm that everyone
4 had waived that this Court could move forward with this
5 case because as you can appreciate with -- sometimes
6 people talking at the same time, so if we -- if you don't
7 mind.

8 Does anyone need me to restate my disclosure or
9 can I just go straight to just confirming that all parties
10 have waived. What would you like me to do, folks?

11 MR. D'ALBA: I don't think we need to restate it, your
12 Honor.

13 UNIDENTIFIED SPEAKER: Yeah.

14 MR. D'ALBA: On behalf of the Defendants'
15 counter-plaintiff's, we do waive.

16 THE COURT: Thank you.

17 MR. LAL: The same is true for the Plaintiffs, your
18 Honor. We did waive. Thank you.

19 THE COURT: Okay. Thanks. Between then and now, did
20 anyone have any additional questions for the Court at all,
21 or would you just like to move forward with the motions.
22 Okay. Then we'll move forward with the motions.

23 Go ahead, Counsel.

24 MR. D'ALBA: Do you mind, your Honor, if we started
25 with the motion for injunction first?

1 MR. ALEXANDER: Your Honor, we have no objection to
2 that. I think it makes sense.

3 THE COURT: Sure. Then we will start with -- these
4 are in a little bit different order, so just give me one
5 second to get my piles together. Okay.

6 So we are going to Defendant's motion for
7 preliminary injunction. Now, with regards to your
8 arguments on this, are you going to cross over with the
9 relief requested, or are we going to treat these as
10 separate standards and separate motions. I'm fine either
11 way, just --

12 MR. D'ALBA: From my our perspective we'd like them
13 treated as separate motions.

14 THE COURT: Okay. Then please go ahead, Counsel.

15 I think it's quite -- the number of individuals
16 that I have here who have been fully prepped. I'm not
17 going to give an inclination. I'm just going to let you
18 argue and then we can rule on it. Thank you so very much.
19 Please proceed.

20 And just to let you know from the Court's
21 standpoint, you are perfectly fine if you want to be at
22 counsel table, if you want to be at the podium, or if
23 y'all -- a person that likes to walk around, we have
24 handheld mic's and pocket microphones, or you can sit
25 down. Whatever makes you comfortable.

1 Go ahead, Counsel.

2 MR. D'ALBA: Thank you. We would like to start with
3 the motion for injunction and indicate some preliminary
4 remarks, and then present a witness if you'll allow us to
5 do it.

6 But as a preliminary remark, we'd like to note
7 that under Nevada law, there should exist a reasonable
8 probability that there -- a real injury will occur if the
9 injunction is not issued. And here we see the injury as
10 the decision of the NSEA not to seat CCA members who are
11 still in good standing.

12 And we've carefully evaluated the claim of the
13 NSEA as to the disaffiliation question that's been raised
14 and that delegates would no longer be members of NSEA. We
15 apologize to the Court for not raising our pleading until
16 the upcoming disaffiliation vote that will take place in a
17 couple of days.

18 And in the context of the argument raised by the
19 NSEA, we think that upon disaffiliation, the current
20 members of CCA -- of NSEA, would no longer have dues
21 collected for them, and pursuant to the policies of NSEA,
22 they would then no longer be members in good standing.

23 The argument that they've been making is that the
24 dues have to be collected and transmitted.

25 But, in fact, under a new policy that was updated

1 in July of 2017, which we have -- we will put before you
2 in an exhibit, the policy now has no longer the word
3 "transmitted." It just that has word "collected." But we
4 believe that if they are no longer members of NSEA, dues
5 will no longer be collected for them by payroll deduction
6 from the school district.

7 So we think that in and of itself gives us an
8 opportunity to suggest to the Court a narrowing of the
9 relief that we're seeking. And that would be to keep the
10 status quo as it now exists through the next couple of
11 days before the disaffiliation election.

12 We obviously don't know whether that this
13 disaffiliation will even take place, meaning whether the
14 members will prove it. So in that context, it's our view
15 that if you enjoin any issue with respect to the
16 non-seating of the CCA members, and that if in fact the
17 disaffiliation vote is an affirmative vote, that CCA moves
18 to remove itself from NSEA, at that point the injunction
19 would be dissolved.

20 That's the narrowing that we think makes sense.
21 The vote itself begs the question as to the scope of the
22 relief that we're seeking. And what we're really seeking
23 is an order to reserve the status quo through the period
24 of this qualification vote, and with an affirmative vote,
25 the injunction we think should be resolved -- dissolved.

1 And that's how we would like to open the case
2 with respect to how we would like to proceed. And if your
3 Honor's willing to consider that, it might obviate the
4 need to have a further hearing on this question.

5 THE COURT: Generally, if somebody is starting with
6 some kind of opening statement or oral argument before
7 putting on the first witness, I normally would allow the
8 other side to respond and then start with the witnesses to
9 go on the stand. If that's what you all -- I don't know
10 if you all talked about this beforehand, but that's
11 normally what we do. Do you know what I mean?

12 It's kind of like opening statements opening
13 statements, something else, even though it's a hearing,
14 not a trial, and then move forward with any witness
15 testimony. So I'm fine if the other side -- appropriate
16 to allow them to do an opening if they wish to. And if
17 they don't wish to, they wish to just have you put your
18 witnesses on and then do it in summation, that's going to
19 be fine from the Court's standpoint as well.

20 Let me here from the Plaintiffs'
21 counter-defendant.

22 MR. WEST: Your Honor, John -- John West for the
23 Plaintiffs. I -- I just like to say a word or two in
24 response to what we've just heard from Mr. D'Alba.

25 First of all, if I could explain our division of

1 labor on our side of the -- of the courtroom.

2 THE COURT: Sure.

3 MR. WEST: I am going to be arguing the preliminary
4 injunction motion, but Mr. Alexander, my colleague, is
5 going to be, assuming that there is a witness presented,
6 will be handling the -- the cross-examination of the
7 witness. So we'll be up and down here.

8 But as to what Mr. D'Alba first said -- just now
9 said, this is the first that we've heard of this proposal.
10 One point to keep in mind is he's suggesting that the
11 status quo be maintained for two days.

12 I don't know that they have, in anything they
13 have said, suggested that there is any threat to CCA being
14 placed in trusteeship or anything else that they are
15 suggesting as an injury happening within the next few
16 days.

17 Rather what they are suggesting is that at the
18 NSEA delegate assembly, which begins this Friday, that a
19 resolution may be passed permitting the imposition of
20 trusteeships. So there is -- there is no point in
21 preserving the status quo for two days.

22 Our view as I'll lay out, perhaps at a little bit
23 greater length, is that this is not a -- regardless of
24 what CCA does, this is not a question that's right for --
25 for judicial determination, and we have also a quite a few

1 other problems with the request for preliminary
2 injunction. But it -- at any event we don't think that
3 this suggestion resolves anything.

4 And I also would like to point out, your Honor,
5 that not only did the CCA parties fail to mention to the
6 Court when they -- when they moved for a preliminary
7 injunction, and when they asked the Court to shorten time,
8 so that we were required to respond to that, that they
9 filed to mention that this disaffiliation vote was going
10 to be happening before the NSEA delegate assembly so that
11 the whole thing would -- would possibly be mooted.

12 They did not mention that, and they instead filed
13 their motion, moved to shorten time, and if we hadn't
14 brought it up, I'm not sure where we would be. In any
15 event, what I'm up here to say is that we -- we don't
16 think that this suggestion of -- that everything is going
17 to be resolved by simply maintaining the status quo for
18 two days -- is -- is of -- of any help really.

19 THE COURT: Okay. So should I gather from what you
20 are saying -- there is no agreement among the parties, and
21 I should move forward with the preliminary injunction
22 hearing.

23 MR. WEST: That would certainly be our position, your
24 Honor.

25 THE COURT: Okay. Well, if they're not going to

1 agree, then I need to move forward with the preliminary --

2 MR. D'ALBA: We'll move forward, your Honor. We'll
3 call our first witness.

4 THE COURT: Okay. So -- and are you all doing it
5 similarly, where one person is doing argument and one
6 person is doing examination of the witness, or are you
7 doing this --

8 MR. WEST: No.

9 THE COURT: Okay. Do you have any objection to the
10 method by which they've broken down their --

11 MR. D'ALBA: No, your Honor.

12 THE COURT: Okay. So then feel free. Then at this
13 juncture since you are the movement for the preliminary
14 injunction, please call your first witness.

15 MR. D'ALBA: John Vellardita.

16 THE COURT: Okay. And then the clerk will swear him
17 in in just a moment.

18 Does anyone need any -- is anyone anticipating
19 that anyone's going to need any assistance getting to the
20 stand? We're more than glad to give ADA accommodations if
21 anyone needs it. Is there -- any of that going to be
22 necessary? I assume the answer is going to be no.

23 THE CLERK: Will you raise your right hand.

24 ///

25 ///

1 JOHN VELLARDITA,
2 [having been called as a witness and being first duly
3 sworn testified as follows:]
4

5 THE WITNESS: I do.

6 THE CLERK: Thank you. You can be seated. Now,
7 please state your full name, spelling your first and last
8 name for the record.

9 THE WITNESS: John Vellardita, J-O-H-N. V as in
10 victor, E-L-L-A-R-D-I-T-A.

11 THE COURT: Go ahead, Counsel. You may proceed at
12 your convenience.

13 MR. D'ALBA: May I bring up the exhibit books we plan
14 on using?

15 THE COURT: Sure there's -- opposing counsel have --

16 MR. D'ALBA: Yes. They've been given, they've been
17 attached.

18 THE COURT: Yeah. Of course. Okay. Thank you so
19 much.

20 MR. D'ALBA: And one for the witness as well.

21 THE COURT: Appreciate it. Thank you. Okay. Are
22 these stipulated exhibits for purposes of today's hearing,
23 or are you going --

24 MR. D'ALBA: We tried -- we tried --

25 THE COURT: -- to lay a foundation and be introduced?

1 MR. D'ALBA: -- to get the exhibits several days ago.

2 THE COURT: Okay.

3 MR. D'ALBA: I don't think there is a stipulation as
4 to the exhibits; is that correct?

5 MR. ALEXANDER: That's correct. On some of them we
6 will have no objection.

7 THE COURT: Okay.

8 MR. ALEXANDER: Some of them we may, depending on what
9 they're used for.

10 THE COURT: Okay. I appreciate it then. Please
11 proceed at your convenience.

12 DIRECT EXAMINATION

13 BY MR. D'ALBA:

14 Q Please state your name, sir.

15 A John Vellardita.

16 Q And are you the executive director of the CCEA?

17 A I am.

18 Q And when were you hired?

19 A In October of 2011.

20 Q And what were you hired to do?

21 A To become the executive director of the Clark
22 County Education Association, and in that capacity
23 essentially run all manners of the association that I
24 would be instructed to do by the governance.

25 Q Does CCEA has a collective bargaining agreement

1 with the school district?

2 A We do.

3 Q Calling your attention to Exhibit A, and in
4 particularly to the pages marked at the bottom 10,
5 Article 8. Is this the dues deduction section of the
6 agreement?

7 A It is.

8 Q And did you negotiate this agreement?

9 A It's been negotiated. I personally did not
10 negotiate these two -- or this -- or this article 8 as it
11 stands now, but I have negotiated several of these
12 contracts.

13 Q But these article 8 is in the current agreement?

14 A That's correct.

15 Q And with respect to this article 8, does it
16 contain a deduction for dues payments from employee
17 paychecks?

18 A It does.

19 Q And please identify that provision.

20 A It's article 8-1.

21 Q Do employees authorize or have to authorize the
22 payment of dues from their paychecks?

23 A They do.

24 Q And did they do that by a membership form?

25 A They -- yes, they do.

1 Q Calling your attention to Exhibit B. Is this the
2 membership form?

3 A This is the membership form that a member signs
4 upon accepting membership to CCEA.

5 Q And in your tenure, is this the form that's been
6 used?

7 A This -- this is the current form. The form has
8 been modified I think maybe once or twice, but, in
9 essence, this is the form that's been there.

10 Q And does this form give a school district the
11 right to deduct dues payments from employees' paychecks?

12 A It does.

13 Q And then to transmit the money to the CCEA?

14 THE COURT: Wait a second.

15 MR. ALEXANDER: Objection, your Honor. A, lead in
16 which I don't mind that much given the nature of this
17 hearing, but also foundation. I don't know that
18 Mr. Velladita is testifying about the legal relationship
19 between the parties without any foundation to do so.

20 THE COURT: Okay. The Court is going to sustain the
21 objection the second round. With -- can you lay some
22 foundation with regards to his last conclusion that gives
23 him the authority. Thank you.

24 BY MR. D'ALBA:

25 Q Would you please point to the membership form

1 itself and the payroll deduction paragraph. What is the
2 purpose of this payroll deduction paragraph?

3 A Well as it states in the first paragraph, it
4 authorizes CCEA to negotiate with the school district for
5 the number, and it gives CCEA the authority to request of
6 the school district to deduct dues for them to CCA.

7 Q And with respect to the second line, does it
8 authorize the deduction of paycheck money in the form of
9 dues by CCSDT school district to the paid directly to
10 CCEA?

11 A Yeah. It's the second paragraph that says
12 payroll deduction authorization.

13 MR. ALEXANDER: Again, your Honor, I object to the
14 extent Mr. Velladita is just reading what it says on the
15 page. I don't believe that Mr. D'Alba has established the
16 foundation that he has the competence to do -- to testify
17 about it anymore than --

18 THE COURT: Okay.

19 MR. ALEXANDER: -- I would be or you would be able to
20 just read those provisions.

21 THE COURT: So the basis of the objection -- what
22 what's.

23 MR. ALEXANDER: It's foundation.

24 THE COURT: What's the evidentiary basis? Foundation?

25 MR. ALEXANDER: Foundation. It's lack of foundation

1 and competence.

2 THE COURT: The Court is only going take his testimony
3 as a lay person and his reading and interpretation of the
4 document. I'm not taking it for the ultimate conclusion
5 that, really, you are all asking this court to make.

6 MR. ALEXANDER: Okay. Thank you, your Honor.

7 THE COURT: Go ahead.

8 BY MR. D'ALBA:

9 Q What has been the practice with respect to the
10 deduction of dues by the district and the forwarding of
11 the dues?

12 A Well, once the district receives this membership
13 form from CCA, the district then proceeds to deduct each
14 pay period, the dues that are owed to CCA from the member.

15 Q Is there any specific authorization on this form
16 for dues to be paid to either NSEA or NEA?

17 A No, there is not.

18 Q And does CCA in the normal practice submit dues
19 money to NSEA and NEA?

20 A With a contract to remit those dues, we have in
21 the past.

22 Q And how are you aware of that practice?

23 A We have a contract in the past with NSEA to remit
24 dues, and in that context we file that contract and remit
25 those dues.

1 Q Does that contract have a specific name?

2 A It is the contract to remit dues. I think -- I
3 believe that's what it is.

4 Q Calling your attention to Exhibit C. What is
5 this document?

6 A This is the service agreement between the Nevada
7 State Education Association and the Clark County Education
8 Association.

9 Q And what is the purpose of this document?

10 A It essentially captures between the two parties
11 what services would be rendered, as well as it speaks to
12 some other things of which the contract for dues
13 remittance is part of it.

14 Q Calling your attention to paragraph 1. Are you
15 familiar with that paragraph?

16 A I am.

17 Q Have you had discussions with the NSEA
18 representatives in the past about that paragraph?

19 A I've had discussions on and off for the past
20 several years.

21 Q And is there an addendum that's been attached to
22 this agreement?

23 A There is an Addendum A -- that's attached --

24 Q I want to --

25 A -- to this agreement.

1 Q I want to call your attention to a document that
2 has a Bates number 16 in this series of Exhibit C. But
3 what is this document?

4 A This is the Addendum A, and it's an agreement
5 between the NSEA and -- and the Clark County Classroom
6 Teachers Association to remit dues --

7 Q And are you familiar with this document?

8 A -- collecting and transmitting this. Excuse me?

9 Q Are you familiar with this document?

10 A I am.

11 Q How so?

12 A This is the contract -- this is a contract for
13 dues remittance that's been part of the service agreement
14 as Addendum A between us and NSEA.

15 Q Calling your attention to the period before 2017,
16 did you have discussions with representatives of the NSEA
17 in 2014 concerning a service agreement in Addendum A?

18 A Yes, we did. We served notice to terminate the
19 service agreement that had the Addendum A in it as well in
20 2014 to NSEA.

21 Q Calling your attention to Exhibit D, please. Is
22 this a document that you wrote?

23 A This is a document I sent and wrote on
24 March 20, 2014, to the executive director of NSEA
25 indicating that we were serving notice to terminate the

1 service agreement between the parties.

2 Q And subsequent to that notice, did you have
3 meetings with the representatives of NSEA concerning this
4 subject?

5 A We did.

6 Q And calling your attention to the very next page.
7 Can you please identify what that is?

8 A This is one of two pages that essentially
9 captured an agreement reached between NSEA and CCEA as a
10 result of us having negotiations for a new service
11 agreement. And this -- this agreement was mediated by a
12 third party facilitator.

13 Q Does it contain your signature on the bottom?

14 A It does.

15 Q Does it contain the signature of representatives
16 of the NSEA?

17 A It -- yes. There's four other signatures on the
18 bottom. Gary Peck (phonetic), the executive director,
19 Michael Tibbs (phonetic), who was the CFO, I believe,
20 Ruben Murillo, who was the president of NSEA, and Debbie
21 K. Hill (phonetic), who was in some kind of senior staff
22 capacity.

23 Q And as a result of this agreement, what was the
24 actual result in terms of these provisions. What do they
25 provide for?

1 A They provide -- depending on which one of these,
2 but essentially, financial assistance from NSEA to CCA.
3 That was part of the core of the -- the request to
4 negotiate a new service agreement because of the -- the
5 dues situation.

6 Q Calling your attention to a document on the
7 bottom right which is marked 265. It has a title, "Review
8 of Service Agreement." What is this document?

9 A Excuse me, I'm -- I'm -- where are we looking at?

10 Q One more page after the handwritten notes.

11 A Okay.

12 Q On the bottom right it has the number 265.

13 A Got it.

14 Q Are you familiar with this?

15 A I am.

16 Q Please identify it.

17 A This is a document that's dated at the top,
18 April 9, 2014, in the upper left-hand corner, and this
19 captures the -- essentially the minutes of the
20 negotiations between NSEA and CCA for a new service
21 agreement in 2014.

22 Q And what specifically -- calling your attention
23 to Item Number 1.

24 MR. ALEXANDER: Your Honor?

25 THE COURT: Just a second.

1 BY MR. D'ALBA:

2 Q About half way down --

3 MR. ALEXANDER: I'm going to object to this part of
4 the exhibit as hearsay, which it clearly is, I believe,
5 your Honor. It is a document that appeared -- well, I
6 don't know the foundation, but it appears to have been
7 created by CCEA.

8 THE COURT: Okay. Let me walk through. At this
9 junction no one sought for it to be admitted. He's just
10 asking -- he asked the question whether he recognizes it,
11 and was just pointing to the document.

12 So did you have an objection to that last
13 question, or are you preserving an objection if he seeks
14 to admit it.

15 MR. ALEXANDER: Well, the latter your Honor, to the
16 extent -- and the last question I do not have an objection
17 to, but if he asks Mr. Vellardita to testify about what's
18 in that document. That is outside of what is his -- in
19 his personal competence. I would object to that.

20 THE COURT: Okay. Then I'm going to wait to hear each
21 of the questions and have you raise an objection per --
22 per question. Okay. I do --

23 MR. ALEXANDER: Thank you, your Honor.

24 THE COURT: -- appreciate that. Thank you so very
25 much.

1 BY MR. D'ALBA:

2 Q Mr. Vellardita, with respect to the handwritten
3 notes that are in front of this, how and when were they
4 written?

5 A Are we talking about the previous two pages?

6 Q Yes, sir.

7 A These were written by the person who facilitated
8 the negotiations between us and NSEA.

9 Q And has this been kept in the files of your union
10 since then?

11 A It has been.

12 Q Is this a business record of the union?

13 A It is.

14 Q Calling your attention to the next page, number
15 265, the one we were just looking at, is this also the
16 documents that have been maintained in the files of your
17 union?

18 A It is, and -- and this was a document that both
19 sides agreed to that we capture the minutes of these
20 meetings.

21 Q And is this a business record of your union?

22 A It is.

23 Q And with respect to Item Number 1 that refers to
24 membership collecting and processing agreement, were there
25 discussions among -- or between the CCA representatives

1 and NSEA representatives about transmitting dues from the
2 school district to NSEA?

3 A There were during these negotiations, during that
4 time.

5 Q And does this paragraph refer to Addendum A?

6 A It does.

7 Q Is that the same Addendum A that you were
8 referring to earlier?

9 A It is.

10 Q Can I go back to Addendum A, please. This is in
11 Exhibit C, and specifically Bates stamp number 16. Is
12 this a -- is this a record -- an agreement that you keep
13 in the ordinary course of business of the union?

14 A We do.

15 Q And what is the purpose of Addendum A?

16 A This is the contractual arrangement between CCA
17 and NSEA to remit dues to NSEA from CCA.

18 Q And does this contain a -- a termination clause?

19 A It does.

20 Q Calling your attention to Roman 6, on page marked
21 18. Is this the termination clause you are referring to?

22 A It is.

23 Q And then calling your attention to the service
24 agreement, which is at -- also in Exhibit C, page -- Bates
25 stamp 15. Does this also contain a termination agreement

1 at page -- at paragraph 20?

2 A It does.

3 Q And with respect to these termination agreements,
4 let me call your attention to Exhibit E. In -- or on or
5 about May 3 of 2017, did you send this letter?

6 A I did.

7 Q To whom did you send it?

8 A To the executive director, Brian Lee, of the
9 Nevada State Education Association.

10 Q And is this letter in the business files and
11 records of your union?

12 A It is.

13 Q And what was the purpose of sending this letter?

14 A We were serving notice to NSEA that we wanted to
15 terminate the service agreement that was in place and that
16 we wanted to negotiate a new agreement.

17 But we also gave reasons for it. The school
18 district just went through a significant reorganization.
19 It required more resources on the part of CCEA, so there
20 was a pressing financial need on our part to revisit this
21 service agreement and the -- and the dues remittance
22 contract.

23 Q What were you hoping to negotiate in terms of
24 success or dues transmission agreement?

25 A Well, in 2014 we had made some progress on

1 getting additional financial assistance from NSEA, and so
2 our intent was to try to negotiate a new agreement that
3 reflected the growing financial needs of CCA in relation
4 to the amount of money it was sending to NSEA at that time
5 in the form of dues.

6 Q And does this -- does this agreement both on
7 Exhibit C, in terms of the service agreement and
8 paragraph 1 on Bates stamp 12. First, on Bates stamp 12,
9 does this provide for CCA to transmit dues money to NSEA?

10 A It does.

11 Q Is that what you were seeking to terminate?

12 A I was seeking to terminate the service agreement
13 and that -- that's part of the service agreement,
14 Addendum A, as it states in the -- in this agreement.

15 Q And calling your attention to Addendum A, Bates
16 stamp 16, at Roman 2-B, does this also provide for CCEA to
17 transmit dues money to NSEA?

18 A It does.

19 Q And is the organization CCTA the predecessor of
20 CCEA?

21 A It is.

22 Q With respect to your letter to Mr. Brian Lee, who
23 is he?

24 A He's the executive director of NSEA.

25 Q Were there subsequent letters that you sent to

1 Brian Lee concerning the termination of this agreement?

2 Your desire --

3 A There was.

4 Q -- to negotiate a new one?

5 A Yes, there was.

6 Q Calling your attention to the next page. That
7 says Bates stamp number 654. Is this a letter that is
8 kept in the ordinary course of business at your union?

9 A It is.

10 Q And did you write this letter?

11 A I did.

12 Q And what was the purpose of this letter?

13 A It was a notice sent to NSEA that we were
14 terminating the service agreement between CCA and NSEA.

15 Q Calling your attention to the next page. This is
16 the date of August 3, 2017. Is this a letter that you
17 wrote?

18 A It is.

19 Q This is a two-page letter, and is this also kept
20 in the ordinary course of business at your union?

21 A It is.

22 Q And what was the purpose of this letter?

23 A Well, the subject line says, "Final Notice,
24 Contract For Dues Remittance." Again, we're indicating
25 that we had served notice to terminate the service

1 agreement, and the contract for dues remittance will be
2 null and void on -- or expires on August 31, 2017. And
3 short of negotiating a new agreement, a successor
4 agreement, there would not be one in place.

5 Q I want to call your -- was this -- is this also a
6 letter that's kept in the ordinary course of business --

7 A It is.

8 Q -- at your union? Calling your attention to the
9 paragraph -- the fourth paragraph. Actually, the third
10 paragraph first. What were you saying to Mr. Lee about a
11 collection of dues and what NSEA was doing?

12 A NSEA had coll -- had collected membership forms
13 from Clark County teachers, and on those membership forms
14 it -- it did not identify what the local affiliates name
15 was to have authorization to have those dues collected
16 from the school district on behalf of CCEA. And in this
17 notice I'm asking Brian Lee essentially -- it's come to
18 our attention and, you know, it's -- what are you doing?
19 And you're not representing that issue properly to people.
20 And without a contract between us and NSEA to remit dues,
21 again, it expires August 31st.

22 Q Calling your attention to the second page of this
23 exhibit, Bates stamp 37. What is it that you were asking
24 for with respect to this sentence?

25 A So we concluded this letter -- I conclude this

1 letter by stating to NSEA that we had produced four
2 invoices that had a billing for services in the amount of
3 \$467,000 and 133 -- \$130.69 as of that day, and we're
4 looking for reimbursement.

5 Q Is this what you were expecting to negotiate with
6 this successor agreement?

7 A In part. It -- it certainly was because it was
8 services that we were requiring.

9 Q Calling your attention to the next page. This is
10 a letter dated August 4th. Did you receive this letter in
11 the ordinary course of business?

12 A This letter was dropped off at our front desk
13 office in a brown envelope.

14 Q And are you familiar with the person who signed
15 it?

16 A This is a person who works for NSEA.

17 Q And what was, if anything, attached to this
18 letter.

19 A There are five membership forms that are attached
20 to it, and the title of the membership form says NSEA
21 Membership Enrollment Form.

22 Q And were these membership forms referenced in the
23 letter dated August 4th?

24 A These are the ones. Yes.

25 Q Calling your attention to Exhibit F. First, was

1 there any response from NSEA to your letter of August 3rd?
2 Going back to Exhibit E and the page that's marked 36 at
3 the bottom.

4 A Response to the entire letter --

5 Q Yes.

6 A -- or parts of the letter?

7 Q Any part.

8 A Never heard anything on the membership forms from
9 NSEA. The issue that we raised that they were collecting
10 NSEA membership forms and never heard anything from them,
11 never received any kind of acknowledgment that they owed
12 or would pay the \$467,000 that we were asking for.

