IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT CLARKE, Appellant, Vs. SERVICE EMPLOYEES INTERNATIONAL UNION ("SEIU"); SEIU LOCAL 1107 AKA SEIU NEVADA; Respondents.	)))))))))))	No. 80520

APPELLANT'S OPENING BRIEF

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NRAP 26.1 DISCLOSURE

Pursuant to NRAP 26.1, the undersigned counsel of record certifies that there are no persons or entities as described in NRAP 26.1(a) that must be disclosed.

DATED this 24th day of August, 2020.

Respectfully submitted,

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COMES NOW, the Appellant, ROBERT CLARKE, by and through his counsel, MICHAEL J. MCAVOYAMAYA, ESQ., of Michael J. McAvoy-Amaya Law, files the instant appeal of the judgment against him entered in the Eighth Judicial District Court, Clark County, Nevada.

STATEMENT OF JURISDICTION

Jurisdiction before the Nevada Supreme Court is proper because this is a direct appeal from a final judgment entered in "an action or proceeding, commenced in" the Eighth Judicial District Court of Nevada. Nev. Rev. Stat. § 2.090; *see also* NRAP 3A(b). This appeal is timely, the judgment having been entered on January 3, 2020, and the notice of appeal was filed on January 29, 2020.

ROUTING STATEMENT

This matter is presumptively assigned to the Nevada Supreme Court to "hear and decide" for numerous reasons. First, this appeal raises "as a principal issue a question of first impression involving the United States…Constitution." NRAP 17(a)(11). This matter also raises a question of statewide public importance. NRAP 17(a)(12).

ISSUES PRESENTED FOR REVIEW

DOES THE LABOR MANAGEMENT REPORTING AND DISCLOSURE ACT ("LMRDA") PREEMPT APPELLANT'S WRONGFUL TERMINATION CLAIM INVOLVING A BREACH OF HIS FOR-CAUSE EMPLOYMENT CONTRACT WITH RESPONDENT LOCAL 1107.

DID THE DISTRICT COURT ABUSE IT'S DISCRETION AND COMMIT CLEAR ERROR BY IGNORING NEVADA LAW AND THE EVIDENCE WHEN GRANTING RESPONDENT SEIU SUMMARY JUDGMENT ON THE ALTER-EGO THEORY OF LIABILITY.

STATEMENT OF THE CASE AND RELEVANT FACTS

The facts of this case are relatively straight forward. Appellant had a for-cause employment contract with Respondent Local 1107. *See* Appdx. at 1-2. The contract was offered to Appellant by Local 1107's President in 2016 and negotiated and governed by Nevada law. *Id.* On April 28, 2017, Respondent SEIU International imposed a trusteeship over Local 1107 removing its President and Executive Board. *Id.* at 3-7. The SEIU International Trustees over Local 1107 then breached Appellant's for-cause contract terminating his employment without cause. *Id.* at 10. This lawsuit followed Appellant's termination.

The District Court granted Respondents' Motions for Summary Judgment concluding, pursuant to a novel California Supreme Court preemption doctrine, that the LMRDA preempted Appellant's state law

breach of for-cause contract, and other wrongful termination claims. *Id.* at 111-116. Appellant appeals the District Court's ruling applying this novel preemption doctrine created by the California State Supreme Court This California doctrine is inconsistent with both federal preemption precedent and Nevada's own labor preemption doctrines. Appellant also appeals the District Court's grant of summary judgment on the alter-ego liability claim against Respondent SEIU.

SUMMARY OF THE ARGUMENT

The District Court ignored Nevada law on the issue of labor-management preemption and instead applied California precedent. This California-invented new preemption doctrine has been rejected by a majority of courts, both state and federal, when concluding the LMRDA preempted California's wrongful termination law. *See Screen Extras Guild, Inc. v. Superior Court*, 51 Cal. 3d 1017 (1990). The District Court failed to analyze Congressional intent behind the LMRDA which this Court has repeatedly held is required when ruling on novel issues of preemption. The Congressional intent behind the LMRDA makes abundantly clear the act was not intended to preempt state law. As such, judgment should have been entered in Appellant's favor. Further, the

District Court ignored Nevada law on alter-ego liability and the evidence presented in support of Appellant's alter-ego theory when it granted summary judgment in favor of Respondent.

LEGAL ARGUMENT

I. THE DISTRICT COURT ABUSED ITS DISCRETION AND COMMITTED CLEAR ERROR WHEN ENTERING JUDGMENT IN FAVOR OF RESPONDENTS BECAUSE THE LMRDA DOES NOT PREEMPT NEVADA'S WRONGFUL TERMINATION LAW

"Because questions of federal preemption are questions of law, we will review the district court's order de novo." *Dancer v. Golden Coin, Ltd.*, 124 Nev. 28, 32 (2008). This Court has consistently declined to preempt Nevada law based on federal labor law when there is no expression of Congressional intent gleaned from the act itself, and its legislative history. "It is fundamental that federal law may preempt state law: '[u]nder the Supremacy Clause, state laws which are contrary to, or which interfere with, the laws of Congress are invalid.'" *Id.* "In determining whether a federal law preempts a state law, we look to congressional intent." *Id.* at 32-33. "When Congress has explicitly spoken on the issue, we look to the language it used to determine its intent. Thus, state law is expressly preempted when federal law explicitly sets forth

the degree to which it preempts state law." *Id.* at 33. State law may also be preempted if there is a conflict between state and federal law. *Id.* This Court has found that when an act includes a "savings clause," such a clause "evidences congressional intent to leave room for state law to" regulate the field of law. *Id.* Absent express language on preemption, preemption can be implied in certain limited circumstances. *Id.*

This Court had cautioned, however, that labor law "*pre-emption should not be lightly inferred*…since the establishment of labor standards falls within the traditional police power of the State." *W. Cab Co. v. Eighth Judicial Dist. Court of Nev.*, 390 P.3d 662, 667 (Nev. 2017) *quoting Fort Halifax Packing Co., Inc. v. Coyne*, 482 U.S. 1, 21 (1987). "When a state law establishes a minimal employment standard not inconsistent with the general legislative goals of the [federal act], it conflicts with none of the purposes of the Act." *Id.* at 668. "Congress did not intend to disturb state laws in existence that set minimum labor standards but *are unrelated in any way to the processes of bargaining or self-organization*. 'States possess broad authority under their police powers *to regulate the employment relationship to protect workers within the State*.'" *MGM Grand Hotel-Reno v. Insley*, 102 Nev. 513, 518 (1986)(emphasis added).

In *Dancer*, this Court found the Fair Labor Standards Act ("FLSA") did not preempt Nevada's minimum wage law. *Dancer*, 124 Nev. at 36. When analyzing preemption, this Court turned to congressional intent. *Id.* at 33. Because the FLSA included a savings clause indicating that state regulation on the matter of minimum wages over and above the FLSA's requirements was permitted Nevada's minimum wage law was held to not be preempted by the FLSA. *Id.*

In *W. Cab Co.*, this Court analyzed federal preemption as it related to the National Labor Relations Act ("NLRA") and Employee Retirement Income Security Act ("ERISA"). 390 P.3d at 666. The Court noted that the "[a]lthough the NLRA *contains no express preemption clause*, the Supreme Court of the United States has articulated two types of implied preemption" relating to the NLRB, "*Garmon* preemption and *Machinists* preemption. *Id.* at 667. This Court preserved Nevada's minimum wage law finding that neither the NLRA nor ERISA indicated a Congressional intent to preempt the state's traditional police power to regulate the employment relationship within the state when the matter at issue in the complaint was not a matter that should have been presented to the NLRB, and did not expressly involve an ERISA plan. *Id.* at 668-69.

In *Insley*, this Court noted Section 301 of the LMRA "does not necessarily preempt every state law claim asserting a right that relates in some way to a provision in a collective bargaining agreement, or that relates more generally to the parties to such an agreement. *Congress did not intend to disturb state laws in existence that set minimum labor standards but are unrelated in any way to the processes of bargaining or self-organization*." *Insley*, 102 Nev. at 518 (emphasis added). "States possess *broad authority* under their police powers to *regulate the employment relationship to protect workers within the State*. Child labor laws, minimum and other wage laws, laws affecting occupational health and safety . . . are only a few examples." *Id.* at 518 (emphasis added).

The State Industrial Insurance System (SIIS) is an independent public agency which administers and is supported by the state insurance fund. NRS 616.1701. Employers and employees are governed by the terms, conditions and provisions set out in NRS Chapter 616 and 617. *Id.* This Court has held "[t]he *obligation to pay compensation benefits and the right to receive them exists as a matter of statute independent of any right established by contract*." *Id.* "[M]inimum standards 'independent of the collective-bargaining process [that] devolve on [employees] as

individual workers, not as members of a collective organization'" are within the state's power to regulate. *Id.* "Indeed, a contract of employment which would waive or modify the terms or liability created by NRS 616 would be void. NRS 616.265." *Id.* The law was not preempted because it was outside the scope of what Congress intended the LMRA to regulate.

In *Rosner v. Whittlesea Blue Cab Co.*, this Court noted the United States Supreme Court, in *Belknap, Inc. v. Hale*, 463 U.S. 491 (1983), had recently held "the state had a substantial interest in protecting its citizens from misrepresentation and breach of contract." 104 Nev. 725, 727 (1988). This Court noted the *Belknap* Court had found that, when a claim is not squarely within the exclusive jurisdiction of the NLRB pursuant to the NLRA, the state may regulate the matter because Congress has expressed no intent to preempt the entire field of labor law. *Id.* This Court, applying *Belknap*, held the plaintiffs in *Rosner* could proceed on their breach of contract and misrepresentation claims against a unionized employer after they were removed at the conclusion of a strike because the claim was "a significantly different cause of action than that which could have been brought before the National Labor

Relations Board; that the breach of a contract not involving collective bargaining is a matter of peripheral concern to the Board; and that, in reversing the decision of the lower court, *we merely recognize Nevada's substantial interest in protecting its citizens from the breach of employment contracts*." *Id.* at 728 (emphasis added).

