

**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 02:09 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

v.

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

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

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**APPELLANTS' APPENDIX VOLUME IX**

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Georgina Yeomans (pro hac vice)  
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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

<b>DATE FILED</b>	<b>DOCUMENT</b>	<b>VOLUME</b>	<b>PAGE RANGE</b>
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

<b>DATE FILED</b>	<b>DOCUMENT</b>	<b>VOLUME</b>	<b>PAGE RANGE</b>
	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

<b>DATE FILED</b>	<b>DOCUMENT</b>	<b>VOLUME</b>	<b>PAGE RANGE</b>
6/18/2018	Exhibit 8 to CCEA Parties' Motion for Partial Summary Judgment in Case No. A-17-761364-C <sup>1</sup>	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

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<sup>1</sup> 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.

<b>DATE FILED</b>	<b>DOCUMENT</b>	<b>VOLUME</b>	<b>PAGE RANGE</b>
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 <sup>2</sup>	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

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<sup>2</sup> 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.

<b>DATE FILED</b>	<b>DOCUMENT</b>	<b>VOLUME</b>	<b>PAGE RANGE</b>
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 <sup>3</sup>	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

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<sup>3</sup> 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.

<b>DATE FILED</b>	<b>DOCUMENT</b>	<b>VOLUME</b>	<b>PAGE RANGE</b>
	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



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

## ALPHABETICAL INDEX TO APPELLANTS' APPENDIX

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

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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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	Summary Judgment and Exhibits A, and E through H		
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2/21/2018	Defendants’ Answer to the Second Amended Complaint in Case No. A-17-761364-C	I	0131 – 0140
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	Docket Case No. A-17-761884-C	I	0012 – 0020

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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 3<sup>rd</sup> day of February, 2020.

/s/ Debbie Leonard

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*Attorneys for NSEA Appellants*

## **CERTIFICATE OF SERVICE**

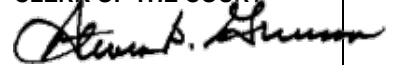
I HEREBY CERTIFY that I am an employee of Leonard Law, PC, and that on February 3, 2020, a copy of the foregoing document was electronically filed with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Court's E-Filing system (E-Flex). Participants in the case who are registered with E-Flex as users will be served by the EFlex system. A flash drive containing Appellants' Appendix was served by first-class mail addressed as follows:

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



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*Attorneys for Plaintiffs Clark County Education Association,  
Victoria Courtney, James Frazee, Robert G. Hollowood and  
Maria Neisess*

**IN THE EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-17-761364-C  
DEPT. NO.: 4

(consolidated with A-17-761884-C)

**NOTICE OF ENTRY OF FINDINGS OF  
FACT, CONCLUSIONS OF LAW, AND  
ORDER GRANTING IN PART AND  
DENYING IN PART THE NSEA  
PARTIES' MOTION FOR PARTIAL  
RECONSIDERATION OF THE  
DECEMBER 20, 2018 FINDINGS OF  
FACT, CONCLUSIONS OF LAW, AND  
ORDER**

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

4 Plaintiffs-Counter Defendants,

5 And

6 BRIAN LEE,

7 Counter-Defendant,

8 vs.

9 CLARK COUNTY EDUCATION  
10 ASSOCIATION; JOHN VELLARDITA; AND  
VICTORIA COURTNEY,

11 Defendants-Counter Plaintiffs.

Case No.: A-17-761884-C  
(consolidated with A-17-761364-C)

12 PLEASE TAKE NOTICE that Findings of Fact, Conclusions of Law, and Order Granting  
13 in Part and Denying in Part the NSEA Parties' Motion for Partial Reconsideration of the  
14 December 20, 2018 Findings of Fact, Conclusions of Law, and Order were entered in the above-  
15 captioned matter on June 28, 2019, a copy of which are attached hereto.

16 DATED this 28<sup>th</sup> day of June, 2019.

17 SNELL & WILMER L.L.P.

18  
19 By: /s/ Michael Paretti

John S. Delikanakis

Nevada Bar No. 5928

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**CERTIFICATE OF SERVICE**

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On this date, I caused to be served a true and correct copy of the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING IN PART AND DENYING IN PART THE NSEA PARTIES' MOTION FOR PARTIAL RECONSIDERATION OF THE DECEMBER 20, 2018 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** by the method indicated below:

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

and addressed to the following:

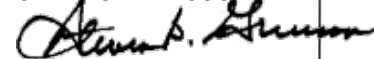
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DATED this 28th day of June, 2019.

/s/ Maricris Williams  
An Employee of Snell & Wilmer L.L.P

4832-9232-3227.1



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*Attorneys for the CCEA Parties*

**IN THE EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-17-761364-C  
DEPT. NO.: 4

(consolidated with A-17-761884-C)

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND ORDER GRANTING IN  
PART AND DENYING IN PART THE  
NSEA PARTIES' MOTION FOR  
PARTIAL RECONSIDERATION OF  
THE DECEMBER 20 FINDINGS OF  
FACT, CONCLUSIONS OF LAW, AND  
ORDER**

**Date of Hearing : May 9, 2019  
Time of Hearing: 9:00 a.m.**

1 NEVADA STATE EDUCATION  
2 ASSOCIATION; NATIONAL EDUCATION  
3 ASSOCIATION; RUBEN MURILLO;  
4 ROBERT BENSON; DIANE  
5 DI ARCHANGEL; AND JASON WYCKOFF,  
6  
7 Plaintiffs-Counter Defendants,  
8  
9 And  
10 BRIAN LEE,  
11  
12 Counter-Defendant,  
13  
14 vs.  
15  
16 CLARK COUNTY EDUCATION  
17 ASSOCIATION; JOHN VELLARDITA; AND  
18 VICTORIA COURTNEY,  
19  
20 Defendants-Counter Plaintiffs.

Case No.: A-17-761884-C  
(consolidated with A-17-761364-C)

12 The Court, having read and considered Nevada State Education Association (“NSEA”),  
13 National Education Association (“NEA”), Dana Galvin, Ruben Murillo, Jr., Brian Wallace, Brian  
14 Lee, Robert Benson, Diane Di Archangel and Jason Wyckoff (collectively “NSEA Parties”) Motion  
15 for Partial Reconsideration of the December 20 Findings of Fact, Conclusions of Law, and Order  
16 (“Motion for Reconsideration”), filed January 10, 2019; the Clark County Education Association  
17 (“CCEA”), Victoria Courtney, James Frazee, Robert Hollowood, and Maria Neisess’s (collectively,  
18 the “CCEA Parties”) Opposition to the Motion for Reconsideration, filed February 25, 2019; the  
19 NSEA Parties’ Reply in Support of the Motion for Reconsideration, filed April 4, 2019; and all  
20 other papers filed in support of the foregoing; having heard and considered the oral argument of  
21 counsel John S. Delikanakis, Esq., Bradley Austin, Esq. and Michael Paretti, Esq. of Snell &  
22 Wilmer L.L.P., and Joel D’Alba, Esq. of Asher, Gittler & D’Alba, Ltd. appearing on behalf of the  
23 CCEA Parties, and Robert Alexander, Esq. and James Graham Lake, Esq. of Bredhoff & Kaiser,  
24 PPLC and Paul J. Lal, Esq. of Boies Schiller Flexner appearing on behalf of the NSEA Parties, and  
25 with good cause appearing, enters the following findings of fact, conclusions of law and order.

### **FINDINGS OF FACT**

27 1. The CCEA Parties filed a Motion for Partial Summary Judgment (“MPSJ”) on June  
28 18, 2018 seeking summary judgment on their claim for Declaratory Relief.



1           2.     The NSEA Parties filed their Opposition to the MPSJ on July 20, 2018.  
2  
3           3.     The CCEA Parties filed their Reply in Support of the MPSJ on August 14, 2018.  
4  
5           4.     The Court entertained oral argument on the MPSJ on November 15, 2018 – with the  
6 consolidated hearing spanning nearly two-and-a-half hours in length (beginning at 9:06 am and  
7 concluding at 11:30 am).

8           5.     Following the hearing, the Court issued a Minute Order on November 15, 2018,  
9 granting the CCEA Parties’ MPSJ and directing CCEA’s counsel to draft a proposed order.

10          6.     The Parties subsequently exchanged redlines of a proposed order but were unable to  
11 reach a consensus.

12          7.     On December 6, 2018, CCEA submitted its proposed order, along with a redline  
13 from NSEA, highlighting for the Court all of the specific changes that the NSEA Parties requested.

14          8.     On December 7, 2018, the NSEA Parties submitted a competing order, along with  
15 a seven-page, single spaced letter – much of which contained arguments identical to those found in  
16 the instant Motion for Reconsideration.

17          9.     After reviewing both competing orders, the redline of the NSEA Parties’ proposed  
18 changes, and the NSEA Parties’ seven-page letter, the Court entered its Findings of Fact,  
19 Conclusions of Law, and Order granting the CCEA Parties’ Motion for Partial Summary Judgment  
20 on December 20, 2018.

