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Attorney for Plaintiffs

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

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

* * * *

DANA GENTRY, an individual; and
ROBERT CLARKE, an individual,

Plaintiffs,

vs.

SERVICE EMPLOYEES INTERNATIONAL
UNION, *et al.*

Defendants.

CASE NO.: A-17-764942-C

DEPT. NO.: 26

NOTICE OF APPEAL

Notice is hereby given that Plaintiff Robert Clarke hereby appeals to the Nevada Supreme Court from the final judgment of the District Court finding Plaintiffs' claims pursuant to Nevada's wrongful termination law preempted by the Labor-Management Reporting and Disclosure Act ("LMRDA") entered in this action on the 3rd day of January, 2020.

DATED this 29th day of January, 2020.

/s/ Michael J. Mcavaoyamaya

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Attorney for Plaintiffs

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Attorneys for Local 1107 Defendants

Dated this 29th day of January, 2020.

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EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY**Robert Clarke, Plaintiff(s)****vs.****Service Employees International Union, Defendant(s)****CASE NO. A-17-764942-C**§
§
§
§Location: **Department 26**Judicial Officer: **Sturman, Gloria**Filed on: **11/20/2017**Cross-Reference Case **A764942**

Number:

CASE INFORMATION**Statistical Closures**

01/03/2020 Motion to Dismiss by the Defendant(s)

Case Type: **Employment Tort**Case
Status: **01/03/2020 Dismissed****DATE****CASE ASSIGNMENT****Current Case Assignment**

Case Number	A-17-764942-C
Court	Department 26
Date Assigned	11/20/2017
Judicial Officer	Sturman, Gloria

PARTY INFORMATION

Plaintiff	Clarke, Robert	<i>Lead Attorneys</i> Mcavoyamaya, Michael J. <i>Retained</i> 702-299-5083(W)
	Gentry, Dana	Mcavoyamaya, Michael J. <i>Retained</i> 702-299-5083(W)
Defendant	Blue, Luisa	James, Evan L. <i>Retained</i> 702-255-1718(W)
	Clark County Public Employees Association	James, Evan L. <i>Retained</i> 702-255-1718(W)
	Henry, Mary K	James, Evan L. <i>Retained</i> 702-255-1718(W)
	Kisling, Sharon	
	Manteca, Martin	James, Evan L. <i>Retained</i> 702-255-1718(W)
	Nevada Service Employees Union	James, Evan L. <i>Retained</i> 702-255-1718(W)
	Service Employees International Union	James, Evan L. <i>Retained</i> 702-255-1718(W)
Arbitrator	Buttell, Alan J.	
Trustee	Blue, Luisa	James, Evan L. <i>Retained</i> 702-255-1718(W)













CASE SUMMARY**CASE NO. A-17-764942-C**

EVENTS & ORDERS OF THE COURT

DATE

INDEX

EVENTS

11/20/2017	 Complaint Filed By: Plaintiff Clarke, Robert; Plaintiff Gentry, Dana <i>Complaint</i>
11/20/2017	 Initial Appearance Fee Disclosure Filed By: Plaintiff Gentry, Dana <i>Initial Appearance Fee Disclosure</i>
12/14/2017	 Summons Electronically Issued - Service Pending Party: Plaintiff Clarke, Robert; Plaintiff Gentry, Dana <i>Summons - Civil</i>
12/14/2017	 Summons Electronically Issued - Service Pending Party: Plaintiff Clarke, Robert; Plaintiff Gentry, Dana <i>Summons - Civil</i>
12/14/2017	 Summons Electronically Issued - Service Pending Party: Plaintiff Clarke, Robert; Plaintiff Gentry, Dana <i>Summons - Civil</i>
12/14/2017	 Summons Electronically Issued - Service Pending Party: Plaintiff Clarke, Robert; Plaintiff Gentry, Dana <i>Summons</i>
12/14/2017	 Summons Electronically Issued - Service Pending Party: Plaintiff Clarke, Robert; Plaintiff Gentry, Dana <i>Summons - Civil</i>
12/14/2017	 Summons Electronically Issued - Service Pending Party: Plaintiff Clarke, Robert; Plaintiff Gentry, Dana <i>Summons</i>
01/12/2018	 Summons Filed by: Plaintiff Clarke, Robert; Plaintiff Gentry, Dana <i>Summons - SEIU Local 1107</i>
01/12/2018	 Summons Filed by: Plaintiff Clarke, Robert; Plaintiff Gentry, Dana Party served: Trustee Blue, Luisa <i>Summons - Luisa Blue</i>
01/12/2018	 Summons Filed by: Plaintiff Clarke, Robert; Plaintiff Gentry, Dana Party served: Defendant Manteca, Martin <i>Summons and Affidavit of Service - Martin Manteca</i>
01/12/2018	 Summons Filed by: Plaintiff Clarke, Robert; Plaintiff Gentry, Dana Party served: Defendant Henry, Mary K <i>Summons and Affidavit of Service- Mary K Henry</i>














CASE SUMMARY

CASE NO. A-17-764942-C

01/12/2018	 Summons Filed by: Plaintiff Clarke, Robert; Plaintiff Gentry, Dana Party served: Defendant Service Employees International Union <i>Summons - Service Employees International Union</i>
02/02/2018	 Initial Appearance Fee Disclosure Filed By: Trustee Blue, Luisa; Defendant Manteca, Martin; Defendant Nevada Service Employees Union <i>Initial Appearance Fee Disclosure</i>
02/02/2018	 Answer Filed By: Trustee Blue, Luisa; Defendant Manteca, Martin; Defendant Nevada Service Employees Union <i>Answer</i>
03/13/2018	 Affidavit of Service Filed By: Plaintiff Clarke, Robert; Plaintiff Gentry, Dana <i>Summons and Affidavit of Service Sharon Kisling</i>
03/13/2018	 Summons Filed by: Plaintiff Clarke, Robert; Plaintiff Gentry, Dana <i>Summons - Service Empoloyees International Union</i>
03/13/2018	 Summons Filed by: Plaintiff Clarke, Robert; Plaintiff Gentry, Dana Party served: Defendant Henry, Mary K <i>Summons and Affidavit of Service - Mary K Henry</i>
03/19/2018	 Initial Appearance Fee Disclosure Filed By: Defendant Henry, Mary K <i>Initial Appearance Fee Disclosure (NRS Chapter 19)</i>
03/19/2018	 Answer Filed By: Defendant Service Employees International Union; Defendant Henry, Mary K <i>Answer</i>
03/20/2018	 Certificate of Service Filed by: Defendant Service Employees International Union; Defendant Henry, Mary K <i>Certificate of Service</i>
06/18/2018	 Request for Exemption From Arbitration Filed by: Plaintiff Clarke, Robert; Plaintiff Gentry, Dana <i>ABREA</i>
07/03/2018	 Commissioners Decision on Request for Exemption - Granted <i>Commissioner's Decision on Request For Exemption - GRANTED</i>
08/27/2018	 Joint Case Conference Report <i>JCCR</i>
08/30/2018	 Proof of Service Filed by: Plaintiff Clarke, Robert; Plaintiff Gentry, Dana <i>Proof of Service - Service Employees Internatoinal Union</i>

CASE SUMMARY

CASE NO. A-17-764942-C

09/05/2018	 Three Day Notice of Intent to Default Filed By: Plaintiff Gentry, Dana <i>Notice of Intent to Default</i>
09/06/2018	 Motion Filed By: Trustee Blue, Luisa; Defendant Manteca, Martin; Defendant Clark County Public Employees Association <i>Motion to Receive Service of Plaintiffs' Documents by United States Mail</i>
09/20/2018	 Opposition Filed By: Plaintiff Clarke, Robert; Plaintiff Gentry, Dana <i>Plaintiffs' Opposition to Defendants Motion to Receive Service of Plaintiffs' Documents by Mail</i>
09/26/2018	 Motion for Partial Summary Judgment Filed By: Plaintiff Clarke, Robert; Plaintiff Gentry, Dana <i>Motion for Partial Summary Judgment Liability</i>
10/05/2018	 Arbitration File <i>- Arbitration File</i>
10/08/2018	 Reply to Opposition Filed by: Trustee Blue, Luisa; Defendant Manteca, Martin; Defendant Nevada Service Employees Union <i>Reply to Opposition for Service by Mail</i>
10/10/2018	 Scheduling Order <i>Scheduling Order</i>
10/11/2018	 Order Setting Civil Bench Trial <i>Order Setting Bench Trial</i>
10/15/2018	 Opposition and Countermotion Filed By: Trustee Blue, Luisa; Defendant Manteca, Martin; Defendant Nevada Service Employees Union <i>Opposition to and Countermotion for Summary Judgment</i>
10/15/2018	 Opposition and Countermotion Filed By: Defendant Service Employees International Union; Defendant Henry, Mary K <i>Defendants Service Employees International Union's and Mary Kay Henry's Brief in Opposition to Plaintiffs' Motion for Partial Summary Judgment; Counter Motion for Summary Judgment</i>
10/17/2018	 Declaration Filed By: Defendant Service Employees International Union; Trustee Blue, Luisa; Defendant Manteca, Martin; Defendant Nevada Service Employees Union <i>Declaration of Ken Ubani</i>
10/18/2018	 Order Filed By: Defendant Service Employees International Union; Trustee Blue, Luisa; Defendant Manteca, Martin; Defendant Clark County Public Employees Association <i>Order Continuing Hearing Dates</i>
10/23/2018	 Notice of Entry of Order Filed By: Defendant Service Employees International Union; Trustee Blue,

CASE SUMMARY

CASE NO. A-17-764942-C

Luisa; Defendant Manteca, Martin; Defendant Nevada Service Employees Union
Notice of Entry of Order Continuing Hearing Dates

10/24/2018



Certificate of Service

Filed by: Defendant Service Employees International Union; Trustee Blue, Luisa; Defendant Manteca, Martin; Defendant Nevada Service Employees Union
Certificate of Service of Notice of Entry of Order Continuing Hearing Dates

11/01/2018



Reply to Motion

Filed By: Plaintiff Clarke, Robert; Plaintiff Gentry, Dana
Plaintiffs' Reply in Support of Motion for Partial Summary Judgment on Liability and Opposition to Defendants' Countermotion for Summary Judgment

11/06/2018



Reply in Support

Filed By: Defendant Service Employees International Union; Defendant Henry, Mary K
Service Employees International Union's and Mary Kay Henry's Reply in Support of Summary Judgment

11/06/2018



Reply

Filed by: Trustee Blue, Luisa; Defendant Manteca, Martin; Defendant Nevada Service Employees Union
Reply in Support of Local 1107's Summary Judgment Motion

01/14/2019



Motion to Amend Complaint

Filed By: Plaintiff Clarke, Robert; Plaintiff Gentry, Dana
Plaintiffs Motion for Leave to Amend Complaint

01/30/2019



Opposition to Motion

Filed By: Defendant Service Employees International Union; Defendant Henry, Mary K
Defendants Service Employee International Union's and Mary Kay Henry's Opposition to Plaintiffs' Motion to Amend Complaint

01/30/2019



Opposition

Filed By: Trustee Blue, Luisa; Defendant Manteca, Martin; Defendant Clark County Public Employees Association
Opposition to Motion to Amend

02/12/2019



Reply

Filed by: Plaintiff Clarke, Robert; Plaintiff Gentry, Dana
Reply in Support of Motion to Amend

03/20/2019



Order

Filed By: Defendant Service Employees International Union; Trustee Blue, Luisa; Defendant Manteca, Martin; Defendant Nevada Service Employees Union
Order Granting in Part and Denying in Part Plaintiff Dana Gentry's Motion to Amend

03/20/2019



Notice of Entry

Filed By: Defendant Service Employees International Union; Trustee Blue, Luisa; Defendant Manteca, Martin; Defendant Nevada Service Employees Union
Notice of Entry of Order

03/25/2019



Amended Complaint

Filed By: Plaintiff Clarke, Robert; Plaintiff Gentry, Dana
First Amended Complaint