In Nevada, when an issue of labor-management preemption is raised the Court's duty is to analyze the Congressional intent behind the act to determine if Congress intended to preempt state law. Where Congress has expressed clear intent to preempt or Congress has expressly set limits on what matters are preempted, the analysis ends. If Congress has expressed neither intent to preempt nor intent to permit state regulation, preemption may be implied if Congress intended to occupy the field, enforcement of the state and federal statutes is impossible, or when the state law stands as an obstacle to Congress' objectives in passing the act. *Nanopierce Techs., Inc. v. Depository Trust and Clearing Corp.,* 123 Nev. 362, 371 (2007). However, when "[c]ompliance with both laws is not impossible," preemption does not apply. *Dancer*, 124 Nev. at 32-33. Further, if a matter is outside the scope

of what Congress intended to regulate by the act, or a peripheral concern of the act, the matter is not preempted.

A. The LMRDA Does Not Preempt Nevada Wrongful Termination Law Because Congress Was Not Concerned with Regulating the Union-Employer/ Union-Employee Relationship When Passing The LMRDA

As an initial matter, it is clear and indisputable that Congress did not intend to regulate the employment relationship between unions and their employees because Congress was not concerned with the union-employer/union-employee relationship. The District Court's Order granting summary judgment in favor of Defendants makes clear the LMRDA's "overriding objective was to ensure that unions would be democratically governed, and responsive to the will of the union membership as expressed in open, periodic elections." *See* A-Appdx. at 113:3-5 *citing Finnegan v. Leu,* 456 U.S. 431, 441 (1982).

In *Finnegan*, the United States Supreme Court made it abundantly clear that "in enacting Title I of the Act, Congress simply was not concerned with perpetuating appointed union employees in office at the expense of an elected president's freedom to choose his own staff. Rather, its concerns were with promoting union democracy and protecting the

rights of union *members* from arbitrary action by the union or its officers. 456 U.S. at 442. When passing the LMRDA, Congress was simply not concerned with regulating the employment relationship between unions and their employees, appointed or otherwise. *Id.*

The District Court's ruling is based on the California Supreme Court's holding in *Screen Extras Guild v. Superior Court*, 51 Cal. 3d 1017, 1034-35 (1990). *See* A-Appdx. at 113:9-13. Rather than follow this Court's clear directive to analyze Congressional intent behind the LMRDA, the District Court instead turned to California law on the issue of preemption while simultaneously ignoring Nevada's own clearly established precedent on preemption. *See* A-Appdx. at 113:25-28. The District Court asserted "this is an issue of first impression in Nevada." *Id.* However, federal preemption of state labor law is not an issue of first impression in Nevada. *See Dancer*, 124 Nev. at 32; *W. Cab Co.*, 390 P.3d at 667; *Insley*, 102 Nev. at 518; *Rosner*, 104 Nev. at 727. Rather, only the issue of whether the LMRDA preempts Nevada's wrongful termination law is an issue of first impression. *Id.* The District Court was required to apply Nevada's own preemption case law to this case when analyzing whether the LMRDA preempts state wrongful termination law. *Id.* The District

Court committed clear error and abused its discretion when it ignored Nevada's firmly established preemption analysis in favor of California's novel "substantive preemption" doctrine. *Screen Extras Guild*, 51 Cal. 3d at 1034-35.

Rather, the District Court was bound by this Court's preemption doctrine which recognizes numerous facets of federal preemption. To wit, Nevada law recognizes complete preemption. *Marcoz v. Summa Corp.*, 106 Nev. 737, 749 (1990). Nevada recognizes express preemption. *Nanopierce Techs., Inc.*, 123 Nev. at 371; *Dancer*, 124 Nev. at 32; *W. Cab Co.*, 390 P.3d at 667; *Insley*, 102 Nev. at 518; *Rosner*, 104 Nev. at 727. Nevada recognizes field preemption. *Id.* Nevada recognizes conflict preemption, which "*examines the federal statute as a whole* to determine whether a party's compliance with both federal and state requirements is impossible or whether, in light of the federal statute's purpose and intended effects, state law poses an obstacle to the accomplishment of Congress's objectives." *Id.* at 371-72. This Court has never recognized the "substantive preemption" doctrine invented by the California Supreme Court in *Screen Extras Guild* and neither has any federal court because

"substantive preemption" doctrine is inconsistent with existing federal preemption precedent. 51 Cal. 3d at 1024.

The District Court was not permitted to ignore Nevada's existing preemption case law in lieu of the California Supreme Court's preemption case law. The District Court was required to look to the plain language of the LMRDA statutes, and the LMRDA's legislative history to ascertain Congressional intent to preempt Nevada's wrongful termination law in this case. *Id.* The District Court failed to conduct the preemption analysis established by this Court instead relying entirely on the outlier California Supreme Court's decision in *Screen Extras Guild* when the District Court handed down its preemption ruling in this case. *See* A-Appdx. at 113-115. The District Court has incorrectly inferred preemption of Nevada wrongful termination law despite "the establishment of labor standards fall[ing] within the traditional police power of the State" (*W. Cab Co.*, 390 P.3d at 667), and this Court's clear recognition of "Nevada's substantial interest in protecting its citizens from the breach of employment contracts." *See Rosner*, 104 Nev. at 728

Further, as the dissent in *Screen Extras Guild v. Superior Court* correctly noted, "*Finnegan* is not a preemption case. It holds only that an

appointed union employee has no wrongful-discharge remedy *under the LMRDA*. Neither *Finnegan* nor any other United States Supreme Court decision has intimated that the LMRDA has a preemptive effect on *state-law* protections against wrongful discharge from employment." 51 Cal. 3d at 1034-35 (emphasis added).

Under Nevada law, where Congress does "not intend to disturb state laws in existence that set minimum labor standards but are unrelated in any way to the" purposes of the act, state law is not preempted. *Insley*, 102 Nev. at 518. The United States Supreme Court has resolved the issue of whether or not the LMRDA was intended to regulate employment with unions. "Congress simply was not concerned with perpetuating appointed union employees in office at the expense of an elected president's freedom to choose his own staff. Rather, its concerns were with promoting union democracy, and protecting the rights of union *members* from arbitrary action by the union or its officers." *Finnegan*, 456 U.S. at 442. Indeed, Congress simply was not concerned with regulating the employment relationship between unions and their employees.

Union employment was not even a "peripheral concern" of the LMRDA, but rather, not a concern of Congress at all. *Rosner*, 104 Nev. at 728. For this reason, to infer preemption here based on Congress's general goal of preserving union democracy by regulating the conduct of union officers, would be in direct conflict with Nevada's existing preemption law. Nevada law regulating a matter that Congress simply was not concerned with when passing the LMRDA, cannot conflict with the purposes of the LMRDA.

B. Congress Explicitly Set Forth the Degree to Which the LMRDA Was Intended to Preempt State Law

"[S]tate law is expressly preempted when *federal law explicitly sets forth the degree to which it preempts state law*." *Dancer*, 124 Nev. at 33. As outlined above, when analyzing a novel issue of preemption such as the one raised in this appeal, this Court has clearly and consistently held courts must first analyze the express language of the act and its congressional record to appropriately determine congressional intent. *Id.* The Supreme Court has already concluded Congress was not concerned with regulating employment with unions. *Finnegan*, 456 U.S. at 442. Congress has also explicitly set forth the degree to which the LMRDA preempts state law by expressly declaring that, except where expressly

preempted, the LMRDA is not intended to preempt state law. *See* 29 U.S.C. § 523.

Where Congress has spoken on the issue of preemption that Congressional intent must be honored. *Dancer*, 124 Nev. at 33. This Court's prior rulings in labor preemption cases are consistent with the United States Supreme Court's preemption precedent. To wit, "Pre-emption may be either expressed or implied, and '*is compelled whether Congress' command is explicitly stated in the statute's language* or implicitly contained in its structure and purpose.'" Only *"[a]bsent explicit pre-emptive language,"* can a court find that preemption is implied. *Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 98-99 (1992) (citations omitted).

All United States Supreme Court preemption precedent makes clear that when Congress' command is explicitly stated in the statute's language, conformance with Congressional intent is compelled. *Id.*; *see also Fid. Fed. Sav. & Loan Ass'n v. de la Cuesta*, 458 U.S. 141, 153 (1982); *Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977); *Fmc Corp. v. Holliday*, 498 U.S. 52, 57 (1990). "*If the intent of Congress is clear, that is the end of the matter*; for the court . . . must give effect to the

unambiguously expressed intent of Congress." *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-843 (1984)(emphasis added). The principle that express language on the issue of preemption ends the preemption analysis applies to both express preemption statutes and anti-preemption savings clauses. *Id.*

Indeed, in *Holliday*, the Supreme Court turned to the plain language of the Employee Retirement Income Security Act of 1974 (ERISA) quoting both ERISA's preemption clause, and ERISA's anti-preemption savings clauses. *Id.* Preemption can only be found to the express degree Congress intended when there is express preemption language in the statutes of the act. *Holliday*, 498 U.S. at 58.

Here, Congress has expressed clear Congressional intent when passing the LMRDA to preserve state law "[e]xcept as explicitly provided to the contrary." *See* 29 U.S.C. § 523. The LMRDA includes numerous, extremely broad anti-preemption savings clauses that demonstrate clear Congressional intent to preclude the act from preempting State law except where explicitly stated to the contrary. *See* 29 U.S.C. §§ 413; 466; 483; 501; 523; 524; 524(a). Congress did not leave the LMRDA open to inferences of preemption. *Id.* This Court is bound by that explicit

Congressional intent in the LMRDA. Each of these LMRDA statutes is a savings clause that expressly preserves state laws regulating the field covered by the LMRDA. In fact, there is a broad anti-preemption clause contained in every Title of the LMRDA except Titles II and IV, regarding reporting procedures. *Id.*

Title II of the LMRDA, the reporting procedures, makes clear that suits for violations of reporting requirements of unions may only be brought by the Secretary of Labor and only in federal court. *See* 29 USCS § 440. The other Title of the LMRDA that expressly preempts state law is Title IV and covers union elections. Only the Secretary of Labor may invalidate a union election via suit in court after the union held that election. *See* 29 U.S.C. § 482. However, challenges to union elections before they are held are not preempted and may be brought in state court. *See* 29 U.S.C. § 483; *see also Ross v. Haw. Nurses' Ass'n Office & Prof'l Emples. Int'l Union Local 50*, 290 F. Supp. 3d 1136, 1142 (D. Haw. 2018).

Every other Title of the LMRDA includes a broad anti-preemption savings clause indicating an unmistakable express Congressional intent that none of the statutes preempt state law except where expressly stated otherwise. 29 U.S.C. §413 preserves "rights and remedies of any member

of a labor organization under any State or Federal law or before any court or other tribunal, **or** under the constitution and bylaws of any labor organization." 29 U.S.C.S. § 413 (emphasis added); *see also Bloom v. Gen. Truck Drivers Union, Local 952*, 783 F.2d 1356, 1362 n.13 (9th Cir. 1986); *Machinists* v. *Gonzales,* 356 U.S. 617 (1958); *Amalgamated Ass'n of St., Elec.Ry. & Motor Coach Emps. v. Lockridge*, 403 U.S. 274, 322 (1971); *Int'l Bhd. of Boilermakers v. Hardeman*, 401 U.S. 233, 247-48 (1971) ("*Congress, which preserved state law remedies by…29 U. S. C. § 413*, was well aware that even the broad language of [the LMRDA] *was more limited in scope than much state law*.") "[A] labor union is for many purposes given the rights *and subjected to the obligations of a legal entity*." *Machinists,* 356 U.S. at 619.

The next LMRDA savings clause has been cited far less frequently, 29 U.S.C. §466, and is found under Title III of the LMRDA and is the section governing trusteeships. 29 U.S.C. §466 provides that "The rights and remedies provided by this title…*shall be in addition to any and all other rights and remedies at law or in equity*." 29 U.S.C. § 466 (emphasis added); *see also Hodgson v. United Mine Workers*, 473 F.2d 118, 128 (1972); *Pignotti v. Sheet Metal Workers' Int'l Asso.*, 477 F.2d 825, 831 (8th

Cir. 1973); *Laborers' International Union v. National Post Office Mail Handlers, etc.*, 1989 U.S. Dist. LEXIS 6796, *2-3, 132 L.R.R.M. 2060.

29 U.S.C. §523 is known as the LMRDA's catchall savings clause, providing that "*[e]xcept as explicitly provided to the contrary, nothing in this Act shall reduce or limit the responsibilities of any labor organization or any officer, agent, shop steward, or other representative of a labor organization*, or of any trust in which a labor organization is interested, *under any other Federal law or under the laws of any State*, and except as explicitly provided to the contrary." 29 U.S.C. § 523 (emphasis added); *Paul v. Winco Foods*, 156 F. App'x 958, 959 (9th Cir. 2005); *Posner v. Util. Workers Union of Am.*, 47 Cal. App. 3d 970, 973 (1975) *citing* 29 U.S.C. §§ 413, 523; *Parks* v. *International Brotherhood of Electrical Wkrs.* 314 F.2d 886, 922 (4th Cir. 1963); *Tomko* v. *Hilbert* 288 F.2d 625, 629 (3d Cir. 1961); *Fulton Lodge No. 2 of Int. Ass'n of Mach. & Aero. Wkrs.* v. *Nix*, 415 F.2d 212, 215-216, fn. 7 (5th Cir. 1969).

"In 29 U.S.C. § 523(a), Congress included a *'catchall' anti-preemption provision*." *Int'l Union, Sec., Police & Fire Prof'ls of Am. v. United Gov't Sec. Officers of Am. Int'l Union*, No. 04-2242-KHV, 2004 U.S. Dist. LEXIS 26309, at *16-17 (D. Kan. Dec. 30, 2004) (emphasis

added). "The plain language of the statute reveals no express preemption of state law. If anything, it compels a conclusion that Congress did not intend to preempt state law remedies." *Id.*

Further, the statute also provides that nothing "contained in said titles (except section 505 [29 USCS § 186]) of this Act be construed to confer any rights, privileges, immunities, *or defenses upon employers*." 29 U.S.C.S. § 523(b)(emphasis added). Here, Local 1107 as an employer, which is "given the rights *and subjected to the obligations of a legal entity*" under state law (*Machinists,* 356 U.S. at 619) (emphasis added), violated Nevada's wrongful termination law by breaching Appellant's contract and proffered a preemption defense pursuant to the LMRDA. *See* A-Appdx. at 113. This statute expressly states that the LMRDA is not intended to "limit the responsibilities of any labor organization," nor is the LMRDA to be interpreted to "confer any rights, privileges, immunities, or defenses upon employers" like Local 1107. *See* 29 U.S.C. § 523(a-b). The LMRDA's express language demonstrates a clear intent to preserve all responsibilities of a labor organization under state law and was not intended to confer any defenses, such as preemption, upon employers. *Id.* The breadth of this anti-preemption savings clause makes

abundantly clear that all state laws are preserved except where expressly preempted.

"As regards the LMRDA, '*it is clear that Congress did not intend to occupy the entire field of regulation*, as the text of *LMRDA explicitly makes reference to continued viability, of state laws*.'" *Casumpang v. ILWU, Local 142*, 94 Haw. 330, 340, 13 P.3d 1235, 1245 (2000) (emphasis added) *quoting O'Hara v. Teamsters Union Local # 856,* 151 F.3d 1152, 1161 (9th Cir. 1998) (citing 29 U.S.C. § 523). Indeed, "*Congress expressly provided two broad anti-preemption provisions in the LMRDA* in response to objections initially raised by then Sen. John F. Kennedy (D-Mass.)." *Fulton Lodge No. 2 of Int'l Ass'n of Machinists and Aerospace Workers, AFL-CIO v. Nix,* 415 F.2d 212, 215 (5th Cir. 1965)(emphasis added). 29 U.S.C. § 523(a) of the LMRDA is "*an express disclaimer of pre-emption of state laws regulating the responsibilities of union officials, except where such preemption is expressly provided*." *Brown v. Hotel & Restaurant Employees Local No. 54,* 468 U.S. 491, 505-06 (1984)(emphasis added).

"The only express provisions of the LMRDA that foreclose the jurisdiction of the courts, both federal and state, are 29 U.S.C. §§ 481

through 483." *Casumpang*, 94 Haw. at 340. In *O'Hara*, the 9th Circuit Court of Appeals affirmed "the district court's summary judgment in favor of former union officials Bento and Catherine Leal in the Leal's action for indemnification arising out of an underlying age discrimination/wrongful termination action brought by former union employee Helen O'Hara against the union and the Leals." *O'Hara*, 151 F.3d at 1155.

"[T]he Supreme Court has reinforced that § 603(a) is '*an express disclaimer of pre-emption of state laws regulating the responsibilities of union officials, except where such preemption is expressly provided in the 1959 Act.*'" *Schepis v. Local Union No. 17, United Bhd. of Carpenters & Joiners*, 989 F. Supp. 511, 516 (S.D.N.Y. 1998) *quoting De Veau v. Braisted*, 363 U.S. 144, 157 (1960) (plurality opinion); *see also id.*, at 160-61 (BRENNAN, J. concurring in judgment) (LMRDA "explicitly provides that it shall not displace such legislation of the States"); *Id.*, at 164 n.4 (DOUGLAS, J. dissenting in judgment) (stating that § 603(a) specifically refers to "the fiduciary responsibilities created by § 501 of the Act and makes clear that these provisions of federal law do not pre-empt state law"). "*[T]he 1959 Act…reflects congressional awareness of the problems*

of pre-emption in the area of labor legislation, and which did not leave the solution of questions of pre-emption to inference. When Congress meant pre-emption to flow from the 1959 Act it expressly so provided." *De Veau*, 363 U.S. at 156-57. *Id* (emphasis added).

Local 1107's responsibility to honor Appellant's employment contract negotiated under Nevada law is a responsibility Local 1107, as a labor organization and employer, had under state law. Because Congress has explicitly set forth the degree to which the LMRDA preempts state law, the Court cannot infer preemption. *Dancer*, 124 Nev. at 33. The District Court granted Respondents' summary judgment motions based on a defense of preemption pursuant to the LMRDA, a matter expressly disclaimed in the LMRDA's catchall anti-preemption savings clause. *See* 29 U.S.C. § 523(a-b).

This Court has recognized "Nevada's substantial interest in protecting its citizens *from the breach of employment contracts*." *Rosner*, 104 Nev. at 728 (emphasis added). That is why Nevada wrongful termination law applies to unionized employers who enter into for-cause contracts with replacement employees during a strike. *Id.* Nevada's substantial interest in protecting citizens like Appellant from breach of

his employment contract with Local 1107 should also apply to unions like Local 1107 when those unions are acting as an employer.

The LMRDA does not expressly preempt the relationship between a union as an employer and the union's employees. As such, inferring preemption here is not permissible because Congress has clearly expressed intent to preserve all state law unless expressly preempted as indicated in the plane text of the statute. *See* 29 U.S.C. § 523(a-b); *see also* 29 U.S.C. §§ 413, 466, 483, 501, 524, 524a. Because of Congress' intent to preserve all state law unless expressly preempted, this Court may end analysis of the matter here, reverse the District Court's judgment, and direct the District Court to enter judgment in Appellant's favor.

The continued vitality of the Nevada statutes at issue here, "in light of these saving clauses logically implies the continued vitality of the state's means of enforcing those statutes, including, as here, a cause of action for wrongful discharge." *Bloom*, 783 F.2d at 1361. However, in the interest of thoroughness, Appellant will also review the legislative history of the LMRDA, which also demonstrates clear congressional intent not to preempt state laws.

The Congressional record of the LMRDA is also replete with expressions of Congressional intent to ensure the LMRDA would not preempt state laws. The Senate Majority Report includes numerous references to Congressional intent not to preempt state law:

> Section 507: Nothing in this act shall be construed to impair or diminish the authority of any State to enact or enforce its own criminal laws. Our amendment adds this section to the bill in order to preserve the authority of the States to apply their own criminal law against possible preemption by the Federal Government.

See Appdx. at 831 (S.REP. NO.187 ON S. 1555 at 94).

The Senate majority's report repeatedly expressed its intent to preserve state law. *See* A-Appdx. at 836 (S.REP.NO.187 ON S. 1555 at 104); A-Appdx. at 841 (H.REP.NO 741 ON H.R. 8342 at 4).

> RETENTION OF RIGHTS UNDER OTHER FEDERAL AND STATE LAWS
> Section 603 of the committee bill *states unequivocally that—except as explicitly provided to the contrary, nothing in this act shall reduce or limit the responsibilities of any labor organization* or *any officer, agent, shop steward, or other representative of a labor organization, or of any trust in which a labor organization is interested, under any other Federal law or under the laws of any State*, and except as explicitly provided to the contrary, nothing in this act shall take away any right or bar any remedy to which the members of a labor organization are entitled under such other Federal law or the law of any State.

See A-Appdx. at 845-846 (H.REP.NO. 741 ON H.R. 8342 at 25-26); A-Appdx. at 850-851 (H.REP.NO. 741 ON H.R. 8342 at 47-48) (emphasis added).

The discussion of the LMRDA on the floor of Congress also includes clear expressions of Congress to prevent the courts from inferring preemption in the LMRDA:

> Mr. KENNEDY. I would think that in order to prevent this amendment from preempting the field, certainly additional language would be required either in the bill or in the amendment of the Senator from Arkansas.
> …
> *Is it not true that a plenary provision guarding against preemption, such as suggested by the Senator from Arkansas, would completely guard against any such surrender of rights*? *Would it not make clear that all rights —and the rights may vary in the different States — would be preserved, but, at the same time, a field would be created, without fear of preemption*, under which by Federal law, passed by the Congress, there would be protections provided more sweeping than those provided in at least several of the States?
> …
> Mr. McCLELLAN. Has the Senator preempted the State courts in the protection of those rights, which he seeks to protect by criminal penalty?
> Mr. KENNEDY. We have not, but there is a great deal of difference between the rights we have sought to guarantee and the rights which the Senator mentions, in the entire field of the Bill of Rights.

Id. at 853-854 (Congressional Record, Senate April 22, 1959 at 5817-5818) (emphasis added).

Congress discussed the issue of preemption and intent to preserve state law *ad nauseam* when passing the LMRDA. Appellant provided the district court with the entire 2000 page legislative history of the LMRDA in searchable pdf and a declaration listing every page "preemption", the authority of state courts, and preservation of state laws, including state right to work laws, were found. *See* A-Appdx. at 824-825. The Congressional intent behind the LMRDA could not be clearer. Except as expressly provided to the contrary nothing in the LMRDA was intended to preempt state laws. *See* 29 U.S.C. §523. Congress has expressly instructed this Court in its review of preemption under the LMRDA to conclude that unless the LMRDA expressly preempts state wrongful termination law for breach of for-cause contracts between unions and their employees, no such intent to preempt may be inferred because "**If the intent of Congress is clear, that is the end of the matter**; for the court…must give effect to the unambiguously expressed intent of Congress." *Chevron*, 467 U.S. at 842-843(emphasis added).

C. Conflict Preemption Does Not Apply to This Case

The District Court's order granting Respondents' Motion for Summary Judgment is rooted entirely in conflict preemption. *See* A-

Appdx. at 113. As discussed above, conflict preemption does not apply because Congress "*did not leave the solution of questions of pre-emption to inference*. When Congress meant pre-emption to flow from the 1959 Act *it expressly so provided*." *De Veau*, 363 U.S. at 156-57(emphasis added). Conflict preemption is found by making the inference that preemption is implied.

"**Absent explicit pre-emptive language,** we have recognized at least two types of implied pre-emption: field pre-emption, where the scheme of federal regulation is 'so pervasive as to make reasonable the *inference* that Congress left no room for the States to supplement it,'" …and conflict pre-emption, where 'compliance with both federal and state regulations is a physical impossibility,' or where state law 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" *Gade*, 505 U.S. at 98-99 (citations omitted). Conflict preemption is impermissible here because the applicability of implied preemption has been expressly disclaimed by Congress in the express language of the LMRDA. Congress "*did not leave the solution of questions of pre-emption to inference*." *De Veau*, 363 U.S. at 156-57(emphasis added). The *De Veau* decision is binding United States

Supreme Court precedent. In this case, both Defendants and the District Court acknowledged there was no express preemption provision preempting state wrongful termination claims by union employees. Despite this fact, the District Court granted Defendants' summary judgment based on conflict preemption anyway pursuant to *Screen Extras Guild*. 51 Cal. 3d at 1023. The District Court's order is contrary to Congressional intent, and by logical axiom, Nevada's preemption law.

1. The Federal Precedent Relied on By the Screen Extras Guild Court Does Not Support LMRDA Conflict Preemption of Appellant's Wrongful Termination Claims.

In its 4-3 split decision, the *Screen Extras Guild* Court majority analyzed numerous United States Supreme Court Cases and one 9th Circuit case interpreting the LMRDA when crafting its novel LMRDA preemption doctrine. *Id.* at 1019, 1029 *citing Finnegan*, 456 U.S. at 432 (1982); *Sheet Metal Workers' Int'l Ass'n v. Lynn*, 488 U.S. 347, 354 (1989); *Brown v. Hotel & Rest. Emps. & Bartenders Int'l Union Local 54*, 468 U.S. 491, 501 (1984); *Bloom*, 783 F.2d at 1361. However, none of these federal cases found the LMRDA to preempt state law.

In *Finnegan*, the Supreme Court held a Business Agent as an appointed union-member employee had no claim under Title I of the

LMRDA to seek redress for discharge from union employment for supporting the opponent of the incoming union president. "*Congress simply was not concerned* with perpetuating appointed union employees in office at the expense of an elected president's freedom to choose his own staff." *Finnegan*, 456 U.S. at 442(emphasis added). In *Lynn*, the Supreme Court held an elected union official discharged by an international union trustee for speaking out against a dues increase did have a claim under Title I of the LMRDA. "[T]he potential chilling effect on Title I free speech rights is more pronounced when elected officials are discharged. Not only is the fired official likely to be chilled in the exercise of his own free speech rights, but so are the members who voted for him." *Lynn*, 488 U.S. at 355.

In *Bloom*, the 9th Circuit Court of appeals found a union business manager's state wrongful termination claim was not preempted. "[T]he Act itself explicitly saves both state criminal actions and state-imposed responsibilities of union officers from preemption by the Act." *Bloom*, 783 F.2d at 1361. "The continued vitality of the California statutes in light of these saving clauses logically implies the continued vitality of the state's means of enforcing those statutes, including, as here, a cause of action

for wrongful discharge for refusal to acquiesce or abet in the statutes' violation." *Id.* However, the *Bloom* Court declined to "decide…whether allowing a state cause of action for wrongful discharge would generally undermine this federal interest and rob the union leader of discretion needed to serve the wishes of the membership and thus the purposes of the Act" because the business manager's claim alleged he was discharged for refusing to commit a criminal act. *Id.* at 1362. "Protecting such a discharge by preempting a state cause of action based on it does nothing to serve union democracy or the rights of union members; it serves only to encourage and conceal such criminal acts and coercion by union leaders." *Id.*

Finally, in *Brown*, the United States Supreme Court held the LMRDA did not preempt state law regulating who could serve as a union officer, despite it being a matter directly covered by the statutes of the LMRDA. 29 U.S.C. § 504; *Brown*, 468 U.S. at 505-06. The *Brown* decision highlighted the difference between field preemption, and conflict preemption. *Id.* "The so-called 'local interests' exception to the pre-emption doctrine does not apply if the state law regulates conduct that is actually protected by federal law. Where, as here, the issue is one of an

asserted substantive *conflict with a federal enactment*, then the relative importance to the State of its law is not material, *since the federal law must prevail by direct operation of the Supremacy Clause of the Federal Constitution*." *Id.* at 493 (emphasis added). Because the state law at issue in *Brown* regulated the same conduct as the LMRDA, conflict preemption was at issue. *Id.* However, because of the LMRDA's "'express disclaimer of pre-emption of state laws regulating the responsibilities of union officials, except where such pre-emption is expressly provided,'" the Court could not find Congressional intent to preclude state regulation regarding who may serve as a union officer. *Id.* at 505-06 *quoting De Veau*, 363 U.S. at 157.

The *Screen Extras Guild* majority misinterpreted and misapplied the *Brown* decision, concluding that preemption is either "substantive or jurisdictional," and finding a conflict between the LMRDA and California's wrongful termination despite the latter statute clearly having nothing to do with union democracy. *Screen Extras Guild*, 51 Cal. 3d at 1039-40 (dissent). The *Screen Extras Guild* did not analyze a conflict between the state and federal statutes. Rather, the *Screen Extras Guild* majority found there was conflict between the general federal

policy favoring union democracy and enforcing California's "garden variety 'wrongful termination'" law because examining the intent behind the statutes and whether enforcement actually conflicted with federal policy on a case by case basis was "unworkable." 51 Cal. 3d at 1051.

As the dissent correctly noted, garden variety wrongful termination cases have nothing to do with the federal interest in promoting union democracy. *Id.* at 1039-40 (dissent). In such conflict preemption cases, "consideration of the respective federal and state interests cannot be ignored. Rather, the purpose and effect of **both** laws must be assessed to determine whether they "actually conflict"; i.e., whether the state law purports to regulate the same conduct that the federal law 'actually protects.'" *Id.* at 1042 (dissent) (emphasis added); *see also Bloom*, 783 F.2d at 1360. The *Screen Extras Guild* majority opinion only works when the requisite interest-based analysis required by Nevada and federal preemption law is ignored. 51 Cal. 3d at 1031, 1041-43.

Indeed, the Supreme Court has consistently "refused to apply the pre-emption doctrine to activity that…'was a **merely peripheral concern of the …Act**… [or] touched interests so deeply rooted in local feeling and responsibility that, **in the absence of compelling**

congressional direction, we could not infer that Congress had deprived the States of the power to act." *Farmer v. United Bhd. of Carpenters & Joiners*, 430 U.S. 290, 296-97 (1977) (emphasis added); *Linn* v. *Plant Guard Workers,* 383 U.S. 53 (1966) (malicious libel); *Automobile Workers* v. *Russell,* 356 U.S. 634 (1958) (mass picketing and threats of violence); *Machinists* v. *Gonzales,* 356 U.S. 617 (1958) (wrongful expulsion from union membership).

> These exceptions 'in no way undermine the vitality of the pre-emption rule." To the contrary, they highlight our responsibility in a case of this kind **to determine the scope of the general rule by examining the state interests in regulating the conduct in question and the potential for interference with the federal regulatory scheme**.

Id. (emphasis added)

As the *Bloom* Court correctly noted, "[p]reemption questions clearly require us to balance state and federal interests." *Bloom*, 783 F.2d at 1360. Only where the state and federal statutes clearly regulate the same conduct, and an irreconcilable conflict between the statutes alleged, does the interest balancing analysis become less important. *Brown*, 468 U.S. at 505-06; *Farmer*, 430 U.S. at 296-97.

Thus, the *Screen Extras Guild* majority decision is based on: (1) two Supreme Court cases addressing whether the LMRDA provides a cause

of action to a union-member for discharge from union employment (*Finnegan*, 456 U.S. at 442; *Lynn*, 488 U.S. at 355); (2) a Supreme Court case finding that the LMRDA did not preempt state law despite the state and federal statutes regulating the same conduct (*Brown*, 468 U.S. at 505-06); and (3) a 9th Circuit case finding that state public policy wrongful termination law was not preempted by the LMRDA and declining to rule on whether garden variety wrongful termination claims conflict with the federal interests in the LMRDA. *Bloom*, 783 F.2d at 1362.

In other words, the *Screen Extras Guild* majority opinion is not rooted in federal preemption law at all. The *Screen Extras Guild* Court failed to correctly analyze Congressional intent as required and incorrectly applied federal conflict preemption precedent. None of the precedent actually concluded the LMRDA preempts state wrongful termination claims. In this instance, the three dissenting judges in *Screen Extras Guild* were correct, Justice Arabian putting is best:

> The majority opinion is, as Churchill once said of Russia, "a riddle wrapped in a mystery inside an enigma." The majority proposes to hold that the wrongful discharge claims of plaintiff…conflict with, and are therefore preempted by, the …(LMRDA or Act)…*The riddle is to understand how a statute designed to hold union leaders accountable for their actions*

> *and to safeguard workers' rights can be twisted to strip workers of all means of legal redress for employment abuses*. The mystery lies in discerning the majority's analytic route to this bizarre result. The ultimate enigma, of course, *is the fact that the case presents no actual conflict between state and federal law*. Nothing in the LMRDA compels or even contemplates the unjust result reached in the majority opinion.

Screen Extras Guild, 51 Cal. 3d at 1038 (dissent) (emphasis added).

2. There Is No Actual Conflict Between Nevada's Wrongful Termination Law and The Objectives of the LMRDA.

Assuming, *arguendo,* the conflict preemption analysis is permissible in light of the clear expressed Congressional intent not to preempt state law, Respondents cannot identify any actual conflict between the LMRDA or the Congressional intent to protect union democracy and the enforcement of Nevada's wrongful termination laws in this case. In fact, to preempt Nevada's wrongful termination law here would actually undermine the federal policy of preserving union democracy because the result will be to strip Nevada union members of their democratic choice to permit their unions to enter into binding and enforceable for-cause employment contracts with their employees by invalidating such contracts state wide.

According to the Supreme Court in *Finnegan*, the appointed union-member business agent had no redress under the LMRDA because "[n]othing in the Act evinces a congressional intent to alter the traditional pattern which would permit a union president under these circumstances to appoint agents of his choice to carry out his policies." 456 U.S. at 441. The circumstances of *Finnegan* were that: (1) "the presidential election was a vigorous exercise of the democratic processes Congress sought to protect;" (2) "Petitioners -- appointed by the defeated candidate -- campaigned openly against respondent Leu, who was elected by a substantial margin;" and (3) "*The Union's bylaws, adopted, and subject to amendment, by a vote of the union membership, grant the president plenary authority to appoint, suspend, discharge, and direct the Union's business agents,* who have significant responsibility for the day-to-day conduct of union affairs." *Id* (emphasis added). Permitting the appointed business agents to sue under the LMRDA for patronage discharge from union employment was the intent of the Act and contrary to union democracy. This is such because the union constitution duly voted on by union members granted the president plenary authority to discharge business agents.

Finding LMRDA preemption pursuant to *Finnegan* is contrary to union democracy because it strips union members of their right to vote on whether to allow union officers responsible for hiring employees the right to enter into for-cause contracts and to regulate internally the treatment of union employees. *Id.* Enforcing Appellant's contracts under Nevada's wrongful termination law here fit squarely within the ruling in *Finnegan*. Here, Local 1107's members could have amended the Local 1107 constitution to grant the president plenary authority to appoint, suspend, discharge, and direct the union's employees, and preclude the president from entering into for-cause contracts. However, the Local 1107 Constitution allows a sitting president none of those powers.

Appellant's employment with L1107 did not arise from, nor was it governed by, the L1107 Constitution or the SEIU Constitution, which was the issue in *Finnegan*. 456 U.S. at 441-42; *see also* A-Appdx. at 117-192. Here, Appellant's position as "Finance and HR Director" appears nowhere in the L1107 Constitution. *See* A-Appdx. at 117-192. The provision relating to the authority of the L1107 President to hire and fire staff is Article 15. *Id.* at 160-62. This provision provides the President of L1107 the power to "[h]ire and fire…local Union's staff **in accordance**

with any applicable bargaining agreement, rules, laws and regulations regarding discrimination and pursuant to any staff-related policies adopted by the Executive Board, and it is recognized and understood that it is the authority and responsibility of the President to implement the direction of the Executive Board and the membership with respect to the daily affairs and business of the Local Union and to manage and supervise any and all staff." *Id* (emphasis added).

Here, unlike in *Finnegan*, L1107's Constitution, adopted and subject to amendment by a vote of the union membership, does not state Appellant's positions as directors of L1107 were subject to termination at-will, nor does it grant the Local 1107 President plenary power to terminate union employees, appointed or otherwise. *Id.* Rather, the L1107 President has the power to terminate staff "in accordance with any applicable bargaining agreement," rules and staff related policies passed by the Executive Board. *Id.* Rather than grant the Local 1107 President plenary authority to discharge Local 1107 employees at-will, the Local 1107 membership voted via democratic process to expressly permit the Local 1107 President to enter into for-cause bargaining agreements with

the union's employees by including language binding the President and Local 1107 to the terms of any "applicable bargaining agreement." *Id.*

The term "bargaining agreement" is found throughout the L1107 Constitution as would be expected of a union constitution. However, every other time the term "bargaining agreement" appears in the L1107 Constitution it is immediately preceded by the term "collective." *See* A-Appdx. at 123, 124, 125, 127, 128, 132, 138, 139, 140, 143, 148, 157, 160, 163, 164, 165, 167, 168, 177, 185, 188. In fact, the term "Collective Bargaining Agreement" is found twice in bullet point number "2" of Article 15, Section 1(A), just two bullet points before the relevant provision. *Id.* at 160. The omission of the word "collective" from "bargaining agreement" found Article 15's staff provision is not an error. *Id.* A for-cause employment contract negotiated pursuant to Nevada law, like Appellant's employment contract in this case, is a "bargaining agreement" that was not bargained "collectively". *See* A-Appdx. at 1-2.

Here, unlike in *Finnegan*, the Local 1107 Constitution not only contemplates Appellant's for-cause contract, it also binds present and future Local 1107 Presidents to its terms. *See* A-Appdx. at 160. What Respondents request and the District Court has done in granting them

summary judgment, is strip the Local 1107 membership of their democratic choice to authorize the Local 1107 President to enter into for-cause bargaining agreements with union employees, and compel enforcement of such contracts on both present and future Local 1107 Presidents and Executive Boards.

Enforcing Appellant's for-cause employment contract with Local 1107 in this case does not conflict with the federal policy of preserving democracy in the LMRDA. Rather, enforcement actually promotes union democracy by enforcing the will Local 1107 membership expressed when membership voted via democratic process to permit the union to enter into for-cause bargaining agreements with its employees This expressly bound the President of Local 1107 and its Executive Board to the terms of those agreements. In fact, enforcement of Appellant's for-cause contract in this case is not even inconsistent with the majority opinion in *Screen Extras Guild*, 51 Cal. 3d at 1021. The facts the *Screen Extras Guild* majority found to be pertinent to its preemption ruling were: (1) that the union was "governed by a constitution and bylaws;" (2) "The governing body of SEG is the board of directors (Board), which is elected by and from the SEG membership by secret ballot;" (3) "Power to hire

and discharge paid business representatives is vested solely with the Board;" and (4) following a union election, Smith was "terminated by the Board." *Id.* Like in *Finnegan*, the union's constitution granted the Board plenary power to terminate the business agent.

Such plenary power is not the case here. To preempt Nevada's wrongful termination law with respect to union employees in this case would strip the Local 1107 membership from making a democratic choice of whether or not the union members want to be part of a union that forces all its employees to be presumptively at-will employees, or to provide its employees with job security via for-cause contracts, and to mandate enforcement of such contracts even after a new administration takes over. It is important to stress that Congress was concerned with undemocratic conduct by union officers that undermined union member's rights to union democracy given the significant power afforded to unions by Congress:

> **Congress began to be concerned about the danger that union leaders would abuse that power, to the detriment of the rank-and-file members**. Congress saw the principle of union democracy as one of the **most important safeguards against such abuse**, and accordingly included in the LMRDA a comprehensive scheme for the regulation of union elections.

Trbovich v. UMW, 404 U.S. 528, 530-31 (1972)(emphasis added).

"Concerned about 'instances of breach of trust, corruption, disregard of the rights of individual employees, and other failures to observe high standards of responsibility and ethical conduct' *by entrenched union officials*, 29 U.S.C. § 401(b), Congress in 1959 enacted the LMRDA." *Harrington v. Chao*, 372 F.3d 52, 54 (1st Cir. 2004) (emphasis added). Congress expressed a strong federal policy of protecting union democracy from corrupt union leaders when passing the LMRDA. Nothing in the plain language of the LMRDA statutes or its legislative history indicates Congress was at all concerned or intent on altering the relationship between a union and its employees, or to federally guarantee plenary power to union officers to abuse union staff and violate state employment law. To the contrary, the plain language of the LMRDA demonstrates that Congress intended to preserve all responsibilities of unions and union officers under state law. *See* 29 U.S.C. § 523; *see also Finnegan*, 456 U.S. at 442.

Nevada wrongful termination law cannot actually conflict with the federal policy behind the LMRDA because "*Congress simply was not concerned*" with altering a union's power to terminate employees by

protecting union member's employment with their union. *Finnegan*, 456 U.S. at 442 (emphasis added). If Congress was simply not concerned with union-employer/union-employee relationship and did not intend to alter it, state law affecting the union-employer/union-employee relationship cannot conflict with LMRDA. *Id.* To wit, state law cannot conflict with an objective of Congress when state law regulates a matter that Congress was not concerned about. *Id.*

Respondents cannot identify any actual conflict between the intent and objectives of the LMRDA statutes and enforcement of Nevada's wrongful termination law. *Dancer*, 124 Nev. 33; *W. Cab Co.*, 390 P.3d at 667. "When Congress does not include statutory language expressly preempting state law, Congress's intent to preempt state law nonetheless may be implied." *Nanopierce Techs., Inc,* 123 Nev. at 371 (2007); *see also* A-Appdx. at 112:17-23. "Congress's intent to preempt state law is implied to the extent that federal law *actually conflicts* with any state law. Conflict preemption analysis *examines the federal statute as a whole* to determine whether a party's compliance with both federal and state requirements is impossible or whether, in light of the federal statute's purpose and intended effects, state law poses an obstacle to the

accomplishment of Congress's objectives." *Id.* at 371-72 (emphasis added).

The *Screen Extras Guild* holding is inconsistent with Nevada's own conflict preemption law because under Nevada law there is only an "an actual conflict when compliance with both state and federal law is physically impossible, or when a state law *obstructs the accomplishment and execution of the full purposes and objectives of Congress*" found by analyzing the actual federal and state statutes, and their purpose. *Davidson v. Velsicol Chem. Corp.*, 108 Nev. 591, 600 (1992) (emphasis added); *Nanopierce Techs., Inc.,* 123 Nev. at 371; *W. Cab Co.*, 390 P.3d at 667. Here, the District Court conducted **no analysis** of any of the federal statutes in the LMRDA, **nor did it make any conclusion** regarding those statutes' objectives, **nor explain how enforcement of Nevada wrongful termination law in this case would conflict** with a specific purpose of the federal statutes.

Instead, the District Court applied California preemption law and totally ignored Nevada's own robust precedent on federal labor preemption. The District Court did not have the discretion to ignore Nevada's clearly established conflict preemption analysis in favor of

California's novel "substantive preemption" framework that is rooted in the notion that examining an actual conflict between the state and federal statutes on a case by case basis is "unworkable." *Screen Extras Guild*, 51 Cal. 3d at 1022.

"Conflict preemption is particularly difficult to show when 'the most that can be said about the state law is that the direction in which state law pushes [behavior] is in *general tension with broad or abstract goals that may be attributed to . . . federal laws*.'" *Fitzgerald v. Harris*, 549 F.3d 46, 53 (1st Cir. 2008) (emphasis added) *see also Pac. Gas & Elec. Co.* v. *State Energy Res. Conservation & Dev. Comm'n*, 461 U.S. 190, 222-23 (1983); *Commonwealth Edison Co.* v. *Montana*, 453 U.S. 609, 634 (1981) (recognizing that "general expressions of 'national policy'" in a federal statute were insufficient to preempt state law). It is abundantly clear from the syllabus of the *Screen Extras Guild* decision the California Supreme Court chose to preempt California's wrongful termination law *as that law applied* to the appointed union business agent based on the general "federal labor policy as embodied in the LMRDA," *not* because the state law actually obstructed some specific objective of Congress found in the federal statutes. *Screen Extras Guild*, 51 Cal. 3d at 1023.

The Court's analysis is based on the supposed principle, gleaned from *Finnegan*, "that policymaking and confidential staff *are in a position* to thwart the implementation of policies and programs advanced by elected union officials and thus [could] frustrate the ability of the elected officials to carry out the mandate of their election" if they were so inclined. *Screen Extras Guild*, 51 Cal. 3d at 1029 (emphasis added).

The problem with this reasoning is that reasoning is abstract and indefinite in its finding of an actual conflict between the state and federal law. The *Screen Extras Guild* majority posits that appointed union business agents, by virtue of the authority and responsibilities of their position, *could* seek to thwart the implementation of policies and programs advanced by newly elected union officials if they so wished. However, the *Screen Extras Guild* majority failed to explain how enforcing a for-cause employment contract of a business agent actually conflicts with the LMRDA, considering that a business agent's thwarting of a supervising elected official's policy would clearly be a for-cause basis to justify termination.

Essentially, the *Screen Extras Guild* majority presumed, without explanation, that enforcing the business agent's for-cause contract

actually conflicts with the LMRDA's federal policy for preserving union democracy because the business agent could refuse to do their job. This is precisely how for-cause termination works. If an employee refuses to do their job, their employer has cause to terminate the employee. Clearly, if a business agent refused to do their job or actively undermined their elected superior's policies and programs that would subject the business agent to for-cause termination and the democracy concerns of the LMRDA would not be affected.

In contrast, an incumbent union business agent could decide not to thwart the programs and policies of new elected officials and, similarly, the LMRDA's federal policy of preserving union democracy would also not be affected because the membership's will would not be undermined. By rooting its decision in the possibility of a union employee undermining the policies and programs of elected official rather than any clear or actual obstacle to the preservation of union democracy, the *Screen Extras Guild* majority pulled the decision outside of the conflict preemption framework recognized in Nevada. Rather than apply conflict preemption based on an "actual conflict" between the federal and state statutes as

required by Nevada and federal law, the *Screen Extras Guild* majority established an entirely new facet of preemption.

Under the *Screen Extras Guild* "substantive preemption" analysis, a court may preempt state law where the mere possibility that an individual actor, by virtue of their position, can take some abstract undefined action that *could* undermine a general federal policy underlying a federal act justifies preempting the state law regardless of whether the state has a strong interest in regulating the conduct. This is clear by the Court's use of the following example when explaining its substantive preemption doctrine: "Smith, for example, *could decide* to waive certain union rules in the case of some employers." *Screen Extras Guild*, 51 Cal. 3d at 1031(emphasis added). The *Screen Extras Guild* majority decision is akin to finding preemption simply because the state law pushes behavior in a way that could result in "general tension with broad or abstract goals" of preserving union democracy commonly attributed to the LMRDA in some limited cases. *Fitzgerald*, 549 F.3d at 53; *see also Pac. Gas & Elec. Co.*, 461 U.S. at 222-23; *Montana*, 453 U.S. at 634. In other words, the *Screen Extras Guild* Court found preemption because it was possible for the business agent to undermine union

democracy, not because enforcement of the state statute actually conflicted with federal policy.

In Nevada, when "[c]ompliance with both laws is not impossible, and the [state law] does not impede successfully implementing federal" statutes and their goals, conflict preemption does not apply. *Dancer*, 124 Nev. at 33. The dissenting judges in *Screen Extras Guild* highlight the contradiction between the majority's opinion and the traditional conflict preemption analysis, which requires the Court to identify an actual conflict between enforcement of the state law and the goals of the federal statutes, which the majority dismissed apparently because they believed conducting the proper analysis might be difficult or "unworkable." *Screen Extras Guild*, 51 Cal. 3d at 1051.

When analyzing conflict preemption "[t]he very task we are called upon to perform is to discern the specific federal interests Congress intended to protect by its enactment and to determine whether the state law at issue 'relates to' those purposes so as to significantly interfere with their achievement. The United States Supreme Court has not, to my knowledge, crafted a new category of preemption based on the 'workability' of differentiating federal and state interests." *Id.*

Here, Nevada "employment law does not interfere or conflict with any legitimate federal interest in the freedom of elected union officials to choose their own aides" because, like "California, the employment relationship is *presumptively* 'at-will.'" *Screen Extras Guild*, 51 Cal. 3d at 1036-37 (dissent); *see also Chavez v. Sievers*, 118 Nev. 288 (2002). Nevada "provides a remedy for discharge from employment only if the termination contravened a valid express or implied agreement for job security" (*D'Angelo v. Gardner*, 107 Nev. 704 (1991)), the termination "stemmed from a pernicious form of discrimination" (NRS 613.330), "or violated some other clear and fundamental public policy." *Wiltsie v. Baby Grand Corp.*, 105 Nev. 291 (1989); *D'Angelo*, 107 Nev. at 704.

Members of a union like the members of Local 1107 and SEIU could easily vote to include a provision in their union constitution or bylaws that expressly precludes the president or other officer responsible for hiring employees from entering into for-cause contracts under state law. Absent such a provision, if a union president has the power to enter into a for-cause employment contract with union employees, like the contract at issue in this case, democracy concerns are not implicated by

enforcement of the contract because the union members permitted it via democratic process.

Under existing Nevada preemption law the District Court was not permitted to forego Nevada's established conflict preemption analysis in lieu of the California Supreme Court's new category of "substantive preemption" based on the "workability" of identifying state and federal interests underlying the statutes at issue. *Davidson*, 108 Nev. at 600; *Nanopierce Techs., Inc.,* 123 Nev. at 371; *W. Cab Co.*, 390 P.3d at 667. The District Court was required to apply Nevada's existing conflict preemption doctrine. Failure to do so is clear error and this Court should reverse.

3. The Screen Extras Guild Analysis Does Not Apply to Appellant, An Unelected, Unappointed, Salaried Employee Terminated by An Unelected SEIU Trustee.

The *Screen Extras Guild* decision does not apply to the facts of this case. First, the *Screen Extras Guild* majority was concerned with protecting the right of newly elected union officials to appoint their administrators. "This '*ability of an elected union president* to select his own administrators,' said the court, is *consistent* with the 'overriding'

federal goal of union governments which are responsive to popular will." *Screen Extras Guild*, 51 Cal. 3d at 1035 (emphasis added).

Appellant was not terminated by an elected union official. Appellant was terminated by an unelected SEIU International Trustee. *See* A-Appdx. at 9, 29:24-30:6. Deputy Trustee Martin Manteca breached Appellant's for-cause contract bargained under Nevada law when Manteca defied the will of the Local 1107 membership. This will of Local 1107 was manifested when Local 1107 approved its Constitution and imposed upon the Local 1107 President and the union a duty to "[h]ire and fire…the Local Union's staff in accordance with any applicable bargaining agreement." *See* A-Appdx. at 160. The will of the Local 1107's membership was for Local 1107 to adhere to the terms of contracts with union staff. *Id.*

Appellant never expressed any opposition to the trusteeship, the incoming unelected trustee, nor the trustee's plan or policies. *See* A-Appdx. at 42:17-21. Nothing in *Screen Extras Guild, Finnegan,* or *Lynn* indicates any intent to afford an unelected union trustee the rights as an elected official. Indeed, *Lynn* demonstrates a clear contrary intent. 488 U.S. at 354.

Upon imposition of the trusteeship, Local 1107's right to democratic governance was suspended. *See* A-Appdx. at 6, 40:1-42:1. Local 1107's elected officers were removed, its constitution supposedly suspended, and a trustee appointed to run the union without input from the Local 1107 membership. *Id.* It is impossible for enforcement of Appellant's contract to conflict with Local 1107's democracy when democracy was suspended. Nothing in *Screen Extras Guild* leads to the conclusion that the holding applies to an unelected official like the SEIU Trustees at issue in this case. Because democracy was not a concern at all in this case, even if the *Screen Extras Guild* substantive workability preemption were a viable and recognized preemption doctrine under Nevada law, it would still not apply here.

Moreover, Appellant was not an *appointed* administrator of Local 1107. Rather, Appellant *was hired* as a salaried employee. The *Screen Extras Guild* plaintiff was a union business agent appointed by the union's Executive Board. "A union's business agent, who was not a union member and whose management position was appointive, was discharged by the union's board of directors." *Screen Extras Guild*, 51 Cal. 3d at 1020. "In our view, allowing even 'garden-variety' wrongful

termination actions to proceed from the discharge of *appointed* union business agents by *elected* union officials would implicate the union democracy concerns of the LMRDA." *Screen Extras Guild*, 51 Cal. 3d at 1027 (emphasis in the decision). The fact the *Screen Extras Guild* majority emphasized the words "*appointed* union business agent," and "*elected* union officials" should not be overlooked. *Id.* Clearly, the California Supreme Court intended the decision apply only to appointed administrators discharged by elected union officials. *Id.* Appellant was a hired, salaried, Finance Director terminated by an unelected union trustee.

Finally, Appellant was not in a position with Local 1107 with the kind of bargaining related decision-making authority that is contemplated by the *Screen Extras Guild* decision. *Id.* at 1031. According to the *Screen Extras Guild* majority, because "Union business agents 'have significant responsibility for the day-to-day conduct of union affairs,'" are "at the forefront of implementing union policy, linking the union member and the upper echelons of the union bureaucracy," respond to worker grievances, and make strategic bargaining decisions, strike decisions, and decisions relating to enforcement of union contracts,

allowing wrongful termination claims by business agents supposedly affected union democracy. *Id.* at 1031.

Appellant's position as Financial Director is nothing like the union business agent position at issue in *Screen Extras Guild* and *Finnegan*. All of Appellant's decisions were supervised by the Local 1107's President and Executive Board. As such, even if the novel substantive workability preemption doctrine established in *Screen Extras Guild* were not squarely inconsistent with Nevada's conflict preemption law, it still would not be applicable to the specific facts of this case. As such, reversal is warranted.

II. THE DISTRICT COURT ABUSED IT'S DISCRETION AND COMMIT CLEAR ERROR BY IGNORING NEVADA LAW AND THE EVIDENCE WHEN GRANTING RESPONDENT SEIU SUMMARY JUDGMENT ON THE ALTER-EGO THEORY OF LIABILITY.

"[T]he requirements for application of the alter ego doctrine [are] (1) The corporation must be influenced and governed by the person asserted to be its alter ego. (2) There must be such unity of interest and ownership that one is inseparable from the other; and (3) The facts must be such that adherence to the fiction of separate entity would, under the circumstances, sanction a fraud or promote injustice." *Frank McCleary*

Cattle Company v. Sewell, 317 P. 2d 957, 959 (Nev. 1957). "'It is not necessary that the plaintiff prove actual fraud. It is enough if the recognition of the two entities as separate would result in an injustice.'" *Id. citing Gordon v. Aztec Brewing Company*, 33 Cal.2d 514, 522; 203 P.2d 522, 527.

"Under the principle of corporate separateness, the actions of a subsidiary company are generally not attributable to its parent corporation." *Viega GmbH v. Eighth Jud. Dist. Ct.*, 328 P. 3d 1152, 1162 (Nev. 2014) *citing Dole Food Co. v. Patrickson*, 538 U.S. 468, 474, 123 S.Ct. 1655, 155 L.Ed.2d 643 (2003). "But this principle may yield where a subsidiary is so dominated by its parent that the two corporations are, as a practical matter, the same entity or "alter egos," and recognizing their corporate separateness would sanction fraud or promote injustice." *Id. citing Publicker Indus., Inc. v. Roman Ceramics Corp.*, 603 F.2d 1065, 1069 (3d Cir.1979); *Polaris Indus. Corp. v. Kaplan*, 103 Nev. 598, 601, 747 P.2d 884, 886 (1987). "By extension, jurisdiction over a parent corporation can be established on an alter ego theory where there is such unity of interest and ownership that in reality no separate entities exist and failure to disregard the separate identities would result in fraud or

injustice." *Am. Tel. & Tel. Co. v. Compagnie Bruxelles Lambert*, 94 F.3d 586, 591 (9th Cir.1996).

Alter ego liability has been routinely found by other Courts in the union context. In *International Union of Op. Eng. v. JA Jones Const. Co.*, 240 S.W.2d 49, 54 (Ky. Ct. App. 1951), the Court "conclude[d] that the Local Union is the International Union itself in action," noting the two entities had a "common constitution," the international "possesses and dominates its constituent parts," the "locals have very little autonomy," and the reserved powers of the parent body permitted it to approve or disapprove the local's actions. *Id.*

Under the Labor Management Relations Act ("LMRA") cases for breach of a collective bargaining agreement ("CBA") - an employment contract, the United States Supreme Court has recognized that a suit can be maintained for "a breach-of-contract claim under LMRA § 301(a) against Local as a CBA signatory, *and against IBT as Local's agent or alter ego*." *Granite Rock v. Intern. Broth. of Teamsters*, 561 U.S. 287 (2010)(emphasis added). The federal courts have also held an International Union a proper party in National Labor Relations Board ("NLRB") cases when the local union is under trusteeship and the claim

of liability arose during the trusteeship. *Pioneer Inn Associates v. NLRB*, 578 F.2d 835, 837-38 (9th Cir. 1978).

Here, according to Respondents Local 1107's Constitution was suspended upon imposition of the trusteeship. *See* A-Appdx. at 6. As such, Local 1107 and SEIU had a common Constitution. It is undisputed that while under trusteeship SEIU International possessed and dominated Local 1107's operations. Indeed, the SEIU Constitution itself places the SEIU International trustees in charge of all a trusteed local union's affairs and the SEIU Constitution makes clear that all actions of the trustees are supervised and directed by the SEIU International President:

> The Trustee shall report on the affairs/transactions of the Local Union or affiliated body to the International President. The Trustee and all of the acts of the Trustee shall be subject to the supervision and direction of the International President.