21          10.    Pertinent to the Motion for Reconsideration, the December 20, 2018, Findings of  
22 Fact, Conclusions of Law, and Order provides:

- 23               a. Paragraph 6: “Members of CCEA pay dues to CCEA pursuant to a  
24 membership dues authorization form (‘Membership Authorization Form’).”  
25               b. Paragraph 8: “Once an individual CCEA member signs the CCEA  
26 Membership Authorization Form, CCEA membership dues are then  
27 deducted from members’ pay checks by their employer, the CCSD, pursuant  
28 to a collective bargaining agreement negotiated and agreed to by and  
between CCEA and CCSD.”

1 c. Paragraph 9: "The membership dues deducted from CCEA members' pay  
2 checks are then paid to CCEA by CCSD."

3 d. Paragraph 10: "A portion of the CCEA membership dues are then  
4 transmitted to NSEA through a dues transmittal agreement by and between  
5 CCEA and NSEA('Dues Transmittal Agreement'), which is attached as an  
6 addendum and incorporated into a negotiated services agreement by and  
7 between CCEA and NSEA ('Service Agreement') as Addendum A."

8 e. Paragraph 12: "In the absence of a Dues Transmittal Agreement, there is no  
9 obligation for CCEA to transmit dues to NSEA and per NEA's bylaws, only  
10 NSEA has a contractual obligation to pay NEA."

11 11. Any finding of fact which should be construed as a conclusion of law shall be  
12 construed as such.

13 12. Any conclusion of law which should be construed as a finding of fact shall be  
14 construed as such.

### 15 CONCLUSIONS OF LAW

#### 16 **A. Standard for Reconsideration**

17 13. "A district court may reconsider a previously decided issue if substantially different  
18 evidence is subsequently introduced or the decision is clearly erroneous." *Masonry & Tile*  
19 *Contractors Ass'n of S. Nevada v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486,  
20 489 (1997) (internal citations omitted.).

21 14. "Only in very rare instances in which new issues of fact or law are raised supporting  
22 a ruling contrary to the ruling already reached should a motion for rehearing be granted." *Moore v.*  
23 *City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976).

24 15. Further, a petition for rehearing may not be utilized as a vehicle to reargue matters  
25 considered and decided in the court's initial opinion. *Matter of Estate of Herrmann*, 100 Nev. 149,  
26 151, 679 P.2d 246, 247 (1984).

1           16. A decision is erroneous “when although there is evidence to support it, the reviewing  
2 court on the entire evidence is left with the definite and firm conviction that a mistake has been  
3 committed.” *Union America Mortgage and Equity v. McDonald*, 97 Nev. 210,211-212, 626 P.2d  
4 1272, 1273 (1981), quoting *United States v. Gypsum Co.*, 333 U.S. 364, 395 (1948).

5 **B. Paragraph 6 of the December 20 Order**

6           17. Paragraph 6 of the Court’s December 20, 2018, Findings of Fact, Conclusions of  
7 Law, and Order did not classify the subject enrollment form as a CCEA enrollment form.

8           18. The Court did not interpret the findings of fact in Paragraph 6 to limit NSEA or  
9 NEA’s rights.

10           19. Substantially different evidence has not been subsequently introduced, and the  
11 Court’s decision is not clearly erroneous.

12           20. Accordingly, the Court denies the NSEA Parties’ Motion for Reconsideration with  
13 respect to Paragraph 6.

14 **C. Paragraphs 8-10 of the December 20 Order**

15           21. Paragraphs 8-10 of the Court’s December 20, 2018, Findings of Fact, Conclusions  
16 of Law, and Order explained the mechanisms as to how membership dues were transmitted from  
17 CCSD to CCEA, NSEA, and NEA prior to CCEA’s termination of the Service Agreement and  
18 Dues Transmittal Agreement.

19           22. Substantially different evidence has not been subsequently introduced, and the  
20 Court’s decision is not clearly erroneous.

21           23. Accordingly, the Court denies the NSEA Parties’ Motion for Reconsideration with  
22 respect to Paragraphs 8-10, but does so without prejudice to ruling on the parties’ pending motions  
23 for summary judgment.

24 **D. Paragraph 12 of the December 20 Order**

25           24. Paragraph 12 of the Court’s December 20, 2018, Findings of Fact, Conclusions of  
26 Law, and Order did not serve as a basis in any way for the Court’s ruling on the CCEA Parties’  
27 MPSJ.  
28

AA 1538

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8 By:

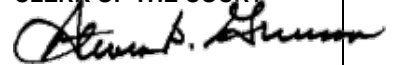
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**IN THE EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

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

Plaintiffs-Counter Defendants,

Case No.: A-17-761364-C  
DEPT. NO.: 4  
(consolidated with A-17-761884-C)

**NOTICE OF ENTRY OF FINDINGS OF  
FACT, CONCLUSIONS OF LAW, AND  
ORDER GRANTING CCEA PARTIES'  
MOTION TO ALTER OR AMEND  
COURT'S MAY 11, 2018 ORDER  
PURSUANT TO NRCP 59(E) AND 60(B)**

Case No.: A-17-761884-C  
(consolidated with A-17-761364-C)

1 And  
2 BRIAN LEE,  
3 Counter-Defendant,  
4 vs.  
5 CLARK COUNTY EDUCATION  
6 ASSOCIATION; JOHN VELLARDITA; AND  
7 VICTORIA COURTNEY,  
8 Defendants-Counter Plaintiffs.

9 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL:

10 PLEASE TAKE NOTICE that the attached Findings of Fact, Conclusions of Law, and  
11 Order Granting CCEA Parties' Motion to Alter or Amend Court's May 11, 2018 Order Pursuant to  
12 NRCP 59(E) and 60(B) was entered in the above-referenced action on the 3<sup>rd</sup> day of July, 2019.

13 DATED this 3<sup>rd</sup> day of July, 2019.

14 SNELL & WILMER L.L.P.

15 By: /s/ Brad Austin

16 John S. Delikanakis (Nevada Bar No. 5928)  
17 Michael Parette (Nevada Bar No. 13926)  
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*Attorneys for Plaintiffs*

1 **CERTIFICATE OF SERVICE**

2 I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen  
3 (18) years, and I am not a party to, nor interested in, this action. On this date, I caused to be  
4 served a true and correct copy of the foregoing **NOTICE OF ENTRY OF FINDINGS OF**  
5 **FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING CCEA PARTIES'**  
6 **MOTION TO ALTER OR AMEND COURT'S MAY 11, 2018 ORDER PURSUANT TO**  
7 **NRCP 59(E) AND 60(B)** by the method indicated below:

8 <u>XX</u>	Odyssey E-File & Serve	_____	Federal Express
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10 _____	Facsimile Transmission	_____	Hand Delivery
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12 and addressed to the following:

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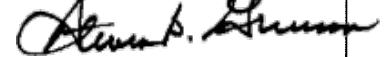
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Attorneys for Defendants

19  
20 DATED this 3<sup>rd</sup> day of July, 2019.

21 /s/ Ruby Lengsavath  
22 An Employee of Snell & Wilmer L.L.P.

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4812-2658-2427.1





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*Attorneys for the CCEA Parties*

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

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-17-761364-C  
DEPT. NO.: 4

(consolidated with A-17-761884-C)

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND ORDER GRANTING  
CCEA PARTIES' MOTION TO ALTER  
OR AMEND COURT'S MAY 11, 2018  
ORDER PURSUANT TO NRCP 59(E) and  
60(B)**

**Date of Hearing : May 9, 2019  
Time of Hearing: 9:00 a.m.**

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

Plaintiffs-Counter Defendants,

And

BRIAN LEE,

Counter-Defendant,

vs.

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

Defendants-Counter Plaintiffs.

Case No.: A-17-761884-C  
(consolidated with A-17-761364-C)

The Court, having read and considered the Clark County Education Association (“CCEA”), Victoria Courtney, James Frazee, Robert Hollowood, and Maria Neisess’s (collectively, the “CCEA Parties”) Motion to Alter or Amend the Court’s May 11, 2018, Order Pursuant to NRCP 59(E) and NRCP 60(B) (“Motion”), filed December 12, 2018; Nevada State Education Association (“NSEA”), National Education Association (“NEA”), Dana Galvin, Ruben Murillo, Jr., Brian Wallace, Brian Lee, Robert Benson, Diane Di Archangel and Jason Wyckoff’s (collectively “NSEA Parties”) Opposition to the Motion, filed January 23, 2019; the CCEA Parties’ Reply in support of the Motion, filed April 4, 2019; and all other papers filed in support of the foregoing; having heard and considered the oral argument of counsel John S. Delikanakis, Esq., Bradley Austin, Esq. and Michael Paretti, Esq. of Snell & Wilmer L.L.P., and Joel D’Alba, Esq. of Asher, Gittler & D’Alba, Ltd. appearing on behalf of the CCEA Parties, and Robert Alexander, Esq. and James Graham Lake, Esq. of Bredhoff & Kaiser, PLLC and Paul J. Lal, Esq. of Boies Schiller Flexner appearing on behalf of the NSEA Parties, and with good cause appearing, enters the following findings of fact, conclusions of law and order.