13 Q Now, turning your attention to Exhibit F, please.
14 Is this a letter that you kept in the ordinary course of
15 business at your union?

16 A It is.

17 Q And did you write this letter?

18 A I did.

19 Q And to whom did you write it?

20 A The President of NEA, Ms. Eckleson-Garcia.

21 Q For what purpose?

22 A At this point this is September. Our contract to
23 remit dues to NSEA was no longer in effect. We reached
24 out to NEA and we indicated to them that we would be open
25 to having a contract directly with NEA to remit their

1 dues.

2 Q And did you also submit with that letter a draft
3 transmittal agreement?

4 A We did.

5 Q Is that on the very next page of that exhibit?

6 A It is.

7 Q And was there a response to that letter from the
8 NEA?

9 A From the general counsel of NEA; correct.

10 Q Is that the very next page in that exhibit?

11 A It is. Dated September 28, 2017.

12 Q And are these documents in Exhibit F documents
13 that were maintained in the ordinary course of business of
14 your union?

15 A They are.

16 Q Was there a meeting in September between CCA and
17 NSEA concerning the -- your request for renegotiations?

18 A There was.

19 Q And approximately when was that?

20 A September 18, 2017.

21 Q And who was present, if you know?

22 A For -- myself, representing CCA,
23 Michelle Kim (phonetic) for CCA, Vicky Courtney, the
24 President of CCA, Theo Small, vice president of CCA. For
25 NSEA, an attorney from NEA, I can't recall the name, the

1 executive director of NSEA, the President of NSEA, and
2 then I'm not sure who else was there in terms of their
3 names.

4 Q What if anything did you say about trying to
5 reach an agreement for a successor?

6 A We made it clear going into that meeting with
7 correspondence that we did not have a contract to remit
8 dues in place, and the intent was to negotiate a new dues
9 remittal contract with NSEA and --

10 Q Was there?

11 A -- we --

12 Q Was there a response?

13 A We stated that at the meeting, and the response
14 was the NSEA would make -- would be interested in making
15 minor modifications to the contract for dues remittance,
16 but would not engage in any negotiations to substantially
17 change it.

18 Q Well, was there an agreement for a successor
19 agreement?

20 A No there was not. The meeting was short.

21 Q Calling your attention to Exhibit G. What is
22 this document?

23 A This is the CCA Constitution and Bylaws.

24 Q Is this a document kept in the ordinary course of
25 business of the union?

1 A It is.

2 Q Calling your attention to Exhibit H. Please
3 identify what this document is.

4 A This is the Bylaws of the National Education
5 Association.

6 Q And calling your attention to the -- the page
7 marked 135, Exhibit 2-9. Please identify what this is.

8 A This is a page out of the Constitution Bylaws
9 amending A, and on page 135 there is a Section 29 that
10 says, Dues Transmittal and Enforcement Procedures.

11 Q And do you understand the transmittal of dues is
12 based upon a dues transmittal contract?

13 A I do.

14 MR. ALEXANDER: Objection. Foundation. This -- he's
15 interpreting NEA Bylaws at this point.

16 MR. D'ALBA: Your Honor, this is pretty basic stuff.

17 THE COURT: I need a little bit better offer of proof
18 than it's basic stuff, Counsel. How about a little bit
19 more of an offer of proof?

20 MR. D'ALBA: It's a surprise coming from them, because
21 I don't think it's disputed. That's why I said that.

22 THE COURT: Yeah, but --

23 BY MR. D'ALBA:

24 Q How do you know that there is a requirement for
25 the transmittal of dues pursuant --

1 THE COURT: Since that was withdrawn and restated as
2 new question, the Court may not rule. Go ahead. You can
3 answer.

4 BY MR. D'ALBA:

5 Q How do you know that there is a -- or do you know
6 if there is -- let me back up. How do you know that there
7 is a contract requirement for dues payments to be made --
8 transmitted from CCA to NEA and NSEA?

9 A It's a requirement of affiliation to both the
10 state association and the national organization to have a
11 contract for dues remittance in place.

12 Q And are you familiar with that based upon your
13 knowledge of the constitution?

14 A Absolutely.

15 Q And is this one of the several provisions that
16 you have referred to and learned about over the years?

17 A This is.

18 Q Yes, sir. Calling your attention to Exhibit I.
19 What is this document?

20 A This is the Bylaws of the Nevada State Education
21 Association.

22 Q And are you familiar with this?

23 A I am.

24 Q Calling your attention to a page that's marked 16
25 on the bottom right. Are there, if you know, minimum

1 standards of an affiliate with NSEA?

2 A There is. It's cited in Section 3 of their
3 Bylaws.

4 Q And calling your attention to F. Are you
5 familiar with that?

6 A I am.

7 Q And what is that?

8 A It requires that as part of a minimum standard to
9 be an affiliate of the state association, a local must
10 have a dues transmittal contract with NSEA.

11 Q Had CCA stopped transmitting dues to NSEA?

12 A We have.

13 Q As of when?

14 A September 1, 2017.

15 Q And why is that?

16 A We did not have a contract to transmit those
17 dues.

18 Q At the time the dues payments were stopped, did
19 you order or set up a separate bank account for
20 maintaining the dues?

21 A Shortly thereafter we did.

22 Q And what did you do?

23 A We -- we set up an account with our bank to
24 essentially establish it on a restricted basis where
25 deposits would be made, and the understanding would be

1 that those monies deposited in that account could never be
2 withdrawn because we informed the bank that there was
3 ongoing litigation between CCA and NSEA. And that until
4 that litigation was resolved, any monies deposited in that
5 account would not be withdrawn, and that's the nature of
6 the restricted account.

7 Q And since it was set up as a restricted account,
8 has any money been withdrawn from the account by CCEA?

9 A No money has been withdrawn.

10 Q Calling your attention to Exhibit M. Is this a
11 letter that you authorized your counsel to send to the
12 attorneys for NSEA?

13 A It is.

14 Q And was -- what was the purpose of this letter,
15 if you know?

16 A To give insight and explanation to the nature of
17 the account that was set up by CCA that I just spoke to --
18 the restricted account.

19 Q And at the end of this exhibit -- if you -- two
20 pages from the end, there is a letter dated December 12,
21 217 -- 2017. What do you know about this letter?

22 A This is a letter sent by my fin -- or CCA's
23 finance and risk management -- manager to an individual
24 with the Bank of America in relation to the account that
25 we had set up that was restricted.

1 Q And does this indicate that it was a restricted
2 account?

3 A It does.

4 Q Are these two letters kept in the ordinary course
5 of business at your union?

6 A They are.

7 Q Do you know when the last transmittal of dues
8 money to S -- NSEA occurred?

9 A It would have been for the pay period of
10 August -- the last pay period in August of 2017.

11 Q And as a result of the termination of
12 transmitting dues to NSEA, has NSEA taken the position
13 that CCA members of the NSEA Board of Directors are no
14 longer in good standing?

15 A They have.

16 Q Calling your attention to Exhibit J. Do you
17 recognize this document?

18 A I do.

19 Q How did you obtain this document?

20 A It was shared with me -- or presented to me by
21 the governance of CCA. It's an E-mail from Ruben Murillo
22 to NSEA board of director members not in good standing.

23 Q And is this a document that you kept in the
24 ordinary business of your union?

25 A It is.

1 Q Are you familiar with the membership composition
2 of the Board of Directors of NSEA and the delegate
3 assembly?

4 A I'm familiar with CCA's representation on both
5 those bodies.

6 Q And calling your attention to Exhibit K. What is
7 Exhibit K?

8 A Exhibit K is -- at the top it says delegate
9 allocation. This is an NSEA form that's given -- was
10 given to CCA indicating for the delegate assembly how many
11 delegates that CCA would be allowed to have seated based
12 on 2016 numbers. It shows 154 seats.

13 Q And is that a large number compared to the total
14 number of people whom attend the assembly?

15 A It's the majority. There's only 299 that -- on
16 this form indicated, and we had 154.

17 Q Are you aware if CCA members are still main --
18 being maintained under membership roles of NSEA?

19 A I know that NS -- I know firsthand that NSEA
20 sends communications to members of CCA that NSEA says
21 they're members of NCA because those people have forwarded
22 those E-mails to me.

23 Q Is there a delegate assembly meeting and Board of
24 Directors meeting of NSEA scheduled for the foreseeable
25 future?

1 A There is. April -- I think 27, 28, and 29 of
2 2018.

3 Q And have CCA members have been advised that they
4 will not be allowed to participate in those meetings?

5 A I've been informed by members of my board that --
6 the delegates that they've been informed that they cannot
7 attend.

8 Q And do you object to the exclusion of these
9 members from these meetings?

10 A Our governance has objected to that. Yes.

11 Q Are you aware of Bylaws that will be presented at
12 this meeting?

13 A We are, and I am.

14 Q Calling your attention to Exhibit L. First,
15 there is a by law for article Roman 8. When was this
16 presented, if you know?

17 A I'm sorry. Presented?

18 Q Well it's a Bylaw form. How was it presented?

19 A I'm assuming it was submitted to NSEA. It has a
20 date of Feb- -- February 16, 2018, and they post these on
21 their website.

22 Q And is this Bylaw that is scheduled to be voted
23 upon in the meeting that you just previously identified?

24 A It is.

25 Q And what about the next Bylaw page?

1 A It's the same thing.

2 Q And is the -- what is the purpose, as you
3 understand it, of this Bylaw change?

4 A This is the Bylaw that would empower if passed by
5 the delegate assembly, the Board of Directors of NSEA to
6 put into trusteeship a local affiliate for reasons of, and
7 it speaks for itself, financial mac -- malpractice or
8 restoring democratic procedures.

9 Q Are you familiar with how trusteeships operates,
10 sir?

11 A I'm sorry? Could you --

12 Q Are you familiar with how trusteeships operate?

13 A I am.

14 Q And will the NSEA trustees, if a trustee is --
15 trusteeship is -- is adopted and imposed, be able to take
16 the dues money out of the restricted account?

17 A They would be in control of all aspects of CCA.

18 Q Is that based upon your experience as a trade
19 unionist?

20 A Yes.

21 MR. ALEXANDER: Objection, your Honor. He can speak
22 generally to what trusteeships are, but he's -- party to
23 testify about what the effect of this specific trusteeship
24 Bylaw would forbid. And I don't think that he can speak
25 to that. I think it's speculation.

1 THE COURT: Okay. So you have a speculation
2 objection. Counsel, do you wish to respond, or do you
3 want the Court to rule?

4 MR. D'ALBA: The document itself, your Honor,
5 specifically says, "The trustees would be able to take
6 full charge of the affairs of the affiliate and empower
7 the trustees to take possession of all funds books papers
8 records and other property." That's what he's speaking to
9 as a witness.

10 THE COURT: The Court is going to sustain the
11 objection because the document speaks for itself for what
12 it says. His interpretation of it wouldn't be binding
13 upon the entity of the drafting document. So I'm going to
14 sustain it for speculation at this juncture based on what
15 he's said so far.

16 BY MR. D'ALBA:

17 Q In your experience what have you seen trustees
18 do?

19 A By and large what's referenced in here
20 essentially takes over the entire local -- every aspect of
21 it, particularly the finances and operations.

22 Q Would the trustees in your opinion, be able to
23 order the resolution of the two lawsuits that are now
24 pending in this district's -- in this district court?

25 A My --

1 MR. ALEXANDER: Same objection, your Honor.

2 THE COURT: Speck --

3 MR. ALEXANDER: He's asking for speculation about what
4 a Bylaw that hasn't yet been adopted would permit in a
5 particular situation based on his general experience of
6 the trusteeships in -- my belief is federal context, but
7 maybe he can lay a foundation for it.

8 THE COURT: So is it speculation or foundation or
9 both?

10 MR. ALEXANDER: Well it's speculation because there is
11 no foundation, your Honor.

12 THE COURT: Counsel, do you wish to be heard?

13 MR. D'ALBA: The same words, take charge of all
14 affairs.

15 THE COURT: Okay. The Court's going to sustain the
16 objection because it's not in the document and it's not
17 shown that he has any first-hand knowledge of what can be
18 the effect of the document.

19 BY MR. D'ALBA:

20 Q Are you aware of trusteeships being imposed on
21 certain unions that you've worked on -- where you've
22 worked with before?

23 A Yes.

24 Q And are you aware of trustees in those unions
25 taking charge and resolving litigation that we're

1 spending?

2 A I'm aware that they have the authority to do
3 that. Yes.

4 Q Is that something that you believe would happen
5 in this particular case?

6 A Yes.

7 MR. ALEXANDER: Same objection, your Honor.

8 THE COURT: Overruled because it's his belief rather
9 than factual knowledge. You can answer.

10 BY MR. D'ALBA:

11 Q Do you have a meeting scheduled of your own
12 members this week?

13 A We do.

14 Q And is there a vote that will come up at that
15 meeting concerning this affiliation?

16 A There will be on April 25th.

17 Q And with respect to disaffiliation, what would be
18 the consequence of that?

19 A CCA would no longer be an affiliate of NSEA and
20 NEA, and members of CCA would no longer be members of NSEA
21 and then (inaudible).

22 Q Has NSEA been campaigning against this proposal?

23 A They have.

24 Q Calling your attention to Exhibit N. Are these
25 the NSEA policies that were updated as of July 19, 2017?

1 A The to the best of my knowledge, yes.

2 MR. D'ALBA: Your Honor, I move the introduction of
3 the exhibits that have been identified.

4 THE COURT: Which are -- I need have them -- bless
5 you.

6 MR. D'ALBA: A, the collective bargaining agreement.

7 THE COURT: Sure. Is it all of them or is it --

8 MR. D'ALBA: All of them.

9 THE COURT: Okay. Well, Counsel for the Plaintiff
10 counter-defendants, do you object with the request for A
11 through N?

12 MR. ALEXANDER: I object, your Honor, solely to --

13 THE COURT: Which ones.

14 MR. ALEXANDER: -- the last two pages of Exhibit D, of
15 which appears to be a summary at -- made at some point by
16 some person at CCEA, but I don't believe that this
17 could -- could be characterized as a business record
18 because there is no testimony about when it was done, who
19 did it, why they did it. And it is in our view a
20 characterization of an agreement that was made by other
21 parties and as such would be hearsay.

22 THE COURT: Okay. Counsel, if you respond for an
23 offer of proof, the Court's going have one question. I
24 might as well give you a head's up of what my question is
25 because as counsel was raising the objection beforehand, I

1 did notice in the lower left-hand corner -- see it says
2 page 1 of 13, and the second one says page 2 of 13. So I
3 wasn't sure if these were excerpts or --

4 MR. D'ALBA: May I ask the witness?

5 THE COURT: Sure. Go ahead. I'm just giving you --

6 BY MR. D'ALBA:

7 Q Mr. Vellardita, first this -- this document
8 refers to a meet occurring on April 9, 2014. Did you
9 attend that meeting?

10 A Could you reference the document.

11 Q I'm sorry. Exhibit D, the Bates stamp is 265.

12 A I'm sorry. Go ahead.

13 Q Did you attend a meeting on April 9th of 2014?

14 A I did.

15 Q And do you know who these other people are who
16 attended.

17 A There is -- Donna Fisher, who was my finance
18 director. She's the one that took the minutes that both
19 parties agreed to. So this is the document she created.
20 Vicky Courtney who was the President at that time of CCA;
21 Gary Peck, the executive director of NCA; Debbie K. Hill,
22 I -- I can't recall what her title was for NSEA; and then
23 Michael Tibbs, who was their finance guy for NCA.

24 Q And did you direct Ms. Fisher to prepare the
25 minutes for this meeting?

1 A I did, but it was with consensus with NSEA
2 because somebody kept minutes, and these minutes were
3 shared with both parties upon completion.

4 Q And do these minutes accurately reflect what was
5 discussed at that meeting?

6 A They do.

7 Q At the bottom of page -- of the page, there is an
8 indication that there is a page 1 and a page 2. Do you
9 know what the remaining pages are?

10 A Could you repeat your question.

11 Q Please look at the -- please look at the bottom
12 left of the page.

13 A Okay.

14 Q It says page 1 of 13.

15 A Correct.

16 Q And then next page says page 2 of 13. Do you
17 know what the other pages were with respect to this
18 document?

19 A They would have been the balance of the document
20 that wasn't addressed that these notes capture on page one
21 and two.

22 Q What do you mean by that?

23 A The bal -- the service agreement had -- the
24 service had Addendum A, which is the contract for dues
25 remittance. It had Addendum B, which was the legal

1 services agreement. That would be part of this.

2 MR. D'ALBA: Move the introduction of this document,
3 your Honor.

4 THE COURT: Okay. Counsel?

5 MR. ALEXANDER: Still object to it as hearsay. It
6 doesn't -- in our view it would -- the fact that they
7 might be minutes taken by somebody affiliated with CCEA
8 does not allow for the introduction of them as -- for the
9 truth of the matters that are submitted.

10 THE COURT: Okay. What's your purpose for your
11 admitting these two documents? Is it for the truth or is
12 it for some other purpose to address --

13 MR. D'ALBA: It's to show what was discussed at this
14 meeting, your Honor.

15 THE COURT: So it's the truth. Okay. Well, I have to
16 sustain the objection without prejudice and deny the
17 admissions of Bates stamp pages 265 and 266. Was there an
18 objection to any of the remaining documents A through N?

19 MR. ALEXANDER: No, your Honor.

20 THE COURT: Okay. The reason for the denial with
21 regards to Bates stamp 265 and 266 of -- which is the last
22 two pages of proposed Exhibit D, like Douglas or dog or
23 whatever you want to use your D for.

24 There is two reasons. One, it appears to be an
25 incomplete document. I've got a 1 of 13 and 2 through 13.

1 This witness has testified that this is an incomplete
2 document.

3 The second reason is that it would be hearsay
4 because it's being sought for the truth of the matter, so
5 we don't have who did it. And while there is an assertion
6 that this accurately reflects part of the agreement, we
7 have a dispute in that regard, and so it would not fall
8 within one of the exceptions of a hearsay. (Inaudible) see
9 it as a business record.

10 Just because it's maintained in their files
11 doesn't mean it necessarily falls as an exception to the
12 hearsay rules of business records. So it's denied without
13 prejudice and the balance of one through -- A through N
14 are admitted. So --

15 (Defendants' Exhibits' A through N was received
16 in evidence by the Hearing Officer.)

17 BY MR. D'ALBA:

18 Q Mr. Velladita, calling your attention to this
19 meeting that occurred on April 9th of 2014, and
20 particularly with respect to the issue of membership
21 collecting processing agreement of the October 1979,
22 Addendum A, what do you recall being discussed about CCA's
23 agreement to transmit dues to NSEA?

24 A That whatever the result of this negotiations, we
25 would have either continuation of the contract for dues

1 remittance or there would be modifications to it.

2 Q And, in fact, what wound up in terms of those
3 discussions?

4 A We -- we continued -- we -- we reached and
5 agreement, and we continued the current 1979, Addendum A,
6 as part of the service agreement moving forward with NSEA.

7 Q Calling your attention to this document also,
8 there is a reference to a review meeting on
9 March 10, 2014. Did you attend that meeting?

10 A I did.

11 Q And do you know what was discussed at that
12 meeting?

13 A It was probably more of the same.

14 MR. D'ALBA: Your Honor, I have no other questions.

15 THE COURT: Okay. You kind of started with your next
16 question while I was in the midst of finishing up my
17 reasonings for the denial of that.

18 So part of it was also because we didn't have a
19 date and time when we knew this was done, so I don't know
20 if it was done contemporaneously back in 2014. 2015.
21 Some other time -- 2018. That was just going to be my --

22 MR. D'ALBA: May I ask another question then?

23 THE COURT: Of course. I was just going to --

24 BY MR. D'ALBA:

25 Q Do you know when these minutes were taken?

1 A They were taken the date of the meeting, so in
2 this case it would show April 9th. And they were typed up
3 within a day or two after that.

4 Q And how are they shared by the other participants
5 of the meeting?

6 A Donna Fisher shared them with the participants.
7 I'm assuming she shared them either at the -- the next
8 meeting that we had or electronically. I don't recall
9 specifically, but I know they were shared.

10 Q I believe you said there was a consensus as to
11 these minutes. What do you mean by that?

12 A Well, the parties acknowledged that there would
13 be notes being taken during these negotiations and that
14 there was an understanding and an agreement -- that's what
15 I mean by consensus reached -- that the -- the notes that
16 Donna Fisher would take would be shared by both parties,
17 and if there was any correction that somebody want today
18 make about those, that they would.

19 Q Was there any correction by NSEA with respect to
20 the section that deals with the transmission of dues in
21 Addendum A?

22 A As of April 9th --

23 Q Yes, sir.

24 A 2014, no.

25 MR. D'ALBA: Thank you, your Honor. I have no other

1 questions.

2 THE COURT: Okay. Do proceed. Cross-examination.

3 CROSS-EXAMINATION

4 BY MR. ALEXANDER:

5 Q Good afternoon, Mr. Velladita, my name is
6 Robert Alexander.

7 A Hello.

8 Q As of today, CCEA is an affiliate of NSEA; is
9 that correct?

10 A As of today, correct.

11 Q And it's CCA's position that as of today, there
12 is no dues transmittal agreement between CCEA and NSEA; is
13 that correct also?

14 A That's correct.

15 Q Prior to 2017, September 2017, CCEA collected
16 dues from CCA members inclu- -- including dues deductions
17 for NSEA dues and NEA dues; is that correct?

18 A That's correct.

19 Q And prior to September 2017, CCEA remitted the
20 NSEA portion of dues to NSEA and also the NEA portion of
21 dues to NEA -- to NSEA; is that correct?

22 A Remitted the dues to NCA for NSEA and NEA dues,
23 is that --

24 Q Yes. Both of them.

25 A Yes, that's correct.

1 Q And the amount of dues that was collected by CCEA
2 in the period prior to September 2017 included a break
3 down that was partly for the -- representing the CCEA
4 portion of dues, partly the NSEA portion of dues and
5 partially the NEA portion of dues; is that right?

6 A I'm not sure what you are asking when -- brought
7 down meaning what?

8 Q For each pay period that CCEA collected dues from
9 members through payroll deduction, those dues represented
10 a portion of what that was -- CCEA dues, a portion that
11 was NEA dues, and a portion that was NCA dues; correct?

12 A The dues that were remitted back to CCEA through
13 payroll deductions from the Clark County School District
14 did not distinguish any payment to NCA, NEA or CCA in any
15 amount.

16 It was -- it was one agnostic figure that was
17 sent to CCA. CCA then in turn would assess what the dues
18 per member for NCA/NEA would be and then would transmit
19 those dues in the aggregate to both organizations.

20 Q And the -- the dues were determined to be an
21 annual dues that were then broken up into bimonthly
22 payments; correct?

23 A Correct.

24 Q And the CC -- under the CCEA Constitution or
25 Bylaws, the CCEA determined it's own amount of dues. That

1 was it's portion of the dues that were collected from the
2 school district; correct?

3 A The constitution for CCA provides that.

4 Q Right. And that amount was annually about \$245 a
5 year; is that right?

6 A Not quite, but close enough.

7 Q Okay. And at the same time the other -- another
8 portion of the dues that was collected was the bimonthly
9 amount that over an annual basis would represent
10 approximately \$377 for NCA; is that right?

11 A Correct.

12 Q And NSEA determined that -- those dues under it's
13 own Bylaws; correct?

14 A That's my understanding.

15 Q And it also -- CCEA also collected an amount
16 of -- on a bimonthly basis that amounted for -- on an
17 annual basis -- to about \$189 per member for NEA dues;
18 correct?

19 A That's correct.

20 Q And those were determined by the NEA; is that
21 right?

22 A That's my understanding.

23 Q Since September of 2017, it's CCA's position that
24 there -- there was not a dues transmittal agreement; is
25 that right?

1 A That's correct.

2 Q It's also CCEA's position that if it continued to
3 collect dues from members that represent the NEA portion
4 and the NSEA portion; correct?

5 A We've been collecting dues since the contractor
6 dues remittance has been terminated from the school
7 district, as we did prior to that termination.

8 Q So the amount of dues that CCA's been collecting
9 since September 2017 include portions that are -- that
10 represent NSEA dues and NEA dues; correct?

11 A That's correct.

12 Q And CCEA is maintaining, if I understand your
13 testimony correctly, the NSEA and NEA dues in an account
14 at Bank of America that is described as a restricted
15 account; is that right?

16 A We're keeping a restricted account on our
17 membership dues.

18 Q So are you -- is it your testimony that the CCEA
19 dues are also in that restricted account?

20 A No. I'm saying that those dues are members dues.
21 Their not NCA or NEA dues. There's me -- there's dues
22 members money that's in that restricted account that are
23 not CCA's dues money.

24 Q They're not CCA's dues money?

25 A Correct.

1 Q And it's your understanding that the right to
2 deduct dues pursuant to a payroll deduction system is
3 based on the existence of a valid dues transmittal
4 agreement between CCEA and NSEA; is that right?

5 THE COURT: Bless you.

6 MR. D'ALBA: Objection, your Honor. I don't know if
7 that's a correct statement of the law with respect to the
8 collective bargaining agreement --

9 THE COURT: Bless you.

10 MR. D'ALBA: -- that authorizes the deduction of
11 payroll money.

12 THE COURT: You want to offer a proof response? Same
13 as I did with your objections.

14 MR. ALEXANDER: Well, I can turn Mr. Velladita to
15 Exhibit E in your notebook.

16 THE COURT: So is that withdrawn and then restated?

17 MR. ALEXANDER: I will withdraw that, and I will
18 substitute it.

19 THE COURT: No worries. It's withdrawn. The Court
20 may not rule. Go ahead.

21 BY MR. ALEXANDER:

22 Q If you look at the August 3, 2017, letter and the
23 second paragraph. This -- this is the letter that you
24 wrote to NSEA; correct?

25 A That's correct.

1 Q And in it you quote, "Payroll deduction is
2 contingent upon the existence of a valid dues transmittal
3 agreement between the local and NSEA;" is that correct?

4 A I'm citing NSEA's Bylaws that state that in that
5 letter. That's NSEA's --

6 Q Then you agree --

7 A -- Bylaws.

8 Q Then you agree with that position; right?

9 A I'm -- I'm citing in this letter that without a
10 dues remittal contract, we're not in compliance with
11 NSEA's Bylaws.

12 Q But you -- even after September 1st, that you
13 understand CCA's position that there is no valid dues
14 transmittal agreement, you continued payroll deduction; is
15 that correct?

16 A We have a --

17 Q That's a "yes" or "no" question, Mr. Velladita.

18 A We have an agreement with the school district to
19 do that.

20 Q But you don't have an agreement between CCEA and
21 NSEA to collect any portion of NSEA's dues after
22 September 1st to you?