03/28/2019

CASE SUMMARY

CASE NO. A-17-764942-C

	 Stipulation and Order to Extend Discovery Deadlines Filed By: Plaintiff Clarke, Robert; Plaintiff Gentry, Dana <i>Stipulation and Order Extending Discovery Deadlines</i>
03/28/2019	 Notice of Entry of Stipulation and Order Filed By: Plaintiff Clarke, Robert; Plaintiff Gentry, Dana <i>Notice of Entry of Stipulation and Order</i>
04/08/2019	 Answer Filed By: Defendant Service Employees International Union; Trustee Blue, Luisa; Defendant Manteca, Martin; Defendant Nevada Service Employees Union <i>Answer to Amended Complaint</i>
04/11/2019	 Answer Filed By: Defendant Service Employees International Union; Defendant Henry, Mary K <i>Defendants Service Employees International Union's and Mary Kay Henry's Answer to First Amended Complaint</i>
05/03/2019	 Stipulation to Extend Discovery Party: Defendant Service Employees International Union; Defendant Henry, Mary K <i>Stipulation to Extend Deadlines for Expert Disclosures (Second Request)</i>
06/21/2019	 Application for Entry of Default Filed By: Plaintiff Gentry, Dana <i>Application for entry of default against Sharon Kisling</i>
06/25/2019	 Default Filed By: Plaintiff Gentry, Dana <i>Default Defendant Sharon Kisling</i>
06/26/2019	 Application for Default Judgment Party: Plaintiff Gentry, Dana <i>Application for Default Judgement against Sharon Kisling</i>
06/26/2019	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
06/28/2019	 Order Setting Civil Bench Trial <i>Scheduling Order, Amended Order Setting Civil Non-Jury Trial and Calendar Call</i>
07/02/2019	 Stipulation and Order to Extend Discovery Deadlines Filed By: Plaintiff Clarke, Robert; Plaintiff Gentry, Dana <i>SAO Extending discovery deadlines</i>
07/08/2019	 Opposition Filed By: Defendant Service Employees International Union; Trustee Blue, Luisa; Defendant Manteca, Martin; Defendant Nevada Service Employees Union <i>Opposition to Application for Default Judgment Against Sharon Kisling</i>
07/12/2019	 Reply Filed by: Plaintiff Gentry, Dana <i>Reply to Local 1107 Defendants' Opposition to Default Against Kisling</i>
07/22/2019	 Request for Judicial Notice

CASE SUMMARY

CASE NO. A-17-764942-C

Plaintiffs Request for Judicial Notice of NLRB's Decision in Javier Cabrera v. SEIU Local 1107, Case 28-CA -209109

07/23/2019	 Order Shortening Time Filed By: Defendant Service Employees International Union; Defendant Henry, Mary K <i>Order Shortening Time to Hear Motion to Associate COounsel</i>
07/23/2019	 Motion to Associate Counsel Filed By: Defendant Service Employees International Union; Defendant Henry, Mary K <i>Motion to Associate Counsel on Order Shortening Time</i>
07/23/2019	 Notice of Entry Filed By: Defendant Service Employees International Union; Defendant Henry, Mary K <i>Notice of Entry of Order Shortening Time and Certificate of Service of Order Shortening Time</i>
07/25/2019	 Order Admitting to Practice Filed By: Defendant Service Employees International Union; Defendant Henry, Mary K <i>Order Admitting to Practice</i>
07/25/2019	 Notice of Entry Filed By: Defendant Service Employees International Union; Defendant Henry, Mary K <i>Notice of Entry of Order</i>
08/01/2019	 Opposition Filed By: Defendant Service Employees International Union; Defendant Henry, Mary K <i>Service Employees International Union's and Mary Kay Henry's Opposition to Plaintiffs' Request for Judicial Notice</i>
08/05/2019	 Joinder Filed By: Defendant Service Employees International Union; Trustee Blue, Luisa; Defendant Manteca, Martin; Defendant Nevada Service Employees Union <i>Local 1107, Luisa Blue and Martin Manteca's Joinder in SEIU and Mary K Henry's Opposition to Mo to Take Judicial Notice</i>
08/05/2019	 Opposition Filed By: Defendant Service Employees International Union; Trustee Blue, Luisa; Defendant Manteca, Martin; Defendant Nevada Service Employees Union <i>Local 1107, Lusia Blue and Martin Manteca's Opposition to Motion to Take Judicial Notice (Hearing Requested)</i>
08/05/2019	 Order Shortening Time Filed By: Defendant Service Employees International Union; Defendant Henry, Mary K <i>Order Shortening Time to Hear Motion to Determine Attorney client Privilege</i>
08/05/2019	 Motion Filed By: Trustee Blue, Luisa; Defendant Manteca, Martin; Defendant Nevada Service Employees Union <i>Motion to Determine Attorney-Client/Work Product Privilege</i>
08/05/2019	 Notice Filed By: Trustee Blue, Luisa; Defendant Manteca, Martin; Defendant Nevada Service Employees Union <i>Notice of Entry of Order</i>
08/09/2019	 Request for Judicial Notice

CASE SUMMARY

CASE NO. A-17-764942-C

Filed By: Plaintiff Gentry, Dana

Plaintiffs' Request for Judicial Notice of the NLRB's Decision in Javier Cabrera v. SEIU Local 1107, Case 28-CA-209109

08/13/2019



Clerk's Notice of Hearing

Notice of Hearing

08/13/2019



Order

Filed By: Defendant Service Employees International Union; Trustee Blue, Luisa; Defendant Manteca, Martin; Defendant Nevada Service Employees Union
Order Denying Motion for Default Judgment

08/14/2019



Notice

Filed By: Defendant Service Employees International Union; Trustee Blue, Luisa; Defendant Manteca, Martin; Defendant Nevada Service Employees Union
Notice of Entry of Order

08/15/2019



Stipulated Protective Order

Filed By: Defendant Service Employees International Union; Trustee Blue, Luisa; Defendant Manteca, Martin; Defendant Nevada Service Employees Union
Stipulated Protective Order

08/21/2019



Notice

Filed By: Defendant Service Employees International Union; Trustee Blue, Luisa; Defendant Manteca, Martin; Defendant Nevada Service Employees Union
Notice of Entry of Order

08/23/2019



Stipulation and Order

Filed by: Plaintiff Clarke, Robert; Plaintiff Gentry, Dana
Stipulation and Order Extending Discovery

08/26/2019



Stipulation and Order to Extend Discovery Deadlines

Filed By: Plaintiff Clarke, Robert; Plaintiff Gentry, Dana
Stipulation and Order Extending Discovery

08/26/2019



Motion to Compel

Filed By: Plaintiff Clarke, Robert; Plaintiff Gentry, Dana
Motion to Compel Documents, Unredacted Audio Recordings, the Deposition of Brenda Marzan and to Reject Defendants' Improper Attorney Client Privilege Objections on Order Shortening Time

08/26/2019



Clerk's Notice of Hearing

Notice of Hearing

09/20/2019



Stipulation

Filed by: Defendant Service Employees International Union
Stipulation Regarding Attorney-Client Privilege (2nd Order)

09/25/2019



Order

Filed By: Defendant Service Employees International Union
Order Denying Motion to Take Judicial Notice

09/25/2019



Notice of Entry

Filed By: Trustee Blue, Luisa; Defendant Manteca, Martin; Defendant Nevada Service Employees Union

CASE SUMMARY

CASE No. A-17-764942-C

Notice of Entry of Order

09/30/2019



Notice of Change of Hearing

Notice of Change of Hearing

10/29/2019



Motion for Summary Judgment

Filed By: Defendant Service Employees International Union; Defendant Henry, Mary K
DEFENDANTS SERVICE EMPLOYEES INTERNATIONAL UNION S AND MARY KAY HENRY S NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT; MEMORANDUM OF POINTS AND AUTHORITIES;

10/29/2019



Declaration

Filed By: Defendant Service Employees International Union; Defendant Henry, Mary K
DECLARATION OF MARTIN MANTECA IN SUPPORT OF SERVICE EMPLOYEES INTERNATIONAL UNION S AND MARY KAY HENRY S MOTION FOR SUMMARY JUDGMENT;

10/29/2019



Declaration

Filed By: Defendant Service Employees International Union; Defendant Henry, Mary K
DECLARATION OF JONATHAN COHEN IN SUPPORT OF SERVICE EMPLOYEES INTERNATIONAL UNION S AND MARY KAY HENRY S MOTION FOR SUMMARY JUDGMENT

10/29/2019



Appendix

Filed By: Defendant Service Employees International Union; Defendant Henry, Mary K
APPENDIX IN SUPPORT OF DECLARATION OF JONATHAN COHEN IN SUPPORT OF SERVICE EMPLOYEES INTERNATIONAL UNION S AND MARY KAY HENRY S MOTION FOR SUMMARY JUDGMENT

10/29/2019



Declaration

Filed By: Defendant Service Employees International Union; Defendant Henry, Mary K
DECLARATION OF DEIRDRE FITZPATRICK IN SUPPORT OF SERVICE EMPLOYEES INTERNATIONAL UNION S AND MARY KAY HENRY S MOTION FOR SUMMARY JUDGMENT

10/29/2019



Appendix

Filed By: Defendant Service Employees International Union; Defendant Henry, Mary K
APPENDIX IN SUPPORT OF DECLARATION OF DEIRDRE FITZPATRICK IN SUPPORT OF SERVICE EMPLOYEES INTERNATIONAL UNION S AND MARY KAY HENRY S MOTION FOR SUMMARY JUDGMENT

10/29/2019



Declaration

Filed By: Defendant Service Employees International Union; Defendant Henry, Mary K
DECLARATION OF LUISA BLUE IN SUPPORT OF SERVICE EMPLOYEES INTERNATIONAL UNION S AND MARY KAY HENRY S MOTION FOR SUMMARY JUDGMENT

10/29/2019



Proof of Service

Filed by: Defendant Service Employees International Union; Defendant Henry, Mary K
PROOF OF SERVICE RE DEFENDANTS SERVICE EMPLOYEES INTERNATIONAL UNION S AND MARY KAY HENRY S MOTION FOR SUMMARY JUDGMENT

10/29/2019



Motion for Summary Judgment

Filed By: Trustee Blue, Luisa; Defendant Manteca, Martin; Defendant Clark County Public Employees Association; Defendant Nevada Service Employees Union
Motion for Summary Judgment

CASE SUMMARY

CASE NO. A-17-764942-C

10/29/2019	 Appendix Filed By: Trustee Blue, Luisa; Defendant Manteca, Martin; Defendant Clark County Public Employees Association; Defendant Nevada Service Employees Union <i>Appendix to Motion for Summary Judgment</i>
10/29/2019	 Notice of Change of Hearing <i>Notice of Hearing</i>
10/29/2019	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
10/30/2019	 Motion for Partial Summary Judgment Filed By: Plaintiff Clarke, Robert; Plaintiff Gentry, Dana <i>Plaintiffs' Motion for Partial Summary Judgment</i>
10/31/2019	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
11/12/2019	 Opposition to Motion For Summary Judgment Filed By: Trustee Blue, Luisa; Defendant Manteca, Martin; Defendant Nevada Service Employees Union <i>Opposition to Plaintiffs' Motion for Partial Summary Judgment</i>
11/12/2019	 Opposition to Motion For Summary Judgment Filed By: Defendant Service Employees International Union; Defendant Henry, Mary K <i>Service Employees International Union's and Mary Kay Henry's Opposition to Plaintiffs' Motion for Partial Summary Judgment</i>
11/12/2019	 Opposition to Motion For Summary Judgment Filed By: Plaintiff Clarke, Robert; Plaintiff Gentry, Dana <i>Plaintiffs Opposition to L1107 Defendants Motion for Summary Judgment</i>
11/12/2019	 Opposition to Motion For Summary Judgment Filed By: Plaintiff Clarke, Robert; Plaintiff Gentry, Dana <i>Plaintiffs' Opposition to SEIU Defendants Motion for Summary Judgment</i>
11/13/2019	 Appendix <i>Appendix II - 1 to Plaintiffs' Opposition to Local 1107 Defendants' Motion for Summary Judgment</i>
11/13/2019	 Appendix Filed By: Plaintiff Clarke, Robert; Plaintiff Gentry, Dana <i>Appendix I-2</i>
11/13/2019	 Appendix Filed By: Plaintiff Clarke, Robert; Plaintiff Gentry, Dana <i>Appendix II - 3</i>
11/13/2019	 Appendix Filed By: Plaintiff Clarke, Robert; Plaintiff Gentry, Dana <i>Appendix II - 4</i>
11/13/2019	 Appendix Filed By: Plaintiff Clarke, Robert; Plaintiff Gentry, Dana

CASE SUMMARY

CASE NO. A-17-764942-C











Appendix II - 5

11/13/2019	 Stipulation Filed by: Defendant Service Employees International Union; Defendant Henry, Mary K <i>Stipulation and Joint Motion to Continue Trial Date</i>
11/19/2019	 Motion Filed By: Trustee Blue, Luisa; Defendant Manteca, Martin; Defendant Nevada Service Employees Union <i>Motion to Coordinate Cases</i>
11/20/2019	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
11/22/2019	 Reply to Opposition Filed by: Trustee Blue, Luisa; Defendant Manteca, Martin; Defendant Nevada Service Employees Union <i>Reply to Opposition to Motion for Summary Judgment</i>
11/22/2019	 Reply to Opposition Filed by: Defendant Service Employees International Union; Defendant Henry, Mary K <i>Service Employees International Union's and Mary Kay Henry's Reply in Support of Motion for Summary Judgment</i>
11/22/2019	 Declaration Filed By: Defendant Service Employees International Union; Defendant Henry, Mary K <i>Supplemental Declaration of Jonathan Cohen in Support of SEIU's & Mary Kay Henry's Motion for Summary Judgment</i>
11/26/2019	 Reply in Support Filed By: Plaintiff Clarke, Robert; Plaintiff Gentry, Dana <i>Plaintiffs Reply in Support of Motion for Partial Summary Judgment</i>
11/26/2019	 Opposition to Motion For Summary Judgment Filed By: Plaintiff Clarke, Robert; Plaintiff Gentry, Dana <i>Plaintiffs' Opposition to L1107 Defendants Motion for Summary Judgment</i>
01/03/2020	 Order Granting Motion Filed By: Defendant Service Employees International Union; Defendant Henry, Mary K <i>Order Granting Summary Judgment in Favor of Defendants</i>
01/03/2020	 Memorandum of Costs and Disbursements Filed By: Defendant Service Employees International Union; Defendant Henry, Mary K <i>SERVICE EMPLOYEES INTERNATIONAL UNION S AND MARY KAY HENRY S MEMORANDUM OF COSTS; DECLARATION OF JONATHAN COHEN IN SUPPORT OF MEMORANDUM OF COSTS</i>
01/03/2020	 Notice of Entry of Order Filed By: Trustee Blue, Luisa; Defendant Manteca, Martin; Defendant Nevada Service Employees Union <i>Notice of Entry of Order</i>
01/06/2020	 Memorandum of Costs and Disbursements Filed By: Trustee Blue, Luisa; Defendant Manteca, Martin; Defendant Nevada Service Employees Union