///

## FINDINGS OF FACT

1. On March 30, 2018, the NSEA Parties filed an Application for Order Directing the Issuance of a Prejudgment Writ of Attachment with Notice (the “Application”), which the CCEA Parties opposed.

2. In opposition, the CCEA Parties represented to the Court that CCEA had been placing the dues at issue into a restricted account since the inception of this lawsuit.

3. The Honorable Judge Joanna Kishner entertained oral argument on the Application on April 23, 2018, and issued an equitable order on May 11, 2018, ordering as follows:

- a. That all funds in the possession of or received by CCEA for the 2017-2018 school year in respect to NSEA dues (numerically calculated traditionally at the annual rate of \$376.66) and in respect to NEA dues (numerically calculated traditionally at the annual rate of \$189.00) shall continue to be deposited by CCEA into account number ending in -4739 (the “Restricted Account”), maintained at the Bank of America Las Vegas, Nevada Branch (the “Bank”) as CCEA has represented to the Court it had done during the course of this litigation; and
- b. That all funds on deposit in the Restricted Account with respect to the 2017-2018 NSEA and NEA dues shall remain in the Restricted Account, and that no funds shall be withdrawn, transferred, or disbursed out of the Restricted Account, and the Restricted Account shall not be changed or modified, without a further Order from this Department 31<sup>1</sup> of this Court.
- c. The Restricted Account Order further required CCEA to provide NSEA and NEA with a monthly statement from the Restricted Account.

<sup>1</sup> The May 11, 2018, Order makes specific reference to Department 31 because at the time it was issued, two separate actions between the NSEA Parties and CCEA Parties were proceeding in Departments 28 and 31. On June 29, 2018 – after the Order was issued, the Department 31 action was consolidated into the Department 28 action upon motion by the CCEA Parties. On July 2, 2018, the consolidated action was reassigned to Department 1. Upon CCEA Parties’ peremptory challenge, and on July 9, 2018, the consolidated action was ultimately assigned to this Department. Thus, this Department is the proper Department to issue this order.

1           4.       On June 18, 2018, the CCEA Parties filed a Motion for Partial Summary Judgment  
2 on their declaratory relief claim.

3           5.       On December 20, 2018, the Court granted the CCEA Parties' Motion for Partial  
4 Summary Judgment, finding that: (1) the termination provisions of the underlying Service  
5 Agreement and Dues Transmittal Agreement are clear and unambiguous, (2) CCEA's letters  
6 notifying NSEA of the termination of the Service Agreement and Dues Transmittal Agreement are  
7 equally clear and unambiguous, (3) the Service Agreement and Dues Transmittal Agreement were  
8 terminated by CCEA within the required contractual timeframe, (4) this termination caused both  
9 agreements to expire on August 31, 2017, and (5) in light of the foregoing termination and  
10 expiration, CCEA owed no duties to NSEA/NEA under the Service Agreement or Dues Transmittal  
11 Agreement to collect and/or transmit membership dues on NSEA/NEA's behalf on or after  
12 September 1, 2017.

13           6.       Court subsequently considered the NSEA Parties Motion for Partial Summary  
14 Judgment on Conversion (filed November 9, 2018), the CCEA Parties' Countermotion for Partial  
15 Summary Judgment (filed December 12, 2018), and the NSEA Parties' Motion for Partial Summary  
16 Judgment on Bylaws (filed January 23, 2019). The Court heard oral argument from the parties on  
17 these motions on May 9, 2019, and issued its ruling from the bench at the hearing, granting the  
18 CCEA Parties' Motion for Partial Summary Judgment in its entirety, and denying the NSEA  
19 Parties' Motions for Partial Summary Judgment on Conversion and Bylaws in their entirety.<sup>2</sup>

20           7.       Any finding of fact which should be construed as a conclusion of law shall be  
21 construed as such.

22           8.       Any conclusion of law which should be construed as a finding of fact shall be  
23 construed as such.

24       ///

25  
26  
27       <sup>2</sup> The Court's findings are subsequently being incorporated into a Findings of Fact, Conclusions  
28 of Law, and Order to be entered concurrently herewith. The findings and conclusions in that order  
are incorporated herein by reference.

## CONCLUSIONS OF LAW

### A. Standard for Reconsideration

9. “A district court may reconsider a previously decided issue if substantially different evidence is subsequently introduced or the decision is clearly erroneous.” *Masonry and Tile Contractors Ass’n v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486 (1997).

10. Rule 59(e) motions have been interpreted as “cover[ing] a broad range of motions, [with] the only real limitation on the type of motion permitted [being] that it must request a substantive alteration of the judgment, not merely correction of a clerical error, or relief of a type wholly collateral to the judgment.” *AA Primo Builders, LLC v. Washington*, 245 P.3d 1190, 1193 (Nev. 2010).

11. “Among the ‘basic grounds’ for a Rule 59(e) motion are ‘correct[ing] manifest errors of law or fact,’ ‘newly discovered or previously unavailable evidence,’ the need ‘to prevent manifest injustice,’ or a ‘change in controlling law’.” *Id.* (citing *Coury v. Robison*, 115 Nev. 84, 124–27, 976 P.2d 518 (1999)). *See also*, *Lytle v. Rosemere Estates Prop. Owners*, 314 P.3d 946, 948 (Nev. 2013) (holding that Rule 59(e) applies to any appealable order).<sup>3</sup> The requirements for filing a Rule 59(e) motion are minimal; in addition to being timely filed (no later than 10 days after service of written notice of entry of the judgment), the motion must “be in writing, . . . state with particularity [its] grounds [and] set forth the relief or order sought.” *Id.* at 1192.

12. NRCP 60(b) states that:

(b) On motion and upon such terms as are just, the court may relieve a party or a party’s legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment is void; or, (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that an injunction should have prospective application. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than 6 months after the proceeding

<sup>3</sup> Because this Court’s Order is injunctive in nature, it is appealable. *See* NRAP 3A(b)(3).

1 was taken or the date that written notice of entry of the judgment or order  
2 was served. A motion under this subdivision (b) does not affect the finality  
3 of a judgment or suspend its operation. This rule does not limit the power of  
4 a court to entertain an independent action to relieve a party from a judgment,  
5 order, or proceeding, or to set aside a judgment for fraud upon the court.  
6 Writs of coram nobis, coram vobis, audita querela, and bills of review and  
bills in the nature of a bill of review, are abolished, and the procedure for  
obtaining any relief from a judgment shall be by motion as prescribed in  
these rules or by an independent action.

7 **B. The CCEA Parties Are Entitled to Modification of the May 11, 2018, Order**

8 13. The Court has already determined that, as a matter of law: (1) the termination  
9 provisions of the underlying Service Agreement and Dues Transmittal Agreement are clear and  
10 unambiguous, (2) CCEA's letters notifying NSEA of the termination of the Service Agreement and  
11 Dues Transmittal Agreement are equally clear and unambiguous, (3) the Service Agreement and  
12 Dues Transmittal Agreement were terminated by CCEA within the required contractual timeframe,  
13 (4) this termination caused both agreements to expire on August 31, 2017, and (5) in light of the  
14 foregoing termination and expiration, CCEA owed no duties to NSEA/NEA under the Service  
15 Agreement or Dues Transmittal Agreement to collect and/or transmit membership dues on  
16 NSEA/NEA's behalf on or after September 1, 2017.

17 14. As determined by the Court in denying the NSEA Parties' Motions for Partial  
18 Summary Judgment on Bylaws and Conversion, and granting the CCEA Parties' Motion for Partial  
19 Summary Judgment, NSEA and NEA have no legal or contractual right to the funds held in the  
20 Restricted Account under the NSEA or NEA Bylaws, which Bylaws expressly rely upon the  
21 (terminated) Dues Transmittal Agreement for any obligation to transmit dues.

22 15. As determined by the Court in denying the NSEA Parties' Motions for Partial  
23 Summary Judgment on Bylaws and Conversion, and granting the CCEA Parties' Motion for Partial  
24 Summary Judgment, NSEA and NEA have no legal or contractual right to the funds held in the  
25 Restricted Account under the Membership Authorization Form, which Form is only between CCEA  
26 and the individual members.

27 16. As determined by the Court in denying the NSEA Parties' Motions for Partial  
28 Summary Judgment on Bylaws and Conversion, and granting the CCEA Parties' Motion for Partial

Summary Judgment, NSEA/NEA have no equitable right to the funds held in the Restricted Account

17. In light of this Court's findings that CCEA owed no duties to NSEA or NEA under the Service Agreement or Dues Transmittal Agreement to collect and/or transmit membership dues on NSEA/NEA's behalf on or after September 1, 2017, and that in the absence of a Dues Transmittal Agreement, there is no obligation for CCEA to transmit dues to NSEA or NEA, the underlying basis for the Court's May 11, 2018, Order no longer exists.

18. As such, the Court vacates the Restricted Account Order in its entirety and permits CCEA to disgorge and return the funds held in the Restricted Account to the individual CCEA members (including the individual NSEA Parties) from whom they were collected.