23 A We have an agreement with our members to collect
24 dues.

25 Q But you don't have -- it's a simple question.

1 You don't have an agreement with NSEA to collect dues; is
2 that right?

3 A That's correct.

4 Q If I can turn you briefly to the service
5 agreement that's Exhibit C. And if I could turn to you to
6 the addendum document which -- if I understand --

7 MR. D'ALBA: Sorry, your Honor. Will you please
8 identify where you are.

9 MR. ALEXANDER: Sure. I believe it's Exhibit C, which
10 is the service agreement, which includes the --

11 MR. D'ALBA: Thank you. What page?

12 MR. ALEXANDER: The page that I believe begins on CCEA
13 16, which is the first page of what you previously
14 described --

15 MR. D'ALBA: Thank you.

16 MR. ALEXANDER: -- as the dues transmittal agreement.
17 BY MR. ALEXANDER:

18 Q This is the agreement that CCEA believes is no
19 longer in existence; correct?

20 A Which part of the agreement?

21 Q Addendum --

22 A The entire thing?

23 Q -- A. Addendum A.

24 A Correct.

25 Q And it's CCEA's position that Addendum A which

1 is -- you've described as the dues transmittal agreement,
2 has to be in place and operative for CCEA to transmit dues
3 to NSEA and NEA; is that right?

4 A To transmit dues, correct.

5 Q Right. If you look at Addendum A though,
6 Addendum A, the agreement between NSEA and the predecessor
7 of what is now CCEA. If you go to paragraph 1, it states
8 that "NSEA designates CCCTA agrees to be authorized agent
9 for the purpose of collecting and transmitting NSEA and
10 NEA dues and membership data." Do you see that?

11 A I do.

12 Q So part of what Addendum A provides is an agency
13 agreement between CCEA and NSEA; correct?

14 A It does.

15 Q And the agency agreement is one in which CCEA
16 has -- is designated the agent to collect NSEA and NEA
17 dues; right?

18 A Correct.

19 Q And that's no longer in place; correct?

20 A Correct.

21 Q So currently CCEA has no agency relationship with
22 NSEA that allows it to collect the NSEA or NEA dues; is
23 that correct?

24 A Doesn't allow us to transmit dues.

25 Q It speaks not to just transmitting but also

1 collecting doesn't it, Mr. Vellardita?

2 A It does.

3 Q So -- is it CCEA's position that it has the
4 authority to collect NEA and NSEA dues without any
5 contractual authorization from NSEA?

6 A As long as our members don't inje -- object and
7 our members know that we are in a contract dispute with
8 NCO -- A over this matter, we've continued to collect
9 them.

10 Q And previously you've looked at, I believe it was
11 Exhibit I in your notebook if you see that. Those are the
12 Bylaws of the NSEA; correct?

13 A Correct.

14 Q And previously in your August 3rd letter, you
15 quoted a portion of the NSEA Bylaws. I think that was
16 your testimony; right?

17 A It was.

18 Q Section 5 on page 3, which speaks to enrollment;
19 correct?

20 A 5 what? In its entirety or A or B.

21 Q Five A is what you were quoting in your
22 August 3rd letter --

23 A Correct.

24 Q -- correct? And the NSEA Bylaws which are
25 Exhibit A -- I -- I'm sorry, they are an affiliate

1 agreement in a sense between NSEA and CCA; correct?

2 A Could you restate that?

3 Q Sure. NSEA and CCEA have an affiliate, an
4 agreement between them that is NSEA Bylaws?

5 A We have a contract that the constitu -- they're
6 Bylaws that constitutes a contract.

7 Q Correct. And so Exhibit I is a contract between
8 CCEA and NSEA; correct?

9 A Correct.

10 Q And the portion that you previously quoted states
11 that "Payroll deduction is contingent upon the existence
12 of a valid dues transmittal agreement between the local
13 and NSEA." Do you see that? It's at the bottom of A, I
14 believe it's what you quoted in fact in your August 3rd
15 letter.

16 A Correct.

17 Q And there is no valid dues transmittal agreement
18 in your -- in CCEA's view between CCEA and NSEA; correct?

19 MR. D'ALBA: All right. This has been asked several
20 times now. I don't think it's relevant to this
21 proceeding.

22 MR. ALEXANDER: I have one further question only on
23 this.

24 THE COURT: If asked and answered is your objection.

25 MR. D'ALBA: Yes, ma'am.

1 THE COURT: Okay. I'm going to overrule because it
2 was phrased a little bit differently, but remind you to --

3 MR. ALEXANDER: Move it on.

4 THE COURT: -- because this is now his belief versus
5 some of your generalized questions. The reason why I'm
6 allowing the additional question. Go ahead.

7 BY MR. ALEXANDER:

8 Q It's your understanding of this contract as the
9 executive director of CCEA that payroll deduction, which
10 is what CCEA has continued to do since September 2017, is
11 contingent upon the existence of a valid dues transmittal
12 agreement between the local and NSEA; correct?

13 A Correct.

14 Q Okay. I'd like to ask you just a couple of
15 questions. Maybe a handful about the situation in 2014.
16 If you turn to Exhibit D in your notebook, the cover --
17 the first page is the March 20, 2014, letter. That's a
18 letter that, like the one that was sent in 2017, indicates
19 a -- a notice by CCEA that if a new service agreement is
20 not negotiated, CCEA will terminate the -- the service
21 agreement, which would then in CCA's view also terminate
22 the dues transmittal agreement; correct?

23 A Correct.

24 Q And no new service agreement was negotiated by
25 September 1, 2014, was it?

1 A I know we had a mediation and that's what's
2 referenced in the other two documents.

3 Q And the next page --

4 A (Inaudible).

5 Q So the next page represents an agreement between
6 CCEA and NSEA; correct?

7 A Correct.

8 Q And that is when the parties reached a new
9 agreement on a new service agreement, which would permit
10 transmittal of dues in CCA's view; correct?

11 A No. The service agreement was renewed in
12 September of 2014. This was reached in December of
13 24th -- it's in good faith. We had reached what we
14 thought conceptually was an agreement. We weren't to put
15 the finalization to it, and in good faith a service
16 agreement was continued as a result.

17 Q So you never did in 2014 terminate the dues
18 transmittal agreement; is that --

19 A It's because --

20 Q -- your testimony?

21 A We did not. We had several negotiation sessions
22 with them as -- yeah.

23 Q And you continued to transmit dues after
24 September 1st up until the period of -- of December 2nd
25 when you reached the agreement that is reflected on the

1 handwritten pages of the second and third pages of Exhibit
2 D; correct?

3 A That was a long one. So there was no
4 interruption in any remittance of dues to NSEA and NEA.

5 Q CCA's holding an association representative
6 committee meeting tomorrow; is that right?

7 A Correct.

8 Q And then on Wednesday it's holding a general
9 membership meeting; is that right?

10 A Correct.

11 Q And CCEA at tomorrow's association representative
12 committee -- could I just call it the ARC meeting for
13 shortening?

14 A That's fine.

15 Q Once -- each other. There are CCEA Bylaw
16 amendments that will be voted on tomorrow; is that right?

17 A Correct.

18 Q One of those Bylaw amendments deals with amending
19 the Bylaws to permit the disaffiliation; correct?

20 A Yeah. You could interpret it that way.
21 Absolutely.

22 Q And that Bylaw amendment -- it -- it -- which
23 changes the affiliate status of CCEA from -- with being
24 required, shall maintain affiliate status with the NEA and
25 NSEA, to may maintain affiliate status; is that right?

1 A That's correct.

2 Q And there is another Bylaw amendment that allows
3 for the general membership to vote to change the
4 relationship between NEA and -- NSEA and CCEA that would
5 override any existing Bylaws; is that right?

6 A I'm not sure if I would characterize that Bylaw
7 that way. That Bylaw, I think your referencing, empowers
8 the membership meeting to act on all matters of the
9 association.

10 Q And that -- if passed tomorrow, the ARC would
11 allow, on Wednesday, the membership to vote to
12 disaffiliate from NSEA; is that correct?

13 A If the membership shall choose; correct.

14 Q And those two Bylaws were presented as early as
15 March 1st to the Bylaw committee; is that right?

16 A I don't recall the exact date, but early March
17 sounds right.

18 Q In fact, under the CCEA constitution and Bylaws,
19 amendments to the Bylaws must be submitted to the Bylaws
20 Committee by March 1st; right?

21 A Okay.

22 Q So the Bylaws we're talking about that would
23 allow this affiliation were presented by March 1st;
24 correct?

25 A I didn't present them so I assume they were --

1 Q Okay.

2 A -- if that's what the Bylaws are.

3 Q CCEA not only has presented potential Bylaw
4 changes that would allow this affiliation, CCEA has
5 advocated to it's membership for disaffiliation. Would
6 you agree with that?

7 A CCEA's Board of Directors has done that. Yes.

8 Q And CCEA maintains a website; correct?

9 A We do.

10 Q And one of the purposes of that website is to
11 communicate with members; right?

12 A In part, yes.

13 Q So, for example, the membership meeting that's
14 being held on Wednesday, that appears on the CCEA website;
15 correct?

16 A It does.

17 Q And CCEA controls the message that -- on the
18 website that goes to its membership; correct?

19 MR. D'ALBA: Your Honor, this is beyond the scope of
20 direct examination and not relevant to the motion for an
21 injunction.

22 MR. ALEXANDER: Your Honor, while it might be slightly
23 beyond the scope of what he argued on direct, it's
24 definitely relevant to the preliminary injunction motion
25 because it goes to both the rightness and the equitable

1 basis for the injunction that's being sought to prohibit
2 NSEA from voting on Bylaw amendments that CCEA has known
3 for a month and a half at least and has advocated for to
4 disaffiliate and which would make the preliminary
5 injunction they're now seeking absolutely moot.

6 THE COURT: Okay. Let me go back a step. I'm looking
7 at the conclusion section of the motion for preliminary
8 injunction and what it says in that section. Okay. And
9 it says in that section, "For the foregoing reasons the
10 Defendant counter-claimant's request this Court to grant
11 an injunction -- excuse me -- to restrain NSEA and its
12 officer from borrowing C -- barring CCEA's elected
13 delegates to participate in the NSEA board of delegates
14 and related meetings dealing with the proposed trusteeship
15 Bylaw amendment and to require all CCEA members to be
16 placed in good standing." Period.

17 "In addition, Defendants' counter-claimants
18 request that Plaintiffs' counter-defendants be barred from
19 imposing a trusteeship on CCEA during the dependency of
20 this case. Such action of this Court is necessary to
21 protect its jurisdiction and has been -- that has been
22 invoked by NSEA to determine its rights to the dues money
23 that has been placed in the restricted account." Period.
24 "Such action by the Court is necessary to maintain the
25 status quo while the Court determines the merits of the

1 dispute."

2 So that -- looking at the second part of your
3 objection as far as relevancy, it seems we need to
4 overrule that because in order to address the issues of
5 what's happening on -- I'll say, Thursday -- well, the
6 subsequent two days because now we've kind of got -- it
7 kind of looks like it's Tuesday and Wednesday, and
8 Thursday/Friday. The NSEA actions are Thursday/Friday,
9 the CCEA actions are potentially for Tuesday and
10 Wednesday.

11 So it looks like it would be relevant because the
12 very status that you are asking at the beginning to be in
13 a little more limited status means I got to deal with this
14 from a relevancy. But once again, the outside scenario --
15 sometimes on direct you're outside the scope, and this is
16 why I have a question for the party.

17 Often times in a preliminary junction hearing --
18 now, each side gets to call witnesses from the --
19 Department's going to (inaudible) one with the letter,
20 which I've asked for both parties agreement was, and I
21 didn't see a distinction from this witness that was being
22 called by one side versus the other side.

23 So in general terms that usually means that each
24 party has a full opportunity, and what I can call a round
25 one. Some people call it funnel, you know, to ask the

1 breadth of questions. Was there some different agreement
2 I just really was looking to the April 18th letter and
3 whether or not that was the understanding of the parties.
4 That's just to address the outside the scope question.

5 MR. D'ALBA: I'm not understanding the question.

6 THE COURT: Sure. Excuse me. One way to do this is a
7 preliminary injunction hearing. The movement calls all
8 their witnesses. Right. Then the responding party has an
9 opportunity to call all their witnesses, maybe incorrectly
10 or correctly.

11 When I read the April 18th letter as to what you
12 all wished to do for today's purposes, it appeared that
13 you all were agreeing that the current witness was going
14 to be called by both parties to have questions examined of
15 him. So I just need to know if that's correct or
16 incorrect. Do they need to wait and recall him when they
17 have an opportunity to call any witnesses in their case,
18 or is there some agreement that this witness gets
19 exhausted for all questions right now?

20 MR. ALEXANDER: There -- there -- there is no
21 agreement on this, but I think it would be efficient
22 because I don't have very much. I definitely think it's
23 relevant for me to conclude this line of questioning with
24 Mr. Vellardita. We provided to Mr. D'Alba the documents
25 that are -- I'm just referring to about the website, and

1 so, Mr. D'Alba knew that we were planning to question Mr.
2 Vellardita about this, and I think it's, for efficiency
3 purposes, easiest to just do it now instead of recalling
4 him.

5 THE COURT: Let me see. Do you all want to take a
6 sec? What do you want to do?

7 MR. D'ALBA: No objection.

8 THE COURT: Okay. So by just ruling on the relevancy
9 objection, you withdrew the outside the scope? And so is
10 the -- counsel can ask the full breadth of questions
11 versus recalling the witnesses? These are questions.
12 These are statements. I just need to know what you all
13 wish --

14 MR. D'ALBA: No objection.

15 THE COURT: Okay.

16 MR. DELIKANAKIS: No objection.

17 THE COURT: Okay. Then you may proceed.

18 MR. ALEXANDER: Thank you, your Honor. And thank you.

19 BY MR. ALEXANDER:

20 Q If I understand your testimony previously, Mr.
21 Vellardita, you agreed with me when I indicated that CCEA
22 has advocated to its membership on its website to vote to
23 disaffiliate from NSEA?

24 A After NSEA posted its Bylaw changes for
25 trusteeship, that is correct.

1 Q And one of the benefits that CCEA has advocated
2 to its membership is that it would be able to reduce -- if
3 once it disaffiliated, it would be able to reduce the
4 members' dues because it would no longer need to collect
5 the NSEA and NEA portions; correct?

6 A That's correct. It would be no longer a need to
7 collect 70 percent of the current amount that a member
8 pays.

9 Q And you were indicating that if -- CCEA was
10 indicating that if the members voted to disaffiliate, they
11 could reduce their dues by 40 percent; is that correct?

12 A I believe it was up to 40 percent that's correct.

13 Q But not by 70 percent?

14 A No. Currently, Counsel, 70 percent of every --
15 \$0.70 on every dollar collected by a teacher leaves
16 Clark County and goes to the state and the national, and
17 that's what would be eliminated.

18 Teachers are paying way too much money in dues
19 right now and have been for a long time. And that's what
20 they object to. That's what this dispute is about.

21 Q Thank you, Mr. Vellardita. I think that's a
22 little beyond what my question was, but I appreciate that.
23 If you could turn back to exhibit -- hold on for a second.
24 (Inaudible) it's Exhibit D, but I don't actually believe
25 it is Exhibit D. I believe it is Exhibit L. Those are

1 the two Bylaw amendments that NSEA has proposed for its
2 delegate assembly and that are the subject of this motion
3 for preliminary injunction; correct?

4 A Correct.

5 Q And it's your view that if NSEA adopts the
6 amendment and that's the one relating to the trusteeship,
7 that just the narrow adoption of this right to impose a
8 trusteeship under certain circumstances will cause a loss
9 of union autonomy and self-determination for members of
10 CCEA; correct?

11 A We strongly believe that. Yes.

12 Q And that's because in part of the Bylaw --
13 proposed Bylaw amendment by NSEA would permit to the
14 extent allowable by state and federal law an imposition of
15 the trusteeship based on financial malpractice; is that
16 right?

17 A That's what the Bylaw is proposing.

18 Q And it's your belief that NSEA is taking the view
19 that -- collecting but not transmitting the NEA and NSEA
20 dues amounts to financial malpractice; correct?

21 A It's our view that NSEA would call financial
22 malpractice the current contract dispute we have with NSEA
23 over a contract for dues remittance, which does not exist
24 in CCEA's opinion because we served notice to terminate
25 it.

1 Q So in your -- in your view it would not
2 constitute financial malpractice on a basis to impose a
3 trusteeship because CCEA is collecting but not
4 transmitting the NSEA and NEA dues currently?

5 A My view in terms of what constitutes financial
6 malpractice isn't the driving decision for an NSEA
7 trusteeship. It's an NSEA decision.

8 Q That's I think what I'm trying to get at. You
9 don't know whether NSEA's Board of Directors would provide
10 for policies that would allow an imposition of -- on CCEA
11 for financial malpractice if they adopt the 2018
12 trusteeship Bylaw amendment, do you?

13 A I can't say for sure, but I have good reason to
14 belief they would.

15 Q And you also see that the Bylaw amendment
16 provides that the Board of Directors must, and the
17 policies they adopt, not only comply with federal and stay
18 law, but also include a review and due process procedure
19 if NSEA determines to try to impose a -- a trusteeship on
20 CCA; correct?

21 A Well, the proposed Bylaw is loose. It doesn't
22 say that takes effect. It's -- it's something that's
23 recommended, so we have no idea what that would be.

24 Q So you actually just don't know what procedures
25 would be in place and what opportunities CCA would have at

1 that time if in fact NCA adopts this Bylaw amendment,
2 imposes a trusteeship based on financial malpractice
3 and -- and under what circumstances. You don't know what
4 would happen at that point, do you?

5 A I'm not sure if you can unpack your question for
6 me to give you an answer. I'm not sure what you are
7 looking for.

8 Q Do you know whether or not CCEA would have the
9 opportunity to challenge a trusteeship that was imposed
10 based on financial malpractice if NSEA adopts this Bylaw
11 amendment?

12 A I don't know, but given the experience of --

13 Q You don't know.

14 A -- denying our delegates to delegate assembly
15 NSEA, I don't have a lot of confidence that that would
16 happen.

17 Q And that's the basis. You don't have any
18 confidence that that would happen. You also don't know
19 whether, if there was a trusteeship imposed, NSEA would
20 remove all of the officers, do you?

21 A If they would remove all the officers?

22 Q You don't know that, do you?

23 A We -- we understand -- I understand that NEA's
24 policy of trusteeships elsewhere where they have removed
25 everybody, yes.

1 Q And they've also not removed everybody in other
2 trustee ships. Are you aware of that?

3 A I'm not.

4 Q Okay.

5 MR. ALEXANDER: I have no further questions, your
6 Honor.

7 THE COURT: Okay. Do you need another round? And you
8 probably also -- since I saw a couple people looking up
9 towards that wall. Which is kind of interesting.
10 Remember if you -- asked to allocate a total two hours, I
11 could go back to the letter to say how long you said this
12 part would take, but I think you all know.

13 Ball park estimate, folks, as you can see I'm
14 trying to balance something else right after this. So how
15 much time do you think -- I want to make sure everyone has
16 a full opportunity to be heard.

17 I just need to potentially move around something
18 because you all seemed in agreement that it would end at
19 330 to handle all three matters. And I appreciate
20 sometimes counsel's best intentions aren't reality, you
21 know. "I'll be just a minute," usually is not a
22 legitimate 60 seconds.

23 MR. DELIKANAKIS: We want to be respective of the
24 Court's time. I think it's important that we think we get
25 this testimony before the Judge -- before the Court. As

1 to the other two motions, they are not of the moment and
2 they aren't pressing, so if the Court -- I have no -- this
3 side has no objection.

4 If you want to continue the hearing on the other
5 two motions and devote the time to this preliminary
6 injunction hearing, we would certainly be happy to do
7 that.

8 THE COURT: Somehow I think they're going have a
9 different position.

10 MR. DELIKANAKIS: (Inaudible) jumped up.

11 THE COURT: I think when he jumped up.

12 MR. ALEXANDER: Your Honor, i HAVE no objection if
13 they want to move the motion -- the partial motion to
14 dismiss, which isn't going take much time anyway. But we
15 believe that our application for word of attachment is
16 pressing and we would like to have the Court conclude a
17 ruling on that today if we can.

18 THE COURT: That was the first one filed, is it not,
19 of all these matters? I think you --

20 MR. ALEXANDER: Yes, your Honor. I believe it was.
21 Well, the motion to dismiss may have been filed.

22 MR. DELIKANAKIS: Before that.

23 MR. ALEXANDER: But before that.

24 MR. DELIKANAKIS: I believe it was a motion to
25 dismiss, motion for writ of attachment, and then the

1 preliminary injunction. That I think's the order.

2 THE COURT: Yeah 343, 344 is what I saw from looking
3 at these. Okay. How much time do you think you need?
4 I'm not cutting you off. I'm just trying to ball park it
5 here, folks.

6 MR. D'ALBA: I have a few more questions of the
7 witness. We have no witnesses after him.

8 THE COURT: Opposing?

9 MR. ALEXANDER: We -- we have no witnesses.

10 THE COURT: After him.

11 MR. ALEXANDER: That's correct.

12 THE COURT: Please proceed. Let's see where we're
13 going on time then. Trying to figure out something.
14 Check back in about 10 -- 15 minutes. See if there is
15 anything else I can do. Okay. Thanks.

16 Please proceed at your convenience.

17 MR. D'ALBA: Thank you.

18 REDIRECT EXAMINATION

19 BY MR. D'ALBA:

20 Q I'm going to call your attention to Exhibit B,
21 the authorization form. This is the payroll deduction
22 form that employees sign; correct?

23 A Correct.

24 Q There is nothing on this form is there with
25 respect to NSEA dollars; is that correct?

1 A Correct.

2 Q Calling your attention to Exhibit D, page 265.

3 A I'm sorry. What --

4 Q I'm sorry.

5 A -- exhibit.

6 Q This is Exhibit D.

7 A 265?

8 Q The 2014 papers. The bottom right number is 265.

9 A Correct.

10 Q The title says "Review of Service Agreement." I
11 want to call your attention to what you indicated are the
12 minutes. These minutes reflect meetings on April 9th; is
13 that correct?

14 A They do.

15 Q Now, with respect to your notice of termination,
16 you are seeking termination as of September 1 of 2014;
17 correct?

18 A Correct.

19 Q So prior to September 1 of 2014, were there
20 discussions about reaching an agreement for a successor to
21 do this transmittal agreement?

22 A There was.

23 Q And was in fact there an agreement reached?

24 A There was.

25 Q Now, with respect to the meeting scheduled for

1 NSEA, is there harm as you understand it, to CCEA in CCEA
2 delegates and board members not being seated?

3 A At the April 27th -- you are trying to
4 (inaudible) the delegate assembly?

5 Q Yes, sir.

6 A Absolutely. There is no voice, there is no vote,
7 and the delegates will decide Bylaw changes that could
8 adversely affect CCA as an organization.

9 Q And is that what you are objecting to? Them not
10 being seated.

11 A Correct.

12 Q And what is your concern about the remaining
13 members who are -- are seated voting in the affirmative
14 for this Bylaw change with respect to a trusteeship?

15 A They would be deciding the fate of CCA if that
16 Bylaw passed, and it was acted on against CCA for this
17 current contract dispute we have with NCA.

18 Q And is it your opinion that your member should
19 have a voice in that?

20 A Absolutely.

21 MR. D'ALBA: No other questions.

22 THE COURT: Thank you.

23 Recross, Counsel?

24 MR. ALEXANDER: No, your Honor.

25 THE COURT: Okay. So then I would ask at this

1 juncture, even though you've already told me you have no
2 other witnesses, I'm still going to ask. Would you like
3 to call your next witness? Do you have any other
4 witnesses?

5 MR. D'ALBA: No, your Honor. Thank you.

6 THE COURT: Okay. So then it would move to opposing
7 parties. Do you have any witnesses you wish to call?

8 MR. ALEXANDER: We do not, your Honor.

9 THE COURT: Okay. So then there being no further
10 witnesses, is there any other exhibits or anything anyone
11 is suggesting or proposing at this juncture, or is this
12 the conclusion of preliminary injunction evidentiary
13 portion.

14 MR. D'ALBA: There is one exhibit I want to call to
15 your attention, your Honor, that has not been discussed in
16 great detail that was not part of the original papers.

17 THE COURT: I'm sorry --

18 THE WITNESS: Your Honor, can I step down?

19 THE COURT: Well, that's what I have to find out in
20 second. Wait one second.

21 THE WITNESS: Okay.

22 THE COURT: That's what I'm trying to find -- trying
23 to make sure that nobody is trying to introduce something
24 for this witness, or can this witness be excused.

25 So he's your witness. Counsel?

1 MR. D'ALBA: He may be excused.

2 MR. ALEXANDER: We have no witnesses, and we have no
3 questions of this witness.

4 THE COURT: Well, then you can step down.

5 THE WITNESS: Thank you.

6 THE COURT: Thank you is very much. Okay. So this
7 witnesses testimony has been concluded. So now what the
8 Court was saying you went through, you have no other
9 testamentary. Okay. We've already had Exhibits A through
10 N with the exception of Bates 265 and 266 that have been
11 admitted.

12 So now since we have no other witnesses, I just
13 was making sure there wasn't any stipulated agreement that
14 there wasn't any other evidentiary information that needed
15 to be presented to the Court before you get to oral
16 argument. I appreciate -- my next question is going to be
17 whether each party kind of wants to do a conclusion, but
18 is there any other evidentiary basis. And then I'm going
19 to ask you how you are going to get it in if you don't
20 have a stipulation when you have no witnesses, but let's
21 do step by step here.

22 MR. D'ALBA: I would like to at least call your
23 attention to a document that's already admitted that was
24 not part of the original papers submitted to you.

25 THE COURT: I'm sorry. So is it in A through N other

1 than 265 or 266?

2 MR. D'ALBA: It's N.

3 THE COURT: Okay. So you are going to -- so you are
4 going address that in your closing? My next ques --

5 MR. D'ALBA: I can address it closing, or I can
6 address it now.

7 THE COURT: Okay. My next question is going to be --
8 I'm just trying to make sure I've all the testamentary
9 evidence, then do I have any other exhibits. Any other
10 exhibits?

11 MR. D'ALBA: No.

12 THE COURT: Any exhibit?

13 MR. ALEXANDER: Your Honor, all the exhibits that were
14 made part of the preliminary injunction record was
15 sponsored through affidavits.

16 THE COURT: So refresh what your referencing because
17 you kind of pointed over to your colleague, so let's make
18 sure that we're all talking about the same thing.