CASE SUMMARY

CASE NO. A-17-764942-C

Verified Memorandum of Costs

01/09/2020	 Motion to Retax Filed By: Plaintiff Clarke, Robert; Plaintiff Gentry, Dana <i>Motion to Retax Costs</i>
01/10/2020	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
01/10/2020	 Errata Filed By: Trustee Blue, Luisa; Defendant Manteca, Martin; Defendant Nevada Service Employees Union <i>Errata to Verified Memorandum of Costs</i>
01/13/2020	 Opposition Filed By: Trustee Blue, Luisa; Defendant Manteca, Martin; Defendant Nevada Service Employees Union <i>Opposition to Motion to Retax Costs</i>
01/14/2020	 Motion for Attorney Fees and Costs Filed By: Trustee Blue, Luisa; Defendant Manteca, Martin; Defendant Nevada Service Employees Union <i>Motion for Attorney Fees and Award of Costs - Hearing Requested</i>
01/14/2020	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
01/14/2020	 Errata Filed By: Defendant Service Employees International Union; Defendant Henry, Mary K <i>ERRATA TO MEMORANDUM OF COSTS OF SERVICE EMPLOYEES INTERNATIONAL UNION AND MARY KAY HENRY</i>
01/14/2020	 Opposition to Motion Filed By: Defendant Service Employees International Union; Defendant Henry, Mary K <i>Opposition to Motion to Retax Costs</i>
01/16/2020	 Motion for Attorney Fees Filed By: Defendant Service Employees International Union; Defendant Henry, Mary K <i>SEIU's and Mary Kay Henry's Motion for Attorneys' Fees</i>
01/16/2020	 Declaration Filed By: Defendant Service Employees International Union; Defendant Henry, Mary K <i>Declaration of Jonathan Cohen in support of SEIU's & Mary Kay Henry's Motion for Attorneys Fees</i>
01/16/2020	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
01/27/2020	 Stipulation and Order Filed by: Trustee Blue, Luisa; Defendant Manteca, Martin; Defendant Clark County Public Employees Association <i>Stipulation and Order to Move Retax Motion Hearing Date</i>
01/28/2020	 Opposition to Motion

CASE SUMMARY

CASE NO. A-17-764942-C

Filed By: Plaintiff Clarke, Robert; Plaintiff Gentry, Dana
Opposition to Motion for Attorneys' Fees

01/29/2020



Notice of Appeal

Filed By: Plaintiff Clarke, Robert
Notice of Appeal

DISPOSITIONS

01/03/2020

Summary Judgment (Judicial Officer: Sturman, Gloria)

Debtors: Robert Clarke (Plaintiff), Dana Gentry (Plaintiff)

Creditors: Service Employees International Union (Defendant), Luisa Blue (Defendant), Martin Manteca (Defendant), Mary K Henry (Defendant), Sharon Kisling (Defendant), Nevada Service Employees Union (Defendant)

Judgment: 01/03/2020, Docketed: 01/03/2020

Comment: 1st ACOM - All Claims

HEARINGS

10/16/2018



Motion (9:00 AM) (Judicial Officer: Sturman, Gloria)

10/16/2018, 11/13/2018

Motion to Receive Service of Plaintiffs' Documents by United States Mail

Matter Continued;

Denied;

Matter Continued;

Denied;

Journal Entry Details:

Court stated the Pltf. indicated he would be in a deposition today and not be appearing; however he did submit his opposition. Mr. Evan stated the motion may be moot as there was a Motion for Summary Judgment (MSJ) on November 6, 2018. Mr. Evan stated they had a briefing issue and therefore requested the hearing be continued, along with the MSJ to a later date. . COURT ORDERED, Motion CONTINUED. CONTINUED TO: 11/13/18 9:00 AM;

11/13/2018



All Pending Motions (9:00 AM) (Judicial Officer: Sturman, Gloria)

Matter Heard;

Journal Entry Details:

PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT OPPOSITION TO AND COUNTERMOTION FOR SUMMARY JUDGMENT DEFENDANTS SERVICE EMPLOYEES INTERNATIONAL UNION'S AND MARY KAY HENRY'S BRIEF IN OPPOSITION TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT; COUNTERMOTION FOR SUMMARY JUDGMENT MOTION TO RECEIVE SERVICE OF PLAINTIFFS' DOCUMENTS BY UNITED STATES MAIL Mr. Mcavoyamay argued the Def't.'s did not dispute the existence of the for cause contracts rather they argue the evidence was not authentic so it could not be addressed at the time of trial. Mr. Mcavoyamay argued the contracts exist, that the Def't.'s breached the contracts, and that Def't.'s argued the trusteeship encompassed their employment. Mr. Mcavoyamay argued the trusteeship had nothing to do with the Pltf.'s and that the Def't.'s don't dispute they contracts were breached. Mr. Mcavoyamay argued Def't.'s argued regarding preemption and had attempted to bifurcate their argument to excuse the breach as that Def't.'s say the International Union terminated them. Mr. Mcavoyamay argued the preemption defense had disputable facts regarding whether the Pltf.'s were policy making employees. Mr. Cohen argued it was Pltf.'s burden to establish admissible evidence, that Pltf.'s didn't authenticate the contracts, and that one contract wasn't even executed. Mr. Cohen argued that Pltf.'s were subject to the trustee order, that Federal preemption does apply, and that the International Union can remove management pursuant to the international constitution. Mr. Cohen argued regarding the Screen Actor's Guild case and further argued that Federal law made it clear the employees were subject to the removal even with a for cause contract. Mr. James argued the Pltf.'s were the Director of Communications and Director of Finance and Human Resources and both reported to the president. Mr. James argued the Pltf. were not members of SEIU or the Local 1107, they were not bringing claims as union members, rather they were just trying to vindicate their continued employment. Mr. James argued in the Screen Actor's Guild case they were not protected as union employees. Mr. James argued the Pltf.'s say the International Union was liable because it placed the local union in trusteeship; however there was no evidence SEIU was a party to the contracts, they never adopted the contracts, and they never had anything to do with the contracts. Mr. James

CASE SUMMARY

CASE NO. A-17-764942-C

argued the Pltf.'s were trying to sue based on contracts they were never a part of. Mr. James further argued the new administration could not be saddled with the management of the prior administration. Mr. Mcavoyamay further argued regarding preemption and policy analysis, the Bloom case, the Lynn case, and that the LMRDA was not preempted. Mr. James argued regarding the National Labor Relations Act and that the trustee was a fiduciary of the local union and not liable for it's debts or local actions. Mr. Cohen argued regarding the distinction between an employee and a union employee, the hobbling of incoming administration with a union employee by force, congressional intent, that preemptions applied, the Bloom case, and that both employees make policy and therefore were management. COURT ORDERED, Pltf.'s Motion for Summary Judgment CONTINUED TO CHAMBERS; Deft.'s Opposition and Countermotion for Summary Judgment CONTINUED TO CHAMBERS. Mr. Mcavoyamay further argued Deft.'s were just trying to run up costs. Mr. Cohen argued they hadn't run up costs; however Pltf.'s argue nonsensical things that Deft.'s were forced to address. COURT ORDERED, Motion to Receive Service by Mail DENIED as there were admitted problems in the past; however counsel has been made aware of the differences in service between the District Court and the Federal Court and should there be a problem in the future counsel may address it. ;

11/13/2018 **CANCELED All Pending Motions (9:00 AM)** (Judicial Officer: Sturman, Gloria)
Vacated

11/13/2018 **Motion for Partial Summary Judgment (9:30 AM)** (Judicial Officer: Sturman, Gloria)
11/13/2018, 02/22/2019, 03/15/2019, 03/22/2019

Plaintiff's Motion for Partial Summary Judgment
at 10/16/18 hearing
Continued for Chambers Decision;
Matter Continued; 30 days for a decision
on Civil Calendar
Matter Continued; 30 days for a decision
decision made
Minute Order - No Hearing Held;
at 10/16/18 hearing
Continued for Chambers Decision;
Matter Continued; 30 days for a decision
on Civil Calendar
Matter Continued; 30 days for a decision
decision made
Minute Order - No Hearing Held;
at 10/16/18 hearing
Continued for Chambers Decision;
Matter Continued; 30 days for a decision
on Civil Calendar
Matter Continued; 30 days for a decision
decision made
Minute Order - No Hearing Held;
at 10/16/18 hearing
Continued for Chambers Decision;
Matter Continued; 30 days for a decision
on Civil Calendar
Matter Continued; 30 days for a decision
decision made
Minute Order - No Hearing Held;

11/13/2018 **Opposition and Countermotion (9:30 AM)** (Judicial Officer: Sturman, Gloria)
11/13/2018, 02/22/2019, 03/15/2019, 03/22/2019

Opposition to and Countermotion for Summary Judgment
at 10/16/18 hearing
Continued for Chambers Decision;
Matter Continued; 30 days for decision
on Civil Chambers Calendar
Matter Continued; 30 days for a decision
decision made in advance
Minute Order - No Hearing Held;

CASE SUMMARY

CASE NO. A-17-764942-C

at 10/16/18 hearing
Continued for Chambers Decision;
Matter Continued; 30 days for decision
on Civil Chambers Calendar
Matter Continued; 30 days for a decision
decision made in advance
Minute Order - No Hearing Held;
at 10/16/18 hearing
Continued for Chambers Decision;
Matter Continued; 30 days for decision
on Civil Chambers Calendar
Matter Continued; 30 days for a decision
decision made in advance
Minute Order - No Hearing Held;
at 10/16/18 hearing
Continued for Chambers Decision;
Matter Continued; 30 days for decision
on Civil Chambers Calendar
Matter Continued; 30 days for a decision
decision made in advance
Minute Order - No Hearing Held;

11/13/2018

Opposition and Countermotion (9:30 AM) (Judicial Officer: Sturman, Gloria)

11/13/2018, 02/22/2019, 03/22/2019

Defendants Service Employees International Union's and Mary Kay Henry's Brief in Opposition to Plaintiffs' Motion for Partial Summary Judgment; Countermotion for Summary Judgment

at 10/16/18 hearing
Continued for Chambers Decision;
Matter Continued; 30 days for a decision
decision made in advance
Minute Order - No Hearing Held;
at 10/16/18 hearing
Continued for Chambers Decision;
Matter Continued; 30 days for a decision
decision made in advance
Minute Order - No Hearing Held;
at 10/16/18 hearing
Continued for Chambers Decision;
Matter Continued; 30 days for a decision
decision made in advance
Minute Order - No Hearing Held;

02/19/2019



Motion to Amend Complaint (9:00 AM) (Judicial Officer: Sturman, Gloria)

Plaintiffs Motion for Leave to Amend Complaint

Granted in Part;

Journal Entry Details:

Court stated the second (duplicate) 14th cause of action was defamation which was not an independent cause of action, and therefore was unable to stand on its own. Mr. Mcavoyamaya argued it was public policy as it was just another factual basis. Court noted Deft.'s say this was untimely and that she knew about the defamation all along. Mr. Mcavoyamaya argued it was in the original action, that it didn't add any new parties, that there was new evidence, and that Deft.'s were on notice that it would be resolved. Mr. Mcavoyamaya further argued regarding the Mitchell v SEIU Local 721 case. Mr. Cohen argued there was no basis for waiting four months to file as that was undue delay. Mr. Cohen further argued regarding futility and that Pltf.'s allege Deft.'s failed to retract the statement of a third-party, and that SEIU didn't publish the false statement rather they just didn't retract it. Mr. Cohen argued the statement was someone else's defamatory statement, there was no cause of action for defamatory statement, and there was no relation back. Mr. Cohen argued SEIU didn't employ the Pltf.'s; however now they say alter ego, that it wasn't raised until their reply, and that the trustee was appointed by SEIU and they fired the Pltf.'s. Mr. James JOINED the arguments. COURT ORDERED, Motion GRANTED IN PART as Court understands the extension of the allegation if the allegation was that Ms. Kishing was acting within the course and scope of her