**ORDER**

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** as follows:

That the CCEA Parties Motion is **GRANTED**;

That the Court's May 11, 2018, Order is **VACATED**; and

That CCEA shall return the funds held in the Restricted Account to CCEA's members, including any interest that accrued while the subject funds were held in the Restricted Account.

That this Order is stayed for 14 days of notice of entry, to permit NEA and NSEA to move for a stay pending appeal of this Order. If NEA and NSEA move in this Court for a stay of this Order within 14 days of notice of entry, this Order will remain stayed until disposition of the motion.

DATED: July 1, 2019

  
THE HONORABLE JUDGE KERRY EARLEY

A-17-761364-C

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RESPECTFULLY SUBMITTED BY:

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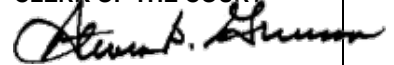
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**IN THE EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

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

Plaintiffs-Counter Defendants,

Case No.: A-17-761364-C  
DEPT. NO.: 4  
(consolidated with A-17-761884-C)

**NOTICE OF ENTRY OF FINDINGS OF  
FACT, CONCLUSIONS OF LAW, AND  
ORDER GRANTING THE CLARK  
COUNTY EDUCATION ASSOCIATION  
PARTIES' MOTION FOR PARTIAL  
SUMMARY JUDGMENT AND  
DENYING THE NEVADA STATE  
EDUCATION ASSOCIATION PARTIES'  
MOTION FOR PARTIAL SUMMARY  
JUDGMENT**

Case No.: A-17-761884-C  
(consolidated with A-17-761364-C)

1 And  
2 BRIAN LEE,  
3 Counter-Defendant,  
4 vs.  
5 CLARK COUNTY EDUCATION  
6 ASSOCIATION; JOHN VELLARDITA; AND  
7 VICTORIA COURTNEY,  
8 Defendants-Counter Plaintiffs.

9 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL:

10 PLEASE TAKE NOTICE that the attached Findings of Fact, Conclusions of Law, and  
11 Order Granting the Clark County Education Association Parties' Motion for Partial Summary  
12 Judgment and Denying the Nevada State Education Association Parties' Motion for Partial  
13 Summary Judgment was entered in the above-referenced action on the 3<sup>rd</sup> day of July, 2019.

14 DATED this 3<sup>rd</sup> day of July, 2019.

15 SNELL & WILMER L.L.P.

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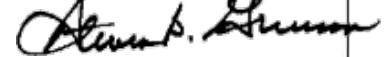
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15 *Attorneys for the CCEA Parties*

16 **IN THE EIGHTH JUDICIAL DISTRICT COURT**

17 **CLARK COUNTY, NEVADA**

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

20 Plaintiffs,

21 vs.

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

25 Defendants.

Case No.: A-17-761364-C  
DEPT. NO.: 4

(consolidated with A-17-761884-C)

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND ORDER GRANTING  
THE CLARK COUNTY EDUCATION  
ASSOCIATION PARTIES' MOTION  
FOR PARTIAL SUMMARY JUDGMENT  
AND DENYING THE NEVADA STATE  
EDUCATION ASSOCIATION PARTIES'  
MOTIONS FOR PARTIAL SUMMARY  
JUDGMENT**

**Date of Hearing : May 9, 2019  
Time of Hearing: 9:00 a.m.**

28

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

4 Plaintiffs-Counter Defendants,

5 And

6 BRIAN LEE,

7 Counter-Defendant,

8 vs.

9 CLARK COUNTY EDUCATION  
10 ASSOCIATION; JOHN VELLARDITA; AND  
VICTORIA COURTNEY,

11 Defendants-Counter Plaintiffs.

Case No.: A-17-761884-C  
(consolidated with A-17-761364-C)

12 The Court, having read and considered Nevada State Education Association ("NSEA"),  
13 National Education Association ("NEA"), Dana Galvin, Ruben Murillo, Jr., Brian Wallace, Brian  
14 Lee, Robert Benson, Diane Di Archangel and Jason Wyckoff (collectively "NSEA Parties") Motion  
15 for Partial Summary Judgment ("NSEA Motion for Partial Summary Judgment on Conversion"),  
16 filed November 9, 2018; the NSEA Parties' Motion for Partial Summary Judgment ("NSEA Motion  
17 for Partial Summary Judgment on Bylaws"), filed January 23, 2019; and Clark County Education  
18 Association ("CCEA"), Victoria Courtney, James Frazee, Robert Hollowood, and Maria Neisess's  
19 (collectively, the "CCEA Parties") Countermotion for Partial Summary Judgment ("CCEA  
20 Countermotion for Partial Summary Judgment") filed by the CCEA Parties on December 12, 2018,  
21 and all papers filed in support of the foregoing Motions; having heard and considered the oral  
22 argument of counsel John S. Delikanakis, Esq., Bradley Austin, Esq. and Michael Paretti, Esq. of  
23 Snell & Wilmer L.L.P., and Joel D'Alba, Esq. of Asher, Gittler & D'Alba, Ltd. appearing on behalf  
24 of the CCEA Parties, and Robert Alexander, Esq. and James Graham Lake, Esq. of Bredhoff &  
25 Kaiser, PLLC and Paul J. Lal, Esq. of Boies Schiller Flexner appearing on behalf of the NSEA  
26 Parties, and with good cause appearing, enters the following findings of fact, conclusions of law  
27 and order.  
28

### FINDINGS OF FACT

The Court concludes, under N.R.C.P. 56, that there is no genuine dispute of fact regarding the following:

1. CCEA is a democratic organization that is the exclusive collective bargaining representative of the licensed professional employees of the Clark County School District ("CCSD") and is the employee organization that serves as the local voice for educators to advance the cause of education, promote professional excellence among educators to protect the rights of educators, advance their interests and welfare, and secure professional autonomy.

2. CCEA is the recognized and exclusive bargaining agent for CCSD's licensed professional employees.

3. NSEA was the state-wide affiliate of the CCEA.

4. The NEA was the national affiliate of the CCEA.

5. Members of CCEA pay dues to CCEA pursuant to a membership dues authorization form ("Membership Authorization Form").

6. The Membership Authorization Form provides that:

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

7. Once an individual CCEA member signs the Membership Authorization Form, CCEA membership dues are then deducted from members' pay checks by their employer, the

1 CCSD, pursuant to a collective bargaining agreement negotiated and agreed to by and between  
2 CCEA and CCSD.

3 8. The membership dues deducted from CCEA members' pay checks are then paid to  
4 CCEA by CCSD.

5 9. A portion of the membership dues were then transmitted to NSEA through a dues  
6 transmittal agreement by and between CCEA and NSEA ("Dues Transmittal Agreement"), which  
7 is attached as an addendum and incorporated into a negotiated services agreement by and between  
8 CCEA and NSEA ("Service Agreement") as Addendum A.

9 10. The Service Agreement incorporates the Dues Transmittal Agreement and provides  
10 as follows:

11 CCEA agrees to transmit NSEA and NEA dues, and NSEA-TIP and NEA-PAC  
12 contributions to NSEA for each by the tenth business day following the payroll  
13 deduction. The agreement is attached as Addendum A.

14 11. The Service Agreement incorporates and the Dues Transmittal Agreement and  
15 together provide for the quid pro quo exchange between CCEA and NSEA. The Service Agreement  
16 sets forth the services and financial payments that NSEA will provide to CCEA in exchange for  
17 transmittal of dues that CCEA sends to NSEA, as set forth in both the Service Agreement – Dues  
18 Transmittal Agreement.

19 12. Specifically, paragraph 1 of the Service Agreement states that CCEA will transmit  
20 dues to NSEA and the following paragraph (paragraph 2) provides that in exchange, NSEA will  
21 transmit grants to CCEA.

22 13. The Service Agreement and the Dues Transmittal Agreement allow either party to  
23 unilaterally terminate and seek to renegotiate the terms of the agreement.

24 14. Specifically, the Service Agreement provides that:

25 The term of this agreement shall be from September 1 to August 31. This  
26 Agreement shall be automatically renewed on an annual basis, unless either party  
27 shall give written notice of termination to the other party, with evidence of receipt  
28 by the other party no later than thirty (30) days prior to the anniversary date of the  
Agreement. Should either party give notice of termination as provided alone, then  
this Agreement shall terminate on the anniversary date unless a successor agreement  
has been mutually agreed to by the parties.

1           15.     The relevant anniversary date is September 1, 2017.

2           16.     Similarly, the Dues Transmittal Agreement provides that “[t]his agreement shall  
3 remain in force for each subsequent membership year unless terminated in writing by either party  
4 prior to September 1 of any NSEA membership year, or amended by mutual consent of both  
5 parties.”

6           17.     The NSEA membership year runs from September 1 to August 31.

7           18.     On May 3, 2017, CCEA gave notice to NSEA and its officers of an intent to  
8 terminate the Service Agreement and the Dues Transmittal as follows:

9  
10 Pursuant to the terms of the Service Agreement between the Nevada State Education  
11 Association and the Clark County Education Association, I write to give you notice  
12 to terminate this agreement, unless a successor agreement can be mutually agreed  
13 to by the parties....Please accept this letter as our formal notice of termination of the  
14 Service Agreement.