19 MR. ALEXANDER: Well, I should maybe turn it over to
20 Mr. West, who's going to be arguing the motion.

21 MR. WEST: Your Honor --

22 THE COURT: I'm just trying -- I'm purely -- is it
23 attached to the motion opposition of reply?

24 MR. WEST: Yes. There were -- there were documents
25 that were attached. When the motion was originally filed

1 by CCA folks, they submitted an affidavit of
2 Mr. Vellardita, which had a number of documents attached
3 to them.

4 Many of them may have been included in what was
5 discussed today but then in our opposition we submitted an
6 affidavit of Brian Lee, which had a number of documents
7 attached, and then I think they submitted some others
8 in -- in their reply brief.

9 THE COURT: Okay. So for purposes of -- for the A
10 through C, the initial motion, we had A through O in the
11 opposition, and then I had A through E in the reply. And
12 then we have A through N with the exception 265 and 266
13 here at the time of the hearing.

14 Some of those overlap multiple times. Some of
15 them overlap maybe one time. Madame Clerk and
16 Madame Court Recorder, I do appreciate that these letters
17 in each of the four of those, but just phrase these as the
18 exhibits attached to the motion opposition in reply and
19 the additional exhibits to the extent that they weren't
20 otherwise covered in those that were admitted here today
21 that were A through N, other than 265 and 266.

22 Does that meet the parties needs as far as the
23 completion of the evidentiary record?

24 MR. D'ALBA: Yes.

25 UNIDENTIFIED SPEAKER: Yes.

1 MR. DELIKANAKIS: Yes, your Honor.

2 MR. D'ALBA: For your information, your Honor, the
3 exhibits that we introduced, A through N, overlap the
4 exhibits that we offered with respect to the motion and
5 the reply. We put even more documents so it would be
6 easier for you to review.

7 THE COURT: A through N.

8 MR. D'ALBA: And we also added a couple more exhibits,
9 maybe four or five exhibits --

10 THE COURT: Okay.

11 MR. D'ALBA: -- that were not part of the original
12 submission.

13 THE CLERK: (Inaudible).

14 THE COURT: (Inaudible) one second Madame --
15 Madame Clerk is giving me the look, so let me clear it up.
16 Okay. We have -- okay. On the initial ex-parte for the
17 order shortening time, that was filed on April 3, 2018, at
18 9:53 a.m. It was Exhibits A through C, so apple through
19 charlie. Okay.

20 Then in the counter -- Defendants'
21 counter-plaintiff's, Clark County Education Association,
22 John Vellardita and Victoria Courtney's, motion for an
23 injunction filed on 4/3, also 9:53 a.m. It was Exhibits A
24 through H, as in harry, so apple through harry. Okay.

25 Then we have -- with affidavit of Brian Lee, in

1 opposition to CCEA parties motion for injunction, which
2 was filed on April 11th at 10:48 a.m. A through O. So
3 apple through Oscar.

4 Then we had Defendant, counter-plaintiff's reply
5 in support of motion for injunction. We received the
6 courtesy copy on 4/17. The one I have is not Bates
7 stamped, so I'm just going to say courtesy copy received
8 on 4/17. Then it had A through E so apple through
9 elephant.

10 Then we had today during the term of the hearing,
11 we introduced in open court the binder which has exhibits
12 A through N, which the court admitted with no objection,
13 and the court sustained the objection to the portion of
14 Exhibit D, Bates stamp 265 and 266, which I put a little
15 clip on. That is what the court was referencing when it
16 said the evidentiary record.

17 Is that each of the parties understanding? Was
18 there some exhibit that somebody thinks that they attached
19 to somebody that I have not yet stated?

20 MR. WEST: No, your Honor. That is absolutely correct
21 in our understanding.

22 MR. D'ALBA: We agree.

23 THE COURT: Okay. So I've got the testimony. I've
24 got the evidentiary record. So would the parties like to
25 spend a few moments to kind of do a summation before the

1 court rules on the preliminary injunction motion?

2 MR. D'ALBA: I would.

3 THE COURT: Okay. So would it be fair to give each
4 side five minutes?

5 MR. D'ALBA: Maybe a little bit more than that.

6 THE COURT: Well, maybe you spent your whole two hours
7 and 15 minutes on this versus -- especially after all
8 motion -- I mean, folks, I'm trying to balance everybody's
9 needs. They have a motion --

10 MR. D'ALBA: I'll go as fast as I can.

11 THE COURT: Pardon?

12 MR. D'ALBA: I'll do it as fast as I can.

13 THE COURT: So we're going start the proverbial watch,
14 and I think that's going to be fair because you all have
15 hours for -- thanks. Go ahead, Counsel.

16 MR. D'ALBA: I want to call your attention to what I
17 think is the critical piece in this case, and that is the
18 membership question.

19 THE COURT: Sure.

20 MR. D'ALBA: In their reply brief, your Honor, in
21 their opposition, they refer to an affidavit from
22 Brian Lee, and attached to that affidavit was Exhibit M.
23 And Exhibit M is a policy statement. So they're relying
24 upon a policy statement that they refer to for the basis
25 of saying these employees may not be seated because they

1 are -- did not have their dues collected and transmitted,
2 and said they refer to a 2010 policy statement.

3 The policy statement was updated in July of 2017,
4 and that's Exhibit N, the last exhibit in the group that I
5 gave you. At page 56, it specifically removed the word
6 "transmitted."

7 THE COURT: I'm going stop you for a second, so I'm
8 going to count it against your time, but for clarity of
9 the record, since you want everything as letter exhibits,
10 and now you are cross-referencing a whole bunch of other
11 documents, you are going to have to mention what that
12 document is from.

13 So Exhibit N came in today. First one you said
14 from the opposition because otherwise the Court Recorder
15 and Madame Clerk are not going to -- in fairness to them,
16 they're wonderful, but they won't know which "O" and "N"
17 you are talking about, unless you tell them. So if you
18 don't mind, please.

19 So you are talking about -- N came in today.

20 MR. D'ALBA: I'm referring to the N that came in
21 today.

22 THE COURT: Go ahead.

23 MR. D'ALBA: And page 56. Compare that with page 14
24 of Exhibit M that came in Brian Lee's affidavit that was
25 attached to the opposition. Their -- their central

1 argument with respect to their policies was that dues
2 transmitted collected and transmitted create the good
3 standing status for members. Under the exhibit that was
4 introduced today, N, the reference to transmitted has been
5 removed.

6 So what you have is a paragraph that says for
7 purposes of representation and association governance,
8 members shall be counted as members in good standing if
9 their dues are selected. The dues were collected.

10 And what's important to understand, your Honor,
11 is that under Federal Labor Law, it is not uncommon for
12 employers to collect dues and not send them to the union.
13 The Department of Labor has nune -- has several
14 regulations in which the Department has taken the position
15 that the delay and the payment of dues does not disqualify
16 somebody from eligibility to vote in a union election, and
17 that's exactly what you have here.

18 With respect to /T-PLT other portion of this
19 matter that they have referred to, their own Bylaws,
20 article 9 on page 17, which is Exhibit I of the document
21 that came in today, the parliamentary authority says, "The
22 rules contained in the current edition of Robert's Rules
23 of Order shall govern the NSEA in all cases."

24 So what they're saying with respect to this
25 province rule is -- rule is that it only applies to who

1 gets to speak at a meeting; when there is an adjournment
2 when the meeting is to call to order. That's not what
3 this says. It applies in all cases.

4 And with respect to all cases, that includes
5 exactly this particular problem, which is the problem of
6 is somebody a member in good standing. And it says
7 specifically in all cases in which they are applicable.
8 And that's really the heart of why we think these members
9 should sit. And we think that the harm to them is their
10 not being able to participate, that's really
11 anti-democratic and that's really what we're complaining
12 about.

13 With respect to Robert's Rules, they're all kind
14 of issues other than simply calling to order. The content
15 of minutes, reports of the organizations executive
16 directors, forming content of a financial report, form of
17 a committee meeting report, merger and consolidation.

18 These are the ways in which Robert's Rules govern
19 the operations of NSEA in all cases, and what we're
20 talking about is Roberts, as I stated in the argument,
21 these employees are members in good standing even if there
22 are arrears, and that is the reason why they should be
23 allowed to vote. That's the heart of what we're seeking
24 for in terms of an injunction. Your Honor, if they get to
25 vote, they get to hold off the trusteeship vote.

1 Now, in terms of counsel's statement, there is no
2 threat. There is no greater threat to having the meeting
3 in which there is going to be a vote in which you know the
4 results already because they've staffed the death by
5 excluding their people. There will be a trusteeship, and
6 what will the trusteeship be able to do. It's -- it's the
7 probability of an injury that's going to force this
8 question upon you, and that's why we came to you.

9 The fact that the trustees can take charge of the
10 affairs shall be empowered to take charge and control
11 local affiliate and authorize and empower the trustees to
12 take charge. That's what we are afraid of happening and
13 that will happen as a vote because the members of CCA will
14 be excluded from participating.

15 That's the heart of the problem, and that's why
16 we think injunctive relief is important. In terms of
17 standing, there is clearly an imminent injury. There is
18 on the basis of what we're saying to your Honor. There is
19 a probability of a threat, and under the injunction
20 statute its simply the threat that gives the standing.

21 I'm referring to 33.012. We, therefore, have a
22 trusteeship that's likely to be imposed. That's not
23 speculative, but speculative is our disaffiliation vote.
24 We don't know how that will take place. They can say the
25 trusteeship is speculative, but what is not speculative is

1 how that vote will take place. And under the staff deck,
2 our people will be excluded, and that's why an injunction
3 is appropriate.

4 There is really no speculation as to what they're
5 planning on doing. CCA delegates will not be seated and
6 that's the heart of the problem. That's why, your Honor,
7 we think there's a basis for injunctive relief.

8 THE COURT: Okay. I'm going to -- do you mind if I
9 ask a couple questions now, or do you want me to wait
10 until --

11 MR. D'ALBA: Go right ahead.

12 THE COURT: And it's kind of the nuance issue that you
13 addressed in the very beginning. The vote for
14 disaffiliation is to occur -- is -- you all -- you all
15 have told me what the next four days may potentially bring
16 and some different outcomes if those next four days may
17 happen.

18 So, how does the tie-in between the harm alleged
19 by CCEA tie into the fact that CCEA may vote on Wednesday
20 to be disaffiliated, and so, therefore, if you say it, you
21 know, it may moot the concept of whether or not they're
22 harmed. You phrased it a little bit differently. But how
23 can I rule today on Monday when there is -- is it right
24 before me is another way of phrasing it?

25 MR. D'ALBA: It's right before you because there is no

1 certainty as to how the disaffiliation vote will occur.
2 We don't know what will happen. But what we do know is
3 that on Thursday, without CCA people being present, there
4 will be a vote to empower the NSEA Board of Directors and
5 executives to impose a trusteeship upon this union.

6 So the harm system two-fold. One, CCA members
7 will not be able to attend. That's clear. That's not a
8 threat. That's already taken place.

9 THE COURT: Where? Can you point me to the
10 evidentiary support where that has taken place?

11 MR. D'ALBA: I think it's in J.

12 THE COURT: Okay.

13 MR. D'ALBA: Or K.

14 THE COURT: You are talking about the E-mail -- the
15 G-Mail E-mail?

16 MR. D'ALBA: I'm talking about -- it's in J. I'm
17 talking about the E-mail that says, CCA members are no
18 longer eligible to fit -- to fill the position on the
19 NSEA Board.

20 There is testimony from Mr. Vellardita that
21 clearly states he has been told these people will not be
22 able to participate. And if you go down these bullet
23 points, you won't be able to attend the 2018 delegate
24 assembly. CCA members will not be able to attend the 2018
25 representative assembly. CCA members will not be eligible

1 to attend any SEA- or NEA-sponsored conferences or
2 workshops. But the first three bullet points --

3 THE COURT: Okay.

4 MR. D'ALBA: -- specifically state you are not allowed
5 to participate. If you look at the first paragraph,
6 colleagues, CCA leadership has illegally withheld dues.
7 As of December 1, 2017, members become not in good
8 standing with NSEA. Well, that's not really the case
9 under their own Bylaws because the dues are still being
10 collected, and that's why we think there is merit to the
11 question of their good standing.

12 THE COURT: Has there been -- because this E-mail is
13 dated December 4, 2017. Has something happened between
14 the date of this E-mail, December 7th -- sorry.
15 December 4, 2017, and today, meaning has there been for
16 example a board meeting where CCEA -- because you
17 referenced me to the first three bullets.

18 The first one says, CCEA members who sit on the
19 NSEA BOD -- presumably that's Board of Directors; is that
20 correct?

21 MR. D'ALBA: Yes.

22 THE COURT: Okay. Are no longer eligible to fill that
23 position. Has there been a Board of Directors meeting
24 where a member of CCEA has tried to attend that meeting or
25 be a part of the Board? Or has there ever -- been a board

1 decision? Do you understand what I'm saying?

2 MR. D'ALBA: There hasn't been a board meeting.

3 THE COURT: There hasn't been anything since
4 December 4, 2017?

5 MR. D'ALBA: Right.

6 THE COURT: So this Thursday/Friday is the first time
7 that it's happened?

8 MR. D'ALBA: Right. And this delegate assembly is an
9 annual meeting, so that hasn't occurred prior to the
10 scheduled date of April 27th.

11 THE COURT: And the representative assembly? That
12 also hasn't happened in the last --

13 MR. D'ALBA: Correct.

14 THE COURT: Okay. I appreciate that. Those were my
15 questions. Thank you so much.

16 MR. D'ALBA: Thank you, your Honor.

17 THE COURT: Thank you.

18 MR. WEST: Your Honor, I'll try and brief -- be very
19 brief. We have a lot of points that we've covered in our
20 brief, and so I'm not going to make any attempt to recap
21 them all, but let me just highlight several things.

22 First of all, kind of a long the lines of your
23 last question. I want to -- I want to speak specifically
24 to the request for an injunction that would require NSEA
25 to seats the CCEA delegates at the -- the delegate

1 assembly, which is beginning on Friday in -- in Elko.

2 Several points. First of all, as a legal point,
3 this is a request for a mandatory injunction, which is not
4 favored. We have cases cited in our brief in footnote 7,
5 but much more important than that, any attempt to require
6 NSEA to -- to seat these delegates with the entirely
7 impractical -- there are logistical problems with regard
8 to transportation, hotels, food, and so forth. But that's
9 not the main thing.

10 There is no way that NSEA has to verify who --
11 whether the delegates that -- that CCEA sends are in fact
12 members, and that goes particularly for new teachers who
13 have joined the union presumably since the fall, and the
14 reason for this is because CCEA, along with refusing to
15 transmit the -- our dues that they are collecting, has
16 refused to transmit updated membership information to us.

17 So NSEA has no idea whether people who might be
18 sent to the meeting by CCEA are in fact NSEA members --
19 CCA and NSEA members. They particularly do not know that
20 for -- for any new teachers that are included. And they
21 have no way of verifying these people to membership as
22 they do for every other delegate that comes to that
23 delegate assembly and that's precisely because of CCA's
24 actions in trying to get leverage to -- to -- to get more
25 financial advantages from us.

1 In fact, NSEA cannot even calculate exactly how
2 many delegates CCEA would be entitled to because we don't
3 currently know how many members they have. And this --
4 their entitlement to delegates is based on the number of
5 members.

6 They have refused to transmit this information
7 too us. So they -- what they have done has made it
8 impossible, and especially impossible in the three days
9 before this -- this delegate assembly begins to be able to
10 determine who is going be seated.

11 But -- and there is one other point that -- that
12 really needs to be considered along with this, and this --
13 this is related to the question that you asked of -- of
14 Mr. D'Alba at the end of his argument.

15 CCEA was told -- their officers were told on
16 December 4, 2017, that unless the dues were transmitted
17 as -- as CCEA is -- is required to do, unless the dues
18 were transmitted promptly, their members -- their
19 delegates would not be permitted to vote -- to sit in any
20 of these bodies that are enumerated including in
21 particular this delegate assembly that is to start on
22 Friday.

23 December 4, 2017. They knew that. But they
24 waited until April 2018, four months, to seek an
25 injunction requiring that -- that they be seated at this.

1 So I think we've got a situation here, your Honor, where
2 we've got at very serious -- in fact, I would say
3 insurmountable practical problems for a variety of
4 reasons, if your Honor were to order them to be seated.

5 And these problems are entirely of their making
6 in that they have refused to transmit the information to
7 us, and in particular that they sat on their hands for
8 four months and filed a motion for preliminary injunction
9 only at the last minute so that we're hearing this now
10 three days before the delegate assembly begins.

11 And as you know, your Honor, and in -- in equity,
12 this kind of unclean hands is an important -- a very
13 important consideration.

14 Having said that, let me -- let me go into -- to
15 just touch briefly on several of the more general reasons
16 why a preliminary injunction should not be issued.

17 One of them your Honor has already touched on,
18 and that's the rightness problem. The -- we -- we
19 indicated in our brief I believe it's a -- pages 12 and 13
20 of our brief, about five or six or seven things that would
21 have to happen before the harm that they foresee, namely
22 the imposition of a trusteeship actually comes to pass.

23 And there is no certainty that any of them will
24 happen. The very first one of course is whether between
25 now and Friday CCA votes to disaffiliate. If they do,

1 it's all done with. There -- there is -- there is --
2 there is no issue. Even if they should decide not to
3 disaffiliate.

4 They are assuming that -- that the NSEA delegate
5 assembly won't adopt this proposal to allow its Board of
6 Directors to -- to establish trusteeship provisions, but
7 they don't know that. And the case law on this is really
8 clear on the -- on the rightness. The -- the -- the
9 Supreme Court has said that the -- where you are talking
10 about threat of future injury as a basis for standing or
11 rightness, the -- the injury is sufficient only if it is
12 certainly impending.

13 So that means they're saying, well, you know,
14 it's not certain that this is going to happen. This might
15 not happen. That only makes clear that there are a lot of
16 uncertainties here, and when you have these uncertainties
17 the claim is not right. Right.

18 As the Supreme Court said in a case called Texas
19 vs. United States, a claim is not right for adjudication
20 if its rests on contingent future events that may or may
21 not occur as anticipated or indeed may not occur at all.

22 So that's exactly what we have here. We have
23 five or six different things that have to happen before
24 the injury that they're talking about comes to pass.
25 That's point number one. The case is not judicial --

1 judicial because it's not right.

2 Point number the two, and related to that one,
3 even if a trusteeship should end up being imposed, the
4 injury that CCEA would suffer would not be irreparable and
5 because they would have a remedy at law that they could
6 mitigate the -- the validity of the trusteeship.

7 This is something that happens all the time that
8 you have trusteeships being imposed, and you have the
9 validity of the trusteeship being litigated either in an
10 action by the parent union to enforce the trusteeship or
11 an action by the -- the trustee local union to overturn
12 the trusteeship.

13 So, they have that thing. So you don't -- there
14 is no need for a trusteeship of an -- excuse me -- for a
15 preliminary injunction at this point.

16 And finally the -- the other thing in addition
17 to, you know, rightness, irreparable injury, the other
18 critical issue that, of course, your Honor has to consider
19 in determining whether to issue an injunction, is the
20 likelihood of success.

21 And let me be very clear on one thing. We've
22 talked a lot today about the underlying merits of the case
23 that is before the court, namely of whether CCEA is
24 required to forward these dues payments to NSEA, whether
25 it's been converting them to its own use as we contend,

1 and so forth. That really isn't the issue here.

2 The issue -- the issue here is whether the
3 Defendants are likely to succeed on the merits of their
4 claim that an injunction should be issued enjoining a
5 trusteeship. That's -- we're here on a preliminary
6 injunction and that is the -- that is the underlying legal
7 issue. Are they -- are they likely to succeed on the
8 merits of the claim that -- that -- that the trusteeship
9 should be enjoined or that NSEA should be enjoined to
10 allow them to sit at the delegate assembly.

11 And they make several arguments as to why -- why
12 they are likely to succeed on that point. One of them was
13 a Nevada constitutional argument that we haven't heard
14 anything about today. I assume they have abandoned that
15 and -- and quite rightly because there is no state action
16 here. So the -- the free speech clause of the Nevada
17 Constitution doesn't have any relevance. The.

18 The other one is the various provisions of the
19 NSEA Bylaws which -- which Mr. D'Alba touched on. One of
20 them that says that -- the provision that allows for the
21 revocation of membership when a member is alleged to have
22 violated the NEA Code of Ethics for members of the
23 teaching profession. That has no relevance here at all.
24 Doesn't have anything to do with -- with dues.

25 And this other one is this Roberts Rule of Order

1 argument where there is a paragraph about parliamentary
2 authority and the -- and the Bylaws incorporate Robert's
3 Rules as the default proceeding, but that doesn't have
4 anything to do with the substantive question of whether a
5 member is in good standing.

6 The -- the -- and -- and here's the point that I
7 really want to emphasize, and this is going to be my -- my
8 final point here. The -- the determination of the -- of
9 whether a -- let me start over.

10 Where it's alleged that a union is violating it's
11 governing documents, a union, or, for that matter any
12 other voluntary association, PTA or the NAACP or what have
13 you, there is a very strongly established rule and we've
14 quoted a handful of cases in our brief, I believe it's
15 page 18, that the court's will -- will defer to a union or
16 other organization's interpretation of its Bylaws or it's
17 constitutional documents and will not second-guess them
18 unless the union's interpretation is arbitrary and
19 unreasonable.

20 And that's the fundamental principle you need to
21 be looking at here, your Honor. The NEA By -- NSEA Bylaws
22 provide for the payment of dues by members. And the --
23 even if it may not be stated in so many words, the
24 interpretation of those Bylaws as saying that a member is
25 not in good standing if his dues have been withheld for

1 six months in order for his local association to try to
2 gain leverage in a -- in another dispute, with a -- the
3 state union, that is the -- the -- it's entirely
4 reasonable for any union to so interpret it's -- it's dues
5 as -- as allowing for treating members not being in good
6 standing in that context.

7 THE COURT: Okay. There is --

8 MR. WEST: I have not touched at all on the underlying
9 merits, as I said I don't think they're of really much
10 relevance here. I would have a lot to say about them if I
11 did, but leave that for an another time, unless your Honor
12 has questions.

13 THE RECORDER: Your Honor, I'm having a problem.
14 Sorry.

15 THE COURT: JAVS problem?

16 THE RECORDER: Yeah.

17 THE COURT: Do we need pause for a moment?

18 THE RECORDER: Yes, please.

19 THE COURT: Okay. (Inaudible). It's a good time
20 anyway.

21 MR. WEST: Yes.

22 THE COURT: Pause for a brief moment. We need send an
23 order request to JAVS, or do we need to move to another
24 courtroom --

25 THE CLERK: No, I think --

1 THE COURT: It's always great to get new technology.

2 THE CLERK: I can't log back in, and I don't know why.

3 THE COURT: Okay. Do you want to call?

4 Gina (phonetic) can you ask (inaudible) to
5 quickly get somebody up here? Appreciate it.

6 THE RECORDER: Sorry.

7 THE COURT: So we can kind of double do this.

8 So we're going have to pause because I --
9 nothing's being -- she's having some problems recording,
10 so I can't speak with anyone.

11 MR. DELIKANAKIS: May we pau -- recess for a few
12 minutes?

13 THE COURT: So if you want to recess and take a nice
14 break, take a brief, five-minute break, sure.

15 MR. DELIKANAKIS: Thank you, your Honor.

16 THE COURT: Come back. Thank you so much.

17 THE BAILIFF: All right. Court is in recess.

18 (Recess)

19 THE COURT: Are we back on the record?

20 THE RECORDER: Yes. We are, your Honor.

21 THE COURT: Okay. I do appreciate that. Thank you so
22 much. Okay. So we had done the conclusion of
23 Plaintiffs' counter --

24 MR. WEST: Yes.

25 THE COURT: -- claimant's chief summation; right?

1 MR. WEST: Unless your arg -- your Honor had questions
2 for me.

3 THE COURT: I do have a couple of questions.

4 MR. WEST: All right.

5 THE COURT: Okay. You had mentioned a couple of
6 things. One, that you didn't know the number of members.
7 I thought I saw in your writ paperwork the number of
8 10,768 because that's how you all did the mathematical
9 calculations between the 6 million and -- 6 million-ish
10 and the 3 million-ish for the 15 of the 24. So I guess --
11 I appreciate it. You know you all asked me to hear all
12 these motions on the same day, so --

13 MR. WEST: Yeah.

14 THE COURT: If you tell me it's not fair for me to
15 mention your numbers that you mentioned in one of your
16 briefs, but --

17 MR. WEST: Absolutely. Your Honor, I don't know the
18 answer to that question. I would --

19 THE COURT: Do you need a second to check with your
20 colleagues?

21 MR. WEST: I would -- yes. I would guess that that's
22 a number from 2016 because we do have the 2016 numbers in
23 one of the --

24 THE COURT: Page five of your writ.

25 MR. WEST: In one -- yeah.

1 Your Honor, my colleague tells me that the number
2 is based on what NSEA understood to be at the beginning of
3 the school year in August or September -- understood to be
4 the -- the number of delegates -- excuse me not delegates,
5 the number of CCEA members.

6 THE COURT: So -- so just give me a quick snapshot
7 refresher. You got dues through August; right?

8 MR. WEST: That's correct.

9 THE COURT: So in August you know how much money you
10 got, and you can do the math --

11 MR. WEST: Yes, yes.

12 THE COURT: -- to figure out how many people -- is
13 that whether the ten thousand-ish number came from? Did
14 the math, divide it by the -- and so -- and then school
15 started in August of this year in Clark County? That's
16 why I'm asking the question because September 1, I mean,
17 with our new summer schedule, classes started in
18 September -- I mean in August, not Sept --

19 MR. WEST: What I can -- what I can tell you, your
20 Honor, is that under the dues transmission agreement which
21 they contend has been terminated, they would have been --
22 CCA would have been required to send to NSEA, by the 15th
23 of October, up-to-date membership lists for the new school
24 year. They were not required to do it before the 15th of
25 October, and they did not in fact do it this year. They

1 are required to do that on the 15th of October and then
2 update it monthly, and none of that has been done. So I
3 believe what we -- what we have is -- is a -- a
4 guesstimate as of the beginning of the school year, but
5 not based on any numbers for this current school year.

6 THE COURT: And that's why -- that's what I'm trying
7 to understand. Okay. The school year starts in August?

8 MR. WEST: Yeah.

9 THE COURT: Not as soon as it starts this upcoming
10 summer, but for this year, started August 2 (inaudible) --
11 early part of August. 20 something.

12 MR. WEST: Yeah.

13 THE COURT: Which -- do you want me to look it up? I
14 guess I could take judicial notice on which time the CCSD
15 school started. Lets see. I think you all tell me -- did
16 it not -- school not start August 21 this year? Excuse
17 me. August 14, 2017 this school year, which would have
18 meant the first dues payment would have been -- that's
19 what I'm asking. When would the first dues payment have
20 been due for the school year for those two --

21 MR. WEST: There would have been dues payments for the
22 month of August that would have been due in -- due in
23 September.

