

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

CLARKE VS. SERV. EMPLOYEES INT'L
UNION

No. 80520

Electronically Filed
Mar 02 2020 03:48 p.m.

DOCKETING Elizabeth A. Brown
CIVIL APPEALS Clerk of Supreme Court

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department Twenty-Six ("XXVI")
County Clark County Judge Gloria Sturman
District Ct. Case No. A-17-764942-C

2. Attorney filing this docketing statement:

Attorney Michael J. Mcavoy-Amaya Telephone (702) 299-5083
Firm Michael J. Mcavoy-Amaya Law
Address 4539 Paseo Del Ray Drive, Las Vegas, Nevada, 89121

Client(s) Robert Clarke

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Jonathan Cohen Telephone (626) 796-7555
Firm Rothner, Segall & Greenstone
Address 510 South Marengo Avenue, Pasadena California 91101-3115

Client(s) Service Employees International Union ("SEIU"), Mary Kay Henry

Attorney Evan L. James Telephone (702) 255-1718
Firm Christensen James & Martin
Address 7440 W. Sahara Avenue, Las Vegas, Nevada 89117

Client(s) Nevada Public Employees Assoc. aka SEIU Local 1107

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input checked="" type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): _____ |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

None

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

8. Nature of the action. Briefly describe the nature of the action and the result below:

Breach of for cause employment contract.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

Does the Labor-Management Reporting and Disclosure Act ("LMRDA") preempt a union employees state wrongful termination claims for breach of a for cause contract.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None. This is an issue of first impression in the state of Nevada.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☒ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain: All matters of preemption are issues arising under the Supremacy Clause of the United States Constitution because only Congress can preempt state law. *Mut. Pharm. Co. v. Bartlett*, 570 U.S. 472, 475, 133 S. Ct. 2466, 2470 (2013). For this reason, every analysis of preemption involves an analysis of Congressional intent. *Cervantes v. Health Plan of Nev., Inc.*, 127 Nev. 789, 794, 263 P.3d 261, 265 (2011). This case also involves a substantial issue of first impression pursuant to *Screen Extras Guild, Inc. v. Superior Court*, 51 Cal. 3d 1017 (1990).

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

Appellant believes that this matter is presumptively retained by the Nevada Supreme Court because it is a matter "raising as a principal issue a question of first impression involving the United States...Constitution." NRAP 17(a)(11). This is also a matter "raising as a principal issue a question of statewide public importance" as the decision of the district court has the potential to invalidate all for cause contracts between union employees and the union employees they work for. NRAP 17(a)(12).

14. Trial. If this action proceeded to trial, how many days did the trial last? _____

Was it a bench or jury trial? _____

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?
No.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from Jan 3, 2020

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served Jan 3, 2020

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed Jan 29, 2020

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP(a)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input type="checkbox"/> Other (specify) _____ | |

(b) Explain how each authority provides a basis for appeal from the judgment or order: This is an appeal "A final judgment entered in an action or proceeding commenced in the court in which the judgment is rendered." NRAP 3A(b)(1).

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Robert Clarke
Dana Gentry
Service Employees International Union
Nevada Public Employees Association
Mary Kay Henry
Martin Manteca
Luisa Blue

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

Only one plaintiff appealed. Dana Gentry chose not to appeal due to personal reasons. Any ruling in favor of Robert Clarke would also apply to Ms. Gentry's claims.

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Robert Clarke brought claims for: breach of for cause employment contract, Breach of Implied Covenant of Good Faith and Fair Dealing, wrongful termination, tortuous discharge, and negligence.

Dana Gentry brought claims for: breach of for cause employment contract, Breach of Implied Covenant of Good Faith and Fair Dealing, wrongful termination, tortuous discharge, negligence, and defamation.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Robert Clarke
Name of appellant

Michael J. Mcavoy-Amaya, Esq.
Name of counsel of record

Mar 2, 2020
Date

/s/ Michael J. Mcavoy-Amaya
Signature of counsel of record

State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 2nd day of March, 2020, I served a copy of this completed docketing statement upon all counsel of record:

☒ By personally serving it upon him/her; or

☐ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Via the electronic filing system:

CHRISTENSEN JAMES & MARTIN

EVAN L. JAMES, ESQ. (7760)

7440 W. Sahara Avenue

Las Vegas, Nevada 89117

Email: elj@cjmlv.com

ROTHNER, SEGALL & GREENSTONE

JONATHAN COHEN (10551)

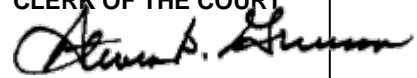
510 South Marengo Avenue

Pasadena, CA 91101-3115

jcohen@rsglabor.com

Dated this 2nd day of March, 2020

Signature



MICHAEL J. MCAVOYAMAYA, ESQ.
Nevada Bar No.: 014082
4539 Paseo Del Ray
Las Vegas, Nevada 89121
Telephone: (702) 685-0879
Mmcavoyamayalaw@gmail.com
Attorney for Plaintiffs

EIGHTH JUDICIAL DISTRICT COURT

DISTRICT OF 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 dba
NEVADA SERVICE EMPLOYEES 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. NO.: 26

FIRST AMENDED COMPLAINT

(JURY TRIAL DEMANDED)

COME NOW, Plaintiffs DANA GENTRY and ROBERT CLARKE, by and through
their attorney of record MICHAEL J. MCAVOYAMAYA, ESQ., and hereby complain and
allege as follows:

I. PARTIES

1. Plaintiff Dana Gentry is and was at all times relevant herein a resident of Clark
County, Nevada.

2. Plaintiff Robert Clarke is and was at all times relevant herein a resident of
Clark County, Nevada.

1 3. Defendant Service Employees International Union (hereinafter referred to as
2 “SEIU”) is and was at all times relevant herein a nonprofit corporation with headquarters in
3 Washington D.C. with sufficient contacts with Local 1107 in Clark County, Nevada to confer
4 personal jurisdiction.

5 4. Defendant Luisa Blue (hereinafter the “Trustee”), at all times relevant herein
6 was present in Clark County, Nevada to confer personal jurisdiction.

7 5. Defendant Martin Manteca (hereinafter the “Deputy Trustee”) at all times
8 relevant herein was present in Clark County, Nevada to confer personal jurisdiction.

9 6. Defendant Mary Kay Henry (hereinafter “President Henry”) on information
10 and belief is a resident of Washington D.C., and at all times relevant herein had sufficient
11 contact with Local 1107 in Clark County, Nevada to confer personal jurisdiction.

12 7. Defendant Clark County Public Employees Association, dba Nevada Service
13 Employees Union aka SEIU 1107 (hereinafter “Local 1107”), is and was at all times relevant
14 herein a domestic non-profit cooperative corporation, having its main and principal office in
15 Clark County, Nevada.

16 8. Sharon Kisling, at all times relevant herein was present in Clark County,
17 Nevada to confer personal jurisdiction.

18 9. The true names of DOES 1 through 20, their citizenship and capacities,
19 whether individual, corporate, associate, partnership or otherwise, are unknown to Plaintiffs
20 who therefore sue these Defendants by such fictitious names. Plaintiffs are informed and
21 believe, and therefore allege, that each of the Defendants, designated as DOES 1 through 20,
22 are or may be legally responsible for the events referred to in this action, and caused damages
23 to the Plaintiffs, as herein alleged, and Plaintiffs will ask leave of this Court to amend the
24 Complaint to insert the true names and capacities of such Defendants, when the same have
25 been ascertained, and to join them in this action, together with the proper charges and
26 allegations.
27
28

1 10. That the true names and capacities of Defendants named herein as DOE
2 AGENCIES 1 through 20 and ROE CORPORATIONS 1 through 20, inclusive, are unknown
3 to the Plaintiffs, who therefore sue said Defendants by such fictitious names. Plaintiffs are
4 informed and believe and thereon allege that each of the Defendants designated herein as a
5 DOE AGENCIES and/or ROE CORPORATION Defendant is responsible for the events and
6 happenings referred to and proximately caused damages to the Plaintiffs as alleged herein.
7 Plaintiffs will ask leave of the Court to amend the Complaint to insert the true names and
8 capacities of DOE AGENCIES 1 through 20 and ROE CORPORATIONS 1 through 20,
9 inclusive, when the same have been ascertained, and to join such Defendants in this action.
10

11 **II. JURISDICTION AND VENUE**

12 11. This Court has personal jurisdiction over the Defendants and claims as set forth
13 herein pursuant to NRS 14.065, that such jurisdiction is not inconsistent with the Nevada
14 Constitution or the United States Constitution.