15           19.     On July 17, 2017 and August 3, 2017, CCEA sent NSEA two additional letters  
16 providing for notice of the intent to terminate the Service Agreement and the Dues Transmittal  
17 Agreement. Specifically, the July 17, 2017, letter stated in pertinent part that:

18           On May 3, 2017 CCEA served notice that it was terminating the Service Agreement  
19 between CCEA and NSEA.....This letter serves notice to NSEA that unless there is  
20 a successor agreement in place before the August 31, 2017 all terms and conditions  
21 of the agreement shall become null and void.

22           The August 3, 2017, letter stated in pertinent part that:

23           Your letter expressing a claim based on NSEA policies is incorrect as this is a  
24 contract matter, there has not been a mutual agreement to modify the Agreement,  
25 and without mutual agreement, the terms and conditions of the Agreement will be  
26 null and void upon its expiration on August 31, 2017....The Agreement serves as  
27 the dues transmittal contract, and it is otherwise set to expire unless a successor is  
28 negotiated per the terms and conditions of that Agreement. Upon expiration, CCEA  
is not only legally not obligated to transmit dues, but cannot transmit member dues  
to NSEA per NSEA’s own ByLaws. To be clear, when the current Agreement  
between CCEA and NSEA expires on August 31, 2017 there will not be a contract  
in place between the two organizations to collect and remit dues to NSEA.

29           20.     On March 24, 2018, CCEA members were given notice of a dues issue to be  
30 presented at a general membership meeting to be held on April 25, 2018.

31           21.     On April 14, 2018, the Executive Board of CCEA met to consider a proposed bylaw



1 amendment to set CCEA dues at \$510 per year immediately upon disaffiliation from the NSEA and  
2 the NEA and upon CCEA becoming an independent labor organization.

3 22. Prior to the termination of the Service Agreement and Dues Transmittal Agreement,  
4 the annual dues payments for CCEA members included payments to CCEA, NSEA and NEA and  
5 were \$810.50. The \$510 dues payments considered by the dues motion on April 14, 2018,  
6 constituted a dues decrease for all CCEA members.

7 23. On April 24, 2018, the CCEA Association Representative Council ("ARC") met to  
8 consider, among other things, bylaws changes. The ARC approved a motion to change Article X,  
9 Section 1 of the CCEA Bylaws by removing the word "shall" from the affiliate's status and bylaw  
10 provision and inserting the "may," which meant that the Association may, rather than shall,  
11 maintain affiliate status with the NSEA and NEA. That change to Article X of the Bylaws was  
12 approved.

13 24. On April 24, 2018, the ARC adopted a tentative budget for fiscal year 2018-2019,  
14 setting the CCEA annual dues rate at \$510 for each member, which budget would take effect  
15 immediately upon disaffiliation from NSEA and NEA.

16 25. On April 25, 2018, members of the Association at a general membership meeting  
17 were advised that the ARC amended the Bylaws to permit members to effectively authorize the  
18 disaffiliation from the NSEA and NEA and upon disaffiliation members' union dues would be  
19 reduced from \$33.78 per paycheck to \$21.25 per paycheck.

20 26. On April 25, 2018, the CCEA members were notified by a mass email of this vote  
21 and received a second notice of the general membership meeting to that place on that day.

22 27. During CCEA's April 25, 2018, general membership meeting, CCEA's members  
23 approved a motion to disaffiliate from the NSEA and NEA, and to reduce the union dues as set  
24 forth above.

25 28. CCEA disaffiliated from NSEA and NEA on April 25, 2018, and the foregoing dues  
26 reduction took effect immediately upon disaffiliation.

27 29. After the termination of the Dues Transmittal Agreement, but prior to CCEA's April  
28

1 25, 2018, disaffiliation from NSEA and NEA, CCSD continued to send the employees' dues to  
2 CCEA, whereupon the dues were placed into a restricted bank account ("Sequestered Funds") –  
3 with CCEA seeking via the instant litigation a declaratory determination from the Court as to the  
4 rightful owner of the funds, and NSEA asserting via the instant litigation a right to the funds under  
5 contract, conversion, and unjust enrichment causes of action.

6 30. On May 11, 2018, and to preserve the status quo while the CCEA Parties'  
7 declaratory relief claim was pending with the Court, the Court required that: (1) all funds in the  
8 possession of or received by CCEA for the 2017-2018 school year in respect to NSEA dues and in  
9 respect to NEA dues be deposited into a restricted account, "as [CCEA] has represented to the  
10 Court it has done during the course of this litigation"; (2) that no funds shall be withdrawn,  
11 transferred, or disbursed out of the Restricted Account, and the Restricted Account shall not be  
12 changed or modified, without a further Order from the Court; and (3) that CCEA provide a monthly  
13 account statement to the NSEA Parties.

14 31. On December 20, 2018, pursuant to a Motion for Partial Summary Judgment filed  
15 by the CCEA Parties, this Court held that the May 3, July 17, and August 3, 2017 termination  
16 notices caused both the Service Agreement and Dues Transmittal Agreement to terminate and  
17 expire on August 31, 2017.

18 32. The Court further held that in light of the foregoing termination and expiration,  
19 CCEA owed no duties to NSEA or NEA under the Service Agreement and Dues Transmittal  
20 Agreement to collect and/or transmit membership dues on NSEA or NEA's behalf on or after  
21 September 1, 2017, nor did NSEA or NEA have any obligation to CCEA on or after September 1,  
22 2017, to perform pursuant to the Service Agreement and Dues Transmittal Agreement, and that  
23 there was no dispute that NSEA and NEA ceased to perform under the Service Agreement and  
24 Dues Transmittal Agreement on or after September 1, 2017.

25 33. Any finding of fact which should be construed as a conclusion of law shall be  
26 construed as such.  
27  
28

## CONCLUSIONS OF LAW

35. The Court will render judgment “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Nevada Rule of Civil Procedure 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986.)

38. To meet this burden, the moving party may either produce evidence affirmatively demonstrating the absence of such evidence or point out a lack of evidence to support the nonmoving party's case. *Id.* at 325.

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1           41. A precondition to bringing a claim for conversion is that the claimant must be the  
2 rightful owner of the property.

3           42. NSEA and NEA have no legal or contractual right to the Sequestered Funds under  
4 the Service Agreement or Dues Transmittal Agreement, which agreements were terminated prior  
5 to September 1, 2017.

6           43. NSEA and NEA have no legal or contractual right to the Sequestered Funds under  
7 the NSEA or NEA Bylaws, which Bylaws expressly rely upon the (terminated) Dues Transmittal  
8 Agreement for any obligation to transmit dues.

9           44. NSEA and NEA have no legal or contractual right to the Sequestered Funds under  
10 the Membership Authorization Form, which Form is only between CCEA and the individual  
11 members.

12           45. NSEA/NEA have no equitable right to the Sequestered Funds, or any other funds  
13 CCEA collected on behalf of its members after September 1, 2017.

14           46. In light of the foregoing, NSEA/NEA are not the rightful owners of, and have no  
15 legal or equitable right to, the Sequestered Funds and as a result, cannot meet the rightful owner  
16 element.

17           47. There are no genuine issues of material fact precluding summary judgment in the  
18 CCEA Parties' favor on the NSEA Parties' claim for conversion.

19           48. The NSEA Parties have not made any showing that the CCEA Parties are not entitled  
20 to summary judgment as a matter of law.

21           49. Pursuant to Nevada Rule of Civil Procedure 56, the CCEA Parties are entitled to  
22 summary judgment in their favor and against the NSEA Parties on the NSEA Parties' claim for  
23 conversion.

24 **C. NSEA Parties' Claim for Unjust Enrichment**

25           50. The essential elements of unjust enrichment are "a benefit conferred on the  
26 defendant by the plaintiff, appreciation by the defendant of such benefit, and acceptance and  
27 retention by the defendant of such benefit under circumstances such that it would be inequitable for  
28

1 him to retain the benefit without payment of the value thereof.” *Leasepartners Corp. v. Robert L.*  
2 *Brooks Tr. Dated Nov. 12, 1975*, 113 Nev. 747, 755, 942 P.2d 182, 187 (1997).

3 51. Similar to a claim for conversion, the claimant must have an underlying right to the  
4 property/funds at issue. *See id.* (one of the essential elements for unjust enrichment is “a benefit  
5 conferred on the defendant by the plaintiff”).

6 52. Furthermore, “an action based on a theory of unjust enrichment is not available when  
7 there is an express, written contract, because no agreement can be implied when there is an express  
8 agreement.” *See Leasepartners Corp. v. Robert L. Brooks Trust Dated November 12, 1975*, 113  
9 Nev. 747, 755-56, 942 P.2d 182, 187 (1997); *Lipshie v. Tracy Investment Co.*, 93 Nev. 370, 379,  
10 566 P.2d 819, 824 (1977) (“To permit recovery by quasi-contract where a written agreement exists  
11 would constitute a subversion of contractual principles.”) (emphasis supplied). 66 Am.Jur.2d  
12 Restitution § 11 (1973) (“The doctrine of unjust enrichment or recovery in quasi contract applies  
13 to situations where there is no legal contract but where the person sought to be charged is in  
14 possession of money or property which in good conscience and justice he should not retain but  
15 should deliver to another.”).

16 53. For the reasons set forth under the claim for conversion – which findings are  
17 incorporated herein by reference – NSEA and NEA do not have standing to assert a claim for unjust  
18 enrichment because they do not have an ownership interest or underlying right to the Sequestered  
19 Funds.

20 54. To the extent the unjust enrichment claim is asserted on behalf of Parties Murillo,  
21 Benson, Di Archangel, and Wyckoff (“Teacher Parties”), such claim fails for the following  
22 independent reasons:

- 23 a. First, the Teacher Parties’ claim for unjust enrichment fails because an express,  
24 written contract governs the parties’ relationship – specifically, the Membership  
25 Authorization Form; thus, no equitable agreement can be implied.  
26 b. Second, the Teacher Parties’ claim for unjust enrichment fails for lack of  
27 damages. Specifically:  
28

- i. Simultaneous with granting the CCEA Parties' Motion for Partial Summary Judgment, this Court also granted the CCEA Parties' Motion to Alter or Amend the Restricted Account Order, which Order provides, in part, that CCEA will return the Sequestered Funds to the individual CCEA members, the teachers, inclusive of the Teacher Parties. Further, the Order provides that CCEA will return to the Teacher Parties their full CCEA dues for the entire 2017-2018 membership year.
- ii. The Teacher Parties, therefore, have not suffered any cognizable damages.

55. There are no genuine issues of material fact precluding summary judgment in the CCEA Parties' favor on the NSEA Parties' claim for unjust enrichment.

56. The NSEA Parties have not made any showing that the CCEA Parties are not entitled to summary judgment as a matter of law.

57. Pursuant to Nevada Rule of Civil Procedure 56, the CCEA Parties are entitled to summary judgment in their favor and against the NSEA Parties on the NSEA Parties' claim for unjust enrichment.

**D. NSEA Parties' Claim for Breach of NSEA, NEA, and CCEA Bylaws**

58. "Questions of contract construction, in the absence of ambiguity or other factual issues, are suitable for determination by summary judgment." *See Nelson v. California State Auto. Ass'n Inter-Ins. Bureau*, 114 Nev. 345, 347, 956 P.2d 803, 805 (1998) *S. Tr. Mortg. Co. v. K & B Door Co.*, 104 Nev. 564, 568, 763 P.2d 353, 355 (1988) ("[W]here a document is clear and unambiguous, the court must construe it from the language therein."); *Chwialkowski v. Sachs*, 108 Nev. 404, 406, 834 P.2d 405, 406 (1992) (same); *Renshaw v. Renshaw*, 96 Nev. 541, 543, 611, P.2d 1070, 1071 (1980) (same); *Ellison v. California State Auto Ass'n*, 106 Nev. 601, 603, 797 P.2d 975, 977 (1990) (same); *Watson v. Watson*, 95 Nev. 495, 496, 596 P.2d 507, 508 (1979) ("Courts are bound by language which is clear and free from ambiguity and cannot, using guise of interpretation, distort plain meaning of agreement.").

1           59. As previously determined by this Court in its December 20, 2018 Order, the Service  
2 Agreement and Dues Transmittal Agreement were terminated by CCEA within the required  
3 contractual timeframe, which termination caused both agreements to expire on August 31, 2017.

4           60. But-for the Service and Dues Transmittal Agreements (which this Court found  
5 expired on August 31, 2017, due to CCEA's termination), CCEA is not subject to the NSEA/NEA  
6 Bylaws, nor are NSEA/NEA parties to the CCEA Bylaws.

7           61. Accordingly, no contractual relationship between CCEA and NSEA/NEA –  
8 inclusive of any contractual relationship created by the NSEA/NEA/CCEA Bylaws – existed on or  
9 after September 1, 2017.

10           62. In the absence of a Dues Transmittal Agreement, there is no obligation for CCEA  
11 to transmit dues to NSEA and per NEA's bylaws, only NSEA has a contractual obligation to pay  
12 NEA.

13           63. Accordingly, because CCEA was not bound by NSEA/NEA Bylaws after  
14 September 1, 2017, and because NSEA/NEA are not parties to the CCEA Bylaws, there can be no  
15 breach by CCEA and NSEA/NEA's breach of contract claims fail. *Clark Cty. V. Bonanza No. 1*,  
16 96 Nev. 643, 648–49, 615 P.2d 939, 943 (1980) (“As a general rule, none is liable upon a contract  
17 except those who are parties to it.”).

18           64. There are no genuine issues of material fact precluding summary judgment in the  
19 CCEA Parties' favor on the NSEA Parties' claim for breach of NSEA/NEA/CCEA Bylaws.

20           65. The NSEA Parties have not made any showing that the CCEA Parties are not entitled  
21 to summary judgment as a matter of law.

22           66. Pursuant to Nevada Rule of Civil Procedure 56, the CCEA Parties are entitled to  
23 summary judgment in their favor and against the NSEA Parties on the NSEA Parties' claim for  
24 breach of NSEA/NEA/CCEA Bylaws.

25 **E. NSEA Parties' Claim for Fraud**

26           67. The elements for fraud are: “(1) A false representation made by the defendant; (2)  
27 Defendant's knowledge or belief that the representation is false (or insufficient basis for making  
28

1 the representation); (3) Defendant's intention to induce the plaintiff to act or to refrain from acting  
2 in reliance upon the misrepresentation; (4) Plaintiff's justifiable reliance upon the  
3 misrepresentation; and (5) Damage to the plaintiff resulting from such reliance." *Bulbman, Inc. v.*  
4 *Nevada Bell*, 108 Nev. 105, 110–11, 825 P.2d 588, 592 (1992).

5 68. "A plaintiff has the burden of proving each element of fraud claim by clear and  
6 convincing evidence." *Id.*

7 69. "Where an essential element of a claim for relief is absent, the facts, disputed or  
8 otherwise, as to other elements are rendered immaterial and summary judgment is proper." *Id.*  
9 (granting summary judgment for defendant on plaintiff's fraud claim because plaintiff could not  
10 present a triable issue of material fact as to every element of fraud).

11 70. Simultaneous with granting the CCEA Parties' Motion for Partial Summary  
12 Judgment, this Court also granted the CCEA Parties' Motion to Alter or Amend the Restricted  
13 Account Order, which Order provides, in part, that CCEA return the Sequestered Funds to the  
14 individual CCEA members, the teachers, inclusive of the Teacher Parties.

15 71. Furthermore, as to the Teacher Parties only, and pursuant to the CCEA Parties offer  
16 in their briefing and in open court, this Court orders that CCEA return the entire membership years'  
17 worth of dues to the Teacher Parties, which totals \$810.50 per individual Teacher Party within 30  
18 days of entry of this Order, or final review of this Order by any appellate court, whichever is later.

19 72. The Teacher Parties cannot establish damages related to their fraud cause of action.

20 73. There exists no genuine dispute of material fact that the Teacher Parties failed to  
21 establish any fact supporting punitive damages and thus, are not entitled to punitive damages as a  
22 matter of law.

23 74. There are no genuine issues of material fact precluding summary judgment in the  
24 CCEA Parties' favor on the NSEA Parties' claim for fraud.

25 75. The NSEA Parties have not made any showing that the CCEA Parties are not entitled  
26 to summary judgment as a matter of law.

27 76. Pursuant to Nevada Rule of Civil Procedure 56, the CCEA Parties are entitled to  
28



1 summary judgment in their favor and against the NSEA Parties on the NSEA Parties' claim for  
2 fraud.

3 **F. Unauthorized mid-year increase in CCEA dues.**

4 77. The Constitution and Bylaws of the CCEA are the main source of governance for  
5 the CCEA and controls as to the how and when dues payments can be charged and the procedures  
6 for their alteration.

7 78. As the governing rules for the Union, the CCEA Constitution and Bylaws constitute  
8 a contract between the CCEA and its members, and this is a recognized labor and contract law  
9 principle. *Hickman v. Kline*, 71 Nev. 55, 279 P.2d 662,669 (1955) (union's constitution "amounts  
10 to a binding agreement between the union and its members"); *United Ass'n of Journeymen v. Local*  
11 *334*, 452 U.S. 615, 619-11 (1981).

12 79. The CCEA Constitution and Bylaws state that CCEA "shall be governed by its  
13 Bylaws and Policies, and such other actions as the Association Representative Council and  
14 Executive Board may take consistent therewith." Article I, Section 3.

15 80. Under the Constitution and Bylaws, the Association Representative Council  
16 ("ARC") is the legislative and policy body of the Association. Article III Section 1.

17 81. As such, the ARC has the authority to alter dues for members of the Association.  
18 Article II, Section 4.

19 82. Here, the ARC and CCEA properly altered the dues payments during the 2017-18  
20 fiscal year in April 2018, which alteration was approved by the majority of the members voting at  
21 the April 25, 2018, General Membership Meeting ("Dues Alteration").

22 83. The Dues Alteration was permitted by the CCEA Bylaws and the Membership  
23 Authorization Form does not supersede the CCEA Bylaws, nor does it serve to limit or prohibit the  
24 Dues Alteration.