24 THE COURT: August was paid in September?

25 MR. WEST: Yes.

1 THE COURT: Okay. Then that makes sense. Okay. My
2 second question is with regards to the potential Bylaws
3 that may or may not be passed on Friday at all.

4 MR. WEST: Yeah.

5 THE COURT: If -- when I tried to read the term of the
6 Bylaw, I didn't see a time frame. Let's go to -- there is
7 a couple. I'm going to ask one question on the flip side
8 well, because in your papers you object to a couple of the
9 Bylaws and arguments. You kind of focus more on the one,
10 and what I'm talking about is the individual Bylaw with
11 regards to personal defendants versus entities.

12 But if those Bylaws get adopted, also,
13 afterwards, do they get effectuated, meaning,
14 hypothetically, the argument is that the trusteeship --
15 okay that's irreparable harm. The response is that the
16 trusteeship it may or may not happen. I'm asking how long
17 after it's voted on, if it does happen, would it be
18 effectuated.

19 MR. WEST: Your Honor, I don't know the answer to
20 that. I can tell you what has to happen before its
21 effectuated and that is, A, the delegate assembly, and it
22 has to be by two-third's supermajority adopts the
23 provision allowing the Board of Directors to establish
24 trusteeship provisions; B, the Board of Directors has to
25 vote in fact to establish such provisions; and then, C,

1 NSEA pursuant to those new provisions has to actually
2 impose a trusteeship. I --

3 THE COURT: Can I have a time frame estimate?

4 MR. WEST: I would just be speculating if I -- if I
5 tried to say how quickly that -- that might happen.

6 THE COURT: But shouldn't this Court be aware of that
7 for purposes of evaluating the irreparable harm aspect?
8 Because part of your argument is -- or potential -- a
9 court could potentially stay it after it happens if there
10 is some time frame versus having to deal with on the --
11 having to deal with on the front.

12 Isn't that part of your issue when it's not
13 right?

14 MR. WEST: What typically -- what typically happens in
15 the -- in these --

16 THE COURT: You need to realize, I can't use any of my
17 outside knowledge from when I used to practice, so I have
18 to ask these questions.

19 MR. WEST: Sure. What typically happens in -- in
20 trusteeships is the parent union imposes a trusteeship.
21 Assuming that the local is going to resist it, which is
22 not always the case, but if they do, the local typically
23 will refuse to comply with it, and the -- the -- the state
24 or -- or national union will then be required to file a
25 lawsuit in court, which, since this is a public sector,

1 would probably be in this court, to enforce the
2 trusteeship.

3 So the -- what typically happens then is there is
4 a legal proceeding to determine and -- and it probably
5 would happen on motions for preliminary injunctions on --
6 if it's a motion to enforce the trusteeship, I would
7 assume that the parent union would be moving very rapidly
8 for a preliminary injunction, perhaps even a TRO, so that
9 the -- the issue would come before the court in the
10 concrete form of a trusteeship actually having been
11 established, instead of in the form of, well, maybe this
12 with happen, and this will happen, and this will happen,
13 and then there will be a trusteeship.

14 Your Honor, if I could, my colleague just passed
15 me a --

16 THE COURT: Sure.

17 MR. WEST: Note. With regard to your earlier question
18 about the timing for this, and what I'm told is that the
19 next scheduled meeting of the NSEA Board of Directors is
20 in late July.

21 THE COURT: 2018? I have to ask the question.

22 MR. WEST: I'm assuming that to be the case. Yes.

23 THE COURT: Okay. Okay. My other question is in
24 these Bylaw amendments, the draft Bylaw amendments that
25 were attached as Exhibit L, like Larry, you got naked --

1 Maker seconded, and then you've got affiliates.

2 Can you explain the affiliate designation and
3 what that means on each of these?

4 Do you need a moment?

5 MR. WEST: I -- I -- I -- yes I believe the affiliate
6 is the local association affiliated with NSEA of which
7 the -- the maker and the seconder are members. For
8 example, on the --

9 THE COURT: Okay.

10 MR. WEST: -- first one, it's a WEA which would be
11 Washoe Education Association. I'm not sure what --

12 THE COURT: Wait. Mr. Murillo is a member of the
13 Washoe Education Association, not Clark -- wasn't he named
14 as a --

15 MR. WEST: Yes. He --

16 THE COURT: There is an assertion in your answer that
17 he is on leave, but then there was an assertion I thought
18 in your complaint that he was a member of the --

19 MR. WEST: He -- he -- he was at one point. He has
20 become a member of the Washoe Education Association
21 subsequently and is currently a member of the
22 Washoe Education Association.

23 THE COURT: Okay. So then -- okay. Thank you. Those
24 are my questions.

25 MR. WEST: Thank you, your Honor.

1 THE COURT: I appreciate it.

2 MR. D'ALBA: Your Honor, may I have a few comments?

3 THE COURT: You may have a few brief moments as this
4 motion opposition replied, but really just a few moments
5 is --

6 MR. D'ALBA: Understandable.

7 THE COURT: And fairness to all parties because you
8 all came in here with a particular time frame.

9 MR. D'ALBA: Understandable.

10 THE COURT: I appreciate it. Thanks.

11 MR. D'ALBA: First, I want to tell you that in
12 February there was an election of officers and delegates
13 for CCEA.

14 THE COURT: Do I have that in the record anywhere
15 because I looked for a list because honestly when I saw
16 what you requested was, I looked for a list of delegates.
17 I did not see it anywhere in any of these documents. So
18 is it before me?

19 MR. D'ALBA: Probably not, but what I can tell you
20 just as they're telling you their practical questions
21 about assembling people and --

22 THE COURT: Which --

23 MR. D'ALBA: -- finding out who they are.

24 THE COURT: Which you told me I can kind of disregard.
25 It wasn't really a big deal, and I am disregarding it

1 because it wasn't in the evidence, but go ahead.

2 MR. D'ALBA: Well, those delegates were voted upon.
3 It is known who those delegates are. That's point number
4 one.

5 THE COURT: Known -- known how? Was a written
6 communication --

7 MR. D'ALBA: Well, there was an election and the
8 officers were elected, and the delegates were elected, and
9 it's posted on their website. And so Mr. Murillo knows
10 exactly who the delegates would be if allowed to sit.

11 THE COURT: Wait. But, Counsel, you are not asking me
12 to include information that's not before me; right? After
13 I put through all the evidence and went through all the
14 exhibit tabs and made sure everyone had a full
15 opportunity.

16 You wouldn't be under -- doing that under the
17 Nevada Rules of Evidence, I'm sure. Go ahead.

18 MR. D'ALBA: Thank you. But what I am going to
19 suggest to you is that what's on this document which is
20 Exhibit M --

21 THE COURT: M as in Mary. Go ahead.

22 MR. D'ALBA: -- from our document today, there is a
23 specific statement from counsel for the union to
24 Mr. Alexander setting forth, I am sending to you
25 information attached to this letter. The first set of

1 document is the list of individual contributions for every
2 employee for every pay period from September 1, 2017, to
3 the present that pays dues to NSEA. This number changes
4 with each pay period.

5 The second set of documents contains wire
6 transfer notices for dues from Clark County School
7 District to CCEA, so they have information as to all the
8 people for whom dues are being paid. That's what we have
9 on the record in terms of this transmittal that says here
10 are the people we have in the system for whom we are
11 collecting dues.

12 THE COURT: Do I have that though? I didn't see the
13 attached --

14 MR. D'ALBA: What you have is there letter.

15 THE COURT: Right. I'm in know way questioning
16 Mr. D'Alba's office. I'm not in any way questioning you,
17 however -- my question is I did not see your Exhibit M as
18 in Mary. And once again, you all saw how you wanted to do
19 these.

20 This was a two-page letter, and then a blank -- a
21 third page that says April 6th, doesn't have anything
22 attached to it, and then it says, December 12th letter,
23 then there's the E-mail, Christine Keller, so I only have
24 those five pages. I don't have all those. So --

25 MR. DELIKANAKIS: I understand, your Honor. Ill --

1 I'll explain.

2 THE COURT: Sure.

3 MR. DELIKANAKIS: This letter --

4 THE COURT: And Counsel, I think it's appropriate to
5 have him ex-main because the question because brought up.
6 If you don't mind.

7 UNIDENTIFIED SPEAKER: Sure.

8 MR. DELIKANAKIS: Thank you. Mr. Alexander attached
9 my letter in his reply brief on the writ. So when I
10 reference the documents, it was a zip file that was sent
11 electronically because we were literally talking about
12 thousands -- tens of thou -- you know, I mean, I think
13 Mr. Alexander would agree it was a large amount of
14 documents that were sent electronically.

15 So did I attach them as an exhibit to this? I
16 didn't. Neither did Mr. Alexander, but it ref -- it --
17 what this does evidence is that Mr. Alexander and his
18 client know how many teachers are members of the
19 Clark County Union. So that -- that's the only purpose to
20 try and point that out, your Honor.

21 THE COURT: Sure. So -- I'm just -- no worries. I'm
22 just -- okay. I see the CC. I see it's E-mailed. You
23 just didn't put attachments or attachments by PDF or a zip
24 file? I just don't see it anywhere on the --

25 MR. DELIKANAKIS: It says under -- under my signature

1 to the left there's a JSD and then my assistant's initials
2 underneath attachment, and my recollection is that the
3 attachment was a zip file.

4 THE COURT: Wait. I'm sorry. It says attach --

5 MR. DELIKANAKIS: It's the -- it's page 3 of the
6 April 6, 2018, letter. May I approach the bench?

7 It's attached as Exhibit A to Mr. Alexander's
8 declaration.

9 THE COURT: I'm looking -- okay. Counsel, who's
10 arguably speaking, referenced me to M as many Mary, which
11 was brought in today. That's what I'm looking at. You're
12 looking at a different document. That's why I'm --

13 MR. DELIKANAKIS: We're looking at different
14 documents, your Honor.

15 THE COURT: Okay. So you are looking at -- because
16 that's why I was describing the number of pages that are
17 in M as in Mary, which doesn't say attachment. That's
18 what I was asking you.

19 Okay. So I have a different version of the
20 document that's attached to --

21 MR. DELIKANAKIS: It's the same letter, your Honor.
22 On the first page of Exhibit M at the bottom, the first
23 bullet point, it reads the first set of falcon is the list
24 -- should have been documents -- is a list of individual
25 contributions for every employee for every pay period

1 between September 1, 2017, and it goes on. It's -- it
2 is --

3 THE COURT: And attached to this letter.

4 MR. DELIKANAKIS: Yeah.

5 THE COURT: Well, it's just --

6 MR. DELIKANAKIS: I'm looking at -- if you are looking
7 for any attachments.

8 THE COURT: Right. I didn't see an attachment. I
9 didn't see a reference to a zip file or anything like
10 that. That's what I was --

11 MR. DELIKANAKIS: I understand.

12 THE COURT: That's what I was saying.

13 MR. DELIKANAKIS: I understand.

14 THE COURT: You know, usually in the lower left-hand
15 corner right underneath your initials, you say attachments
16 via PDF or --

17 MR. DELIKANAKIS: Well --

18 THE COURT: -- attachments or anything like that. I
19 see it's in the body --

20 MR. DELIKANAKIS: Right. I attached. Yes.

21 THE COURT: (Inaudible). I got it.

22 MR. DELIKANAKIS: Right.

23 THE COURT: Okay. No worries.

24 MR. DELIKANAKIS: Right. I'm making sure we're both
25 speaking the same language. Okay.

1 MR. D'ALBA: Thanks, your honor.

2 THE COURT: So your argument is they had it
3 because they sent --

4 MR. D'ALBA: They know the numbers.

5 THE COURT: On April 6th.

6 MR. D'ALBA: That's right. And they -- they know the
7 numbers.

8 THE COURT: Okay.

9 MR. D'ALBA: The second point I wanted to make with
10 respect to the seating of the members, that really is the
11 threat. That's not speculative at all. They're saying
12 the trusteeship may or may not happen, but that really is
13 the threat. And with respect to the trusteeship being
14 imposed, there is a -- there is a board meeting this week.
15 They can hold under their rules a board meeting at any
16 time and so it can be an emergency trusteeship.

17 My own personal experience, your Honor, in terms
18 of trusteeships, is that as soon as the executive board
19 enacts a trusteeship, the first phone call made is to the
20 bank. And the bank gets a call that says we are the new
21 trustees, and we are going to take control over all the
22 accounts. And then to the employers, you are going to
23 send your dues to the union, we are the trustees.

24 And then they come into the union office and take
25 charge. They terminate people, they take over. So it's

1 not a question of months, it's a question of immediate
2 impact with respect to trusteeships. That's the
3 experience I've had with respect to trusteeships for our
4 clients.

5 The next point I want to make deals with the
6 rightness question in mind. Counsel is making a claim
7 based upon constitutional standing, and the cases he
8 referred to are U.S. Supreme Court cases involving article
9 3 questions. And justiciability.

10 Colorado -- Nevada is a concept of statutory
11 standing, and what I'm referring to is the Cold Springs v.
12 City of Reno case, in which the court recognizes that the
13 legislature granted standing to somebody who has a harm
14 eminent, and they are using a different standard. And
15 that's why the -- and what -- what the court specifically
16 said is that in terms of Cold Springs, that statute there
17 which I think involved annexation questions, conferred
18 rights that are broader than those conferred by
19 constitutional standing.

20 Because it states that any person proceeding
21 claiming to be adversely affected by an annexation
22 decision can challenge it. But what we're saying is we're
23 affected by a decision that has an impact on a judgment
24 that you can make.

25 And the judgment is going to be that call from

1 the bank to the Bank of America by the new trustees of the
2 NSEA to say we now want to change the signature authority
3 on the account, and we want to take money out of the
4 account. That changes the entire dynamic of this case
5 and -- of the case before you with respect to their making
6 a request for a declaration as to who has rights to the
7 members dues money, they will then take the money.

8 And what's important, your Honor, this is members
9 money. ' This isn't the NSEA money. They have no right to
10 this money in the absence of a dues transmittal agreement.
11 That money is being held for the members. And a
12 trusteeship, if imposed, gives them the opportunity to
13 control the money literally grab it and then take it.
14 That's the harm.

15 And with respect to the standing question, if --
16 if there is a real concern about the imminence of
17 something happening, it may make some sense. It makes
18 absolutely no sense for us to wait until Tuesday, after
19 the trusteeship -- after the disaffiliation vote. If we
20 lose -- if the disaffiliation vote is in the negative,
21 then we'll be coming back to you on Tuesday or Wednesday
22 to say, now, I wish an injunction.

23 It may make some sense, your Honor, to simply
24 take this case under advisement until after that
25 trustee -- that vote on the disaffiliation, and then at

1 that point the question may or may not be.

2 Those are the comments we wanted to make, your
3 Honor. Thank you very much for your time and the --

4 THE COURT: Sure.

5 MR. D'ALBA: -- courtesies you have give to us.

6 THE COURT: Yeah, of course. Okay.

7 MR. WEST: Your Honor, if -- if I may. I apologize.

8 THE COURT: It's motion, opposition, response; right?

9 MR. WEST: I understand that --

10 THE COURT: In fairness.

11 MR. WEST: -- your Honor. The justiciability point
12 that Mr. D'Alba mentioned that brought this up in their
13 reply brief for the first time. They did not say anything
14 about it in their -- in his opening argument, so I
15 didn't -- if I can say one word.

16 THE COURT: Go ahead. You got two minutes. Well, the
17 same two-ish minutes. Counsel was supposed to have three
18 minutes, but we know how that went. So you get two
19 minutes of a ratio standpoint. Okay. Go ahead.

20 MR. WEST: Nevada does have a doctrine of statutory
21 justiciability, and what that means is that the
22 legislature can override the -- the -- the presumption
23 that the courts will not address issues that are not
24 justifiable, but what -- so the question here is whether
25 the legislature has done so.

1 The case that Mr. D'Alba pointed out and the --
2 the one that Stockmire (phonetic) case that was cited in
3 their brief are cases in which specific statutes said that
4 certain persons have standing to sue. The -- the
5 Stockmire (phonetic) case in the brief says any person
6 denied their right conferred by a particular statute
7 can sue. And the same thing in the case that was just
8 quoted.

9 Here there is no such thing. There is in --
10 in -- NRS 33.010, there is a statement of the
11 circumstances under which injunctions can be issued. But
12 there is no statement conferring on particular individuals
13 standing to bring a lawsuit so that the normal default of
14 rules of justiciability will be
15 fully applicable.

16 THE COURT: Sure. Okay. I have do have one question
17 because -- okay. Folks, you brought it up at the last
18 minute which is why I gave (inaudible). But I do have one
19 question for you.

20 Do you have a list of all the delegates who they
21 elected?

22 MR. WEST: All right.

23 THE COURT: It's a simple "yes" or "no", isn't it?

24 MR. WEST: No. We do not have the a list of all the
25 delegates, and more important, we do not have --

1 THE COURT: But they asserted that there were
2 delegates --

3 MR. WEST: Pardon me? They asserted that they've
4 elected delegates, and even more important, if we did we
5 cannot verify that they are in fact members because we do
6 not have a list of current members.

7 What -- what was discussed here, the letter that
8 was sent to my colleague, Mr. Alexander, on April 6 -- not
9 to the union but to -- to Mr. Alexander, was a list that
10 showed amounts of dues transmitted, but it did not have
11 the names of members on it. So that if they give us a
12 list that says John Doe and Jane Smith are -- are,
13 delegates we have no way of confirming that those people
14 are in fact members of the union in this case.

15 THE COURT: Okay. That's the one question I'm going
16 ask you to answer, and then I'm going have to make an a
17 determination.

18 When the information was sent on April 6, 2018,
19 did it include the names of each of the individuals?

20 MR. WEST: No, it did not.

21 THE COURT: Okay. Here's what the Court's going to
22 do. The court is going to stay tuned for a few moments.
23 I'm going to hear the writ, then I'm going to -- because
24 you all overlapped some of your writ arguments with
25 regards to injunction arguments.

1 So I'm going to hear the writ now. I'm really
2 inclined on the motion to dismiss to defer to a different
3 date. I was able to move some things off, but I think
4 that is -- but you're the movements on that. Do you think
5 that's fair? One motion each.

6 MR. DELIKANAKIS: Yes. Yes, of course.

7 THE COURT: Is there a motion to dismiss and it's not
8 something needed timely by this week; right?

9 MR. D'ALBA: Correct.

10 THE COURT: Okay. So if you have a writ, that means
11 you go first, and then response, and then you go last.

12 MR. ALEXANDER: Thank you, your Honor, and I'll try to
13 keep it brief, too.

14 What's undisputed here is that the monies at
15 issue in the lawsuit by NSEA and NEA are the dues deducted
16 by CCEA for NEA and for NSEA's membership dues. It's
17 undisputed that they collected those, and they've amounted
18 to approximately \$4.2 million to date and will amount to
19 about \$6.1 million when they're done collecting them.

20 And as you've heard in the testimony from
21 Mr. Velladita before, and also in the papers, that there
22 is no dispute that those were collected for NEA and the
23 NSEA. It's also undisputed they haven't paid them over.

24 The right to collect dues from -- from members
25 for NSEA and NEA is dependent on an agreement that

1 authorizes CCEA to act as NSEA's agent for transmittal of
2 the dues. Indeed the NSEA Bylaws, which is also a
3 contract between the CCEA and the NSEA, requires that a
4 dues transmittal agreement be in place.

5 And the obvious reason for that is that the state
6 affiliate and the NEA does not want to allow locals to
7 have payroll deductions where they deduct a unified dues
8 amount, which majority of which belong to the state and
9 the NEA, without being required to turn them over -- the
10 dues that are collected for the state and for the NEA to
11 the respective unions.

12 So either the CCEA has collected these NSEA and
13 NEA dues and in violation of contract, refused to transmit
14 them over or alternatively they have collected these NEA
15 and NSEA dues without any authority whatsoever. And if
16 that's the case, then they've engaged in taking and
17 converting the monies that -- funds that belong to NSEA
18 and NEA.

19 Under either of those accounts -- either of those
20 theories, a writ of attachment is appropriate. Under
21 310131, a contract for payment of money allows for a writ
22 of attachment if the -- the claim is valid.

23 Alternatively, even without notice a -- a writ of
24 attachment is appropriate if the Defendant has taken or
25 converted without right, the property of the plaintiff.

1 Here we would argue they've done both of these things, but
2 they've done at least one of those things because they
3 have no right to collect the money in the absence of an
4 agreement, and if there is an agreement, which we believe
5 there is, they have the obligation to transmit it over.
6 It's -- it's really that simple.

7 And the attachment May issue irrespective of
8 whether money is in danger or not, whether or not there is
9 risk that there will not be the ability to satisfy a
10 judgment at the end of the litigation, altern -- but here
11 there are facts that show that there is danger of the
12 money not being available at the end of the litigation,
13 both because of the shifting of representations that CCEA
14 has made about what's it's done with the money, and it's
15 failure to provide evidence that in fact all of the money
16 that they've collected for NEA and NSEA are in any account
17 other than the CCEA account.

18 That is it's regular general account, or if they
19 have collected it and transferred it to this restricted
20 account, however much they have done, we don't know what
21 the actual restrictions are and whether or not those
22 amounts are liable to be attached by third parties.

23 In addition, we've put in evidence that shows
24 that CCEA, even currently, which relies on NSEA for
25 considerable financial support and is seeking more

1 financial support, meanwhile is running \$2 million in the
2 red and if it disaffiliates, it will no longer have any
3 rights to support from NSEA under those circumstance, and
4 it will have no further relationship with NSEA.

5 Under those circumstances we believe that we
6 could satisfy, even the third extraordinary circumstance
7 that the money will not be available at the end of the
8 litigation to satisfy judgment. I don't think we need to
9 get to that because I think it's absolutely clear that
10 under 310131 and 310173, a writ is appropriate to be
11 issued.

12 And finally I guess, it seems kind of perplexing
13 to us that CCEA would resist the issuing of a writ of
14 attachment so strenuously when they're making
15 representations that they don't even have any access to
16 this money anyways.

17 So all a writ of attachment would do is would
18 allow for the sheriff to attach these funds, require us to
19 post a bond in the amount of the funds that are being
20 attached, and CCA would be in absolutely no different
21 position then they claim to be in right now.

22 So -- so all of those reasons we think that this
23 is absolutely an inappropriate case to issue a writ of
24 attachment. Do you have any questions, your Honor?

25 THE COURT: I do not at this juncture. Thank you so

1 much.

2 MR. ALEXANDER: Thank you.

3 THE COURT: Counsel, go ahead.

4 MR. DELIKANAKIS: There is a reason why the attachment
5 garnishment and other extraordinary remedies are
6 considered extraordinary remedies. There has to be
7 some -- some -- something that makes a fundamental
8 unfairness to a litigant that places them at risk of a
9 collectability of a final judgment.

10 Absent that extraordinary circumstance, where
11 it's generally weary about granting a prejudgment writ of
12 attachment, especially when I have two
13 commercially-sophisticated established litigation entities
14 here.

15 This is basically a contract dispute between two
16 large sophisticated entities who seem to be well-funded as
17 they've been litigating now in two different courts within
18 the judicial district at full core with multiple teams of
19 lawyers.

20 So I would ask this Court what (inaudible) have
21 the evidence to show that this extraordinary remedy should
22 be given when we have -- in this situation. So they talk
23 about -- there is a speculation that they may not be able
24 to collect, but they didn't even come out to say that they
25 can't -- they won't have the ability to collect on a final

1 judgment.

2 They simply cite to a \$2 million shortfall in one
3 of the most recent budgets of the entity. There is no
4 evidence of insolvency, there is no evidence of fraud.
5 There is no evidence that this is a thinly capitalized
6 entity whose owner, as if in one of the cases we cited to,
7 had tax issues and was a flight risk.

8 And most importantly this deals with the
9 intangible. This isn't a case about a thousand dollar
10 contract for a crane and you didn't pay for the crane and
11 I want my crane back. Or it's not a case where I have a
12 thousand dollar set finite, easily evidenced damages
13 figure. No.

14 What we have here is a theory that all of these
15 damages, whether there is a contract in place for the
16 transmittal of dues, an agency contract, somehow accrue
17 throughout the entire year to NSEA. And that's ultimately
18 the question that's going to be adjudicated at trial here.

19 What's really central here is on September 1st,
20 is there a contract in place because what's really
21 telling -- I'm going too far, I feel.

22 But what I'm saying is, I don't see any of these
23 minutia (phonetic) of the pause of court to pause and say
24 you know what, there is some fundamental unfairness here
25 that I'm going remedy and I'm going to protect one of the

1 litigants by making sure they're made whole if and when
2 they secure a judgment.

3 Second, my client segregated the money for a
4 number of reasons, and it seems to being held against
5 them. But that money doesn't belong to CCEA. It belongs
6 to the members. The members signed an agreement to
7 transmit dues to CCEA.

8 CCEA, as a collective bargaining unit, comes up
9 with that figure with the school district, and it's
10 transmitted. Then CCEA enters into another contract.
11 That contract is the services agreement with the
12 Addendum A, which is the transmittal agreement.

13 It is that contract that delineates how much is
14 going to be sent each month, every two weeks, to the NSEA.
15 So just because we segregated the money, somehow it's
16 being held against us that we somehow acknowledge that
17 this is theirs. It's -- despite the fact that there is a
18 counterclaim in this case for an excess of \$467,000.

19 But -- which brings me to my final point that the
20 damages in many respects are illusory because ultimately
21 this Court is going to make a determination as to was
22 there a contract for transmittal dues on September 1st.

23 In other words. It's very telling Mr. Lee's
24 affidavit in paragraph 10, says very blandly, there was no
25 termination of the transmittal agreement. But there is

1 been ample evidence before this Court, and I can go
2 through the exhibits, but I think you've seen the letters
3 already, where Mr. Velladita sent a letter, particularly
4 May 3rd saying, hi, I'm writing to you because this
5 agreement is about to term -- expire, and I'm sending
6 you formal notice of termination.

7 So this Court ultimately is going to look at the
8 contract, it's going to look at the addendum, it's going
9 to look at the letters that were sent, and it's going make
10 a decision on law or a mixed question of law in fact, and
11 find that either the contract was terminated on
12 September 1st or not.

13 Then the next question before the court is, well,
14 if it's been terminated, what damages, if any, flow from
15 CCEA to NSEA, (inaudible) with the agent to collect money
16 that was sent by teachers.

17 If that is the basis by which they are claiming
18 their right to money and that contract doesn't exist, I
19 pause it to the Court that the damages be cut off. So the
20 damages are expected.