CASE SUMMARY**CASE NO. A-17-764942-C**

duties to the Local; however the trustees knew of the defamation as they were trustees after the fact; NO RULING regarding the affirmative defenses; the 15th cause of action OUT as it was a duplicate and not allowed; matter to be amended to bring in the employer only. ;

03/22/2019

**All Pending Motions (3:00 AM)** (Judicial Officer: Sturman, Gloria)

Minute Order - No Hearing Held;

Journal Entry Details:

PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT .. OPPOSITION TO AND COUNTERMOTION FOR SUMMARY JUDGMENT . DEFENDANTS SERVICE EMPLOYEES INTERNATIONAL UNION'S AND MARY KAY HENRY'S BRIEF IN OPPOSITION TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT; COUNTERMOTION FOR SUMMARY JUDGMENT Plaintiffs Motion for Partial Summary Judgment and Defendants Oppositions and Counter Motions for Summary Judgment came on for hearing on November 13, 2018. Having taken the matter under advisement, the COURT HEREBY FINDS as follows: Plaintiff's Motion for Partial Summary Judgment is based on employment contracts which were not part of the original pleading. Defendant's objected to the evidence as not having been properly authenticated, further Defendants argued that the Motion for Partial Summary Judgment was premature and they were entitled to discovery under NRCP 56(f) as the Nevada Rules of Civil Procedure read at the time. Subsequently the Rules were amended, the Advisory Committee Notes to NRCP 56 now state Rule 56(d) modernizes the text of former NRCP 56(f) consistent with FRCP 56(d). The changes are stylistic and do not affect Choy v. Ameristar Casinos, Inc., 127 Nev. 870, 265 P.3d 698 (2011), which requires an affidavit to justify a request for a continuance of the summary judgment proceeding to conduct further discovery. As the Defendants have raised questions of fact to the common law contract claims and no discovery having been done, they are entitled to relief under NRCP 56(f) as the Plaintiff's Motion for Partial Summary Judgment is Premature. COURT THEREFORE ORDERED, Plaintiff's Motion for Partial Summary Judgment Denied. Defendant's counter motions are based primarily on Federal Pre-emption. The Plaintiffs complaint states 16 causes of action (although improperly captioned with there being two causes of action labeled 14). It is clear that the standard for granting a Motion for Summary Judgment has not changed, see Advisory note to Subsection (a). Rule 56(a) retains the word shall consistent with the advisory committee notes to the 2010 amendments to FRCP 56 to preserve Wood v. Safeway, Inc., 121 Nev. 724, 121 P.3d 1026 (2005), and its progeny. The causes of action allege common law torts for breach of contract, breach of the covenant of good faith and fair dealing, intentional interference with contractual advantage, wrongful termination for each plaintiff as to the Local, and SEIU, as well as certain claims as to individual defendants, and finally defamation on behalf of Ms. Gentry. To the extent that any of these common law causes of action implicate issues that are preempted by federal law they may be appropriate for dismissal, however, at this point the facts have not been developed sufficiently for this court to determine as a matter of law that any cause of action is preempted. However, the cause of action for conspiracy appears deficient as a matter of law, as under Nevada law (a)gents and employees of a corporation cannot conspire with their corporate principal or employer where they act in their official capacities on behalf of the corporation and not as individuals for their individual advantage. See Collins v Union Federal Savings and Loan Assn. 99 Nev. 284, 662 P.2d 610 (1983). Therefore, COURT HEREBY ORDERED, Defendants Counter motions DENIED IN PART as to preemption WITHOUT PREJUDICE to be renewed; GRANTED as to the Seventh Cause of Action, Civil Conspiracy, WITHOUT PREJUDICE should facts develop which might meet the exception to the general rule. COURT ORDERED, Counsel for Defendants are DIRECTED to provide an Order for signature by the Court within 30 days. CLERK'S NOTE: A copy of this minute order was e-mailed, mailed, or faxed as follows: Michael Mcavoyamaya, Esq. (Michael.mcavoyamaya@gmail.com) and Evan James, Esq. (elj@cjmlv.com)./ls 03-22-19;

07/25/2019

**Motion to Associate Counsel (10:30 AM)** (Judicial Officer: Allf, Nancy)

Motion Granted;

Journal Entry Details:

Argument by Mr. Mcavoyamaya, noting it would be improper for Mr. James to represent S.E.I. as the parties' interests are adverse. Argument by Mr. James, stating he would have withdrawn if there was conflict. Further argument by Mr. Mcavoyamaya. COURT FINDS, petition meets all of the requirements of SCR 42; the issue of potential conflict is not appropriate for this Court to consider; if counsel believes there is an actual conflict they may take it up before the trial Judge. COURT ORDERED, motion GRANTED. Order signed and returned IN OPEN COURT.;

CASE SUMMARY

CASE NO. A-17-764942-C

08/06/2019



Motion for Default Judgment (9:00 AM) (Judicial Officer: Sturman, Gloria)

Application for Default Judgment Against Sharon Kisling

Denied;

Journal Entry Details:

Court stated this was Nevada law that was decided in 1980 in Paul vs. Paul and that a party cannot enter judgment until the case was resolved. Mr. Mcavoyamaya stated Ms. Kisling just entered an appearance in the case and that he was agreeable with extending discovery to allow time for her deposition. COURT ORDERED, Application DENIED.;

08/07/2019



Motion (8:45 AM) (Judicial Officer: Sturman, Gloria)

Motion to Determine Attorney-Client/Work Product Privilege

Referred to Discovery Commissioner;

Journal Entry Details:

Court ADVISED these types of disputes were to be handled by the Discovery Commissioner. Mr. James stated they were cooperating in discovery; however they did not want to do anything inappropriate. Court stated they could either proceed with the deposition and speak with the Discovery Commissioner afterwards or they could cancel the deposition. Court further stated the parties could take portions of the deposition to the commissioner for ruling, preserve their record, and bring the matter to this court later. Mr. Mcavoyamaya stated he wanted to do that and noted the letters were complicated and that the at issue waiver wasn't the primary argument, rather it was that the local union waived privilege for all of this prior to litigation. Mr. Cohen stated if they decided to postpone the deposition and resolve those issues, it wouldn't be resolved until after discovery cut off and therefore requested the Court allow a late deposition. Court ADVISED the parties see what they can get done and preserve certain issues; however if the entire deposition appeared it was going to be objection after objection then they might just need to suspend it. The Court noted she didn't like to inconvenience a witness and counsel who have traveled for this deposition but this needs to be briefed. Mr. Mcavoyamaya stated the deposition should be postponed and further argued that since Ms. Blue now made an appearance they had an opportunity to do discovery which meant he needed to file a discovery schedule. ;

08/15/2019

CANCELED Calendar Call (9:00 AM) (Judicial Officer: Sturman, Gloria)

Vacated - per Stipulation and Order

08/28/2019



Minute Order (7:00 AM) (Judicial Officer: Sturman, Gloria)

Minute Order - No Hearing Held;

Journal Entry Details:

COURT FINDS on calendar for October 1, 2019 a Motion to Compel Documents, Unredacted Audio Recordings, The Deposition of Brenda Marzan and to Reject Defendants Improper Attorney Client Privilege Objections on Order Shortening Time. This motion should be noticed for a Discovery Commission hearing AND THEREFORE ORDERED, Hearing VACATED; Counsel must designate in the caption whether the hearing should be before District Court or the Discovery Commissioner. CLERK'S NOTE: A copy of this minute order has been electronically served to all registered parties for Odyssey File & Serve./s;

09/09/2019

CANCELED Bench Trial (9:30 AM) (Judicial Officer: Sturman, Gloria)

Vacated - per Stipulation and Order

09/10/2019



Motion (9:00 AM) (Judicial Officer: Sturman, Gloria)

Plaintiff's Request for Judicial Notice of the NLRB's Decision in Javier Cabrera v. SEIU Local 1107, Case 28-CA-209109

Denied;

Journal Entry Details:

Present telephonically was Jonathan Cohen, Esq. Court inquired why she should take judicial notice of the NLRB Decision. Mr. Mcavoyamaya stated he wanted the decision on the record as the rule in Nevada was flexible and if the case was similar and close in time. Mr. Mcavoyamaya stated all the parties in that case would testify in this case. Court stated they were union staff members. Mr. Mcavoyamaya argued they were members of the non-management staff, they were employees, that the trustees breached the contract, and that there was a breach in this case and therefore he requested the Court take judicial notice of the record. Mr. Mcavoyamaya argued it was proper for judicial notice and that Def't.'s acknowledge this proceeding should follow federal law. Mr. James argued the Pltf.'s were high

CASE SUMMARY

CASE NO. A-17-764942-C

ranking union members while his client was staff, that here they had employment contracts not union contracts, and that the issues in that case were different. Mr. Cohen argued that case had no bearing in this case, that testimony in this case could be impeached by documents without that decision, and that the Court cannot take judicial notice of disputed facts in another proceeding. COURT STATED FINDINGS AND ORDERED, Request DENIED.;

09/30/2019



Motion to Compel (9:00 AM) (Judicial Officer: Sturman, Gloria)

Motion to Compel Documents, Unredacted Audio Recordings, the Deposition of Brenda Marzan and to Reject Defendants' Improper Attorney Client Privilege Objections on Order Shortening Time

See Advance Decision

Referred to Discovery Commissioner;

Journal Entry Details:

COURT FINDS the Motion to Compel currently on calendar should be heard by the Discovery Commissioner AND THEREFORE ORDERED, Motion VACATED from the October 3, 2019 calendar and REFERRED to Discovery. CLERK'S NOTE: A copy of this minute order has been electronically served to all registered parties for Odyssey File & Serve./ls 09-30-19 ;

10/11/2019

CANCELED Motion to Compel (9:00 AM) (Judicial Officer: Truman, Erin)

Vacated

Plaintiff's - Motion to Compel Documents, Unredacted Audio Recordings, the Deposition of Brenda Marzan and to Reject Defendants' Improper Attorney Client Privilege Objections on Order Shortening Time

12/03/2019



All Pending Motions (9:00 AM) (Judicial Officer: Sturman, Gloria)

Matter Heard;

Journal Entry Details:

DEFENDANTS SERVICE EMPLOYEES INTERNATIONAL UNION'S AND MARY KAY HENRY'S NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT; MEMORANDUM OF POINTS AND AUTHORITIES DEFENDANT'S MOTION FOR SUMMARY JUDGMENT PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT As to Defendants Service Employees International Union's And Mary Kay Henry's Notice Of Motion And Motion For Summary Judgment; Memorandum Of Points And Authorities: Extensive arguments by counsel regarding the merits of the motions. COURT ORDERED, Defendant's Motion for Summary Judgment and Defendants Service Employees International Union's and Mary Kay Henry's Motion for Summary Judgment GRANTED. COURT FINDS this case was preempted and fell directly under the Screen Actors Guild case. Further, Nevada looks to California for guidance when there was not on point Nevada law. That was their analysis of Federal Preemption. Additionally, they may use different terminology; however, it was the exact same concept of preemption. Court noted it would not address the issue of whether or not there was a contract. Defense counsel to prepare the Order and circulate to opposing counsel. Mr. Mcavoyamaya advised he would file his Notice of Appeal immediately. COURT FURTHER ORDERED, the whole case was DISMISSED under the basis of Federal Preemption as a matter of law. Mr. Mcavoyamaya requested the Court to rule on the Motion to Relate the two cases first so the order on preemption applied to both, which would allow him to appeal both cases to the Nevada Supreme Court on the issue. COURT NOTED there was a Motion to Coordinate which was set for January 7, 2020, which the Court had not reviewed. Counsel indicated there was a stipulation. Court directed counsel to provide an Order coordinating the two cases. Colloquy regarding consolidating the cases. Mr. James suggested to stay the Nguyen case (A-19-794662-C) pending an appeal. Further, Plaintiff Gentry and Clarke were the first two directors and Plaintiff Nguyen was the third director, whom was terminated around the same time. Further colloquy regarding coordination and consolidation. Mr. Cohen noted an Order coordinating the cases with a stipulation to stay the Nguyen case pending the resolution of appeal in the Gentry case would be the most efficient way to handle the case.;

12/03/2019

Motion for Summary Judgment (9:30 AM) (Judicial Officer: Sturman, Gloria)

Defendants Service Employees International Union's and Mary Kay Henry's Notice of Motion and Motion for Summary Judgment; Memorandum of Points and Authorities

12/03/2019

Motion for Summary Judgment (9:30 AM) (Judicial Officer: Sturman, Gloria)