25 84. The foregoing Dues Alteration took effect immediately upon disaffiliation, as set  
26 forth in the uncontested April 1, 2019 Affidavit of John Vellardita.

27 85. There are no genuine issues of material fact precluding summary judgment in the  
28

1 CCEA Parties' favor on the NSEA Parties' claim for unauthorized mid-year dues increase.

2 86. The NSEA Parties have not made any showing that the CCEA Parties are not entitled  
3 to summary judgment as a matter of law.

4 87. Pursuant to Nevada Rule of Civil Procedure 56, the CCEA Parties are entitled to  
5 summary judgment in their favor and against the NSEA Parties on the NSEA Parties' claim for  
6 unauthorized mid-year dues increase.

7 **ORDER**

8 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** as follows:

9 That the CCEA Parties' Countermotion for Partial Summary Judgment is **GRANTED**  
10 in its entirety and summary judgment is entered in favor of the CCEA Parties on the NSEA  
11 Parties' claims for conversion, unjust enrichment, breach of NSEA/NEA/CCEA Bylaws, fraud,  
12 and unauthorized mid-year dues increase.

13 That the NSEA Motion for Partial Summary Judgment on Conversion is **DENIED**; and

14 That the NSEA Motion for Partial Summary Judgment on Bylaws is **DENIED**.

15 That this Order disposes of all remaining claims in Case No. A-17-761884-C.

16 That Final Judgment under NRCP 58 € will be entered in Case No. A-17-761884-C in  
17 favor of the CCEA Parties and against the NSEA Parties.

18  
19  
20 DATED: July 1, 2019

21   
22 THE HONORABLE JUDGE KERRY EARLEY

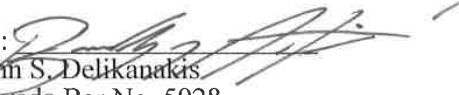
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28 A-17-761364-C

1 SNELL & WILMER L.L.P.

2

RESPECTFULLY SUBMITTED BY:

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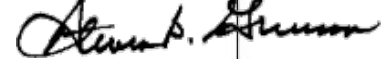
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**DISTRICT COURT  
EIGHTH JUDICIAL DISTRICT  
CLARK COUNTY, NEVADA**

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

Plaintiffs,

v.

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

Defendants.

Case No.: A-17-761364-C  
(Consolidated with Case No. A-17-761884-C)

DEPT. NO.: 4

**NOTICE OF APPEAL**

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

7 Plaintiffs-Counter

8 Defendants,  
9 And

10 BRIAN LEE,

11 Counter-Defendant,

12 vs.

13 CLARK COUNTY EDUCATION  
14 ASSOCIATION; JOHN VELLARDITA;  
15 AND VICTORIA COURTNEY,

16 Defendants-Counter

17 Plaintiffs.

Case No.: A-17-761884-C  
(consolidated with A-17-761364-C)

18 Notice is hereby given that Plaintiffs Nevada State Education Association, National  
19 Education Association, Ruben Murillo Jr., Robert Benson, Diane Di Archangel, and Jason  
20 Wyckoff ("NSEA Parties") hereby appeal to the Supreme Court of Nevada from the District  
21 Court's final judgment in Case No. A-17-761884-C, entered on July 3, 2019, and all Orders  
22 underlying the judgment therein, including: (1) the Findings of Fact, Conclusions of Law, and  
23 Order Granting the Clark County Education Association Parties' Motion for Partial Summary  
24 Judgment and Denying the Nevada State Education Association Parties' Motion for Partial  
25 Summary Judgment dated July 1, 2019, and for which Notice of Entry was entered on July 3,  
26 2019; (2) the Findings of Fact, Conclusions of Law, and Order Granting Plaintiffs' (Clark  
27 County Education Association, Victoria Courtney, James Frazee, Robert Hollowood, and Maria  
28 Neisess's – CCEA Parties) Motion for Partial Summary Judgment dated December 20, 2018, and  
for which Notice of Entry was entered on December 20, 2018 ("December 20, 2018 Order")

NOTICE OF APPEAL

1 (which was amended under the Findings of Fact, Conclusions of Law, and Order Granting in part  
2 and Denying in part the NSEA Parties' Motion for Partial Reconsideration dated June 24, 2019  
3 and for which Notice of Entry was entered on June 28, 2019) (thereby causing the disposal of  
4 Count 1 of the NSEA Parties' Second Amended Complaint in a manner adverse to the NSEA  
5 Parties); (3) the Findings of Fact, Conclusions of Law, and Order Granting CCEA Parties'  
6 Motion to Alter or Amend Court's May 11, 2018 Order Pursuant to NRCP 59(E) and 60(B)  
7 dated July 1, 2019, and for which Notice of Entry was entered on July 3, 2019; and (4) all  
8 judgments and orders made appealable by any of the foregoing .  
9

10 DATED this 15th of July, 2019.

11 Respectfully submitted,

12 BOIES SCHILLER FLEXNER LLP  
13

14 /s/ Paul J. Lal  
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24 \* Admitted pro hac vice

25 *Attorneys for the NSEA Parties*  
26  
27  
28

NOTICE OF APPEAL

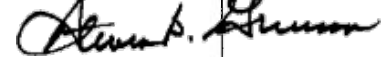
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Pursuant to NRCP 5(b), I, an employee of BOIES SCHILLER FLEXNER LLP, hereby certify service of the foregoing ***NOTICE OF APPEAL*** was made this date by electronic filing and/or service with the Eighth Judicial District Court and by mailing a true and correct copy, addressed as follows:

John S. Delikanakis  
Michael Paretti  
Snell & Wilmer, L.L.P.  
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Las Vegas, NV 89169

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

4



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

29 CLARK COUNTY EDUCATION  
30 ASSOCIATION, VICTORIA COURTNEY,  
31 JAMES FRAZEE, ROBERT G.  
32 HOLLOWOOD, and MARIE NEISESS,

33 Plaintiffs,

34 v.

35 NEVADA STATE EDUCATION  
36 ASSOCIATION, DANA GALVIN, RUBEN  
37 MURILLO JR., BRIAN WALLACE, and  
38 BRIAN LEE,

39 Defendants.

Case No. A-17-761364-C  
(Consolidated with Case No. A-17-761884-C)

DEPT. NO. 4

**NOTICE OF ENTRY OF ORDER ON  
FINDINGS OF FACT, CONCLUSIONS OF  
LAW, AND ORDER GRANTING NSEA  
AND NEA PLAINTIFFS' MOTION FOR  
STAY PENDING APPEAL**



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

6 Plaintiffs-Counter Defendants,

7 and

8 BRIAN LEE,

9 Counter Defendant,

10 vs.

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

14 Defendants-Counter Plaintiffs.

Case No. A-17-761884-C

(consolidated with No. A-17-761364-C)

15 PLEASE TAKE NOTICE that an ORDER ON FINDINGS OF FACT, CONCLUSIONS  
16 OF LAW, AND ORDER GRANTING NSEA AND NEA PLAINTIFFS' MOTION FOR STAY  
17 PENDING APPEAL was entered in the above-captioned matter on October 16, 2019, a copy of  
18 which is attached hereto.

19 Dated this 17<sup>th</sup> day of October, 2019.

20 BOIES SCHILLER FLEXNER LLP

21 /s/ Paul J. Lal, Esq.

22 RICHARD J. POCKER, ESQ.

23 Nevada Bar No. 3568

24 PAUL J. LAL, ESQ.

25 Nevada Bar No. 3755

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\* Admitted pro hac vice

Attorneys for NSEA Parties

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b)(2), I, an employee of BOIES SCHILLER FLEXNER LLP, hereby  
3 certify that service of the foregoing ***NOTICE OF ENTRY OF ORDER ON FINDINGS OF***  
4 ***FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING NSEA AND NEA***  
5 ***PLAINTIFFS' MOTION FOR STAY PENDING APPEAL*** was made this date by electronic  
6 filing and/or service via the Eighth Judicial District Court's E-Filing System to the following:  
7

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22 Las Vegas, Nevada 89169

23 Dated this 17<sup>th</sup> day of October, 2019.

24 /s/ Carolyn E. Wright  
25 An employee of Boies Schiller Flexner LLP  
26  
27  
28



1 **ORDER**

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21 **DISTRICT COURT**  
22 **EIGHTH JUDICIAL DISTRICT**  
23 **CLARK COUNTY, NEVADA**

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

28 Plaintiffs,

vs.

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

Defendants.

Case No.: A-17-761364-C

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

DEPT. NO.: 4

**FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND ORDER GRANTING  
NSEA AND NEA PLAINTIFFS' MOTION  
FOR STAY PENDING APPEAL**

Date of Hearing: October 3, 2019

Time of Hearing: 9:00 a.m.

NEVADA STATE EDUCATION  
ASSOCIATION; NATIONAL EDUCATION

1 ASSOCIATION; RUBEN MURILLO;  
2 ROBERT BENSON; DIANE  
3 DI ARCHANGEL; and JASON WYCKOFF,

4 Plaintiffs-Counter Defendants,

5 and

6 BRIAN LEE,

7 Counter Defendant,

8 vs.