See A-Appdx. at 212.

In fact, the SEIU International Chief of Staff stated in her declaration in support of Respondents' Counter-Motion for Summary Judgment that upon imposition of the trusteeship over Local 1107 the Local 1107 Constitution and Bylaws were suspended and the SEIU

Constitution governs the local. *See* A-Appdx. at 271:26-272:1-25. Local 1107's governing body was also suspended and "President Henry appointed Defendant Luisa Blue as a Trustee of SEIU Local 1107, and Defendant Martin Manteca as Deputy Trustee of SEIU Local 1107," who controlled Local 1107's day to day operations, hiring, training, supervising and firing, and reported directly to the SEIU International President. *Id.* There was also direct evidence that the SEIU International Chief of Staff herself was directly involved in Appellant's termination. *See* A-Appdx. at 12-14.

The Nevada Supreme Court has recognized a parent corporation may be held accountable for its agent subsidiary. *Viega GmbH*, 328 P.3d at1158-59 *citing In re Amerco Derivative Litig.*, 252 P.3d 681, 695 (2011). Appellant made a prima facie showing of alter ego liability by presenting "evidence demonstrating 'agency or control'" by SEIU, the parent organization, over Local 1107. *Id.*

"Generally, an agency relationship is formed when one person has the right to control the performance of another." *Id.*; Restatement (Second) of Agency § 14 (1958). Appellant established all three elements of alter-ego liability in this case: (1) Local 1107 was being influenced and

governed by SEIU because the Trustees actions were directly supervised and directed by the SEIU President; (2) there was unity of interest and ownership of Local 1107 by SEIU during the trusteeship, as they were governed by the same constitution, controlled and directed by SEIU International and its employees making one essentially inseparable from the other; and (3) The facts here are such that adherence to the fiction of a separate entity would, under the circumstances, sanction a fraud or promote injustice because it would impose liability on Local 1107's membership for actions of SEIU International. *Bonanza Hotel Gift Shop v. Bonanza No. 2*, 95 Nev. 463, 466 (1979).

When ruling on the alter-ego issue at the hearing on the Motions for Summary Judgment the District Court ignored the facts and evidence by disregarding the plain language in the SEIU International Constitution stating that all actions of the trustees were "subject to the supervision and direction of the International President." *See* A-Appdx. at 212. According to the Court, despite this clear language in the SEIU Constitution, the District Court's position was:

> THE COURT: And so what? I mean if the International had said you can't fire them, you have to rehire them, the Local wouldn't have had to do it. They have no control. So I'm just trying to –

> …
> THE COURT: -- figure out what's –
> …
> THE COURT: I said who cares? I mean, the mere fact of reporting something, this is what's happened here locally –
> …
> THE COURT: -- because we're under –
> …
> THE COURT: -- trusteeship, we just had to fire some employees. So is there any indication that the International ever said -- overruled any decision of these trustees? Any decision that they made –
> MR. COHEN: No.
> THE COURT: -- because they were reporting up what they were doing, because they were under trusteeship.
> MR. COHEN: Zero evidence, Your Honor. Zero. The Plaintiffs have developed zero evidence of any data it had control of the Local Union by the International Union.

See A-Appdx. at 280:10-281:4.

The Court's analysis ignores the fact the Trustee over Local 1107 was the SEIU International Executive Vice President, Luisa Blue. *See* A-Appdx. at 004. As such, Local 1107 and SEIU International had common officers in control of operations. *Id.* The Deputy Trustee, Martin Manteca, was also an SEIU International employee appointed by the SEIU International President. *See* A-Appdx. at 41:18-28. Thus, SEIU International employees and officers, appointed by the SEIU International President to control Local 1107's day to day operations, whose actions were subject to supervision and direction of SEIU

International, terminated Appellant's for-cause contracts. Under this evidence, alter-ego liability was established. The Court simply ignored the fact the agents of SEIU International and whose actions were directly supervised by the SEIU International President were the individuals who breached Appellant's contract.

Instead, the Court again ignored Nevada law on alter-ego liability. Disregarding SEIU"s common control over Local 1107, the common constitution governing the two entities, the common officers and SEIU employees making the decisions for SEIU and Local 1107, and treated their actions as separate from SEIU International unless the SEIU International President expressly stated in a document or email that "the International says, sure fine." *See* A-Appdx. at 282:5-6. Further, there was clear evidence that SEIU International did affirmatively approve of and direct the Trustees terminations of the Local 1107 staff.

First, there was an email from the SEIU International President Mary Kay Henry to the SEIU International Chief of Staff expressly stating that the SEIU International Executive Vice President and Local 1107 Trustee, Luisa Blue, was "on the program to get rid of staff quickly. She is documenting the staff." *See* A-Appdx. at 13. In response,

Fitzpatrick states that Blue was "getting rid of the managers who are not a fit with the new direction of the local…Positive steps. They need to taper themselves on the rest for a variety of reasons. Documenting is good." *Id.* There is direct evidence of an SEIU International "program" for directing trusteeships imposed by the SEIU International President to "get rid of staff quickly." *Id.* That program involved the Trustees "getting rid of the managers," but waiting to terminate the lower level staff "for a variety of reasons," and that "[d]ocumenting" the lower level staff for the purpose of terminating them was "good." *Id.*

Further, in an email between SEIU International Chief of Staff Fitzpatrick, SEIU International Executive Vice President, and Local 1107 Trustee Blue, Fitzpatrick instructed Blue to run Local 1107 staffing decisions through the office of the SEIU International President:

> Luisa, I know you're speaking to Michelle so let me know if anything changes in that Otherwise, do either of you have ideas from other local union staff? *If so, please let me know* and I'd like MK to help loosen things up to get staff on a longer term loan (or Luisa, *depending on the local you may be the better person but let's talk first). It's important to let me know before going to other locals* to make the ask-- MK's policy is that needs to know when we are suggesting asking other locals to support a trusteed local, *just so it's aligned with other moving parts between her and SEIU locals.* In general, it's a good way to filling gaps; *the process should just move through exec office.*

See A-Appdx. at 12. (emphasis added)

Then SEIU International Chief of Staff Fitzpatrick proceeds to discuss with SEIU International Executive Vice President and Local 1107 Trustee Blue the termination of Local 1107's staff, including Appellant, and how Blue should replace him:

> *I hear that the separation conversation with Dana was uneventful and that Richard's was more dramatic but ultimately okay.* Hopefully, things get smoother from here (with the exception of Peter). You may want to think about doing his meeting off-site, and either bringing him his personal things or telling him that they will be delivered to his house same day /shortly thereafter. He will no doubt be disruptive when you meet -- Steve knows him well so I'm sure you've got the low down on his usual tactics. *He's also no doubt been in touch with Cheri and Dana and will know that others have been let go.*
> …
> As I mentioned, *in other trusteeships, we've had success with using temp to hire arrangements for professional financial/ accounting staff.* Is that something you are thinking to do here? Again, I'm not sure what Richard's role was and whether it needs replacing, *but until you tell me otherwise, I'm assuming it's a hole in the staffing structure you're trying to fill* (not just patch).

Id. (emphasis added)

The email between SEIU International Chief of Staff Fitzpatrick and SEIU International Executive Vice President and Local 1107 Trustee Blue, when looked at together with the email between SEIU

International President Henry and SEIU International Chief of Staff Fitzpatrick, clearly demonstrates that SEIU International has a trusteeship "program." *See* A-Appdx. at 13. That program involves getting "rid of [local union] staff quickly," "documenting staff" that cannot be immediately terminated and having SEIU International replace that staff with staff from other SEIU local unions. *See* A-Appdx. at 12. The trustees also use "temp[orary]" employees to replace finance and accounting staff, like Appellant, to "patch," or temporarily fill in the "gaps" created by the trusteeship "program to get rid of staff quickly." *See* A-Appdx. at 12-13.

Despite this clear evidence presented in the briefs, the District Court ignored the evidence and sided with Respondents stating there was: "No evidence that their marching instructions were to get in there, clean house, fire everybody." *See* A-Appdx. at 285-86; *see also* A-Appdx. at 115:17-25. There was, without question, evidence the trustees were sent into Local 1107 to implement the trusteeship "program" of SEIU International, which involved getting rid of staff quickly, and replacing them with trusted employees from other local unions, or temp employees as a patch to fill in the gaps because it was SEIU International President

"M[ary] K[ay Henry]'s policy" that trusteed local union staffing decisions "move through [SEIU International] exec[utive's] office" so that such staffing decisions are "aligned with other moving parts between [SEIU International President Mary Kay Henry] and SEIU locals." *See* A-Appdx. at 12.

Respondents presented no evidence to rebut this unmistakably clear evidence that SEIU International was making the staffing decision for Local 1107 and the trustees were given marching orders to terminate staff quickly. Instead, Respondents simply told the District Court that no such evidence existed and the District Court granted Respondents' motion for summary judgment. As such, based both on the District Court's misapplication of Nevada alter ego liability law, and complete disregard for the evidence, this Court should reverse summary judgment in SEIU International's favor and direct the Court to enter summary judgment on the alter-ego claim on behalf of Appellant.

CONCLUSION

For the reasons set forth above, Appellant requests that this Court GRANT his appeal, and reverse the District Court's Order granting Respondents summary judgment.

Respectfully submitted,

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CERTIFICATE PURSUANT TO NRAP 28.2

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

> [X] This brief has been prepared in a proportionally spaced typeface using Microsoft Word in Century Schoolbook; or
>
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I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

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Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or

interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada.

Dated this **24th** day of **August 2020**.

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on the 24th day of August, 2020. Electronic service of the foregoing document was made in accordance with the Master Service List as follows:

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