15 12. Venue is proper in this Court pursuant NRS 13.010 *et seq.* because, among
16 other reasons, Local 1107 operates its principal place of business in Clark County, Nevada.
17 Furthermore, this action arises out of the Contract between the Plaintiffs, Local 1107 and
18 SEIU, which was entered into and performed in Clark County, Nevada.

19 **III. ALLEGATIONS COMMON TO ALL CLAIMS**

20 13. On April 18, 2016, Local 1107 entered into a contract of employment with
21 Plaintiff Dana Gentry (hereinafter the “Gentry Contract”). The Gentry Contract was executed
22 by then Local 1107 President Cherie Mancini and Plaintiff Dana Gentry. The position held by
23 Plaintiff Gentry was Communications Director.

24 14. On August 23, 2016, Local 1107 extended an offer of employment to Plaintiff
25 Robert Clarke. Plaintiff Robert Clarke accepted the offer of employment with Local 1107 on
26 or about September 6, 2016 (hereinafter the “Clarke Contract”). The Clarke Contract was
27
28

1 executed by then Local 1107 President Cherie Mancini and Plaintiff Robert Clarke. The
2 position held by Plaintiff Clarke was Director of Finance and Human Resources.

3 15. Both the Gentry Contract and the Clarke Contract contain the same termination
4 clause, which states: "Termination of this employment agreement may be initiated by the
5 SEIU Nevada President *for cause* and is appealable to the local's Executive Board, which
6 shall conduct a full and fair hearing before reaching a final determination regarding your
7 employment status."

9 16. On April 28, 2017, Defendant SEIU President Mary Kay Henry placed Local
10 1107 under trusteeship and appointed Defendants Luisa Blue and Martin Manteca as
11 Trustee and Deputy Trustee, respectively.

12 17. On April 28, 2017, the managing staff of Local 1107 were told to stay home.

13 18. On May 4, 2017, Defendant Deputy Trustee Martin Manteca delivered a letter
14 to Plaintiff Robert Clarke informing Clarke that his employment with Local 1107 was
15 terminated effective immediately.

16 19. On May 4, 2017, Defendant Deputy Trustee Martin Manteca delivered a letter
17 to Plaintiff Dana Gentry informing Gentry that her employment with Local 1107 was
18 terminated effective immediately.

20 20. Both the letter to Clarke and the letter to Gentry contained the same language
21 regarding their termination: "the Trustees will fill management and other positions at the
22 Local with individuals they are confident can and will carry out the Local's new program and
23 policies. In the interim, the Trustees will largely be managing the Local themselves with input
24 from member leaders. For these reasons, the Trustees have decided to terminate your
25 employment with Local 1107, effective immediately."

27 21. Plaintiff Robert Clarke could not appeal the termination decision to Local
28 1107's Executive Board because the Board had been disbanded by SEIU, and Deputy Trustee

1 Manteca and Trustee Luisa Blue have exclusive control over Local 1107 since the Trusteeship
2 was imposed.

3 22. Plaintiff Dana Gentry could not appeal the termination decision to Local
4 1107's Executive Board because the Board had been disbanded by SEIU, and Deputy Trustee
5 Manteca and Trustee Luisa Blue have exclusive control over Local 1107 since the Trusteeship
6 was imposed.
7

8 **FIRST CAUSE OF ACTION**
9 **Breach of Contract – Dana Gentry**

10 23. Plaintiffs restate and reallege all preceding and subsequent allegations as
11 though fully set forth herein.

12 24. That Local 1107 entered into a valid and binding Employment Contract with
13 Dana Gentry.

14 25. That said Employment Contract contained a clause specifying that termination
15 of Plaintiff's employment could only be initiated for cause.

16 26. That Deputy Trustee Manteca and Trustee Blue are the interim managers of
17 Local 1107 while it is under Trusteeship, and the Executive Board is disbanded, leaving
18 Plaintiff no avenue to appeal the termination decision.
19

20 27. That Deputy Trustee Manteca and Trustee Blue as the managers of Local 1107
21 breached the Employment Contract by terminating Plaintiff Dana Gentry without cause.

22 28. That Plaintiff Dana Gentry has sustained damages in the result of said breach
23 in an amount in excess of \$15,000.00, and the costs and expenses associated in filing this
24 action, including Plaintiff's reasonable attorneys' fees and costs.
25

26 **SECOND CAUSE OF ACTION**
27 **Breach of Contract – Robert Clarke**

28 29. Plaintiffs restate and reallege all preceding and subsequent allegations as
though fully set forth herein.

1 30. That Local 1107 entered into a valid and binding Employment Contract with
2 Robert Clarke.

3 31. That said Employment Contract contained a clause specifying that termination
4 of Plaintiff's employment could only be initiated for cause.

5 32. That Deputy Trustee Manteca and Trustee Blue are the interim managers of
6 Local 1107 while it is under Trusteeship, and the Executive Board is disbanded, leaving
7 Plaintiff no avenue to appeal the termination decision.

8 33. That Deputy Trustee Manteca and Trustee Blue as the managers of Local 1107
9 breached the Employment Contract by terminating Plaintiff Robert Clarke without cause.

10 34. That Plaintiff Robert Clarke has sustained damages in the result of said breach
11 in an amount in excess of \$15,000.00, and the costs and expenses associated in filing this
12 action, including Plaintiff's reasonable attorneys' fees and costs.
13
14

15 **THIRD CAUSE OF ACTION**
16 **Breach of Implied Covenant of Good Faith and Fair Dealing – Contractual Breach**
17 **Dana Gentry**

18 35. Plaintiffs restate and reallege all preceding and subsequent allegations as
19 though fully set forth herein.

20 36. Plaintiff Gentry entered into a valid and binding Employment Contract with
21 Local 1107.

22 37. That Defendant Local 1107, their parent union SEIU, and the Deputy Trustee
23 Manteca and Trustee Blue owed a duty of good faith to Plaintiff Gentry to perform under the
24 employment agreement, which could only be terminated for cause.

25 38. That Defendants breached their duty of good faith by terminating the
26 Employment Contract between Local 1107 and Plaintiff Gentry in order to fill Gentry's
27 position with individuals the Trustees would choose, which was unfaithful to the purpose of
28 the Gentry Contract that specified employment could only be terminated for cause.

39. That Plaintiff Gentry had the justified expectation that her employment could only be terminated for cause.

40. That Defendants' breach denied Plaintiff Gentry her justified expectation that she could only be terminated for cause.

41. That Plaintiff Dana Gentry has sustained damages as a result of said breach in an amount in excess of \$15,000.00, and the costs and expenses associated in filing this action, including Plaintiff's reasonable attorneys' fees and costs.

FOURTH CAUSE OF ACTION
Breach of Implied Covenant of Good Faith and Fair Dealing – Contractual Breach
Robert Clarke

42. Plaintiffs restate and reallege all preceding and subsequent allegations as though fully set forth herein.

43. Plaintiff Clarke entered into a valid and binding Employment Contract with Local 1107.

44. That Defendant Local 1107, their parent union SEIU, and the Deputy Trustee Manteca and Trustee Blue owed a duty of good faith to Plaintiff Clarke to perform under the employment agreement, which could only be terminated for cause.

45. That Defendants breached their duty of good faith by terminating the Employment Contract between Local 1107 and Plaintiff Clarke in order to fill Clarke's position with individuals the Trustees would choose, which was unfaithful to the purpose of the Clarke Contract that specified employment could only be terminated for cause.

46. That Plaintiff Clarke had the justified expectation that his employment could only be terminated for cause.

47. That Defendants' breach denied Plaintiff Clarke his justified expectation that he could only be terminated for cause.

48. That Plaintiff Robert Clarke has sustained damages as a the result of said breach in an amount in excess of \$15,000.00, and the costs and expenses associated in filing this action, including Plaintiff's reasonable attorneys' fees and costs.

FIFTH CAUSE OF ACTION
Breach of Covenant of Good Faith and Fair Dealing – Tortious Breach
Dana Gentry

49. Plaintiffs restate and reallege all preceding and subsequent allegations as though fully set forth herein.

50. That Plaintiff Gentry entered into an employment contract with Local 1107.

51. That Defendant Local 1107, their affiliate parent union SEIU, and the Deputy Trustee Manteca and Trustee Blue owed a duty of good faith to Plaintiff Gentry to perform under the employment agreement, which could only be terminated for cause.

52. That a special element of reliance or fiduciary duty existed between Plaintiff Gentry and Defendants Local 1107, SEIU, SEIU President Henry, Deputy Trustee Manteca and Trustee Blue where Defendants were in a superior or entrusted position as Plaintiff's employer.

53. That Defendants collectively breached that duty by terminating the employment agreement between Local 1107 and Plaintiff Gentry in order to fill Gentry's position with individuals the Trustees would choose, which was unfaithful to the "for cause" purpose of the Gentry Contract and amounts to engaging in misconduct under the Gentry Contract.

54. That Plaintiff Dana Gentry has sustained damages in the result of said breach in an amount in excess of \$15,000.00, and the costs and expenses associated in filing this action, including Plaintiff's reasonable attorneys' fees and costs.

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SIXTH CAUSE OF ACTION
Breach of Covenant of Good Faith and Fair Dealing – Tortious Breach
Robert Clarke

55. Plaintiffs restate and reallege all preceding and subsequent allegations as though fully set forth herein.

56. That Plaintiff Clarke entered into an employment contract with Local 1107.

57. That Defendant Local 1107, their parent union SEIU, and the Deputy Trustee Manteca and Trustee Blue owed a duty of good faith to Plaintiff Clarke to perform under the employment agreement, which could only be terminated for cause.

58. That a special element of reliance or fiduciary duty existed between Plaintiff Clarke and Defendants Local 1107, SEIU, SEIU President Henry, Deputy Trustee Manteca and Trustee Blue where Defendants were in a superior or entrusted position as Plaintiff's employer.

59. That Defendants collectively breached that duty by terminating the employment agreement between Local 1107 and Plaintiff Clarke in order to fill Clarke's position with individuals the Trustees would choose, which was unfaithful to the "for cause" purpose of the Clarke Contract and amounts to engaging in misconduct under the Clarke Contract.

60. That Plaintiff Robert Clarke has sustained damages in the result of said breach in an amount in excess of \$15,000.00, and the costs and expenses associated in filing this action, including Plaintiff's reasonable attorneys' fees and costs.

SEVENTH CAUSE OF ACTION
Intentional Interference with Contractual Relations – All Plaintiffs against
Defendants SEIU, Henry, Blue and Manteca

61. Plaintiffs restate and reallege all preceding and subsequent allegations as though fully set forth herein.

1 62. That there exist two valid contracts between Plaintiff Gentry and Local 1107
2 and Plaintiff Clarke and Local 1107 containing the for cause termination provision.

3 63. That Defendant Manteca, Defendant Blue, and Defendant Henry are third
4 parties who took control of Local 1107 and knew of the existence of these contracts.

5 64. That Defendants Manteca, Blue and Henry committed intentional acts in the
6 form of terminating the for cause contracts between Plaintiffs Clarke and Gentry and Local
7 1107.
8

9 65. That terminating the Plaintiffs' for cause contracts caused an actual disruption
10 of Plaintiffs' valid employment contracts with Local 1107.

11 66. That Plaintiff Robert Clarke has sustained damages in the result of said breach
12 in an amount in excess of \$15,000.00, and the costs and expenses associated in filing this
13 action, including Plaintiff's reasonable attorneys' fees and costs.
14

15 67. That Plaintiff Dana Gentry has sustained damages in the result of said breach
16 in an amount in excess of \$15,000.00, and the costs and expenses associated in filing this
17 action, including Plaintiff's reasonable attorneys' fees and costs.

18 **EIGHTH CAUSE OF ACTION**
19 **Wrongful Termination – Breach of Continued Employment Contract**
20 **Dana Gentry**

21 68. Plaintiffs restate and reallege all preceding and subsequent allegations as
22 though fully set forth herein.

23 69. That Defendant Local 1107 and Plaintiff Gentry entered into an employment
24 contract on April 18, 2016.

25 70. That Defendant Local 1107 expressly agreed with Plaintiff that employment
26 was to be for an indefinite term and could be terminated only for cause.

27 71. That Defendant Local 1107 and Defendants Manteca and Blue breached the
28 Employment Contract by terminating Plaintiff Gentry without cause.

72. That Plaintiff Dana Gentry has sustained damages in the result of said breach in an amount in excess of \$15,000.00, and the costs and expenses associated in filing this action, including Plaintiff's reasonable attorneys' fees and costs.

NINTH CAUSE OF ACTION
Wrongful Termination – Breach of Continued Employment Contract
Robert Clarke

73. Plaintiffs restate and reallege all preceding and subsequent allegations as though fully set forth herein.

74. That Defendant Local 1107 and Plaintiff Clarke entered into an employment contract on September 6, 2016.

75. That Defendant Local 1107 expressly agreed with Plaintiff that employment was to be for an indefinite term and could be terminated only for cause.

76. That Defendant Local 1107 and Defendants Manteca and Blue breached the Employment Contract by terminating Plaintiff without cause.

77. That Plaintiff Robert Clarke has sustained damages in the result of said breach in an amount in excess of \$15,000.00, and the costs and expenses associated in filing this action, including Plaintiff's reasonable attorneys' fees and costs.

TENTH CAUSE OF ACTION
Wrongful Termination – Bad Faith Discharge
Dana Gentry

78. Plaintiffs restate and reallege all preceding and subsequent allegations as though fully set forth herein.

79. That Defendant SEIU 1107 and Plaintiff Gentry entered into an employment contract on April 18, 2016.

80. That Plaintiff established contractual rights of continued employment and developed a relationship of trust, reliance and dependency with Defendant Local 1107 by performing her employment duties for Local 1107 through April 2017.

1 81. That Defendant Local 1107 and Defendants Manteca, Blue and Henry, acting
2 in bad faith, breached the employment contract by discharging Plaintiff Gentry without cause.

3 82. That Plaintiff Dana Gentry has sustained damages in the result of said breach
4 in an amount in excess of \$15,000.00, and the costs and expenses associated in filing this
5 action, including Plaintiff's reasonable attorneys' fees and costs.
6

7 **ELEVENTH CAUSE OF ACTION**
8 **Wrongful Termination – Bad Faith Discharge**
9 **Robert Clarke**

10 83. Plaintiffs restate and reallege all preceding and subsequent allegations as
11 though fully set forth herein.

12 84. That Defendant Local 1107 and Plaintiff Clarke entered into an employment
13 contract on September 6, 2016.

14 85. That Plaintiff established contractual rights of continued employment and
15 developed a relationship of trust, reliance and dependency with Defendant Local 1107 by
16 performing his employment duties for Local 1107 through April 2017.

17 86. That Defendant Local 1107 and Defendants Manteca, Blue and Henry, acting
18 in bad faith, breached the employment contract by discharging Plaintiff Clarke without cause.

19 87. That Plaintiff Robert Clarke has sustained damages in the result of said breach
20 in an amount in excess of \$15,000.00, and the costs and expenses associated in filing this
21 action, including Plaintiff's reasonable attorneys' fees and costs.
22

23 **TWELFTH CAUSE OF ACTION**
24 **Tortious Discharge - Dana Gentry**

25 88. Plaintiffs restate and reallege all preceding and subsequent allegations as
26 though fully set forth herein.

27 89. That Defendant Local 1107, at the direction of and through the actions of
28 Defendants SEIU, Manteca, Blue and Henry improperly dismissed Plaintiff Gentry in order to

1 fill Plaintiff's position with individuals who would carry out SEIU's new program and
2 policies at Local 1107, which violates public policy upholding "for cause termination"
3 provisions in employment contracts.

4 90. That as a result, Plaintiff has sustained damages in an amount in excess of
5 \$15,000.00, and the costs and expenses associated in filing this action, including Plaintiffs'
6 reasonable attorneys' fees and costs.
7

8 **THIRTEENTH CAUSE OF ACTION**
9 **Tortious Discharge - Robert Clarke**

10 91. Plaintiffs restate and reallege all preceding and subsequent allegations as
11 though fully set forth herein.

12 92. That Defendant Local 1107, at the direction of and through the actions of
13 Defendants SEIU, Manteca, Blue and Henry improperly dismissed Plaintiff Clarke in order to
14 fill Plaintiff's position with individuals who would carry out SEIU's new program and
15 policies at Local 1107, which violates public policy upholding "for cause termination"
16 provisions in employment contracts.
17

18 93. That as a result, Plaintiff has sustained damages in an amount in excess of
19 \$15,000.00, and the costs and expenses associated in filing this action, including Plaintiffs'
20 reasonable attorneys' fees and costs.

21 **FOURTEENTH CAUSE OF ACTION**
22 **Negligence**

23 94. Plaintiffs restate and reallege all preceding and subsequent allegations as
24 though fully set forth herein.

25 95. That Defendant Local 1107 owed a duty of care to Plaintiffs as Plaintiffs'
26 employer to ensure that Plaintiffs would only be terminated for cause.
27
28

1 96. That Defendants Manteca and Blue owed a duty of care to Plaintiffs as the
2 acting managers of Local 1107, which employed Plaintiffs, to ensure that Plaintiffs would
3 only be terminated for cause.

4 97. That Defendants Local 1107, Manteca and Blue breached that duty by
5 terminating Plaintiffs without cause.

6 98. That Defendants Manteca and Blue further breached the duty of care by failing
7 to inspect the Plaintiffs' contracts for employment before terminating Plaintiffs.

8 99. That Defendants' breach of the duty of care caused Plaintiffs to be terminated
9 without cause, in violation of their employment contracts.

10 100. That as a result of said breach, Plaintiffs have sustained damages in an amount
11 in excess of \$15,000.00, and the costs and expenses associated in filing this action, including
12 Plaintiffs' reasonable attorneys' fees and costs.

13
14
15 **FIFTEENTH CAUSE OF ACTION**
16 **Defamation – Dana Gentry Against Sharon Kisling and SEIU Local 1107**

17 101. Plaintiffs restate and reallege all preceding and subsequent allegations as
18 though fully set forth herein.

19 102. That Defendant Sharon Kisling made a false a defamatory statement alleging
20 that Plaintiff Dana Gentry was drinking during performance of her employment and using the
21 union's credit card for personal expenses without authorization.

22 103. That an unprivileged publication of this statement was made to third persons
23 when Defendant Kisling sent a memo containing the unfounded allegations to the Local 1107
24 Executive Board.

25 104. That the statement included an allegation that Plaintiff Gentry committed a
26 crime, to wit: Plaintiff was stealing money from her employer for personal use constituting
27 defamation per se.
28

1 105. That the statement also included an allegation that affected Plaintiff Gentry's
2 business reputation, to wit: that Plaintiff Gentry was drinking alcohol while working for Local
3 1107 constituting defamation per se.

4 106. That Plaintiff Gentry requested that Kisling retract the defamatory statement
5 and she refused.

6 107. That Plaintiff Gentry subsequently request that the Local 1107 Executive
7 Board conduct an investigation and direct Ms. Kisling, the Vice President of Local 1107, to
8 retract the knowingly false defamatory statement.

9 108. That Plaintiff Gentry informed numerous officials from SEIU International,
10 Local 1107's parent organization, of the defamatory statements made against her by Local
11 1107's Vice President, Sharon Kisling.

12 109. That Defendants knew the statements were false.

13 110. That Defendants were at least negligent in making, and refusing to retract the
14 statements because Defendants knew that the statement was false and were published without
15 regard to the damages it caused Plaintiff Gentry in her employment with the Local Union.

16 111. That Plaintiff Gentry was subsequently terminated by Defendants without
17 Defendants retracting the defamatory statements.

18 112. That Plaintiff Gentry has sustained actual or presumed damages as a result of
19 the statement because it damaged her reputation as an employee.

20 113. That Plaintiff Gentry has sustained damages in an amount in excess of
21 \$15,000.00, and the costs and expenses associated in filing this action, including Plaintiffs'
22 reasonable attorneys' fees and costs.

23 **IV. PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiffs pray for Judgment in their favor as follows:

- 25 1. Damages in excess of \$15,000.00 for each Plaintiff;

1 2. Compensatory and consequential damages resulting from the injuries caused to
2 Plaintiffs by the breach of the employment contracts with Local 1107;

3 3. The reasonable attorney's fees and costs to bring this suit and post-judgment
4 interest;

5 4. Punitive damages for Defendants intentional and malicious conduct and as
6 allowed by law;

7 5. Such other and further relief as this court deems proper.

8 Dated this 25th day of March, 2019.

9 /s/ Michael J. Mcavaoyamaya

10 _____
MICHAEL J. MCAVOYAMAYA, ESQ.

11 Nevada Bar No.: 14082

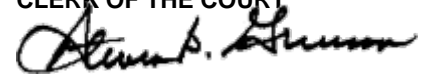
12 4539 Paseo Del Ray

13 Las Vegas, Nevada 89121

14 Telephone: (702) 685-0879

15 Mmcavoyamayalaw@gmail.com

16 Attorney for Plaintiffs
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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


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10 
11 HONORABLE GLORIA J. STURMAN
DISTRICT COURT JUDGE

12 Submitted By:


13 CHRISTENSEN JAMES & MARTIN

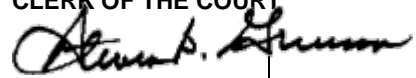
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15 By 
16 EVAN JAMES
17 Attorneys for Service Employees International Union,
Local 1107, Martin Manteca
and Luisa Blue

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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



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3 EVAN L. JAMES, ESQ. (7760)
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5 Las Vegas, Nevada 89117
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7 Facsimile: (702) 255-0871
8 Email: elj@cjmlv.com,
9 *Attorneys for Local 1107, Luisa Blue and Martin Manteca*

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

8 DANA GENTRY, an individual; and
9 ROBERT CLARKE, an individual,
10
11 Plaintiffs,
12 vs.

CASE NO.: A-17-764942-C

DEPT. No. XXVI

NOTICE OF ENTRY OF ORDER

11 **SERVICE EMPLOYEES**
12 **INTERNATIONAL UNION**, a nonprofit
13 cooperative corporation; LUISA BLUE, in
14 her official capacity as Trustee of Local
15 1107; MARTIN MANTECA, in his
16 official capacity as Deputy Trustee of
17 Local 1107; MARY K. HENRY, in her
18 official capacity as Union President;
19 SHARON KISLING, individually;
20 **CLARK COUNTY PUBLIC**
21 **EMPLOYEES ASSOCIATION UNION**
22 aka SEIU 1107, a non-profit cooperative
23 corporation; DOES 1-20; and ROE
24 CORPORATIONS 1-20, inclusive,
25
26 Defendants.

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

21 DATED this 3rd day of January 2020.

CHRISTENSEN JAMES & MARTIN

23 By: /s/ Evan L. James
24 Evan L. James, Esq. (7760)
25 *Attorneys for Local 1107, Luisa Blue*
26 *and Martin Manteca*
27

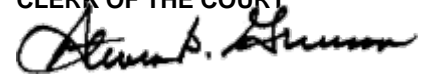
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CERTIFICATE OF SERVICE

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)
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510 South Marengo Avenue
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EIGHTH JUDICIAL DISTRICT COURT

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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
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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
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10 The Court, based on the pleadings and papers in the record, and having considered
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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
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24 Such a conflict is presented here. The LMRDA is a comprehensive federal statute that
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27 statute “does not restrict the freedom of an elected union leader to choose a staff whose views are
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1 Indeed, neither the language nor the legislative history of the [LMRDA] suggests that it
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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.

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9 Relying on *Finnegan*, in *Screen Extras Guild, Inc. v. Superior Court*, 51 Cal.3d 1017
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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
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25 Because this is an issue of first impression in Nevada, the Court looks to *Screen Extras*
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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.

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27 ///

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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:

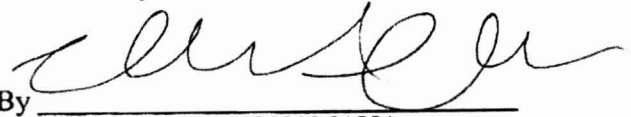
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