

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 02:01 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 VIII

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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

DATE FILED	DOCUMENT	VOLUME	PAGE RANGE
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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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 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

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

Debbie Leonard (Nevada Bar No. 8260)
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Attorneys for NSEA Appellants

CERTIFICATE OF SERVICE

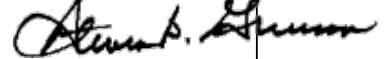
I HEREBY CERTIFY that I am an employee of Leonard Law, PC, and that on February 3, 2020, a copy of the foregoing document was electronically filed with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Court's E-Filing system (E-Flex). Participants in the case who are registered 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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1630 South Commerce Street, Suite 1-A
Las Vegas, Nevada 89102

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



1 RTRAN

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3
4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 CLARK COUNTY EDUCATION
8 ASSOCIATION, ET AL.,

9 Plaintiffs,

10 vs.

11 NEVADA STATE EDUCATION
12 ASSOCIATION, ET AL.,

13 Defendants.

CASE#: A-17-761364-C

DEPT. IV

14 BEFORE THE HONORABLE KERRY EARLEY,
15 DISTRICT COURT JUDGE

16 THURSDAY, MAY 9, 2019

17 **RECORDER'S TRANSCRIPT OF PROCEEDINGS**
18 **MOTION FOR RECONSIDERATION**
19 **MOTION FOR PARTIAL SUMMARY JUDGMENT**
20 **MOTION TO AMEND COMPLAINT**
21 **OPPOSITION AND COUNTERMOTION**
22 **MOTION FOR PARTIAL SUMMARY JUDGMENT**

23 APPEARANCES:

24 For the Plaintiffs:

JOHN S. DELIKANAKIS, ESQ.
JOEL A. D'ALBA, ESQ.

25 RECORDED BY: RUBINA FEDA, COURT RECORDER

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APPEARANCES CONTINUED:

For the Plaintiffs:

BRADLEY T. AUSTIN, ESQ.
MICHAEL PARETTI, ESQ.

For the Defendants:

PAUL J. LAL, ESQ.
ROBERT ALEXANDER, ESQ.
JAMES G. LAKE, ESQ.

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Las Vegas, Nevada, Thursday, May 9, 2019

[Case called at 9:07 a.m.]

THE COURT: Okay. I don't have a page --

THE MARSHAL: Here you go.

THE COURT: Oh here I do. I think I have the same one from April 18th?

THE MARSHAL: Okay, well I'll give you a fresh one.

THE COURT: Can I use this one to make sure I -- okay.

Okay, everybody take your time and set up or whatever you need to do.

[Pause]

MR. DELIKANAKIS: Good morning, Your Honor.

THE COURT: Good morning.

MR. ALEXANDER: Good morning, Your Honor.

THE COURT: Is everybody -- okay, so everybody please give your appearance for the record.

MR. DELIKANAKIS: Yes, John Delikanakis, Joel D'Alba --

THE COURT: I'm sorry, John, I know --

MR. DELIKANAKIS: I'm sorry, John -- I'm John Delikanakis --

THE COURT: I know -- okay. I didn't --

MR. D'ALBA: Joel D'Alba.

THE COURT: Okay, I just like to -- okay, I've got you.

MR. AUSTIN: Brad Austin.

THE COURT: Brad Austin. Are you on my list, but I'll let you

1 -- okay. Brad Austin and?

2 MR. PARETTI: Michael Paretti, Your Honor.

3 THE COURT: Okay. Michael. All right. And you are here on
4 behalf of?

5 MR. DELIKANAKIS: The Clark County --

6 THE COURT: County.

7 MR. DELIKANAKIS: -- Education Association --

8 THE COURT: Yes. And --

9 MR. DELIKANAKIS: -- Victoria Courtney, James Frazee,
10 Robert G. Hollowood and Maria Neisess --

11 MR. D'ALBA: Neisess.

12 MR. DELIKANAKIS: -- N-e-i-s-e-s-s.

13 THE COURT: Okay. All right. Great.

14 All right. Counsel.

15 MR. LAL: Good morning, Your Honor.

16 THE COURT: Good morning.

17 MR. LAL: Paul Lal with Boise Schiller Flexner.

18 THE COURT: Okay, let me make sure I get all the names
19 right. Paul --

20 MR. LAL: Lal.

21 THE COURT: -- Joseph?

22 MR. LAL: Lal.

23 THE COURT: L-a-l?

24 MR. LAL: L-a-l. Yeah.

25 THE COURT: Okay, thank you. I got you.

1 MR. ALEXANDER: Hi, Your Honor.
2 THE COURT: Yes.
3 MR. ALEXANDER: Robert Alexander --
4 THE COURT: Right. I --
5 MR. ALEXANDER: -- and with me is Graham Lake.
6 THE COURT: Okay.
7 MR. LAKE: I might be under there as James Graham Lake.
8 MR. ALEXANDER: That's true.
9 THE COURT: Did you change -- your name changed?
10 MR. LAKE: No, no, I've just always gone by my middle name
11 and it's always confusing how to handle that --
12 THE COURT: Okay. I've got you too, and you're here on
13 behalf of --
14 MR. ALEXANDER: We're here --
15 THE COURT: -- all the defendants?
16 MR. ALEXANDER: Well, plaintiffs defendants because
17 they're two cases --
18 THE COURT: Yes, they're two separate cases.
19 MR. ALEXANDER: -- Your Honor, we -- that have been
20 consolidated so --
21 THE COURT: Okay.
22 MR. ALEXANDER: -- the Nevada State Education
23 Association, the National Education Association --
24 THE COURT: Association and?
25 MR. ALEXANDER: -- and various individual defendants and

1 plaintiffs.

2 THE COURT: Correct.

3 MR. ALEXANDER: They're enough that I think --

4 THE COURT: I actually did a map. I know who -- I actually
5 did a map for the Judge who's on first and who's on second. Okay. I'm
6 good. All right, here's what I did. I tried to go through the motions and
7 do them in the order that I thought I could handle or made sense. So if
8 that's okay with you, if you have a -- let me know, because I -- I did them
9 in order, at least the best I could from reviewing and doing everything on
10 this case, so what I was going to start with is -- here's the first one I had
11 down: NSEA party's motion for partial reconsideration of the December
12 20th findings of fact and conclusions of law and order.

13 MR. ALEXANDER: Your Honor --

14 THE COURT: Because you -- your point to the Court was part
15 of those findings you felt would impact some of these other motions.
16 Correct, at least when I -- I read it all.

17 MR. ALEXANDER: No, no, you're --

18 THE COURT: Is that correct or not?

19 MR. ALEXANDER: You're -- no, you're absolutely right, Your
20 Honor. If I can give 30 seconds --

21 THE COURT: You can give -- you are the only people on
22 today as you can see --

23 MR. ALEXANDER: Thank you.

24 THE COURT: -- I actually because I -- I took everything else
25 off so everybody has a very clean and good record is what I'm trying to

1 accomplish.

2 MR. ALEXANDER: Thank you.

3 THE COURT: You're welcome. You deserve it.

4 MR. ALEXANDER: It's correct that the motion for
5 reconsideration is based on the positions that are involved in other
6 motions before the Court --

7 THE COURT: Correct.

8 MR. ALEXANDER: -- and the correctness or incorrectness of
9 the positions in those other motions will necessarily determine whether
10 or not the Court should reconsider her order of December 12th or
11 whether it's moot. At the time we --

12 THE COURT: Okay. That was my thought too, but okay.

13 MR. ALEXANDER: At the time we filed the motion for
14 reconsideration, we already had on file a motion for partial summary
15 judgment on the conversion claim --

16 THE COURT: Okay.

17 MR. ALEXANDER: -- that NSEA and NEA have brought.
18 Because the nature of the issue in that claim is whether or not -- it really
19 involves whether or not the monies that CCEA has held and hasn't
20 turned over are --

21 THE COURT: It's the trust -- it's in a trust fund that Judge
22 Kishner -- okay.

23 MR. ALEXANDER: It's in a -- currently it's in a restricted
24 account --

25 THE COURT: Protected --

1 MR. ALEXANDER: Exactly, at the Bank of America I believe.
2 THE COURT: Okay, that was my understanding from reading
3 everything and I -- Court's read Kishner's order.
4 MR. ALEXANDER: The nature of those funds, whether or not
5 NSEA and NEA have a property interest --
6 THE COURT: Right.
7 MR. ALEXANDER: -- with the NSEA and NEA dues, has
8 implications and actually I think determines a number of the other
9 motions.
10 THE COURT: I agree.
11 MR. ALEXANDER: So for example, the motion to alter or
12 amend is entirely dependent on finding that NSEA and NEA do not --
13 THE COURT: Have any kind of interest --
14 MR. ALEXANDER: Exactly. You've got it. You've got it.
15 THE COURT: I read everything. I get it. Okay, so what
16 would you like --
17 MR. ALEXANDER: So --
18 THE COURT: -- to do with this one? Do you want me defer it
19 till the end or --
20 MR. ALEXANDER: I would -- I think that the most efficient
21 and comprehensive way and I think it would shorten the hearing is to
22 begin with the conversion motion. They're -- since they are
23 cross-motions, it would resolve both our motion for summary judgment
24 and the CCEA motion for summary judgment on the exact same claim
25 and would have implications for other motions.

1 THE COURT: Okay.

2 MR. DELIKANAKIS: May I speak? Yes.

3 THE COURT: Yes.

4 MR. DELIKANAKIS: Actually, I disagree.

5 THE COURT: Okay --

6 MR. DELIKANAKIS: So much of what's being going to be
7 heard here today -- and I'll state this: About 80 percent of the
8 arguments that are going to be re-heard on these motions was
9 presented in NSEA's and NEA's oppositions so this is not totally fresh
10 territory. Having said this --

11 THE COURT: You mean oppositions to the previous --

12 MR. DELIKANAKIS: To the original motion for partial
13 summary judgment.

14 THE COURT: Yes. I actually read all that.

15 MR. DELIKANAKIS: Right. As you're reading the motions,
16 they must have -- the arguments must have sounded familiar because
17 they were briefed and argued ad nauseam in the first hearing that we
18 had.

19 The reason why I think the Court is well-guided to begin with
20 the motion for reconsideration is that so much stems -- as my colleague
21 across the aisle said, so much depends on whether the Court denies the
22 motion, which I think it should, or grants the motion in part and modifies
23 its order because --

24 THE COURT: Well that was my thought process when I got
25 through everything. I did the order only after I literally read everything.

1 So that's what I thought also so -- but, you know, either way it's all going
2 to come out so I -- you know, when I was looking at it, it was really just --
3 it was concerns only about a small section of my -- of the findings, or the
4 ruling. It wasn't the whole order or anything.

5 Because I actually -- when your letter came in, I did -- I did try
6 the best I could, counsel, you know, to do the order that I thought
7 reflected what occurred, you know, because as you all know, everybody
8 -- this is very intense and very complex and there's a lot of issues and
9 I'm just trying to do the best record for everybody that I can. And when I
10 read this it looked to me -- let me -- you know, it looked to me like what
11 your interest in was basically first of all the number 12 paragraph?

12 But it's up to you. If you want me to go there, if you want --
13 either way I'm ready -- I'll do it so I'm -- here's the biggest one let's start
14 -- let's just do this because I read through it and the arguments are
15 going to come out anyway, counsel. You have it all well briefed. I
16 mean, you know, believe me there's a record here and I did feel like I
17 was reading things over and over. But that's okay. You have a right to
18 brief it however you want and you have every -- you know, I find no -- I
19 don't find fault with that at all in that a lot of it is intertwined, so that I --
20 you know, I didn't say ad nauseam because I did feel things were very
21 much intertwined. I'm not correcting you --

22 MR. DELIKANAKIS: I retract that comment.

23 THE COURT: No, I --

24 MR. DELIKANAKIS: I didn't mean it to be --

25 THE COURT: I know.

1 MR. DELIKANAKIS: -- disparaging in any way.

2 THE COURT: And I have to -- no.

3 MR. DELIKANAKIS: It's just I felt like it was Groundhog Day
4 all over again as I was preparing for all of this. Anyway --

5 THE COURT: Okay, so what I'd -- okay, so let me -- let's talk
6 about this. It's NSEA's party's motion for partial reconsideration of this
7 Court's December 20th findings of fact, conclusions of law and order
8 that was filed 1/10/19. My understanding you wanted this Court to
9 reconsider paragraphs 6, 8, 9, 10 and 12. Correct?

10 MR. ALEXANDER: That is correct, Your Honor --

11 THE COURT: Make sure I'm -- because I've got notes --
12 okay, 6, 8, 9 and 10 are kind of along the same lines. And 12 of that
13 order. Okay?

14 MR. ALEXANDER: So --

15 THE COURT: However you want to start it, I kind of circled it
16 by paragraphs and I'm more than willing to listen.

17 [Colloquy between counsel and the Marshal]

18 THE COURT: And my understanding is when I look at a
19 motion for reconsider -- your basis was that I considered evidence that
20 was not -- should not have been part of those motions.

21 MR. ALEXANDER: Not exactly, Your Honor.

22 THE COURT: Okay, tell me because I was trying to --

23 MR. ALEXANDER: Sure.

24 THE COURT: -- see what your basis for the reconsideration
25 was. At least that's what it looked like, and then, you know, they always

1 throw in erroneous as a matter of law --

2 MR. ALEXANDER: Right.

3 THE COURT: -- because I guess that applies to anything a
4 Judge does, right? I don't mean it. Yeah.

5 MR. ALEXANDER: It could depend on --

6 THE COURT: Okay.

7 MR. ALEXANDER: -- the interpretation of your order --

8 THE COURT: Okay.

9 MR. ALEXANDER: -- as well.

10 THE COURT: I got it all here. Okay.

11 MR. ALEXANDER: So paragraph 12 --

12 THE COURT: Okay, I started with that. Why are we --

13 MR. ALEXANDER: -- of your order --

14 THE COURT: -- why did we both start -- okay.

15 MR. ALEXANDER: -- which states that in the absence of a
16 dues transmittal agreement, there is no obligation for CCEA to transmit
17 dues to NSEA and per NSEA's bylaws, only NSEA has a contractual
18 right to pay NEA. Now --

19 THE COURT: Okay. I will be honest. When I read that, I
20 thought that was over what I actually was doing. That is the only one,
21 but I'll just be very honest. I read through the original motions for
22 summary judgment. I did not focus on the bylaws. Your argument on
23 me then going the next step on the bylaws, I felt there might be -- there
24 might be some merit to it because I literally, counsel, went through the
25 whole motions, the underlying motions again. I thought I had been -- but

1 you're right. Until I saw all these motions to know how your argument on
2 the bylaws somehow -- not somehow, that's not nice. How the bylaws
3 have a separate independent duty is -- I did not know that --

4 MR. ALEXANDER: At the time.

5 THE COURT: -- at the time.

6 MR. ALEXANDER: Exactly.

7 THE COURT: I'm being very fair and that's -- that is the one I
8 circled here. It really -- it really if it comes out, it has no, to me, change
9 anything that I ruled on in the first underlying motion so I will tell you that
10 is one that I circled here and said, you know what, I think it is one that
11 the finding really wasn't something that the Court -- and I'll say for the
12 record I went back through those motions again to make sure as -- as
13 best I can, you know? I'm like you guys, I'm a human being doing the
14 very best I can, but I did see -- anything to do with the bylaws, things
15 were talked about the bylaws but not the significance obviously that I
16 then found when I read all these other motions which obviously were not
17 available to me when I did this order. So I -- that is one I honestly you --
18 I was -- you know, and I can hear from Mr. Dillakokis [phonetic] -- I said
19 your name right, Dilla -- I always do it phonetically. Dillakinokis
20 [phonetic]. Did I do --

21 MR. DELIKANAKIS: Correct, Your Honor.

22 THE COURT: How about John?

23 MR. DELIKANAKIS: John is good, Your Honor.

24 THE COURT: I agreed with you on that because I didn't feel it
25 was necessary for my -- underlying my rulings and I did feel even though

1 the bylaws were talked about, I really didn't use that as a finding to
2 support what I did on the letter.

3 MR. ALEXANDER: Right --

4 THE COURT: So I -- I'm more than -- and you can -- I'm more
5 than willing to take out of my -- that order, I've got it here, of saying I
6 would take out paragraph 12; revise it for paragraph 12.

7 MR. ALEXANDER: Thank you, Your Honor --

8 THE COURT: But I'll let you talk --

9 MR. ALEXANDER: Thank you, Your Honor. I mean --

10 THE COURT: I mean that is my thought process. Like I said,
11 if you -- you're not going to think -- I mean, correct?

12 MR. ALEXANDER: No. I think you're correct, Your Honor,
13 but I think that you're correct for one of two reasons.

14 THE COURT: Okay.

15 MR. ALEXANDER: The paragraph 12 states there's no
16 obligation for CCEA to transmit dues to NSEA and as a contractual
17 matter, the only -- the motion that was before you, the only contract at
18 issue was the dues transmittal agreement.

19 THE COURT: I totally agree with you.

20 MR. ALEXANDER: And that's your point.

21 THE COURT: I am --

22 MR. ALEXANDER: That's your point.

23 THE COURT: -- absolutely on board. I agree with you,
24 counsel.

25 MR. ALEXANDER: Separately --

1 THE COURT: So when I went back, I agree. What's the
2 second? I got that part.

3 MR. ALEXANDER: Right.

4 THE COURT: Give me the second.

5 MR. ALEXANDER: The second one is that if when you -- if
6 you read no obligation for CCEA, if you read that as no contractual
7 obligation, then that would end the matter and we would be -- it would be
8 sufficient that it didn't include the NEA bylaws and the NSEA bylaws
9 which are separate contracts.

10 THE COURT: Right.

11 MR. ALEXANDER: But there's a separate obligation.

12 THE COURT: No, I understand --

13 MR. ALEXANDER: Court obligation --

14 THE COURT: -- your argument on that. That's --

15 MR. ALEXANDER: And that was not part of the motion either.

16 THE COURT: I agree because that's certainly part of a lot of
17 these motions --

18 MR. ALEXANDER: Exactly.

19 THE COURT: -- so I got that and when I saw the word
20 obligation, I actually put maybe if we put contractual, but really my point
21 is I didn't use that finding to support my decision on the original and I'm
22 comfortable with that because I feel that's true. So for me to say that
23 was a finding I -- I'm going to say I agree.

24 Okay, I don't know if counsel on the other side --

25 MR. ALEXANDER: Thank you, Your Honor --

1 THE COURT: -- I agree because it doesn't affect in any way
2 because I looked very carefully -- in my opinion, they may have -- it does
3 not affect the basis for my rulings in the previous motions for summary
4 judgment so I was going to grant your motion for paragraph 12 to delete
5 it out of my order -- what is it here? Order entered 12/20/2018. Or filed.
6 I'm sorry, I don't know the -- the one we're talking about.

7 MR. ALEXANDER: Yes.

8 THE COURT: Okay?

9 MR. ALEXANDER: Separately --

10 THE COURT: Okay.

11 MR. ALEXANDER: And then moving to the --

12 THE COURT: Okay, then let's do the other paragraphs you
13 want.

14 MR. ALEXANDER: The other paragraphs I think --

15 THE COURT: Six.

16 MR. ALEXANDER: I --

17 THE COURT: Oh I'm sorry, I just have them in order you --

18 MR. ALEXANDER: I think --

19 THE COURT: However you want to do it, I've got it here,
20 counsel.

21 MR. ALEXANDER: I think it's --

22 THE COURT: I don't mean to rush you. I'm sorry.

23 MR. ALEXANDER: No that's fine. I think it is six and then
24 eight through 10.

25 THE COURT: Six, eight through 10 is what I have marked.

1 MR. ALEXANDER: And all of those paragraphs -- and this is
2 a very minor issue, but it's an important issue with respect to the
3 conversion motion. It's the description of the enrollment form --

4 THE COURT: Okay, let's start with six. It says six, members
5 of CCEA pay dues to CCEA pursuant to a membership dues
6 authorization form -- membership authorization form. When I looked
7 back at the documents, that's what it says that was -- is there something
8 incorrect about that fact under six because I pulled up the form, I could
9 not find it. So what in six do you feel was not a proper finding?

10 MR. ALEXANDER: That it is not a -- the form is not a CCEA
11 enrollment form. It is an association enrollment form.

12 THE COURT: Well it doesn't say that though. What it says is
13 members of CCEA pay dues to CCEA pursuant to a membership dues
14 authorization form. I do get they also part of the dues go to NSEA, part
15 of the dues go to NEA. I got that. But that fact is not incorrect. It may
16 not be --

17 MR. ALEXANDER: Complete.

18 THE COURT: Complete.

19 MR. ALEXANDER: That's --

20 THE COURT: I put down here --

21 MR. ALEXANDER: You're -- that's fair. And I --

22 THE COURT: Okay. Thanks.

23 MR. ALEXANDER: And I'm -- and with respect to paragraph
24 six --

25 THE COURT: I knew where you were going with that --

1 MR. ALEXANDER: -- I'm willing to --

2 THE COURT: -- but that does not mean it only inclusive. I
3 was not doing a finding that it only -- that CCEA members paying dues
4 to CCEA excluded NSEA or NEA because that's not true and that's
5 obvious by the document so I think -- that's why I don't find fault with
6 that. I did not mean it to be and I'm -- I did not include that in any way in
7 my -- as a finding --

8 MR. ALEXANDER: Correct.

9 THE COURT: -- in any way that I excluded that they were
10 paying also to NSEA and NEA. I did not, counsel --

11 MR. ALEXANDER: Okay.

12 THE COURT: -- and I'm very aware from the documentation
13 that they do.

14 MR. ALEXANDER: Then --

15 THE COURT: And the form and I'm also -- I understand it has
16 everybody's name on it. It has -- you know, I want -- so I'm not going to
17 change six, but I will tell you that's how I interpreted it and that's how I
18 am using it in all the motions today.

19 MR. ALEXANDER: And that's sufficient --

20 THE COURT: So you're not in any way -- your client is not in
21 any way that I felt like --

22 MR. ALEXANDER: Prejudiced by that.

23 THE COURT: Exactly.

24 MR. ALEXANDER: And --

25 THE COURT: I put down here not prejudiced so we're good.

1 MR. ALEXANDER: Yes.

2 THE COURT: Does that make sense?

3 MR. ALEXANDER: It does. It makes perfect sense.

4 THE COURT: So I did not want to change six. I felt -- but I

5 wanted the record very clear that I understood it was not all inclusive or

6 excluding NEA or NSEA. Okay, for six --

7 MR. ALEXANDER: And as we will explain --

8 THE COURT: Okay.

9 MR. ALEXANDER: -- when we --

10 THE COURT: Oh no, I --

11 MR. ALEXANDER: -- when we get to the --

12 THE COURT: I know you're going to --

13 MR. ALEXANDER: -- conversion motion --

14 THE COURT: I get it.

15 MR. ALEXANDER: -- the form itself and the enrollment and

16 the membership of the members, at least until this affiliation, was --

17 THE COURT: Oh I have all that.

18 MR. ALEXANDER: -- an enrollment of membership in all

19 three of the organizations with dues obligations to all three of them and it

20 was only to --

21 THE COURT: I absolutely get that. Okay, until you're -- I

22 have your arguments -- so I'm going to keep six, but I did want on the

23 record to make sure that I did not in any way use six or feel six is

24 excluding NSEA or NEA which is -- could -- should be your concern.

25 MR. ALEXANDER: And that's exactly correct.

1 THE COURT: And that's legitimate. Counsel, I want you to
2 know I felt that was legitimate and I considered that so I'm not going to
3 reconsider number 6. Eight, nine and 10 are to me basically
4 mechanisms of how it occurred, not that somebody had a right to
5 something or not which -- what portion or how, do you see what I'm
6 saying, but --

7 MR. ALEXANDER: Yes.

8 THE COURT: -- I wrote down here these were the
9 mechanisms of how the dues got transmitted. Not saying that
10 somebody had a right to something more than somebody else or
11 somebody didn't. I looked at this -- in fact, I went through my notes
12 because you did an argument on these paragraphs when I did your
13 letter and the order. I looked at it as a mechanism issue and when I
14 looked at the documents, I thought the mechanism was fair, but you tell
15 me -- and that's what 8 through 10 is; it's basically how it worked. I was
16 not determining necessarily specific rights that would address the
17 conversion and stuff, I was just basically the facts of here's how it works
18 factually.

19 MR. ALEXANDER: And I think our -- we wanted to avoid the
20 potential confusion --

21 THE COURT: Okay, and I --

22 MR. ALEXANDER: -- by characterizing the form as a CCEA
23 membership form when in fact it's broader than that and --

24 THE COURT: Well and I didn't think of it that way.

25 MR. ALEXANDER: Okay.

1 THE COURT: I'm really clear on the record and I did not think
2 of the --

3 MR. ALEXANDER: Under that circumstance, I -- it may be
4 completely unnecessary --

5 THE COURT: Okay.

6 MR. ALEXANDER: -- to reconsider those --

7 THE COURT: Okay.

8 MR. ALEXANDER: -- three paragraphs.

9 THE COURT: And that's how I looked at it and that's how I
10 interpreted it when I read it and those -- not determining rights but just --
11 I put down here the mechanism basically -- how it went. Not saying who
12 has a right to do certain things at what time, I -- that's all here. I get that.
13 So --

14 MR. ALEXANDER: Okay.

15 THE COURT: -- that is why I'm going to grant your motion as
16 to paragraph 12 on the bylaws. I will grant it as far as that paragraph.

17 And I'm sorry, counsel, I didn't even --

18 MR. DELIKANAKIS: Yes.

19 THE COURT: -- let you argue. I'm arguing with myself, right?
20 I'm showing my reasoning but --

21 MR. ALEXANDER: I should let Mr. Delikanakis --

22 THE COURT: Yeah, sorry.

23 MR. DELIKANAKIS: I see I have an uphill battle and that's
24 fine.

25 THE COURT: For 12. The other ones are staying in.

1 MR. DELIKANAKIS: For 12. And I'm only going to address
2 12, but I --
3 THE COURT: Yeah.
4 MR. DELIKANAKIS: -- I'm also going to address --
5 THE COURT: I got --
6 MR. DELIKANAKIS: -- the broader issue of an improper
7 motion for reconsideration.
8 THE COURT: Yeah, I looked at that.
9 MR. DELIKANAKIS: You know, look, I mean --
10 THE COURT: I looked at --
11 MR. DELIKANAKIS: -- there is -- that's a very high hurdle to
12 meet a motion for reconsideration.
13 THE COURT: You would be surprised how many people don't
14 seem to get that.
15 MR. DELIKANAKIS: They don't --
16 THE COURT: I get reconsideration of -- it's just a different
17 world than what I used to do, right? We used --
18 MR. DELIKANAKIS: You're correct. Because the standard in
19 Nevada is that you have to present newly-acquired evidence, or a
20 radical change in the law, or point out that the judge is, of course as you
21 said, a clearly erroneous standard.
22 THE COURT: Right.
23 MR. DELIKANAKIS: Now, this order just didn't come out of a
24 vacuum.
25 THE COURT: No.

1 MR. DELIKANAKIS: This order was the result of almost what,
2 three hours of oral argument on CCEA's motion for partial summary
3 judgment. And I went back and I kind of looked at the briefs in
4 opposition to that and that's why I said -- I made the Groundhog Day
5 comment is that so many of the arguments that they're now presenting
6 again were in the opposition, and that's why my belief and CCEA's belief
7 is that paragraph 12 is fully justified by the record; that this issue of the
8 bylaws creating some sort of extra-contractual relationship, our
9 argument, that the only contractual relationship between the
10 organizations was a dues transmittal agreement as evidenced by not
11 only the agreement's plain language but their own bylaws which say that
12 you can't --

13 THE COURT: Okay.

14 MR. DELIKANAKIS: -- be in the club --

15 THE COURT: But Mr. Delinokis [sic], I did not address that. I
16 agree I -- I know that's coming. I've -- I read it. But I am -- I will be very
17 fair. When I went back and looked, although there were arguments of
18 that, that is not what I based my decision on.

19 MR. DELIKANAKIS: I understand.

20 THE COURT: I -- and I'm just being very fair for both of you
21 on the record. I did just what you did. I went back to -- in fact, I actually
22 did it when I got your letter because I try very hard, as you -- any judge
23 would, to try to make sure when I sign orders as, you know, especially
24 with these kind of motions, you know, I realize that's what's going to go
25 up, whatever, so I understand what you're saying.

1 MR. DELIKANAKIS: Okay.

2 THE COURT: I do feel that -- and it's not really an error of
3 law, it's more of a -- findings of fact I'm a little -- I don't want to say looser
4 because that's not a good word. I'm a little -- I'm a -- have a little more
5 discretion as opposed to law. When I make a law, then I look at the
6 standard if -- if granting or not granting a motion on the basis, I clearly
7 apply the motion for reconsideration standard like you and I -- we're all
8 aware of.

9 But findings of fact are tough one, as you and I know, and so I
10 appreciate what you're saying. I'm still going based on the reasoning I
11 did. Once again, that doesn't say that I still feel I have a -- I still feel,
12 counsel, you have a very strong findings of fact and conclusions of law
13 of what this Court felt was appropriate and ruled in this order, and I am
14 very -- I feel strongly that taking out 12 doesn't in any way impact the
15 basis I gave for this summary judgment which is what I have to be
16 concerned about for both sides because that's what goes up, you know,
17 to people smarter than I am probably in the supreme court, right? So
18 that's how I look at it.

19 MR. DELIKANAKIS: I understand --

20 THE COURT: Whether you -- so -- and as you can see, I
21 spent a lot of time. I wanted to make sure that it didn't impact -- so that's
22 why I am -- I understand your argument and I understand -- but since it
23 is a finding of fact which to me I have a greater discretion, I just don't
24 want to take out a finding of fact and I won't if I truly feel it is a factual
25 basis for my ruling. And that's why I'm leaving the other ones in. I felt

1 like they were, they were very important to me the mechanism because
2 that shows the significance in my mind, right? Of the termination letters.
3 That's why I would not -- I denied six, eight, nine and 10 for that reason,
4 but I am going to grant it for 12.

5 MR. DELIKANAKIS: Understood, Your Honor.

6 THE COURT: Okay.

7 MR. DELIKANAKIS: I completely appreciate --

8 THE COURT: And I didn't mean to cut you off because we
9 got -- I get it but --

10 MR. DELIKANAKIS: May I make a suggestion --

11 THE COURT: Yeah.

12 MR. DELIKANAKIS: -- because that was actually raised --

13 THE COURT: Sure.

14 MR. DELIKANAKIS: -- by what Mr. Alexander said. He
15 thought that the fact that there was not the word contractual before the
16 word obligation --

17 THE COURT: Yeah.

18 MR. DELIKANAKIS: -- in paragraph 12 created an ambiguity
19 and that troubled him. So I would suggest to the Court is keep
20 paragraph 12, but add the word contractual --

21 THE COURT: You know what?

22 MR. DELIKANAKIS: -- between the words no and obligation.

23 THE COURT: I don't care, but --

24 MR. DELIKANAKIS: So I -- he raised it so I'm just --

25 THE COURT: Yeah.

1 MR. ALEXANDER: Well, I didn't raise it in that respect, but
2 I'm happy to address it. The issue is not solved. In fact, the issue is
3 magnified if you add the word contractual because --

4 THE COURT: Well --

5 MR. ALEXANDER: -- then it suggests that you have ruled on
6 the NEA --

7 THE COURT: The bylaw. You know what, then I'm very --
8 after reading everything, I'm very cognizant that the bylaw issue is key
9 for both parties so that's why I honestly did this one last. I went through
10 everything, but then I thought when I ruled the way I did that's why I
11 wanted to go first because for the reasons I'm giving you. I mean I can't
12 -- I guess I can't be any clearer than I am, right? So I'm just going to --
13 I'm going to grant it just to delete paragraph 12.

14 MR. DELIKANAKIS: Very good, Your Honor.

15 THE COURT: Everything else -- and I'm denying as far as
16 paragraphs six, eight, nine and 10 and for the record I gave you so
17 hopefully that works. At least that's my ruling, right?

18 MR. ALEXANDER: Thank you, Your Honor.

19 MR. DELIKANAKIS: Thank you.

20 THE COURT: Okay.

21 MR. DELIKANAKIS: Thank you for your consideration.

22 THE COURT: No, no, I very much respect the briefing and
23 the issues. As you know, you know, I -- I have great respect so -- so
24 NSEA's party's motion for partial reconsideration of the December 20th
25 findings of fact, conclusions of law is granted as to paragraph 12. I want

1 to make -- grant and denied as to paragraph six, eight, nine and 10.
2 THE CLERK: Thank you.
3 THE COURT: You're welcome. I want to make sure we -- it's
4 not easy, I know. Okay. So --
5 MR. ALEXANDER: Your Honor --
6 THE COURT: Yeah.
7 MR. ALEXANDER: -- one last thing may be unnecessary --
8 THE COURT: No, that's fine.
9 MR. ALEXANDER: -- for your order, but I -- that you indicated
10 that the denial of paragraphs six, eight, nine and 10 was without
11 prejudice to the arguments on --
12 THE COURT: Absolutely.
13 MR. ALEXANDER: Thank you.
14 THE COURT: And that's why we -- I tried to be very plain on
15 the record how I looked at them --
16 MR. ALEXANDER: Exactly.
17 THE COURT: -- so you would know I did not use it to -- I --
18 that's why I wanted to start with this one first because after I reviewed
19 everything, I very much understand where both parties are coming from.
20 MR. ALEXANDER: Thank you.
21 THE COURT: You know, I didn't have that insight when I had
22 your letter --
23 MR. ALEXANDER: Of course.
24 THE COURT: -- because I hadn't -- so absolutely, I -- and I --
25 and as best as I can be clear on the record, that's how I used it. I don't

1 know how else but you got a record.

2 MR. ALEXANDER: Thank you.

3 THE COURT: I'm not using it that way. I looked at it as
4 mechanisms which were factually correct without deciding who had a
5 right to what or who had a -- when it could be as far as the bylaws.

6 Okay. All right, so I wanted to make sure I got -- you guys I
7 had to -- okay, so number 1. All right. If you don't mind, let me get my
8 notes. Oh my goodness. Okay. All right. Then let me see what I
9 wanted and then you can tell me if I'm doing this -- deny in part for six,
10 eight -- thank you for letting me do my notes because, you know, I go
11 back and I do 50 million things and they go don't you remember this,
12 Judge, and you're like huh?

13 Grant as to paragraph -- okay. All right. Now here's what I did
14 and let's see, you said to me you wanted conversion. Here's what I put
15 for two. I put next partial summary judgment on counts two and three.
16 Which one is conversion, six?

17 MR. ALEXANDER: Conversion is six.

18 THE COURT: Okay.

19 MR. ALEXANDER: Two and three are the NEA and NSEA
20 bylaw claims.

21 THE COURT: Okay. So do you want -- I can -- do -- let's see.
22 Number six I put for three so I can do that next. I don't care because
23 they're both -- honestly, counsel, they're all so intertwined, I'll --

24 MR. ALEXANDER: They're -- they overlap. And I do think --

25 THE COURT: Do you want to do three?

1 MR. ALEXANDER: I do think that starting with the conversion
2 claims --

3 THE COURT: Okay. Which is count six.

4 MR. ALEXANDER: It's count six.

5 THE COURT: Okay. That's fine. I'll switch my tabs.

6 MR. ALEXANDER: Is the most sensible one and --

7 THE COURT: Okay. So right now for the record we're -- let
8 me switch my tabs. Okay, so right now we're doing NSEA and NEA
9 plaintiffs' motion for partial summary judgment and I added here on
10 count six, conversion, although it's not on the calendar that well,
11 because that was the easiest way to keep track.

12 THE CLERK: Okay.

13 THE COURT: Okay? So that's -- it's the last one on the
14 calendar. It says there's motion for partial summary judgment, but could
15 you -- yeah, if you look -- I don't know if you have the same calendar I
16 do.

17 THE CLERK: I do, but it doesn't have enough detail for me.

18 THE CLERK: Yeah, well that's why I added -- I know. Okay,
19 so it's -- sorry, just let me make sure the clerk because --

20 MR. ALEXANDER: Of course. Of course.

21 THE COURT: NSEA and NEA plaintiffs' motion for partial
22 summary judgment on count six, which I just put in paren to help us,
23 conversion, c-o-n-v-e-r-s-i-o-n, claim, because it doesn't say that.

24 Okay. Thank you.

25 MR. ALEXANDER: Thank you.

1 THE COURT: We're ready.

2 MR. ALEXANDER: So, Your Honor, I think it might make
3 sense if I zoom out a little bit --

4 THE COURT: That's fine.

5 MR. ALEXANDER: -- to put this into perspective because --

6 THE COURT: Because honestly two and three kind of go
7 together.

8 MR. ALEXANDER: Two and three go together and they're
9 related to six as well in certain --

10 THE COURT: Correct.

11 MR. ALEXANDER: -- respects. So essentially what this is, is
12 this is a dispute that's arising in the following scenario: There were
13 three organizations that were affiliated. During a period of time they
14 were affiliated, one of the organizations collected dues for all three of the
15 organizations, kept the dues for the other two organizations and refused
16 to turn them over. This is a scenario that can occur outside of the labor
17 context; for example, in the Girl Scouts, the Girl Scouts of America local
18 troops and members will be in a similar situation where the local Girl
19 Scout troop will sign up members and those members will be members
20 of the Girl Scouts of America and of the local troop and will pay over the
21 money to the local troop and the local troop has an obligation --

22 THE COURT: No, I didn't think this setup was probably
23 anything unique to the --

24 MR. ALEXANDER: It's not. Exactly.

25 THE COURT: -- teachers association to any other kind of --

1 MR. ALEXANDER: And what that does is --

2 THE COURT: I assumed by doing other things that this was
3 kind of a --

4 MR. ALEXANDER: This scenario raises potentially a variety
5 of claims. It could raise a claim for breach of contract, if there's an
6 affiliation agreement say between the Girl Scouts of America and the
7 local troop requiring the local troop to turn over the portion of the fees to
8 the Girl Scouts of America. It could also raise an equitable unjust
9 enrichment claim if they refuse to turn over the Girl Scouts --

10 THE COURT: If they had a legal right to it, that is unjust
11 enrichment.

12 MR. ALEXANDER: Exactly. Separately and finally, with -- if
13 the monies are Girl Scout of America membership fees and the local
14 troop is not turning them over and keeping them, controlling them,
15 exercising dominion over them, that is where a conversion claim rises.

16 THE COURT: Correct. It's when you keep --

17 MR. ALEXANDER: And --

18 THE COURT: -- monies that's not legally and rightfully yours.

19 MR. ALEXANDER: Right, and --

20 THE COURT: I got conversion, counsel.

21 MR. ALEXANDER: Right, and the *Giles* [phonetic] case which
22 we cited to you --

23 THE COURT: Right.

24 MR. ALEXANDER: -- involved exactly that sort of scenario
25 where you had a variety of claims arising out of the same controlling

1 certain monies that didn't go to someone else that could be a contract
2 claim and a conversion claim and an unjust enrichment claim.

3 THE COURT: Well, the basis for the conversion can be a
4 contract --

5 MR. ALEXANDER: It can be --

6 THE COURT: -- unjust -- it can be -- there has to be some
7 type of legal right to those funds --

8 MR. ALEXANDER: To the dues.

9 THE COURT: Yeah, the dues, if you want to say dues, or
10 funds that the person is keeping because if you don't have a legal right
11 and you keep it, that is the basis for a common law --

12 MR. ALEXANDER: Right.

13 THE COURT: -- conversion claim.

14 MR. ALEXANDER: And in this case --

15 THE COURT: I got that.

16 MR. ALEXANDER: In this case this is a little bit odd because
17 CCEA does not assert any property right to the NEA and NSEA dues.
18 Only NSEA --

19 THE COURT: Correct.

20 MR. ALEXANDER: -- and NEA are asserting a property
21 right --

22 THE COURT: They're --

23 MR. ALEXANDER: -- to their dues and just to be clear --

24 THE COURT: I get it.

25 MR. ALEXANDER: -- I think that if I could put up a

1 demonstrative exhibit, if that's okay?

2 THE COURT: This is your time. Like I said, I --

3 MR. ALEXANDER: Thank you.

4 THE COURT: -- I read everything but I appreciate anything

5 that can help me.

6 MR. ALEXANDER: This is -- and did you get a copy of this?

7 MR. DELIKANAKIS: No.

8 MR. ALEXANDER: Oh I think --

9 MR. DELIKANAKIS: Do you have a copy? That'd be great.

10 MR. ALEXANDER: Yes, Graham will give you --

11 MR. DELIKANAKIS: Thank you.

12 MR. ALEXANDER: -- a copy. Sure.

13 And just again, you know, to go back to the scenario, this is a

14 timeline.

15 THE COURT: Okay.

16 MR. ALEXANDER: And the timeline here is September 1,

17 2017 --

18 THE COURT: Correct.

19 MR. ALEXANDER: -- the beginning of the new membership

20 year.

21 THE COURT: Correct.

22 MR. ALEXANDER: This line down here --

23 THE COURT: I got that.

24 MR. ALEXANDER: -- is the end --

25 THE COURT: And it goes through August 31st of the next

1 year.

2 MR. ALEXANDER: It goes -- right. It goes --

3 THE COURT: If it's --

4 MR. ALEXANDER: Exactly.

5 THE COURT: Okay. No, I -- all right.

6 MR. ALEXANDER: So the period of time --

7 THE COURT: I should be quiet. Okay.

8 MR. ALEXANDER: -- we are talking about -- so this is the
9 whole year.

10 THE COURT: Right.

11 MR. ALEXANDER: For a portion of the year from September
12 1, 2017 --

13 THE COURT: To --

14 MR. ALEXANDER: -- until April 25 --

15 THE COURT: 25th.

16 MR. ALEXANDER: -- 2018, this blue area, CCEA was
17 affiliated with NEA and NSEA and the members of NSEA -- the
18 members of CCEA were also members of NEA and NSEA. So they
19 were members of all three organizations during that period and the
20 conversion claim that we're arguing today involves only the monies that
21 were collected by CCEA and paid by the members of NEA and NSEA
22 and CCEA for their --

23 THE COURT: Well, Clark County School District employees
24 who were members of --

25 MR. ALEXANDER: Who were members of all three

1 organizations --

2 THE COURT: It was taken out of their paycheck and given,
3 yes.

4 MR. ALEXANDER: Right. For --

5 THE COURT: The mechanisms.

6 MR. ALEXANDER: For that period of time, so it's the dues
7 paid by those members for their membership and their membership
8 obligation to NEA and NSEA for the period of time they were members
9 of NEA and NSEA. After --

10 THE COURT: Well isn't that kind of the issue, were they or
11 were they not members, right?

12 MR. ALEXANDER: And I -- well I'm -- I think --

13 THE COURT: I think that's the key issue to all this, correct?

14 MR. ALEXANDER: I think that you're right and I -- but I do
15 think --

16 THE COURT: But get to the --

17 MR. ALEXANDER: -- it's an issue, but I also think that it is on
18 the facts undisputed that they were members of NEA and NSEA --

19 THE COURT: Okay.

20 MR. ALEXANDER: -- during the period of time they were
21 affiliated with the two -- with -- during the period of time CCEA was
22 affiliated and --

23 THE COURT: That CCEA was affiliated --

24 MR. ALEXANDER: So affiliated --

25 THE COURT: -- with them?

1 MR. ALEXANDER: Exactly.

2 THE COURT: With -- okay.

3 MR. ALEXANDER: And --

4 THE COURT: I'm trying to get -- okay.

5 MR. ALEXANDER: So there are a small number of
6 propositions that are essential and we believe are undisputed in the
7 record. First, that members of CCEA, until this affiliation, were also
8 members of NEA and NSEA, and they became members of all three
9 organizations through the enrollment forms for all three organizations.

10 After this affiliation in April 25, 2018, it's correct to say that
11 those members were only members of CCEA, but the monies at issue
12 here are not for those periods of time after April 25th.

13 THE COURT: No, your --

14 MR. ALEXANDER: Exactly.

15 THE COURT: -- argument stems on whether --

16 MR. ALEXANDER: Right.

17 THE COURT: I get -- okay.

18 MR. ALEXANDER: Second, during the period of time that
19 these members were members of NEA and NSEA, they had dues
20 obligations, membership dues obligations to pay dues to NEA and
21 NSEA for their membership. And they did pay those. They paid them
22 through payroll deduction collected by CCEA.

23 And the monies at issue that are under CCEA's -- were under
24 CCEA's control are those NSEA and NEA dues payments paid by NSEA
25 and NEA dues members for the period of time they were NSEA and

1 NEA members. And what I'd like to do because the -- the record I think
2 is clear on this, but I think that it makes sense to go through a number of
3 the exhibits that prove that and --

4 THE COURT: I have it all here.

5 MR. ALEXANDER: I actually have -- with your permission,
6 Your Honor --

7 THE COURT: Sure.

8 MR. ALEXANDER: -- I've given a -- this is a portion of the
9 exhibits because there's so many of them that -- and we gave a copy to
10 Mr. Delikanakis --

11 THE COURT: That's fine. If you have an extra for me --

12 MR. ALEXANDER: I do --

13 THE COURT: -- please approach the bench.

14 MR. ALEXANDER: -- if that's all right?

15 THE COURT: No --

16 MR. ALEXANDER: Thank you.

17 THE COURT: It's appreciated. It's not just all right, it's
18 appreciated, because you know, I don't want to stumble trying to find all
19 these exhibits.

20 MR. ALEXANDER: Oh, and in case it's helpful to you, the --
21 though I think you can probably read it from there but --

22 THE COURT: Okay. All right.

23 MR. ALEXANDER: -- here's an extra copy.

24 THE COURT: It's appreciated. Thank you.

25 MR. ALEXANDER: Thank you.

1 THE COURT: No problem.

2 MR. ALEXANDER: So what I'd like --

3 THE COURT: So I get the period of time --

4 MR. ALEXANDER: Sure, so what I'd like to do --

5 THE COURT: -- that we're talking about.

6 MR. ALEXANDER: -- is go through a number of the exhibits --

7 THE COURT: Okay.

8 MR. ALEXANDER: -- which I think prove those propositions I

9 just stated. So the first proposition is whether or not -- when CCEA

10 disaffiliated from NEA and NSEA. I believe that --

11 THE COURT: No, that is the critical issue, is it not?

12 MR. ALEXANDER: I -- well I don't --

13 THE COURT: Because if they're not affiliated --

14 MR. ALEXANDER: Well it is -- I think it is a critical issue, but I

15 don't think it's a disputed issue because --

16 THE COURT: Okay.

17 MR. ALEXANDER: Well first, if you look at tab one --

18 THE COURT: No, I saw even the letters -- okay, never mind.

19 You give me the exhibits.

20 MR. ALEXANDER: Sure. So if you look --

21 THE COURT: I know the letters. Sorry.

22 MR. ALEXANDER: No, not at all. If you open your binder that

23 I just handed you --

24 THE COURT: I did.

25 MR. ALEXANDER: -- to tab one --

1 THE COURT: That's the letter I was thinking of.

2 MR. ALEXANDER: Yes. That's the letter.

3 THE COURT: I didn't --

4 MR. ALEXANDER: The letter in which CCEA --

5 THE COURT: Yes.

6 MR. ALEXANDER: -- is telling NSEA and NEA that we are no
7 longer affiliated and we no longer will have any contractual obligations or
8 relationship with NEA and NSEA. That is the termination of the
9 affiliation relationship.

10 THE COURT: That's the letter.

11 MR. ALEXANDER: Now, the importance of that is highlighted
12 when you look at the CCEA's own constitution and bylaws because
13 while they're affiliates, there are certain facts that bear on both their
14 members and themselves.

15 So if you turn to tab two, which is the CCEA constitution and
16 bylaws, during the period of time prior to disaffiliation, they amended
17 them because once they disaffiliated, certain of the provisions --

18 THE COURT: Yeah.

19 MR. ALEXANDER: -- were no longer effective. So let me
20 start first with article two which is on page 2 of the constitution and
21 bylaws.

22 Article two, section one, eligibility, and that's eligibility of
23 membership in CCEA, and it reads that any member of the bargaining
24 unit as defined by CCEA CCSD labor agreement in Clark County School
25 District may become a member of the association, and in this context

1 the association is CCEA, when evidence of membership in NSEA and
2 NEA is received and an official plan is signed authorizing payment of
3 dues of the certified professionals.

4 In other words, in order -- during the period of time CCEA was
5 affiliated with NSEA and NEA, in order to become a member of CCEA,
6 you had to show evidence of being a member of NSEA and NEA.

7 THE COURT: Okay.

8 MR. ALEXANDER: There's one other provision in the
9 constitution that bears looking at and that is on page 21, article 10,
10 section one.

11 THE COURT: Okay, hold on, let me find --

12 MR. ALEXANDER: Sure.

13 THE COURT: -- page 21.

14 MR. ALEXANDER: Yes, of the CCEA --

15 THE COURT: I'm almost there.

16 MR. ALEXANDER: -- constitution and bylaws prior to
17 disaffiliation.

18 THE COURT: Yes.

19 MR. ALEXANDER: Section one says affiliate status and it
20 says the association, again CCEA, shall maintain affiliate status with the
21 National Education Association and the Nevada State Education
22 Association under the required procedures of each organization which
23 makes perfect sense because if you're going to be an affiliate of these
24 two other organizations, you have to be a party to their bylaws and that's
25 what the required procedures of each organization is referring to.

1 Now, following on that, it seemed obvious to us and it I think
2 actually seemed obvious to CCEA as well that it was an affiliate of
3 NSEA and NEA and that its members were members of NEA and NSEA
4 and owed membership dues to NEA and NSEA. The best place, and
5 this is actually what Judge Kushner relied on in part in granting the
6 motion to -- for the restricted account back --

7 THE COURT: Right.

8 MR. ALEXANDER: -- in April is paragraph if you turn -- is the
9 answer. This is a judicial admission that CCEA's answer --

10 THE COURT: What are you looking at?

11 MR. ALEXANDER: Count three.

12 THE COURT: I read her orders. It's something in her order?

13 MR. ALEXANDER: Tab -- no, if you go -- turn to tab three --

14 THE COURT: Okay.

15 MR. ALEXANDER: -- tab three is simply CCEA's answer to
16 the NSEA and NEA complaint. And on --

17 THE COURT: Okay.

18 MR. ALEXANDER: -- page 4 --

19 THE COURT: The complaint that was filed --

20 MR. ALEXANDER: That --

21 THE COURT: -- that Judge Kushner had? Why am I still
22 having -- never mind. Okay.

23 MR. ALEXANDER: Yeah, no, now it's yours. It's this case.

24 THE COURT: No, I'm just wondering --

25 MR. ALEXANDER: It is this case.

1 THE COURT: Okay. Okay, whatever, I got it. I'm here.
2 MR. ALEXANDER: Yes. And paragraph 12 --
3 THE COURT: Okay.
4 MR. ALEXANDER: -- of the allegations --
5 THE COURT: Okay, hold on. Paragraph 12. All right.
6 MR. ALEXANDER: -- alleges that NEA, NSEA and CCEA
7 have a unified membership --
8 THE COURT: Okay.
9 MR. ALEXANDER: -- meaning that by joining CCEA, a
10 member also joins NSEA and NEA as well, becoming a member of all
11 three organizations entitled to all the benefits of membership and
12 obligated to pay membership dues to all three organizations.
13 THE COURT: Okay.
14 MR. ALEXANDER: That allegation is admitted. So they admit
15 that members of CCEA while they were affiliated with NEA and NSEA --
16 THE COURT: Okay, hold on.
17 MR. ALEXANDER: -- were also members of NEA and NSEA
18 and that those members had dues obligations to NEA and NSEA.
19 THE COURT: By joining -- okay, hold on.
20 MR. ALEXANDER: Sure.
21 THE COURT: Let me read it again.
22 MR. ALEXANDER: Of course.
23 THE COURT: Where does it say affiliation? So let me read it
24 again. Have unified membership which that -- the forms all show that.
25 MR. ALEXANDER: Yes.

1 THE COURT: Okay, in fact, the bylaws say they were all
2 formed meaning that by joining -- is member also joins NSEA and NEA
3 as well which the bylaws really say you're supposed to join them before,
4 but it doesn't matter.

5 MR. ALEXANDER: Right --

6 THE COURT: Cart before the horse or the horse, it doesn't
7 matter. You got to have all three. I get that.

8 MR. ALEXANDER: They're tethered together is the important
9 part.

10 THE COURT: Becoming a member of all three is -- to all the
11 benefits of membership and obligated which makes sense.

12 MR. ALEXANDER: Right.

13 THE COURT: If you get -- okay. The benefits of membership
14 include -- okay. Where does it say affiliation in that admission?
15 Because that seems to me the real key in -- maybe you disagree with
16 me, but I -- when I read through all this --

17 MR. ALEXANDER: Paragraph 11 --

18 THE COURT: -- where does it say affiliation of --

19 MR. ALEXANDER: Well paragraph 11 talks about CCEA
20 being the local affiliate of NSEA, but --

21 THE COURT: Okay. But that's not the same as saying
22 there's an admission that as long as you are -- as long as CCEA is
23 affiliated with NEA and NSEA that you are obligated to pay dues. I
24 mean that's a critical obviously issue to me because --

25 MR. ALEXANDER: No. It's not -- it's -- it does -- it arises --

1 THE COURT: Okay.

2 MR. ALEXANDER: -- from the fact that being a member of

3 CCEA means you're a member of NEA and NSEA as well.

4 THE COURT: No, I --

5 MR. ALEXANDER: And each --

6 THE COURT: -- I absolutely agree with you that that's --

7 MR. ALEXANDER: Right. And each of those three -- each of

8 those three is --

9 THE COURT: An affiliate of the other --

10 MR. ALEXANDER: Each of those three --

11 THE COURT: -- is what you're going to say.

12 MR. ALEXANDER: -- has membership dues obligations and

13 that's --

14 THE COURT: I get that.

15 MR. ALEXANDER: -- and the monies at issue here are the

16 dues obligations --

17 THE COURT: No.

18 MR. ALEXANDER: -- that were paid by those members --

19 THE COURT: No.

20 MR. ALEXANDER: -- to NEA and NSEA. And we --

21 THE COURT: I understand that too. I understood that --

22 MR. ALEXANDER: -- we will --

23 THE COURT: -- from the order that's why she did the -- at

24 least my understanding because you counsel were obviously there. I'm

25 just reading the order as best I can since -- okay.

1 MR. ALEXANDER: That's true. So --
2 THE COURT: Okay.
3 MR. ALEXANDER: -- we're going to get into -- I will show
4 you --
5 THE COURT: Okay, I'm fine. I don't mean --
6 MR. ALEXANDER: That's fine.
7 THE COURT: -- to cut you off. I just want to make sure --
8 MR. ALEXANDER: No, no, no, no, not at all.
9 THE COURT: -- I'm following because there's so many
10 facts --
11 MR. ALEXANDER: And paragraph --
12 THE COURT: -- I want to be on the same page. Okay.
13 MR. ALEXANDER: Paragraph 13, the next paragraph --
14 THE COURT: Paragraph 13. Okay, NSEA --
15 MR. ALEXANDER: -- alleges that the NSEA and NEA dues
16 portions of the members' dues are set by NSEA and NEA an amount
17 to --
18 THE COURT: Right.
19 MR. ALEXANDER: -- the amounts that they are and again
20 CCEA admits that.
21 THE COURT: Right. Absolutely.
22 MR. ALEXANDER: So --
23 THE COURT: In fact, I think they collected it based on that.
24 MR. ALEXANDER: They did. They did.
25 THE COURT: That went into the fund. That went into the

1 trust --

2 MR. ALEXANDER: Right. They collected those NSEA and
3 NEA dues.

4 THE COURT: They kept -- I understand that.

5 MR. ALEXANDER: Absolutely.

6 THE COURT: Okay.

7 MR. ALEXANDER: Now --

8 THE COURT: Okay. Okay.

9 MR. ALEXANDER: -- previously I mean this -- the current
10 defense that CCEA has that NEA and NSEA doesn't have an ownership
11 right to the membership dues that NSEA and NEA members were
12 obligated to pay and did pay is a relatively new position. They have no
13 affirmative defense on that. Their only affirmative defense with respect
14 to the conversion claim is a defense that they have now abandoned
15 which is that they claimed that they did not exercise dominion or control
16 over those monies, but under the law of conversion, what they did
17 absolutely constitutes control and dominion because they wouldn't give
18 them up to NSEA and NEA.

19 They never in their -- any of their answers, and they had three
20 of them, identified as a defense that NSEA and NEA didn't have a right
21 to those monies --

22 THE COURT: Well wasn't the whole point in front of Judge
23 Kishner is they didn't know -- based on the letters of termination, they
24 weren't sure and they were trying to be fair? Wasn't the whole point
25 when I read -- I did as best I could read what happened in Judge

1 Kishner was we're not sure, Judge, we don't think that they have a right
2 to it, we don't know, this is a legal determination so help us, Judge
3 Kishner, we don't want to be in a situation --

4 MR. ALEXANDER: I --

5 THE COURT: -- where we've given the -- back or we've used
6 them for something else and that's why -- at least that was my
7 understanding is they were objecting to that it was NEA or NSEA, they
8 weren't sure, they felt like there was legal issues and so, Judge, it's just
9 like when -- you interplead funds -- I looked at as an interpleader. I don't
10 know if it was or not to be honest. I guess it was a regular complaint.

11 MR. ALEXANDER: Right.

12 THE COURT: If it had come to me, I would look at as an
13 interpleader going hey we got some -- we have some what we feel are
14 legitimate issues, somebody is due this money, we have it, we're not
15 sure who and so we're going to just interplead it into the court or put it in
16 a trust and that's what -- am I incorrect on that because like I said, you
17 were --

18 MR. ALEXANDER: I think you -- I think not completely
19 correct.

20 THE COURT: Okay. Then tell me my --

21 MR. ALEXANDER: I do believe --

22 THE COURT: Because like once again I'm just reading the
23 best I can from what was there.

24 MR. ALEXANDER: I believe that --

25 THE COURT: Why did they --

1 MR. ALEXANDER: -- that well CCEA as a matter of fact did
2 not want to transmit the dues monies to NSEA because they wanted to
3 renegotiate a new service agreement. That was the reason. They
4 only --

5 THE COURT: So they were holding -- it was your opinion
6 they were holding it hostage saying hey --

7 MR. ALEXANDER: Yes.

8 THE COURT: -- this is a leverage?

9 MR. ALEXANDER: Yes, absolutely.

10 THE COURT: Okay, I'm just trying to understand.

11 MR. ALEXANDER: That's absolutely right, but if we -- I mean
12 I think we can clear up any of the confusion because again it's
13 undisputed that the -- if the members were members of NEA and NSEA,
14 which they admit, while they were members of CCEA and which they
15 had to admit because the CCEA constitution required them to be
16 members of NEA and NSEA --

17 THE COURT: Right.

18 MR. ALEXANDER: -- and they paid their NEA and NSEA
19 member dues, then whose money could it be besides NEA's and
20 NSEA's money? But we'll get to that.

21 There are additional admissions, in fact allegations that CCEA
22 makes in its own counterclaim, so if you turn to tab four, tab four is an
23 answer and counterclaim from July of 2018. And paragraph 34 of their
24 counterclaim, it's on page 29 --

25 THE COURT: Okay. Let me find it. Okay. Paragraph -- do it

1 again for me? I'm --

2 MR. ALEXANDER: Sure, 34.

3 THE COURT: Thirty-four. Thank you. I'm sorry, I --

4 MR. ALEXANDER: It's on page 29.

5 THE COURT: -- blanked the number for a second. Okay.

6 MR. ALEXANDER: Indicates that CCEA members
7 contributed \$377.66 per year to NSEA pursuant to the NSEA policies
8 and that those had been deducted by payroll deductions by Clark
9 County and paid or contributed \$189 per teacher per year to the NEA.
10 Those again are their dues payments.

11 THE COURT: No, I -- it matches up with what --

12 MR. ALEXANDER: Exactly.

13 THE COURT: -- the documents show.

14 MR. ALEXANDER: And --

15 THE COURT: I think the issue is when they felt they did no
16 longer need to pay those dues, but I agree with that --

17 MR. ALEXANDER: Yes. Yes, there --

18 THE COURT: -- and I match to that.

19 MR. ALEXANDER: And that's why at the beginning at the
20 outset when I zoomed out, there can be issues of whether there's a
21 contractual obligation to pay it --

22 THE COURT: Right.

23 MR. ALEXANDER: -- like the --

24 THE COURT: Right.

25 MR. ALEXANDER: -- pursuant to a dues transmittal

1 agreement, but there's also potential wrongdoing if they hold onto
2 money that doesn't belong to them and keep it from the party who it
3 does belong to.

4 THE COURT: Correct.

5 MR. ALEXANDER: Right.

6 THE COURT: That's --

7 MR. ALEXANDER: So if you turn to the next tab which is tab
8 five --

9 THE COURT: Okay.

10 MR. ALEXANDER: -- that's the affidavit of John Vellardita that
11 was filed last December.

12 THE COURT: Okay.

13 MR. ALEXANDER: In that affidavit, Mr. Vellardita avers --
14 paragraph 5 is on page 2 -- that the Nevada State Education
15 Association, NSEA, was the statewide affiliate of CCEA until April 25,
16 2018. So that is the admission that CCEA was affiliated with NSEA until
17 April 25, 2018, which shouldn't be surprising given the letter on April 26
18 that was tab one that said we're no longer affiliated.

19 If you turn to the next page at paragraph 7, it also avers that
20 NEA was the national affiliate of both NSEA and CCEA, again until April
21 25th, 2018.

22 And then paragraph 14, again and I don't want to belabor this,
23 identifies that the CCEA members for their NSEA and NEA membership
24 while CCEA was affiliated contributed \$377 for their NSEA membership
25 and \$189 for the NEA membership. They paid it. It's sitting in that

1 account. That is the money at issue --

2 THE COURT: Correct, they kept up the same payment
3 schedule they had had.

4 MR. ALEXANDER: Right, until --

5 THE COURT: Okay.

6 MR. ALEXANDER: -- April 25th, until the disaffiliation --

7 THE COURT: Right.

8 MR. ALEXANDER: -- and that's a separate issue.

9 THE COURT: Oh, I know.

10 MR. ALEXANDER: If you turn to page 5, it's of -- I think it's
11 the --

12 THE COURT: Okay.

13 MR. ALEXANDER: -- it's paragraph 35 of Mr. Vellardita's
14 affidavit. He indicates that as of April 14th, 2018, the due -- annual dues
15 payments for CCEA members included payments to CCEA, NSEA and
16 NEA. So again, Mr. Vellardita, the Executive Director of CCEA, is
17 averring that the payments that are being made included payments to
18 NSEA and NEA.

19 Now, a property right and under -- in conversion can arise in a
20 lot of ways. You can have a property right from a gift that was provided
21 to you, from a contribution. There doesn't have to be a contractual right
22 to a property. There's any number of ways to have a property right.
23 You can inherit a property right. And if someone takes your property
24 that you inherited, even though you did not have any contractual
25 relationship to that property, you can still assert a conversion claim and

1 that's exactly what the -- the *Hester versus Vision Airlines* is that sort of
2 case.

3 THE COURT: Right.

4 MR. ALEXANDER: In that case there was no contract. In
5 *Hester*, what happened was employees of Vision Airlines ran flights to
6 Afghanistan and Iraq. Vision Airlines had a contractor who paid Vision
7 Airlines. Those contractors, in addition to paying a normal payment,
8 made a separate payment that was earmarked for hazard pay for the
9 employees. The employees didn't even know about it. They had no
10 contractual right to the hazard pay, but the contractors of Vision Airlines
11 made that. Vision Airlines didn't tell its members -- it's employees it kept
12 the money. Those employees had a conversion claim against Vision
13 Airlines for keeping money that was earmarked for them --

14 THE COURT: Right. Because the point was --

15 MR. ALEXANDER: -- even though they had no contract right
16 to that. It was intended for them.

17 THE COURT: But the legal obligation or the reason it was
18 done was an obligation to -- that was to the benefit because they were
19 the ones who were in the hazardous situation to the employees --

20 MR. ALEXANDER: Right. The contractor made --

21 THE COURT: -- not the airline.

22 MR. ALEXANDER: Exactly. The contractor made the --

23 THE COURT: I read that case. I get that. Yes.

24 MR. ALEXANDER: Exactly. And --

25 THE COURT: No, I understand that.

1 MR. ALEXANDER: -- in the same --

2 THE COURT: Sure.

3 MR. ALEXANDER: -- way here --

4 THE COURT: Okay.

5 MR. ALEXANDER: -- the members paid their dues
6 obligations for the NSEA and NEA membership and CCEA just kept the
7 money. But at the end of the day, I think it's a bit of a red herring
8 because it's absolutely clear I think on the record that the membership
9 obligation of the members while they were members of NEA and NSEA
10 was a contractual obligation to pay their dues for their membership and
11 that --

12 THE COURT: A contractual obligation between them and
13 NSEA and NEA?

14 MR. ALEXANDER: Yes, like any membership organization
15 relationship. Whether you treat it as a contract or you treat it as a
16 membership, it is the same obligation. CCEA has admitted that these
17 members had an obligation as members of NEA and NSEA in their
18 answer, paragraph 12.

19 But since the whole defense of CCEA in this -- on this claim is
20 that somehow the enrollment form was a CCEA-only enrollment form, I'd
21 like to spend a little time looking at CCEA's own description of the
22 enrollment form and the enrollment form itself.

23 THE COURT: Itself, I -- okay.

24 MR. ALEXANDER: And it's in the record so if you turn to tab
25 six and also, because it is sufficiently important, it was worth I thought

1 blowing up and pulling out certain portions of this exhibit.

2 So this exhibit is a CCEA website enrollment form invitation to
3 teachers to become members of the three organizations.

4 THE COURT: Okay.

5 MR. ALEXANDER: And if you look the first page is a cover
6 page asking the members to become -- asking the teachers to join and
7 become members of CCEA, NEA and --

8 THE COURT: NSEA. Yeah.

9 MR. ALEXANDER: Exactly. And that as a member of those
10 three organizations they get a whole bunch of benefits. And so the
11 cover of the enrollment form asks these members -- these teachers to
12 join all three organizations and to fill out the enrollment form on the next
13 page.

14 And if you look at the enrollment form on the next page, as
15 you pointed out yourself earlier, the enrollment form is an enrollment
16 form for all three organizations; a membership enrollment form for Clark
17 County Education Association, Nevada State Education Association and
18 National Education Association. And it also states that by filling this out
19 they become members of all three organizations and indeed they ask for
20 some additional voluntary information, mostly demographic information,
21 in the middle in between the two -- between the top enrollment form and
22 the expert [phonetic] information, stating that you don't have to give us
23 this demographic information and not giving it to us will not affect your
24 membership status, rights or benefits in NEA, NSEA and CCEA.

25 So now going down to the actual key issue, which is the

1 payroll authorization, the payroll authorization, as you indicated earlier,
2 it's a mechanism, because CCEA is the collective bargaining
3 representative at the local level with the school district so it's the one
4 that has the contractual relation with the school district and the school
5 district is deducting monies pursuant to that collective bargaining
6 agreement.

7 THE COURT: Correct.

8 MR. ALEXANDER: But for whom is the question and for
9 whom the teachers who joined NEA, NSEA and NEA [sic] are agreeing
10 to have dues deductions is what the question is and if you look at the
11 middle paragraph, the one that says payroll deduction authorization, it
12 states that I hereby agree to pay cash or in accordance with an agreed
13 upon payroll deduction, the professional dues as established annually
14 for the membership year.

15 So they paid to CCEA, but what did they pay? They paid the
16 professional dues established annually for the membership years. Not
17 the local union's professional dues, not CCEA's professional dues but
18 the association professional dues which is all three of those
19 organizations.

20 And indeed, the -- at the bottom where it's countersigned, it's
21 not countersigned by the local -- not by the CCEA agent or the local
22 association agent, it's the association agent. And as we'll see in a
23 minute, association refers to all three of the organizations.

24 And indeed, NSEA gets a copy of this enrollment form for its
25 records because it has to know who the members are of NSEA and NEA

1 and it has to have evidence that these members have agreed to pay
2 their obligation through payroll deduction which then is through an
3 accounting process dealt with, with CCEA and that is a different issue
4 that goes more to the bylaws --

5 THE COURT: Right, and also who's entitled to the benefits. If
6 they're conferring benefits --

7 MR. ALEXANDER: Right.

8 THE COURT: -- NEA -- I understand that.

9 MR. ALEXANDER: All three of them are conferring benefits
10 because they're members.

11 THE COURT: Yeah.

12 MR. ALEXANDER: And indeed --

13 THE COURT: I follow that.

14 MR. ALEXANDER: Indeed the next --

15 THE COURT: Hopefully you pay for benefits, right? That's
16 the idea.

17 MR. ALEXANDER: Exactly. You pay for your membership.
18 And they did pay for their membership. It's just that it never got to the
19 organizations of which they were members, NEA and NSEA.

20 THE COURT: I understand that. Okay.

21 MR. ALEXANDER: I appreciate that.

22 THE COURT: No --

23 MR. ALEXANDER: No, no, I do. I really --

24 THE COURT: No, it's --

25 MR. ALEXANDER: I didn't mean it in any other way.

1 THE COURT: No, it's -- to me it's easier to interact to make
2 sure I'm on the same -- because, you know, it doesn't do me any good
3 for someone to just pontificate out there because I want to make sure
4 I'm following you. So if I interrupt you, I don't mean -- and you've got a
5 script so you're good. I just want to make I -- I'm following you.

6 MR. ALEXANDER: Thank you.

7 THE COURT: Just easier for me to make sure you know --

8 MR. ALEXANDER: So I mean the --

9 THE COURT: -- I get at the facts.

10 MR. ALEXANDER: -- and the next page indeed --

11 THE COURT: Right.

12 MR. ALEXANDER: -- allows them to sign up --

13 THE COURT: Why Join, yes.

14 MR. ALEXANDER: -- because they are now NEA members to
15 get certain NEA specific benefits.

16 THE COURT: Correct.

17 MR. ALEXANDER: And so --

18 THE COURT: I jumped you on the benefits ahead, sorry --

19 MR. ALEXANDER: Exactly.

20 THE COURT: -- but I got it.

21 MR. ALEXANDER: So the next tab is tab seven is again this
22 is a CCEA-produced document available on its website again inviting
23 teachers to become members of the three organizations called Why
24 Join, all the benefits. And this is a document that actually was on the
25 website even after CCEA terminated the dues transmittal agreement. If

1 you look at the top says 9/15/2017.

2 If you turn two pages to the Why Join, CCEA is describing
3 joining the association as becoming part of a three million member
4 family; the NEA, NSEA and the CCEA. It says that right there at the
5 very top of Why Join. And below it identifies of the association the three
6 levels that you're becoming a member of, and this is what you are
7 getting in return for your membership obligation that you are paying
8 that's being deducted.

9 And indeed, although I don't think it's necessary because it's
10 clear on the face of the documents and frankly I think it's clear under the
11 CCEA's own bylaws that you have to show evidence of being a NEA
12 and NSEA member and paying their dues in order to be a CCEA
13 member, we've included under tab eight a declaration of Robert Benson
14 who was during a period of time when a lot of people signed up to all
15 three organizations the Vice President of CCEA.

16 One of his responsibilities he identifies is signing people up
17 and Mr. Benson avers that he instructed persons who were signing up
18 teachers to be members of the three organizations to make sure they
19 understood that they were becoming members of the three
20 organizations and that the persons signing the association
21 countersigning the form were acting on behalf of all three of the
22 organizations. Not any different from if a local Girl Scout troop signs up
23 Girl Scouts and then they become members of both the Girl Scout troop
24 and the Girl Scouts of America.

25 If you go to the next --

1 THE COURT: This is somebody's --

2 MR. ALEXANDER: -- tab which is tab nine --

3 THE COURT: Right.

4 MR. ALEXANDER: -- this actually is in fact the NSEA -- the
5 CCEA exhibit that it relied on itself as membership enrollment form.
6 This enrollment form honestly is actually more clear that it is signing up
7 people for all three and not just CCEA because CCEA does not even
8 appear on the form.

9 What appears on the form is NSEA, NEA and the local
10 association, which in this case was CCEA, but a member signing up is
11 signing up for any -- would be signing up for any of the available Nevada
12 unions, teachers unions that were within the NSEA and NEA umbrella.
13 And if in fact this was only a form for CCEA enrollment, it would have to
14 say that somewhere and it doesn't say that anywhere. And indeed --

15 THE COURT: It just says local association, CCEA.

16 MR. ALEXANDER: Well it says that's who you pay it to, but it
17 doesn't say that's who you become a member of.

18 THE COURT: No.

19 MR. ALEXANDER: You become --

20 THE COURT: I just looked under local association --

21 MR. ALEXANDER: Right.

22 THE COURT: -- and it says CCEA --

23 MR. ALEXANDER: And the --

24 THE COURT: -- when I looked at it.

25 MR. ALEXANDER: And again, it doesn't say local association

1 agent either, which would be correct if in fact they were only --

2 THE COURT: It says association agent.

3 MR. ALEXANDER: Right. And the association as shown
4 before was the NEA, NSEA and CCEA, all three of them.

5 THE COURT: Okay.

6 MR. ALEXANDER: And finally on this point, the collective
7 bargaining agreement in which the school district agreed to deduct fees
8 -- membership fees explicitly addresses that it is deducting dues for the
9 association and its affiliates, if any.

10 Now, again, as Mr. Vellardita averred in his declaration
11 previously, until April 25th, 2018, those affiliates were NSEA and NEA.

12 THE COURT: Okay.

13 MR. ALEXANDER: Is there any question about that?

14 THE COURT: No.

15 MR. ALEXANDER: Okay. So --

16 THE COURT: I have no question that the three went together
17 as the -- I mean, every -- I'm not even sure it's in dispute, but yes, I
18 follow that.

19 MR. ALEXANDER: But what's also important is that the dues
20 go to each of them because they were obligated to pay dues for their
21 membership --

22 THE COURT: No --

23 MR. ALEXANDER: -- and that's what was collected.

24 THE COURT: Correct.

25 MR. ALEXANDER: So the remainder of these exhibits and I

1 don't want to belabor it --

2 THE COURT: Is this -- is 10 the collective bargaining
3 agreement? Is that what you just were referring to?

4 MR. ALEXANDER: That's correct.

5 THE COURT: Because I --

6 MR. ALEXANDER: That's -- that was 10.

7 THE COURT: Okay. Oh I see I'm already -- because I -- I'll
8 be honest, I don't remember reviewing this thing but -- this but --

9 MR. ALEXANDER: I think it was --

10 THE COURT: Okay. You just gave me the language. Okay.

11 MR. ALEXANDER: Yes. Now --

12 THE COURT: I don't remember seeing this but it's consistent.

13 MR. ALEXANDER: Exhibits 11 through 18 I don't -- I can --
14 they are -- they establish three points. One, they establish --

15 THE COURT: Can you tell me they're emails from Vicky
16 Courtney --

17 MR. ALEXANDER: Oh, Number 11. Number 11 is an email
18 in which the President of CCEA --

19 THE COURT: Okay. I see that.

20 MR. ALEXANDER: -- indicates that the -- this is an email from
21 a member who's complaining about dues increases.

22 THE COURT: Oh.

23 MR. ALEXANDER: And what she is saying is the dues
24 increases are not our dues increases, the dues increases are NSEA and
25 NEA's dues increases.

1 THE COURT: And that was -- okay.

2 MR. ALEXANDER: That's all that is and --

3 THE COURT: Okay.

4 MR. ALEXANDER: -- and the remainder of these exhibits

5 through 18 are reflections of CCEA describing the monies at issue --

6 THE COURT: Okay. And you're using the dates because

7 that's after the date of the letters, correct?

8 MR. ALEXANDER: Correct, and --

9 THE COURT: I'm figuring --

10 MR. ALEXANDER: Exactly.

11 THE COURT: I'm following what you're doing with this.

12 MR. ALEXANDER: It's after the termination of the --

13 THE COURT: Yes.

14 MR. ALEXANDER: -- dues transmittal agreement.

15 THE COURT: Right.

16 MR. ALEXANDER: Exactly. Exactly, and --

17 THE COURT: I think that's where you were going.

18 MR. ALEXANDER: -- and those amounts are the amounts for

19 the 2017, 2018 year, the year in which they were collecting --

20 THE COURT: Which would have been the new year.

21 MR. ALEXANDER: Exactly.

22 THE COURT: Because it started --

23 MR. ALEXANDER: And, you know, and NSEA --

24 THE COURT: Okay. So you're saying by this they --

25 MR. ALEXANDER: This is just another example --

1 THE COURT: Okay. Do your argument. I'm sorry, I'm just
2 trying to figure out --
3 MR. ALEXANDER: No, no, no.
4 THE COURT: -- the legal significance of saying --
5 MR. ALEXANDER: This is -- I mean the reason I wasn't
6 actually going to go through --
7 THE COURT: No, I --
8 MR. ALEXANDER: -- 11 through 18 is because I think these
9 points are so well established by now --
10 THE COURT: Yeah.
11 MR. ALEXANDER: -- that I don't need to belabor it, but what
12 they --
13 THE COURT: That they were --
14 MR. ALEXANDER: -- they identify the fact that CCEA itself
15 understood that its members, also members of NSEA and NEA, were
16 paying dues --
17 THE COURT: To all three.
18 MR. ALEXANDER: -- to all three and that --
19 THE COURT: No, I --
20 MR. ALEXANDER: -- any complaints about paying too much
21 dues should be leveled at NEA and NSEA because they're the ones --
22 THE COURT: So you're looking -- this is an -- you're -- you
23 want --
24 MR. ALEXANDER: This is an admission, but --
25 THE COURT: I started to say that, but I don't want to put

1 words in your -- I'm just trying to make sure I follow your argument.

2 MR. ALEXANDER: It is, but --

3 THE COURT: Or I said acknowledgement, but I --
4 admission's a little strong, I get it.

5 MR. ALEXANDER: And, you know --

6 THE COURT: Admission by --

7 MR. ALEXANDER: Yes.

8 THE COURT: -- CCEA that these were -- okay.

9 MR. ALEXANDER: Tab 12 is again this --

10 THE COURT: Tab 12 is the --

11 MR. ALEXANDER: -- is this is a letter from John Vellardita to
12 CCEA members in January of 2018. If you turn to page 2, the
13 paragraph that begins why is it happening, he -- in the middle of the
14 paragraph, he states: You pay \$567 annually in dues to NEA and
15 NSEA. The dispute CCEA has with NSEA is that they receive too much
16 of your dues money while providing very little, if anything, to members in
17 return. But this is an acknowledgement that the members are paying
18 their -- the dues.

19 Now, CCEA thinks that the membership to -- in NEA and
20 NSEA wasn't worth the --

21 THE COURT: Yeah.

22 MR. ALEXANDER: -- \$567 and that's why eventually they
23 disaffiliated. Maybe. But they did disaffiliate.

24 And indeed, if we can turn to Exhibit 14 -- Exhibit 13 is just
25 some admissions from the hearing before Judge Kishner, but I don't

1 think we need to go through them. Certainly you -- I think they were put
2 before you and you've reviewed them. They were in our reply brief on
3 conversion.

4 THE COURT: Right.

5 MR. ALEXANDER: Tab 14 is a CCEA exhibit that they
6 introduced in their reply brief on their motion for -- countermotion for
7 summary judgment and what this is, is a ballot to CCEA members and
8 the choices are disaffiliate from NSEA and NEA and pay less dues or
9 remain affiliated with NEA --

10 THE COURT: Okay. What's the date on this one?

11 MR. ALEXANDER: It's undated, but I believe it would have
12 been about the time -- about approximately April 2018 which is when the
13 disaffiliation vote took place.

14 THE COURT: Okay.

15 MR. ALEXANDER: It would be in the reply brief of CCEA
16 because they're the ones who introduced it as an exhibit.

17 THE COURT: Okay.

18 MR. ALEXANDER: But if you vote no on disaffiliating, CCEA
19 will remain affiliated with NSEA and NEA. The unified dues of NSEA,
20 NEA and CCEA will be \$810.50 per member per year. In other words,
21 CCEA is acknowledging that the only way to stop the dues obligation
22 that its members had to NEA and NSEA is to disaffiliate.

23 So I mean I think at this point I should close --

24 THE COURT: Okay, that's --

25 MR. ALEXANDER: -- on this claim and just -- I realize that

1 this was an extended recitation of the record, but the monies that have
2 been withheld here are NSEA and NEA dues paid --

3 THE COURT: During this --

4 MR. ALEXANDER: -- by NSEA and NEA members during a
5 period of time they were NEA and NSEA members to satisfy their
6 membership obligations to NEA and NSEA. By exercising control over
7 those dues, CCEA is liable for conversion.

8 THE COURT: Okay. And how do you factor in the dues
9 transmittal letter that that was terminated? How does that factor in --
10 because I understand what you're saying.

11 MR. ALEXANDER: Sure. So --

12 THE COURT: If none of that happened -- if there was no
13 cancellation of the dues transmittal letter and those separate
14 agreements, you -- I -- we wouldn't be here.

15 MR. ALEXANDER: The answer is --

16 THE COURT: Correct? How do you factor in the legal effect
17 or how do you read those together, the dues transmittal that --

18 MR. ALEXANDER: Right.

19 THE COURT: -- that they can cancel that, but they still have
20 to -- they still have to transmit dues?

21 MR. ALEXANDER: This goes --

22 THE COURT: Other than you're saying well they kept doing it
23 so it's almost like a -- I don't want to say --

24 MR. ALEXANDER: No.

25 THE COURT: -- ratification, but that's kind of what you're

1 arguing; hey, they kept treating their members, they kept collecting it,
2 they kept acting like even though CCEA --

3 MR. ALEXANDER: Your Honor --

4 THE COURT: Okay.

5 MR. ALEXANDER: I'm sorry, I didn't mean to interrupt --

6 THE COURT: That's what I need.

7 MR. ALEXANDER: Yes. These --

8 THE COURT: Do you -- you know what I'm asking.

9 MR. ALEXANDER: Yes. And the answer is that it's --

10 THE COURT: And I know how they responded, but I need
11 your help with your side.

12 MR. ALEXANDER: Absolutely. The answer is that it's
13 completely unrelated because just --

14 THE COURT: It's unrelated.

15 MR. ALEXANDER: Absolutely, because just as in *Giles*, the
16 act of breaching a contract that involves keeping money that doesn't
17 belong to you could be a breach of contract and a conversion. If the
18 defense to the breach of contract is that the contract is no longer in
19 place, that does not affect the tort liability for conversion because those
20 are different interests.

21 Contract interests involve expectation -- agreements and
22 expectation rights. Torts involve controlling the behavior of people with
23 respect to property or personal bodily integrity, or other things too, like
24 slander or libel. But a conversion claim -- just as in *Giles*, a conversion
25 claim can arise out of the same set of behaviors that would also

1 constitute a breach of contract.

2 Now, the dues transmittal agreement was an agreement
3 involving a mechanism by how CCEA would move the NSEA monies
4 and the NEA monies to NSEA and NEA. How promptly they would do it,
5 how many days they would do it, how -- by what point in time they would
6 have to do it. Some of these are also controlled by the bylaws, we'll get
7 to that, but whether or not there was a contract to transmit monies that
8 belonged to NEA and NSEA does not absolve in any way CCEA from
9 the obligation to transfer property that belongs to NEA and NSEA and --

10 THE COURT: Okay. So let me make -- so you're -- what
11 you're saying to me is even though they had terminated and let NSEA
12 and NEA saying we're no longer going to transmit, we're terminating as
13 of this year -- August 31st, 2017, you're saying unless that CCEA and its
14 members also disaffiliated at the -- I just want to make sure -- at the -- at
15 that exact same time, they still had the legal obligation -- there was two
16 separate things. The transmittal is one thing, but they -- I'm trying to
17 read them together, but they also had to disaffiliate at the exact same
18 time and not collect any dues. Is that -- I just want -- because I've got to
19 read them together obviously --

20 MR. ALEXANDER: Well --

21 THE COURT: -- because contracts have to be read together
22 so I can't say it's just totally unrelated. So --

23 MR. ALEXANDER: Right. Well it's related to the bylaws
24 claims. And -- well I mean because those are separate contracts. I
25 don't know if it's related. It's related in the sense that the bylaws require

1 a dues transmittal agreement and a breach of -- but the --

2 THE COURT: But if they didn't have a right to those funds
3 and they're not trying to keep them, they're trying to see where do they
4 go, how is it a -- it's --

5 MR. ALEXANDER: It's because --

6 THE COURT: Okay. I'm sorry. I'm trying.

7 MR. ALEXANDER: No, no, no, I completely get that. They --
8 because they were NSEA and NEA monies. Now there -- we cited
9 cases in which the defense by the party holding the monies was that
10 well, we think that someone else has a right to those monies too. But
11 that is not a defense to conversion if the parties they're keeping it from
12 themselves have a property right --

13 THE COURT: Well obviously. If they have a right and they --
14 that's --

15 MR. ALEXANDER: Right. But the right --

16 THE COURT: But if somebody else has a right to it and
17 they're not sure that what they think is --

18 MR. ALEXANDER: But there is nobody who has a right to
19 them at this point.

20 THE COURT: I think their argument it goes back to the CCSD
21 members.

22 MR. ALEXANDER: But the --

23 THE COURT: At least that's how I read; am I correct?

24 MR. ALEXANDER: But well --

25 THE COURT: Okay, they're saying the people who should

1 have this money from -- should go back to the Clark County School
2 District teacher that it was collected from.

3 MR. ALEXANDER: Right, but that doesn't make --

4 THE COURT: Correct? Not to NSEA --

5 MR. ALEXANDER: But there's no --

6 THE COURT: -- and NEA. Okay.

7 MR. ALEXANDER: Right, but there's no basis for that if
8 they're --

9 THE COURT: No, I understand you disagree.

10 MR. ALEXANDER: -- if they're membership dues.

11 THE COURT: I just don't -- I did -- I wanted to make sure I
12 understood they're not saying CCEA, we get to keep this.

13 MR. ALEXANDER: No.

14 THE COURT: We collected dues --

15 MR. ALEXANDER: That's true.

16 THE COURT: -- for NEA and NSEA and we terminated and
17 we get to keep collecting \$510 from our members and -- if that was their
18 position, I would feel totally different because then wait a minute, they're
19 actually -- these members think they're collecting it for NSEA and NEA
20 and that's -- but that's not their position. Now what you're -- am I
21 correct? I'm correct on that, right? They -- they're not asking for it to go
22 to CCEA --

23 MR. ALEXANDER: That's -- that is true. But that is --

24 THE COURT: Okay, I just want to make sure because I -- you
25 know, that -- and so then the next thing my question is for them -- I want

1 to get your -- so basically because after August 31st, 2017, they kept
2 collecting dues that were obviously if you look at the agreement would
3 be NEA's and NSEA's. I mean this is not hard to -- I mean that because
4 they kept doing it, they knew that their members still had an obligation
5 until CCEA disaffiliated and they didn't do that, so by their actions they --
6 and you said one word admission -- acknowledge that they were
7 collecting money their -- they acknowledged or did an admission by their
8 actions of collecting this money that they needed to disaffiliate before
9 they no -- their members no longer owed dues. Did I say that correctly?
10 I think I said that --

11 MR. ALEXANDER: You did. I think it's simpler to --

12 THE COURT: Okay, I just want to make sure I understand --

13 MR. ALEXANDER: You did.

14 THE COURT: -- your position. Okay.

15 MR. ALEXANDER: The simpler way of thinking of it --

16 THE COURT: That's great.

17 MR. ALEXANDER: -- is for as long as those teachers were
18 members of NSEA and NEA and had a dues obligation, the monies that
19 were collected were the --

20 THE COURT: Go to them.

21 MR. ALEXANDER: -- NSEA and NEA --

22 THE COURT: Okay.

23 MR. ALEXANDER: -- and go to them.

24 THE COURT: So the critical -- did they have a dues
25 obligation. That's the legal issue here. Okay.

1 MR. ALEXANDER: Right. And the dues obligation arises
2 from their membership. In fact, in the --

3 THE COURT: No, I --

4 MR. ALEXANDER: -- answer they -- CCEA admits that
5 members have a dues obligation as NSEA and NEA members --

6 THE COURT: Well I don't think they could dispute that if they
7 still felt that they were members.

8 MR. ALEXANDER: That's correct. And there's no -- there's
9 absolutely no evidence except for admissions and statements that they
10 were members until disaffiliation. That's the whole purpose of the
11 disaffiliation --

12 THE COURT: No, I --

13 MR. ALEXANDER: -- to allow members to no longer be
14 NSEA and NEA members. So on that basis --

15 THE COURT: Okay.

16 MR. ALEXANDER: -- for CCEA to keep the NSEA and NEA
17 dues for that portion of time --

18 THE COURT: Okay.

19 MR. ALEXANDER: -- that they were members, which was
20 until disaffiliation, is conversion.

21 THE COURT: Okay. And I had a question and I -- hopefully I
22 don't open a can of worms here. Is there any evidence -- I started
23 looking for it -- that NSEA or NEA gave anything to any of these CCSD
24 teachers, like paid legal assistance, paid out -- all these benefits, paid
25 out a life insurance? I actually was looking for that because is there any

1 documents here that during this time frame, and I know the time frame
2 until that --

3 MR. ALEXANDER: Well there were --

4 THE COURT: -- benefits were actually conferred by either
5 NSEA or NEA?

6 MR. ALEXANDER: Well there is, but --

7 THE COURT: Okay.

8 MR. ALEXANDER: -- I don't think it's relevant.

9 THE COURT: Okay --

10 MR. ALEXANDER: And the reason it's --

11 THE COURT: Why would that not be relevant?

12 MR. ALEXANDER: Because if you --

13 THE COURT: Because if they were -- if benefits were
14 conferred, doesn't this CCSD person have a duty to pay for the --

15 MR. ALEXANDER: Well they're going to be --

16 THE COURT: Why would that not be relevant?

17 MR. ALEXANDER: Well there could be separate insurance
18 benefits that you might have to pay for, but they come for free --

19 THE COURT: Well I'm just looking at what you say were the
20 benefits from that --

21 MR. ALEXANDER: Well, CCEA --

22 THE COURT: Why you would pay that.

23 MR. DELIKANAKIS: Right.

24 MR. ALEXANDER: -- it's -- the benefit --

25 THE COURT: I'm sorry. Okay, I'll let him --

1 MR. ALEXANDER: The benefit is the membership --

2 THE COURT: I'm just doing down that road because to me if

3 you confer benefits on somebody, that's almost an unjust enrichment

4 and then you --

5 MR. ALEXANDER: Well --

6 THE COURT: -- you paid this money, you NSEA and NEA

7 conferred benefits, whether it's -- I look at it as an unjust -- I just --

8 MR. ALEXANDER: There are two -- I have --

9 THE COURT: -- couldn't find anything like that so --

10 MR. ALEXANDER: There are two answers to that.

11 THE COURT: Okay. Help me.

12 MR. ALEXANDER: The first one is that the membership is the

13 benefit. When you join an organization, you become a member --

14 THE COURT: Well I know but --

15 MR. ALEXANDER: -- and -- well you can dispute how useful

16 being a member of NEA and NSEA is --

17 THE COURT: Well I'm not here to judge that, I'm just -- okay.

18 MR. ALEXANDER: -- but they, you know, provide lobbying

19 services, they provide insurance -- NEA provided insurance for as long

20 as they were in good standing --

21 THE COURT: That's what I said is there -- did they pay out

22 insurance -- did they -- did each of the -- did anybody collect from

23 insurance during that time frame any of the CCSD --

24 MR. ALEXANDER: That I don't know, but I don't think it's

25 relevant --

1 THE COURT: Because?
2 MR. ALEXANDER: Because the --
3 THE COURT: It was there whether they used it or not.
4 MR. ALEXANDER: Exactly.
5 THE COURT: Okay, I'm just trying to figure out your --
6 MR. ALEXANDER: The membership dues you -- if you, you
7 know, join Netflix but you never turn on the Netflix -- the TV --
8 THE COURT: No, I --
9 MR. ALEXANDER: -- you are still obligated to pay Netflix until
10 you terminate it.
11 THE COURT: Okay. I was just looking because to me I was
12 looking whether there was an unjust enrichment because that
13 obviously --
14 MR. ALEXANDER: The second answer to the --
15 THE COURT: Okay.
16 MR. ALEXANDER: -- question is that --
17 THE COURT: All right.
18 MR. ALEXANDER: -- I suppose it could be different if you
19 actually had CCEA members asserting their own claim for NSEA and
20 NEA dues back. There is no such claim. There are no such parties. If
21 anything, the only CCEA parties are parties -- individuals are those who
22 are suing CCEA for its actions --
23 THE COURT: Okay.
24 MR. ALEXANDER: -- including the mid-year dues increase,
25 but that's --

1 THE COURT: That's --
2 MR. ALEXANDER: -- that's another point.
3 THE COURT: Yeah. Okay.
4 MR. ALEXANDER: So --
5 THE COURT: Okay. Okay.
6 MR. ALEXANDER: -- with that I think I'll sit down.
7 THE COURT: No. No. I appreciate it. Thank you very much.
8 I wanted to make sure I understood your position. Thank you.
9 MR. DELIKANAKIS: May we recess for about one minute
10 while I speak to my client?
11 THE COURT: We can. If you need to -- and my staff may
12 need --
13 MR. DELIKANAKIS: Very quick. I appreciate it.
14 THE COURT: That's okay.
15 MR. DELIKANAKIS: Thank you, Your Honor.
16 THE COURT: No problem. I probably should appreciate it
17 too. We'll take a quick break.
18 [Recess taken at 10:34 a.m.]
19 [Proceedings resumed at 10:50 a.m.]
20 THE COURT: We're back. Okay.
21 MR. DELIKANAKIS: Thank you.
22 THE COURT: You're welcome. Thank you.
23 MR. DELIKANAKIS: You know, I'd like to answer the first
24 question you posed to my colleague on the other side of the aisle. You
25 know, that issue was argued, briefed, again ad nauseam, in the first

1 hearing we had on our partial motion for summary judgment. And your
2 order in paragraph 13 was very --

3 THE COURT: Of that order? Okay.

4 MR. DELIKANAKIS: The order -- if you take a look at the
5 order --

6 THE COURT: Okay, I've got it. Let me just pull it so I make
7 sure I --

8 MR. DELIKANAKIS: Right.

9 THE COURT: It's here on the --

10 MR. DELIKANAKIS: That order --

11 THE COURT: Okay. I have it.

12 MR. DELIKANAKIS: Sure. If you take a look at -- if you'll be
13 kind enough to look at paragraph 13.

14 THE COURT: I'd be glad to.

15 MR. DELIKANAKIS: The service agreement incorporates and
16 the dues transmittal agreement and together provide for the quid pro
17 quo exchange between CCEA and NSEA. The service agreement sets
18 forth the services and financial payments that NSEA will provide to
19 CCEA in exchange for the transmittal of dues that CCEA sends to NSEA
20 and sets forth in both the service agreement slash dues transmittal
21 agreement.

22 That was not challenged --

23 THE COURT: Oh I know.

24 MR. DELIKANAKIS: -- and nor was it argued today. So I
25 assume that still is a good order.

1 THE COURT: Okay, hold on, let me just --
2 MR. DELIKANAKIS: Good portion of the order.
3 THE COURT: -- let me read it again in my brain.
4 MR. DELIKANAKIS: Sure.
5 THE COURT: Okay, one second.
6 MR. DELIKANAKIS: Of course, please.
7 THE COURT: Service agreement -- okay. I see that. Okay.
8 MR. DELIKANAKIS: And that's the whole quid pro quo
9 argument --
10 THE COURT: I know.
11 MR. DELIKANAKIS: -- that was advanced and argued --
12 THE COURT: I'm sorry.
13 MR. DELIKANAKIS: -- and the Court raised again today so I
14 just want to point the Court --
15 THE COURT: Okay.
16 MR. DELIKANAKIS: -- to that section of the order which the
17 Court's already kind of made that decision I believe. If you --
18 THE COURT: No, I did make --
19 MR. DELIKANAKIS: You did make that decision.
20 THE COURT: -- that decision.
21 MR. DELIKANAKIS: Exactly.
22 THE COURT: Okay.
23 MR. DELIKANAKIS: And paragraph -- I'd also like the Court
24 to look at paragraph 34 --
25 THE COURT: Okay.

1 MR. DELIKANAKIS: -- another paragraph that was not
2 objected to by the NSEA, NEA parties, nor was it argued today or
3 objected to today in today's hearing, but if you take --

4 THE COURT: Paragraph?

5 MR. DELIKANAKIS: Paragraph 34, Your Honor.

6 THE COURT: Okay, the Court finds as follows?

7 MR. DELIKANAKIS: Yes, but I'd like you --

8 THE COURT: Okay.

9 MR. DELIKANAKIS: -- to go halfway down. It's after the date
10 September 1st, 2017. The fragment that I think is relevant here is nor
11 did NSEA or NEA have any obligation to CCEA on or after September
12 1st, 2017, to perform pursuant to the service agreement and the dues
13 transmittal agreement and in fact, there is no dispute that NSEA and
14 NEA ceased to perform under the service agreement and dues
15 transmittal agreement on or after --

16 THE COURT: And that's what I just asked about, didn't I?

17 MR. DELIKANAKIS: Correct, Your Honor. And that's why I
18 was kind of fidgeting in my chair because --

19 THE COURT: No, I --

20 MR. DELIKANAKIS: -- this issue's already been decided and
21 admitted to and conceded because I recall in oral arguments last time
22 you asked my colleague, Mr. Alexander, flat out --

23 THE COURT: The same thing.

24 MR. DELIKANAKIS: -- the same question and he conceded
25 that there were no services provided after September 1st and that's why

1 it was incorporated in the order and I assume they still don't --
2 THE COURT: Which makes --
3 MR. DELIKANAKIS: -- object because they didn't object --
4 THE COURT: Okay.
5 MR. DELIKANAKIS: -- in their motion for reconsideration and
6 they didn't object --
7 THE COURT: Well I seem to be consistent, don't I?
8 MR. DELIKANAKIS: You do seem to be consistent. So --
9 THE COURT: But I don't always -- okay.
10 MR. DELIKANAKIS: -- although my colleague --
11 THE COURT: See that really was -- okay.
12 MR. DELIKANAKIS: No, so although my colleague kind of
13 gave this recitation of all these things that occurred --
14 THE COURT: I don't think you disagree that when everything
15 was falling [phonetic] they were members of all three. Correct, when
16 everything before --
17 MR. DELIKANAKIS: The termination.
18 THE COURT: Yes. I just started -- before the termination,
19 everything -- I agree with all that, do you not?
20 MR. DELIKANAKIS: I'm not going to disagree.
21 THE COURT: No you can't.
22 MR. DELIKANAKIS: No, I -- exactly.
23 THE COURT: Okay. No.
24 MR. DELIKANAKIS: So that's the whole --
25 THE COURT: All right.

1 MR. DELIKANAKIS: -- that's why this --

2 THE COURT: That's what I thought. Okay.

3 MR. DELIKANAKIS: It's a fascinating exercise and that's why
4 the Court was correct to pinpoint what is the legal effect of the
5 termination --

6 THE COURT: I know.

7 MR. DELIKANAKIS: -- of the dues transmittal agreement.
8 And the legal effect and the practical effect and the equitable effect is
9 that that was a de facto termination of any relationship between the
10 members of CCEA and NSEA and NEA for every practical legal
11 equitable reason you can come up with, because this is all very
12 fascinating, but this is all before the termination. Okay?

13 THE COURT: August 31st --

14 MR. DELIKANAKIS: And although NSEA and NEA love to
15 talk about the obligations of the individual school teachers who are
16 members of CCEA to tender the money that they paid in this interim
17 period and they kind of thump on the obligation, the obligation, the
18 obligation, what they don't talk about and they're remarkably silent on is
19 the -- their obligation, their obligation to give something in return,
20 because what they're essentially asking you to do is to give money that
21 has been segregated for the benefit of individual school teachers and to
22 give it to them when they in fact haven't given anything to these
23 individual school teachers --

24 THE COURT: You don't think it's the Netflix analogy?

25 MR. DELIKANAKIS: I don't. I don't. Because there is -- this

1 Court has already found that there was a quid pro quo relationship --
2 THE COURT: Right.
3 MR. DELIKANAKIS: -- between the parties and that was
4 memorialized and found the basis was the dues transmittal agreement.
5 I mean that --
6 THE COURT: And in fact when I thought at the break about
7 the Netflix, if you no longer paid for the Netflix membership, you -- they
8 -- it'd go black.
9 MR. DELIKANAKIS: You get zero.
10 THE COURT: Okay.
11 MR. DELIKANAKIS: And that's exactly what happened --
12 THE COURT: I was using -- I was trying to figure -- sorry, my
13 brain thinks and I'm sitting back here going, okay, not that I like Netflix,
14 but I look -- thought through what would happen if I didn't pay my Netflix,
15 it wouldn't come on. I would not be able to access movies or whatever
16 is on Netflix, right?
17 MR. DELIKANAKIS: Correct.
18 THE COURT: Okay. I just --
19 MR. DELIKANAKIS: Notwithstanding the Netflix --
20 THE COURT: Okay.
21 MR. DELIKANAKIS: -- it's already been --
22 THE COURT: Because I --
23 MR. DELIKANAKIS: -- it's been argued, briefed --
24 THE COURT: -- listened to his analogy.
25 MR. DELIKANAKIS: -- reconsidered. That's the law in this

1 case.

2 And, you know, with regards to the dues transmittal
3 agreement, we've already argued this before, I'm going to argue it again.

4 THE COURT: I --

5 MR. DELIKANAKIS: If you take a look at the NSEA bylaws,
6 it's a precondition. The dues transmittal agreement is a precondition to
7 membership. If you look at section three of the NSEA bylaws --

8 THE COURT: Do you have an exhibit somewhere I could -- I
9 apologize --

10 MR. DELIKANAKIS: Who was this? Where was this --

11 MR. D'ALBA: NSEA bylaws.

12 THE COURT: It just helps me if I can look at it --

13 MR. DELIKANAKIS: Yeah, no, no, I appreciate it, Your
14 Honor. In fact it was in our --

15 THE COURT: Is it -- if it's an exhibit --

16 MR. DELIKANAKIS: It was CCEA party's opposition --

17 THE COURT: Oh dear. To?

18 MR. DELIKANAKIS: -- to the motion for partial summary
19 judgment and it's Exhibit 1.

20 THE COURT: Okay, so the -- this partial summary judgment?
21 The one we're talking about now or is another one?

22 MR. DELIKANAKIS: May I approach the bench because I
23 think --

24 THE COURT: Do you mind?

25 MR. DELIKANAKIS: -- I've got this section memo -- I've got

1 this memo --

2 THE COURT: Okay. Well I don't. I --

3 MR. DELIKANAKIS: I'll -- it's -- this is what I'm --

4 MR. ALEXANDER: I know what it is.

5 MR. DELIKANAKIS: Okay, just so you see that. Okay.

6 THE COURT: You -- I'm sure they have it memorized. The
7 Court doesn't --

8 MR. DELIKANAKIS: Yeah, we've all memorized --

9 THE COURT: Yeah, I apologize if --

10 MR. DELIKANAKIS: Take a look --

11 THE COURT: -- I don't have it memorized, I don't.

12 MR. DELIKANAKIS: If you take a look at the last sentence
13 and, you know --

14 THE COURT: Okay.

15 MR. DELIKANAKIS: -- this is something that --

16 THE COURT: Let me be comfortable. Can you give me just a
17 second?

18 MR. DELIKANAKIS: Of course.

19 THE COURT: Because I --

20 MR. DELIKANAKIS: Of course.

21 THE COURT: -- I don't want to just look at the last sentence if
22 I don't look at the whole section --

23 MR. DELIKANAKIS: Sure.

24 THE COURT: -- because I need it in perspective.

25 [Pause]

1 THE COURT: Have a dues transmittal contract with NSEA.
2 Okay. In fact, was this the one that they had changed the bylaws just a
3 -- to include that just a few years before -- that's a different one. I have
4 something in the back of my -- I am right, aren't I?

5 MR. D'ALBA: I think so.

6 THE COURT: See there you go --

7 MR. D'ALBA: I think --

8 THE COURT: I know more than you.

9 MR. DELIKANAKIS: Yeah --

10 MR. D'ALBA: I think it is.

11 MR. DELIKANAKIS: -- your memory is good, but you see --

12 THE COURT: I just remember going through this. Okay.

13 MR. DELIKANAKIS: And it's the same argument that was
14 argued the last time around is that the existence of a dues transmittal
15 agreement is a precondition by their own bylaws and affiliates and
16 membership in --

17 THE COURT: I'm sorry?

18 MR. DELIKANAKIS: -- is a prerequisite, a precondition --

19 THE COURT: To a membership.

20 MR. DELIKANAKIS: -- to membership. I mean that's their
21 own bylaws and they can't get around that. I mean that's why I call this
22 a de facto termination of any relationship because the -- it begs the
23 question you asked my colleague, Mr. Alexander, okay, so after the
24 dues transmittal agreement was terminated in September 1st, what's the
25 effect?

1 THE COURT: I did.

2 MR. DELIKANAKIS: And I think I've answered that --

3 THE COURT: Yeah.

4 MR. DELIKANAKIS: -- question because it's in your order
5 already. And to elaborate upon it, the effect is, is that there was no
6 working relationship between the members of CCEA and the NSEA
7 because they didn't get anything.

8 THE COURT: Okay, then why did CCEA -- and just I got to
9 ask why did they keep collecting dues? Why did they have on their
10 website all these different exhibits, join?

11 MR. DELIKANAKIS: I can't explain the website. I don't have
12 an answer for that --

13 THE COURT: Okay.

14 MR. DELIKANAKIS: -- except they're probably slow just
15 dealing with the website.

16 THE COURT: Take it down, but --

17 MR. DELIKANAKIS: But as to the collection of the dues, I'll
18 give you the same answer that CCEA has given this Court in the past.
19 We were in a dispute, we were in a negotiation phase --

20 THE COURT: No, I --

21 MR. DELIKANAKIS: -- and in all (indiscernible) we did is we
22 just segregated the funds. We don't claim these funds for ourselves.

23 THE COURT: No, I understood that. So what you're saying is
24 you -- not you, but CCEA's position was we still would like to work
25 something out with NSEA, NEA, even though we've terminated, so we

1 would probably make it retroactive back to when we start so we would --
2 we don't want our members to get hit -- because I know the dues are for
3 a year. I get that. I've done all that timeline. So instead of saying hey,
4 not collect it after starting September 1st, we are going to collect it, but
5 we're segregating it and then am I reading this right, when you -- when
6 CCEA said okay, doesn't look like we're going to be able to get an
7 agreement, is that when the lawsuit happened when Judge Kishner got
8 involved?

9 MR. DELIKANAKIS: No, the lawsuit was prior to that.

10 THE COURT: It was even prior to that?

11 MR. DELIKANAKIS: The lawsuit was prior to that so there
12 was a right -- there was a dispute going on here already. And so we --

13 THE COURT: Okay.

14 MR. DELIKANAKIS: -- so the hope was at the time of course
15 is that --

16 THE COURT: See I don't know when that -- okay.

17 MR. DELIKANAKIS: -- the parties would resolve their
18 differences, there would be a -- you know, a kumbaya between the
19 national and state and local --

20 THE COURT: Sure.

21 MR. DELIKANAKIS: -- and I think the local was behaving
22 prudently by just segregating that money which belongs to the individual
23 teachers. So --

24 THE COURT: Okay.

25 MR. DELIKANAKIS: -- to hold that against us as some sort of

1 some affirmation or waiver or admission --

2 THE COURT: Almost like an --

3 MR. DELIKANAKIS: -- I think is unfair and I think it's also
4 incorrect.

5 THE COURT: Okay.

6 MR. DELIKANAKIS: And I think it's incorrect under the law.

7 THE COURT: I just wanted to address that because I --

8 MR. DELIKANAKIS: I hope I've address that so --

9 THE COURT: No. You have. I --

10 MR. DELIKANAKIS: Look, I don't -- a lot of what Mr.
11 Alexander went through again all is prior to the termination and I think
12 I've explained our position --

13 THE COURT: No. Believe me I understand that.

14 MR. DELIKANAKIS: Okay, so --

15 THE COURT: Like once I said I -- I don't even think you
16 would object prior the termination that that was the agreement --

17 MR. DELIKANAKIS: We don't.

18 THE COURT: -- that if you became a member of CCEA, you
19 became a member of NSEA, you became a member of NEA, you were
20 required to have dues go to all three. I mean I -- that was very clear and
21 that's probably the same as the Girl Scouts or any place else I -- you
22 know, when you have associations like this. I understood that. Okay.

23 MR. DELIKANAKIS: And the practical effect of the
24 termination of the agreements was a severance of relationships between
25 the parties. And to simply say -- stand here and say yeah that was a

1 termination of our obligations to provide you services, which is in the
2 order, and it was a termination of your duty to transmit dues for us, but I
3 still want that money from those teachers in that interim period because
4 they hadn't yet gone through the formality --

5 THE COURT: Of --

6 MR. DELIKANAKIS: -- of the democratic process of having a
7 vote and say we are going to disaffiliate and we're going to change the
8 dues. I don't think that's good law and I don't think it's good equity.

9 Finally, and I'm just going to end this, at the end of the day,
10 the same --

11 THE COURT: No, I -- I'm very aware of --

12 MR. DELIKANAKIS: Yeah, the same facts and analysis which
13 the Court should apply in the conversion claim would of course apply to
14 the unjust enrichment claim --

15 THE COURT: All of them.

16 MR. DELIKANAKIS: Exactly.

17 THE COURT: I -- listen, I --

18 MR. DELIKANAKIS: And also for the disgorgement motion so
19 I -- I'm just kind of -- you know, this is a decision which given the right
20 decision should take care of a lot of these motions.

21 THE COURT: No, I -- if I go your way, I firmly understand
22 that.

23 MR. DELIKANAKIS: Do you have any questions for me?
24 Anything you'd like me to talk about?

25 THE COURT: You told me that the lawsuit with Judge

1 Kishner was when? I didn't --

2 MR. DELIKANAKIS: I'll get you the dates.

3 THE COURT: I didn't know I -- I wasn't involved -- she had
4 this --

5 MR. DELIKANAKIS: I think mid-September 2017?

6 MR. ALEXANDER: Is when the lawsuit was filed.

7 MR. DELIKANAKIS: Yeah.

8 THE COURT: September 2017?

9 MR. DELIKANAKIS: Seventeen. Yes --

10 MR. ALEXANDER: Right after the --

11 THE COURT: Right after the dues transmittal letter. Oh my
12 goodness.

13 MR. DELIKANAKIS: Yes.

14 THE COURT: Okay, I -- well that just reaffirms to me the
15 position that what you were saying is somebody needs to decide the
16 effect of that dues transmittal letter and the services agreement --

17 MR. DELIKANAKIS: Correct.

18 THE COURT: -- which then came to -- okay.

19 MR. DELIKANAKIS: That's why I think when you look at their
20 very own bylaws --

21 THE COURT: No, I --

22 MR. DELIKANAKIS: -- the precondition to membership, the
23 fact the way the relationship worked was all based upon this duty to give
24 money in exchange for services. You know there's the old adage, love
25 or money, and in this case I posit, Your Honor, it was money. That's

1 what drove this relationship. It was a commercial relationship
2 memorialized in the dues transmittal agreement as to what would be
3 given for what and that was terminated unequivocally on September 1st
4 and it's also undisputed that no services were provided after September
5 1st. And with that I'll --

6 THE COURT: And the dues that were collected were --

7 MR. DELIKANAKIS: Segregated.

8 THE COURT: -- September -- yeah, collected and
9 segregated. I understand that.

10 MR. DELIKANAKIS: My colleague here is -- I apologize, Your
11 Honor.

12 THE COURT: Okay. He seems nervous. You can talk.
13 That's fine.

14 [Colloquy between counsel]

15 MR. DELIKANAKIS: Oh, the lawsuit had a declaratory
16 judgment component to it to find out if we had a right that the members
17 -- the members had a right to the money --

18 MR. D'ALBA: We had a right to terminate the agreement and
19 then contemporaneous with that the money was placed into a protected
20 account, an escrow account with a letter from Bank of America that
21 said --

22 THE COURT: So basically you're saying to me the -- it's
23 already been determined it goes if it doesn't -- if I don't rule it goes to
24 NSEA or NEA, it goes to the members?

25 MR. DELIKANAKIS: Correct, that's the object of our

1 disgorgement motion is --

2 THE COURT: Well, no, I got --

3 MR. DELIKANAKIS: Yeah.

4 THE COURT: -- I got that.

5 MR. DELIKANAKIS: Yeah. Exactly. Right.

6 THE COURT: I didn't know there was a --

7 MR. DELIKANAKIS: CCEA is not claiming a right to this
8 money.

9 THE COURT: I got that --

10 MR. DELIKANAKIS: Right.

11 THE COURT: -- but you're saying that was actually part of a
12 declaratory cause of action.

13 MR. D'ALBA: The declaratory judgment was whether we had
14 a right to terminate the agreement, the termination agreement, and then
15 contemporaneous with that --

16 THE COURT: No, that's here.

17 MR. DELIKANAKIS: Correct.

18 MR. D'ALBA: But that was --

19 THE COURT: Oh, I thought you meant in front of Judge
20 Kishner I'm like --

21 MR. D'ALBA: No, that was --

22 MR. DELIKANAKIS: No, no, no, no, no, no, no.

23 THE COURT: -- why am I reinventing the wheel here?

24 MR. D'ALBA: That was the --

25 THE COURT: I'm working -- okay, I get it.

1 MR. D'ALBA: That was the original --
2 THE COURT: I got it. I got it. I got it.
3 MR. D'ALBA: That was the original lawsuit is going to amend
4 it since --
5 THE COURT: Okay. I follow you now. I'm sorry. It's hard
6 when you take something from somebody else as you can -- and I did
7 the best I could to try to -- I did not look at the date, but that fits with
8 more what I was thinking.
9 MR. DELIKANAKIS: Mid-September. Do you have any more
10 questions or anything else for me?
11 THE COURT: No, I'm pretty sure -- okay.
12 MR. DELIKANAKIS: Okay. Thank you.
13 THE COURT: No, I'm --
14 MR. ALEXANDER: Thank you.
15 THE COURT: Okay.
16 MR. ALEXANDER: Your Honor, I just need to clear up a few
17 things.
18 THE COURT: Sure. I want your record too for you.
19 MR. ALEXANDER: Thank you. Let me start with the quid pro
20 quo because that is -- it is relevant to your thinking.
21 THE COURT: Yes.
22 MR. ALEXANDER: Paragraph 13 and paragraph 34 of your
23 order involved the quid pro quo services agreement and dues transmittal
24 agreement between CCEA and NSEA, and only --
25 THE COURT: Correct.

1 MR. ALEXANDER: -- that agreement. It did not have to do
2 with the quid pro quo of membership to the individual teachers. The
3 membership to the -- obtained by the individual teachers provided them
4 as members of NSEA and NEA and variety of benefits --

5 THE COURT: So that was totally an independent separate
6 duty.

7 MR. ALEXANDER: Absolutely. Absolutely. NSEA and NEA
8 have a duty to the members, their members, including providing
9 assistance to locals, providing assistance to states, providing insurance,
10 providing legal representation, and in fact, it's not in the record because
11 that was never a defense to whether or not NSEA or NEA have a
12 property right in the dues, but as a matter of fact, NSEA and NEA did
13 provide insurance benefits, did provide legal benefits to members after
14 September 1 --

15 THE COURT: Okay, where is that in my record?

16 MR. ALEXANDER: It's not in the record because --

17 MR. DELIKANAKIS: It's not --

18 THE COURT: Okay, I can only do the record -- okay.

19 MR. ALEXANDER: -- because that's not the defense that
20 was --

21 THE COURT: Okay. If you didn't feel it was relevant -- that's
22 fine.

23 MR. ALEXANDER: Well, and the reason it wasn't -- it's not a
24 defense is because the defense is that NSEA and NEA don't have a
25 contractual right to dues under -- and that -- and so because of that they

1 don't have any property interest in it. But that's very different from a
2 member of CCEA saying I think membership in NSEA and NEA stinks. I
3 think that I'm paying this money to them and I'm not getting enough
4 services. That doesn't mean that the money they're paying to them is
5 not money that NSEA and NEA have a property right to. There may be
6 a --

7 THE COURT: No, I would not do that --

8 MR. ALEXANDER: The members might have a right, but the
9 members are not before you here. No one is clamoring from CCEA
10 saying we did never -- we never intended to give money to NSEA and
11 NEA and we were never members of NSEA and NEA after the
12 termination of the dues transmittal agreement because they were.

13 Now Mr. Delikanakis is making a new argument here that
14 somehow as a de facto matter, once they terminated the dues
15 transmittal agreement, that acted like a disaffiliation, like a pseudo
16 disaffiliation from NEA and NSEA, but the documents and their
17 admissions in their answer and in their affidavits are the exact opposite,
18 and in fact in their actions April 25th. It was only then that they
19 disaffiliated and as a matter of law --

20 THE COURT: What case do you have because I looked for
21 anything on affiliations or anything because obviously -- what do you
22 have that says anything to do with an -- because I looked honestly,
23 counsel, and I looked -- trying to find what -- where -- on affiliation
24 whether there was any case law or anything doing with that and I
25 couldn't find -- I was back to the facts of this case. Because you just

1 said as a -- what did you just say to me, as a matter of law?

2 MR. ALEXANDER: Right, as a matter of law under the
3 CCEA's own bylaws.

4 THE COURT: Oh, okay, so that's an -- I just wanted to make
5 sure I wasn't --

6 MR. ALEXANDER: That -- right.

7 THE COURT: When I see matter of law, I almost --

8 MR. ALEXANDER: Right. So --

9 THE COURT: I think of a case law that I have to follow.

10 MR. ALEXANDER: No, I understand, Your Honor.

11 THE COURT: So -- okay.

12 MR. ALEXANDER: I mean if -- a termination of an affiliation
13 relationship must be done expressly and in fact in our reply brief in
14 support of our motion for summary judgment on the NEA bylaws we
15 included the NEA constitution which this was on the issue of whether it's
16 a perpetual contract --

17 THE COURT: Right. I looked at that.

18 MR. ALEXANDER: -- but the issue goes to this as well that if
19 you want to disaffiliate, you can, but you have to actually do it. And they
20 did actually do it, but they didn't do it until April 25th, 2018.

21 Now, Mr. Delikanakis makes separate arguments about the
22 affect of the dues transmittal agreement on the affiliation under the
23 bylaws and I'd like to reserve that to arguing the bylaws issue because I
24 think it's very clear that that's not correct. But I just wanted to make sure
25 the Court understands the distinction between paragraph 13 and

1 paragraph 34 of her December 12th order --

2 THE COURT: No, I --

3 MR. ALEXANDER: -- that had to do with the quid pro quo
4 between NSEA and CCEA and services that NSEA was providing to
5 CCEA has nothing to do with the membership benefits that exist --

6 THE COURT: But how can you read that membership
7 enrollment form that you just spent two hours telling me includes all
8 three that they are in this tripart --

9 MR. ALEXANDER: Because they were.

10 THE COURT: Well I guess really four part membership here
11 and these three and then say but it had nothing to do -- that doesn't
12 even fit to the whole --

13 MR. ALEXANDER: No, no, it does have to do with --

14 THE COURT: -- scheme -- that to me is --

15 MR. ALEXANDER: So you have a member and then you
16 have three organizations, but they're --

17 THE COURT: No. Believe me I got that.

18 MR. ALEXANDER: -- and they're members of all three.

19 THE COURT: Right.

20 MR. ALEXANDER: Now, above them, the organizations may
21 have disputes about their rights vis-à-vis one another. So CCEA may
22 say NSEA is not providing benefits to us -- and the reason they weren't
23 is because CCEA is the one that terminated the service agreement
24 unilaterally.

25 THE COURT: But they had -- they --

1 MR. ALEXANDER: They had a right to do that.

2 THE COURT: You gave them -- your group gave them the
3 mechanism to do that and you --

4 MR. ALEXANDER: They absolutely had the right to do that.

5 THE COURT: So if you think you have a mechanism to do
6 that, I even looked back does it say anything that when you proper --
7 when you do the service terminate, according to what everybody agreed
8 to, you also have to disaffiliate or it has no effect?

9 MR. ALEXANDER: Sure.

10 THE COURT: I even looked --

11 MR. ALEXANDER: Because they're --

12 THE COURT: Where does it say that in the writing? Because
13 I looked -- it doesn't say that in the services agreement.

14 MR. ALEXANDER: No, it doesn't --

15 THE COURT: That --

16 MR. ALEXANDER: -- because the services agreement has
17 nothing to do -- it's an exaggeration to say it had nothing to do.

18 THE COURT: Yeah, it -- I disagree but -- okay.

19 MR. ALEXANDER: But the affiliation relationship is governed
20 by the bylaws. The bylaws provide --

21 THE COURT: But if they don't transmit those dues, there is
22 no membership.

23 MR. ALEXANDER: Yes there is.

24 THE COURT: Oh, so NSEA and NEA would provide all this if
25 they never got their dues? They're saying you know what, we have no

1 right to dues, you're a member, we don't have to have dues?

2 MR. ALEXANDER: No, the --

3 THE COURT: No. I can tell you I read the -- that's not what
4 they say.

5 MR. ALEXANDER: The members have an obligation to pay
6 the dues. If the members don't pay the dues --

7 THE COURT: No --

8 MR. ALEXANDER: -- then they can be --

9 THE COURT: Okay. I get that. I very much --

10 MR. ALEXANDER: Right.

11 THE COURT: -- get that. Okay.

12 MR. ALEXANDER: But the issue of whether or not CCEA
13 remained an affiliate of NEA and NSEA, which is something they have
14 admitted over and over again -- I know -- we did go through this, I realize
15 that, a number of times --

16 THE COURT: I think they didn't know what the -- what would
17 be determined as the legal significance of them do -- terminating the
18 service agreement and the dues transmittal agreement, so I mean that --
19 that's why we're here, correct? Isn't --

20 MR. DELIKANAKIS: It was prior to the termination, Your
21 Honor.

22 THE COURT: I know.

23 MR. DELIKANAKIS: These answers were all prior to the
24 termination.

25 MR. ALEXANDER: No they --

1 THE COURT: They were? I don't know -- I --
2 MR. LAKE: No.
3 MR. DELIKANAKIS: Was before the --
4 MR. LAKE: They were not.
5 MR. ALEXANDER: They were not because the lawsuit --
6 THE COURT: Even if so until --
7 MR. DELIKANAKIS: Oh, there's no time frame in the
8 answers. I apologize. I withdraw that.
9 THE COURT: Okay.
10 MR. DELIKANAKIS: There was no time frame in the answers.
11 THE COURT: But in my -- even if so, once that determination
12 is -- whether they like it or not, or whether you like it, that was what I
13 determined is the facts and you can go -- I mean that -- that's how I
14 looked at it, whether right or wrong, the best I can do.
15 MR. ALEXANDER: If you -- no, I --
16 THE COURT: So I'm not going to look at admissions when
17 they -- when there was a determination of -- because this -- okay,
18 whatever. My record's my record, I'm sorry.
19 MR. ALEXANDER: No, I understand.
20 THE COURT: I am trying to explain it --
21 MR. ALEXANDER: But I am trying to make a distinction
22 between the relationship --
23 THE COURT: No, you're making a distinction between rights
24 between CCEA and NEA and the membership down here [indicating].
25 MR. ALEXANDER: That's one --

1 THE COURT: Right.

2 MR. ALEXANDER: -- distinction I'm making. I'm making also
3 a distinction between a property right to dues that were paid --

4 THE COURT: Right.

5 MR. ALEXANDER: -- by the members to -- for their
6 membership in NEA and NSEA, and there is no, I think, dispute that they
7 were continued to be members until disaffiliation because in order to be
8 members of CCEA, under CCEA's own bylaws, they had to be members
9 of NEA --

10 THE COURT: Okay.

11 MR. ALEXANDER: -- and NSEA as a legal matter.

12 THE COURT: Okay.

13 MR. ALEXANDER: That's why it was earlier said as a matter
14 of law because CCEA's bylaws --

15 THE COURT: Right, and I looked at it as a matter of law once
16 the service agreement and the dues transmittal agreement was properly
17 done, that that terminated it and that could -- you know, could be wrong,
18 could be right, I don't know, I -- all I can do is the best -- okay. And I --

19 MR. ALEXANDER: When we talk about the bylaws, maybe I
20 can address that more directly --

21 THE COURT: Okay.

22 MR. ALEXANDER: -- because those are different contracts
23 and that's the contract claim that's at issue --

24 THE COURT: Okay. All right.

25 MR. ALEXANDER: -- here today as opposed to --

1 THE COURT: All right.

2 MR. ALEXANDER: -- the one that was in December.

3 THE COURT: All right. As far as the plaintiff NSEA's and
4 NEA's motion for partial judgment on count six which is conversion, I'm
5 going to deny that claim. I do not feel there's a legal basis for
6 conversion of these funds and I did put -- based after -- in my notes here
7 now I -- after the termination of the service agreement and dues
8 transmittal agreement expired on August 31st, 2017. I felt that the -- it
9 was terminated at that time that the members -- that NSEA or NEA had
10 a right to any dues. And that would be the period from after the
11 termination so that would be September 1st to April 25th, 2008 [sic]
12 which is the funds that are being held in escrow.

13 Okay, so that -- just put denied.

14 MR. DELIKANAKIS: Your Honor, we counter-moved on that
15 claim, so is summary judgment granted in favor of CCEA on the
16 conversion claim?

17 THE COURT: You counter-moved -- let me find it. Okay, hold
18 on, let me make sure -- I thought that was separate, but it could -- you --
19 there's a counterclaim?

20 MR. DELIKANAKIS: No.

21 THE COURT: I don't know. Hold on. I tried to take --

22 MR. ALEXANDER: Your --

23 MR. DELIKANAKIS: We counter-moved for summary
24 judgment on the conversion claim.

25 THE COURT: But on something -- yeah.

1 MR. DELIKANAKIS: On the --
2 THE COURT: You did on the conversion that's this one.
3 MR. ALEXANDER: I agree.
4 THE COURT: You did.
5 MR. ALEXANDER: Your Honor, they did but --
6 THE COURT: You did. Let me look at it. There's a -- that
7 was number four --
8 MR. ALEXANDER: It's the opposite side of our motion.
9 THE COURT: Right.
10 MR. DELIKANAKIS: Correct. Correct.
11 THE COURT: I do have so --
12 MR. ALEXANDER: But before --
13 THE COURT: -- there's also -- if you want me to do it at the
14 same time? Because that's number four on my list here.
15 MR. ALEXANDER: Before you enter -- before you make your
16 decision, could I have one last word on that? I really --
17 THE COURT: One last word on conversion?
18 MR. ALEXANDER: Yes. If --
19 THE COURT: You can put anything more you want on the
20 record.
21 MR. ALEXANDER: Okay. We cited -- this -- trying to
22 distinguish between your view that the money that was collected for
23 someone else was tied to a contract for collecting that money for
24 someone else, we cited the -- a case called *Shishock* [phonetic]. That
25 case is a case in which one party authorized another party to collect

1 rents for it. Instead what that party did was agree -- back rents -- agreed
2 to release the lessees and terminated the -- and the party who was the
3 landlord terminated the contract with the agent --

4 THE COURT: Okay.

5 MR. ALEXANDER: -- said we no longer have a contract.
6 That agent nonetheless continued to collect monies from the tenants
7 and keep them. Now there was no --

8 THE COURT: And keep the money?

9 MR. ALEXANDER: Yes.

10 THE COURT: Okay.

11 MR. ALEXANDER: There was no contract between the
12 landlord --

13 THE COURT: Well I'm not limiting it to a contract, I'm saying
14 the obligations and that's why -- I'm saying once their obligations -- once
15 they terminated pursuant to contract, that terminated all obligations. I'm
16 not saying it's just contractual. In fact that's why I didn't want to put the
17 word contractual in my findings. I felt like once that was done, then all
18 obligations were terminated at that point and I'm going to do it that way.

19 MR. ALEXANDER: Okay. Thank you, Your Honor.

20 THE COURT: Okay. And then let's do CCEA's counter-motion
21 for summary judgment on -- now I put down it's not just six I -- oh you
22 put six, two and three -- oh you did a lot here. Okay, so here's --

23 MR. DELIKANAKIS: We did.

24 THE COURT: I will say for six is granted.

25 MR. DELIKANAKIS: Correct.

1 THE COURT: There's some other ones here too, but --
2 MR. DELIKANAKIS: Also unjust enrichment for --
3 THE COURT: Here's what I've got, I've got -- I don't know if
4 they -- I've got counts two and three which are breach of -- I can't do
5 those because we're going to do the bylaws so I don't want to do --
6 okay, here's what I'm going to do. I'm going to do count six on -- let me
7 write it down because my court clerk's going to shoot me.
8 MR. DELIKANAKIS: Sure. No, no, it's --
9 THE COURT: Just one second, okay? That's not fair. On
10 CCEA's countermotion for summary judgment, I'm going to grant it for
11 count six which is conversion.
12 MR. DELIKANAKIS: Conversion.
13 THE COURT: Count five, I'm going to grant that because
14 that's unjust enrichment.
15 MR. DELIKANAKIS: Okay.
16 THE COURT: And the other two, two and three I'm not going
17 to address yet in fairness --
18 MR. DELIKANAKIS: Which is --
19 THE COURT: -- because that's all the bylaws, so I'm going to
20 grant it for six and for -- oh, unjust enrichment. I have count four. Is it
21 count four or five? I have two things here. Did I do it wrong?
22 MR. DELIKANAKIS: There's also --
23 THE COURT: No, count five.
24 MR. DELIKANAKIS: There's --
25 THE COURT: What's count four? I have a count four here

1 too. Oh no, that's breach of contract. I'm not going to do that. Right.
2 MR. ALEXANDER: Your Honor, just --
3 MR. DELIKANAKIS: We've already done breach of contract.
4 MR. ALEXANDER: -- briefly --
5 THE COURT: That's what I thought.
6 MR. ALEXANDER: -- the --
7 THE COURT: That's why I put count four is already done. All
8 right. Yes.
9 MR. ALEXANDER: The unjust -- I just wanted --
10 THE COURT: Yes.
11 MR. ALEXANDER: -- before you finish --
12 THE COURT: Okay.
13 MR. ALEXANDER: -- with unjust enrichment --
14 THE COURT: Yes.
15 MR. ALEXANDER: -- I just wanted to --
16 THE COURT: You can go ahead and put on the record.
17 MR. ALEXANDER: -- put on the record that the unjust
18 enrichment claim is divided between claims by NSEA and NEA for
19 unjust enrichment for CCEA keeping its dues. The -- I mean the NSEA
20 and NEA dues, but separate and apart from that, individual CCEA
21 members have --
22 THE COURT: Individual plaintiffs, yes.
23 MR. ALEXANDER: -- have a claim against CCEA for keeping
24 the monies in the event -- well first of all, they're for keeping monies they
25 -- that belong to them. If they don't belong to NSEA and NEA, then

1 they're going to them --

2 THE COURT: Well I'm -- on the -- it goes back to them.

3 MR. ALEXANDER: But that is not the entirety of the unjust
4 enrichment claim.

5 THE COURT: What else are they claiming?

6 MR. ALEXANDER: I'd like to if I could ask Mr. Lake --

7 THE COURT: Absolutely.

8 MR. ALEXANDER: -- because he's the one who's prepared
9 on this.

10 MR. LAKE: And I'll be brief, Your Honor, but --

11 THE COURT: Sure.

12 MR. LAKE: -- but on with respect to unjust enrichment as I'm
13 sure Your Honor's --

14 THE COURT: For the individual -- uh-huh.

15 MR. LAKE: For the -- the primary difference between a
16 conversion claim on the one hand and --

17 THE COURT: Right.

18 MR. LAKE: -- an unjust enrichment claim is that with unjust
19 enrichment you also have a right to not just the funds but also any profits
20 that the --

21 THE COURT: They got from the funds.

22 MR. LAKE: Exactly.

23 THE COURT: I assume you're not keeping any profits, are
24 you?

25 MR. DELIKANAKIS: The lordly [phonetic] profits that Bank of

1 America pays on that account I'm happy to give to the individuals.
2 We've already put that in our briefing. If they want to calculate what the
3 profits are on about \$566 --

4 THE COURT: It should be done across the board to the
5 individuals.

6 MR. DELIKANAKIS: Of course. Of course.

7 THE COURT: Okay.

8 MR. DELIKANAKIS: And we've already in our brief agreed --

9 THE COURT: I know you said that --

10 MR. DELIKANAKIS: Yeah. Yeah.

11 THE COURT: -- but I just --

12 MR. DELIKANAKIS: We will and I'll say it again.

13 THE COURT: Okay. Just make sure.

14 MR. DELIKANAKIS: Of course. Not a problem.

15 THE COURT: Okay. Anything else? And they are -- the
16 individual plaintiffs are -- their dues are part of this fund that was put in
17 the trust -- it's not a trust fund. What is it? A sequestered fund,
18 whatever --

19 MR. DELIKANAKIS: It's a sequestered account.

20 MR. LAKE: Restricted.

21 THE COURT: Restricted account. Thank you.

22 MR. DELIKANAKIS: Restricted account. Yeah, restricted
23 account.

24 THE COURT: I don't want to say trust fund because that's not
25 accurate.

1 MR. DELIKANAKIS: Yeah. Yes. Yes it is.

2 THE COURT: Okay, just wanted to -- I assumed it was when I

3 took the name of the plaintiffs to make sure, but they are?

4 MR. DELIKANAKIS: Yes, Your Honor.

5 THE COURT: Okay. Because, you know, I can only -- okay,

6 so what else then on the unjust --

7 MR. LAKE: I mean just I think just to clarify the -- I don't

8 believe that our colleagues on the other side put anything in their brief

9 about providing unjust enrichment profits in addition. That's neither in

10 their principal brief --

11 THE COURT: If it is, here -- I will make sure on the

12 disgorgement that it is very explicit that CCEA -- other than you have to

13 pay Bank of America whatever dues -- service fees or something like

14 that, right, that -- for keeping --

15 MR. DELIKANAKIS: There's been -- you know, this is the

16 interesting it's definition of profits. I mean if there's any interest in the

17 account, the money's just been sitting there and it's -- we'll have Bank of

18 America calculate the interest and it will be disbursed.

19 THE COURT: Among the individual members because it's

20 their money.

21 MR. DELIKANAKIS: Yeah.

22 THE COURT: Okay.

23 MR. DELIKANAKIS: Yes. Yeah, absolutely.

24 THE COURT: Okay. Just want to be very clear I'm -- if I --

25 MR. DELIKANAKIS: We're not concerned about that. That

1 money's been sitting in the account --

2 THE COURT: It's their money. It's not CCEA's.

3 MR. DELIKANAKIS: Correct. It's not. It's been our position
4 since day one --

5 THE COURT: Okay. We have that on the record because --

6 MR. LAKE: Right.

7 THE COURT: Okay.

8 MR. DELIKANAKIS: It's been our position since day one it's
9 not our money.

10 THE COURT: Okay, I -- you guys have been involved a little
11 longer than me so I want to make sure I have a record that -- that that's
12 what's going on.

13 MR. DELIKANAKIS: Understood.

14 THE COURT: I apologize but I only can do --

15 MR. DELIKANAKIS: Understood.

16 THE COURT: Okay.

17 MR. LAKE: And just --

18 THE COURT: Okay. Uh-huh, one other -- no, I want you to
19 have the record.

20 MR. LAKE: Yeah, so just two more points. One is at least to
21 make a record with this respect, you know --

22 THE COURT: No.

23 MR. LAKE: -- our position is that the monies at least through
24 disaffiliation April 25th, 2018 are -- belong to NEA and NSEA --

25 THE COURT: Do you want to just incorporate all your points

1 and authority and arguments which you did -- that you did for the
2 conversion claim?

3 MR. LAKE: I -- that's a wonderful suggestion, Your Honor, but
4 with one P.S. --

5 THE COURT: You can add to that.

6 MR. LAKE: -- that wasn't there which is simply that --

7 THE COURT: That's fine.

8 MR. LAKE: -- I think there are two pieces that have been
9 omitted. One is that by CCEA's own admission in their reply brief on
10 page 29, they didn't change the amount of dues they collected until June
11 8th or June -- yes, June 8th, 2018 --

12 THE COURT: Okay. So what does that --

13 MR. LAKE: So that doesn't include -- the monies in the
14 restricted account doesn't include that -- any of those funds.

15 THE COURT: Okay. Hold on.

16 MR. LAKE: Yeah.

17 THE COURT: Are those funds that went strictly to CCEA for a
18 separate membership or were those ones that were part of NSEA, NEA?

19 MR. DELIKANAKIS: No, no, no, no.

20 THE COURT: I don't know what you're --

21 MR. DELIKANAKIS: Yeah, I'm not sure --

22 THE COURT: I don't know what you're --

23 MR. DELIKANAKIS: I'm not sure I understand either.

24 MR. LAKE: Sure.

25 THE COURT: You're putting a new ringer that I'm not aware

1 of. So --

2 MR. DELIKANAKIS: Yeah.

3 MR. LAKE: No, so money that was collected in between
4 disaffiliation on April 25th, 2019 and June --

5 THE COURT: 2018.

6 MR. LAKE: Sorry, 2018. Thank you.

7 THE COURT: That's okay. No, you're --

8 MR. LAKE: And June 8th, 2018 was collected from teachers
9 at a rate that exceeded --

10 THE COURT: Okay. Is that part of the fund? You're not even
11 asking for those --

12 MR. LAKE: What I'm suggesting to you, Your Honor, is that
13 those monies are not part of the fund and therefore the profits that have
14 been discussed on the other side being related to that fund aren't going
15 to be accounted for if they -- for the purpose of providing --

16 THE COURT: Well you're not even asking for the funds after
17 April 25th, 2018, correct?

18 MR. DELIKANAKIS: No. No.

19 THE COURT: You say that your legal position is once they
20 disaffiliated, so what are you saying?

21 MR. LAKE: That's the --

22 THE COURT: You're saying there's an accounting issue?

23 MR. LAKE: Well that is the -- Your Honor, one amendment to
24 that. That is our position with respect to NSEA and NEA. The
25 individuals of course had that money collected from them after

1 disaffiliation and inappropriately to the extent that it exceeded the per
2 pay period amounts and --

3 THE COURT: Well, okay.

4 MR. DELIKANAKIS: This is all very new to me.

5 THE COURT: Yeah, I have no idea what you're talking about
6 if it's --

7 MR. DELIKANAKIS: I'm not sure I do either.

8 THE COURT: So here's the deal. If there's an accounting
9 issue, when this -- when we're going to disburse the funds because I
10 assume you're going to want an accounting, we'll address it at that time.

11 MR. DELIKANAKIS: That's fine. That's fine because this is --

12 THE COURT: I want to make sure everything fairly goes to
13 whoever needs -- to them. So if there's an accounting issue on what
14 funds are in there, whatever we'll make sure -- if we have to get an
15 expert in accounting or somebody, we'll make sure that whatever's --

16 MR. DELIKANAKIS: No.

17 THE COURT: I'm sure we won't. I'm sure it's --

18 MR. DELIKANAKIS: We'll spell it out in the order. They can
19 vet it then. We can try and resolve it then.

20 THE COURT: Okay, I want -- because I'm -- I want to make
21 sure I don't want anything done that's not correct.

22 MR. DELIKANAKIS: I don't either.

23 THE COURT: Okay.

24 MR. DELIKANAKIS: May I speak to the -- there's also a fraud
25 claim, Your Honor.

1 THE COURT: I -- let me look. Count seven did you --
2 MR. DELIKANAKIS: Countermotion for summary judgment --
3 THE COURT: On the -- let me --
4 MR. DELIKANAKIS: -- on the fraud claim.
5 THE COURT: Yes, I have it.
6 [Pause]
7 THE COURT: Okay. Do you want to talk on the fraud claim
8 because I had some questions on that to be honest.
9 MR. DELIKANAKIS: I will answer any questions you have,
10 Your Honor.
11 THE COURT: Okay, or --
12 MR. DELIKANAKIS: Yeah.
13 THE COURT: -- what is your position on the fraud claim?
14 MR. DELIKANAKIS: There is no fraud claim. That's my
15 position, Your Honor. I'm not --
16 THE COURT: I got yours. I was kind of looking at --
17 MR. DELIKANAKIS: I'm not being flippant, I just --
18 THE COURT: No, I was --
19 MR. DELIKANAKIS: Yeah.
20 THE COURT: I got that because I --
21 MR. DELIKANAKIS: Yeah.
22 THE COURT: -- put it down here --
23 MR. DELIKANAKIS: First and foremost, and I'm again trying
24 to be as practical as possible, when we looked at this fraud claim --
25 THE COURT: Okay. Let's start on --

1 MR. DELIKANAKIS: -- aside from the fact --
2 THE COURT: That's claim --
3 MR. DELIKANAKIS: -- first of all --
4 THE COURT: -- count seven.
5 MR. DELIKANAKIS: Yeah, count seven. First and foremost,
6 no one on the other side of the aisle asked for Rule 57(d) --
7 UNIDENTIFIED SPEAKER: 56(d).
8 MR. DELIKANAKIS: -- 56(d), used to be (f). The former Rule
9 56(f) which is now Rule 56(d), no one asked for Rule 56(d) relief that
10 there was some discovery that needed to be done in order to establish --
11 THE COURT: No, I know what that means.
12 MR. DELIKANAKIS: -- the who, what, when and where as to
13 the requisite elements of a fraud claim so --
14 THE COURT: Right.
15 MR. DELIKANAKIS: -- we're stuck with what they've got and
16 what they got -- what they've got is deficient. But most importantly, in
17 our briefing we made it very clear that the damages prong of the fraud
18 claim is --
19 THE COURT: Damages.
20 MR. DELIKANAKIS: -- what they paid in. And so we've
21 already agreed in our briefing and through the disgorgement motion that
22 the individual teachers are going to get their money back.
23 THE COURT: Okay, let me look at my notes on this.
24 MR. DELIKANAKIS: Of course.
25 THE COURT: One second, okay, because --

1 MR. DELIKANAKIS: And I ask --

2 THE COURT: -- I didn't -- one of the elements of fraud is
3 damages. You just started with that. Okay, let me -- that's where
4 obviously I -- let me just look at it real quick so I --

5 MR. DELIKANAKIS: Of course. Yeah.

6 THE COURT: -- make sure --

7 MR. DELIKANAKIS: Of course, Your Honor.

8 THE COURT: -- I've got --

9 [Pause]

10 THE COURT: The only thing I put here is there's a question
11 would the teachers have cancelled their membership had they been
12 aware -- but if they get their money back, that was one question I had.
13 The -- had the teachers been aware that their membership was
14 cancelled even though they were collecting dues, if that was a fraud
15 element, what would be the damages of that? The damage is they're
16 getting their money back unless they say well the damage is I could
17 have put it in a stock that makes a lot more money than Bank of
18 America. I'm just trying to think through something. Thus -- I don't
19 know. Okay.

20 MR. DELIKANAKIS: And that's why our --

21 THE COURT: That was the one question --

22 MR. DELIKANAKIS: Yeah.

23 THE COURT: -- I had I -- I realized it focused on damages.

24 MR. DELIKANAKIS: Yeah, and that's the crux of our
25 argument --

1 THE COURT: So what are they going to show -- can I ask
2 them? What would you show as damages under the fraud claim at the
3 state of discovery right now other than the money that's in the Bank of
4 America account? That's what I need.

5 MR. LAKE: Certainly, Your Honor, and I'll answer that briefly,
6 but I'd like to also sort of circle back to just one --

7 THE COURT: You can. No, I'm --

8 MR. LAKE: Yeah, but I --

9 THE COURT: -- I'm taking it out of order. I appreciate you
10 helping me.

11 MR. LAKE: No. Absolutely. So I think the most simple direct
12 answer is punitive damages which have been claimed with respect to
13 the fraudulent --

14 THE COURT: Punitives? What do you have of a conscious --
15 I assume it has --

16 MR. LAKE: Yeah.

17 THE COURT: You're saying fraud -- under punitives, a clear
18 and convincing standard that -- what was the fraud or the --

19 MR. LAKE: Yeah, so -- and in that respect here's where I
20 think circling back makes sense because what's important for I think an
21 important starting point is actually what CCEA's motion argues.

22 THE COURT: What --

23 MR. LAKE: CCEA's motion -- countermotion with respect to
24 fraud accepts for the purposes of the motion all of the underlying
25 elements -- so on page 26 of their countermotion I'm quoting to you --

1 THE COURT: Hold on, let me find it --
2 MR. LAKE: Yeah, sure.
3 THE COURT: -- because I -- argument and acceptance and
4 admissions are -- admissions are totally different for me than what
5 people argue so I want to --
6 MR. LAKE: Yeah, sure.
7 THE COURT: -- what -- okay, hold on. I got to find the
8 countermotion. I got so much stuff here you guys. Hold on one second.
9 Okay, let me find what I'm looking for --
10 MR. LAKE: If it's helpful, I'll be happy to just --
11 THE COURT: Reply. Motion for partial. Okay, I can't -- hold
12 on. It's in another spot.
13 MR. LAKE: If I --
14 THE COURT: It should be in here though. Hold on, let me
15 make sure. Conversion -- no, it's here. The countermotion's here. Just
16 a second you guys. I apologize. I've got so much stuff. Oh here it is,
17 countermotion. It's here. It's under a tab. Sorry, apologize. What page
18 on the countermotion?
19 MR. LAKE: All right, 26.
20 THE COURT: Okay, I'll find it; the Court can do that. Twenty
21 -- I'm at 30. Okay.
22 MR. LAKE: All right.
23 THE COURT: I'm there. I'm with you.
24 MR. LAKE: And in particular line 12 which reads --
25 THE COURT: Line 12. Even taking --

1 MR. LAKE: -- even taking -- yeah.
2 THE COURT: Okay. I'm sorry.
3 MR. LAKE: No, that's okay.
4 THE COURT: I want to be on the --
5 MR. LAKE: I'm as happy for you to read it as for me so either
6 way is fine.
7 THE COURT: Okay. No, you read it to me.
8 MR. LAKE: Okay. Even taking the teacher parties'
9 allegations of fraud as true for purposes of this countermotion, and that's
10 the whole basis of their motion is to take as true all of the pled
11 allegations of fraud. That mean they take --
12 THE COURT: Okay, what are the allegations of fraud?
13 MR. LAKE: Yeah, I'm -- I'll summarize it for you, but I'll --
14 THE COURT: Okay.
15 MR. LAKE: -- I would also direct the Court to in particular
16 paragraphs 86 through 90 of the second amended complaint, but let --
17 THE COURT: Okay.
18 MR. LAKE: -- but you -- Your Honor I don't think --
19 THE COURT: Okay, go ahead.
20 MR. LAKE: -- needs to go there just because I think, you
21 know, that's there and you -- Your Honor can consult it, but the basic
22 allegations of fraud, which again are assumed true for the purposes of
23 the countermotion, are that CCEA made materially false representations
24 to individual members and materially false omissions.
25 THE COURT: Okay.

1 MR. LAKE: And in particular those admissions and
2 misrepresentations were that the dues deducted from members'
3 paychecks would pay for the membership fee not just in CCEA but also
4 in NSEA and NEA.

5 THE COURT: Okay. And taking that as true, what are their
6 damages from that?

7 MR. LAKE: Well, and so taking that as true, I mean the --
8 there are others as well which I can circle back to if it's helpful --

9 THE COURT: No, you can tell me what they are. I -- because
10 you still have to have damages which is obviously why I put damages
11 with question mark when I looked at the fraud. If that's true.

12 MR. LAKE: Yeah.

13 THE COURT: So if someone from CCEA said you know
14 what, we're still taking dues after -- let's say October 2017, we're still
15 deducting from your paycheck dues for NEA and NSEA, as we know
16 they did, and we're saying that to you, okay, that --

17 MR. LAKE: Right, and that as --

18 THE COURT: -- they're saying that's -- they were --

19 MR. LAKE: Right.

20 THE COURT: -- but they were transmitting them --

21 MR. LAKE: Right, and part -- another one of the
22 representations that's alleged or omissions that's alleged is that by
23 joining or remaining in CCEA, teachers would also join or remain in
24 NSEA and NEA and be entitled to the benefits thereunder.

25 THE COURT: Okay.

1 MR. LAKE: And again, another allegation is that CCEA knew
2 these representations were false when the time they were made, knew
3 that they had to correct their material omissions when they didn't
4 disclose to existing members that they wouldn't in fact provide the dues
5 and transmit them and when they didn't disclose that remaining CCEA
6 member would ultimately wouldn't come with being an NSEA and NEA
7 member; that they knew that it was false when the time when --

8 THE COURT: No, I get that element --

9 MR. LAKE: Okay. So back to damages --

10 THE COURT: Just to damages.

11 MR. LAKE: Yeah, so --

12 THE COURT: I actually went through the elements what I
13 was trying --

14 MR. LAKE: Certainly.

15 THE COURT: -- to find is damages because you --

16 MR. LAKE: Yes.

17 THE COURT: -- as we all know, you got to have damages --

18 MR. LAKE: And here I think it's --

19 THE COURT: That's what I was looking for -- my notes.

20 MR. LAKE: Right, and here -- and here, Your Honor, I think
21 it's important to distinguish between the damages at the time which are
22 an element of the prima facie case and what they're suggesting now
23 which is a mid-suit payback which would go towards whether the claim
24 is mooted; in their words, nullified.

25 THE COURT: No, I get it. So if there's an individual plaintiff

1 here saying you know what, I thought I was covered by this, I needed
2 legal representation and you know what, because CCEA did not transmit
3 my dues, NEA did not give me legal representation that I required at the
4 time and I had to come out of pocket for a lawyer. That would --
5 absolutely would be a damage. Correct? Something --

6 MR. LAKE: Right.

7 THE COURT: So is there anything -- because honestly I tried
8 to look but I thought I just --

9 MR. LAKE: Yeah, and --

10 THE COURT: That's why I have damages here.

11 MR. LAKE: Right, and --

12 THE COURT: Is there other than I pay money and I did -- and
13 I didn't mean it facetiously. I -- you know, if someone wants to argue me
14 well, you know what, I could have put that money and bought, you know,
15 a really -- Netflix and made more money --

16 MR. LAKE: So --

17 THE COURT: I'm going to Netflix you -- Netflix and made
18 more money instead of sitting in that Bank of America at the cheapest
19 rate, something like that, you know, because you have to give me
20 genuine issues of material --

21 MR. LAKE: No --

22 THE COURT: -- fact. Do we have affidavits like that? I --

23 MR. LAKE: Well so yeah, the --

24 THE COURT: Other than averments of -- and I got the
25 misrepresentations because they thought they were members.

1 MR. LAKE: Right. No --

2 THE COURT: I mean it was -- I mean at least if I take it as
3 true, what they're saying is we thought we were members of NEA, NSEA
4 during that period.

5 MR. LAKE: In our countermotion I believe there's affidavits
6 from Diane --

7 THE COURT: In your countermotion --

8 MR. LAKE: Sorry, excuse me, the opposition to the
9 countermotion.

10 THE COURT: Okay, I have your opposition. Tell me where
11 and I'll look.

12 MR. LAKE: Well --

13 THE COURT: Because I'm --

14 MR. LAKE: -- now I'm going off memory so you have to
15 forgive me, but I --

16 THE COURT: Okay. Well I got -- I'm -- I got it.

17 MR. LAKE: I believe it would be Exhibit --

18 THE COURT: Jim Testerman [phonetic]?

19 MR. LAKE: No, no, no, after that.

20 THE COURT: I read his --

21 MR. LAKE: Exhibit 3 --

22 THE COURT: Okay. I got it. I got it.

23 MR. LAKE: -- or 4.

24 THE COURT: No, I -- this is important to me.

25 MR. LAKE: Okay.

1 THE COURT: Because like you said, it -- three is -- no that's
2 the enrollment form. We don't want that. I've seen that. Okay, I've got
3 one by Jason Wyckoff.

4 MR. LAKE: Jason Wyckoff, yes.

5 THE COURT: Right. I know he's one of them.

6 MR. LAKE: So among the things that --

7 THE COURT: Let me see what he says.

8 MR. LAKE: Yes.

9 THE COURT: Go ahead.

10 MR. LAKE: And among --

11 THE COURT: Now they -- these are just emails.

12 MR. LAKE: Well I think included is as a paragraph in his
13 actual declaration --

14 THE COURT: Okay, let me find -- what is that, 3C? I'll find it.
15 Here's Exhibit D. Let me --

16 MR. LAKE: And --

17 MR. D'ALBA: Mr. Wyckoff's declaration is Exhibit 3.

18 THE COURT: Okay. I'm in three, but there's like three parts
19 so let's find it. I'm in Exhibit 3.

20 MR. LAKE: All right, so Exhibit 3 --

21 THE COURT: Oh here it's the beginning. I got all the way --

22 MR. LAKE: It's the very beginning. Yes, Your Honor.

23 THE COURT: Thank you. I was to 3D, E. Okay. Only
24 signed a membership -- okay. Direct me to a paragraph to help me.

25 MR. LAKE: Sure.

1 THE COURT: After signing --
2 MR. LAKE: So I think paragraph 6 goes to --
3 THE COURT: I chose to sign --
4 MR. LAKE: -- goes to damages inasmuch as it shows that he
5 relied on the fraudulent statements on the part of CCEA --
6 THE COURT: No but that's an element, reliance, but
7 damages is a separate --
8 MR. LAKE: Well --
9 THE COURT: Reliance is absolutely --
10 MR. LAKE: Correct, but --
11 THE COURT: -- an element. I marked that here.
12 MR. LAKE: Right, but the damages would be the aggregate --
13 the full aggregate amount of NEA, NSEA and CCEA dues that were
14 deducted --
15 THE COURT: Do it again?
16 MR. LAKE: The full amount of NEA, NSEA and CCEA --
17 THE COURT: Where is his right to a deduction of CCEA
18 dues?
19 MR. LAKE: Well, he -- if he wouldn't have joined CCEA in the
20 first place but for the fact that he understood that doing so is how he was
21 going to be entitled to NSEA and NEA benefits, then he's certainly
22 entitled to --
23 THE COURT: So he's -- where does it say I would have never
24 joined any of this but for -- I was never going to join CCEA --
25 MR. LAKE: So that -- that's paragraph 7. I would not have --

1 THE COURT: I decided -- okay.
2 MR. LAKE: Yeah, I --
3 THE COURT: I'm sorry. Go ahead.
4 MR. LAKE: No, that's quite all right, Your Honor.
5 THE COURT: When I signed the form -- that by submitting I
6 would be joining -- well but he's saying not just CCEA, he thought he
7 was going to do all three. Is he saying I would have never just joined --
8 MR. LAKE: Yeah, well --
9 THE COURT: -- CCEA?
10 MR. LAKE: Yeah, I would not have --
11 THE COURT: That I would therefore --
12 MR. LAKE: -- signed the form. And the form is how he signed
13 up for all three organizations. So --
14 THE COURT: Okay, so what is his --
15 MR. LAKE: So --
16 THE COURT: So his damage is I paid the dues, he gets his
17 dues back. What are the other damages?
18 MR. LAKE: Yeah, he gets the aggregate amount of all the
19 damages that have been deducted from him following his signing of the
20 form which he would not have done but --
21 THE COURT: So what you're arguing for him -- he also gets
22 what he paid to CCEA.
23 MR. LAKE: Yeah, absolutely, and I think that there is a --
24 THE COURT: This is crazy.
25 MR. LAKE: -- in addition to -- so that is sufficient to establish

1 the element of damages --

2 THE COURT: I don't know, I'm listening.

3 MR. LAKE: Yeah.

4 THE COURT: So the only --

5 MR. LAKE: And so --

6 THE COURT: So --

7 MR. LAKE: -- then the question is -- we also are entitled to

8 punitive damages and --

9 THE COURT: No, you got to prove punitive --

10 MR. LAKE: Oh --

11 THE COURT: -- clear and convincing --

12 MR. LAKE: Oh --

13 THE COURT: Don't stand here and tell me you're entitled

14 right now. I --

15 MR. LAKE: That --

16 THE COURT: I take punitives --

17 MR. LAKE: Well --

18 THE COURT: -- so seriously --

19 MR. LAKE: Yeah. Your Honor, we are not --

20 THE COURT: You -- you're asserting them. You're saying --

21 MR. LAKE: Yeah.

22 THE COURT: -- I feel that you can meet -- is there a

23 summary judgment on punitives? Do you have punitives as --

24 MR. LAKE: No. Your Honor --

25 MR. DELIKANAKIS: No, there's a --

1 THE COURT: I'm sorry, I missed --
2 MR. LAKE: Yeah.
3 THE COURT: -- punitives somewhere
4 MR. DELIKANAKIS: No, there's a summary judgment on the
5 fraud claim.
6 THE COURT: Okay.
7 MR. DELIKANAKIS: So they can scream punitives all they
8 want, but before --
9 THE COURT: I don't want to scream.
10 MR. DELIKANAKIS: -- what's before the Court right now is --
11 THE COURT: Want to keep my voice down. I don't want to
12 scream but did I miss -- because honestly, guys --
13 MR. DELIKANAKIS: No, Your Honor.
14 THE COURT: -- if I miss things, I get upset because I'm trying
15 so hard -- okay, so that's --
16 MR. LAKE: No --
17 THE COURT: That can be a separate motion.
18 MR. LAKE: Right, I think that's precisely the point I take -- my
19 -- I'm not up here Honor -- you know, arguing to Your Honor --
20 THE COURT: Oh.
21 MR. LAKE: -- that right now you should sign an order saying
22 that we are entitled to punitive damages.
23 THE COURT: Okay.
24 MR. LAKE: What I am saying --
25 THE COURT: I took it that way and I -- you know, I take --

1 okay.

2 MR. LAKE: -- is that there -- we will finish discovery --

3 THE COURT: Damages.

4 MR. LAKE: -- and we will have a trial and after trial we will

5 have shown by clear and convincing evidence --

6 THE COURT: No, I have to determine before then whether

7 you get to the jury --

8 MR. LAKE: Oh, oh --

9 THE COURT: -- the way it works here --

10 MR. LAKE: Yeah, no --

11 THE COURT: -- but that's fine. I --

12 MR. LAKE: No --

13 THE COURT: I'm very aware of how to do punitives and --

14 MR. LAKE: Absolutely.

15 THE COURT: Right.

16 MR. LAKE: And when I -- and --

17 THE COURT: Okay, so --

18 MR. LAKE: -- you know, CCEA is free at any point to raise a

19 motion suggesting that we're not entitled to punitive damages. That's

20 not what they've done. In fact they said we assume that all of your

21 allegations of fraudulent statements and omissions are true for the

22 purposes of their motion. So this motion --

23 THE COURT: What they're saying is -- they're not saying

24 they're true, they're saying, Judge, if you want to assume they're true --

25 it's like a 12(b)(5) motion.

1 MR. LAKE: No, I agree.

2 THE COURT: If you want to assume all of these allegations
3 as a -- so I understand that. Okay, so let me -- let's just table punitive --
4 here's my question then you're saying, hey Judge, as far as Jason
5 Wyckoff, he's going to say that he wants his CCEA dues back.

6 MR. LAKE: In -- yes.

7 THE COURT: Right?

8 MR. LAKE: In addition to --

9 THE COURT: Well he's going to get his -- potentially get his
10 NEA. What he wants back is his CCEA --

11 MR. LAKE: And -- yeah, and I just want to be very clear that
12 what CCEA is proposing to do is essentially try and nullify a fraud claim
13 in the middle of a suit and none of the cases --

14 THE COURT: Nullify.

15 MR. LAKE: -- that they have provided suggest any sort of
16 basis for providing and mooted out a fraud claim by just saying okay,
17 you know, we'll give you back just the underlying compensatory
18 damages and in our briefing we cite a number of cases that say you
19 can't moot -- that's what they're talking about. They say nullify, but what
20 they're talking about is mooted with a payment. You can't moot a fraud
21 claim --

22 THE COURT: No, I didn't take it that way. I took -- but you
23 have to -- I didn't take it as moot. What I took it as what other damages
24 because yes, you have a right -- just because they're -- if -- you have a
25 right to have more damages if there's a genuine issue of material fact of

1 other damages and an issue. That's what I'm -- I understand that
2 completely.

3 MR. LAKE: Right. And --

4 THE COURT: That's what I'm trying to find out. Your answer
5 to me is if I read -- Mr. Wyckoff's going to come and testify and say I
6 wouldn't have joined any of this -- if it was only CCEA, I wouldn't have
7 signed this form so I have a right based on their misrepresentation to get
8 my CCEA dues back.

9 MR. LAKE: Right. And --

10 THE COURT: Okay. I get that any -- I mean I assume he's
11 going to say that.

12 MR. LAKE: And just I don't think we need to go through it
13 because it's the same basic structure, but the next --

14 THE COURT: Have you taken these people's depositions?

15 MR. DELIKANAKIS: No.

16 MR. LAKE: No.

17 THE COURT: No. Okay. I was going to say are they all
18 going to say the -- you're saying to me every single affidavit --

19 MR. LAKE: No. I'm just saying to you that there's also a
20 declaration from Diane Wyckoff that I wanted to direct the Court's
21 attention to --

22 THE COURT: Okay, what --

23 MR. LAKE: -- and I don't think that we need to go through it
24 because it's the same basic structure, so I'm just providing that to -- for
25 Your Honor's information --

1 THE COURT: And she's also a teacher.
2 MR. LAKE: Yes, exactly, and she's the next exhibit.
3 THE COURT: Okay. She's 4?
4 MR. LAKE: I believe so.
5 THE COURT: Must be.
6 MR. LAKE: Yes, 4.
7 THE COURT: No -- is Diane Di Archangel the same as Diane
8 Wyckoff?
9 MR. LAKE: There --
10 THE COURT: No.
11 MR. ALEXANDER: Yes. You meant to say Diane --
12 MR. LAKE: Oh, did I say Diane Wyckoff?
13 THE COURT: Maybe I --
14 MR. LAKE: Because that -- then I made up a person. So, you
15 know --
16 THE COURT: That's okay. Hey, this is not easy.
17 MR. LAKE: Right.
18 THE COURT: No, I didn't think you were making up a person.
19 MR. LAKE: No, no, so --
20 THE COURT: I thought maybe they got married. What do I
21 know?
22 MR. LAKE: Yeah, well, not to --
23 THE COURT: Okay, so you --
24 MR. LAKE: -- not to my knowledge, Your Honor. But I -- you
25 know, I think just --

1 THE COURT: Let me find hers.

2 MR. LAKE: At the end of the day and I --

3 THE COURT: Okay.

4 MR. LAKE: -- I think I can close with this. You know, the --
5 they're attempting to nullify a fraud claim, even though they assume,
6 again right in their principal motion, that for the purposes of this
7 countermotion, the allegations are assumed true. I'm not saying they
8 are true right now, I'm just saying for the purpose of their countermotion
9 and --

10 THE COURT: Yeah, my -- I got that, counsel. That's why I
11 put here --

12 MR. LAKE: Okay.

13 THE COURT: -- damages.

14 MR. LAKE: Right.

15 THE COURT: I -- because if -- I know it sounds like --

16 MR. LAKE: Well --

17 THE COURT: -- tort law, but I mean everybody seems to get
18 elements and no one seems to sometimes understand it still has to
19 proximately cause damages whether it's -- and I'm not being facetious,
20 believe me.

21 MR. LAKE: No, no, I fully understand, Your Honor.

22 THE COURT: This comes in front of me and I go that's fine.
23 And I took it as saying even if you think these are -- I don't think -- I think
24 there is reliance I think -- I mean I -- that's why --

25 MR. LAKE: And if --

1 THE COURT: -- I tell you my biggest notes was damages, I
2 need help on whether there's damages and you just gave me Mr.
3 Wyckoff, you take his depo or if you read this, in your opinion, he's
4 saying hey I wouldn't have signed up for any of this so I want my CCEA
5 back.

6 MR. LAKE: Right. And I don't understand CCEA and its
7 counter-motion in this respect to be challenging that. What they're
8 saying is well now that there's this otherwise valid claim, if we give back
9 a certain amount of that money, we, quote unquote, nullify it or moot it
10 and what I'm --

11 THE COURT: No, I --

12 MR. LAKE: Yeah.

13 THE COURT: -- I totally agree that is not how I can look at it.

14 MR. LAKE: Okay. That --

15 THE COURT: I would not look at it that way. That's why my
16 big note says damages.

17 MR. LAKE: Thank --

18 THE COURT: Just by doing part of it that's why I asked. No, I
19 totally understand what you're saying.

20 MR. LAKE: Thank you.

21 THE COURT: I follow you --

22 MR. DELIKANAKIS: Right.

23 THE COURT: -- and I agree with you on that.

24 What do we do on damages?

25 MR. DELIKANAKIS: I think he's told you what the damages

1 are because the whole purpose -- you know, this idea -- well first of all
2 let me just address this ridiculous argument that --

3 THE COURT: Oh goodness.

4 MR. DELIKANAKIS: I'm sorry but, you know, it really bothers
5 me --

6 THE COURT: No. No. No, I -- I'm trying very hard to --

7 MR. DELIKANAKIS: -- that opposing counsel is sitting here
8 saying oh there's a grievous admission, a really serious admission here
9 in a sentence that reads even taking the teachers party's allegations of
10 fraud as true for purposes of this countermotion, and he forgot to read
11 the rest of it, paren, which allegations the CCEA parties vehemently
12 deny. Okay, it's really just kind of assuming arguendo so let's just put
13 that to bed.

14 THE COURT: That's -- I took it as that.

15 MR. DELIKANAKIS: I think the Court grasped it, but I just had
16 to really --

17 THE COURT: Okay, okay. Put it on the record.

18 MR. DELIKANAKIS: -- put the nail in that coffin.

19 THE COURT: Okay, I took it as that.

20 MR. DELIKANAKIS: Now, the whole purpose of summary
21 judgment is as we get to the close of discovery, everyone has the
22 opportunity to put in genuine issues of material fact as to the each of the
23 elements to defeat a motion for summary judgment --

24 THE COURT: That's what *Wood versus Safeway* says.

25 MR. DELIKANAKIS: That's what *Wood versus Safeway* says

1 and what you're going to --

2 THE COURT: I get that.

3 MR. DELIKANAKIS: -- see in the opposition here is evidence
4 that would raise a genuine issue of material fact as to damages and their
5 right to punitive damages and that's why we briefed the punitive
6 damages in our brief, pointing out --

7 THE COURT: Okay.

8 MR. DELIKANAKIS: -- the deficiency. So summary judgment
9 as to the fraud claim is absolutely appropriate at this stage and if they
10 want to somehow argue punitive damages later for any of their
11 remaining claims, which I don't think there are going to be any remaining
12 claims left, that's their prerogative --

13 THE COURT: But how do I address Mr. Wyckoff's affidavit?

14 MR. DELIKANAKIS: He says he relied on damages so he's
15 got the reliance element, right? For purposes of --

16 THE COURT: No, no, he said he relied on the representation
17 that when he paid his dues --

18 MR. DELIKANAKIS: He relied on the --

19 THE COURT: -- he was going to be in all three organizations
20 which I --

21 MR. DELIKANAKIS: Right.

22 THE COURT: -- I would see where he would do that under
23 the membership form. I'm trying to decide where he says -- I'm trying to
24 look. That's why I asked if there was any deposition testimony. Let's
25 see. I submit I would be joining not just CCEA -- what I was looking for

1 is saying I would have never joined just CCEA if NSEA and NEA were
2 part of it. That's what I was looking for.

3 MR. DELIKANAKIS: I don't think you're going to see it --

4 THE COURT: Okay, well let -- give me --

5 MR. DELIKANAKIS: -- but I would read carefully --

6 THE COURT: Okay, I -- I'll read carefully, okay? I'll read as
7 carefully as the Judge can read. New teacher -- certificate of insurance
8 -- signed a membership -- a member -- I would not -- see here's the hard
9 part for me. What he said is I would not have signed the form nor
10 authorized the payroll deduction but for CCEA's representing in its
11 material that by submitting the form I would be joining not just CCEA but
12 NSEA and NEA as well. So I guess the reverse of that you would have
13 to infer that he -- if it was just CCEA, he wouldn't have done it. I'm just --
14 that the dues -- I'm concerned -- I don't know. I mean the only way I can
15 do it is infer what he's trying -- infer that what he's saying if it was just
16 CCEA, but can I ask what -- I guess I should know the breakdown, right?
17 How many -- what -- how much were CCEA dues for each of the
18 members during that two --

19 MR. DELIKANAKIS: Right. You know --

20 THE COURT: I mean we might even be below the threshold
21 of what -- if it's --

22 MR. DELIKANAKIS: Right, and --

23 THE COURT: -- of this jurisdiction I'm -- to be very honest.

24 MR. DELIKANAKIS: To be very honest, I doubt we'd get into
25 justice court with these amounts because --

1 THE COURT: That's why I have to look at the jurisdiction if I
2 (indiscernible) but --

3 MR. DELIKANAKIS: The -- and we've already put in our brief
4 we've kind of broken down the amounts for the four teachers, the --
5 these are four teachers that have claims here and --

6 THE COURT: Well --

7 MR. DELIKANAKIS: -- we've already agreed -- now, you
8 know, I understand the phraseology we're trying to nullify a claim in the
9 middle of a lawsuit. Well, the whole point of a summary judgment
10 motion, at least I was taught, was you gather up the facts, you tell
11 people give me facts that prove me that there's a genuine issue of
12 material fact, and the facts are that we presented are the damages
13 which we enumerated and which they agreed to. It's what they paid for
14 both CCEA, NSEA and NEA, and the CCEA party has agreed in their
15 brief that they would return it to them, so I don't know what the
16 argument's about.

17 THE COURT: Well, the argument now is it's -- you're going to
18 return the NSEA and the NEA part. They're saying oh wait a minute --

19 MR. DELIKANAKIS: No, no, no. No, Your Honor, I'm sorry to
20 -- I'm --

21 THE COURT: You're going to do the CCEA also?

22 MR. DELIKANAKIS: For those four teachers, yes.

23 THE COURT: Fine.

24 MR. DELIKANAKIS: That's --

25 THE COURT: That's fine. If --

1 MR. DELIKANAKIS: That's why I'm wondering what are we
2 arguing about?

3 THE COURT: I don't know. I'm just listening to their
4 damages. I want to make sure there's not damages out there that I
5 should --

6 MR. DELIKANAKIS: Yeah. No, no --

7 THE COURT: -- should not -- I'm just --

8 MR. DELIKANAKIS: We're going to make them whole. I
9 mean whatever the complaint is --

10 THE COURT: Okay. If --

11 MR. DELIKANAKIS: -- the fraud claim, we're going to pay
12 them --

13 THE COURT: Okay. Because --

14 MR. DELIKANAKIS: -- the dues for all three --

15 THE COURT: Okay.

16 MR. DELIKANAKIS: -- for those four teachers, plus if there's
17 any interest that accrued on it.

18 THE COURT: You're going to pay that.

19 MR. DELIKANAKIS: Yes, Your Honor.

20 THE COURT: Yeah, because I mean --

21 MR. DELIKANAKIS: Yes. Absolutely.

22 THE COURT: Okay. Is there any other damages that you
23 feel the four teachers are --

24 MR. LAKE: Yeah, so just -- Your Honor, just two quick points
25 I think --

1 THE COURT: Yeah.

2 MR. LAKE: Functionally it seems like what my colleague is
3 suggesting is something akin to an offer of judgment, but actually it
4 hasn't been provided in any sort of Rule 68 form --

5 THE COURT: No, I would make it in the order.

6 MR. LAKE: Yeah.

7 THE COURT: I would make it in the order if I was granting
8 their summary judgment that these -- this is what has to be paid for each
9 of the four. I would make it in an order.

10 MR. DELIKANAKIS: The sums are --

11 MR. LAKE: And then --

12 MR. DELIKANAKIS: -- are listed --

13 THE COURT: Okay.

14 MR. DELIKANAKIS: I'm sorry, the sums are listed on page 17
15 of our brief, so you can have the exact sums.

16 THE COURT: Okay.

17 MR. LAKE: And just the last point --

18 THE COURT: Okay.

19 MR. LAKE: -- which I'm just going to --

20 THE COURT: No --

21 MR. LAKE: -- reiterate is that there is a difference and the
22 case law recognizes this difference between the -- a question of whether
23 the damage element was met contemporaneously and this after the fact
24 trying to moot out a claim by paying --

25 THE COURT: No -- okay.

1 MR. LAKE: Well, and --
2 THE COURT: Do it again. I'm sorry.
3 MR. LAKE: No, that's --
4 THE COURT: I'm struggling with the mooting because when
5 you assert elements of a cause of action one of the things is damages, if
6 the damages you're asserting they're going to pay as part of the
7 summary judgment --
8 MR. LAKE: Yeah.
9 THE COURT: -- then you're not nullifying anything --
10 MR. LAKE: Right.
11 THE COURT: -- you're paying the damages.
12 MR. LAKE: Right. And Your Honor, I think the primary --
13 THE COURT: Okay.
14 MR. LAKE: -- distinction and why this matters to courts is that
15 CCEA was not going to and nothing suggests that they were going to
16 pay back including CCEA dues but for the fact that we brought this suit.
17 So --
18 THE COURT: But you still have to proximately cause
19 damages. Those would be --
20 MR. LAKE: Right.
21 THE COURT: That would be speculation saying okay, they
22 really weren't going to do it so you know what? Even though they're
23 doing it now, I have damages that they really weren't going to do it.
24 That's called speculation, right, under our damages?
25 MR. LAKE: Well, Your Honor, I respectfully disagree, but I

1 sort of -- I understand where the Court is heading with this but I --

2 THE COURT: I want to make them whole.

3 MR. LAKE: Yeah. I just -- nothing that CCEA has said and I
4 -- nothing that I'm aware of allows this type of after-suit payment to moot
5 out a fraud claim or other tort claim, particularly where there's --

6 THE COURT: Yes, but -- okay.

7 MR. LAKE: -- punitive damages available and again I just
8 refer Your Honor to the cases we cited with respect to punitive damages
9 and again, you know, CCEA is not, for the purposes of this
10 countermotion, moving on punitive damages. If you read their
11 countermotion, nothing mentions it. It's only in their reply where they --

12 THE COURT: Okay. But here's the deal. If I grant these
13 motions, then what's left you can see what you have for punitive
14 damages. That's -- I still have to address it as it comes is how I look at
15 it.

16 Okay. Then I'm -- the moot thing is interesting because
17 there's elements that have to be met and if I give you the judgment,
18 you're going to pay the damages they've asserted which that's what
19 summary judgment is.

20 MR. DELIKANAKIS: Correct.

21 THE COURT: Right?

22 MR. DELIKANAKIS: That's exactly --

23 THE COURT: If --

24 MR. DELIKANAKIS: -- what summary judgment is.

25 THE COURT: I know under 56.

1 MR. DELIKANAKIS: And the damages again are enumerated
2 on page 17 of our brief --
3 THE COURT: Okay. Can I look just --
4 MR. DELIKANAKIS: Yeah.
5 THE COURT: Page 17 of your --
6 MR. DELIKANAKIS: Reply brief. The reply --
7 THE COURT: Your reply brief, okay.
8 MR. DELIKANAKIS: -- reply brief page 17 --
9 THE COURT: Okay. Hold on. Let me --
10 MR. DELIKANAKIS: -- lines 18 to 24 --
11 THE COURT: Okay, just let me make sure I'm comfortable --
12 17 --
13 MR. DELIKANAKIS: I understand.
14 THE COURT: Line 18 -- okay. Let me look at it and make
15 sure this is what I -- would include the -- oh. Oh I see, that's where they
16 get the nullify language.
17 MR. DELIKANAKIS: I hope they steal from the best.
18 THE COURT: Well I -- it just -- okay. Okay. All right. Okay.
19 MR. DELIKANAKIS: Thank you, Your Honor.
20 THE COURT: I'm -- you're --
21 MR. DELIKANAKIS: Thank you.
22 THE COURT: Okay, I am going to grant on count seven,
23 fraud, based on the damages as they are outlined four -- is there four
24 individual plaintiffs I want to make -- four?
25 MR. DELIKANAKIS: Yes, Your Honor.

1 MR. ALEXANDER: Yes.

2 THE COURT: Okay, I didn't -- I don't want to misstate
3 something. Pursuant to the damages as outlined on page 17 of your --
4 of CCEA's reply brief, as far as count seven.

5 What else -- was there something else on this one? I'm sorry,
6 I'm -- I don't want to lose track -- oh my goodness.

7 THE CLERK: Sorry, Your Honor, CCEA's what?

8 THE COURT: Reply.

9 THE CLERK: Reply.

10 THE COURT: CCEA's reply brief. Page 17. I just want that
11 reference so -- okay, so we did conversion. Let me get -- make sure I
12 did everything here. Is there anything left on that on your --

13 MR. DELIKANAKIS: I believe you've --

14 MR. ALEXANDER: Your --

15 MR. DELIKANAKIS: Go ahead.

16 THE COURT: Oh, two, three. Yes, no, no.

17 MR. ALEXANDER: There -- well there are three remaining
18 claims --

19 THE COURT: Yes.

20 MR. ALEXANDER: -- I believe. One of them is --

21 THE COURT: I've got it here. Two and three --

22 MR. ALEXANDER: Two of them -- two and three, the breach
23 of the NSEA bylaws and breach of the NEA bylaws. And then the
24 separate --

25 THE COURT: Count nine.

1 MR. ALEXANDER: -- count nine by the individual teachers as
2 to improper mid-year increase in dues.

3 THE COURT: Okay, I'm -- I have to admit I was a little
4 confused on that one. I don't even know what that one is so -- I did have
5 notes I wasn't sure what that was to be honest. Oh here I have it. I put
6 on count nine this is a strange cause of action I'm not sure I -- I
7 apologize. Okay, I put it as probably most likely should be breach of the
8 membership form, but I don't know if that's true or not. Okay. So oh
9 goodness, it's lunch hour. Well, do you want to take a break and come
10 back at 1:30? I want to finish this today. I know people -- or what do
11 you want to do? I'm -- I get low blood sugar and you don't want the
12 Judge --

13 MR. DELIKANAKIS: It's up to your staff as well.

14 THE COURT: Yeah, it's not fair to them.

15 MR. DELIKANAKIS: I mean I don't want to take their lunch.

16 THE CLERK: I'm fine with trying to get through.

17 THE COURT: Are you?

18 THE CLERK: I am but --

19 THE COURT: Okay. Do you want to keep going? I'm --

20 MR. LAKE: Then great.

21 MR. DELIKANAKIS: I'm ready to keep going if your team is --

22 THE COURT: Yeah, I --

23 THE CLERK: Just use the restroom?

24 MR. DELIKANAKIS: Okay.

25 THE COURT: Okay.

1 MR. DELIKANAKIS: Thank you.

2 THE COURT: One break for the restroom. Okay.

3 MR. DELIKANAKIS: Very good.

4 THE COURT: And just so I -- take -- we're off the -- so what

5 am I left -- I don't want to lose track of where we are.

6 MR. DELIKANAKIS: So -- go ahead.

7 THE COURT: I'm still working on the countermotion for

8 summary judgment by NSEA on these different causes of action,

9 correct?

10 MR. DELIKANAKIS: I think we finished --

11 THE COURT: No, we did four, count four. We did --

12 MR. DELIKANAKIS: Conversion, unjust enrichment, fraud.

13 THE COURT: What -- the count nine, the unauthorized

14 mid-year one.

15 MR. DELIKANAKIS: Oh, five, six, seven which is --

16 MR. LAKE: Don't we have both bylaw -- the NSEA and NEA

17 bylaws --

18 THE COURT: Yes, that's two and three if I --

19 MR. LAKE: Yeah --

20 [Recording stopped at 11:57 a.m.]

21 [Proceedings resumed at 12:13 p.m.]

22 THE COURT: Okay, so now we left off on CCEA's

23 countermotion for summary judgment on count nine? Or where did you

24 want to go, nine?

25 MR. DELIKANAKIS: Is that the bylaws?

1 MR. ALEXANDER: No.
2 THE COURT: I just wanted to look at --
3 MR. D'ALBA: No, it's --
4 MR. ALEXANDER: That's the mid-year dues increase.
5 MR. DELIKANAKIS: That's the dues --
6 MR. D'ALBA: It's the dues.
7 MR. DELIKANAKIS: Why don't you do that? Why don't --
8 THE COURT: It's called --
9 MR. DELIKANAKIS: Let's do that.
10 MR. D'ALBA: Dues adjustment.
11 MR. DELIKANAKIS: It's the dues adjustment. It's the --
12 THE COURT: Yes, it's called --
13 MR. DELIKANAKIS: -- it's the unusual --
14 THE COURT: And I didn't mean to --
15 MR. DELIKANAKIS: Yeah.
16 THE COURT: It's called an unauthorized mid-year increase in
17 CCEA dues.
18 MR. DELIKANAKIS: My colleague, Joel --
19 THE COURT: I don't know if that's the name of it but that's
20 what I -- I got it here.
21 MR. DELIKANAKIS: With the Court's permission, my
22 colleague, Joel --
23 THE COURT: It's called unauthorized mid-year increase in
24 CCEA dues.
25 Okay. Thank you. Sorry, I'm just --

1 MR. D'ALBA: Thank you.

2 THE COURT: -- looking at the complaint. This -- to cause --
3 okay, so this is one strictly by the individual plaintiffs as I read it.
4 Correct, counsel?

5 MR. LAKE: [Nods head yes]

6 THE COURT: Okay, I just wanted to make sure. And they're
7 saying CCEA increased the dues mid-year of the 2017/2018 school
8 year. I'm reading -- okay. Are the allegations I want to make sure -- you
9 guys don't make it easy. Okay. '18 year, okay. So unauthorized and
10 this is by the individual plaintiffs. Okay. I'm ready. Only authorized --
11 okay, so from August -- so that would be from September 2017 to
12 August 31st -- is now -- okay, did -- can -- did they raise the dues from
13 234.84 to 510 for part of the school year? Not school year -- yeah,
14 school year.

15 MR. D'ALBA: Only after the disaffiliation and in connection
16 with the disaffiliation --

17 THE COURT: Okay. Okay, so help me -- okay. Because --
18 all right. Okay, I'm ready. I read the -- read count nine.

19 MR. D'ALBA: The central feature of this particular claim, Your
20 Honor, is the bylaw provision that says the association shall be
21 governed by its bylaws and policies and actions taken by the
22 Association Representative Council.

23 THE COURT: And these are the CCEA bylaws?

24 MR. D'ALBA: Yes.

25 THE COURT: Okay.

1 MR. D'ALBA: And I'm referring to article 1, section 3.

2 THE COURT: Okay.

3 MR. D'ALBA: And also article 2, sections 4A and B. And the
4 case law is very clear with respect to the issue of bylaws being an
5 internal union matter that courts should not interfere with. First there's a
6 well-established principle that there should be no one -- no judicial
7 interference with internal affairs, rules and bylaws of a voluntary
8 association such as this union.

9 Some cases we cited in the brief, starting with a Rhode Island
10 Supreme Court case called *Hebert v. Ventetuolo*. Then there's a case
11 from Nevada, Nevada Supreme Court case called *Hickman v. Kline*, in
12 which the court in the strongest possible way stated: The boundaries of
13 judicial power over labor unions ought to be plainly stated. When the
14 management in control of a union refuses to obey the laws of the union
15 requiring that elections be held, or where it arbitrarily expels members
16 from the union roster, or it dissipates union's funds, and where redress
17 for any other irregularities cannot be obtained through constituted local
18 and international officials, court should intervene.

19 The language of these decisions, this one particular *Hickman*
20 and others which I've cited in the brief, clearly indicate that internal union
21 matters are to be outside the presence of a court review except for
22 totally arbitrary and capricious matters. In this case, the membership
23 dues provisions in the bylaws controlled the operations of this dues
24 adjustment or alteration which occurred on the day of the disaffiliation
25 vote.

1 First, the membership dues in section 4A of article 2 may be --
2 shall be increased or decreased annually based upon a percentage of a
3 salary increase. That's one way in which dues can be changed.

4 THE COURT: All right.

5 MR. D'ALBA: The second and most important to this case is
6 section 4B. Dues for members of the association may be altered -- and
7 the key word is altered; could be increased or decreased -- by the
8 Association Representative Council. And in this case, the union,
9 exercising its democratic institutions, took three separate votes with
10 respect to this question of a dues increase. And most important to the
11 dues alteration section is that there's no time limit. In other words, dues
12 don't have to be increased at a particular time.

13 Their argument, counsel's argument in the papers presented
14 to you, is that the membership enrollment form states annual dues --

15 THE COURT: Right. I have down here they -- it says the
16 membership does not -- the membership enrollment form does not allow
17 for a dues increase mid-year.

18 MR. D'ALBA: What it -- what the enrollment form says is: I,
19 this person who signs this, with full knowledge of the above, agree to
20 pay cash to deduct from my salary pay to CCEA in accordance with the
21 agreed-upon payroll deduction procedure professional dues as
22 established annually for this membership year and each year thereafter.

23 There's nothing in this statement that has a dollar limit as to
24 how dues can be changed. And critical to our case is that the specific
25 language of the bylaws, as a contract between the members and the

1 association, that's well-established Nevada law, well-established federal
2 labor law, those bylaws are specific. And the general language stated in
3 the membership form is trumped by the specific language in the bylaws.

4 And the primary case that we're relying upon with respect to
5 that is a Nevada case called *Shelton v. Shelton* at 119 Nevada 492,
6 particularly at page 497, that indicates -- states a specific provision will
7 qualify the meaning of a general provision.

8 So what happened here? In a meeting of the executive
9 board --

10 THE COURT: Executive board.

11 MR. D'ALBA: -- of this union, a motion was presented, as
12 stated in this board [indicating], to recommend to the ARC, the
13 Association Representative Council, that the general membership and
14 members that upon disaffiliation, an independent CCEA set its dues at
15 \$510 a month -- a year.

16 Now that's \$300 less than what they were paying as
17 aggregate dues to CCEA, NSEA and NEA. So the members are really
18 getting a dues reduction.

19 And what's important in this context is that this motion was
20 then approved on April 14 and then that motion was then sent to the
21 Association Representative Council. And the Association
22 Representative Council, under the bylaws, as part of its authority, has
23 the right to set dues and there's no time limit as to when the Association
24 Representative Council may change the dues. And I'm referring to
25 article 3, section 9(a)(2), the Association Representative Council shall,

1 among its duties, establish dues.

2 So what happened next was a motion that went to the
3 Association Representative Council, and it's on this board, that says the
4 executive board -- this is prior to the executive board meeting on April
5 14th. The executive board adopt the following language to be voted on.

6 THE COURT: By -- okay.

7 MR. D'ALBA: By a ballot by the general members. Will CCEA
8 disaffiliate immediately, will disaffiliate -- will CCEA disaffiliate CCEA and
9 become an independent union, CCEA dues will be \$510 a month [sic].

10 This was voted upon and approved by the executive board.

11 And then the same motion went to the Association
12 Representative Council on April 24. The motion said authorize CCEA to
13 immediately disaffiliate from NSEA and NSEA [sic] in order to become
14 an independent union. That's Exhibit 17.

15 And then there was a motion that the dues would upon
16 disaffiliation be changed to \$510 a month [sic].

17 The ballot question that was voted upon by the members, this
18 is the third act of democratic governance that occurred within this
19 democratic union. This is the ballot question. Was absolutely clear as
20 to what the members were doing -- being asked to do. Will CCEA
21 disaffiliate effective immediately? This is on April 25th. If yes --

22 THE COURT: I got that date, 2018. Believe me I got April
23 25th, 2018.

24 MR. D'ALBA: If yes, CCEA will disaffiliate from NSEA and
25 become an independent union. CCEA dues will be \$510 a month --

1 THE COURT: Okay, per year.

2 MR. D'ALBA: -- a year.

3 This became then part of the new dues structure. Their claim
4 is that this only applied to dues going forward at the new fiscal year --

5 THE COURT: Right.

6 MR. D'ALBA: -- beginning in September --

7 THE COURT: I put here there was a question on annually.

8 MR. D'ALBA: -- of 2018. The word annually is subject to
9 interpretation by the organization itself. That's an internal union matter.
10 There's no arbitrariness about this. This was a vote by the members
11 who attended a duly-authorized meeting with appropriate notice, as
12 stated in Mr. Vellardita's affidavit, and therefore there's nothing arbitrary
13 about what they did.

14 They had a right to say the dues will be altered at this time,
15 and the bylaws don't say anything about when dues may be altered
16 except for the one provision that says they may be altered in connection
17 -- that's the provision that says they may be altered in connection with a
18 wage increase. But this didn't occur in connection with a wage increase,
19 it occurred at another time during the year.

20 And then in terms of the budget modification question, what
21 they're basically saying is they passed a budget on April 24th and that
22 budget showed a dues adjustment for the next fiscal year. But Mr.
23 Vellardita's affidavit, which is unrebutted, says in paragraph 13 on
24 Exhibit 23, the members voted overwhelmingly to disaffiliate from NSEA,
25 NEA and to reduce their dues payments immediately. There was a

1 modification the budget after the new dues rate went into effect to reflect
2 in real time the change in revenue.

3 They had a right as an organization to make these decisions
4 and the court decisions with respect to union internal governance
5 basically say, and couldn't be clearer, unions have a right to be free from
6 judicial interference with respect to their internal affairs, how their bylaws
7 and rules and -- of a voluntary association are to be judged.

8 And there are -- there is a statute in Nevada which basically
9 states, and is cited in our papers, that the members themselves are
10 subject to the rules and bylaws of the organization and these rules and
11 bylaws are interpreted by the organization. That statute is cited in the
12 papers I've given you. It's NRS 81.030 basically states: Any person or
13 number of persons may become members subject to the terms and
14 conditions of membership and subject to such rules and regulations as
15 to their contracts, rights and liabilities between the member and the
16 corporation as those rights and liabilities are prescribed in the bylaws.

17 So the union, CCEA, has a right to make its own internal
18 rules. It's bylaws were not violated in any way. There's no provision
19 that limits the amount of money that can be changed in dues. And in
20 this situation, the total aggregate dues for members went down by 40
21 percent and there was nothing irregular about the manner in which the
22 union --

23 THE COURT: And the standard I would review it is arbitrary
24 and capricious, correct?

25 MR. D'ALBA: Yes. Well --

1 THE COURT: That's what -- under that one -- under the case
2 -- I wrote it down here. If I did feel like it was something to be reviewed.
3 What's the case? I can't read my writing. I --

4 MR. D'ALBA: The case that I referred to is *Hickman v. Kline*.

5 THE COURT: *Hickman*. Yes. There was another one I wrote
6 down too. I apologize. I have so many cases --

7 MR. D'ALBA: The other case I pointed to you was *Hebert v. --*
8 *Hebert*, the Rhode Island case --

9 THE COURT: No, that was -- was there another one? It
10 doesn't matter. I'll figure out my notes. Okay. I just wanted to make
11 sure you agree that the -- okay.

12 MR. D'ALBA: Basically as I read the case law, it's an arbitrary
13 and capricious standard and that's not met here.

14 With respect to *Hickman*, the precise language in the --

15 THE COURT: Okay.

16 MR. D'ALBA: -- in the decision is: But the courts cannot
17 undertake to run labor unions in detail or to interpret their laws on every
18 point of internal controversy. If the judicial power were exercised in this
19 scope, it would have unfortunate consequences upon the independence
20 and the vitality of labor unions. And I would add upon the way in which
21 unions run their democratic institutions.

22 Experience and responsible self-government is essential to
23 the success of union labor in protecting its economic welfare. This in
24 turn depends upon its independence and the courts should intervene
25 only in cases of grave necessity. This doesn't even come close to that,

1 Your Honor.

2 In the earlier part of that decision, the court said: Where the
3 management or control of the union refuses to obey the laws of the
4 union requiring elections to be held -- elections were held here -- or
5 where it arbitrarily expels members from the union roster in violation of
6 union law, or where it dissipates union funds without accounting, and
7 where redress for any of these irregularities cannot be obtained through
8 constitution of [sic] local or international officials, the court will intervene
9 to grant relief.

10 The relief here inside the union was this vote. Members who
11 did not want to agree with a dues change had a right to vote. That was
12 their redress. And if they wanted to go any further, they could have
13 appealed to the ARC, the Association Representative Council. That was
14 not done here.

15 THE COURT: Okay. Thank you.

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

17 THE COURT: Thank you. All right. Count nine.

18 MR. LAKE: Your Honor, I think we can start on points of
19 agreement. Mr. D'Alba mentioned that and cited case law to the effect
20 that unions get deference to their own interpretations of the bylaws. We
21 absolutely agree and --

22 THE COURT: Right.

23 MR. LAKE: -- our position is consistent both here and on the
24 NSEA and NEA bylaws claims that you're about to hear. Just like CCEA
25 can get deference on its interpretation of its bylaws, NSEA and NEA get

1 deference with respect to its bylaws.

2 Similarly, Mr. D'Alba mentioned that members are subject to
3 their own bylaws, citing the Nevada statute, saying -- again, he just cited
4 to the briefing, but he's right that there's briefing and --

5 THE COURT: Right.

6 MR. LAKE: -- that the statute provides that as a matter of
7 Nevada statutory law, members of nonprofit organizations are subject to
8 the bylaws of those organizations. Same, you know, what's good for the
9 goose is good for the gander.

10 Now, the problem for CCEA with both of those arguments is it
11 fundamentally misses the point of the claim. The point of the claim is
12 that the membership enrollment form acts as a limitation. So I will walk
13 through --

14 THE COURT: That's what I was trying to -- honestly I --

15 MR. LAKE: Well, Your Honor had --

16 THE COURT: Membership -- just to begin, I put down here
17 membership enrollment for does what? So I --

18 MR. LAKE: Right. And you had -- Your Honor had averred to
19 that at the outset of this and that's --

20 THE COURT: I just tried to read your -- okay.

21 MR. LAKE: Right, absolutely correct that the principal basis of
22 our claim in this regard is the language by which individuals on the
23 membership enrollment form agreed to join the three unions and agreed
24 to pay dues and -- I guess let me just step back briefly because, you
25 know, individual teachers who joined CCEA, NSEA and NEA were

1 facing just an ordinary consumer choice like any number that we go
2 through life dealing with.

3 So, you know, Mr. D'Alba and I were talking before argument
4 about iPhones. If I go and buy an iPhone, I know the fixed price of that
5 in advance. And it may well be that I can choose to pay the fixed price
6 up front or that I can choose to pay the fixed price as installments over
7 time. But I know up front what those installment payments are going to
8 be and Apple can't -- if I choose to buy an iPhone and I start -- I choose
9 an installment plan and I pay six installments, Apple can't in the middle
10 of my payment for it double the price. They can't, you know, increase
11 the price tenfold --

12 THE COURT: I guess that would depend on your contract
13 when you bought the Apple phone and your installment contract if you
14 signed one or what the terms and conditions were.

15 MR. LAKE: Exactly, Your Honor, and it's --

16 THE COURT: Right, I --

17 MR. LAKE: -- no different here because the language in the
18 membership form provide the terms --

19 THE COURT: Okay, so that trumps anything in the bylaws?

20 MR. LAKE: Certainly --

21 THE COURT: If they're in conflict --

22 MR. LAKE: Well --

23 THE COURT: -- because my notes here --

24 MR. LAKE: Yeah. So --

25 THE COURT: -- that was my first question.

1 MR. LAKE: Yeah, so Your Honor, in fact I think that, you
2 know, Mr. D'Alba said something very interesting. He said there's no
3 dollar limit in the form, which I -- you know, I -- in our briefing we
4 included an illustration that imagine that the enrollment form said in no
5 event will CCEA dues be more than \$300. It's hard to imagine how that
6 couldn't trump and how it would be an unlawful action for CCEA to raise
7 its dues to \$500 even if as a matter of bylaw authority it could. So if
8 there -- so I'm just using this by way of an example.

9 THE COURT: No, I know.

10 MR. LAKE: Yeah.

11 THE COURT: I'm just trying to follow. I'm --

12 MR. LAKE: Right. The --

13 THE COURT: I don't mean to make a face, I'm just trying to
14 make sure I follow you.

15 MR. LAKE: Yeah, absolutely, and the basic point is clear and
16 unambiguous limitations in the form are the terms by which individuals
17 are joining and agreeing to pay dues --

18 THE COURT: And what if there's a conflict with what goes
19 according to procedures in the bylaws, what happens then?

20 MR. LAKE: Well if there's a conflict with clear and
21 unambiguous language, that would be exactly like --

22 THE COURT: No, I didn't say that because there could be
23 clear and unambiguous language in the bylaws too.

24 MR. LAKE: No, no --

25 THE COURT: I'm not saying a contract. What I'm saying is

1 let's say, which basically what's happening here, we have -- what you
2 say here's what they signed in the -- I don't want to say it wrong,
3 membership form. I'm calling it membership form is that -- I think that's
4 right, right?

5 MR. LAKE: That's fine. Yeah.

6 THE COURT: Okay. And their bylaws which they have to
7 agree to, to join is in conflict on how they can do certain procedures,
8 what happens then?

9 MR. LAKE: Well --

10 THE COURT: This -- the membership form this -- this is the
11 only contract then that would trump whatever's done in the bylaws is
12 what I'm asking because --

13 MR. LAKE: Yeah.

14 THE COURT: -- obviously that's what --

15 MR. LAKE: I think it's --

16 THE COURT: -- going on here and --

17 MR. LAKE: Right, I think it's clear as a matter of both law and
18 equity that if there's an unambiguous provision saying what the term of
19 membership is going to be in this form, that that has to trump. That's --

20 THE COURT: Okay, what happens if they decided to
21 disaffiliate in the middle of the term? Because that's what happened
22 here. I mean -- correct?

23 MR. LAKE: Yeah, that --

24 THE COURT: You agree they disaffiliated with --

25 MR. LAKE: Well I --

1 THE COURT: Okay. What happens then? Because that's --

2 MR. LAKE: Yeah, so then the CCEA can only continue to
3 collect through the duration of the membership year the amount that --

4 THE COURT: Based on interpretation of the membership
5 form?

6 MR. LAKE: Yes, I think the --

7 THE COURT: Okay.

8 MR. LAKE: -- membership form is unambiguous --

9 THE COURT: I'm just trying to figure --

10 MR. LAKE: Yeah.

11 THE COURT: -- make sure I understand where you're --
12 that's why my notes were here.

13 MR. LAKE: Right. Absolutely, we --

14 THE COURT: Okay. So -- okay.

15 MR. LAKE: -- we think the membership form is unambiguous,
16 that it --

17 THE COURT: And so based on that, it doesn't matter what
18 other provisions that an association may decide to use to change that
19 because the membership form is a contract that would have to -- I don't
20 want to say the word -- that would supersede anything that would be in
21 the bylaws?

22 MR. LAKE: On the matter that --

23 THE COURT: On --

24 MR. LAKE: -- as to which there's clear language in the form,
25 yes.

1 THE COURT: Okay, that's what I'm trying to figure out.
2 MR. LAKE: Yes.
3 THE COURT: I thought that's where you were, but I was
4 trying to -- okay.
5 MR. LAKE: No. And in that regard I wanted to point out
6 several features of the form which is also available in tab six of the
7 binder that Mr. Alexander provided you which --
8 THE COURT: I still have it.
9 MR. LAKE: Okay, great.
10 THE COURT: I know I do. I appreciate -- okay, selected
11 exhibits. I got it.
12 MR. LAKE: It's the first of --
13 THE COURT: Tab six.
14 MR. LAKE: Yeah, tab six.
15 THE COURT: Okay, the --
16 MR. LAKE: And should be the second page --
17 THE COURT: Okay, that is the membership enrollment form
18 that was being used at I assume this time frame.
19 MR. LAKE: Right. And --
20 THE COURT: Off the -- okay.
21 MR. LAKE: Several features that I want to point out. One is
22 where it says the agreement -- the authorization is only to pay for the
23 professional dues as established annually for this membership year.
24 THE COURT: Okay. But --
25 MR. LAKE: So and to provide a little extra context for that, the

1 membership year undisputedly at this juncture was -- ran for CCEA from
2 September 1st through August 31st.

3 THE COURT: August 31st. Got it.

4 MR. LAKE: Okay.

5 THE COURT: I know that.

6 MR. LAKE: So you could set it annually you can't change it.
7 So that's one feature. If you look down to the penultimate paragraph, it
8 says dues are paid on an annual basis. And then in the -- at the end of
9 that paragraph it says if -- now I'm paraphrasing, but I'll tell you when I'm
10 quoting. When someone leaves or terminates their membership, the
11 member is, quote, still obligated to pay the -- now I've lost it, sorry. I
12 think there might be a typo but pay the -- my membership in CCEA or in
13 the event of termination, resignation or retirement from employment, I
14 am still --

15 THE COURT: Still obligated.

16 MR. LAKE: Yeah. To pay the balance of my, quote unquote,
17 annual dues. So that's one feature.

18 The other feature that I want to point out is there were two
19 options. Right, there's the pay up front and the installment plan. Same
20 thing's true here. So it says I agree to pay cash for the membership at
21 the -- in the start of the paragraph that begins payroll deduction
22 authorization enrolled. That's an upfront payment all at once, or you can
23 -- the member can authorize my -- my employer --

24 THE COURT: It can be deducted from my payroll checks.

25 MR. LAKE: Right. So that's the installment plan.

1 THE COURT: I read that.

2 MR. LAKE: Now, one of the reasons why this form is
3 unambiguous and unambiguous constraint against a
4 mid-membership-year dues increase is that under CCEA's theory, it
5 treats individuals as owing different amounts of dues depending on
6 whether they pay up front or pay in the installment plan. So --

7 THE COURT: I didn't follow you there. Do that again?

8 MR. LAKE: Sure. So we can use the specific example of --

9 THE COURT: Dues are paid --

10 MR. LAKE: -- of in particular --

11 THE COURT: I understand if I sign --

12 MR. LAKE: -- the 2017/2018 membership year. The annual
13 dues up front were 234 or 243?

14 THE COURT: So are you saying they got a discount if you
15 give the money up front as opposed to an installment?

16 MR. LAKE: Well, what I'm saying is that when you --

17 THE COURT: I'm trying to --

18 MR. LAKE: -- pay up front, that's just the annual dues
19 amount.

20 THE COURT: Right. Oh, I see.

21 MR. LAKE: But when they change the -- when they increase
22 the dues mid-year, they're not collecting that money from the people
23 who paid up front so all of a sudden you have --

24 THE COURT: How do you know -- do you have an affidavit to
25 something like that? That -- how do you know that?

1 MR. LAKE: No, I do not.
2 THE COURT: Okay, because --
3 MR. LAKE: Yeah.
4 THE COURT: Okay.
5 MR. LAKE: But I think for --
6 THE COURT: I'm sorry.
7 MR. LAKE: -- and but they -- neither does CCEA have an
8 affidavit as their obligation on summary judgment their -- their moving for
9 summary --
10 THE COURT: Yeah, but they're -- that's not how they're
11 interpreting it.
12 MR. LAKE: Okay.
13 THE COURT: That's how you're interpreting the facts. But
14 that's fine. I'm sorry, I didn't mean to stop you.
15 MR. LAKE: No, no, no, that --
16 THE COURT: I'm just trying to make sure I'm not missing
17 anything.
18 MR. LAKE: No, that's quite all right.
19 THE COURT: Okay.
20 MR. LAKE: And so the last piece of this is -- and this has
21 come up in a different respect but there's only a two-week period where
22 individuals can opt out of membership in -- now just CCEA prior --
23 THE COURT: July 1st to July 15th.
24 MR. LAKE: Right.
25 THE COURT: I got -- I looked at all that --

1 MR. LAKE: And so the way CCEA would have this Court
2 interpret that provision would be to say CCEA's free to do, you know, I --
3 if I'm a member, I choose not to opt out because I've been told what the
4 annual amount of dues is going to be. I -- now comes to be July 30th
5 and -- or just by way of example. There's nothing in the membership
6 form according to CCEA that would stop CCEA from tripling, raising the
7 dues tenfold. It's just not a reasonable reading --

8 THE COURT: Well there's all the mechanisms within their
9 bylaws they would have to go through --

10 MR. LAKE: Right. But there's no --

11 THE COURT: -- to do that.

12 MR. LAKE: Right. But there's no --

13 THE COURT: They can't just arbitrarily say we're now going
14 to charge this without going through their bylaws.

15 MR. LAKE: Certainly, Your Honor, but --

16 THE COURT: Right? Okay.

17 MR. LAKE: -- there's nothing in the form that would --

18 THE COURT: In this form.

19 MR. LAKE: Yes, exactly, that --

20 THE COURT: That would --

21 MR. LAKE: -- that would prevent that type of substantial
22 increase --

23 THE COURT: Okay.

24 MR. LAKE: -- even though it says unambiguously annual
25 dues.

1 Now I think fundamentally CCEA has tried to focus on an
2 issue that's not relevant to the unambiguous constraint in the form
3 because CCEA chooses to focus its arguments under the bylaws
4 themselves. Now, what CCEA has done there, among other things, is
5 brush over what is a material disputed fact over what CCEA in fact did
6 and what's the --

7 THE COURT: Okay, and what's that?

8 MR. LAKE: Great, so for this, I think the way to -- the best
9 way to go through it is to start again with the proposition that CCEA's
10 fiscal year is from September -- was from -- at that time was from
11 September 1st through August 31st.

12 THE COURT: Okay.

13 MR. LAKE: And then to flip to the last tab in the --

14 THE COURT: I got it.

15 MR. LAKE: Yep. The very last tab which is actually
16 unnumbered --

17 THE COURT: Okay.

18 MR. LAKE: -- and the first page --

19 THE COURT: Association council meeting?

20 MR. LAKE: Exactly.

21 THE COURT: Okay. April 24th, 2018.

22 MR. LAKE: Yep. And so CCEA says that this principally
23 shows that the Association Representative Council implemented a dues
24 increase by vote on April 24th, 2018.

25 Now if you skip forward to page 52 --

1 THE COURT: Okay. I am. I got it.

2 MR. LAKE: Yeah, so this if you look at the left -- upper
3 left-hand corner is the fiscal budget for twenty seven twenty-eighteen.
4 Again that's twenty-seven eighteen -- excuse me, twenty-seven --

5 THE COURT: 2017.

6 MR. LAKE: -- 2017 to August 31st, 2018, and one of the
7 reasons why we know that, aside from the fact that CCEA's bylaws says
8 that's the fiscal year, is if you look at the right-most columns, you can
9 see the past fiscal years which go from September of one year to
10 August in another.

11 And I want -- I would like to focus Your Honor's attention on
12 the first line that says CCEA membership dues and the figure is
13 2,497,000. Okay, that's the budget amount for the full 2017 twenty-eight
14 [sic] fiscal year.

15 THE COURT: Okay.

16 MR. LAKE: And you know also that it's not actually the actual
17 amount collected thus far because the actual amount is in the column
18 immediately to the right. Says actual February.

19 THE COURT: That's what's been collected so far.

20 MR. LAKE: Thus far --

21 THE COURT: Right.

22 MR. LAKE: -- in that fiscal year.

23 THE COURT: Right, because it haven't done all -- fiscal year
24 yet, sorry.

25 MR. LAKE: Yes. So let's hold that figure, the 2,497,000 in our

1 heads and --

2 THE COURT: In their budget.

3 MR. LAKE: Yeah, and then skip forward three pages to page
4 59.

5 THE COURT: Okay.

6 MR. LAKE: Now, first thing we'll notice I think is that that
7 same figure is in the second column of numbers under budget
8 2017/2018. Same figure.

9 THE COURT: Yes.

10 MR. LAKE: Now if Your Honor looks in the upper right-hand
11 corner where it says budget draft 2018 through 2019, says March draft
12 and then in red it says with dues increase.

13 THE COURT: Correct.

14 MR. LAKE: And then if you look at the rest of the page, it
15 shows where there are changes in the budget, among other things,
16 based on the dues increase. So the budget for fiscal year 2018/2019
17 which starts in -- again by under its -- under CCEA's own bylaws, that
18 starts August -- excuse me, September 1st, 2018 and runs through
19 September -- excuse me, August 31st --

20 THE COURT: 2019.

21 MR. LAKE: -- 2019. That figure is in red because that figure,
22 if you then look at the comments --

23 THE COURT: Right.

24 MR. LAKE: -- is based off of an increase dues rate of \$510
25 per year which CCEA acknowledges to be a \$22.18 per month increase.

1 THE COURT: That's the numbers. That makes sense --
2 MR. LAKE: Right.
3 THE COURT: -- because that goes with what they -- okay.
4 MR. LAKE: But importantly --
5 THE COURT: What am I to glean from this?
6 MR. LAKE: Yes, so -- and I appreciate the Court's indulgence
7 because it takes --
8 THE COURT: No, I'm -- I want --
9 MR. LAKE: -- takes a while to set up, but --
10 THE COURT: No, I --
11 MR. LAKE: -- we're almost there.
12 THE COURT: I appreciate you helping me.
13 MR. LAKE: So this shows what they changed and what the
14 didn't change because it shows that the 2017/2018 figure remains
15 exactly the same. The dues --
16 THE COURT: Okay, do you have some -- an affidavit or
17 something interpreting this or saying what this means because --
18 MR. LAKE: Yeah --
19 THE COURT: -- I'd be very uncomfortable --
20 MR. LAKE: Well --
21 THE COURT: -- saying this is what they mean. I mean I can
22 see the figures --
23 MR. LAKE: No, no, yeah, certainly --
24 THE COURT: So --
25 MR. LAKE: -- we haven't had the opportunity to depose

1 individuals on this particular document, but for the purposes of our
2 opposing summary judgment where as the non-movant we are due
3 reasonable inferences of fact, certainly a reasonable inference of fact --
4 we're not moving for summary judgment here, we're opposing --

5 THE COURT: No, I --

6 MR. LAKE: Yeah.

7 THE COURT: I understand that. I'm just trying figure out
8 reasonable inferences of fact to do a genuine issue of fact.

9 MR. LAKE: Right. So I think it's a reasonable inference from
10 the fact that they -- even this particular document which shows a dues
11 increase shows that dues increase only applicable to a budget --

12 THE COURT: Well --

13 MR. LAKE: -- starting in -- on September 1st, 2018.

14 THE COURT: Well -- okay. I would be very uncomfortable in
15 saying that's -- I guess you're saying that's how it should be interpreted
16 because it's under that.

17 MR. LAKE: Just because it's Rule 56 we're the non-movant.
18 That's --

19 THE COURT: Okay. I'm just --

20 MR. LAKE: Yeah.

21 THE COURT: When is discovery over in this case? Are we
22 close or?

23 MR. DELIKANAKIS: You're nearly closed, Your Honor.

24 THE COURT: I apologize because I don't know. Because if
25 you're asking for a 56(d) motion on this, I'm just trying to figure this out.

1 MR. DELIKANAKIS: Actually discovery I think is closed
2 already.
3 MR. ALEXANDER: No --
4 MR. LAL: No.
5 MR. ALEXANDER: Well it's --
6 MR. LAL: It's getting close.
7 MR. ALEXANDER: Currently there was a stay and then it was
8 extended in discovery --
9 THE COURT: Do it again, I'm sorry.
10 MR. ALEXANDER: There was a stay of discovery back in the
11 winter and early spring with a corresponding --
12 THE COURT: Additional.
13 MR. ALEXANDER: -- extension --
14 THE COURT: Okay.
15 MR. ALEXANDER: -- in order to address these motions that
16 -- but --
17 THE COURT: Yeah, I saw there was a lot of --
18 MR. ALEXANDER: Right.
19 MR. DELIKANAKIS: Right.
20 THE COURT: -- stips and stuff.
21 MR. ALEXANDER: It was key to the April 18th date which
22 was the original date for this hearing.
23 THE COURT: Right.
24 MR. ALEXANDER: As of right now, there are I believe four
25 weeks left in the discovery schedule.

1 THE COURT: Okay. I'm -- I apologize, I --
2 MR. DELIKANAKIS: Thank you.
3 THE COURT: Okay. So you're basically saying I should
4 interpret this that under NRCP 56 it's (d) now right or (b)?
5 MR. LAKE: Well --
6 THE COURT: They just switched it in March.
7 MR. LAKE: Oh, well so I -- they're two --
8 THE COURT: I apologize.
9 MR. LAKE: -- they're two separate things and I want to make
10 sure we keep them separate.
11 THE COURT: Okay.
12 MR. LAKE: There's an affidavit requesting additional
13 discovery which is a separate matter. What I'm saying is even when you
14 don't request additional discovery but you put evidence into the
15 summary judgment record, the standard by which the Court must review
16 that evidence is by drawing reasonable inferences from that evidence
17 against the movant and in favor of the --
18 THE COURT: No, I understand that --
19 MR. LAKE: Okay.
20 THE COURT: -- but you're asking me do a reasonable
21 inference from a document I know nothing about that you want me to
22 infer that's -- usually when there's documents from an -- I have an
23 affidavit somebody -- not hey Judge --
24 MR. LAKE: Well --
25 THE COURT: -- you may not have an accounting degree, but

1 here -- this is under this column -- I'm used to if -- what usually happens
2 is first of all, if you feel they needed more time, I usually get a motion
3 hey under 56 saying, Judge, we think this is a reasonable inference, we
4 think there's a genuine issue -- we need -- just need more time, Judge,
5 to make sure we get someone to explain what this is because I don't
6 know what this is, you don't know what it is. For me to say it's a
7 reasonable inference --

8 MR. LAKE: Well --

9 THE COURT: -- I get reasonable inferences. It's the status of
10 this evidence that concerns me.

11 MR. LAKE: Well right and I think --

12 THE COURT: Does that makes sense?

13 MR. LAKE: Yeah.

14 THE COURT: There's a difference between reasonable
15 inferences from evidence that's in front of me that I'm -- you know, like
16 an affidavit based on -- and saying hey here's a document, Judge, you
17 could make a reasonable inference that there was an issue here
18 because it doesn't match. That's all I'm saying.

19 MR. LAKE: No, I totally understand Your Honor's point and --

20 THE COURT: I mean I really do understand the -- okay.

21 MR. LAKE: Yeah, no, but -- and I would just say two quick
22 things in response --

23 THE COURT: No, and I understand the distinction, believe
24 me. Okay.

25 MR. LAKE: Right, and well just two things. One is that CCEA

1 introduced a version of this very document and they did not also dispute
2 the authenticity of this document so --

3 THE COURT: No. I assume it's probably -- I'm sure it's
4 authentic. I just don't know if -- if it was meant to mean hey, Judge, infer
5 that you this -- this increase didn't take effect until 2018/19. That's a
6 huge --

7 MR. LAKE: Right.

8 THE COURT: That's the genuine issue of material fact that
9 really is the crux of this. Does that make sense? And I certainly -- that's
10 all I'm saying.

11 MR. LAKE: You know, I --

12 THE COURT: I'm sorry, I'm not trying to be --

13 MR. LAKE: No, no, no, I --

14 THE COURT: -- difficult. I'm just trying to make sure you
15 understand where I'm coming from. I get -- okay.

16 MR. LAKE: I do, Your Honor --

17 THE COURT: No, and I'm sure this is a -- I -- it's not
18 authenticity that I'm concerned about, it's how to interpret that.

19 MR. LAKE: Right, and I certainly think that -- Your Honor, I
20 think that --

21 THE COURT: Okay.

22 MR. LAKE: -- particularly in a circumstance where discovery
23 has not ended, that --

24 THE COURT: That's why I asked. I didn't know. Okay.

25 MR. LAKE: -- it would be particularly inappropriate to sort of

1 have the -- I guess the consequences of the fact that discovery is
2 ongoing fall upon us as non-movant particularly given that CCEA --

3 THE COURT: No, that's why you can move under Rule 56
4 that's -- I absolutely --

5 MR. LAKE: Right. Understood.

6 THE COURT: You can move under that saying hey Judge,
7 we think this is premature, we have some things that we need to get
8 under discovery so that we can show you there is a genuine issue of
9 material fact. Absolutely you have a right -- that's why I asked you what
10 time you have left in discovery because honestly this is -- you know --

11 MR. LAKE: Right. The --

12 THE COURT: I don't know what this mean.

13 MR. LAKE: Right. Just a last observation --

14 THE COURT: I -- uh-huh.

15 MR. LAKE: -- that I direct your --

16 THE COURT: Okay.

17 MR. LAKE: -- your attention to, Your Honor, is if you look at
18 the page 59 --

19 THE COURT: Yes.

20 MR. LAKE: -- and then go back to the very beginning of the
21 document, the table of contents --

22 THE COURT: Table -- this -- okay. Yeah.

23 MR. LAKE: Yeah, so Roman VI(c), you'll note that --

24 THE COURT: Adoption of the --

25 MR. LAKE: -- there's information, information, then action

1 next page 59. So this is -- they were taking -- the representative council
2 was taking action specifically with respect to page 59 which I just walked
3 the Court through.

4 THE COURT: Okay.

5 MR. LAKE: So --

6 THE COURT: Like I said, I had the same concerns about this
7 too because I need somebody who not -- I'm not -- I need somebody to
8 interpret this. I've never seen this before. I don't feel like I have the
9 expertise -- I get your argument, but that's my concern.

10 MR. LAKE: Okay.

11 THE COURT: Okay.

12 MR. LAKE: With that, I -- it sounds like the Court understands
13 the argument and --

14 THE COURT: I do.

15 MR. LAKE: Yeah, and it's really a twofold one; one, that the
16 unambiguous terms trump --

17 THE COURT: Yeah.

18 MR. LAKE: -- and two, that there's a genuine dispute of
19 material facts given that reasonable inferences have to be drawn in
20 favor of the NSEA parties as non-movant and --

21 THE COURT: Okay. And the -- I just want to make sure I --
22 the genuine issue of material fact is that -- I'm just --

23 MR. LAKE: Yeah, no --

24 THE COURT: Let me paraphrase it. If I don't understand, I
25 want you to help me. Is that really Clark -- CCEA knew it was really

1 supposed to just go under the next fiscal year, not the middle of the year
2 by their own documents.

3 MR. LAKE: That --

4 THE COURT: I'm just trying to make sure I got it.

5 MR. LAKE: Yeah, I would say it slightly differently, Your
6 Honor. I would say --

7 THE COURT: Okay. Help me. I want to -- I'm trying to --

8 MR. LAKE: Yeah, the genuine dispute is whether CCEA in
9 fact -- as it contends as its principal basis in its countermotion, whether
10 CCEA in fact amended the dues level effective immediately, or instead --

11 THE COURT: In fact whether they amended it -- I'm --

12 MR. LAKE: No, that's fine. So --

13 THE COURT: Do it again.

14 MR. LAKE: Yeah, I'll --

15 THE COURT: I'm sorry. I'm trying --

16 MR. LAKE: I'll start with what their -- what CCEA says in its
17 motion which -- it's countermotion which is that Association
18 Representative Council amended the dues amount on April 24th and
19 that amendment of the dues amount was effective immediately.

20 THE COURT: Okay, and where is the --

21 MR. LAKE: And --

22 THE COURT: -- genuine issue of material fact? If you're
23 saying your whole thing is they can't do it anyway, what does it matter
24 whether it was the 24th -- as long as it was prior to the start of the new
25 fiscal year, why is -- why would that make a difference?

1 MR. LAKE: Well it makes a difference because the effective
2 date of the dues increase matters to all the individual clients because
3 that's the amount of CCEA dues --

4 THE COURT: Yeah, but what you're saying to me as I
5 understand your argument is it could only -- based on that membership
6 enrollment form, CCEA could only change the dues amount for the
7 annual year which would begin September 1st, 2018.

8 MR. LAKE: Correct. So --

9 THE COURT: So why would it matter -- obviously, as long as
10 it wasn't September 1st -- if it was September 1st, 2018, it would be in
11 total --

12 MR. LAKE: Then we wouldn't have a claim. Yeah.

13 THE COURT: Correct.

14 MR. LAKE: Yes.

15 THE COURT: Okay, so -- but I mean they're even saying --
16 and so your answer is well so they don't have anything telling me it was
17 September 1st, 2018 --

18 MR. LAKE: And in fact --

19 THE COURT: -- so that's in fact I --I assume they're going --

20 MR. LAKE: And it's --

21 THE COURT: -- to tell me it was prior when I look at this stuff,
22 correct?

23 MR. LAKE: Right, and in fact it's a little bit more stronger than
24 that because the evidence suggests that the dues increase was not
25 effective immediately but in fact was effective September 1st, 2018.

1 THE COURT: Okay, so you're saying you feel that you'll have
2 it -- well even if so then you don't have a -- you -- why would you have a
3 claim because it would be -- if it was --

4 MR. LAKE: Here, here --

5 THE COURT: -- September 1st, 2018, it would be in
6 compliance.

7 MR. LAKE: Yeah, so I think maybe --

8 THE COURT: What are you -- I don't know what you're
9 looking for then.

10 MR. LAKE: Yeah, no, so --

11 THE COURT: I'm --

12 MR. LAKE: -- here's why it matters. So this period right here,
13 this in green, shows when CCEA began collecting dues at the annual
14 dues rate of \$510.

15 THE COURT: Okay.

16 MR. LAKE: And this date was June 8th. It was before --

17 THE COURT: No, I get that, but what -- okay, so --

18 MR. LAKE: So it was before September 1st and what we're
19 saying is that the change -- there's evidence in the record, particularly
20 when viewed in a light most reasonable to the non-movant, that shows
21 that the dues change, just as a matter of fact, was approved effective
22 September 1st --

23 THE COURT: Okay, what do you have to say it was -- what
24 do you have in front of me that I could say yeah, there's a genuine issue
25 of fact that it really was supposed to be effective September 1st, 2018?

1 MR. LAKE: So --

2 THE COURT: What do you have in front of me, the budget
3 thing?

4 MR. LAKE: Yeah, the budget.

5 THE COURT: Anything else?

6 MR. LAKE: I mean --

7 THE COURT: Any affidavits from anybody, anything that says
8 hey we voted on it but you know what, I was at the meeting and it was
9 my understanding it was supposed to be effective -- anything like that
10 other than --

11 MR. LAKE: I mean there are other documents that we relied
12 on in our papers, but --

13 THE COURT: What are they? I mean if you're trying to give
14 me a genuine issue -- I need -- this is the time.

15 MR. LAKE: Right.

16 THE COURT: Other -- what else would there be?

17 MR. LAKE: I mean among other things, the Victoria Courtney
18 email refers to annual dues.

19 THE COURT: Well -- no, I'm asking the specific genuine
20 issue of material fact that you're telling me what CCEA -- what
21 everybody approved through these mechanisms was the increase to
22 510 but not until September 1st, 2018.

23 MR. LAKE: Yeah.

24 THE COURT: What do you have that I could say that means
25 they were wrong here. You know, this green spot needs -- is damages.

1 What do -- other than the budget thing here which you gave me --
2 MR. LAKE: We rest on the budget and --
3 THE COURT: And the -- okay, I just want to get my record --
4 MR. LAKE: -- the form because I think they pull --
5 THE COURT: The budget and the enrollment --
6 MR. LAKE: -- in tandem because it makes sense that the
7 Association Representative Council would make their dues change
8 effective at the new membership year because they understood that that
9 was a restraint in the form that they're only allowed to raise dues
10 annually.
11 THE COURT: They're only allowed to raise dues annually
12 because of the constraint in the membership form?
13 MR. LAKE: Correct.
14 THE COURT: Okay. I just want to make sure -- thank you.
15 You're very helpful.
16 MR. LAKE: Thank you for the opportunity.
17 THE COURT: I'm sorry.
18 MR. LAKE: No, no, no.
19 THE COURT: I reiterate just to make sure I am following
20 because -- there's a lot of arguments, thank you. All right.
21 MR. D'ALBA: I want to call your attention, Your Honor, to the
22 motions that are in the record.
23 THE COURT: Oh dear.
24 MR. D'ALBA: This is a blowup of them. The key word is
25 effective immediately. Disaffiliate effective immediately and will

1 disaffiliate and become an independent union; the dues will be \$510 a
2 month [sic]. That's what the members voted to do.

3 Here's the affidavit that's unrebutted, uncontested, they didn't
4 ask for discovery, this is from the Executive Director.

5 THE COURT: Okay. Tell me where it is because --

6 MR. D'ALBA: Exhibit --

7 THE COURT: If you --

8 MR. D'ALBA: -- 23.

9 THE COURT: Exhibit 23 to? Oh, I don't want this --

10 MR. DELIKANAKIS: It's Exhibit 23 to our reply brief, Your
11 Honor.

12 THE COURT: Okay. I got it. All right. I apologize but I really
13 do want to follow this there's --

14 MR. D'ALBA: Paragraph --

15 THE COURT: On --

16 MR. D'ALBA: Paragraph --

17 THE COURT: Of John Vellardita?

18 MR. D'ALBA: John Vellardita.

19 THE COURT: Okay. I got it. Oops.

20 MR. D'ALBA: And on page --

21 THE COURT: Can you pick that up, Roy? Sorry.

22 MR. D'ALBA: -- on page 1 --

23 THE COURT: Page 1, uh-huh.

24 MR. D'ALBA: -- paragraph 4 in which he recites the motions
25 that were presented and the minutes that reflect those motions. So at

1 line 22, paragraph 4 --

2 THE COURT: Okay. The minutes of that -- okay.

3 MR. D'ALBA: -- the minutes attached as Exhibit 16 in which
4 the executive board adopted motion four to recommend to the ARC and
5 members in a general membership meeting to become an independent
6 union. Motion five presented stated executive board recommends to the
7 ARC in the general membership meeting that upon disaffiliation -- it
8 doesn't say September 1 of 2018.

9 THE COURT: Yeah.

10 MR. D'ALBA: Upon September --

11 THE COURT: Upon --

12 MR. D'ALBA: -- upon disaffiliation from NSEA, an
13 independent union will set dues at \$510 a year. This motion was
14 adopted.

15 Paragraph 5, the dues in effect prior to the termination were
16 an aggregate amount of \$810.

17 Paragraph 6, to implement the dues alteration, the executive
18 board adopted motion number 6. I moved the executive board adopt the
19 following language. That's the language I showed you on the board.
20 Will CCEA disaffiliate effective immediately? Yes, meaning if the
21 answer is yes, will disaffiliate, become an independent union. Dues will
22 be \$510 a year.

23 Moving --

24 THE COURT: And they also could have voted CCEA will
25 remain affiliated --

1 MR. D'ALBA: And no dues change at all.

2 THE COURT: -- and there -- I -- the unified dues --

3 MR. D'ALBA: The dues will be \$810.

4 THE COURT: -- will be eight ten fifty per member year.

5 Okay.

6 MR. D'ALBA: The motion was presented to the members on
7 disaffiliation included both the affirmative and the negative answers.

8 You have the ballot which we presented in a board. It's also presented
9 on that affidavit. Here's the ballot that was presented to the members.

10 THE COURT: Right. That's what's referenced here.

11 MR. D'ALBA: And then going --

12 THE COURT: The ballot.

13 MR. D'ALBA: -- down this affidavit, paragraph 7, the ARC met
14 on April 24 to consider the motions that had been approved by the
15 executive board on April 14th. The minutes show the adoption of the
16 motion. The motion authorized CCEA to immediately disaffiliate and
17 NEA to become an independent union. If approved, the ARC will
18 recommend a vote to disaffiliate. This motion was adopted.

19 Paragraph 8, at the same meeting, motion six was presented
20 to the ARC after adoption of the vote to recommend disaffiliation.
21 Motion six adopted a change in the annual dues for members that would
22 take effect immediately upon disaffiliation. This is uncontested.

23 Number 9, the tentative budget approved by the adoption of
24 motion six contained an estimate of revenue -- that's what counsel was
25 referring to --

1 THE COURT: Yeah.

2 MR. D'ALBA: -- for the forthcoming year based upon the
3 alteration of the current dues level that would take effect immediately.
4 They're passing a budget for the next year where new dues numbers
5 would be raised, but it didn't say a word about no dues money not being
6 increased immediately. But what you do have is an affidavit on the very
7 next page -- paragraph that says --

8 THE COURT: Which paragraph? I'm reading --

9 MR. D'ALBA: Thirteen.

10 THE COURT: The members vote -- okay.

11 MR. D'ALBA: Overwhelmingly to disaffiliate from NSEA and
12 to reduce their dues payments immediately. That's not contested.

13 The next sentence, there was a modification of the budget
14 after the new dues rate went into effect to reflect, in quote, real time the
15 change in revenue. And then approximately 30 days later because it
16 took administrative time to work its way through the school district, the
17 dues increase started to take effect with respect -- dues change started
18 take effect with respect to members' paychecks.

19 Paragraph 10 with respect to the tentative budget, the
20 tentative budget revenue estimate was based on the dues amount that
21 we charged to members immediately upon disaffiliation and carried into
22 the next fiscal year. There was no motion made by either the executive
23 board of the ARC to delay the implementation date of the dues
24 alteration. It was to take effect immediately. This also --

25 THE COURT: Counter --

1 MR. D'ALBA: -- was not rebutted by the members who are
2 plaintiffs in this case.

3 What's important in our view is their claim that this
4 membership form signed by a member -- this is somewhat offensive --

5 THE COURT: Don't be offended.

6 MR. D'ALBA: -- trumps --

7 THE COURT: Oh, trump.

8 MR. D'ALBA: -- trumps the --

9 THE COURT: We're getting tired, aren't we?

10 MR. D'ALBA: -- trumps the governance of this union. This
11 provision says the association shall be governed by the bylaws and
12 policies. It's not governed by one member's interpretation that the word
13 annual means you can't change my dues.

14 And then the dues provision says dues may be altered. What
15 does that mean in the context of this word annual? It means that this
16 specific provision of the bylaws governs the general statement of annual
17 that they're trying to make an issue of.

18 And then with respect to your counsel's [sic] request about
19 what does the law say about interference with internal operations of the
20 union, on page 26, line 12, we report in our brief: Absent bad faith or
21 special circumstances, an interpretation of the union constitution by its
22 officials -- and what I just read to you --

23 THE COURT: Is an interpretation I --

24 MR. D'ALBA: -- was the union's official interpretation -- as
25 well as interpretations of rules and regulation should not be disturbed by

1 the court. That's what they're asking you to interfere with. And there are
2 plenty of cases cited on page 26 for that proposition.

3 THE COURT: Okay.

4 MR. D'ALBA: And by bringing this to the members, the
5 highest policymaking body of the organization, the general members
6 have said we want out and we want to pay less dues and we want to
7 take effect immediately. Thank you very much, Your Honor.

8 THE COURT: Okay. All right. After hearing argument and
9 thank both you, I am going to grant the motion CCEA's on count nine --
10 did I say it right? I'm sorry I'm -- nine. I do not find -- first of all there's
11 no genuine issue of material fact that's in front of me. I'm relying on the
12 affidavit of John Vellardita. I do not find as a matter of law that the
13 membership enrollment form in any way supersedes or is controlling
14 over the bylaws. The issue of fact right now did they -- by looking at the
15 evidence I have in front of me, the CCEA did go through their bylaws
16 and so I'm going to grant it.

17 Okay. What -- where are we left now? I know it's getting --
18 but I want to get through if we can get through.

19 MR. DELIKANAKIS: I think the only thing left is the breach --

20 THE COURT: Help me guys.

21 MR. DELIKANAKIS: Yeah, I think the only thing left, Your
22 Honor, is the breach of bylaws claim.

23 THE COURT: Okay, that's two and three and then --

24 MR. ALEXANDER: Correct.

25 THE COURT: -- they have -- hold on, just let me -- let me get

1 all my notes, okay, to make sure I'm not -- geez louise.

2 MR. DELIKANAKIS: So it's counts two, three and four.

3 THE COURT: Okay, hold on. I've got -- well it's kind of the
4 same thing. I got NSEA and NEA's motion for partial summary judgment
5 on two and three, and I have basically your counter ones on the same
6 CCEA's motion for summary judgment on two and three, correct?

7 MR. DELIKANAKIS: On two -- our counter is on counts two,
8 three and four.

9 THE COURT: Three and four.

10 MR. DELIKANAKIS: Correct.

11 THE COURT: Okay. Hold on, let me make sure I'm not --
12 okay, that's -- okay. All right, so however which -- I just want to get back
13 to my notes because I have totally different ones on bylaws.

14 MR. DELIKANAKIS: Given the Court's findings thus --

15 THE COURT: I'm sorry?

16 MR. DELIKANAKIS: Given the Court's findings thus far, really
17 what's left here to argue on these bylaws claims --

18 THE COURT: Let me what I have.

19 MR. DELIKANAKIS: And I understand they want to, you
20 know, everyone like to make a record, but --

21 THE COURT: Yeah.

22 MR. DELIKANAKIS: -- I'm rather curious --

23 THE COURT: There's not much left. I agree.

24 MR. DELIKANAKIS: Yeah. So --

25 THE COURT: Let me just make sure I didn't -- okay, on count

1 -- I'm sorry, two, three. On count two is the breach of the NSEA bylaws,
2 right? And count three, breach on the NEA bylaws, correct? And count
3 four is breach on the CCEA bylaws, but they're all dealing with the
4 transmittal -- the services agreement and the transmittal, correct?

5 MR. ALEXANDER: Well --

6 THE COURT: Or you can add more. I'm not trying to cut you
7 -- I'm just trying --

8 MR. ALEXANDER: No --

9 THE COURT: -- to get my brain back to what I was --

10 MR. ALEXANDER: -- they -- the defense to the breach is
11 based entirely pretty much on the termination by CCEA of the dues
12 transmittal agreement, but --

13 THE COURT: Okay, that's -- they're saying --

14 MR. ALEXANDER: That's their defense.

15 THE COURT: Right. They're saying --

16 MR. ALEXANDER: But whether --

17 THE COURT: No, they're saying based on that legal
18 determination by the Court, all the other claims are not valid.

19 MR. ALEXANDER: Well what they're saying is the effect of
20 the --

21 THE COURT: Yes.

22 MR. ALEXANDER: When they terminated the dues
23 termination --

24 THE COURT: I'm running out of ink here.

25 MR. ALEXANDER: -- the dues transmission [sic] agreement I

1 should say --

2 THE COURT: Right.

3 MR. ALEXANDER: When they terminated that, that had the

4 effect of terminating the bylaws --

5 THE COURT: Right.

6 MR. ALEXANDER: -- contract between CCEA and NEA and

7 CCEA --

8 THE COURT: That had the effect of terminating the

9 relationship so if they don't have the relationship or affiliation anymore,

10 the bylaws wouldn't apply.

11 MR. ALEXANDER: Well, the bylaws --

12 THE COURT: Right? Isn't that --

13 MR. ALEXANDER: -- the bylaws are a contract and they're

14 saying that the contract terminated --

15 THE COURT: Correct. Correct.

16 MR. ALEXANDER: -- and our --

17 THE COURT: If the relationship --

18 MR. ALEXANDER: Right.

19 THE COURT: -- terminated with that, then --

20 MR. ALEXANDER: Right.

21 THE COURT: -- the bylaws would not apply.

22 MR. ALEXANDER: And we obviously --

23 THE COURT: No --

24 MR. ALEXANDER: -- disagree with that --

25 THE COURT: I understand that completely, okay.

1 MR. ALEXANDER: -- and I'd be happy to explain why.
2 THE COURT: Well, if -- I know it's getting late, but I want you
3 to put it on the -- I -- I've got all my --
4 MR. ALEXANDER: Yeah, well the reason --
5 THE COURT: Hold on, let me just -- I apologize, but I really --
6 MR. ALEXANDER: Sure.
7 THE COURT: -- want to refresh my recollection I've gone
8 everywhere this -- okay. Let me spend two seconds on what --
9 MR. ALEXANDER: Absolutely.
10 THE COURT: -- my notes when I read --
11 MR. DELIKANAKIS: Sure.
12 THE COURT: -- everything if you don't mind, I'm --
13 MR. DELIKANAKIS: May I just add one thing?
14 THE COURT: Yes. If I didn't summarize it --
15 MR. DELIKANAKIS: Right.
16 THE COURT: -- or clarify it completely --
17 MR. DELIKANAKIS: The same analysis and argument that
18 led to the decision by the Court to grant summary judgment in favor of
19 CCEA as to conversion and unjust enrichment because the basis for
20 that argument was of course that there was an independent contract
21 called the bylaws --
22 THE COURT: No, I know.
23 MR. DELIKANAKIS: -- that gave one the ownership right to
24 claim a conversion claim, the Court's already decided that. So I think --
25 much like I faced an uphill battle at the beginning of this hearing --

1 THE COURT: Yeah. You did.

2 MR. DELIKANAKIS: -- I think the Court's kind of decided this
3 issue already, but if my colleague wants to make more of a record --

4 THE COURT: Because I will tell you what I put down here.

5 MR. DELIKANAKIS: Yeah. Yeah.

6 THE COURT: The significance of the disaffiliation letter on
7 April 16th, 2018 if -- if I went with that that it -- that that was controlling,
8 then you would have won the -- you would have prevailed -- I don't say
9 won -- prevailed on -- they would have, not you on -- NSEA and NEA so
10 I get my parties right on the conversion because the bylaws -- they
11 wouldn't apply if I felt what when I ruled on the services agreement and
12 the transmittal if it terminated which basically I did rule when I did the
13 conversion, then the bylaws -- the relationship's gone and the bylaws
14 would not be effective -- have effect --

15 MR. DELIKANAKIS: And I --

16 MR. ALEXANDER: Yeah, that --

17 THE COURT: Does that make sense?

18 MR. ALEXANDER: I believe that --

19 THE COURT: Am I say it right? I hope so. I know it's getting
20 long --

21 MR. ALEXANDER: No, no, I believe that that -- that is the
22 analysis that Mr. Delikanakis put forward and --

23 THE COURT: Okay.

24 MR. ALEXANDER: -- the one that underlie the --

25 THE COURT: Okay.

1 MR. ALEXANDER: -- your sense on the conversion motion --
2 THE COURT: Okay, let me --
3 MR. ALEXANDER: -- but --
4 THE COURT: -- let me see if I had --
5 MR. ALEXANDER: -- I'd like to focus --
6 THE COURT: Okay. No, I want you to do the record I --
7 MR. ALEXANDER: I'd like to focus on --
8 THE COURT: It's hot in here.
9 MR. ALEXANDER: -- whether or not there is an actual
10 conclusive argument, which is what they have to have to get summary
11 judgment on the breach of bylaws claims, that in fact notwithstanding
12 that all the evidence that I -- some of it I've given to you and some of it --
13 THE COURT: No, it's --
14 MR. ALEXANDER: -- relevant directly to the bylaws claims
15 that affiliation continued until April 25th --
16 THE COURT: Okay. So --
17 MR. ALEXANDER: -- that --
18 THE COURT: -- the key issue is the -- if the affiliation --
19 MR. ALEXANDER: Absolutely.
20 THE COURT: -- continued till April 25th --
21 MR. ALEXANDER: Right, and --
22 THE COURT: -- 2018, they could not prevail on those claims.
23 MR. ALEXANDER: That's right. And the only --
24 THE COURT: No, I --
25 MR. ALEXANDER: -- reason they say that the affiliation did

1 not continue is because they're saying that we terminated a dues
2 transmittal agreement. A dues transmittal agreement is a basis for and
3 an obligation we have in the bylaws and so by terminating the
4 agreement that was the -- something that we had to do under the
5 bylaws, we also effectively terminated the bylaws. That's their position --

6 THE COURT: Right, and that was briefed. I will admit that
7 was all --

8 MR. ALEXANDER: That's their position.

9 THE COURT: -- all discussed and briefed in the original
10 summary judgment.

11 MR. ALEXANDER: That is --

12 THE COURT: Right, true --

13 MR. ALEXANDER: -- wrong. I mean --

14 THE COURT: Well you may say it's wrong, but that --

15 MR. ALEXANDER: No. I mean that is our --

16 THE COURT: You disagree with it, but that -- I agree that was
17 something that was part of the original --

18 MR. ALEXANDER: Well --

19 THE COURT: -- summary judgment, but I'm --

20 MR. ALEXANDER: No, the -- mean the one in December?

21 THE COURT: Correct.

22 MR. ALEXANDER: No, the one in December only focused on
23 the -- whether or not the dues transmittal agreement terminated. You
24 concluded it did.

25 THE COURT: Correct. I agree with you.

1 MR. ALEXANDER: We understand that.
2 THE COURT: I misspoke because I did say I --
3 MR. ALEXANDER: The question is the effect of that on
4 separate contracts which are the bylaws --
5 THE COURT: On the bylaws.
6 MR. ALEXANDER: Exactly.
7 THE COURT: I agree with you I --
8 MR. ALEXANDER: And if I could address --
9 THE COURT: That is true and that's why I took it out of the
10 original order -- I -- okay. I'm good. I've read it all.
11 MR. ALEXANDER: Okay. Could I continue?
12 THE COURT: Yes.
13 MR. ALEXANDER: Thank you very --
14 THE COURT: Please.
15 MR. ALEXANDER: Okay.
16 THE COURT: Let me just --
17 MR. ALEXANDER: So if --
18 THE COURT: No, that's not the right one. This is it.
19 MR. ALEXANDER: Essentially it's undisputed that the NSEA
20 bylaws and the NEA bylaws were contracts between NSEA and CCEA
21 and NEA and CCEA.
22 THE COURT: Okay.
23 MR. ALEXANDER: Right. I think that that's clear.
24 THE COURT: No.
25 MR. ALEXANDER: In fact, if you go to tab one of the second

1 portion of our --

2 THE COURT: The ones you gave me this morning?

3 MR. ALEXANDER: Of the one I gave you this morning, yes.

4 THE COURT: Okay, I've got it.

5 MR. ALEXANDER: So if you go to --

6 THE COURT: Tab one.

7 MR. ALEXANDER: -- the second tab one because --

8 THE COURT: The second -- okay, that's fine.

9 MR. ALEXANDER: -- it's towards the --

10 THE COURT: Oh I've got it. I absolutely have it.

11 MR. ALEXANDER: And this is CCEA's answer --

12 THE COURT: Answer.

13 MR. ALEXANDER: -- to the amended complaint which was

14 dated March 21, 2018, so many months after the dues transmittal

15 agreement terminated and approximately one month before they voted

16 to disaffiliate.

17 If you turn to page 19, which is the third page, on the breach

18 of the NEA bylaws, we allege that the NEA bylaws constitute a contract

19 between NEA and its affiliated state and local associations, including

20 CCEA, which they admit. And on the prior page --

21 THE COURT: Okay.

22 MR. ALEXANDER: -- in paragraph 60, we allege that the

23 NSEA bylaws constitute a contract --

24 THE COURT: That they were a contract.

25 MR. ALEXANDER: -- and they admit that as well. Nothing

1 in --

2 THE COURT: Okay

3 MR. ALEXANDER: -- their answer purports to state that those
4 contracts that -- a defense to those contract claims is that those
5 contracts had terminated, notwithstanding that several months prior the
6 dues transmittal agreement was terminated. So --

7 THE COURT: I'm sorry.

8 MR. ALEXANDER: Sure.

9 THE COURT: What you're saying is because before I made
10 my ruling they didn't say --

11 MR. ALEXANDER: No.

12 THE COURT: -- that it terminated? I'm --

13 MR. ALEXANDER: No, no.

14 THE COURT: -- trying to figure out --

15 MR. ALEXANDER: No.

16 THE COURT: -- how you're doing -- I apologize and I'm --

17 MR. ALEXANDER: They did not take the position that the
18 NEA bylaws or the NSEA bylaws were not in effect as of March 2018.
19 But that's --

20 THE COURT: Mean not in effect --

21 MR. ALEXANDER: Because they were --

22 THE COURT: -- meaning they're saying --

23 MR. ALEXANDER: Let me step back. It's not --

24 THE COURT: Yeah, step back because now you're --

25 MR. ALEXANDER: Yes.

1 THE COURT: I mean --
2 MR. ALEXANDER: So --
3 THE COURT: -- you're looking at affirmative defenses and
4 stuff and admissions -- I understand the contractual I --
5 MR. ALEXANDER: I can -- I -- I can --
6 THE COURT: -- I agree. I'm sure they -- they are contracts --
7 MR. ALEXANDER: I can move forward because I think that
8 it's clear -- I think it's clear that but for the termination of the dues
9 transmittal agreement, it would be undisputed that CCEA remained --
10 their argument that the dues -- the effect of the dues transmittal
11 agreement, it would be undisputed that CCEA remained an affiliate and
12 bound by the NEA and NSEA bylaws until they disaffiliated on April
13 25th --
14 THE COURT: I think that would be everybody's position until
15 we came here, yes.
16 MR. ALEXANDER: And that's because they affirmatively
17 averred long after they terminated the dues transmittal agreement that
18 they were -- that in fact in December -- if you look at tab five, Mr.
19 Vellardita's -- the first tab five, Mr. Vellardita's affidavit from last
20 December, December 18th of last year after you made your ruling, he
21 himself alleges -- this is the Executive Director and a party to this case
22 alleges that NSEA was the --
23 THE COURT: What paragraph -- what number?
24 MR. ALEXANDER: Oh it's paragraph 5 on page 2 --
25 THE COURT: Okay.

1 MR. ALEXANDER: -- of Mr. Vellardita --
2 THE COURT: Nevada State -- was the statewide affiliate --
3 MR. ALEXANDER: Until April 25, 2018, which is --
4 THE COURT: That --
5 MR. ALEXANDER: Right, and --
6 THE COURT: Right.
7 MR. ALEXANDER: -- and he similarly --
8 THE COURT: Until they did the disaffiliation vote.
9 MR. ALEXANDER: Right.
10 THE COURT: Right.
11 MR. ALEXANDER: But the disaffiliation vote was eight
12 months after the termination of the dues transmittal agreement.
13 THE COURT: But I -- okay.
14 MR. ALEXANDER: They're taking the position --
15 THE COURT: Go ahead, I -- I've been around this --
16 MR. ALEXANDER: They're taking the position now
17 retroactively that the dues transmittal agreement had a effect of
18 terminating the bylaws --
19 THE COURT: But counsel, I made that determination the first
20 time I looked at it, I looked at it and I felt it did. Whether I'm right or
21 wrong --
22 MR. ALEXANDER: Okay. So --
23 THE COURT: -- I don't really -- telling me what they averred
24 before or even I -- I looked at everything, I made the decision and I did
25 my findings of fact and conclusions of law on it.

1 MR. ALEXANDER: Right.

2 THE COURT: Okay, I admit I did not look at whether the
3 bylaws were effect because I just said the effect of that. Then you've
4 come to me and saying oh well, even though you say it terminated the
5 relationship, the bylaws were still in effect so then I have to look. That's
6 what I'm doing now is to the legal effect of what I found for my first one
7 with the services agreement and the dues transmittal agreement how
8 that affected the bylaws. That's what I'm doing now and that's --

9 MR. ALEXANDER: But the contract --

10 THE COURT: Right? That's what's in front of me now.

11 MR. ALEXANDER: The contract, the bylaws are an
12 agreement.

13 THE COURT: I --

14 MR. ALEXANDER: Right.

15 THE COURT: They were.

16 MR. ALEXANDER: Of course they are. And I don't think
17 there's any --

18 THE COURT: I'm -- no one's going to say they're not, I don't
19 think.

20 MR. ALEXANDER: So if all the parties agreed that the bylaws
21 were still in effect after the dues transmittal agreement terminated --

22 THE COURT: But did they apply if the --

23 MR. ALEXANDER: They did.

24 THE COURT: Okay, well --

25 MR. ALEXANDER: And I will explain to you --

1 THE COURT: -- I disagree.

2 MR. ALEXANDER: -- two different ways in which they --

3 THE COURT: Okay.

4 MR. ALEXANDER: -- continued to seek to --

5 THE COURT: Give me your argument.

6 MR. ALEXANDER: -- apply the NSEA bylaws. First, they
7 brought a lawsuit after August 2017 based on the NSEA bylaws,
8 asserting claims under the NSEA bylaws claiming they had contractual
9 rights under the NSEA bylaws and they brought that claim in September
10 of 2017.

11 More importantly, in --

12 THE COURT: That's --

13 MR. ALEXANDER: -- March and April of 2018, right before
14 they disaffiliated, they brought a motion for preliminary injunction and
15 what they sought in the preliminary injunction is for the Court to hold that
16 they had rights under the NSEA bylaws to stop NSEA from making
17 changes to its bylaws that would then be imposed on them. So the only
18 harm they were alleging is their fear of being subjected to NSEA bylaws
19 that necessarily on their preliminary injunction claim had to be in effect
20 at that time, because if they weren't in effect at that time, there would be
21 absolutely no reason to bring a preliminary injunction motion and there
22 would be no reason to claim that they had rights under the NSEA
23 bylaws.

24 So they acted -- their behavior after the dues termination --
25 dues transmittal agreement was terminated is consistent with their

1 understanding, like NEA's understanding and NSEA's understanding,
2 that they remained an affiliate and the bylaws continued to be in effect.

3 THE COURT: Okay.

4 MR. ALEXANDER: So --

5 THE COURT: What the effect of the --

6 MR. ALEXANDER: Now --

7 THE COURT: -- services agreement --

8 MR. ALEXANDER: Yes. Well the --

9 THE COURT: -- being terminated and the dues transmittal --

10 MR. ALEXANDER: I'm going to get to that now.

11 THE COURT: -- how it affect the bylaws was not admitted by
12 anybody, was just what's in front of us now.

13 MR. ALEXANDER: No.

14 THE COURT: Okay.

15 MR. ALEXANDER: It's also --

16 THE COURT: At least that's --

17 MR. ALEXANDER: Yes.

18 THE COURT: -- how I look at it, so I'm --

19 MR. ALEXANDER: Well, and I'm going to get --

20 THE COURT: -- I'm following.

21 MR. ALEXANDER: No, I'm going to get to that --

22 THE COURT: Okay.

23 MR. ALEXANDER: -- and I -- oops. Sorry about this.

24 THE COURT: No, it's fine, they're --

25 MR. ALEXANDER: Oh no, I'm sorry mostly --

1 THE COURT: They're great but they're bulky.
2 MR. ALEXANDER: -- to Mr. D'Alba because they're his
3 posterboards.
4 THE COURT: I honestly appreciate those over looking at the
5 overhead constantly so --
6 MR. ALEXANDER: So --
7 THE COURT: I'm old school. I like the little boards --
8 MR. ALEXANDER: You know, it's --
9 THE COURT: -- no problem.
10 MR. ALEXANDER: Thank you.
11 THE COURT: I struggle with them myself. Gotcha. Okay, so
12 what am I looking at? Help me.
13 MR. ALEXANDER: Well I'm going to --
14 THE COURT: Okay.
15 MR. ALEXANDER: Before you look at it, I'll --
16 THE COURT: Okay.
17 MR. ALEXANDER: -- explain what it is.
18 THE COURT: Okay.
19 MR. ALEXANDER: For the period of time that the NSEA and
20 -- the NEA bylaws were in effect with CCEA and continued to be a
21 contract with CCEA, the NEA bylaws had provisions regarding the
22 transmission of dues and placed obligations on CCEA regarding the
23 transmission of dues. Similarly though less clearly, the NSEA bylaws
24 required as a obligation of CCEA to have a dues transmittal agreement
25 in place.

1 THE COURT: Correct. Okay, I'm following you.
2 MR. ALEXANDER: I'd like to focus first on the NEA bylaws.
3 THE COURT: Okay.
4 MR. ALEXANDER: And this is -- and it's in tab -- in case this
5 is -- it's kind of small here so --
6 THE COURT: That's okay.
7 MR. ALEXANDER: -- it's easier I think --
8 THE COURT: I've got it in front.
9 MR. ALEXANDER: -- in tab three of --
10 THE COURT: The one you gave me today?
11 MR. ALEXANDER: Yes, the --
12 THE COURT: Okay. That's --
13 MR. ALEXANDER: -- the second tab three.
14 THE COURT: The -- okay. I got --
15 MR. ALEXANDER: Yes.
16 THE COURT: That's okay.
17 MR. ALEXANDER: I'm sorry about that.
18 THE COURT: No, don't be. It's easy to -- I found it, bylaws of
19 the National Education Association of the United States.
20 MR. ALEXANDER: Correct.
21 THE COURT: I got them. It's even in big print.
22 MR. ALEXANDER: It is.
23 THE COURT: That's helpful.
24 MR. ALEXANDER: If you turn to page 137 and then it goes
25 on to page 138 --

1 THE COURT: Okay. I'll find it. I got it.
2 MR. ALEXANDER: -- it's two dash nine, dues transmittal --
3 THE COURT: I see it.
4 MR. ALEXANDER: -- and enforcement procedures.
5 MR. D'ALBA: Did you say tab three, counsel?
6 MR. ALEXANDER: The second tab --
7 THE COURT: Tab three, the second tab three.
8 MR. ALEXANDER: Second tab three.
9 THE COURT: The back of the thing.
10 MR. D'ALBA: Oh.
11 MR. ALEXANDER: Yeah, sorry about that.
12 THE COURT: It's okay.
13 MR. ALEXANDER: So this is where the CCEA's obligations
14 for dues --
15 THE COURT: You've got a --
16 MR. ALEXANDER: -- transmittal -- dues collection and dues
17 transmittal appear in the NEA bylaws and it includes three different
18 obligations. Under two dash nine A, it requires the local affiliate, which
19 here is CCEA, to have full responsibility for transmitting state and
20 association dues --
21 THE COURT: Okay, says the association which is -- shall
22 enter into contracts with state affiliates so that would be --
23 MR. ALEXANDER: Yes.
24 THE COURT: -- CCEA enter into a contract with NSEA
25 governing the transmittal of association dues.

1 MR. ALEXANDER: And then state affiliates shall have full
2 responsibility for transmitting association, and here association is NEA
3 dues, from local affiliates on a contractual basis, but then the highlighted
4 language --

5 THE COURT: Okay.

6 MR. ALEXANDER: -- on this board which is also the next
7 sentence in your page --

8 THE COURT: I got it.

9 MR. ALEXANDER: -- is local affiliates shall have full -- the full
10 responsibility for transmitting state and association dues to state
11 affiliates on a contractual basis. So these are two separate obligations
12 that are placed on local affiliates. The first one is that they have full
13 responsibility for transmitting state and association dues. The second is
14 that they have an obligation to do that on a contractual basis, so they
15 have an obligation. It's a duty under the bylaws to have in place a
16 contract for the transmittal of dues, but there's a separate --

17 THE COURT: Right.

18 MR. ALEXANDER: -- standalone obligation --

19 THE COURT: Which I know what that --

20 MR. ALEXANDER: -- to just collect and transmit the dues.

21 Now, separately and importantly for the NEA bylaws, there is
22 a subsection B, completely second subsection here. And I put that out
23 in full here.

24 THE COURT: Right. I have it here. It's on page 138.

25 MR. ALEXANDER: Yes. And the reason for this is that this is

1 a default mechanism for the transmittal of NEA dues in the absence of a
2 contract. It has a separate obligation that a local shall transmit to a state
3 affiliate and a state affiliate shall transmit to the association at least 40
4 percent of the association dues by March 15 and at least 70 percent of
5 the association dues receivable for the year by June 1.

6 It permits the next -- after the semicolon, it permits with
7 respect to a determination of what that 70 percent is referring to, you
8 know, when -- how many people are in there, it is -- it's going to be
9 looking at January 15 as the date. That's the frozen date when you
10 have to have all of the members counted up --

11 THE COURT: Right.

12 MR. ALEXANDER: -- and you have to have at least 40
13 percent of those members' dues paid over --

14 THE COURT: So this is the substantive thing of how you --
15 what --

16 MR. ALEXANDER: Right. This is a --

17 THE COURT: -- should be included in the dates.

18 MR. ALEXANDER: It's a separate obligation. It does allow
19 the January 15th date to be modified if there's a dues -- separate
20 contract in place.

21 THE COURT: Beginning September 1st.

22 MR. ALEXANDER: No, the --

23 THE COURT: Right?

24 MR. ALEXANDER: No, the separate contract is a contract for
25 the transmission of dues, but it's -- the January 15th date has to do with

1 the counting of how many members there are --

2 THE COURT: Okay.

3 MR. ALEXANDER: -- because members join all throughout
4 the year and they drop throughout the year.

5 THE COURT: Sure.

6 MR. ALEXANDER: And so you have to have this 40 percent
7 and 70 percent --

8 THE COURT: Okay.

9 MR. ALEXANDER: -- applying to something.

10 THE COURT: All right.

11 MR. ALEXANDER: So the upshot of all of this though is that
12 the NEA bylaws place three separate duties on CCEA and other local
13 affiliates. One is the full responsibility to collect and transmit the state
14 and NEA dues. The second is to have a dues transmittal agreement in
15 order to facilitate that, and the third is a default mechanism by which
16 there has to be a certain amount of the NEA dues transmitted by the
17 local by March 15th and a separate amount transmitted by June 1st.

18 Now, I say all of this because it's unambiguously the case that
19 after September 1, 2017, CCEA didn't comply with any of these three
20 obligations. They collected but they didn't transmit any of the NEA or
21 NSEA dues, they did not have a dues transmittal agreement in place
22 and they never transmitted a penny of the NEA dues.

23 THE COURT: Correct.

24 MR. ALEXANDER: So the only issue to defend against that is
25 their notion that because we breached one of the three duties, the duty

1 to have a dues transmittal agreement in place, the entire NEA bylaws
2 which cover all sorts of relationships between a local and the NEA,
3 including representation in the NEA, including benefits they could get
4 from the NEA, including representation they could have at the state level
5 and including a plethora of other aspects, that all of that terminated
6 because they breached one of their three obligations.

7 And this is the argument of CCEA. Essentially what they're
8 saying is having a dues transmittal agreement in place is a condition
9 precedent to the existence, continued existence and the continued
10 obligations -- its continued obligations under the NEA bylaws. And the
11 same will apply to the NSEA bylaws, but it's easier to use the NEA
12 bylaws as example --

13 THE COURT: No. I see what you're --

14 MR. ALEXANDER: Now, that's wrong for three different
15 reasons. First of all, contract law distinguishes between promises and
16 duties and conditions precedent. A party might have a whole lot of
17 promises it makes that it fails to fulfill -- it is in breach of the contract, but
18 that breach of the contract does not terminate the other party's duty to
19 perform its obligations under the contract.

20 Conditions precedent have to be clearly stated and they have
21 to be necessary and they are frowned upon because courts do not like
22 to arbitrarily or unnecessarily terminate a contractual relationship unless
23 it's clear that one party's obligations are dependent on the other party's.

24 Second, even in circumstances where a court -- and we
25 briefed this. This is in our reply brief because it was first raised in their

1 opposition.

2 Second, even in situations where a condition precedent has
3 been found to exist in a contract where one of the parties where the --
4 where the party that is seeking to not perform its duties had some role in
5 the condition precedent not happening, not coming to fruition, then the
6 condition precedent can be excused. But none of that's really that
7 important because the most important rule of conditions precedent is
8 that all -- the breach of a condition precedent by one party does not
9 entitle that party to breach or terminate other obligations it has. All it
10 does is it allows the counterparty not to perform its obligations.

11 THE COURT: That's if this Court accepts that that's a
12 condition precedent.

13 MR. ALEXANDER: Right, and if it's not a condition precedent,
14 then the contract can't possibly have terminated because the notion of a
15 contract terminating because of a nonoccurrence of a condition --
16 nonoccurrence of something in the contract, a promise in the contract,
17 only terminates the contract if it is a condition precedent.

18 And that's the *Rains* [phonetic] case and the *Rains* -- which is
19 their case. Their case --

20 THE COURT: They litigated that case?

21 MR. ALEXANDER: No, no, no, it's a case that they cited in
22 their brief.

23 THE COURT: Oh. Okay.

24 MR. ALEXANDER: I'm sorry.

25 THE COURT: Their case?

1 MR. ALEXANDER: But --

2 THE COURT: Okay. I didn't think it was Nevada but -- okay.

3 MR. ALEXANDER: -- under -- so that's why -- I mean and if
4 you think about it from a practical point of view, if a party could not
5 perform its obligations, breach its obligations in the contract and then as
6 a consequence of that have all of its other obligations forgiven, that
7 would put on its head the whole idea of --

8 THE COURT: It would if those were dealing with totally
9 separate things. This is all dealing with dues.

10 MR. ALEXANDER: Well the --

11 THE COURT: Correct?

12 MR. ALEXANDER: No. The NEA --

13 THE COURT: Yes it is --

14 MR. ALEXANDER: The NEA bylaws --

15 THE COURT: -- transmitting dues.

16 MR. ALEXANDER: No, the --

17 THE COURT: Yes.

18 MR. ALEXANDER: -- the NEA bylaws --

19 THE COURT: You just told me there's three separate duties;
20 collect --

21 MR. ALEXANDER: Yes.

22 THE COURT: -- and transmit dues, default mechanism to
23 transmit dues and so it is all dealing with the same subject --

24 MR. ALEXANDER: This provision is.

25 THE COURT: -- so I would agree with you if they were totally

1 separate things, but these are all dealing with the same --
2 MR. ALEXANDER: This provision is.
3 THE COURT: -- topic so --
4 MR. ALEXANDER: This provision is.
5 THE COURT: Yes.
6 MR. ALEXANDER: But in any event --
7 THE COURT: What you just gave me, I wrote them all down
8 here.
9 MR. ALEXANDER: Yes.
10 THE COURT: You said three separate duties.
11 MR. ALEXANDER: Right. So what --
12 THE COURT: I wrote it.
13 MR. ALEXANDER: A condition precedent is -- which is what
14 they're arguing which terminates the obligations, only applies to the
15 non-breaching party. They're the breaching party here. They breached
16 the contract, the bylaws, by terminating -- unilaterally terminating the
17 dues transmittal agreement. That is a breach of the --
18 THE COURT: And they didn't have a right to do that?
19 MR. ALEXANDER: They did not have a right --
20 THE COURT: Okay, well I already --
21 MR. ALEXANDER: - to do that under the bylaws.
22 THE COURT: I already -- okay.
23 MR. ALEXANDER: Under the bylaws they don't have a right
24 to do that. They can -- unless they disaffiliate.
25 MR. D'ALBA: It's a perpetual contract.

1 MR. ALEXANDER: It's not a perpetual contract --
2 THE COURT: Okay.
3 MR. ALEXANDER: -- because they -- a perpetual contract
4 requires both parties to agree to terminate the contract.
5 THE COURT: Okay. Where is there language in the bylaws
6 that you have to disaffiliate before you no longer have to transmit dues?
7 MR. ALEXANDER: Well, it's --
8 THE COURT: I looked everywhere to be very -- looking at
9 your argument, and this disaffiliation -- I get they used the word local --
10 MR. ALEXANDER: Because if you don't disaffiliate, then you
11 are still a party to this bylaws.
12 THE COURT: According to your interpretation.
13 MR. ALEXANDER: And according to the CCEA's own bylaws.
14 Did the CCEA --
15 THE COURT: Okay. That's your --
16 MR. ALEXANDER: And according to the NEA's bylaws and
17 the NSEA's bylaws which require each party to abide by the bylaws of
18 the other parties.
19 THE COURT: Okay, I --
20 MR. ALEXANDER: So --
21 THE COURT: I'm not making my point, but go ahead, I get it.
22 MR. ALEXANDER: So, you know --
23 THE COURT: I'm following.
24 MR. ALEXANDER: I mean I understand that you're
25 disagreeing with me. I just want to make clear --

1 THE COURT: No, I'm just trying to follow --
2 MR. ALEXANDER: Yeah.
3 THE COURT: -- where it said -- I looked so strong trying to
4 find when it said you're supposed to disaffiliate and that --
5 MR. ALEXANDER: And that's --
6 THE COURT: -- these are counter -- these are codependent
7 -- I mean I really --
8 MR. ALEXANDER: Well the bylaws are the contract that
9 regulate --
10 THE COURT: I understand that.
11 MR. ALEXANDER: -- the affiliation relationship. So until the
12 affiliation relationship is concluded by the termination of the bylaws or
13 disaffiliation which has the effect -- it's the same thing as terminating the
14 bylaws --
15 THE COURT: Okay. All right. I follow.
16 MR. ALEXANDER: -- then you are subject to the bylaws --
17 THE COURT: Okay.
18 MR. ALEXANDER: -- because you're a party to the bylaws.
19 You cannot breach your obligations under the bylaws and then say I
20 don't -- I've now terminated the bylaws by breaching them. That would
21 be true even if this were a condition precedent.
22 The reason it's not a condition precedent is because a
23 condition precedent requires that the contract not be able to be
24 enforceable if the condition does not obtain. But here it's absolutely
25 clear that the other promises of having full responsibility for transmitting

1 state and association dues continues to be a promise under the bylaws,
2 and even more importantly, there's specific language about how much of
3 the dues have to be transmitted by a certain point in time that would be
4 true independent of the existence of a dues transmittal agreement.

5 So because of that, this cannot be seen under contract law as
6 a condition precedent, all of which is not as important as the fact that the
7 way conditions precedent work is they only excuse the non-breaching
8 party from performing its obligations. It doesn't allow a breaching party
9 to use --

10 THE COURT: And they breached because they terminated
11 their services agreement and their dues transmittal agreement. Was
12 that their breach?

13 MR. ALEXANDER: Well the services agreement has nothing
14 to do with this.

15 THE COURT: Okay.

16 MR. ALEXANDER: That's completely independent --

17 THE COURT: Okay, once again, did they breach where --
18 their breach is --

19 MR. ALEXANDER: Yes.

20 THE COURT: -- because their -- okay.

21 MR. ALEXANDER: They breached for three -- they --

22 THE COURT: Okay.

23 MR. ALEXANDER: -- breached because --

24 THE COURT: That would be the legal --

25 MR. ALEXANDER: -- they no longer had a dues transmittal

1 agreement in place.

2 THE COURT: Correct.

3 MR. ALEXANDER: And they also breached --

4 THE COURT: But you gave them the mechanism to terminate
5 it.

6 MR. ALEXANDER: Right, but they --

7 THE COURT: That made no sense you -- you agreed --
8 you're -- not you personally, I know. NSEA --

9 MR. ALEXANDER: Well to terminate that one.

10 THE COURT: Yes.

11 MR. ALEXANDER: To terminate that one and renegotiate it,
12 but in order to --

13 THE COURT: Oh, okay, I'm not going to go -- okay. I get it.

14 MR. ALEXANDER: And but separately --

15 THE COURT: Okay.

16 MR. ALEXANDER: -- there's the --

17 THE COURT: I -- I'm following.

18 MR. ALEXANDER: -- there's a separate obligation even if
19 there was no dues transmittal agreement to pay over --

20 THE COURT: No, I understand that you think --

21 MR. ALEXANDER: -- and that -- they breached that as well.

22 THE COURT: -- there's three obligations to pay. I get if you --
23 I understand that argument.

24 MR. ALEXANDER: And those breaches of those obligations
25 are only excused if in fact the contract no longer -- the contract being the

1 NEA bylaws --

2 THE COURT: No, I understand.

3 MR. ALEXANDER: -- no longer exist.

4 THE COURT: No longer --

5 MR. ALEXANDER: Under contract law --

6 THE COURT: Are no longer in effect. Yes.

7 MR. ALEXANDER: With respect to CCEA.

8 THE COURT: Correct.

9 MR. ALEXANDER: Notwithstanding the CCEA itself treated
10 its affiliation relationship as continuing and continued to try to enforce
11 terms of the bylaws, the NSEA bylaws, after it terminated the dues
12 transmittal agreement. I don't know whether --

13 THE COURT: Okay.

14 MR. ALEXANDER: -- my arguments have been --

15 THE COURT: No, I -- it helps --

16 MR. ALEXANDER: -- understandable or --

17 THE COURT: No, they were I --

18 MR. ALEXANDER: -- persuasive to you, but --

19 THE COURT: I -- yes.

20 MR. ALEXANDER: -- but I think that it's important to
21 understand that their application of the conditions precedent doctrine of
22 contract law is not the way contract law works and their own cases don't
23 support that.

24 THE COURT: Okay. No, and I thought I understood there are
25 three -- let me say it differently. Three independent obligations is how

1 you look which I put three separate -- you said separate, but you mean
2 independent. So even though the dues transmittal agreement was
3 done, these other ones were separate obligations on collecting dues and
4 how you did dues -- how you determined the time frame.

5 MR. ALEXANDER: Well, and with respect to the NSEA
6 bylaws --

7 THE COURT: Okay.

8 MR. ALEXANDER: -- there the NSEA bylaws has --

9 THE COURT: These are NEA I was looking --

10 MR. ALEXANDER: Those are NEA.

11 THE COURT: Yeah.

12 MR. ALEXANDER: And NEA has interpreted them and
13 that's --

14 THE COURT: Right.

15 MR. ALEXANDER: -- you know, and just as Mr. D'Alba, my
16 colleague, indicated that the governing bodies of unions are entitled to
17 deference in their interpretation --

18 THE COURT: No, I get that.

19 MR. ALEXANDER: -- we have in the record the affidavit of
20 Jim Testerman who interprets the NEA bylaws exactly as how I
21 described them and --

22 THE COURT: But he was in terms of the mechanisms of what
23 they're following, not -- it's fine.

24 MR. ALEXANDER: There --

25 THE COURT: I'm sorry, I'm not going to make a distinction I --

1 MR. ALEXANDER: That's fair. With respect to the NSEA
2 bylaws --

3 THE COURT: Right. Okay.

4 MR. ALEXANDER: -- the breach is that they -- the breach of
5 the -- I mean whether they had a right to terminate the dues transmittal
6 agreement to renegotiate another one is one thing. By doing that, they
7 effectively breached the NSEA bylaws. Now --

8 THE COURT: The --

9 MR. ALEXANDER: Now, unless the NSEA bylaws -- right?

10 THE COURT: Do -- NSEA. Okay.

11 MR. ALEXANDER: Right, because NSEA --

12 THE COURT: I'm sorry.

13 MR. ALEXANDER: -- bylaws requires --

14 THE COURT: I was --

15 MR. ALEXANDER: -- local affiliates to have a dues
16 transmittal agreement in place, and as you indicated earlier, that was as
17 a result of a dispute --

18 THE COURT: Right.

19 MR. ALEXANDER: -- that CCEA and NSEA had two or three
20 years earlier --

21 THE COURT: Yeah, I --

22 MR. ALEXANDER: -- where --

23 THE COURT: I kind of tracked it back to see how this came
24 into existence. Yeah.

25 MR. ALEXANDER: Exactly, and NSEA interprets their own

1 bylaws as requiring locals to have -- while they're affiliated to have
2 continuing obligations to maintain a dues transmittal agreement.

3 THE COURT: Okay.

4 MR. ALEXANDER: And it's just a mechanism by which you
5 figure out how many days you have before you turn over the dues.

6 THE COURT: No, and I agree with -- I told you that I -- I
7 looked at it as a mechanism of having dues due. I agree.

8 MR. ALEXANDER: So by not having it, that's a breach.
9 What's the result of that breach? Result of that breach is that CCEA
10 was able to take the position that we don't have to provide you those
11 dues that we collected from members at all.

12 THE COURT: So what you're saying is it's a mechanism -- so
13 what you're saying is they have to disaffiliate before they can terminate
14 their transmittal agreement.

15 MR. ALEXANDER: Well they could terminate the -- a dues
16 transmittal agreement as long as they have another one in place but --

17 THE COURT: Oh, okay, that's the -- okay.

18 MR. ALEXANDER: -- but if they want --

19 THE COURT: Then why --

20 MR. ALEXANDER: -- not to have a dues transmittal obligation
21 and not be in breach of the NSEA bylaws, or the NEA bylaws, they have
22 to disaffiliate which has the effect of --

23 THE COURT: Okay.

24 MR. ALEXANDER: -- terminating the contractual relationship.
25 That is exactly what --

1 THE COURT: I get it.

2 MR. ALEXANDER: -- number one, the letter from the
3 President of CCEA said we will no longer have any contractual
4 relationships because we've disaffiliated. That's April 26th that's --

5 THE COURT: 2018.

6 MR. ALEXANDER: 2018, yes.

7 THE COURT: I got it.

8 MR. ALEXANDER: Okay. So --

9 THE COURT: I think I have that letter memorized that's --

10 MR. ALEXANDER: Yes, that's probably burned into your
11 brain I'm afraid --

12 THE COURT: Okay, please provide --

13 MR. ALEXANDER: -- and I apologize for that also.

14 THE COURT: No, I appreciate it. I -- once again, I so much
15 appreciate --

16 MR. ALEXANDER: And I mean I could --

17 THE COURT: -- the great briefing and how well you guys
18 present it.

19 MR. ALEXANDER: I could address the perpetual --

20 THE COURT: Please be advised --

21 MR. ALEXANDER: -- perpetual contract issue if you'd like me
22 to, but I don't think it actually is --

23 THE COURT: You know, it's well-briefed and if they're going
24 to buy that, then you're right on that so -- it has been well-briefed. I will
25 be honest I don't need to go down that road.

1 MR. ALEXANDER: Thank you.

2 THE COURT: It's certainly in your briefs and I understand
3 what you're saying on that.

4 MR. ALEXANDER: Thank you, Your Honor.

5 THE COURT: Okay, please be advised -- let me just look at
6 the letter again. No longer -- we will no longer have any -- okay. I got --
7 I wanted -- okay.

8 MR. DELIKANAKIS: Just a few points. NSEA can't escape
9 the fact that --

10 THE COURT: Okay. I'm sorry, can you speak up? I
11 apologize.

12 MR. DELIKANAKIS: I will. I'm going to come to the podium --

13 THE COURT: I know we're getting tired, but I really want to
14 hear.

15 MR. DELIKANAKIS: No, no, no, no, no, I just have a lot of
16 papers here.

17 THE COURT: Yeah, it makes -- I know it's a pain, but it's
18 easier if you sit up here because it makes people --

19 MR. DELIKANAKIS: Of course.

20 THE COURT: -- speak up to me. I have to make sure I hear.

21 MR. DELIKANAKIS: Sure. Few points.

22 THE COURT: Okay.

23 MR. DELIKANAKIS: First as to CCEA's attempts to seek
24 relief and citing to the NSEA bylaws, there's a concept in court
25 proceedings of alternate theories of remedies and that's exactly what it

1 was and should be given that weight --

2 THE COURT: Okay.

3 MR. DELIKANAKIS: -- because that's all it is. I think you
4 understand that.

5 THE COURT: On the -- well --

6 MR. DELIKANAKIS: But the -- sorry, do you have a question?

7 THE COURT: That -- no, fine. I get that.

8 MR. DELIKANAKIS: Okay. What the --

9 THE COURT: That's how I took it.

10 MR. DELIKANAKIS: Exactly. What the NSEA can't get
11 around is that the burden on their own bylaws reads: The NSEA shall
12 affiliate a local association when it meets the following minimum
13 standards: F, have a dues transmittal contract.

14 So they can't escape that. You're not going to be a member --

15 THE COURT: Read it again to me. I'm sorry.

16 MR. DELIKANAKIS: Of course, I'll read it to you. It's --

17 THE COURT: It mentioned the dues transmittal.

18 MR. DELIKANAKIS: Yeah, it's the document that I brought up
19 to the bench earlier today --

20 THE COURT: Oh that's right, and I wanted to make --

21 MR. DELIKANAKIS: -- when we were arguing about --

22 THE COURT: Okay. No.

23 MR. DELIKANAKIS: -- conversion and unjust enrichment.

24 THE COURT: Right. Okay. No.

25 MR. DELIKANAKIS: It's the same clause. The NSEA shall

1 affiliate a local association when it meets the following minimum
2 standards. Then there's an eclipse it goes down to F.

3 THE COURT: Okay.

4 MR. DELIKANAKIS: Have a dues transmittal contract with
5 NSEA. That plain language tells me you're not going to be in the club
6 unless you have a dues transmittal contract.

7 THE COURT: Because they want their money. I get --

8 MR. DELIKANAKIS: Because they want their money.

9 THE COURT: Of course --

10 MR. DELIKANAKIS: Exactly.

11 THE COURT: -- and they have a right to have their dues.

12 MR. DELIKANAKIS: I also want to address if I could the
13 interesting theory of contractual interpretation on section 2.9 of the NEA
14 bylaws --

15 THE COURT: Okay, let me get that back because I had it
16 right --

17 MR. DELIKANAKIS: -- which is tab three.

18 THE COURT: Three, the -- a letter tab three. Yes, I've got it.

19 MR. DELIKANAKIS: What my colleague is encouraging the
20 Court to do is to read each paragraph in a vacuum as if it existed --

21 THE COURT: Yeah. Independently.

22 MR. DELIKANAKIS: -- independent.

23 THE COURT: I said the word independent but not as -- I
24 know.

25 MR. DELIKANAKIS: And it's not.

1 THE COURT: I know. I just want to make sure.

2 MR. DELIKANAKIS: Because I think a plain reading of
3 section 2.9 makes it very clear. The association shall enter into
4 contracts with state affiliates governing the transmittal of association
5 dues.

6 So what's that first sentence tells me? That if you're going to
7 have an affiliate, this association, the NEA, shall enter into contracts. It
8 doesn't say shall enter into the bylaws. It doesn't say shall be subject to
9 the bylaws. It says you're going to enter into a contract.

10 THE COURT: Transmissal [sic].

11 MR. DELIKANAKIS: So the first sentence establishes that
12 there's going to be a mechanism by which dues are transmitted and that
13 first sentence tells us that it's going to be a contract.

14 State affiliates, like my client, shall have the full responsibility
15 for transmitting association dues from local affiliates on a contractual
16 basis. Again, the responsibility is not some free-floating, independent
17 responsibility which is included in these bylaws. It references, again, a
18 contract.

19 Local affiliate shall have the full -- contractual basis. If you
20 look further as to B, again it talks about the dollar amount.

21 THE COURT: Yeah. I said that.

22 MR. DELIKANAKIS: That's not a freestanding contract in
23 paragraph B. It needs to be read harmoniously with the rest of the
24 provision that -- that obviously deals with a contract.

25 And if you don't have -- if you still have doubts after you get

1 through B, you get to B1, a local or state affiliate which becomes
2 delinquent in its contracted transmittal --

3 THE COURT: Transmittal.

4 MR. DELIKANAKIS: -- schedule. So what I'm saying is you
5 got to read the whole section as a whole and a reasonable interpretation
6 of that section under contract law is that this provision is not a
7 freestanding contract; it refers to a transmittal dues agreement.

8 I understand why they're making this argument, because the
9 Court's already ruled that the dues transmittal agreement has been
10 terminated.

11 THE COURT: I know.

12 MR. DELIKANAKIS: And earlier today the Court ruled -- when
13 they made their arguments about unjust enrichment and conversion,
14 they were resting upon the bylaws as the basis for that. Well the Court's
15 already ruled against them on those two claims.

16 So this has been a fascinating argument on the bylaws and
17 the dissection of the bylaws, but I think the decision for the Court should
18 be the same; that there is no independent contractual basis just in these
19 independent provisions because -- and this is my last point. If the Court
20 accepts their argument --

21 THE COURT: As three independent --

22 MR. DELIKANAKIS: As just -- as independent --

23 THE COURT: I wrote that --

24 MR. DELIKANAKIS: -- what does that do to the transmittal
25 agreement?

1 THE COURT: I don't know. Where is it --
2 MR. DELIKANAKIS: I'll tell you what it does.
3 THE COURT: -- floating around somewhere?
4 MR. DELIKANAKIS: Right, exactly --
5 THE COURT: Well his answer is you have to have one so
6 you -- that goes back to the perpetuity thing. Right?
7 MR. DELIKANAKIS: Well what I'm --if you accept their
8 argument --
9 THE COURT: Okay. I'm trying --
10 MR. DELIKANAKIS: -- you then say you know what, the dues
11 transmittal agreement which seems to be mentioned in all these bylaws
12 means nothing.
13 Now why --- you know, you don't want to interpret a contract
14 so it is a nullity or an absurdity. And I posit that if you accept their theory
15 that there was these super contracts which somehow override the very
16 contract that they refer to within their bylaws, it would be a nullity,
17 because that means anything that they negotiate in the dues transmittal
18 agreement, including the right to terminate the dues transmittal
19 agreement --
20 THE COURT: I know.
21 MR. DELIKANAKIS: -- becomes a nullity and that is an
22 absurd result that the Court should not adopt.
23 THE COURT: I think that's where I have struggled. I mean I
24 have struggled with that trying to give significance to that because -- I
25 struggled before -- not struggled, looked at it and made a decision, but it

1 is -- I mean I'm very aware of that and -- okay.

2 MR. DELIKANAKIS: Thank you, Your Honor.

3 THE COURT: You're welcome.

4 MR. ALEXANDER: Just finally because I think that --

5 THE COURT: No. I want you to --

6 MR. ALEXANDER: No, no, I --

7 THE COURT: Even though it's late, I want you to --

8 MR. ALEXANDER: I think it's --

9 THE COURT: You have a fair right to get this all out, I agree.

10 MR. ALEXANDER: Right. I think that what Mr. Delikanakis
11 did first doesn't take into account how the NEA itself interprets its own
12 governing document, the -- its bylaws, and that's found in Mr.
13 Testerman's affidavit in which he expressly says that that language
14 requires three obligations of local affiliates and that local affiliates do not
15 have the right to modify subsection B of two point --

16 THE COURT: Two nine.

17 MR. ALEXANDER: Two nine --

18 THE COURT: Right.

19 MR. ALEXANDER: -- B, except with respect to the date on
20 which you measure the count of how many members there are for
21 purposes of the 40 percent and 70 percent.

22 It is not a nullity, it is not an absurdity to require a specific
23 contractual relationship that identifies that you have to transmit dues on
24 certain days, you must maintain dues in a interest bearing accounting.
25 There can be all sorts of specific -- much more specific because a bylaw

1 and constitution is just that. It's like a constitution like the United States
2 Constitution or the Nevada state constitution.

3 It does not get into the minutia. That's why it requires local
4 affiliates to have contracts with their state affiliates in order to regulate
5 the minutia of the local affiliate's full responsibility for transmitting the
6 state and association dues.

7 It's undisputed, I think, that if the NSEA and NEA bylaws -- the
8 NEA bylaws, let's limit to that for now, was -- were in effect until April 25,
9 2018 when CCEA disaffiliated and said we no longer have any
10 contractual relationship, CCEA was in breach of 2.9A and 2.9B, both
11 because under 2.9A they did not effectuate their full responsibility for
12 transmitting state and association dues to state affiliates and because
13 they failed to have in place a ministerial-type contract to regulate the
14 minutia of the dues transmittal, and finally because they did not transmit
15 any association dues during that period of time.

16 THE COURT: Right. No, and that's not disputed --

17 MR. ALEXANDER: And Mr. Delikanakis did not address the
18 condition precedent issue. I leave it to the briefs.

19 THE COURT: Yeah, I --

20 MR. DELIKANAKIS: It's been briefed.

21 THE COURT: I worked on the condition precedent -- okay.

22 All right. I'm going to stay consistent that I feel that based on
23 my previous that I do not find that CCEA breached the NSEA or NEA
24 byline -- byline, sorry -- bylaws and based on my looking at the contract
25 that I felt like the transmittal agreement was one condition that was -- not

1 three separate and because they did not, they aren't in breach.

2 I -- you can give more facts, but I followed your argument and
3 it's contractual -- you're right, it's an obligation. I don't look at it as a
4 matter of let them -- let the NEA decide how they want to interpret their
5 own contract because I don't think that's appropriate.

6 The other one when you said bylaws are bylaws, I certainly
7 understand when you're doing the mechanisms that those cases apply
8 to that. I find a distinction. I do want to say that.

9 MR. DELIKANAKIS: Thank you, Your Honor. I wanted to
10 raise my colleague pointed out your order also accrues to the CCEA
11 bylaws?

12 THE COURT: Yes. It does both.

13 MR. DELIKANAKIS: Yes. All three.

14 THE COURT: All three --

15 MR. DELIKANAKIS: All three.

16 THE COURT: -- which are the three causes of action.

17 MR. DELIKANAKIS: Correct. So I think --

18 THE COURT: Two --

19 MR. ALEXANDER: Two, three and four.

20 THE COURT: Am I right, two, three and four? I don't want to
21 mess it up. Two, three and four.

22 MR. DELIKANAKIS: Three and four. So --

23 THE COURT: Two -- yeah.

24 MR. ALEXANDER: Four is only brought by the individual
25 members because they are parties to the CCEA --

1 THE COURT: Okay, hold on. Two is the breach of NSEA
2 bylaws. Three is the breach of NEA bylaws. Where is the breach of
3 CCEA --

4 MR. ALEXANDER: That's four.

5 THE COURT: Four. I'm sorry, four is the breach by -- of the
6 CCEA bylaws.

7 So what did you say four was -- I'm sorry?

8 MR. ALEXANDER: No, that's exactly --

9 MR. DELIKANAKIS: That's correct.

10 THE COURT: Okay, I --

11 MR. ALEXANDER: You're right. That's correct.

12 MR. DELIKANAKIS: That's correct.

13 MR. ALEXANDER: We're all in agreement --

14 THE COURT: You guys I tried to be very careful that I went
15 through each of them so I didn't mess --

16 MR. DELIKANAKIS: That is correct.

17 THE COURT: -- didn't get confused on which causes of
18 action. Okay. Yes. Okay, and we -- I already decided one so we don't
19 have to do that. That's the dues transmittal agreement, right? Okay.
20 So what we have left -- what -- we have left what else? You --

21 MR. DELIKANAKIS: The disgorgement motion, Your Honor.

22 MR. ALEXANDER: The motion to alter or amend Judge
23 Kishner's order --

24 MR. DELIKANAKIS: This was the motion to alter or amend
25 Judge Kishner's order in order --

1 THE COURT: Okay, hold on.

2 MR. DELIKANAKIS: -- to allow disgorgement of the funds that
3 are held in the restricted account so that we can send it back to the
4 teachers.

5 THE COURT: Is this the one pursuant -- wait a minute, that's
6 -- motion to alter or amend court's -- oh yeah, the May 11th -- thank you.
7 I'm sorry, I forgot it was --

8 MR. ALEXANDER: Pursuant to Rule 59.

9 THE COURT: Okay. All right. Sorry. You're right. I have
10 that too. All right. So let me -- that's --

11 MR. ALEXANDER: On that, Your Honor, I mean I --

12 THE COURT: Motion to alter -- okay.

13 MR. ALEXANDER: At this point given that the Court --

14 THE COURT: The previous rulings.

15 MR. ALEXANDER: -- the Court's prior rulings which I ask for
16 purposes of --

17 THE COURT: You're going to ask for a stay, I bet.

18 MR. ALEXANDER: I am going to ask for a stay --

19 MR. DELIKANAKIS: We're going to object.

20 MR. ALEXANDER: We're going to ask for a stay to allow us
21 to appeal it because it is I believe an --

22 THE COURT: No, I --

23 MR. ALEXANDER: -- appealable order under Rule 3 of the --

24 THE COURT: Well --

25 MR. ALEXANDER: -- Nevada Rules of Appellate Procedure.

1 MR. DELIKANAKIS: Actually, Your Honor, I'd like the
2 opportunity to brief that. I think they need to bring a motion --

3 THE COURT: I put a big thing if I do grant it I would like briefs
4 on stay. It is --

5 MR. DELIKANAKIS: Yeah.

6 THE COURT: I will do a temporary restraining order at this
7 time that the funds have to stay where they are.

8 MR. DELIKANAKIS: Of course.

9 THE COURT: I agree with you -- okay, so on this one I'm
10 granting the motion to alter or amend the Court's order, but I am staying
11 the enforcement of -- well I don't want to say -- yeah, I am staying it until
12 I receive briefing on whether it's -- it's a temporary restraining order -- I'm
13 not going to put you to the 15 days either.

14 MR. DELIKANAKIS: No, just --

15 THE COURT: So I'm just going to say a stay -- a temporary
16 stay until whether I should do a permanent stay pending appeal, which
17 there's mechanisms for that too.

18 MR. DELIKANAKIS: Understood, Your Honor.

19 THE COURT: But I would like it briefed so we do that even
20 correctly if you don't mind.

21 MR. ALEXANDER: Yes.

22 THE COURT: I started to do some research on it and I ran
23 out of steam.

24 MR. ALEXANDER: Is it --

25 MR. DELIKANAKIS: Thank you.

1 MR. ALEXANDER: Is it appropriate to brief that issue, the
2 stay, once there is a form of order?
3 MR. DELIKANAKIS: I think that --
4 THE COURT: Yes.
5 MR. DELIKANAKIS: -- would be prudent so let's get the order
6 worked out --
7 THE COURT: So right now you are not to do anything with
8 the --
9 MR. DELIKANAKIS: No, we're not going to touch -- we're not
10 doing --
11 THE COURT: They won't --
12 MR. DELIKANAKIS: No.
13 THE COURT: Okay, I just want it very clear on the record I --
14 I trust all of you, but I want it very clear on the record I don't -- and then
15 I'd be glad to however you want to brief it what I think is the best way to
16 make sure you can get your appeal and the funds stay where they are.
17 MR. DELIKANAKIS: Very good, Your Honor.
18 MR. ALEXANDER: Thank you, Your Honor.
19 THE COURT: You're welcome.
20 MR. ALEXANDER: And I appreciate --
21 THE COURT: I want to thank you, counsel, I --
22 MR. DELIKANAKIS: Yeah.
23 THE COURT: You may not think but I totally enjoy having
24 well-briefed, well-argued I mean and obviously, I truly do appreciate all
25 of your expertise. I am in great awe of how well you did this. I struggled

1 just getting it together. You all did an excellent job and I always want to
2 say that because --

3 MR. ALEXANDER: I want to thank you --

4 THE COURT: -- sometimes judges aren't very nice and I truly
5 appreciate it.

6 MR. ALEXANDER: -- for indulging us and the amount of time
7 we've taken.

8 MR. DELIKANAKIS: We appreciate --

9 THE COURT: No, I --

10 MR. DELIKANAKIS: Yeah.

11 MR. ALEXANDER: And I want -- and so I feel bad that I'm
12 going to ask to indulge for one more minute.

13 THE COURT: Okay. That's fine. What else do you need?

14 MR. ALEXANDER: It's an administrative sort of --

15 THE COURT: Okay.

16 MR. ALEXANDER: -- ministerial issue. Right now there is an
17 August 5 trial date --

18 THE COURT: Okay. Let me look at it.

19 MR. ALEXANDER: -- and --

20 THE COURT: There is. There's a bench trial on August 5,
21 calendar call on 7/18.

22 MR. ALEXANDER: And I would like to given that there's
23 going to be a period of time between the -- this order -- the form of order
24 and then --

25 THE COURT: Sure.

1 MR. ALEXANDER: -- the stay to take that off of the August
2 calendar --

3 THE COURT: I was going to anyway based on the motions.

4 MR. DELIKANAKIS: I explained to my colleague --

5 MR. ALEXANDER: He predicted you would.

6 MR. DELIKANAKIS: -- the Judge will probably do that.

7 THE COURT: I will tell you I have to because I --

8 MR. DELIKANAKIS: Of course.

9 THE COURT: -- I am so into trying to do things orderly and
10 fair to both sides --

11 MR. DELIKANAKIS: Right.

12 THE COURT: -- I mean we -- all judges do. I'm not saying --

13 MR. DELIKANAKIS: Yeah.

14 THE COURT: -- it's just me, but that's very important to me.
15 We've come this far I want to -- like I even on that other order, I spent a
16 long time making sure it reflects what I think is fair because I know it's
17 going up. I'm not -- I understand that.

18 MR. ALEXANDER: Thank you, Your Honor.

19 THE COURT: Either side I --

20 MR. ALEXANDER: And then --

21 THE COURT: And I appreciate you should. I mean --

22 MR. DELIKANAKIS: Yeah.

23 THE COURT: -- it's a really --

24 MR. ALEXANDER: They're complicated issues. They
25 absolutely --

1 THE COURT: They're complicated issues, you know, and if
2 the supreme court has five years to -- no. Has their time to look at it, I --
3 you know, all I do -- try to do for both of you is give my reasoning and
4 spend the time that is required I mean so that I can do the best I can.

5 MR. DELIKANAKIS: Understood, Your Honor.

6 THE COURT: Yeah.

7 MR. ALEXANDER: Thank you, Your Honor.

8 THE COURT: So I will what I'm going to do now I'm going to
9 vacate the calendar call of 7/18 which would help the Court out --
10 7/18/2019 and I'm going to vacate the bench trial of 8/5/2019. There's a
11 temporary stay which we've all agreed to that's not going to be an
12 issue --

13 MR. DELIKANAKIS: Correct.

14 THE COURT: -- and then brief it for me so I feel like that's the
15 best mechanism and you get it up where you need to.

16 Does anything need to be certified? I guess they're all final
17 judgments anyway, aren't they?

18 MR. DELIKANAKIS: Well it will be.

19 THE COURT: It will be. Okay, I want to make sure it's
20 certified because I've --

21 MR. DELIKANAKIS: Yeah, we have -- you know, we also --
22 CCEA has some counterclaims which are live which I have to go back
23 and --

24 THE COURT: Okay. Will you go back and look at them --

25 MR. DELIKANAKIS: I will.

1 THE COURT: -- and see what we need to do?
2 MR. DELIKANAKIS: Right.
3 THE COURT: Or if we need to do anything or if they're still --
4 MR. DELIKANAKIS: We may discuss and see if we come to a
5 stay of some sort, but I need to go back see what's left --
6 THE COURT: Okay. No, I truly appreciate you do.
7 MR. DELIKANAKIS: -- and what the client wants to do with it.
8 We'll --
9 THE COURT: Okay. Okay, I'm glad you made me aware of
10 that.
11 MR. DELIKANAKIS: Yeah, of course.
12 MR. ALEXANDER: Thank you.
13 THE COURT: And of course I want to make sure it goes up
14 properly. I had somebody that took up a writ on a summary judgment
15 and now we have a procedural mess. It just --
16 MR. DELIKANAKIS: Yeah. No, we --
17 MR. ALEXANDER: No, we'll avoid that I'm sure. We'll --
18 THE COURT: Oh please.
19 MR. ALEXANDER: Mr. Delikanakis and I will --
20 THE COURT: No, and I know you're excellent counsel and --
21 MR. ALEXANDER: But --
22 THE COURT: I couldn't stop the other one and now they're in
23 a mess.
24 MR. ALEXANDER: I was assuming but I don't want to
25 assume --

1 THE COURT: Don't always assume, right.
2 MR. ALEXANDER: Exactly.
3 THE COURT: I try to tell my children don't do that.
4 MR. ALEXANDER: That the vacation of the pretrial --
5 THE COURT: Do it again.
6 MR. ALEXANDER: -- conference and the trial --
7 THE COURT: I don't have a pretrial conference.
8 MR. DELIKANAKIS: Calendar call.
9 MR. ALEXANDER: The calendar call, I'm sorry.
10 THE COURT: Calendar call I just vacated.
11 MR. ALEXANDER: And the --
12 MR. DELIKANAKIS: Trial.
13 MR. ALEXANDER: -- trial date of August 5th will also have
14 the effect of staying the remaining discovery period? Because --
15 MR. DELIKANAKIS: I think we'll have to meet and confer
16 because --
17 THE COURT: Not necessarily because now --
18 MR. DELIKANAKIS: Right.
19 THE COURT: -- the way it works here it doesn't necessarily
20 yours -- you have that -- now we do it but --
21 MR. ALEXANDER: Yes.
22 THE COURT: -- you have that period if you want to stipulate
23 to stop it now or not -- you can do that. If you feel like you can't agree
24 on it, then it now comes -- under Rule 16 it now comes to the district
25 court judge --

1 MR. ALEXANDER: It does.
2 THE COURT: -- in my spare time to --
3 MR. DELIKANAKIS: Lucky you.
4 MR. ALEXANDER: It does.
5 THE COURT: In some respects it's bad, in some respects it's
6 great because I really feel like I --
7 MR. ALEXANDER: You have control --
8 THE COURT: -- have a better handle on what's going on in
9 my cases, or at least try to see what's going on in my cases. So --
10 MR. DELIKANAKIS: We will meet and confer on that issue.
11 THE COURT: Okay. If you can't agree, then just do a motion.
12 MR. DELIKANAKIS: We will be before Your Honor.
13 THE COURT: Yeah.
14 MR. DELIKANAKIS: Thank you.
15 MR. ALEXANDER: Thank you very much.
16 THE COURT: Thank you again. Once again I greatly respect
17 the jobs all of you did. I do want you to know that very very much. It at
18 least makes my job somewhat easier.

19 [Hearing concluded at 2:03 p.m.]

20 * * * * *

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.

24 

25 Tracy A. Gegenheimer, CER-282, CET-282
Court Recorder/Transcriber