Defendant's Motion for Summary Judgment

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-17-764942-C

12/03/2019	Motion for Partial Summary Judgment (9:30 AM) (Judicial Officer: Sturman, Gloria) <i>Plaintiffs' Motion for Partial Summary Judgment</i>
12/12/2019	CANCELED Calendar Call (9:00 AM) (Judicial Officer: Sturman, Gloria) <i>Vacated - per Stipulation and Order</i>
01/06/2020	CANCELED Bench Trial (9:00 AM) (Judicial Officer: Sturman, Gloria) <i>Vacated - per Stipulation and Order</i>
01/07/2020	CANCELED Motion to Coordinate (9:00 AM) (Judicial Officer: Sturman, Gloria) <i>Vacated - per Stipulation and Order</i> <i>Defendant's - Motion to Coordinate Cases</i>
02/11/2020	Motion to Retax (9:00 AM) (Judicial Officer: Sturman, Gloria) <i>Plaintiff's Motion to Retax Costs and Stay any Cost Award Until the Nevada Supreme Court Rules on Appeal</i>
02/18/2020	Motion for Attorney Fees and Costs (9:00 AM) (Judicial Officer: Sturman, Gloria) <i>Motion for Attorney Fees and Award of Costs - Hearing Requested</i>
02/18/2020	Motion for Attorney Fees (9:00 AM) (Judicial Officer: Sturman, Gloria) <i>Defendant Service Employees International Union's and Mary Kay Henry's Motion for Attorneys' Fees</i>
04/30/2020	CANCELED Calendar Call (9:00 AM) (Judicial Officer: Sturman, Gloria) <i>Vacated - per Stipulation and Order</i>
05/26/2020	CANCELED Bench Trial (9:00 AM) (Judicial Officer: Sturman, Gloria) <i>Vacated - per Stipulation and Order</i>

DATE

FINANCIAL INFORMATION

Trustee Blue, Luisa	
Total Charges	283.00
Total Payments and Credits	283.00
Balance Due as of 1/31/2020	0.00
Defendant Henry, Mary K	
Total Charges	200.00
Total Payments and Credits	200.00
Balance Due as of 1/31/2020	0.00
Defendant Nevada Service Employees Union	
Total Charges	200.00
Total Payments and Credits	200.00
Balance Due as of 1/31/2020	0.00
Defendant Service Employees International Union	
Total Charges	653.00
Total Payments and Credits	653.00
Balance Due as of 1/31/2020	0.00
Plaintiff Clarke, Robert	
Total Charges	324.00
Total Payments and Credits	324.00
Balance Due as of 1/31/2020	0.00
Plaintiff Gentry, Dana	
Total Charges	400.00
Total Payments and Credits	400.00
Balance Due as of 1/31/2020	0.00

DISTRICT COURT CIVIL COVER SHEET

A-17-764942-C

County, Nevada

Case No. _____

Department 26

(Assigned by Clerk's Office)

I. Party Information (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone):

Defendant(s) (name/address/phone):

Attorney (name/address/phone):

Attorney (name/address/phone):

II. Nature of Controversy (please select the one most applicable filing type below)**Civil Case Filing Types**

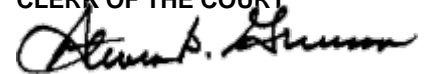
Real Property	Negligence	Torts
Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	<input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate	Construction Defect & Contract	Judicial Review/Appeal
Probate (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ		Other Civil Filing
Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

Date

Signature of initiating party or representative

See other side for family-related case filings.



**ORD
ROTHNER, SEGALL & GREENSTONE**

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Las Vegas, Nevada 89117
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Fax: (702) 255-0871

Attorneys for Service Employees International Union
and Mary Kay Henry

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

DANA GENTRY, an individual; and
ROBERT CLARKE, an individual,

Plaintiffs,

vs.

SERVICE EMPLOYEES INTERNATIONAL
UNION, a nonprofit cooperative corporation;
LUISA BLUE, in her official capacity as
Trustee of Local 1107; MARTIN MANTECA,
in his official capacity as Deputy Trustee of
Local 1107; MARY K. HENRY, in her official
capacity as Union President; SHARON
KISLING, individually; CLARK COUNTY
PUBLIC EMPLOYEES ASSOCIATION
UNION aka SEIU 1107, a non-profit
cooperative corporation; DOES 1-20; and ROE
CORPORATIONS 1-20, inclusive,

Defendants.

Case No.: A-17-764942-C

Dept. 26

**ORDER GRANTING SUMMARY
JUDGMENT IN FAVOR OF
DEFENDANTS**

<input type="checkbox"/> Voluntary Dismissal	<input type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input checked="" type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

1 On December 3, 2019, at 9:30 a.m., in the above-titled courtroom, the Court heard
2 argument concerning the motion for summary judgment of defendants Service Employees
3 International Union (“SEIU”) and Mary Kay Henry (“Henry”); the motion for summary
4 judgment of defendants Nevada Service Employees Union, Local 1107 (misnamed “Clark
5 County Public Employees Association Union aka SEIU 1107”) (“Local 1107”), Luisa Blue and
6 Martin Manteca; and the motion for partial summary judgment of plaintiffs Dana Gentry
7 (“Gentry”) and Robert Clarke (“Clarke”) (collectively, “Plaintiffs”). Jonathan Cohen appeared
8 on behalf of SEIU and Henry. Evan L. James appeared on behalf of Local 1107, Blue and
9 Manteca. Michael J. McAvoyamaya appeared on behalf of Gentry and Clarke.

10 The Court, based on the pleadings and papers in the record, and having considered
11 counsel’s oral arguments, hereby grants summary judgment in favor of all defendants on all
12 claims in the first amended complaint (“FAC”), and denies Plaintiffs’ motion for partial
13 summary judgment.

14 I. Preemption Under the Labor Management Reporting and Disclosure Act

15 The Court finds that all of the claims in the FAC are preempted by the Labor
16 Management Reporting and Disclosure Act, 29 U.S.C. 401, *et seq.* (“LMRDA”).

17 “When Congress does not include statutory language expressly preempting state law,
18 Congress’s intent to preempt state law nonetheless may be implied . . .” *Nanopierce Techs.,*
19 *Inc. v. Depository Trust and Clearing Corp.*, 123 Nev. 362, 371 (2007). For example,
20 “Congress’s intent to preempt state law is implied to the extent that federal law actually conflicts
21 with any state law.” *Id.* Conflict preemption requires a court to determine whether, “in light of
22 the federal statute’s purpose and intended effects, state law poses an obstacle to the
23 accomplishment of Congress’s objectives.” *Id.* at 372.

24 Such a conflict is presented here. The LMRDA is a comprehensive federal statute that
25 regulates the internal affairs of unions. *See* 29 U.S.C. § 401, *et seq.* In *Finnegan v. Leu*, 456
26 U.S. 431 (1982), the U.S. Supreme Court, construing Title I of the LMRDA, observed that the
27 statute “does not restrict the freedom of an elected union leader to choose a staff whose views are
28 compatible with his own.” *Id.* at 441. As the Court emphasized,

1 Indeed, neither the language nor the legislative history of the [LMRDA] suggests that it
2 was intended even to address the issue of union patronage. To the contrary, the
3 [LMRDA's] overriding objective was to ensure that unions would be democratically
4 governed, and responsive to the will of the union membership as expressed in open,
5 periodic elections. Far from being inconsistent with this purpose, the ability of an elected
6 union president to select his own administrators is an integral part of ensuring a union
7 administration's responsiveness to the mandate of the union election.

8 *Id.* (internal citation omitted).

9 Relying on *Finnegan*, in *Screen Extras Guild, Inc. v. Superior Court*, 51 Cal.3d 1017
10 (1990), the California Supreme Court held that conflict preemption barred the plaintiff's claims
11 against her former employer, a labor union, for wrongful discharge in breach of an employment
12 contract, intentional and negligent infliction of emotional distress, and defamation, and directed
13 the trial court to enter judgment in favor of defendants. *See id.* at 1024-33. The court held that
14 "to allow [wrongful discharge] actions to be brought by former confidential or policymaking
15 employees of labor unions would be inconsistent with the objectives of the LMRDA and with the
16 strong federal policy favoring union democracy that it embodies." *Id.* at 1024. The court
17 reasoned that "[e]lected union officials must necessarily rely on their appointed representatives
18 to carry out their programs and policies. As a result, courts have recognized that the ability of
19 elected union officials to select their own administrators is an integral part of ensuring that
20 administrations are responsive to the will of union members." *Id.* at 1024-25. Thus, "allowing
21 [wrongful discharge claims] to proceed in the California courts would restrict the exercise of the
22 right to terminate which *Finnegan* found [to be] an integral part of ensuring a union
23 administration's responsiveness to the mandate of the union election." *Id.* at 1028 (internal
24 quotation marks and citations omitted).

25 Because this is an issue of first impression in Nevada, the Court looks to *Screen Extras*
26 *Guild* as persuasive authority and applies it here. *See Whitemaine v. Aniskovich*, 124 Nev. 302,
27 311 (2008) ("As this is an issue of first impression in Nevada, we look to persuasive authority for
28 guidance."). The decision is particularly persuasive given that several other jurisdictions have

1 adopted its holding.¹ See, e.g., *Packowski v. United Food & Commercial Workers Local 951*,
2 796 N.W.2d 94, 100 (Mich. Ct. App. 2010); *Vitullo v. Int'l Bhd. of Elec. Workers, Local 206*, 75
3 P.3d 1250, 1256 (Mont. Sup. Ct. 2003); *Dzwonar v. McDevitt*, 791 A.2d 1020, 1024 (N.J. App.
4 Div. 2002), *aff'd on other grounds*, 828 A.2d 893 (N.J. Sup. Ct. 2003); *Young v. Int'l Bhd. of*
5 *Locomotive Eng'rs*, 683 N.E.2d 420 (Ohio Ct. App. 1996).

6 Based on the foregoing, the Court finds and concludes that Plaintiffs are policymaking
7 and/or confidential staff whose claims are preempted under the LMRDA. Notably, Plaintiffs
8 have described themselves in briefs to this Court as former managers at Local 1107.² See *Screen*
9 *Extras Guild*, 51 Cal.3d at 1028 (concluding that "Congress intends that elected union officials
10 shall be free to discharge management or policymaking personnel."); see *id.* at 1031 ("Smith
11 herself acknowledges . . . she was considered a management employee."). The evidence of
12 Plaintiffs' former job duties and responsibilities reinforces that conclusion, establishing that they
13 each had significant responsibility for developing and implementing union policy in a wide range
14 of matters. See *id.* at 1031. The evidence also establishes that Plaintiffs had access to sensitive
15 confidential materials regarding the internal affairs of Local 1107. See *id.* at 1029 (noting that
16 "confidential staff are in a position to thwart the implementation of policies and programs" at a
17 union); *Thunderburk v. United Food and Commercial Workers' Union*, 92 Cal. App. 4th 1332,
18 1343 (2001) (holding that secretary was confidential employee within meaning of *Finnegan*

19
20 ¹ Plaintiffs argue that *Screen Extras Guild* does not apply here because the Local 1107 Trustees
21 who terminated their employment were not elected to their positions, but instead appointed
22 pursuant to SEIU's emergency trusteeship order. The Court disagrees. Several courts have
23 concluded that the holding of *Finnegan* applies equally to appointed union leaders. See *Vought*
24 *v. Wisconsin Teamsters Joint Council No. 39*, 558 F.3d 617, 622-23 (8th Cir. 2009); *English v.*
Service Employees Int'l Union, Local 73, Case No. 18-c-5272, 2019 WL 4735400, *3-*4 (N.D.
Ill. Sep. 27, 2019); *Dean v. General Teamsters Union, Local Union No. 406*, Case No. G87-286-
CA7, 1989 WL 223013, *5 (W.D. Mich. Sept. 18, 1989).

25 ² See Plaintiffs' Motion for Partial Summary Judgment, filed 9/26/18, at 11:19-20 ("It cannot be
26 disputed that Ms. Gentry and Mr. Clarke were hired *to their management positions* with Local
27 1107 by former Local 1107 President Cherie Mancini.") (emphasis added); see also *id.* at 11:21
28 (stating that Plaintiffs were "*management employees* that were not covered by" staff union
collective bargaining agreement) (emphasis added); Plaintiffs' Reply in Support of Motion for
Partial Summary Judgment, filed 11/1/18, at 18:8 (admitting that Plaintiffs were "*management*
employees that answered to [the union's former president].") (emphasis added).

1 where she “had access to confidential union information, which, if disclosed, could have
2 thwarted union policies and objectives”); *Hodge v. Drivers, Salesmen, Warehousemen, Milk*
3 *Processors, Cannery, Dairy Employees & Helpers Local Union 695*, 707 F.2d 961, 964 (7th Cir.
4 1983) (holding that secretary was confidential employee within meaning of *Finnegan* where she
5 had “wide-ranging . . . access to sensitive material concerning vital union matters”).

6 II. Preemption of Plaintiff Gentry’s Defamation Claim

7 In addition to grounds cited above, plaintiff Gentry’s defamation claim against Local
8 1107 is preempted because it interferes with the internal management of Local 1107. “Federal
9 labor law preempts state defamation law when applied in ways that interfere with the internal
10 management of union.” *Sullivan v. Conway*, 157 F.3d 1092, 1099 (7th Cir. 1998).