21 They love to throw this number around \$6.7
22 million. But the fact of the matter is, if they really
23 want their remedy, and they're not -- they're never going
24 to do this.

25 You know who -- you know who their contract is?

1 Because they keep saying this. The teachers are on the
2 hook. When they sign that card, they're on for -- for
3 dues for the year and even if they leave testimony system,
4 their position has always been, the teachers still owe
5 those dues for the year.

6 So you know who the remedy is against? I hate to
7 say it, because it's distasteful, the teachers. But
8 they're not going to do that. They would rather come
9 after the CCA and say, you know what, all of that money
10 prospectively the teachers owed, I'm coming after you for
11 it. And that's what's going to get sorted out at trial.

12 So this writ -- in my opinion, this application
13 is an abuse of the writ of attachment process. We don't
14 have the certainty -- we don't -- of what the damages are
15 or what it is they claim.

16 They want to segregate or sequester, and more
17 importantly, we don't have any of the equitable reasons as
18 to somehow why there is a chance that they may not be
19 whole, if they are lucky enough to get a judgment from
20 this Court in excess of \$6 million. And we should not be
21 penalized just because we put the money in a segregated
22 account.

23 I have no more further question -- anything else,
24 your Honor. Do you have any questions for me?

25 THE COURT: I do have a couple because --

1 MR. DELIKANAKIS: Please, of course. Yeah.

2 THE COURT: -- of the letter you wrote on April 6th.

3 MR. DELIKANAKIS: Go ahead. Yeah.

4 THE COURT: Looking at Exhibit M as in Mary, that was
5 introduced today -- okay -- which includes your April 6th
6 letter --

7 MR. DELIKANAKIS: April --

8 THE COURT: -- and the December 12, 2017, letter.

9 MR. DELIKANAKIS: Hold on.

10 THE COURT: Sure. No worries.

11 MR. DELIKANAKIS: I have to -- I've got to bring this
12 up with the Court after -- while this was pointed out,
13 this Exhibit M is an unsigned version of the April 6th
14 letter. And if you look closely at --

15 THE COURT: On the one that was attached to the writ
16 papers.

17 MR. DELIKANAKIS: Yes. Which you noticed. Good.

18 THE COURT: Yeah.

19 MR. DELIKANAKIS: I looked at the weight. I don't see
20 how this ended up in this binder. That's an unsigned
21 version.

22 THE COURT: Because you submitted it and the other
23 side didn't object to it, so I entered it in. That's not
24 a pure error because if you all agreed to an unsigned
25 document, that's really you all's discretion, but if you

1 want to substitute it out, then I'd have to have a
2 stipulation to substitute it out and --

3 MR. DELIKANAKIS: I'm simply suggesting we substitute
4 it with the exhibit that was attached to Mr. Alexander's
5 declaration, which I think is the letter that actually
6 went out.

7 It's up to you.

8 MR. ALEXANDER: I have no objection --

9 MR. DELIKANAKIS: Yeah.

10 MR. ALEXANDER: -- doing it either way. I don't think
11 that there is a difference.

12 THE COURT: Well, someone's going to have to provide
13 us so that Madame Clerk -- because she's already put there
14 nicely a sticker on Exhibit M as in Mary, so I'm sure
15 somebody -- does somebody have with them a signed version
16 that they can provide to Madame Clerk?

17 MR. D'ALBA: (Inaudible).

18 THE COURT: Okay. Sure. While you are doing that
19 detail, should --

20 MR. DELIKANAKIS: Ask your question, your Honor.

21 THE COURT: Sure.

22 MR. DELIKANAKIS: Please. Of course.

23 THE COURT: It's your third bullet point. The third
24 set of documents are redacted bank statements from CCEA's
25 general operating account which evidences CCA -- CCEA's

1 receipt of the money from the Clark County School
2 District. Okay.

3 So I'm trying to reconcile where it originally
4 said escrow account and then it said restricted account.
5 And then this letter says, general operating account. Are
6 we -- are you all talking about the same --

7 MR. DELIKANAKIS: No.

8 THE COURT: -- account or not?

9 MR. DELIKANAKIS: No. These are --

10 THE COURT: And can you clarify which ones?

11 MR. DELIKANAKIS: Of course.

12 THE COURT: Thank you.

13 MR. DELIKANAKIS: This third bullet point was an
14 attempt to show in evidence, the best evidence of how much
15 money does CCEA receive from the school district. So
16 every two weeks, there is a wire from the school district
17 that comes into the general operating account that is --
18 that calculated upon the.

19 THE COURT: Okay.

20 MR. DELIKANAKIS: -- number of teachers that are on
21 the rolls as of that pay period.

22 THE COURT: Then --

23 MR. DELIKANAKIS: So --

24 THE COURT: -- is a portion of that then placed into a
25 different restricted account? Is that what happens?

1 MR. DELIKANAKIS: Correct, your Honor.

2 THE COURT: Okay. And that's the restricted account
3 that's referenced in the last couple of pages of Exhibit M
4 as in Mary, the December 12, 2017, letter, and the il of
5 December 12, 2017; is that correct.

6 MR. DELIKANAKIS: I want to look at Exhibit M, if I
7 may.

8 THE COURT: Go ahead. Of course.

9 MR. D'ALBA: John?

10 MR. DELIKANAKIS: Yeah. Sure.

11 THE COURT: Well, the essence of my question is --

12 MR. DELIKANAKIS: Yeah.

13 THE COURT: Is the 23-ish dollars per teacher placed
14 in this restricted account, or is it some portion thereof?
15 Meaning, if somebody went to the bank today, how much
16 money is in this restricted -- I don't need a dollar.

17 MR. DELIKANAKIS: Of course.

18 THE COURT: But does it reflect all of the portions
19 asserted by NSEA and NEA to the funds through dues check
20 off that have been provided by the underlying teachers?

21 MR. DELIKANAKIS: Yes. Yes. Yes. That's the whole
22 point is that --

23 THE COURT: That's what I --

24 MR. DELIKANAKIS: Yes, of course. We make that --

25 THE COURT: To the \$.70 of the dollar that

1 Mr. Velladita referenced, that \$.70 for every dollar is --

2 MR. DELIKANAKIS: Into --

3 THE COURT: In this restricted account?

4 MR. DELIKANAKIS: Into the restricted account.

5 THE COURT: Okay.

6 MR. DELIKANAKIS: It's kind of like -- look. We're
7 negotiating. We're trying to resolve this, and I think
8 it's a proven use of the members money to segregate, and
9 in case there is a break through and they do resolve this,
10 but, you know, at the end of the day, we're -- that
11 collection effort is of the their money.

12 They rely on the CCEA to cut a deal and to
13 negotiate through the negotiation of the services
14 agreement and the transmittal agreement as to what portion
15 of the total amount that they negotiated through the
16 collective bargaining process; right?

17 THE COURT: Okay. That was my question.

18 MR. DELIKANAKIS: Any other questions, your Honor?

19 THE COURT: That was it. Thank you so very much.

20 MR. DELIKANAKIS: Thank you. Oh, should we handle
21 this exhibit here?

22 THE COURT: Do you have a --

23 MR. DELIKANAKIS: I have a clean copy. I'll take it
24 out of my own binder here. And approach Madame Clerk.

25 THE COURT: Yeah, of course. Does anyone want to see

1 it before it gets approached?

2 MR. ALEXANDER: Yes. I've got it. Okay. Very good.

3 MR. DELIKANAKIS: Of course.

4 THE COURT: Okay. All right. So what I'm going to do
5 is I'm going to give you back this, and this replaces --
6 is that three page -- three pages (inaudible).

7 THE CLERK: (Inaudible).

8 THE COURT: The first two. So it's going to replace
9 the first two pages, which was the one that had the
10 April 6th and then unsigned second page also dated
11 April 6th, so that's page 2.

12 Is that what all parties are stipulating agreeing
13 to being substituted out?

14 MR. DELIKANAKIS: Can you say that again? Be kind
15 enough to repeat that, your Honor?

16 THE COURT: Okay. I can do it --

17 MR. ALEXANDER: (Inaudible).

18 THE CLERK: It's double-sided.

19 THE COURT: Oh, it's double sided.

20 MR. ALEXANDER: (Inaudible).

21 THE COURT: We can't do a double-sided document.

22 MR. DELIKANAKIS: I just put the whole --

23 MR. ALEXANDER: (Inaudible).

24 THE COURT: It's double sided.

25 MR. ALEXANDER: They can a double sided document.

1 THE COURT: And actually, it's not the same. You know
2 why it's not the same?

3 MR. DELIKANAKIS: No. It's -- it's got different
4 formatting.

5 THE COURT: Yeah. It's formatted differently, so we
6 can't accept -- because it can't scan a double-sided
7 document so -- do you want this to -- alternative version
8 to also be included as Exhibit M as in Mary as just being
9 the signed -- what -- what do you all want to do here?

10 MR. DELIKANAKIS: Well, I thought if he had the second
11 page of his version --

12 THE COURT: But the second page of the version has
13 your signature block on it. The one currently in Exhibit
14 M as in Mary brought in today is your signature block.
15 That's why I'm saying the letter that you've been handed
16 to the court, and I'm trying to show this visually --

17 MR. DELIKANAKIS: Right.

18 THE COURT: -- does not have your signature block on
19 page 2.

20 MR. DELIKANAKIS: I understand.

21 THE COURT: That's why -- the court was asking the
22 question. Does that visual kind of picture tell a
23 thousand words here?

24 MR. DELIKANAKIS: Yes, your Honor. Yeah.

25 THE COURT: So in light of that, what do you all want

1 to do because -- or, let's stay tuned on the exhibit
2 issue and let me --

3 MR. DELIKANAKIS: We could finish -- of course.

4 THE COURT: Let counsel finish off with his writ and
5 we'll get back to this in just a moment, so we can get
6 substance and then we'll deal with details. Okay?

7 MR. ALEXANDER: Thank you, your Honor. Just a couple
8 of things.

9 THE COURT: Sure.

10 MR. ALEXANDER: First, Mr. Delikanakis's
11 representation that there have to be extraordinary
12 circumstances and fundamental unfairness in order to issue
13 a writ is not consistent with either the statute or the
14 case law that supports it. Any potential risk is
15 ameliorated by the undertaking requirement that we would
16 have to post.

17 But more fundamentally, Mr. Delikanakis is now
18 saying that the dues that are collected that represent NEA
19 and NSEA dues that members in order to become members of
20 NSEA and NEA commit to paying to NEA and NSEA and that
21 CCEA has the right to collect under the terms of the NSEA
22 Bylaws if it has a -- a valid in place -- dues transmittal
23 agreement is not the monies of NEA or NSEA at all.

24 It still belongs to the members, but that's not
25 at all the case. It's absolutely the case that when you

1 become a member and you sign up for dues deduction --
2 payroll deduction, you are joining NEA and NSEA, and there
3 is a responsibility to pay the annual dues.

4 And it's no different from any other organization
5 that you join. It's no longer their money once CCEA
6 collects it, and CCEA knows that. That's why they say, at
7 the end of this litigation it's going to be dispersed to
8 NEA and NSEA.

9 So I think that there is no question that the
10 monies that are collected by CCEA, that are not the CCEA's
11 own dues, are a part of the tripartite due structure NSEA
12 and NEA's dues, and by keeping them, they're either
13 violating the contractual obligation to transmit them, or
14 they're converting them and exercising dominion over them.

15 There is no more example of exercising dominion
16 than keeping them in their own accounts and refusing to
17 turn them over to NEA and NSEA.

18 And I guess finally, Mr. Delikanakis suggested
19 that the damages here are not easily evidenced. They are.
20 They are exactly the dues that CCEA is keeping that
21 belong, as of today, to NSEA and NEA, and those they are
22 obligated to collect for the rest of the year.

23 If you have any questions, your Honor, I'm happy
24 to answer them; otherwise, I think that I've --

25 THE COURT: Okay.

1 MR. ALEXANDER: -- concluded.

2 THE COURT: I do not. Okay.

3 MR. ALEXANDER: Thank you, your Honor.

4 THE COURT: But here's what -- thank you so very much.
5 Let me -- here's what I'm going to do. The Court's going
6 to tell you what it's inclination is to do with regards to
7 the writ. Okay. And then you need a moment to say
8 whether you agree, disagree or whatever you want to say in
9 that regard, and then I'm going make a ruling. Okay?

10 Because where the Court's inclined to go is the
11 Court's inclined to go is really a modified resolution
12 from the straight writ of attachment. Where the Court is
13 inclined to go is -- the reason why the Court was asking
14 the questions about where the funds and what's the amount
15 in the funds -- okay. Because this is -- any secretive of
16 where I'm walking the yellow bring road; right?

17 The Court's inclined to put a restriction on the
18 account that no funds can be released without court order,
19 and it doesn't matter from this Court -- and that's why I
20 want to hear your input -- whether it remains in a current
21 account -- because if it's an interest-bearing account
22 that's already having all the funds -- all future dues'
23 portions.

24 And I'm going say the dues portions are going be
25 really based on CCEA's -- I'm going to refer them to their

1 own answer, particularly paragraphs 13 and 19. Okay. And
2 since you all may not have -- you probably have it
3 memorized -- probably anyway.

4 It says NSE, paragraph 13, the -- the answer to
5 paragraph 13, NSEA and NEA dues are set by duly elected
6 representatives of those organizations pursuant to those
7 organizations' governing Bylaws. For the 2017-18 academic
8 year, full-time active employee -- active members, excuse
9 me, pay \$377.66 cents in annual dues to NSEA and \$189 to
10 NEA.

11 CCEA determines it's own membership dues which on
12 informationably (phonetic) are approximately \$245 for the
13 current academic year. Answer, Defendants admit the
14 allegations in paragraph 13. Then I go to paragraph 19.
15 Paragraph 19 says as follows:

16 Since at least 1979, CCEA has served as the
17 collection agent for NSEA collecting and transmitting NSEA
18 and NEA dues to NSEA under the terms of the dues
19 transmittal agreement. Answer, Defendants admit the
20 allegations in paragraph 19.

21 That's not the totality. I'm incorporating all
22 the pleadings, but I'm referencing two specific assertions
23 that are admissions, and the reason why I'm saying that
24 this is because that leads this Court that the a proper
25 interim remedy -- moving the funds from one spot and

1 having to do a bond for the amount of the funds really
2 doesn't seem like the best effective course here.

3 If the funds still from all the dues' check off's
4 have to go to the same account and nothing can go out of
5 this account without a court order -- i.e. this Court's
6 signature on the line -- okay -- then it seems to me what
7 it does is it addresses the issues from both sides.

8 It addresses the fact that the funds are being
9 held so nothing can happen to them. It addresses the
10 concerns -- which I'm about to get to the injunction
11 portion. You can probably figure out why I've held off on
12 the injunction ruling because of the writ issue.

13 But I could see for the injunction purposes, it
14 eliminates both sides' issue. One side's issue is that
15 someone's going deplete the funds before the other side
16 can possibly get it, and the other side's issue that it --
17 someone can deplete the funds before it gets it.

18 So that's the courts inclination. It's kind of a
19 modified remedy. It's not specifically under the
20 statutory of a writ. I mean, it falls within the Court's
21 broad discretion to do a remedy that effectuates the
22 purpose and the intent and for equity.

23 So who wants to go first on their position with
24 regards to -- okay.

25 Well, it's their motion. They get to go first

1 don't they?

2 MR. ALEXANDER: Well, we may actually be able to
3 accommodate each of that. I'd like to speak with -- if I
4 can with my client for a minute --

5 MR. DELIKANAKIS: May we speak with --

6 THE COURT: Of course. Would you like me to take a
7 brief recess for --

8 MR. DELIKANAKIS: Yes, your Honor. That would be
9 good.

10 THE COURT: Okay. Come back to the Court until -- you
11 folks realize we're going to have to leave at about seven
12 minutes 'til because Tina's (phonetic) got to do stuff.
13 Okay. Sure.

14 MR. DELIKANAKIS: Thank you, your Honor.

15 THE BAILIFF: The Court is in recess.

16 (Recess)

17 THE COURT: Okay. So we're back on the record in case
18 761884. So Counsel, you wanted a few moments to each
19 speak with your respective clients, I guess. So --

20 MR. ALEXANDER: Yes. We did and --

21 THE COURT: So go ahead first. Plaintiffs, your
22 position and then if there's --

23 MR. ALEXANDER: Thank you.

24 THE COURT: -- anyone else, counter-claimants.

25 MR. ALEXANDER: We would be comfortable with --

1 whether it's treat as a strict escrow account or an
2 account in which the bank has instructions from the Court
3 that it is only to disperse monies that are placed -- that
4 are in the account currently and that are placed into the
5 account subsequently upon the order of the Court.

6 But as we would be entitled to, I think, under a
7 writ of garnishment, we -- we -- we would need to know how
8 much money is in fact in the account currently, and we
9 would need to have reports on a bimonthly basis of how
10 much money more is going into the account for NEA and
11 NSEA.

12 And in order to ascertain that it is the right
13 amount of money, we would think that it's appropriate to
14 get at list of the members for whom the NEA and NSEA dues
15 are being placed.

16 THE COURT: You need actual names or you just need
17 numbers?

18 MR. ALEXANDER: Well, I think for NSEA's purposes of
19 determining whether or not pe -- mem -- actual members are
20 having their dues paid for them, I think they need the
21 names. But I -- am not certain of that.

22 THE COURT: Can -- and maybe this is better question
23 for counsel on this side. But since I don't have the
24 benefit of what was these bullet attachments, I guess
25 it --

1 MR. ALEXANDER: I guess I could say --

2 THE COURT: Can someone answer to me --

3 MR. DELIKANAKIS: Both of us could probably say what
4 they are. We both looked at the supplies --

5 THE COURT: Does this address things as of a time
6 frame in August and it just would be a go forward, or does
7 someone dispute the numbers because --

8 MR. ALEXANDER: The information in those bullets
9 addresses nothing from the Plaintiff's point of view
10 because it says nothing about what's in any restricted
11 account. All it says is how much money CCEA has collected
12 from the school district and placed in its regular
13 account. Everything after that is blacked out.

14 THE COURT: Okay.

15 MR. ALEXANDER: So I don't -- we don't know that
16 they've placed dollar one. I'm not going to dispute
17 counsel's representations that they have, but the
18 information in those zip files does not show any
19 withdrawals or transfers from the CCEA general expense
20 account into a restricted account, much less how much.

21 THE COURT: Okay. I'm sorry. I thought I -- the
22 reason I was asking those specific questions --

23 MR. ALEXANDER: Yeah.

24 THE COURT: -- before I gave my inclination.

25 I paraphrased your client representative you

1 know, \$.70 to the dollar, and I did the numbers straight
2 from the answer.

3 Are all those funds in the account?

4 MR. DELIKANAKIS: They are deposited regularly into
5 the account after being received. And I'm not trying to
6 be coy.

7 THE COURT: I'm sure.

8 MR. DELIKANAKIS: Sometimes there -- it happens the
9 same day. Sometimes it happens a few days later, so I
10 can't tell the Court exactly within how many days does the
11 transfer occur from the Clark County School District to
12 the restricted account and I will tell the Court and ask
13 the Court to take a look at the services agreement, under
14 which they've operated under many, many years -- and let
15 me finish -- is that the concept of transmittal and
16 segregation of the money was never a time sensitive thing.
17 In fact, it was actually understood in the agreement that
18 if there was a delay, there would be a penalty to be paid.

19 So can I tell you sitting here today on the very
20 day that the money comes in, is it transmitted into the
21 segregated account. Sometimes yes, sometimes no.

22 THE COURT: Right.

23 MR. DELIKANAKIS: It varies.

24 THE COURT: Well, let's -- let's ballpark it.

25 MR. DELIKANAKIS: But --

1 THE COURT: If it's bimonthly, it's around the 1st and
2 the 15; correct?

3 MR. DELIKANAKIS: They get paid every two weeks.

4 THE COURT: So today being the 23rd, presumably at
5 least through April -- check on the date, April 1st --
6 make sure I don't see it. April 1st was a -- I thought it
7 was a Sunday, so I was (inaudible) for a second. So
8 April -- all the money through April 2nd that's been
9 received is in the account?

10 MR. DELIKANAKIS: I will have to check --

11 THE COURT: Would that be a fair statement?

12 MR. DELIKANAKIS: May I check with my client?

13 THE COURT: Sure.

14 MR. ALEXANDER: And while Mr. Delikanakis is doing
15 that, I --

16 THE COURT: One second. He may want to listen to what
17 you are saying --

18 MR. ALEXANDER: Yeah. That's fine.

19 THE COURT: -- so let's give him a courtesy of just a
20 moment.

21 MR. ALEXANDER: Sure.

22 (Pause in the proceedings)

23 THE COURT: Okay. We're back on the record, are we
24 not, Madame Court Recorder?

25 THE RECORDER: We are on the record, your Honor.

1 THE COURT: I do appreciate it. Thank you so much.

2 MR. ALEXANDER: Thank you.

3 THE COURT: Counsel for --

4 MR. ALEXANDER: Before Mr. Delikanakis left, I --

5 Something he said either I didn't understand it
6 correctly, or I don't think he meant to say it. He
7 represented that money is going directly from the
8 Clark County School District into the segregated account.

9 MR. DELIKANAKIS: No. No, not at all.

10 THE COURT: I was stopping at the general account and
11 then --

12 MR. DELIKANAKIS: That's what I said.

13 THE COURT: Okay. Is that correct?

14 MR. DELIKANAKIS: That's correct.

15 THE COURT: I understood it was stopping in the
16 general and then a portion is going to this restricted
17 account; is that correct?

18 MR. DELIKANAKIS: Correct.

19 THE COURT: Okay.

20 MR. DELIKANAKIS: And the information -- we were
21 discussing the third bullet point of that letter you said,
22 what does this describe, and that's why --

23 THE COURT: Okay.

24 MR. DELIKANAKIS: -- I advised the Court, it describes
25 a transfer of money from the Clark County School District

1 to the CCA's general operating --

2 MR. ALEXANDER: That's correct.

3 MR. DELIKANAKIS: -- account that shows the best
4 evidence of what's the gross amount of money coming in.

5 So I've spoken to my client, your Honor, and what
6 we propose is this.

7 Within two weeks from today, we will provide them
8 with an accounting of the total dollar amount in the
9 restricted account. We will provide them a list as we did
10 last time of all of the employee numbers. In other words,
11 the numbers of employees.

12 We are not going to provide the names, and we
13 shouldn't have to provide the names because frankly they
14 were relevant to the calculation as to how many employees
15 in the per pay period and the dollar amount segregated per
16 pay period, and where that money is in the account. And
17 I'll tell you why the real reason -- they're organizing
18 against this union.

19 They should -- I should not have to provide these
20 names of the teachers as part of this exercise because
21 it's irrelevant to the purposes of the writ of attachment
22 and frankly it would be used for other purposes that don't
23 benefit my client.

24 THE COURT: Okay. So -- so let's walk back. I think
25 my -- the Court's specific question was, as of today,

1 April 23rd, are all the funds that have been transmitted,
2 that -- consistent with paragraphs 13, 19, and other
3 paragraphs in the answer -- that were -- are they
4 currently in this restricted account? That's -- that's --
5 remember, that was the Court's question.

6 MR. DELIKANAKIS: I do remember, your Honor.

7 Okay. The answer is no, your Honor, because we
8 reconcile at the end of the month, and that's when it
9 would be deposited. So sitting here today, the answer is
10 no.

11 THE COURT: Okay. So would then that mean that
12 everything as of March 15th because that would be the
13 March --

14 MR. DELIKANAKIS: Right.

15 THE COURT: -- 31st date is on the account, just not
16 the April funds?

17 MR. DELIKANAKIS: Yes, your Honor.

18 THE COURT: Okay. So that answer -- portion of your
19 question -- let me finish the response because then I have
20 to get to Defendant, and then I gotta move this --

21 MR. ALEXANDER: Yeah. It answers a portion of my
22 question. I'm not sure it relays my concerns.

23 THE COURT: Right. But -- but look at the relief you
24 are asking for on the writ. The writ doesn't say that you
25 get names.

1 MR. ALEXANDER: I recognize that, and -- and I think
2 that although I disagree with Mr. Delikanakis on what we
3 would do with the money -- with the names and --

4 THE COURT: I'm not going there. I'm just going from
5 up here --

6 MR. ALEXANDER: -- but that's fine. What is most
7 important to us is that we receive evidence from the bank
8 that shows when the monies were transferred and that
9 they're in there, and a separate agreement or a
10 restriction on the account that's part of an order to the
11 bank, or that the bank has to follow, that forbids any
12 monies being taken out of that until the Court orders
13 otherwise.

14 THE COURT: Okay. What the court was simply going
15 with is the following. And it -- parallel a minor's
16 compromise and -- okay. I'm not saying it was a minor.
17 I'm just trying to say it parallels a minor's compromise
18 which usually has standard language. Well, usually X
19 funds or in this case X funds and future funds that are
20 allocated in the set sum that is the disputed amount,
21 whether it goes to the state and the national will be
22 placed in account X.

23 The only reason why I was saying leaving it in
24 the same account was really to eliminate extra costs,
25 defense and everyone having any issues. If you already

1 have it in the Bank of America account, Bank of America
2 already has it and then any additional restriction that no
3 funds can be withdrawn from that account without order of
4 this Court -- okay -- this court being Department 31,
5 right?

6 Which means myself or if I have a senior judge
7 sitting in for me -- okay -- without order of this Court,
8 and that also to the extent because there needs to be an
9 accounting so that you know -- not saying that you ever
10 would only put in a couple hundred bucks, but, you know, a
11 listing by number if there is the 10,736 -- I'm pretty
12 close, but the number was cited in there -- then you have
13 those numbers that it's 10,736.

14 You can do the math so you would know, and really
15 you would all be probably coming back to me in the next
16 60 days anyway, I would assume, because you have to hear
17 what I'm going to say in just a moment.

18 So that would alleviate all parties' concern with
19 regards to the funds that neither party is going to
20 dissipate the funds, take control of the funds, because
21 you have to get a court order. That was where I was
22 anticipating going.

23 Does that meet your needs with the caveat --

24 MR. ALEXANDER: It does if I understood, your Honor.
25 You included in the list of -- of provisions that the

1 order would indicate how much money is currently in there.

2 Or the -- amounts that are in there currently as
3 an actual number.

4 THE COURT: If they reconcile at the end of the month,
5 it seems to me by the end of the month date. Let me make
6 sure that's not a --

7 MR. ALEXANDER: I think, your Honor, it would be very
8 simple because the bank must have that number with respect
9 to the account statement.

10 THE COURT: Okay.

11 MR. DELIKANAKIS: Your Honor, if we reconcile at the
12 end of the month that's -- we could use that as a bench
13 mark date as to when we provide that first bit -- that
14 first information to opposing counsel, and we can do it on
15 a monthly basis.