9 CLARK COUNTY EDUCATION  
10 ASSOCIATION; JOHN VELLARDITA; and  
11 VICTORIA COURTNEY,

12 Defendants-Counter Plaintiffs.

Case No.: A-17-761884-C

(consolidated with No. A-17-761364-C)

13 **ORDER**

14 This Court, the Honorable Kerry Earley presiding, on October 3, 2019, heard the Motion  
15 for Stay Pending Appeal filed by NSEA and NEA. Plaintiffs Counter-Defendants NEA and  
16 NSEA appeared through counsel Paul J. Lal and Robert Alexander. Defendants-Counter  
17 Plaintiffs CCEA, John Vellardita, and Victoria Courtney appeared through counsel John  
18 Delikanakis, Bradley Austin, Michael Paretti, and Joel D'Alba. The Court, having considered the  
19 parties' respective submissions and the arguments made at the hearing, hereby finds and orders:

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**FINDINGS OF FACT**

1. On March 30, 2018, the NSEA Parties filed an Application for Order Directing the Issuance of a Prejudgment Writ of Attachment with Notice. CCEA Parties opposed the motion.

2. The Court, Hon. Joanna Kishner presiding, heard oral argument on the Application on April 23, 2018.

3. On May 11, 2018, Judge Kishner ordered that:

- a. All funds in the possession of or received by CCEA for the 2017-2018 school year in respect to NSEA dues (numerically calculated traditionally at the annual rate of \$376.66) and in respect to NEA dues (numerically calculated traditionally at the annual rate of \$189.00) shall continue to be deposited by CCEA into a Restricted Account at Bank of America Las Vegas, Nevada Branch.
- b. CCEA shall provide NSEA and NEA with a monthly statement starting with CCEA's reconciliation at the end of April, 2018.
- c. All funds on deposit in the Restricted Account with respect to the 2017-2018 NSEA and NEA dues shall remain in the Restricted Account, and that no funds shall be withdrawn, transferred, or disbursed out of the Restricted Account, and the Restricted Account shall not be changed or modified, without a further Order from this Court.

4. CCEA has deposited \$4,089,364.16 into the Restricted Account.

5. The Court, Hon. Kerry Earley presiding, granted CCEA Parties' Motion for Partial Summary Judgment on their declaratory relief claim on December 20, 2018. The Court found that CCEA terminated the Service Agreement and Dues Transmittal Agreement as of August 31, 2017. The Court held that CCEA therefore had no duty after September 1, 2017, to collect and/or transmit NEA or NSEA membership dues on NEA or NSEA's behalf under the Service Agreement and Dues Transmittal Agreement.

1           6.       On July 3, 2019, the Court further granted CCEA Parties' Motion for Summary  
2 Judgment on all remaining claims brought by NSEA Parties, and denied NSEA Parties'  
3 Motions for Partial Summary Judgment on Conversion and the NSEA and NEA Bylaws. The  
4 Court held that because CCEA had terminated the Dues Transmittal Agreement, CCEA was not  
5 bound by the NEA and NSEA Bylaws after September 1, 2017, and that CCEA therefore had  
6 no obligation under either the NEA or the NSEA Bylaws to collect NEA and NSEA dues. The  
7 Court further held that in the absence of a contractual right to the funds sequestered in the  
8 Restricted Account, the NSEA Parties had no legal right to those funds and therefore the CCEA  
9 parties did not commit conversion.

10           7.       On July 3, 2019, the Court also granted CCEA Parties' Motion to Alter or  
11 Amend Court's May 11, 2018 Order Pursuant to NRCP 59(e) and 60(b) ("Dissolution Order").  
12 That Order dissolved the Court's Order entered May 11, 2018, and permitted CCEA Parties to  
13 disgorge and distribute the funds held in the Restricted Account to the individual CCEA  
14 members from whom the funds were collected.

15           8.       The Court stayed the Dissolution Order to allow the NSEA Parties to move for a  
16 stay pending appeal of the Dissolution Order and other orders entered by the Court, and upon  
17 filing of that motion, to allow the Court to rule on the motion.

18           9.       On July 15, 2019, NSEA Parties filed a notice of appeal of the Court's July 3,  
19 2019, Orders and the Court's December 20, 2018, Order.

20           10.      On July 16, 2019, NSEA Parties filed a Motion for Stay Pending Appeal seeking  
21 to stay the Court's Dissolution Order pending appeal. CCEA Parties opposed the motion on  
22 August 9, 2019, and NSEA Parties filed a reply brief on September 3, 2019. A hearing was held  
23 October 3, 2019.

24           11.      Any finding of fact which should be construed as a conclusion of law shall be  
25 construed as such.

26           12.      Any conclusion of law which should be construed as a finding of fact shall be  
27 construed as such.

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CONCLUSIONS OF LAW

13. The Nevada Rules of Civil Procedure provide that “[w]hile an appeal is pending from an interlocutory order or final judgment that . . . dissolves . . . an injunction, the court may stay . . . or grant an injunction on terms for bond or other terms that secure the opposing party’s rights.” NRCP 62(c).

14. Nevada Rule of Appellate Procedure 8(c) sets forth the substantive factors that guide a court’s consideration of a motion for a stay pending appeal. The Court should consider: “(1) whether the object of the appeal or writ petition will be defeated if the stay or injunction is denied; (2) whether appellant/petitioner will suffer irreparable or serious injury if the stay or injunction is denied; (3) whether respondent/real party in interest will suffer irreparable or serious injury if the stay or injunction is granted; and (4) whether appellant/petitioner is likely to prevail on the merits in the appeal or writ petition.” NRAP 8(c); *see also State v. Robles-Nieves*, 129 Nev. 537, 541, 306 P.3d 399, 402-03 (2013) (considering NRAP 8(c) factors where pertinent rule is silent on factors to consider).

15. One object of the NSEA Parties’ appeal is to establish their right to recover the funds in the Restricted Account as NEA and NSEA member dues during the period prior to CCEA’s April 25, 2018 disaffiliation. Disgorging and distributing the Restricted Account funds before a decision on appeal would defeat the object of the NSEA Parties’ appeal. *See Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 252-53 89 P.3d 36, 39 (2004).

16. CCEA has represented that, absent a stay, it will distribute the funds in the Restricted Account to the CCEA members who paid the dues money held in that account. ~~Furthermore, based on the record, the Court is concerned whether the NSEA Parties would ever be able to recover the funds in the Restricted Account, or whether CCEA would be able to satisfy a judgment in the amount of \$4,089,364.16 without recourse to the funds in the Restricted Account.~~ NSEA Parties have thereby demonstrated a risk of irreparable injury absent a stay pending appeal.

17. The CCEA Parties and the non-party CCEA members who paid the dues money held in the Restricted Account will not be harmed by the entry of a stay pending appeal. If the

1 Court's judgment is affirmed on appeal, the CCEA Parties can then distribute the Restricted  
2 Account funds to individual CCEA members.

3 18. Given the balance of the foregoing factors, and the complex and difficult legal  
4 issues on appeal, the NSEA Parties have demonstrated a sufficient likelihood of success to  
5 justify continuing to stay the effectiveness of this Court's Dissolution Order during the  
6 pendency of the appeal. *See Hansen v. Eighth Judicial Dist. Court ex rel. Cty of Clark*, 116  
7 Nev. 650, 659, 6 P.3d 982, 987 (2000).

8 19. Accordingly, the NSEA Parties are entitled to a stay of the Dissolution Order  
9 pending appeal, pursuant to NRCP 62(c) and the factors set forth in NRAP 8(c).

10  
11 **ORDER**

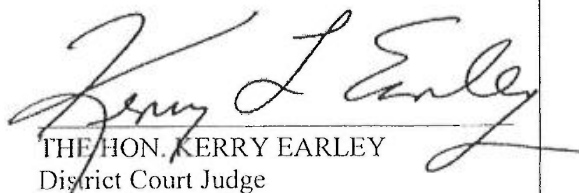
12 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

13 The NSEA Parties' Motion for Stay Pending Appeal is **GRANTED**;

14 The Court's July 3, 2019, Order Granting CCEA Parties' Motion to Alter or Amend  
15 Court's May 11, 2018 Order Pursuant to NRCP 59(e) and 60(b) is **STAYED** pending resolution  
16 of the merits of the NSEA Parties' appeal, currently docketed as Supreme Court Case No. 79208,  
17 and the Supreme Court's issuance of remittitur therein.

18 No funds shall be withdrawn, transferred, or disbursed out of the Restricted Account, and  
19 the Restricted Account shall not be changed or modified until the appeal is decided, remittitur  
20 issues to re-vest jurisdiction in this Court, and the Court issues a further order regarding  
21 disbursement of said funds. CCEA shall continue to provide the NSEA parties with monthly  
22 statements reflecting the balance of the Restricted Account.

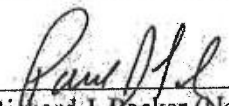
23  
24 DATED: October 16, 2019

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27 THE HON. KERRY EARLEY  
28 District Court Judge



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3 Respectfully submitted by,

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