11 Local 1107’s Executive Board had a duty to address the concerns of former Local 1107
12 Executive Vice-President Sharon Kisling, who raised her concerns about the internal
13 management of Local 1107 during a closed session Executive Board meeting. The union then
14 enlisted its attorney to investigate Kisling’s concerns. Local 1107 and its officers were required
15 to receive and investigate Kisling’s concerns, and they did so without subjecting themselves to
16 liability for defamation. *See id.* at 1099.

17 III. Liability of SEIU and Henry.

18 In addition to the grounds described above, the Court finds and concludes that SEIU and
19 Henry are not liable for any of the claims in the FAC because Plaintiffs did not have any
20 employment contract with SEIU or Henry, and because Plaintiffs were not employed by SEIU
21 and Henry. In the absence of any contractual or employment relationship between them and
22 SEIU or Henry, Plaintiffs have failed to establish any basis for the claims against SEIU or Henry
23 in the FAC. Additionally, the Court finds and concludes that Plaintiffs have failed to raise a
24 genuine issue of material fact regarding their claim against SEIU and Henry for intentional
25 interference with contract.

26 ///


27 ///

28 ///

1 Based on the foregoing, the Court grants summary judgment in favor of defendants
2 Service Employees International Union, Mary Kay Henry, Nevada Service Employees Union,
3 Local 1107, Luisa Blue, Martin Manteca, and Sharon Kisling, on all claims in the first amended
4 complaint, and denies Plaintiffs' motion for partial summary judgment.


5 **IT IS SO ORDERED.**

6
7
8 DATED: December 30, 2019 EIGHTH JUDICIAL DISTRICT COURT


9
10 
11 HONORABLE GLORIA J. STURMAN
DISTRICT COURT JUDGE

12 Submitted By:


13 CHRISTENSEN JAMES & MARTIN

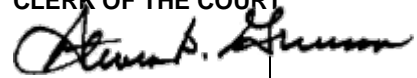
14
15 By 
16 EVAN JAMES
17 Attorneys for Service Employees International Union,
Local 1107, Martin Manteca
and Luisa Blue

18
19 ROTHNER, SEGALL & GREENSTONE

20
21 By 
22 JONATHAN COHEN
23 Attorneys for Service Employees International Union
and Mary Kay Henry

24 Reviewed By:

25
26 By 
27 MICHAEL J. MCAVOYAMAYA
Attorney for Dana Gentry and Robert Clarke



NEOJ
CHRISTENSEN JAMES & MARTIN
EVAN L. JAMES, ESQ. (7760)
7440 W. Sahara Avenue
Las Vegas, Nevada 89117
Telephone: (702) 255-1718
Facsimile: (702) 255-0871
Email: elj@cjmlv.com,
Attorneys for Local 1107, Luisa Blue and Martin Manteca

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

DANA GENTRY, an individual; and
ROBERT CLARKE, an individual,

Plaintiffs,

vs.

CASE NO.: A-17-764942-C

DEPT. No. XXVI

NOTICE OF ENTRY OF ORDER

SERVICE EMPLOYEES
INTERNATIONAL UNION, a nonprofit
cooperative corporation; LUISA BLUE, in
her official capacity as Trustee of Local
1107; MARTIN MANTECA, in his
official capacity as Deputy Trustee of
Local 1107; MARY K. HENRY, in her
official capacity as Union President;
SHARON KISLING, individually;
CLARK COUNTY PUBLIC
EMPLOYEES ASSOCIATION UNION
aka SEIU 1107, a non-profit cooperative
corporation; DOES 1-20; and ROE
CORPORATIONS 1-20, inclusive,

Defendants.

Please take notice that the attached Order Granting Summary Judgment in Favor
of Defendants was entered on January 3, 2020.

DATED this 3rd day of January 2020.

CHRISTENSEN JAMES & MARTIN

By: /s/ Evan L. James
Evan L. James, Esq. (7760)
*Attorneys for Local 1107, Luisa Blue
and Martin Manteca*

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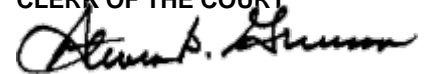
CERTIFICATE OF SERVICE

I am an employee of Christensen James & Martin and caused a true and correct copy of the foregoing document to be served on January 3, 2020 upon the following:

- Michael Macavoyamaya: mmcavoyamayalaw@gmail.com
- Jonathan Cohen: jcohen@rsglabor.com
- Glenn Rothner: grothner@rsglabor.com
- Evan L. James: elj@cjmlv.com

CHRISTENSEN JAMES & MARTIN

By: /s/ Natalie Saville
Natalie Saville



**ORD
ROTHNER, SEGALL & GREENSTONE**

Glenn Rothner (*Pro hac vice*)
Jonathan Cohen (10551)
Maria Keegan Myers (12049)
510 South Marengo Avenue
Pasadena, California 91101-3115
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Fax: (702) 255-0871

Attorneys for Service Employees International Union
and Mary Kay Henry

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

DANA GENTRY, an individual; and
ROBERT CLARKE, an individual,

Plaintiffs,

vs.

SERVICE EMPLOYEES INTERNATIONAL
UNION, a nonprofit cooperative corporation;
LUISA BLUE, in her official capacity as
Trustee of Local 1107; MARTIN MANTECA,
in his official capacity as Deputy Trustee of
Local 1107; MARY K. HENRY, in her official
capacity as Union President; SHARON
KISLING, individually; CLARK COUNTY
PUBLIC EMPLOYEES ASSOCIATION
UNION aka SEIU 1107, a non-profit
cooperative corporation; DOES 1-20; and ROE
CORPORATIONS 1-20, inclusive,

Defendants.

Case No.: A-17-764942-C

Dept. 26

**ORDER GRANTING SUMMARY
JUDGMENT IN FAVOR OF
DEFENDANTS**

<input type="checkbox"/> Voluntary Dismissal	<input type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input checked="" type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

1 On December 3, 2019, at 9:30 a.m., in the above-titled courtroom, the Court heard
2 argument concerning the motion for summary judgment of defendants Service Employees
3 International Union (“SEIU”) and Mary Kay Henry (“Henry”); the motion for summary
4 judgment of defendants Nevada Service Employees Union, Local 1107 (misnamed “Clark
5 County Public Employees Association Union aka SEIU 1107”) (“Local 1107”), Luisa Blue and
6 Martin Manteca; and the motion for partial summary judgment of plaintiffs Dana Gentry
7 (“Gentry”) and Robert Clarke (“Clarke”) (collectively, “Plaintiffs”). Jonathan Cohen appeared
8 on behalf of SEIU and Henry. Evan L. James appeared on behalf of Local 1107, Blue and
9 Manteca. Michael J. McAvoyamaya appeared on behalf of Gentry and Clarke.

10 The Court, based on the pleadings and papers in the record, and having considered
11 counsel’s oral arguments, hereby grants summary judgment in favor of all defendants on all
12 claims in the first amended complaint (“FAC”), and denies Plaintiffs’ motion for partial
13 summary judgment.

14 I. Preemption Under the Labor Management Reporting and Disclosure Act

15 The Court finds that all of the claims in the FAC are preempted by the Labor
16 Management Reporting and Disclosure Act, 29 U.S.C. 401, *et seq.* (“LMRDA”).

17 “When Congress does not include statutory language expressly preempting state law,
18 Congress’s intent to preempt state law nonetheless may be implied . . .” *Nanopierce Techs.,*
19 *Inc. v. Depository Trust and Clearing Corp.*, 123 Nev. 362, 371 (2007). For example,
20 “Congress’s intent to preempt state law is implied to the extent that federal law actually conflicts
21 with any state law.” *Id.* Conflict preemption requires a court to determine whether, “in light of
22 the federal statute’s purpose and intended effects, state law poses an obstacle to the
23 accomplishment of Congress’s objectives.” *Id.* at 372.

24 Such a conflict is presented here. The LMRDA is a comprehensive federal statute that
25 regulates the internal affairs of unions. *See* 29 U.S.C. § 401, *et seq.* In *Finnegan v. Leu*, 456
26 U.S. 431 (1982), the U.S. Supreme Court, construing Title I of the LMRDA, observed that the
27 statute “does not restrict the freedom of an elected union leader to choose a staff whose views are
28 compatible with his own.” *Id.* at 441. As the Court emphasized,

1 Indeed, neither the language nor the legislative history of the [LMRDA] suggests that it
2 was intended even to address the issue of union patronage. To the contrary, the
3 [LMRDA's] overriding objective was to ensure that unions would be democratically
4 governed, and responsive to the will of the union membership as expressed in open,
5 periodic elections. Far from being inconsistent with this purpose, the ability of an elected
6 union president to select his own administrators is an integral part of ensuring a union
7 administration's responsiveness to the mandate of the union election.

8 *Id.* (internal citation omitted).

9 Relying on *Finnegan*, in *Screen Extras Guild, Inc. v. Superior Court*, 51 Cal.3d 1017
10 (1990), the California Supreme Court held that conflict preemption barred the plaintiff's claims
11 against her former employer, a labor union, for wrongful discharge in breach of an employment
12 contract, intentional and negligent infliction of emotional distress, and defamation, and directed
13 the trial court to enter judgment in favor of defendants. *See id.* at 1024-33. The court held that
14 "to allow [wrongful discharge] actions to be brought by former confidential or policymaking
15 employees of labor unions would be inconsistent with the objectives of the LMRDA and with the
16 strong federal policy favoring union democracy that it embodies." *Id.* at 1024. The court
17 reasoned that "[e]lected union officials must necessarily rely on their appointed representatives
18 to carry out their programs and policies. As a result, courts have recognized that the ability of
19 elected union officials to select their own administrators is an integral part of ensuring that
20 administrations are responsive to the will of union members." *Id.* at 1024-25. Thus, "allowing
21 [wrongful discharge claims] to proceed in the California courts would restrict the exercise of the
22 right to terminate which *Finnegan* found [to be] an integral part of ensuring a union
23 administration's responsiveness to the mandate of the union election." *Id.* at 1028 (internal
24 quotation marks and citations omitted).

25 Because this is an issue of first impression in Nevada, the Court looks to *Screen Extras*
26 *Guild* as persuasive authority and applies it here. *See Whitemaine v. Aniskovich*, 124 Nev. 302,
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28 guidance."). The decision is particularly persuasive given that several other jurisdictions have

1 adopted its holding.¹ See, e.g., *Packowski v. United Food & Commercial Workers Local 951*,
2 796 N.W.2d 94, 100 (Mich. Ct. App. 2010); *Vitullo v. Int’l Bhd. of Elec. Workers, Local 206*, 75
3 P.3d 1250, 1256 (Mont. Sup. Ct. 2003); *Dzwonar v. McDevitt*, 791 A.2d 1020, 1024 (N.J. App.
4 Div. 2002), *aff’d on other grounds*, 828 A.2d 893 (N.J. Sup. Ct. 2003); *Young v. Int’l Bhd. of*
5 *Locomotive Eng’rs*, 683 N.E.2d 420 (Ohio Ct. App. 1996).

6 Based on the foregoing, the Court finds and concludes that Plaintiffs are policymaking
7 and/or confidential staff whose claims are preempted under the LMRDA. Notably, Plaintiffs
8 have described themselves in briefs to this Court as former managers at Local 1107.² See *Screen*
9 *Extras Guild*, 51 Cal.3d at 1028 (concluding that “Congress intends that elected union officials
10 shall be free to discharge management or policymaking personnel.”); see *id.* at 1031 (“Smith
11 herself acknowledges . . . she was considered a management employee.”). The evidence of
12 Plaintiffs’ former job duties and responsibilities reinforces that conclusion, establishing that they
13 each had significant responsibility for developing and implementing union policy in a wide range
14 of matters. See *id.* at 1031. The evidence also establishes that Plaintiffs had access to sensitive
15 confidential materials regarding the internal affairs of Local 1107. See *id.* at 1029 (noting that
16 “confidential staff are in a position to thwart the implementation of policies and programs” at a
17 union); *Thunderburk v. United Food and Commercial Workers’ Union*, 92 Cal. App. 4th 1332,
18 1343 (2001) (holding that secretary was confidential employee within meaning of *Finnegan*

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20 ¹ Plaintiffs argue that *Screen Extras Guild* does not apply here because the Local 1107 Trustees
21 who terminated their employment were not elected to their positions, but instead appointed
22 pursuant to SEIU’s emergency trusteeship order. The Court disagrees. Several courts have
23 concluded that the holding of *Finnegan* applies equally to appointed union leaders. See *Vought*
24 *v. Wisconsin Teamsters Joint Council No. 39*, 558 F.3d 617, 622-23 (8th Cir. 2009); *English v.*
Service Employees Int’l Union, Local 73, Case No. 18-c-5272, 2019 WL 4735400, *3-*4 (N.D.
Ill. Sep. 27, 2019); *Dean v. General Teamsters Union, Local Union No. 406*, Case No. G87-286-
CA7, 1989 WL 223013, *5 (W.D. Mich. Sept. 18, 1989).