16 Look, where this is all going, is if they want
17 our bank records -- there's -- this is a separate motion
18 to quash it's going be heard before the discovery
19 commissioner on the 25th.

20 They've subpoenaed the bank records. We don't
21 believe their entitled to the bank records as a motion to
22 quash pending, So they're just trying to get the same
23 information here as they're trying to get through that
24 separate proceeding. For the purposes of the writ which
25 is strictly before this Court, I think your proposal meets

1 their needs, with one exception. It doesn't protect us
2 because they haven't posted a bond. And I think they
3 should have to post a bond.

4 THE COURT: Well, listen to your protect -- the only
5 reason why you post a bond is if they get money in their
6 hand is to ensure that none of the money is dissipated.

7 MR. DELIKANAKIS: Okay. Well, if that's --

8 THE COURT: Here -- here -- here you -- someone is
9 going to have to make a public summation to the Court,
10 right, to request for any funds to go out. You are going
11 to have a full opportunity to argue it. This court's not
12 going to sign any ex-parte order, you know, distributing
13 any funds, and, you know, I would hope that no one was
14 sitting on my seat -- you know what I mean?

15 Presumably neither side is going to submit an
16 inappropriate -- could get you sanction, could get you
17 disparity, never have pro hac vice applications ever
18 approved again, and you are all experienced counsels. I
19 mean, you are not going to do this.

20 So as long as someone is planning on submitting
21 some ex-parte order that doesn't reflect that this Court's
22 going to try to say to have certain funds distributed, it
23 works because I don't sign anything unless we have a
24 hearing that all parties have an opportunity -- either I
25 have a stipulation, which unless someone's falsified

1 somebody's signature, and which I know you all are not
2 going to do because it has the same remedies and
3 ramifications, and, you know, no one is going to do that.

4 Or, two, we have a hearing because someone
5 objects. Somebody wants X amount of dollars out. The
6 other side has an opportunity to be heard, it's set for
7 hearing, and movement's part of public record before
8 anything gets signed on any dotted lines or dashed lines
9 or whatever lines.

10 So does that address your --

11 MR. ALEXANDER: I think that all makes sense. Though
12 I don't see why we have to wait until the end of the month
13 to know how much is in the account currently, and that
14 would be subject to your order before the next
15 reconciliation because this is all money that should have
16 been in there for the last eight months.

17 MR. DELIKANAKIS: Well, actually, I have to object to
18 that because we're not operating under transmittal
19 agreement. I mean -- it's not -- whoever --

20 THE COURT: You all have a dispute.

21 MR. DELIKANAKIS: Yeah. There is a dispute there. So
22 to be -- somehow for someone to tell you, you didn't
23 follow this timeline, that is not in place.

24 I suggested doing it at the end of the month
25 because that's when we reconcile our books, and it can be

1 done on a monthly basis at the end of the month. And
2 that's my proposal to the court.

3 THE COURT: And is there an agreement that no funds
4 will be dissipated --

5 MR. DELIKANAKIS: Absolutely.

6 THE COURT: -- between the today and the 30th so that
7 address any concerns on behalf of the Plaintiff?

8 MR. DELIKANAKIS: Your Honor, my client has made
9 representations to the other side over many months now.
10 That money is there and has not been taken out, and it's
11 not going to be taken out.

12 THE COURT: I need --

13 MR. ALEXANDER: Yeah. And if there is a
14 representation that, now, from today, there will not be --

15 MR. DELIKANAKIS: Yes, yes. You have that
16 representation.

17 MR. D'ALBA: There are --

18 MR. ALEXANDER: -- any money taken out.

19 MR. D'ALBA: There are two letters I've sent to them
20 going all the way back to November stating exactly that.
21 The money will not be disbursed, except for court order.

22 THE COURT: Okay. Well, I don't have that before me,
23 so I wasn't aware of that, but it seemed practical and
24 rational in a situation like this, which is why really you
25 all -- both are asking this court to give status quo.

1 Here is the status quo without additional
2 expense -- because, it's -- under a writ of attachment if
3 I put it in your hands, you are going to do pretty much a
4 bond on the whole amount anyway -- an on going bond
5 amount.

6 MR. ALEXANDER: That's correct.

7 THE COURT: So why go through all of those hoops when
8 the money is sitting there? So unless you are telling
9 me --

10 MR. ALEXANDER: No. It's --

11 THE COURT: -- Bank of America is going to somehow
12 violate a court order that I'm sure is going to show up on
13 my doorstep very, very quickly after it circulated to all
14 parties that ensures this funds. We have a representation
15 by counsel that they're not going dissipate the funds, not
16 that I would think that anyone would anyway. But you have
17 a firm representation on the record. So that gives you
18 everything without having --

19 MR. ALEXANDER: Having to post a bond.

20 THE COURT: -- either side and without having to post
21 a bond and having those additional issues and have an
22 ongoing bond requirement that has to be evaluated. I can
23 do this, and I can do a 60-day status check on that
24 portion subject to if earlier if the parties need
25 something.

1 MR. ALEXANDER: That I think meets our needs.

2 MR. DELIKANAKIS: Yeah. We'll provide a report every
3 month to the opposing coun -- you know, to the parties.

4 THE COURT: Okay. Within five days at the end of the
5 month from a (inaudible) standpoint.

6 MR. DELIKANAKIS: Sure. Five days after the last of
7 the month.

8 THE COURT: Because if they reconcile, it may take a
9 few days to reconcile; right? Doesn't that --

10 MR. DELIKANAKIS: Yeah.

11 THE COURT: Does anyone want to check with your
12 clients, respectively, for a moment?

13 MR. DELIKANAKIS: I just did, your Honor. We're fine.

14 MR. ALEXANDER: I did visually.

15 THE COURT: Okay. No worries. I just wanted to make
16 sure everyone has a full opportunity because you're, you
17 know -- the nice benefit is you have your clients here
18 present, when you are each trying to advocate excellently
19 on behalf of your respective clients, I'm just trying
20 to -- both sides said to, you know, could we keep this in
21 the status quo.

22 This seemed to me is the status quo that met
23 everybody's needs and minimized additional cost and
24 expense for your underlying clients to do this ongoing
25 issue. Okay.

1 So the Court is going to modify the writ request
2 and order that the following: The funds that the parties
3 numerically have calculated as without any
4 characterization of whose funds they are, but the funds
5 characterized that, traditionally, had been -- let just go
6 here to your paragraph.

7 You all agree that paragraph 13 -- the \$377.66
8 annual dues to NSEA and \$189 to NES is correct?

9 MR. ALEXANDER: Yes.

10 THE COURT: Okay. All parties agree that that's the
11 amount that's correct?

12 MR. DELIKANAKIS: Yes, your Honor.

13 THE COURT: Okay. That that fund represented in a
14 bimonthly aspect so all funds through today need to be
15 deposited no later than April 30th. Okay. If they have
16 not already been deposited because that's a
17 reconciliation, then there will be a monthly reporting.

18 The bank account is going to -- well, in a moment
19 I'm going tell you who's going to prepare the order, is
20 only any of those funds in this amount -- in this account,
21 could only be taken out by order of this Court, which
22 means it has a signed order and that you'll basically
23 provide the court a copy of the order. It says it can
24 only be taken out with the order of this Court and that
25 all of your are -- signs, and everyone is bound by it.

1 Right?

2 Everyone has notice. Is there anyone I have to
3 add into my order?

4 MR. DELIKANAKIS: No, your Honor.

5 THE COURT: Okay. I just -- you know. So that would
6 take care of it. And then I'll do a status check on this
7 account. 60 days? 45 days? What meets your needs?

8 MR. DELIKANAKIS: Sixty, your Honor.

9 THE COURT: Sixty?

10 MR. ALEXANDER: We can do the 60.

11 THE COURT: Okay. And Defendant's agree to provide a
12 monthly ending of your accounting within five days of the
13 end of the reconciliation. And if there is any questions
14 regarding the amounts, you all can bring it back to this
15 Court, and I can address it if you choose to -- wish me to
16 do so.

17 This Court takes no position with the pending
18 motion to quash that's before the discovery commissioner.
19 That would only come to me pursuant to an objection after
20 report and recommendation. So I'm ruling on what's before
21 me only. Okay. That takes care of the writ so I grant it
22 as modified. I have not granted it as a writ pursuant to
23 NRS 33. I haven't, like I said, found a modified -- can I
24 call that an agreement of the parties, or it's a ruling of
25 the Court. It depends on if you want to reserve your

1 rights, which I dont -- whichever you all want to do.

2 Do you want me to do it as a rule, or you want it
3 an agreement of the parties modified --

4 MR. ALEXANDER: I prefer it as a ruling of the Court,
5 your Honor.

6 MR. DELIKANAKIS: Ruling of the Court, your Honor.

7 THE COURT: Ruling of the Court, modified, as stated
8 in open court. And I didn't rephrase everything that I
9 just stated, but you understand the terms; right?

10 MR. DELIKANAKIS: (Inaudible).

11 THE COURT: The money goes in. Everything that's
12 currently -- since September 1st or whatever date you
13 stopped sending the transmittal, needs to be in there
14 up-to-date by April 30th and then on a monthly basis as
15 you reconcile those same amounts. The 3 -- That would be
16 if bimonthly portion of the \$377.66 and the bimonthly
17 portion of the \$189 to NEA, per person.

18 Then I understand, also, Defendants are going to
19 provide just a knew America number of individuals so that
20 somebody can do the math to see if the math is correct; is
21 that --

22 MR. DELIKANAKIS: That is correct, your Honor.

23 THE COURT: Okay.

24 MR. DELIKANAKIS: May I ask --

25 THE COURT: Now, how are you going provide this

1 number? Is it just going to being a listing?

2 MR. DELIKANAKIS: It's columns of numbers.

3 THE COURT: Okay. Is it similar to what was -- does
4 that mean it's acceptable?

5 MR. ALEXANDER: I -- in concept.

6 MR. DELIKANAKIS: In concept, it's much like what we
7 sent you before I'm pretty sure.

8 MR. ALEXANDER: It should be fine as long as there is
9 a tallying at the end.

10 MR. DELIKANAKIS: Yeah. I may have to --

11 THE COURT: Okay. I assume some type of excel or
12 something that has a nice columning at the end; right?

13 MR. DELIKANAKIS: I'll make sure there is a column at
14 the end, your Honor.

15 THE COURT: Okay. Go ahead, Counsel. You had a
16 question because then I have --

17 MR. DELIKANAKIS: Essentially, what we've hammered out
18 today is an agreement. So I would ask that it be entered
19 as a stipulation of the parties.

20 THE COURT: But the reason why I asked the question if
21 the parties want to stipulate, it's perfectly fine from
22 this Court, but I'm not going to take away someone's
23 rights that they might want down road if they don't want
24 to stipulate.

25 I mean -- so if you submit it to me as a

1 stipulation, I'll look at it as a stipulation. If you
2 submit it to me as a proposed order, I'll look at it as a
3 proposed order. Does that work?

4 MR. DELIKANAKIS: Very good. We'll confirm.

5 THE COURT: That gives you a chance to, as
6 professionals, to speak among yourselves in the
7 intervening time. EDCR 7.21 means I get it within ten
8 days. Is that doable?

9 MR. DELIKANAKIS: Yes.

10 THE COURT: All right. Circulated. Whose going to
11 take the weathering (phonetic) and drafting since I
12 granted it in part?

13 MR. DELIKANAKIS: (Inaudible).

14 THE COURT: Who -- who --

15 MR. ALEXANDER: Well, I just talked to Mr. Lal. He
16 offered.

17 MR. DELIKANAKIS: That's fine.

18 THE COURT: Okay. Then make sure to circulate it to
19 your other side of the table. Okay. So in light of the
20 that, let me tell you what I'm inclined to go with the
21 application for the order issuing --

22 MADAME CLERK: (Inaudible).

23 THE COURT: Oh, yeah. Madame Clerk is going to give
24 you your 60 day status check date which will probably be
25 your --

1 THE CLERK: (Inaudible) Tuesday.

2 THE COURT: Yeah, Tuesday/Thursday, 9:30.

3 THE CLERK: June 26th. 9:30.

4 THE COURT: Okay. Sounds good. June 26th has a lot
5 of Supreme Court relevance for those of you who follow
6 certain dates when the Supreme Court does things. Anyway.
7 Different story. Not an issue here. Okay.

8 So, now, we go to CCEA party's motion for an
9 injunction. The Court's -- I had request to defer the
10 ruling on this injunction by the movement.

11 Is that still the request?

12 MR. D'ALBA: Yes, ma'am. Yes, your Honor.

13 THE COURT: Okay. Since I have that request, the
14 courts inclined to grant that request to defer ruling.
15 Now, I'm inclined in light of that ruling to put it on
16 my -- I've got two ways I can do this. One, I can defer
17 it to my chambers' calendar this Friday. I have next
18 Friday. Okay?

19 What I'm trying to do here is -- I appreciate
20 that you all at some point you really wanted some kind of
21 clarity on what to do on Tuesday, Wednesday, Thursday, and
22 Friday, particularly your clients here that are sitting
23 here in the gallery; however, I have a movement requesting
24 to defer ruling, and I have so many different
25 contingencies that you all have explained that are going

1 to happen during this day that seems to be a rational
2 request. But Plaintiffs' counsel?

3 MR. LAL: Your Honor, we -- we won't oppose that.
4 It's possible that they will disaffiliate and it will all
5 go away. If it -- if that's not what happens, we
6 certainly still don't think that an injunction would be
7 appropriate, but we -- we won't oppose your suggestion.

8 THE COURT: It's counsel for the movement's suggestion
9 to defer it. I was just ruling to grant it because I
10 hadn't heard anyone oppose it.

11 Now, there is a couple of ways I can do it. I
12 can put it in chambers, no appearances necessary. Or I
13 can set this for an in-person status check on a ruling,
14 and I can find some time next week, except if it's going
15 to be 8:30.

16 I can grant any request that parties want to
17 appear by court call or possibly by a visual to minimize
18 people's cost and expense, if that helps. But really it's
19 going to depend on which way you all want.

20 So do you want to spend a quick second and figure
21 out your strategic definitions of what you want to do?
22 Here's what I'm saying. I can put it on chambers to see
23 and then that would require somebody to provide me some
24 status update of what needs to be still ruled upon, and
25 then the Court could rule from chambers.

1 Choice two is I put it on a Tuesday or Thursday
2 of next week on my motion calendar and short argument and
3 as a standard motion calendar, which is a few minutes, to
4 see what needs to be ruled on.

5 Because really what the ruling stage with
6 possibly an update of whether or not it still exists,
7 whether it might have been transformed into something
8 different. So the Court's going to being fine with that
9 and appreciate they've you got a lot of people coming from
10 out of state.

11 Like I said, I'll grant court calls right now --
12 the people who call in, or if they need audio-visuals
13 under blue jeans you can get hooked up, but you are going
14 to need do that rather quickly.

15 Go ahead.

16 MR. DELIKANAKIS: May I confer with Mr. D'Alba?

17 THE COURT: Of course. Do you want to confer at your
18 table, too? Go ahead.

19 MR. DELIKANAKIS: Your Honor?

20 THE COURT: Go ahead. Who's going first.

21 MR. DELIKANAKIS: Our concern is that meeting that we
22 seek to enjoin is going to occur this Thursday.

23 THE COURT: But you are the ones asking me to defer
24 the rulings, so I mean --

25 MR. DELIKANAKIS: I'll let Mr. D'Alba --

1 MR. D'ALBA: Only -- only until after the
2 disaffiliation. In other words, we don't want to be
3 coming back on Wednesday seeking an injunction if the
4 union does not vote to disaffiliate. If the union votes
5 to affiliate, then on Wednesday we'll advise you.

6 THE COURT: But their -- they may already be in Elko.
7 They've got a whole bunch of things going on. And, folks,
8 in fairness, I either rule today or I put it to next week
9 because you can't kind of pick and choose.

10 I mean, realistically, you said defer. You
11 didn't put a time frame on the defer, so --

12 MR. D'ALBA: Well, I thought I --

13 THE COURT: In fairness --

14 MR. D'ALBA: I'm sorry. I thought I did. What I do
15 recall saying is that if we --

16 THE COURT: You said the part may be moot depending on
17 what the ruling is --

18 MR. D'ALBA: Yes.

19 THE COURT: -- but I didn't hear you say deferral --
20 even if you did -- I mean, folks, I make myself amazingly
21 available, but I am going to be in the middle of a medical
22 malpractice trial. I do have, you know, 13 -- 1,500 other
23 cases on my docket. I mean, what do you need? You know
24 what I mean?

25 MR. D'ALBA: Simply -- simply to put off issuing the

1 ruling until Wednesday, and it may be that you don't need
2 to rule on Wednesday.

3 THE COURT: My chambers' calendars are on Fridays. It
4 would be a Friday, if it's a chambers calendar. And if
5 you are going to make an appearance, an appearance has to
6 be on a Tuesday or Thursday. At least one judicial days'
7 notice to the other side if you would like me to continue
8 this hearing.

9 MR. D'ALBA: Friday's fine.

10 MR. DELIKANAKIS: Friday's fine, your Honor.

11 MR. WEST: Your Honor, we would -- first of all, I
12 think your solution is -- is one that's acceptable to us
13 and if -- if it's put off until next week -- even if it
14 doesn't become moot because of CCA's disaffiliation, it
15 could become moot because the Bylaw amendment isn't
16 adopted this weekend, so you are going to have more
17 information next week than you would if you did it on
18 Friday.

19 We would prefer to have a Tuesday or Thursday
20 calendar so that at least, you know, there is an
21 opportunity for the parties to update your Honor on what
22 the situation is.

23 MR. D'ALBA: Your Honor --

24 MR. WEST: If -- if I may add one --

25 THE COURT: Okay. You all know -- you are not being

1 really fair. Remember this is supposed to end at 3:30.
2 Fairness to my team who, some of which are subject to
3 collective bargaining agreements, are entitled to overtime
4 etcetera. Okay. Everyone should be very cognizant of the
5 fact.

6 MR. WEST: Okay. Well I said what our preferences is.

7 THE COURT: Okay.

8 MR. WEST: I think that the solution that you've come
9 to on the -- on the writ also has a bearing on it because
10 the Court's order is going to mean that if worst case
11 scenario from their point of view comes to pass and that a
12 trusteeship is imposed, the money is going to be in
13 account where we can't have access to it without your
14 order.

15 So -- and that's the principal thing that they're
16 citing as a potential injury, so I think that goes a long
17 way towards ameliorating their (inaudible).

18 MR. D'ALBA: But we can't have stability with respect
19 to the leadership of the organization if they pass a Bylaw
20 that causes Mr. Vellardita to be removed immediately, and
21 that's part of the concern.

22 We can't come to you later and say now issue an
23 order that says their Bylaw was wrong. The case that
24 they've reported on which is English -- I think it's
25 called English v. Burns or Burns v. English, the NEA case

1 from Alabama -- the federal court case said you can't
2 overturn a Bylaw amendment.

3 THE COURT: But they specifically represented to this
4 Court that they're not doing a Board of Directors meeting
5 that's going to impact this approval of any of these
6 Bylaws until July, which is what I'm taking into account.

7 Are you all anticipating that you're going to
8 do -- remember you spoke with your client -- so you are
9 not doing anything until July. If they all of a sudden
10 accelerate this Board of Directors meeting and all of a
11 sudden try to do it before next week when this Court sets
12 a hearing, then I will have to deal with that.

13 I wouldn't anticipate people would make a
14 representation in open court that it's July with all of
15 their -- several of their clients being present that all
16 of a sudden July becomes next week.

17 Do we anticipate something is going to happen
18 next week that you are going to advance the Board meeting
19 from July to next week?

20 MR. D'ALBA: I'm getting a negative sign from my
21 clients in the back.

22 THE COURT: Okay. That's -- I mean. You have to
23 realize I'm trying to take everyone's issues into concern.
24 When I hear July, I'm not seeing that it needed to be this
25 week. If I have a reaffirmation that's not happening --

1 okay -- by next week then I can set something next week,
2 if that's what the parties want.

3 And that way both parties have an opportunity to
4 see what happens in each of your respective meetings;
5 otherwise, you are asking me to really do it halfway
6 through one meeting without the other side having a chance
7 to do it. So it's either today right this second, or
8 it's --

9 MR. D'ALBA: Friday is fine.

10 THE COURT: No. Next week. Remember it's not going
11 to be Friday. Friday doesn't give them their chance to do
12 it. Remember Friday doesn't give them their chance.

13 MR. DELIKANAKIS: Next week.

14 THE COURT: So it's next week on a Tues-- I'll tell
15 you Tuesday is better than Thursday bec -- well, I can't
16 do it this Thursday anyway because I've got all my
17 pretrial conferences. I can do it on the first or I can
18 do it on the third at 9:30.

19 MR. DELIKANAKIS: That's fine.

20 MR. D'ALBA: Tuesday is fine.

21 MR. DELIKANAKIS: Tuesday is fine.

22 THE COURT: Tuesday, May 1? Mayday. Okay. So being
23 around the (inaudible) people will be here. Okay.

24 Court calls. Just send the letter if anyone
25 wants the court call, but you got to do it by Friday of

1 this week so that we know what's for next week. Okay?

2 Go ahead, counsel.

3 MR. DELIKANAKIS: Your Honor, Mr. D'Alba just pointed
4 out he had a conflict on the first. Can we do it
5 Thursday? Next Thursday, your Honor.

6 THE COURT: Thursday the 3rd?

7 MR. DELIKANAKIS: Yes.

8 THE COURT: Does that work for you all as well? What
9 time is your con -- because remember we are Pacific.

10 MR. D'ALBA: May 1st, I'll be out of town.

11 THE COURT: Pardon --

12 MR. D'ALBA: I'll be out of town, and they'll be
13 coming back to Chicago I think on Wednesday.

14 THE COURT: Okay. Are you going to court call or be
15 here. Because like I said I can (inaudible) court calls
16 if people want them, so it's up to you.

17 MR. D'ALBA: Oh, a phone call?

18 THE COURT: Yeah. A court call is a phone call.
19 That's -- that's why I was trying to accommodate
20 everyone's (inaudible) schedule.

21 MR. D'ALBA: I think that could be done. I'll be --
22 I'll be out of town. I think --

23 MR. DELIKANAKIS: Okay. Telephonically on Tuesday is
24 fine, your Honor.

25 THE COURT: Telephonically. May 1. Okay. So I just

1 said anybody who wants a telephonic appearance, get your
2 court call request by this Friday into the Court so that
3 we know how many people are doing via court call because
4 we're just going have to work with that challenge, but
5 we'll make that. At most we're going to have three; is
6 that right?

7 MR. DELIKANAKIS: I'll be present here, your Honor.

8 THE COURT: Present.

9 MR. ALEXANDER: I should be present.

10 THE COURT: So one -- two -- three --

11 MR. DELIKANAKIS: Yeah.

12 THE COURT: -- would that be correct?

13 MR. DELIKANAKIS: I'll be present.

14 THE COURT: Okay. So we can get that accommodated.
15 Just make sure by this Friday if you've got your court
16 call request, so we can get that taken care of for you.
17 May 1, 9:30 is what -- I'm going to phrase that -- is --
18 I'm going to phrase it as a continuation of today's
19 preliminary injunction hearing.

20 But all the parties understand that this is
21 really for purposes of the Court making a decision to the
22 extent that there is still a decision for the Court to
23 make. Right? It is not a continued hearing for
24 additional testimony or evidence because you have all told
25 me all testimony and evidence is closed; is that correct?

1 MR. DELIKANAKIS: Correct, your Honor.

2 UNIDENTIFIED SPEAKER: That's correct, your Honor.

3 THE COURT: Okay. Any other details? I'm going to
4 get your motion to dismiss and I'm going to get you your
5 exhibit.

6 Motion to dismiss. Do you all also want that on
7 May 1st, or do you just want to put that off for a little
8 bit so you can deal with your immediacy issues.

9 MR. D'ALBA: Put it off.

10 MR. DELIKANAKIS: Put it off, please.

11 THE COURT: It's your motion, so you are just going to
12 re-notice it on an agreeable date, and just sent me a
13 letter, and we'll put it on at 9:30. Okay?

14 MR. DELIKANAKIS: Yes, your Honor.

15 THE COURT: Does that work?

16 MR. ALEXANDER: It does.

17 THE COURT: So Madame Clerk -- Madame Clerk is going
18 to do -- Madame Clerk is going to just put it as a
19 placeholder on that 60-day date she gave you, and then
20 we'll advance it when you tell us you want it heard.
21 Okay?

22 MR. DELIKANAKIS: Understood.

23 THE COURT: Because that way it just doesn't get lost
24 in the system. Now, with regards to the April 6th letter
25 which is a double-sided page that you wanted to replace

1 for M. Madame Clerk is more than happy to -- tomorrow
2 during regular business hours make a copy of the back page
3 of what was handed by Counsel for Defendants, and then --
4 and then put that at the end of the current Exhibit M.

5 Is that what the parties are requesting?

6 MR. DELIKANAKIS: Yes, your Honor.

7 MR. ALEXANDER: Yes, your Honor.

8 THE COURT: So then you have both the unsigned and the
9 signed so that you know where it came from. Is that what
10 the parties are requesting, or do you want something
11 different?

12 MR. DELIKANAKIS: That's fine.

13 MR. ALEXANDER: That's fine, your Honor.

14 MR. DELIKANAKIS: That's fine, your Honor.

15 THE COURT: Does that meet -- yes, yes, yes. Okay.

16 MR. DELIKANAKIS: Yes.

17 MR. ALEXANDER: Yes.

18 THE COURT: Thank you, Madame Clerk, for volunteering
19 to do that. Okay. Anything else, or should we wish you
20 all a very nice rest of your afternoon on whatever time
21 zone you are on, and we will see whoever we see back here
22 next week, and best of luck to your respective clients
23 with everything that's going to go on between now and
24 then.

25 Thank you so very much. Have a great rest of

1 your evening.

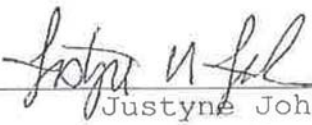
2 THE BAILIFF: All rise. Court is adjourned.

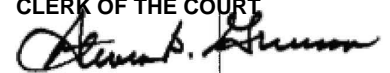
3 THE COURT: Madame Court Recorder, we're off the
4 record.

5 PROCEEDING CONCLUDED AT 5:17 P.M.

6 *****

7
8 ATTEST: I do hereby certify that I have truly and
9 correctly transcribed the audio-video recording of this
10 proceeding in the above-entitled case.

11
12
13 
14 Justyne Johnson,
15 Hearing Reporter
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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,
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: Defendants/Counter-Plaintiffs' Motion for
3 Preliminary Injunction was entered in the above-entitled matter on the 11th day of May, 2018, a
4 copy of which is attached hereto.
5

6 Dated this 11th day of May, 2018.

7 BOIES SCHILLER FLEXNER LLP

8
9 /s/ Paul J. Lal, Esq.

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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: DEFENDANTS/COUNTER-PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION*** 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.

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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

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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

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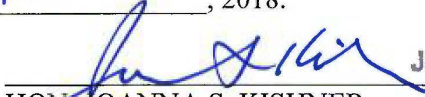

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AA 0512

1 A hearing having been held on April 23, 2018 and continued to May 1, 2018 on
2 Defendants-Counter Plaintiffs' Motion for Preliminary Injunction, and the Court having
3 considered the pleadings, papers and documents on file herein, and the Court being otherwise
4 fully advised in the premises, including representations to the Court by Counsel to Defendants-
5 Counter Plaintiffs that Defendant-Counter Plaintiff Clark County Education Association has
6 disaffiliated from Nevada State Education Association and National Education Association, and
7 good cause appearing therefor,
8

9 IT IS HEREBY ORDERED that Defendants-Counter Plaintiffs' Motion for Preliminary
10 Injunction is denied and dismissed as moot.

11 DATED this 10th day of May, 2018.


12  JOANNA S. KISHNER
13  HON. JOANNA S. KISHNER
District Court Judge


14 Respectfully submitted by,

Approved as to form and content:

15 BOIES SCHILLER FLEXNER LLP

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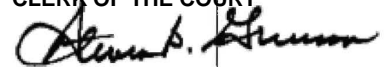
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**DISTRICT COURT
EIGHTH JUDICIAL DISTRICT
CLARK COUNTY, NEVADA**

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

Plaintiffs/Counter-Defendants,
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.

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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.
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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

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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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AA 0517

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.

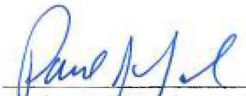
13
14
15  JOANNA S. KISHNER
16 The Honorable JOANNA S. KISHNER
17 District Court Judge


18 Respectfully submitted by,

Approved as to form and content:

19 BOIES SCHILLER FLEXNER LLP

SNELL & WILMER, L.L.P.

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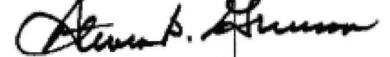
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25 **DISTRICT COURT**
26 **EIGHTH JUDICIAL DISTRICT**
27 **CLARK COUNTY, NEVADA**

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

SECOND AMENDED COMPLAINT FOR
DECLARATORY
AND INJUNCTIVE RELIEF

Arbitration Exemption Claimed:
Declaratory Relief

SECOND AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF - 1

1 1. In this action for declaratory, injunctive, and other equitable relief, Plaintiffs
2 Nevada State Education Association (“NSEA”), National Education Association (“NEA”), and
3 individual Plaintiffs Ruben Murillo, Robert Benson, Diane Di Archangel, and Jason Wyckoff
4 seek to prevent CCEA from diverting to its own use dues monies forwarded to it from the Clark
5 County School District (“CCSD”), which rightfully belong to NSEA and NEA. These funds are
6 collected through payroll deduction from CCSD teachers who have signed up as members of
7 CCEA, NSEA, and NEA, and CCEA’s refusal to transmit to NSEA the portion of these dues
8 payments that belongs to NSEA and NEA is in violation of CCEA’s contractual obligations,
9 constitutes (in the alternative) unjust enrichment, and amounts to conversion and fraud.
10
11

12 PARTIES

13 2. Plaintiff NSEA, a nonprofit corporation organized under the laws of this State, is
14 an employee organization with approximately 24,000 members. NSEA is the parent affiliate of
15 31 local associations, of which CCEA is one, that together represent some 40,000 teachers and
16 other employees of Nevada school districts. NSEA is affiliated at the national level with NEA.
17

18 3. Plaintiff NEA, a federally chartered nonprofit corporation, is a nationwide
19 employee organization of some three million education professionals, the vast majority of whom
20 are employed by public school districts, as well as colleges and universities, throughout the
21 United States, including in Nevada.
22

23 4. Plaintiffs Ruben Murillo, Robert Benson, and Diane Di Archangel are teachers
24 employed by CCSD and residents of Clark County, and have each signed up to be members of
25 CCEA, NSEA, and NEA. Plaintiff Murillo is the President of NSEA and is a former President of
26 CCEA. Plaintiff Benson is a member of the NSEA Board of Directors and is a former Vice
27 President of CCEA.
28

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

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

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

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

JURISDICTION AND VENUE

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

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

FACTS

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

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

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

SECOND AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF - 4

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
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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
SECOND AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF - 7

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
27
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 **33.** Defendant Victoria Courtney has stated that the membership enrollment form
6 provides notice to prospective members that they are joining CCEA, NSEA, and NEA.

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

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

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

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

28 SECOND AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF - 10

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

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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
28

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.

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

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

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

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

12 **59.** Plaintiffs incorporate by reference and re-allege the allegations of Paragraphs 1-
13 58.

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

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

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-

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

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)**

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

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

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

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

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

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

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

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

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

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

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

COUNT NINE
(Unauthorized Mid-Year Increase in CCEA Dues)

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

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

1 **105.** CCEA dues established for the 2017-18 membership year are \$243.84. The 2017-
2 18 membership year ends August 31, 2018.

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

5 **107.** The attempt to cause the deduction of higher CCEA dues from individual
6 Plaintiffs' paychecks in the middle of the 2017-18 membership year violates the Membership
7 Enrollment Forms, which do not authorize the deduction of any dues besides those "established
8 annually" for the "membership year."
9

10 **108.** The individual Plaintiffs, as CCEA members, are or will imminently be injured by
11 CCEA's increases of CCEA dues for the remainder of the 2017-18 school year through payroll
12 deduction.
13

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiffs pray for judgment against Defendants that provides the
16 following relief:
17

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

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

24 C. An order requiring CCEA to disgorge to NSEA, with interest, all NSEA and NEA
25 membership dues that it has received but not transmitted to NSEA;
26

27 D. An award of punitive damages with respect to Count Seven;
28

SECOND AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF - 23

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
13 /s/ Paul J. Lal

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

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

16 BOIES SCHILLER FLEXNER LLP

300 South Fourth Street, Suite 800

Las Vegas, NV 89101

17 John M. West*

18 Robert Alexander*

19 Matthew Clash-Drexler*

James Graham Lake*

20 BREDHOFF & KAISER, PLLC

805 15th Street N.W., Suite 1000

21 Washington, DC 20005

22 * Admitted pro hac vice

23 *Attorneys for Plaintiffs*
24
25
26
27
28

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

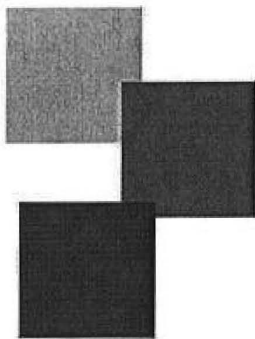
NEVADA STATE EDUCATION ASSOCIATION

BY: Charles E. Smith

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.

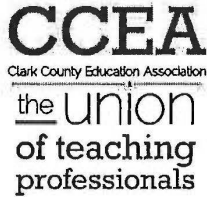
Nevada State Education Association:
(800) 248-6732 or visit the website at www.nsea-nv.org.

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

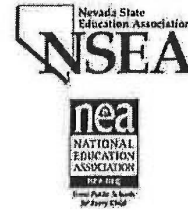
CCEA
Clark County Education Association
**the union
of teaching
professionals**

Nevada State
Education Association
NSEA

nea
NATIONAL
EDUCATION
ASSOCIATION
1916-19
Ensure Public Schools
for Every Child



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:			METHOD OF PAYMENT:		
<input type="checkbox"/> Full Time <input type="checkbox"/> Half Time			<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: ____/____/____ Month Day Year	ETHNIC CODE:	<input type="checkbox"/> Caucasian	MARITAL STATUS: <input type="checkbox"/> Single <input type="checkbox"/> Married <input type="checkbox"/> Separated/Divorced/Widowed
		<input type="checkbox"/> American Indian/Alaska Native <input type="checkbox"/> Asian <input type="checkbox"/> Hispanic	<input type="checkbox"/> Black <input type="checkbox"/> Pacific Islander <input type="checkbox"/> Other _____	
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. 6/14

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

* 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: [REDACTED]	ETHNIC CODE: <input type="checkbox"/> American Indian/Alaska Native <input type="checkbox"/> Black <input type="checkbox"/> Asian <input type="checkbox"/> Pacific Islander <input type="checkbox"/> Hispanic <input checked="" type="checkbox"/> Caucasian	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 offices. 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

Jeanyne Ford
ASSOCIATION AGENT

1/20/2011
DATE

WHITE: CCEA

YELLOW: NSEA

PINK: MEMBER

REV. 7/10

Exhibit D



the union
of teaching
professionals

CLARK COUNTY EDUCATION ASSOCIATION
NEVADA STATE EDUCATION ASSOCIATION
NATIONAL EDUCATION ASSOCIATION



Membership Enrollment Form

BELOW TO BE COMPLETED BY MEMBER

LAST NAME <u>Wyckoff</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 SIGNATURE

8/1/17
DATE

ASSOCIATION AGENT

DATE

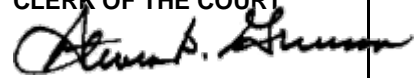
WHITE: CCEA

YELLOW: NSEA

PINK: MEMBER

REV. 6/17





Richard G. McCracken, Nevada Bar No. 2748
Kimberley C. Weber, Nevada Bar No. 14434
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Las Vegas, NV 89102
Tel: (702) 386-5107
rmccracken@msh.law
kweber@msh.law

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Bradley T. Austin, Nevada Bar No. 13064
Michael Paretti, Nevada Bar No. 13926
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jad@ulaw.com

Attorneys for Plaintiffs

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.: 28

**PLAINTIFFS' MOTION FOR PARTIAL
SUMMARY JUDGMENT**

///

///

///

EXHIBIT 8



4230 McLeod Drive
Las Vegas, NV 89121
Tel. 702/733-3063
800/772-2282
Fax 702/733-0240
www.ccea-nv.org

April 26, 2018

Lily Eskelsen Garcia, NEA President
1201 16th Street, NW
Washington, DC 20036-3290
Sent electronically

Re: Disaffiliated

Dear President Eskelsen-Garcia:

Please be advised that effective immediately CCEA is no longer affiliated with the National Education Association (NEA) and the Nevada State Education Association (NSEA) and accordingly, we will no longer have any contractual relationships with NEA and NSEA.

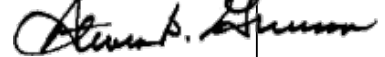
Respectfully,

A handwritten signature in black ink, reading "Vikki Courtney".

Vikki Courtney, President

A handwritten signature in black ink, reading "Theo Small".

Theo Small, Vice-President



1 **RTRAN**

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5 **DISTRICT COURT**

6 **CLARK COUNTY, NEVADA**

7 **NEVADA STATE EDUCATION**
8 **ASSOCIATION, ET AL.,**

9 **Plaintiffs,**

10 **vs.**

11 **CLARK COUNTY EDUCATION**
12 **ASSOCIATION, ET AL.,**

13 **Defendants.**

CASE#: A-17-761884-C

DEPT. XXXI

14 **BEFORE THE HONORABLE JOANNA S. KISHNER,**
15 **DISTRICT COURT JUDGE**

16 **TUESDAY, MAY 1, 2018**

17 ***RECORDER'S TRANSCRIPT OF HEARING***

18 **DEFENDANTS - COUNTER PLAINTIFFS CLARK COUNTY**
19 **EDUCATION ASSOCIATION'S, JOHN VELLARDITA'S AND**
20 **VICTORIA COURTNEY'S MOTION FOR INJUNCTION**

21 **APPEARANCES:**

22 **For the Plaintiffs:**
23 **(Via CourtCall)**
24 **(Via CourtCall)**

PAUL J. LAL, ESQ.
JOHN M. WEST, ESQ.
JAMES G. LAKE, ESQ.

25 **For the Defendants:**

JOHN S. DELIKANAKIS, ESQ.
MICHAEL PARETTI, ESQ.

For CCEA (Via CourtCall):

JOEL A. D'ALBA, ESQ.

RECORDED BY: SANDRA HARRELL, COURT RECORDER

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Las Vegas, Nevada, Tuesday, May 1, 2018

[Case called at 10:10 a.m.]

THE COURT: Page 6 through 9, 7618- --

MR. D'ALBA: (Indiscernible) suggested go back to the museum, but I just got a beep --

THE CLERK: Sorry.

MR. D'ALBA: -- so I'll -- I'll go back after this (indiscernible) --

THE COURT: No worries. Okay, let me get the appearances first in court in Case Number 761884 and then we'll do it on CourtCall. Thank you so much.

Counsel, can I have appearances first here in court?

MR. LAL: Yes. Thank you, Your Honor. Paul Lal with Boies Schiller Flexner on behalf of the plaintiffs.

MR. DELIKANAKIS: John Delikanakis from Snell & Wilmer on behalf of Clark County Education Association, John Vellardita and Victoria Courtney.

MR. PARETTI: Good morning, Your Honor. Michael Paretti also from Snell & Wilmer on behalf of the defendants and counterclaimants.

THE COURT: Do appreciate. On the phone --

MR. D'ALBA: Joel D'Alba on phone conference for the CCEA.

MR. WEST: And this is John West and Graham Lake on the telephone for the plaintiffs, Nevada State Education Association, et al.

THE COURT: Okay. I do appreciate it.

1 Anybody else on the phone? No. Okay.

2 If you don't mind, counsel, when we ask for those on CourtCall
3 to make your statements if you do it in the same order that you just did it,
4 it probably will make life easier so you're not both talking at the same
5 time, and just please do remember anytime you do speak on CourtCall,
6 although I can distinguish the difference in your voices, our JAVS
7 system cannot so please unfortunately say your name again before you
8 speak each time.

9 So I'll open it up with the what is left for this Court to address
10 as we sit slash -- feel free to sit slash stand whatever you'd like to do, it's
11 more comfortable for you, today.

12 MR. LAL: Your Honor, I think we're here on the status check
13 of the defendants' preliminary injunction motion.

14 THE COURT: Right, we have the motion for the preliminary
15 injunction and what I'm --

16 MR. DELIKANAKIS: Correct, Your Honor.

17 THE COURT: -- broadly asking you is -- supposedly a lot of
18 things happened last week so in light of the things that did or did not
19 happen last week, do I still have a pending motion for preliminary
20 injunction or is it moot?

21 MR. DELIKANAKIS: With the Court's permission, Joel D'Alba
22 will address the Court on that point.

23 THE COURT: Sure.

24 Mr. D'Alba.

25 MR. D'ALBA: Yes, Your Honor. The --

1 THE COURT: Feel free to sit down if you want. Sit, stand --

2 MR. D'ALBA: -- union --

3 THE COURT: -- be comfortable.

4 MR. D'ALBA: -- meaning the CCEA voted to disaffiliate from
5 the NSEA. There's no longer a need for injunctive relief.

6 THE COURT: Okay. So is that a withdrawn motion?

7 MR. D'ALBA: Yes.

8 THE COURT: How you characterize -- okay. So is the -- the
9 motion for injunctive relief is then is withdrawn, then the Court need not
10 make a ruling. Is that correct? Is that --

11 MR. D'ALBA: Yes.

12 MR. DELIKANAKIS: Yes, Your Honor.

13 THE COURT: There's a couple of different ways you all may
14 wish me to structure what's happening here today; that's why I'm asking.
15 Is it a withdrawn or is it a ruled on as moot, is it -- you know, what is
16 being requested as far as from the Court standpoint?

17 MR. D'ALBA: I would suggest from our perspective, Your
18 Honor -- this is Joel D'Alba speaking -- that the matter be ruled upon as
19 moot.

20 THE COURT: Any objection from plaintiff?

21 MR. LAL: I'll defer to co-counsel who are on the phone,
22 please?

23 THE COURT: Okay, counsel on the phone, Mr. West and --

24 MR. WEST: Yes, Your Honor.

25 THE COURT: Go ahead.

1 MR. WEST: Yes, this is John West. We have no objection to
2 the motion being denied as moot.

3 THE COURT: Okay. If that was the request of the movant
4 that that's how you wish it to be ruled upon, then that's -- and there's no
5 objection from the other side, then that's what the ruling is going to be.
6 Okay.

7 So then I'm going to -- since we have a ruling as denied is
8 moot, then I would ask counsel for the non-movant to please prepare the
9 order, circulate it to opposing counsel and provide it back to the Court in
10 accordance with EDCR 7.21. That takes care of that issue.

11 Does anyone need to be heard any further on the motion for
12 preliminary injunction? I'll ask --

13 MR. DELIKANAKIS: No, Your Honor.

14 THE COURT: Pardon?

15 MR. DELIKANAKIS: No, Your Honor.

16 THE COURT: Okay.

17 MR. LAL: I don't believe so, Your Honor.

18 THE COURT: Okay. Anyone on the phone need to be heard
19 any further on the motion for preliminary injunction or should I move on?

20 MR. D'ALBA: Nothing from -- this is Joel D'Alba, Your Honor.
21 Nothing from CCEA.

22 MR. WEST: John West. Nothing from NSEA.

23 THE COURT: Okay. So then we were going to reschedule
24 the motion to dismiss. That wasn't going to be heard today because we
25 didn't know what the status of everything's going to be. So we have a

1 pending motion for -- to dismiss. Do you want to have a date set for that
2 to be heard? Is that still pending that the Court needs to address for the
3 parties?

4 MR. DELIKANAKIS: Your Honor, John --

5 MR. D'ALBA: Your Honor, this is Joel D'Alba speaking. I sent
6 an email this morning to Mr. West and Mr. Lake inquiring as to whether
7 they would agree to having this motion to dismiss on the fraud count
8 heard by phone conference and I haven't heard from them but that
9 would certainly be our preference if it's something you're willing to
10 entertain.

11 THE COURT: You mean today? Because I thought you all --

12 MR. D'ALBA: No, no, not at all.

13 THE COURT: Oh you mean by telephonic --

14 MR. D'ALBA: Some date in the future that we could agree
15 upon based on your schedule.

16 THE COURT: Okay.

17 MR. DELIKANAKIS: The parties are confirmed to try and find
18 an agreeable date to present to the Court for possible motion hearing
19 dates.

20 THE COURT: Okay. So just walk me through how you all
21 want to do this. I'm perfectly fine picking another date. Since I've got a
22 lot of parties that want to have their matters heard right now, doing
23 scheduling in the open court may not be the most efficient use of your
24 clients' time or money. I'm more than glad to do it if you really want me
25 to, but you may want to talk among yourselves.

1 Now, format-wise, are you thinking that parties who wish to
2 argue it may want to do it by CourtCall versus being present in court or
3 are you wanting it all to be telephonically, because I'll tell you if it's all
4 telephonically with like six parties on a phone call, can't say it can't be
5 done, it just it does present a challenge for purposes of people speaking
6 over each other. I mean if you're trying not to have local counsel here to
7 save cost and fees, that's -- you've got -- everyone's got excellent -- I
8 don't know if you're local local counsel or if you're local -- whatever roles
9 each every -- if it's a cost and fees issue and somebody needs a waiver
10 of the rule with regards to local counsel, that's one thing. If it's a request
11 that you specifically want to do it all telephonically for some other reason
12 or by audio/visual, we can accommodate it but kind of just need a heads
13 up of what you really want.

14 MR. DELIKANAKIS: John Delikanakis. I appreciate the
15 Court's comments. No, the intent here is certain lawyers from out of
16 state may wish to appear telephonically. We agree with your idea, and
17 that's what we've initiated this morning, to try and get some dates
18 agreed upon all the parties. Then I expect we'll contact the Court's
19 chambers and see what dates are available at the Court's convenience
20 once the parties have nailed down what dates are convenient for them.

21 THE COURT: Sure.

22 MR. LAL: And I think that's a reasonable approach, Your
23 Honor, to have the counsel confer on what are reasonable dates and
24 then report to the Court dates that we've selected and have the Court
25 schedule --

1 THE COURT: Sure.

2 MR. LAL: -- accordingly.

3 THE COURT: And do you all anticipate this will be a standard
4 motion to dismiss time, meaning about 5 to 10 minutes of argument on
5 each side, or do you anticipate that you need more time? The reason
6 why I'm asking that question is standard, you know, motions to dismiss
7 are generally 9:30s on Tuesdays and Thursdays. We did a special
8 setting because you all had, you know, more significant issues that you
9 needed more time on, so just keep that into account of what you're
10 thinking.

11 MR. LAL: Your Honor, if I can speak to that, I would like to
12 defer to our out-of-state --

13 THE COURT: Sure.

14 MR. LAL: -- counsel to figure out the time constraints for
15 arguing that motion.

16 THE COURT: Sure.

17 Mr. D'Alba or Mr. West, would it make sense for you all to
18 speak among yourselves and then just send a written communication to
19 the Court, cc'd to all parties, on what you all are requesting and then if
20 you -- you know, just says, Your Honor, you know, here's a -- here's
21 couple Tuesdays and Thursdays and we can then look and tell you
22 which ones are really busy days.

23 For example, you know, how soon you want to get it taken
24 care of and then we can then say how long you anticipate each side
25 needs for oral argument similar to what you did for your last hearing and

1 then we can find a Tuesday, Thursday at 9:30 if it's going to be a
2 standard amount of time and if you think you need a special setting, then
3 we can evaluate that and then get back to the various parties. Would
4 that meet your needs?

5 MR. DELIKANAKIS: Yes, Your Honor.

6 MR. LAL: I believe it would, Your Honor.

7 THE COURT: That meet your needs, Mr. D'Alba and Mr.
8 West and Mr. Graham?

9 MR. D'ALBA: Your Honor, this Joel D'Alba. It meets our
10 needs as well.

11 MR. WEST: Yes, and this is John West. We're totally in
12 agreement --

13 THE COURT: Okay.

14 MR. WEST: -- with that and I -- and we think we ought to be
15 able to do it on a Tuesday or Thursday setting because the -- what had
16 been decided when we were going to do this last week is that this was
17 going to be five minutes a side for the motion to dismiss so hopefully
18 we'll be able to agree on a Tuesday or Thursday, but I think we -- we'll
19 try to agree on dates and contact the Court and --

20 THE COURT: Okay.

21 MR. WEST: -- and get it set up that way.

22 THE COURT: Sure. Okay. That one's worked. Is -- those
23 are the only matters that I showed that were pending before the Court
24 for today's purposes. Is there anything else that the parties think that
25 they need the Court to address today?

1 MR. DELIKANAKIS: I'd like to --

2 MR. D'ALBA: Yes, Your Honor. This is Joel D'Alba speaking.
3 We are going to ask your permission whether we can do it in an oral
4 statement now or whether you would prefer to have a written motion for
5 permission to return to the members of CCEA the dues money that will
6 be collected after May 1. There is a period of approximately 30 days for
7 the school district to process the request to change the dues deduction
8 amounts and in that period, dues in the amounts that have normally
9 been collected for NSEA will be received and they will be placed in the
10 ordinary course of business per Your Honor's order into the restricted
11 account, but we'd like permission to return that money to the members in
12 due course after the complete collection of the funds. And so we're
13 asking whether you can -- if you're willing to do this by an oral statement
14 today or whether you would prefer a motion.

15 THE COURT: Well it's going to be a simple answer. If the
16 responding party stipulates to it, then the Court is going to be fine with it.
17 The responding party does not stipulate to it, then we would need a
18 proper motion so that all parties have a full opportunity to address the
19 issue, be fully heard on the issue.

20 So who's speaking on behalf of responding party?

21 MR. WEST: Your Honor, this is John West. I can tell you we
22 will not stipulate to that. There are a lot of issues raised --

23 THE COURT: Sure.

24 MR. WEST: -- by what Mr. D'Alba is suggesting and certainly
25 we would want to insist that there be a proper motion that we can

1 respond to.

2 THE COURT: Okay. Well Mr. D'Alba and counsel for CCEA
3 who's also present in court, that would be ordinarily the rule, okay? You
4 got to have -- even if I had an OST which I don't even have a written
5 OST, you got to have judicial day, you got to make sure all parties have
6 a full opportunity to be heard on that, and since there's not a stipulation,
7 sounds to me like I'll be seeing some type of motion and we'll address it
8 when it shows up on my proverbial doorstep.

9 MR. DELIKANAKIS: Thank you, Your Honor. We'll approach
10 (indiscernible) motion.

11 MR. D'ALBA: Thank you, Your Honor. I understand and
12 appreciate your decision.

13 THE COURT: Yeah, it's a non-decision to say I can't address
14 something when it's not --

15 MR. D'ALBA: I understand.

16 THE COURT: No worries.

17 MR. D'ALBA: Of course.

18 THE COURT: I'm just saying it's nothing on the merits, it's just
19 a -- if it's not a stipulation, then it --

20 MR. D'ALBA: Right.

21 THE COURT: -- has to be properly noticed just like anything
22 else. I do appreciate it.

23 Okay. So then at this juncture is there anything else on behalf
24 of NSEA or anything or we're just going to wish you all a nice rest of
25 your week and look forward to a couple of orders heading our way?

1 MR. DELIKANAKIS: Thank you, Your Honor.

2 MR. LAL: Thank you.

3 MR. D'ALBA: Thank you. Thank you, Your Honor, for
4 allowing us to participate by phone conference.

5 THE COURT: Okay. That's fine. And if that's --

6 MR. WEST: Thank you, Your Honor. Nothing further from us.

7 THE COURT: Okay. And if that's a request -- an implicit
8 request for the next hearing on the agreed-upon motion to dismiss date
9 that the parties -- anybody wishes to appear telephonically, just please
10 put -- A, I'm going to be in agreement, but please put that in your written
11 letter just so we can make sure that we have something that we know
12 who's wishing to appear telephonically so when you all reach out to
13 CourtCall that everyone's on the same page, okay?

14 MR. LAL: All right.

15 MR. DELIKANAKIS: Understood, Your Honor.

16 MR. LAL: Thank you, Your Honor.

17 THE COURT: Does that work for everyone?

18 MR. D'ALBA: Thank you.

19 THE COURT: Thank you. So we're going to disconnect on
20 the phone --

21 MR. D'ALBA: Yes. Good afternoon.

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1 THE COURT: -- and wish everyone a nice rest of your week
2 and move on. Thank you so much.

3 MR. PARETTI: Thank you, Your Honor.

4 MR. D'ALBA: Thank you.

5 [Hearing concluded at 10:32 a.m.]

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21 ATTEST: I hereby certify that I have truly and correctly transcribed the
22 audio/visual proceedings in the above-entitled case to the best of my
23 ability.

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Tracy A. Gegenheimer, CER-282, CET-282
Court Recorder/Transcriber