25 ² See Plaintiffs’ Motion for Partial Summary Judgment, filed 9/26/18, at 11:19-20 (“It cannot be
26 disputed that Ms. Gentry and Mr. Clarke were hired *to their management positions* with Local
27 1107 by former Local 1107 President Cherie Mancini.”) (emphasis added); see also *id.* at 11:21
28 (stating that Plaintiffs were “*management employees* that were not covered by” staff union
collective bargaining agreement) (emphasis added); Plaintiffs’ Reply in Support of Motion for
Partial Summary Judgment, filed 11/1/18, at 18:8 (admitting that Plaintiffs were “*management*
employees that answered to [the union’s former president].”) (emphasis added).

1 where she “had access to confidential union information, which, if disclosed, could have
2 thwarted union policies and objectives”); *Hodge v. Drivers, Salesmen, Warehousemen, Milk*
3 *Processors, Cannery, Dairy Employees & Helpers Local Union 695*, 707 F.2d 961, 964 (7th Cir.
4 1983) (holding that secretary was confidential employee within meaning of *Finnegan* where she
5 had “wide-ranging . . . access to sensitive material concerning vital union matters”).

6 II. Preemption of Plaintiff Gentry’s Defamation Claim

7 In addition to grounds cited above, plaintiff Gentry’s defamation claim against Local
8 1107 is preempted because it interferes with the internal management of Local 1107. “Federal
9 labor law preempts state defamation law when applied in ways that interfere with the internal
10 management of union.” *Sullivan v. Conway*, 157 F.3d 1092, 1099 (7th Cir. 1998).

11 Local 1107’s Executive Board had a duty to address the concerns of former Local 1107
12 Executive Vice-President Sharon Kisling, who raised her concerns about the internal
13 management of Local 1107 during a closed session Executive Board meeting. The union then
14 enlisted its attorney to investigate Kisling’s concerns. Local 1107 and its officers were required
15 to receive and investigate Kisling’s concerns, and they did so without subjecting themselves to
16 liability for defamation. *See id.* at 1099.

17 III. Liability of SEIU and Henry.

18 In addition to the grounds described above, the Court finds and concludes that SEIU and
19 Henry are not liable for any of the claims in the FAC because Plaintiffs did not have any
20 employment contract with SEIU or Henry, and because Plaintiffs were not employed by SEIU
21 and Henry. In the absence of any contractual or employment relationship between them and
22 SEIU or Henry, Plaintiffs have failed to establish any basis for the claims against SEIU or Henry
23 in the FAC. Additionally, the Court finds and concludes that Plaintiffs have failed to raise a
24 genuine issue of material fact regarding their claim against SEIU and Henry for intentional
25 interference with contract.

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1 Based on the foregoing, the Court grants summary judgment in favor of defendants
2 Service Employees International Union, Mary Kay Henry, Nevada Service Employees Union,
3 Local 1107, Luisa Blue, Martin Manteca, and Sharon Kisling, on all claims in the first amended
4 complaint, and denies Plaintiffs' motion for partial summary judgment.


5 **IT IS SO ORDERED.**

6
7
8 DATED: December 30, 2019 EIGHTH JUDICIAL DISTRICT COURT


9
10 
11 HONORABLE GLORIA J. STURMAN
DISTRICT COURT JUDGE

12 Submitted By:


13 CHRISTENSEN JAMES & MARTIN

14
15 By 
16 EVAN JAMES
17 Attorneys for Service Employees International Union,
Local 1107, Martin Manteca
and Luisa Blue

18
19 ROTHNER, SEGALL & GREENSTONE

20
21 By 
22 JONATHAN COHEN
23 Attorneys for Service Employees International Union
and Mary Kay Henry

24 Reviewed By:

25
26 By 
27 MICHAEL J. MCAVOYAMAYA
Attorney for Dana Gentry and Robert Clarke

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Employment Tort

COURT MINUTES

October 16, 2018

A-17-764942-C Robert Clarke, Plaintiff(s)
vs.
Service Employees International Union, Defendant(s)

October 16, 2018 9:00 AM Motion

HEARD BY: Sturman, Gloria **COURTROOM:** RJC Courtroom 10D

COURT CLERK: Lorna Shell

RECORDER: Kerry Esparza

REPORTER:

PARTIES

PRESENT: James, Evan L. Attorney

JOURNAL ENTRIES

- Court stated the Pltf. indicated he would be in a deposition today and not be appearing; however he did submit his opposition.

Mr. Evan stated the motion may be moot as there was a Motion for Summary Judgment (MSJ) on November 6, 2018. Mr. Evan stated they had a briefing issue and therefore requested the hearing be continued, along with the MSJ to a later date. .

COURT ORDERED, Motion CONTINUED.

CONTINUED TO: 11/13/18 9:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Employment Tort

COURT MINUTES

November 13, 2018

A-17-764942-C Robert Clarke, Plaintiff(s)
vs.
Service Employees International Union, Defendant(s)

November 13, 2018 9:00 AM

All Pending Motions

HEARD BY: Sturman, Gloria

COURTROOM: RJC Courtroom 10D

COURT CLERK: Lorna Shell

RECORDER: Kerry Esparza

REPORTER:

PARTIES

PRESENT: Cohen, Jonathan Attorney
James, Evan L. Attorney
Mcavoyamaya, Michael J. Attorney

JOURNAL ENTRIES

- PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT OPPOSITION TO AND COUNTERMOTION FOR SUMMARY JUDGMENT DEFENDANTS SERVICE EMPLOYEES INTERNATIONAL UNION'S AND MARY KAY HENRY'S BRIEF IN OPPOSITION TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT; COUNTERMOTION FOR SUMMARY JUDGMENT MOTION TO RECEIVE SERVICE OF PLAINTIFFS' DOCUMENTS BY UNITED STATES MAIL

Mr. Mcavoyamaya argued the Deft.'s did not dispute the existence of the for cause contracts rather they argue the evidence was not authentic so it could not be addressed at the time of trial. Mr. Mcavoyamaya argued the contracts exist, that the Deft.'s breached the contracts, and that Deft.'s argued the trusteeship encompassed their employment. Mr. Mcavoyamaya argued the trusteeship had nothing to do with the Pltf.'s and that the Deft.'s don't dispute they contracts were breached. Mr. Mcavoyamaya argued Deft.'s argued regarding preemption and had attempted to bifurcate their argument to excuse the breach as that Deft.'s say the International Union terminated them. Mr. Mcavoyamaya argued the preemption defense had disputable facts regarding whether the Pltf.'s were policy making employees.

Mr. Cohen argued it was Pltf.'s burden to establish admissible evidence, that Pltf.'s didn't authenticate the contracts, and that one contract wasn't even executed. Mr. Cohen argued that Pltf.'s were subject to the trustee order, that Federal preemption does apply, and that the International Union can remove management pursuant to the international constitution. Mr. Cohen argued regarding the Screen Actor's Guild case and further argued that Federal law made it clear the employees were subject to the removal even with a for cause contract.

Mr. James argued the Pltf.'s were the Director of Communications and Director of Finance and Human Resources and both reported to the president. Mr. James argued the Pltf. were not members of SEIU or the Local 1107, they were not bringing claims as union members, rather they were just trying to vindicate their continued employment. Mr. James argued in the Screen Actor's Guild case they were not protected as union employees. Mr. James argued the Pltf.'s say the International Union was liable because it placed the local union in trusteeship; however there was no evidence SEIU was a party to the contracts, they never adopted the contracts, and they never had anything to do with the contracts. Mr. James argued the Pltf.'s were trying to sue based on contracts they were never a part of. Mr. James further argued the new administration could not be saddled with the management of the prior administration.

Mr. Mcavoyamay further argued regarding preemption and policy analysis, the Bloom case, the Lynn case, and that the LMRDA was not preempted.

Mr. James argued regarding the National Labor Relations Act and that the trustee was a fiduciary of the local union and not liable for it's debts or local actions.

Mr. Cohen argued regarding the distinction between an employee and a union employee, the hobbling of incoming administration with a union employee by force, congressional intent, that preemptions applied, the Bloom case, and that both employees make policy and therefore were management.

COURT ORDERED, Pltf.'s Motion for Summary Judgment CONTINUED TO CHAMBERS; Deft.'s Opposition and Countermotion for Summary Judgment CONTINUED TO CHAMBERS.

Mr. Mcavoyamay further argued Deft.'s were just trying to run up costs.

Mr. Cohen argued they hadn't run up costs; however Pltf.'s argue nonsensical things that Deft.'s were forced to address.

COURT ORDERED, Motion to Receive Service by Mail DENIED as there were admitted problems in the past; however counsel has been made aware of the differences in service between the District Court and the Federal Court and should there be a problem in the future counsel may address it.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Employment Tort

COURT MINUTES

February 19, 2019

A-17-764942-C Robert Clarke, Plaintiff(s)
vs.
Service Employees International Union, Defendant(s)

**February 19, 2019 9:00 AM Motion to Amend
Complaint**

HEARD BY: Sturman, Gloria **COURTROOM:** RJC Courtroom 10D

COURT CLERK: Lorna Shell

RECORDER: Kerry Esparza

REPORTER:

PARTIES

PRESENT: Cohen, Jonathan Attorney
James, Evan L. Attorney
Mcavoyamaya, Michael J. Attorney

JOURNAL ENTRIES

- Court stated the second (duplicate) 14th cause of action was defamation which was not an independent cause of action, and therefore was unable to stand on its own.

Mr. Mcavoyamaya argued it was public policy as it was just another factual basis.

Court noted Deft.'s say this was untimely and that she knew about the defamation all along.

Mr. Mcavoyamaya argued it was in the original action, that it didn't add any new parties, that there was new evidence, and that Deft.'s were on notice that it would be resolved. Mr. Mcavoyamaya further argued regarding the Mitchell v SEIU Local 721 case.

Mr. Cohen argued there was no basis for waiting four months to file as that was undue delay. Mr. Cohen further argued regarding futility and that Pltf.'s allege Deft.'s failed to retract the statement of a third-party, and that SEIU didn't publish the false statement rather they just didn't retract it. Mr. Cohen argued the statement was someone else's defamatory statement, there was no cause of action

for defamatory statement, and there was no relation back. Mr. Cohen argued SEIU didn't employ the Pltf.'s; however now they say alter ego, that it wasn't raised until their reply, and that the trustee was appointed by SEIU and they fired the Pltf.'s.

Mr. James JOINED the arguments.

COURT ORDERED, Motion GRANTED IN PART as Court understands the extension of the allegation if the allegation was that Ms. Kishing was acting within the course and scope of her duties to the Local; however the trustees knew of the defamation as they were trustees after the fact; NO RULING regarding the affirmative defenses; the 15th cause of action OUT as it was a duplicate and not allowed; matter to be amended to bring in the employer only.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Employment Tort

COURT MINUTES

March 22, 2019

A-17-764942-C Robert Clarke, Plaintiff(s)
vs.
Service Employees International Union, Defendant(s)

March 22, 2019 3:00 AM All Pending Motions

HEARD BY: Sturman, Gloria **COURTROOM:** RJC Courtroom 10D

COURT CLERK: Lorna Shell

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT .. OPPOSITION TO AND COUNTERMOTION FOR SUMMARY JUDGMENT . DEFENDANTS SERVICE EMPLOYEES INTERNATIONAL UNION'S AND MARY KAY HENRY'S BRIEF IN OPPOSITION TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT; COUNTERMOTION FOR SUMMARY JUDGMENT

Plaintiffs Motion for Partial Summary Judgment and Defendants Oppositions and Counter Motions for Summary Judgment came on for hearing on November 13, 2018. Having taken the matter under advisement, the COURT HEREBY FINDS as follows:

Plaintiff s Motion for Partial Summary Judgment is based on employment contracts which were not part of the original pleading. Defendant's objected to the evidence as not having been properly authenticated, further Defendants argued that the Motion for Partial Summary Judgment was premature and they were entitled to discovery under NRCP 56(f) as the Nevada Rules of Civil Procedure read at the time. Subsequently the Rules were amended, the Advisory Committee Notes to NRCP 56 now state Rule 56(d) modernizes the text of former NRCP 56(f) consistent with FRCP 56(d). The changes are stylistic and do not affect Choy v. Ameristar Casinos, Inc., 127 Nev. 870, 265 P.3d 698 (2011), which requires an affidavit to justify a request for a continuance of the summary

judgment proceeding to conduct further discovery. As the Defendants have raised questions of fact to the common law contract claims and no discovery having been done, they are entitled to relief under NRCP 56(f) as the Plaintiff s Motion for Partial Summary Judgment is Premature. COURT THEREFORE ORDERED, Plaintiff s Motion for Partial Summary Judgment Denied.

Defendant's counter motions are based primarily on Federal Pre-emption. The Plaintiffs complaint states 16 causes of action (although improperly captioned with there being two causes of action labeled 14). It is clear that the standard for granting a Motion for Summary Judgment has not changed, see Advisory note to Subsection (a). Rule 56(a) retains the word shall consistent with the advisory committee notes to the 2010 amendments to FRCP 56 to preserve Wood v. Safeway, Inc., 121 Nev. 724, 121 P.3d 1026 (2005), and its progeny. The causes of action allege common law torts for breach of contract, breach of the covenant of good faith and fair dealing, intentional interference with contractual advantage, wrongful termination for each plaintiff as to the Local, and SEIU, as well as certain claims as to individual defendants, and finally defamation on behalf of Ms. Gentry.

To the extent that any of these common law causes of action implicate issues that are preempted by federal law they may be appropriate for dismissal, however, at this point the facts have not been developed sufficiently for this court to determine as a matter of law that any cause of action is preempted. However, the cause of action for conspiracy appears deficient as a matter of law, as under Nevada law (a)gents and employees of a corporation cannot conspire with their corporate principal or employer where they act in their official capacities on behalf of the corporation and not as individuals for their individual advantage. See Collins v Union Federal Savings and Loan Assn. 99 Nev. 284, 662 P.2d 610 (1983).

Therefore, COURT HEREBY ORDERED, Defendants Counter motions DENIED IN PART as to preemption WITHOUT PREJUDICE to be renewed; GRANTED as to the Seventh Cause of Action, Civil Conspiracy, WITHOUT PREJUDICE should facts develop which might meet the exception to the general rule.

COURT ORDERED, Counsel for Defendants are DIRECTED to provide an Order for signature by the Court within 30 days.

CLERK'S NOTE: A copy of this minute order was e-mailed, mailed, or faxed as follows: Michael Mcavoyamaya, Esq. (Michael.mcavoyamaya@gmail.com) and Evan James, Esq. (elj@cjmlv.com)./ls 03-22-19

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Employment Tort

COURT MINUTES

July 25, 2019

A-17-764942-C Robert Clarke, Plaintiff(s)
vs.
Service Employees International Union, Defendant(s)

**July 25, 2019 10:30 AM Motion to Associate
Counsel**

HEARD BY: Allf, Nancy **COURTROOM:** RJC Courtroom 03A

COURT CLERK: Michaela Tapia

RECORDER: Gina Villani

REPORTER:

PARTIES

PRESENT: James, Evan L. Attorney
 Mcavoyamaya, Michael J. Attorney

JOURNAL ENTRIES

- Argument by Mr. Mcavoyamaya, noting it would be improper for Mr. James to represent S.E.I. as the parties' interests are adverse. Argument by Mr. James, stating he would have withdrawn if there was conflict. Further argument by Mr. Mcavoyamaya. COURT FINDS, petition meets all of the requirements of SCR 42; the issue of potential conflict is not appropriate for this Court to consider; if counsel believes there is an actual conflict they may take it up before the trial Judge. COURT ORDERED, motion GRANTED. Order signed and returned IN OPEN COURT.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Employment Tort

COURT MINUTES

August 06, 2019

A-17-764942-C Robert Clarke, Plaintiff(s)
vs.
Service Employees International Union, Defendant(s)

**August 06, 2019 9:00 AM Motion for Default
Judgment**

HEARD BY: Sturman, Gloria **COURTROOM:** RJC Courtroom 10D

COURT CLERK: Lorna Shell

RECORDER: Kerry Esparza

REPORTER:

PARTIES

PRESENT: Cohen, Jonathan Attorney
James, Evan L. Attorney
Mcavoyamaya, Michael J. Attorney

JOURNAL ENTRIES

- Court stated this was Nevada law that was decided in 1980 in Paul vs. Paul and that a party cannot enter judgment until the case was resolved.

Mr. Mcavoyamaya stated Ms. Kisling just entered an appearance in the case and that he was agreeable with extending discovery to allow time for her deposition.

COURT ORDERED, Application DENIED.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Employment Tort

COURT MINUTES

August 07, 2019

A-17-764942-C Robert Clarke, Plaintiff(s)
vs.
Service Employees International Union, Defendant(s)

August 07, 2019 8:45 AM Motion

HEARD BY: Sturman, Gloria **COURTROOM:** RJC Courtroom 10D

COURT CLERK: Lorna Shell

RECORDER: Kerry Esparza

REPORTER:

PARTIES

PRESENT: Cohen, Jonathan Attorney
James, Evan L. Attorney
Mcavoyamaya, Michael J. Attorney

JOURNAL ENTRIES

- Court ADVISED these types of disputes were to be handled by the Discovery Commissioner.

Mr. James stated they were cooperating in discovery; however they did not want to do anything inappropriate.

Court stated they could either proceed with the deposition and speak with the Discovery Commissioner afterwards or they could cancel the deposition. Court further stated the parties could take portions of the deposition to the commissioner for ruling, preserve their record, and bring the matter to this court later.

Mr. Mcavoyamaya stated he wanted to do that and noted the letters were complicated and that the at issue waiver wasn't the primary argument, rather it was that the local union waived privilege for all of this prior to litigation.

Mr. Cohen stated if they decided to postpone the deposition and resolve those issues, it wouldn't be resolved until after discovery cut off and therefore requested the Court allow a late deposition.

Court ADVISED the parties see what they can get done and preserve certain issues; however if the entire deposition appeared it was going to be objection after objection then they might just need to suspend it. The Court noted she didn't like to inconvenience a witness and counsel who have traveled for this deposition but this needs to be briefed.

Mr. Mcavoyamaya stated the deposition should be postponed and further argued that since Ms. Blue now made an appearance they had an opportunity to do discovery which meant he needed to file a discovery schedule.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Employment Tort

COURT MINUTES

August 28, 2019

A-17-764942-C Robert Clarke, Plaintiff(s)
vs.
Service Employees International Union, Defendant(s)

August 28, 2019 7:00 AM Minute Order

HEARD BY: Sturman, Gloria **COURTROOM:** RJC Courtroom 10D

COURT CLERK: Lorna Shell

RECORDER: Kerry Esparza

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- COURT FINDS on calendar for October 1, 2019 a Motion to Compel Documents, Unredacted Audio Recordings, The Deposition of Brenda Marzan and to Reject Defendants Improper Attorney Client Privilege Objections on Order Shortening Time. This motion should be noticed for a Discovery Commission hearing AND THEREFORE ORDERED, Hearing VACATED; Counsel must designate in the caption whether the hearing should be before District Court or the Discovery Commissioner.

CLERK'S NOTE: A copy of this minute order has been electronically served to all registered parties for Odyssey File & Serve./ls

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Employment Tort

COURT MINUTES

September 10, 2019

A-17-764942-C Robert Clarke, Plaintiff(s)
vs.
Service Employees International Union, Defendant(s)

September 10, 2019 9:00 AM Motion

HEARD BY: Sturman, Gloria **COURTROOM:** RJC Courtroom 10D

COURT CLERK: Lorna Shell

RECORDER: Kerry Esparza

REPORTER:

PARTIES

PRESENT: Cohen, Jonathan Attorney
James, Evan L. Attorney
Mcavoyamaya, Michael J. Attorney

JOURNAL ENTRIES

- Present telephonically was Jonathan Cohen, Esq.

Court inquired why she should take judicial notice of the NLRB Decision.

Mr. Mcavoyamaya stated he wanted the decision on the record as the rule in Nevada was flexible and if the case was similar and close in time. Mr. Mcavoyamaya stated all the parties in that case would testify in this case.

Court stated they were union staff members.

Mr. Mcavoyamaya argued they were members of the non-management staff, they were employees, that the trustees breached the contract, and that there was a breach in this case and therefore he requested the Court take judicial notice of the record. Mr. Mcavoyamaya argued it was proper for judicial notice and that Deft.'s acknowledge this proceeding should follow federal law.

Mr. James argued the Pltf.'s were high ranking union members while his client was staff, that here

they had employment contracts not union contracts, and that the issues in that case were different.

Mr. Cohen argued that case had no bearing in this case, that testimony in this case could be impeached by documents without that decision, and that the Court cannot take judicial notice of disputed facts in another proceeding.

COURT STATED FINDINGS AND ORDERED, Request DENIED.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Employment Tort

COURT MINUTES

September 30, 2019

A-17-764942-C Robert Clarke, Plaintiff(s)
vs.
Service Employees International Union, Defendant(s)

September 30, 2019 9:00 AM Motion to Compel

HEARD BY: Sturman, Gloria **COURTROOM:** RJC Courtroom 10D

COURT CLERK: Lorna Shell

RECORDER: Kerry Esparza

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- COURT FINDS the Motion to Compel currently on calendar should be heard by the Discovery Commissioner AND THEREFORE ORDERED, Motion VACATED from the October 3, 2019 calendar and REFERRED to Discovery.

CLERK'S NOTE: A copy of this minute order has been electronically served to all registered parties for Odyssey File & Serve./ls 09-30-19

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Employment Tort**COURT MINUTES****December 03, 2019**

A-17-764942-C Robert Clarke, Plaintiff(s)
 vs.
 Service Employees International Union, Defendant(s)

December 03, 2019 9:00 AM All Pending Motions

HEARD BY: Sturman, Gloria **COURTROOM:** RJC Courtroom 10D

COURT CLERK: Natalie Ortega

RECORDER: Kerry Esparza

REPORTER:

PARTIES

PRESENT: Cohen, Jonathan Attorney
 James, Evan L. Attorney
 Mcavoyamaya, Michael J. Attorney

JOURNAL ENTRIES

- DEFENDANTS SERVICE EMPLOYEES INTERNATIONAL UNION'S AND MARY KAY HENRY'S NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT; MEMORANDUM OF POINTS AND AUTHORITIES DEFENDANT'S MOTION FOR SUMMARY JUDGMENT PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

As to Defendants Service Employees International Union's And Mary Kay Henry's Notice Of Motion And Motion For Summary Judgment; Memorandum Of Points And Authorities: Extensive arguments by counsel regarding the merits of the motions. COURT ORDERED, Defendant's Motion for Summary Judgment and Defendants Service Employees International Union's and Mary Kay Henry's Motion for Summary Judgment GRANTED. COURT FINDS this case was preempted and fell directly under the Screen Actors Guild case. Further, Nevada looks to California for guidance when there was not on point Nevada law. That was their analysis of Federal Preemption. Additionally, they may use different terminology; however, it was the exact same concept of preemption. Court noted it would not address the issue of whether or not there was a contract. Defense counsel to prepare the Order and circulate to opposing counsel. Mr. Mcavoyamaya advised he would file his Notice of Appeal immediately. COURT FURTHER ORDERED, the whole case was DISMISSED under the basis

of Federal Preemption as a matter of law. Mr. Mcavoyamaya requested the Court to rule on the Motion to Relate the two cases first so the order on preemption applied to both, which would allow him to appeal both cases to the Nevada Supreme Court on the issue. COURT NOTED there was a Motion to Coordinate which was set for January 7, 2020, which the Court had not reviewed. Counsel indicated there was a stipulation. Court directed counsel to provide an Order coordinating the two cases. Colloquy regarding consolidating the cases. Mr. James suggested to stay the Nguyen case (A-19-794662-C) pending an appeal. Further, Plaintiff Gentry and Clarke were the first two directors and Plaintiff Nguyen was the third director, whom was terminated around the same time. Further colloquy regarding coordination and consolidation. Mr. Cohen noted an Order coordinating the cases with a stipulation to stay the Nguyen case pending the resolution of appeal in the Gentry case would be the most efficient way to handle the case.



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

MICHAEL J. MCAVOYAMAYA, ESQ.
4539 PASEO DEL RAY
LAS VEGAS, NV 89121

DATE: January 31, 2020
CASE: A-17-764942-C

RE CASE: DANA GENTRY; ROBERT CLARKE vs. SERVICE EMPLOYEES INTERNATIONAL UNION; LUISA BLUE; MARTIN MANTECA; MARY K. HENRY; SHARON KISLING; CLARK COUNTY PUBLIC EMPLOYEES ASSOCIATION DBA NEVADA SERVICE EMPLOYEES UNION AKA SIEU 1107

NOTICE OF APPEAL FILED: January 29, 2020

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

- ☒ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)**
- ☒ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
- ☒ Case Appeal Statement
 - NRAP 3 (a)(1), Form 2
- ☐ Order
- ☐ Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. The district court clerk shall apprise appellant of the deficiencies in writing, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (g) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

****Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.**

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER GRANTING SUMMARY JUDGMENT IN FAVOR OF DEFENDANTS; NOTICE OF ENTRY OF ORDER; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

DANA GENTRY; ROBERT CLARKE,

Plaintiff(s),

vs.

SERVICE EMPLOYEES INTERNATIONAL
UNION; LUISA BLUE; MARTIN MANTECA;
MARY K. HENRY; SHARON KISLING;
CLARK COUNTY PUBLIC EMPLOYEES
ASSOCIATION DBA NEVADA SERVICE
EMPLOYEES UNION AKA SIEU 1107,

Defendant(s),

Case No: A-17-764942-C

Dept No: XXVI

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 31 day of January 2020.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk