IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT CLARKE, an individual, Appellant, v. SERVICE EMPLOYEES INTERNATIONAL UNION, a nonprofit cooperative corporation; and CLARK COUNTY PUBLIC EMPLOYEES ASSOCIATION, A/K/A SEIU 1107, a non-profit cooperative corporation, Respondents.	Supreme Court No. 80520 District Case No. A764942
SERVICE EMPLOYEES INTERNATIONAL UNION, an unincorporated association; and NEVADA SERVICE EMPLOYEES UNION A/KA CLARK COUNTY PUBLIC EMPLOYEES ASSOCIATION, SEIU 1107, a non-profit cooperative corporation, Appellants, v. DANA GENTRY, AN INDIVIDUAL; and ROBERT CLARKE, an individual, Respondents.	Supreme Court No. 81166 District Case No. A764942

APPENDIX OF SERVICE EMPLOYEES INTERNATIONAL UNION AND CLARK COUNTY PUBLIC EMPLOYEES ASSOCIATION A/K/A SEIU LOCAL 1107, VOLUME 6

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APPENDIX, VOLUME 6

ALPHABETICAL APPENDIX

01/03/20	Notice of Entry of Order Granting Summary Judgment	1153
07/16/19	Offer of Judgment	354
01/03/20	Order Granting Summary Judgment	1147
09/26/18	Plaintiffs' Motion for Partial Summary Judgment, pages 1-3, and 11	28
01/29/20	Plaintiffs' Opposition to Motion for Attorneys' Fees	1251
11/01/18	Plaintiffs' Reply ISO Partial Summary Judgment, pages 1-2, 18	324
03/19/18	SEIU Answer	23
04/11/19	SEIU Answer to First Amended Complaint	349
01/16/20	SEIU Motion for Attorneys' Fees	1193
10/15/18	SEIU Opposition to Plaintiffs' Motion for Partial Summary Judgment	32
02/05/20	SEIU Reply ISO Attorneys' Fees	1310
10/29/19	SEIU's Motion for Summary Judgment	357
11/22/19	SEIU's Reply in support of Summary Judgment	1068
11/22/19	Supplemental Declaration of Jonathan Cohen ISO Summary Judgment	1091
02/18/20	Transcript of Hearing	1331

DATED: October 7, 2020

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10. Organization Chart from The Urban Law Firm

The organization chart provided to the Executive Board on August 31, 2016, was revised to show duties and reporting obligations to membership and the Executive Board. No other modified chart was provided that included Mr. Nguyen. See **Exhibit 8**.

11. SEIU Newsletter - $15,000.00 not approved by Executive Board

Information was provided on this newsletter, charge for preparation, or Executive Board approval. This issue was discussed at length at the September 2016 Executive Board meeting. See **Exhibit 9**.

12. Alleged comingling of funds

See explanation on No. 7 above. Questionable charges by Ms. Gentry and Mr. Nguyen were identified from credit card and financial records. See also, explanation in Item No. 2 above.

13. Directing staff not to provide information

A letter from President Mancini to staff was provided. See **Exhibit 10**.

14. Nurse representation

No evidence on this issue was produced.

15. Proposed committees

The Executive Board is assigned the right to assign/create committees under the SEIU Local 1107 Constitution and ByLaws.

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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

SERVICE EMPLOYEES INTERNATIONAL UNION'S AND MARY KAY HENRY'S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

Date: December 3, 2019
Time: 9:30 a.m.
Ctrm: 10D

Introduction

Plaintiffs Dana Gentry and Robert Clarke ("Plaintiffs") do not dispute two essential points: They did not work for defendants Service Employees International Union ("SEIU") or SEIU President Mary Kay Henry ("Henry), and they did not have employment contracts with SEIU or Henry. Nor do they point to a single piece of evidence that demonstrates that either SEIU or Henry had any role in, let alone directed, their terminations from defendant Service Employees International Union, Local 1107 ("Local 1107"), their former employer. Summary judgment for SEIU and Henry is therefore proper on all of the claims against them in the first amended complaint.

Hoping the Court will ignore the absence of evidence tying SEIU or Henry to their terminations, Plaintiffs now argue that SEIU and Henry are alter-egos of Local 1107. However, Plaintiffs were required to plead this theory of liability in their first amended complaint, and they did not. Having failed to plead it, they waived it. And even if they did not waive it, they have nonetheless failed to create a genuine issue of material fact regarding the putative alter-ego status of SEIU, Henry, and Local 1107.

Last, regardless of any of the above, Plaintiffs offer no convincing reason that would overcome federal preemption of their claims. A consistent body of caselaw supports the conclusion that the sort of breach of contract, wrongful termination, and related claims Plaintiffs have brought conflict with the federal Labor Management Reporting and Disclosure Act ("LMRDA"). Because Plaintiffs were former policymaking and confidential personnel at Local 1107, the LMRDA authorized the Local 1107 Trustees' termination of their employment. That is especially so in the face of the undisputed evidence of Plaintiffs' hostility to the Local 1107 Trustees and the trusteeship itself.

In short, SEIU and Henry respectfully submit that summary judgment should be granted in their favor on all claims against them in the first amended complaint.

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Argument

I. Plaintiffs' Have Waived their Alter-Ego Argument by Failing to Raise it in the First Amended Complaint.

Plaintiffs do not dispute that they did not have employment contracts with either SEIU or Henry, an essential, and yet missing element of their breach of contract claims. Plaintiffs also do not dispute that they did not work for either SEIU or Henry, another essential, and yet missing element of their wrongful termination claims. Instead, at the eleventh hour, Plaintiffs now argue that SEIU and/or Henry were alter-egos of Local 1107, their former employer. Pltffs' Opp. at 6-18.

Plaintiffs' alter-ego argument is waived. A complaint must "set forth sufficient facts to demonstrate the necessary elements of a claim for relief so that the defending party has adequate notice of the nature of the claim and relief sought." *Western States Constr. v. Michoff*, 108 Nev. 931, 936 (1992). A plaintiff therefore "cannot oppose summary judgment on grounds not in issue under the pleadings." *Kimura v. Decision One Mortg. Co., LLC*, Case No. 2:09-cv-01970-GMN-PAL, 2011 WL 915086, at *4 (D. Nev. Mar. 15, 2011); Nev. Civ. Prac. Manual 19.08[1] ("[T]he party opposing summary judgment may not do so on the basis of unpled allegations or claims appearing for the first time in the opposition to summary judgment.").

In particular, courts have ruled that a plaintiff may not oppose summary judgment by raising an alter ego theory that is not pleaded in the operative complaint. *See Marshall v. Anderson Excavating & Wrecking Co.*, 901 F.3d 936, 942-43 (8th Cir. 2018) (holding that district court erred in applying alter ego theory of liability where "plaintiffs never pleaded an alter ego theory in their complaint"); *Garcia v. Village Red Rest. Corp.*, Case No. 15-civ-62 92 (JCF), 2017 WL 1906861, *5-6 (S.D.N.Y. 2017) (rejecting alter ego argument where not raised in pleadings); *Travelers Cas. And Sur. Co. v. Dormitory Authority-State of New York*, 735 F. Supp. 2d 42, 81-82 (S.D.N.Y. 2010) (holding that party may not "resist summary judgment by relying on alter-ego theory" where not raised in pleadings; noting "summary judgment is not a procedural second chance to flesh out inadequate pleadings"). Plaintiffs did not raise the alter-ego claim in their complaint or in their first amended complaint. Having failed to plead it, they

are barred from raising it as a basis to resist summary judgment.

The only time Plaintiffs raised an alter-ego argument was in their reply in support of their motion to amend the complaint, *but the Court denied their motion for leave to amend as to SEIU and Henry*. And despite making the argument in support of their motion to amend, Plaintiffs did not plead their alter-ego claim *in their first amended complaint*. As a result, SEIU and Henry were not on notice that Plaintiffs intended to litigate the alter-ego status of SEIU, Henry, and Local 1107 in connection with the claims in the first amended complaint. Plaintiffs therefore cannot defeat summary judgment on the basis of a theory of liability not pled in the first amended complaint. Because alter ego liability is the only basis for holding SEIU and Henry liable for the contract and wrongful termination claims in the first amended complaint, summary judgment in favor of SEIU and Henry is appropriate.[1]

II. Even If Plaintiffs Did Not Waive the Alter-Ego Theory, They Fail to Create a Genuine Issue of Material Fact Regarding the Alter-Ego Status of SEIU, Henry, and Local 1107.

Even if Plaintiffs are permitted to raise their alter-ego claim to defeat summary judgment, despite having waived it by not pleading it in their complaint or first amended complaint, they have failed to create a genuine issue of material fact regarding the alleged alter-ego status of SEIU, Henry, and Local 1107.

Plaintiffs' alter-ego argument relies primarily on two contentions. First, they contend that SEIU and Local 1107 are alter-egos by virtue of SEIU's imposition of a trusteeship over Local 1107. Pltffs' Opp. at 10-11. Second, they contend that two email chains among former Local 1107 Trustee Luisa Blue, then-SEIU Deputy Chief of Staff Deirdre Fitzpatrick, and SEIU President Mary Kay Henry establish that SEIU "expressly directed the terminations of Plaintiffs' employment with Local 1107." Pltffs' Opp. at 13. As discussed below, these contentions do not create a genuine issue of material fact that SEIU, Henry, and Local 1107 are alter-egos.

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[1] The only remaining claim against SEIU and Henry is intentional interference with contractual relations. That claim is addressed in Section III, *infra*.

A. Alter-Ego Standard.

"[T]he corporate cloak is not lightly thrown aside and . . . the alter ego doctrine is an exception to the general rule recognizing corporate independence." *Truck Ins. Exchange v. Palmer J. Swanson, Inc.*, 124 Nev. 629, 635 (2008). Thus, "[u]nder the principle of corporate separateness, the actions of a subsidiary company are generally not attributable to its parent corporation." *Viega GmbH v. Eighth Judicial Dist. Court*, 130 Nev. 368, 383 (2014) (Pickering, J., concurring).

Instead, "[i]t must be shown that the subsidiary corporation is so organized and controlled, and its affairs are so conducted that it is, in fact, a mere instrumentality or adjunct of another corporation." [2] *Bonanza Hotel Gift Shop, Inc. v. Bonanza No. 2*, 95 Nev. 463, 466 (1979). The "'essence' of the alter-ego doctrine is to 'do justice' whenever it appears that the protections provided by the corporate form are being abused." *LFC Marketing Group, Inc. v. Loomis*, 116 Nev. 845-46 (2000).

> The elements for finding an alter ego, which must be established by a preponderance of the evidence, are: '(1) the corporation must be influenced and governed by the person asserted to be the 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 corporate fiction of a separate entity would, under the circumstances, sanction [a] fraud or promote injustice.' [*Polaris Indus. Corp. v. Kaplan, 103 Nev. 598, 601*]. Further, the following factors, though not conclusive, may indicate the existence of an alter ego relationship: (1) commingling of funds; (2) undercapitalization; (3) unauthorized diversion of funds; (4) treatment of corporate assets as the individual's own; and (5) failure to observe corporate formalities. *See id.* at 601, 747 P.2d at 887. We have

[2] Plaintiffs appear to argue that the U.S. Supreme Court's decision in *Carbon Fuel Co. v. United Mine Workers of Am.*, 444 U.S. 212 (1979), establishes the appropriate standard for evaluating SEIU's alter-ego liability. Pltffs' Opp. at 8-9. *Carbon Fuel* has no application here. That case addressed a distinct issue, *i.e.*, agency liability of an international union under 29 U.S.C. § 185 for a wildcat strike of a local union. *See Carbon Fuel*, 444 U.S. at 213. By contrast, Plaintiffs' claims are based on state law, not federal law. Hence, alter-ego status must be evaluated under Nevada law. Moreover, Plaintiffs contend that SEIU is Local 1107's alter-ego, not that Local 1107 was SEIU's agent, a distinct legal concept addressed in *Carbon Fuel*.

emphasized, however, that "[t]here is no litmus test for determining when the corporate fiction should be disregarded; the result depends on the circumstances of each case." *Id.* at 602, 747 P.2d at 887.

Loomis, 116 Nev. at 904. As shown below, Plaintiffs fail to demonstrate the existence of a genuine issue of material fact regarding the alter-ego status of SEIU, Henry, and Local 1107.

B. Plaintiffs Fail to Show SEIU or Henry Influenced or Governed Local 1107.

Plaintiffs have failed to create a genuine issue of material fact regarding the first alter-ego factor, namely, that Local 1107 was "influenced and governed" by SEIU or Henry. *Loomis*, 116 Nev. 896, 904.

The mere fact that the Local 1107 Trustees were appointed by SEIU – the primary pillar of Plaintiffs' alter-ego argument, *see* Pltffs' Opp. at 12-13 – does not make the Local 1107 Trustees "influenced and governed" by SEIU or Henry. *The opposite is true as a matter of law*. "A trustee assumes the duties of the local union officer he replaces and is obligated to carry out the interests of the local union and *not the appointing entity*." *Campbell v. Int'l Bhd. of Teamsters*, 69 F. Supp. 2d 380, 385 (E.D.N.Y. 1999) (emphasis added); *see also Dillard v. United Food & Commercial Workers Union Local 1657*, Case No. CV 11-J-0400-S, 2012 WL 12951189, at *9 (N.D. Ala. Feb. 9, 2012) ("As a matter of law, a trustee steps into the shoes of the local union's officers, assumes their rights and obligations, *and acts on behalf of the local union*.") (emphasis added), *aff'd*, 487 F. App'x 508 (11th Cir. 2012); *see also Perez v. Int'l Bhd. of Teamsters, AFL-CIO*, Case No. 00-civ-1983-LAP-JCF, 2002 WL 31027580, at *5 (S.D.N.Y. Sep. 11, 2002) (same); *Fields v. Teamsters Local Union No. 988*, 23 S.W.3d 517, 525 (Tx. Ct. App. 2000) (same). In fact, at her deposition SEIU Chief of Staff Dierdre Fitzpatrick described the role of a trustee in precisely these terms: "The trustees stand in the shoes of the local and they make all decisions for the local around staffing." Supplemental Declaration of Jonathan Cohen ("Supp. Cohen Decl."), Ex. A, Depo. Tr. at 34:19-22.

Hoping to overcome this point, Plaintiffs note that the SEIU Constitution provides that an appointed trustee "shall report on the affairs/transactions of the Local Union . . . 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." Pltffs' Opp. at 15 (*see* Fitzpatrick Appx. at 22 (SEIU Const., Art. VI, § 7(b))). However, in the corporate context, a parent company <u>*always has some measure of control over a subsidiary*</u>. *See Viega GmbH v. Eighth Jud. Dist. Ct.*, 130 Nev. 368, 378 (2014) ("In the corporate context, however, the relationship between a parent company and its wholly owned subsidiary necessarily includes some elements of control."); *MGM Grand, Inc. v. Eighth Judicial Dist.*, 107 Nev. 65, 68-69 (1991) (holding that Disney's Nevada subsidiaries' contacts could not be imputed to Disney for purposes of exercising jurisdiction where "Disney exercises no more control over its subsidiaries than is appropriate for the sole shareholder of a corporation"); *In re W. States Wholesale Natural Gas Antitrust Litigation*, Case No. 2:03-CV-01431-PMP-PAL, 2009 WL 455653, *12 (D. Nev. Feb. 23, 2009) (rejecting alter-ego status between parent and subsidiaries, noting that "[the parent's] promulgation of general policies for its subsidiaries is consistent with its indirect investor status").

Furthermore, the mere fact that an international union has the right to supervise or control the acts of a trustee is not evidence that <u>*it actually exercises control over the day-to-day operations of a local union under trusteeship*</u>. That principle was recognized in *Herman v. United Bhd. Of Carpenters and Joiners of Am., Local Union No. 971*, 60 F.3d 1375 (9th Cir. 1995), where the court rejected the argument that an international and local union were a single employer of purposes of establishing liability under the federal Age Discrimination in Employment Act or Nevada law, even though under the international union's constitution it "ha[d] the power to impose trusteeships over locals and *control their affairs*." *Id*. at 1383 (emphasis added). As the court observed, such features "are common in union constitutions and do not sufficiently evidence the type of inter-relationship between the day-to-day operations of the International and the local union" required to establish they were a single employer.[3] *Id*. at 1383-84. That same reasoning applies here: That the SEIU Constitution reserves to the SEIU

[3] The four factors the Ninth Circuit considered in evaluating single employer status were "1) inter-relation of operations; 2) common management; 3) centralized control of labor relations; and 4) common ownership or financial control." *Herman*, 60 F.3d at 1383.

president some degree of supervision over the conduct of a trustee does not mean that SEIU or Henry actually exercised influence and control over the Local 1107 Trustees.

The decision in *Fields v. Teamsters Local Union No. 988*, 23 S.W. 3d 517 (Tx. Ct. App. 2000), is also instructive. There, an international union placed a local union under trusteeship, and the international president had authority "to involve himself in staffing decisions of the local union during trusteeship." *Id*. at 525. The court also found that, although the trustee was in charge of the local union, he was "under the direction of the [international] General President." *Id*. Even so, the court held that the two unions were not a "single employer" for purposes of liability for the plaintiff's termination under the state's discrimination statutes.[4] *See id.* at 524-25. Among other things, the court cited the principle that "a trustee assumes the duties of the local union officer he replaces and is obligated to carry out the interests of the local union and not the appointing entity," and found that the trustee "made the final decisions regarding employment matters related to [the plaintiff]." *Id*. at 525.

As in *Fields*, the evidence is uncontradicted that the Local 1107 Trustees, not SEIU or Henry, made the decision to terminate Plaintiffs. *See* Declaration of Martin Manteca in Support of Summary Judgment, ¶ 5; Declaration of Luisa Blue in Support of Summary Judgment, ¶ 5. Equally important, there is no evidence that SEIU or Henry exercised day-to-day control over the affairs of Local 1107. *See In re W. States Wholesale Natural Gas Antitrust Litigation*, 2009 WL 455653, *12 (rejecting alter ego status where "Plaintiffs present no evidence that [the parent] played a role in the day-to-day conduct [of its subsidiaries] operational business."). To the contrary, SEIU Chief of Staff Fitzpatrick's testimony is undisputed that "[t]he trustees of the local union make determinations about how to handle all of their contracts and staffing." Supp. Cohen Decl., Ex. A, Depo Tr. at 60:6-8; *see also id.*, Ex. A, Depo. Tr. at 33:18-20 ("The International union doesn't advise or direct in [any] way around staff contract and management of the decision-making around staff."); *id*., Ex. A, Depo Tr. at 48:16-17 ("It is our practice not to advise locals, period. Locals employ staff."); *id*.. Ex. A, Depo Tr. at 60:6-8 ("The trustees of the

[4] The court in *Fields* evaluated the "single employer" issue by applying the same four factors applied by the court in *Herman*. *See* note 3, *supra*; *Fields*, 23 S.W. 3d at 524.

local union make determinations about how to handle all of their contracts and staffing."); *id.*, Ex. A, Depo. Tr. at 96:14-18 ("[T]he Local 1107 trustees are charged with the responsibility of running the local union. And the International union does not monitor the activities of trustees in running the local union."). *Missing from Plaintiffs' opposition is any evidence to the contrary, i.e., that SEIU or Henry exercised day-to-day control over the Trustees' administration of Local 1107, let alone that they made the decision to terminate the Plaintiffs*.

The most Plaintiffs have mustered in support of their belated alter-ego claim are two email chains, neither of which creates a genuine issue of material fact regarding whether Local 1107 was influenced or governed by SEIU. *See Truck Ins. Exchange*, 124 Nev. at 636 (rejecting alter-ego status between firms where no evidence "that the Nevada firm was influenced and governed by the California firm"). The first email chain shows that *the day after* the Trustees terminated Plaintiffs' employment with Local 1107, then-Local 1107 Trustee Luisa Blue reported the terminations to then-SEIU Deputy Chief of Staff Fitzpatrick, and that Fitzpatrick, in turn, reported the terminations to SEIU President Henry.[5] *See* Pltffs' Opp. at 13 (citing Pltffs' Appx, Ex. 12, 759-60). But the mere fact that Blue reported the terminations to SEIU *after Plaintiffs were terminated* is insufficient to overcome the presumption of corporate separateness and establish alter-ego status between SEIU and Local 1107. *See In re W. States Wholesale Nat. Gas Antitrust Litigation*, 2009 WL 455653, *12 (rejecting alter-ego status between parent and subsidiary despite evidence that parent "monitor[ed] [subsidiaries'] performance" and that subsidiary engaged in "daily reporting" to parent); *cf. Viega GmbH*, 130 Nev. at 380 (holding that regular reporting by subsidiary to parent did not establish agency relationship but instead "merely show the amount of control typical in a parent-subsidiary relationship").

Plaintiffs note that in the same email chain SEIU President Henry wrote to then-SEIU

[5] Plaintiffs grossly mischaracterize this email chain, contending it shows that "[t]he SEIU Defendants also expressly directed the terminations of Plaintiffs' employment with Local 1107." Pltffs' Opp. at 13. In fact, the email chain begins with then-Trustee Blue reporting to then-SEIU Deputy Chief of Staff Fitzpatrick that *she had already terminated the Plaintiffs*. Pltffs' Appx., Ex. 12 at 760 ("So far so good 8 days into the trusteeship. 2 dirs., Financial Dir. And Communications Dir. were let go yesterday . . . ."). Nothing in that email shows that SEIU "expressly directed" Plaintiffs' terminations from Local 1107.

Deputy Chief of Staff Fitzpatrick stating that then-Local 1107 Trustee Blue was "on the program to get rid of staff quickly. She is documenting the staff." Pltffs' Opp. at 13 (citing Appx., Ex. 12 at 759). Fitzpatrick responded to Henry, "[t]hey are getting rid of managers who are not a fit with the new direction of the local . . . Positive steps. They need to temper themselves on the rest, for a variety of reasons. Documenting is good." *Id*. *Again, missing from these emails, which are from the day after Plaintiffs' terminations, is any evidence that SEIU influenced or governed the decision of the Local 1107 Trustees to terminate Plaintiffs.* Instead, this is an email conversation *internal to SEIU*, not with the Local 1107 Trustees, regarding the status of the recently imposed trusteeship.

As Fitzpatrick explained in her deposition when asked about this email with SEIU President Henry:

> THE WITNESS: This was several days after the imposition of the trusteeship, and I believe that what I was referring to here was [Trustee] Luisa [Blue]'s report that she had let staff go and my sort of general awareness that they were running a process of interviewing all of the staff to learn about sort of what the work in progress was and to verify that they were willing to work under the direction of the trustees.

Supp. Cohen Decl., Ex. A, Depo. Tr. at 39:19-40:4. Fitzpatrick further testified as follows regarding the email:

> Q. Okay. Yeah, what did you mean in your email?
>
> A. Yeah. What I meant in my e-mail was that I was conveying what I learned from Luisa [Blue], the trustee of the local, about the course they were on to assess the staff and to ensure that they could run the local union. I thought it was a positive development that they were assessing the staff and making progress on getting the function of the local union back up, period.

Supp. Cohen Decl., Ex. A, Depo. Tr. at 41:7-14. When asked whether there is an SEIU "program to get rid of staff when a trusteeship was imposed," Fitzpatrick responded, "No, there is not." Supp. Cohen Decl., Ex. A, Depo. Tr. at 29:5. Finally, when asked what she meant in her email when she said, "Documenting is good," Fitzpatrick testified as follows:

Q. What do - - what's the documenting part? What are you documenting? Documenting for the purpose of termination, or - -?

A. I don't - - I wouldn't read it that way. I read it as the conversations with staff to learn everything about what they're doing, what pressing work is coming up, what the scope of their work is, and confirming their willingness to cooperate under the direction of the trustees.

Supp. Cohen Decl., Ex. A, Depo. Tr. at 41:18-42:1.[6]

In short, this first email chain does not create a genuine issue of fact regarding SEIU's control or influence over Local 1107. It simply reflects, as one would expect, a report from the Local 1107 Trustees about the state of affairs following imposition of the trusteeship, and an internal conversation between SEIU's then-Deputy Chief of Staff and its President regarding the Trustees' actions, including their decision to terminate the Plaintiffs. Such evidence is insufficient to establish alter-ego status between SEIU and Local 1107. *See Truck Ins. Exchange*, 124 Nev. at 636; *In re W. States Wholesale Nat. Gas Antitrust Litigation*, 2009 WL 455653, *12; *cf. Viega GmbH*, 130 Nev. at 380.

Finally, Plaintiffs point to a second email from Fitzpatrick to then-Local 1107 Trustees Blue and Manteca. Pltffs' Opp. at 13 (citing Pltffs' Appx., Ex. 12, 758). *As with the other email chain, nothing about this email chain establishes that SEIU played any role in the day-to-day affairs of Local 1107, that Local 1107 was influenced or governed by SEIU, or that SEIU directed Plaintiffs' terminations*. In her email, Fitzpatrick informs the Trustees that if they are going to ask other SEIU-affiliated local unions to loan staff to Local 1107 during the trusteeship, to let Fitzpatrick, then-SEIU Deputy Chief of Staff, know beforehand. In relevant part, the email from Fitzpatrick states as follows:

Otherwise, do either of you have ideas from other local union staff? If so, please let me

[6] As discussed in SEIU's motion for summary judgment, the Local 1107 Trustees met with Local 1107 staff following imposition of the trusteeship to learn about their job duties and to confirm their loyalty to the Trustees. SEIU Motion at 9:2-6. The Trustees also asked staff to complete a written questionnaire regarding their job duties. Appx. to Cohen Decl. at 33-34 (Depo. Tr. 183:17-184:15).

know and I'd like [SEIU President Henry] 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 – [SEIU President Henry's] policy is that need 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 fill gaps; the process should just move through exec office.

Pltffs' Appx., Ex. 12, 758. In her deposition, Fitzpatrick explained as follows about this email:

Q. If you'll look in the middle of that first paragraph, it says MK's policy is that needs to go - - or that needs to know when we are suggesting asking other locals to support a trusteed local. What's that policy?

A. There is no written policy. This is probably more - - would have been better put as a practice, that Mary Kay's operating need is to know when we're making asks for a trusteeship of other local unions within SEIU, because the International union is in all kinds of transaction with other local unions and she needs to be aware when we're asking local unions to commit capacity to a trusteeship in the event that it pulls against another priority for that local.

Supp. Cohen Decl., Ex. A, Depo. Tr. at 49:9-18. Fitzpatrick was then asked if "the SEIU International is involved in the staffing of a trusteed local then," and she responded,

THE WITNESS: I would say involved only in the broadest sense, that a local in trusteeship very often identifies urgent operating needs and areas of expertise and staffing shortfalls and asks the International union if we can hep locate people who could go in and work under the trustees' direction in the local. And in that way, the International sometimes reaches to local unions to say do you have two field organizers who could come in for two weeks and work with the trustees in Local ABC.

Supp. Cohen Decl., Ex. A, Depo. Tr. at 50:5-14.

As Fitzpatrick's testimony makes clear, this second email chain reflects, at most, that SEIU wanted to be aware if the Local 1107 Trustees were asking other SEIU-affiliated local

unions to loan staff to "work under the trustees' direction." But evidence that a subsidiary entity regularly reports to a parent corporation, and that parent corporation monitors the subsidiary entity's operation, does not establish they are alter-egos. *See In re W. States Wholesale Nat. Gas Antitrust Litigation*, 2009 WL 455653, *12; *cf. Viega GmbH*, 130 Nev. at 380. Again, this email chain fails to show that SEIU played any role in the day-to-day affairs of Local 1107, that Local 1107 was influenced or governed by SEIU, or that SEIU directed Plaintiffs' terminations.

In sum, Plaintiffs have failed to create a genuine issue of fact regarding the first alter-ego factor.

C. Plaintiffs Fail to Show SEIU or Henry Shared a Unity of Interest with Local 1107.

Plaintiffs have utterly failed to create a genuine issue of material fact that SEIU or Henry shared a unity of interest and ownership with Local 1107, the second alter-ego factor. *See Bonanza, No. 2*, 95 Nev. at 466.

In support of their argument, Plaintiffs point to the fact that SEIU imposed a trusteeship over Local 1107, removed its officers, suspended its bylaws, and appointed trustees. Pltffs' Opp. at 12-13. But, as noted earlier, the Local 1107 Trustees "assume[d] the duties of the local union officer [they] replace[d] and [were] obligated to carry out the interests of the local union and *not the appointing entity*." *Campbell*, 69 F. Supp. 2d at 385 (emphasis added); *Dillard*, 2012 WL 12951189, at *9; *Perez*, 2002 WL 31027580, at *5; *Fields*, 23 S.W.3d at 525. Thus, *as a matter of law*, the trusteeship itself is not evidence that there was a unity of interest between SEIU, Henry, and Local 1107. The contrary conclusion Plaintiffs urge would turn this well-established legal principle on its head.

Moreover, Plaintiffs have failed to present an iota of evidence regarding the traditional unity of interest factors. Plaintiffs do not point to evidence that there was any comingling of funds between SEIU and Local 1107; that SEIU and Local 1107 had the same operations; that SEIU and Local 1107 had the same headquarters;[7] that SEIU and Local 1107 had the same bank

[7] To the contrary, Local 1107 is headquartered in Las Vegas, while SEIU is headquartered in Washington, D.C. Fitzpatrick Decl., ¶¶ 3, 5. SEIU has its own officers and executive board that

accounts; or that SEIU or Local 1107 failed to observe corporate formalities. *See Truck Ins. Exchange*, 124 Nev. at 637 (affirming finding that no alter-ego relationship existed where, *inter alia*, purported alter-ego maintained separate federal tax identification numbers; possessed independent business license; tax license; staff; phone line; insurance coverage; office sublease); *Bonanza No. 2*, 95 Nev. at 467 (affirming finding that no alter-ego relationship existed where "separate corporate books and accounts were kept," separate directors' meetings where held; "corporations had independent headquarters, separate business responsibilities and operations"). Nor do Plaintiffs offer a shred of evidence or a single argument regarding SEIU President Henry's alleged unity of interest or ownership with Local 1107.

Put simply, Plaintiffs have failed to create a genuine issue of material fact that there was a unity of interest between SEIU, Henry, and Local 1107, the second alter-ego factor.

D. Plaintiffs Fail to Show Adherence to Separate Corporate Forms Would Sanction a Fraud or Promote Injustice.

As with the second alter-ego factor, Plaintiffs have completely failed to demonstrate a genuine issue of material fact that adherence to separate corporate forms would sanction a fraud or promote injustice, the third alter-ego factor. *See Bonanza, No. 2*, 95 Nev. at 466; *see DFR Apparel Co., Inc. v. Triple Seven Promotional Prods., Inc.*, Case No. 2:11-cv-01406-APG-CWH, 2014 WL 4828874, *3 (D. Nev. Sep. 30, 2014) ("Even where two companies appear to be heavily intertwined, alter ego liability applies only if adherence to corporate forms would result in injustice.").

Plaintiffs' sole argument regarding this factor is that it would sanction a fraud and promote injustice to make the Local 1107 membership pay for the actions of the Trustees. Pltffs' Opp. at 13-14. There is nothing fraudulent or unjust about this.[8] The Trustees were acting on behalf of Local 1107, not SEIU, during the trusteeship. *Campbell*, 69 F. Supp. 2d at 385.

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govern its affairs. *See id.*, ¶ 3; *see also id.*, Ex. A (SEIU Constitution and Bylaws, Arts. VII-XI).

[8] If anything, imposing liability on SEIU, the international union with which Local 1107 is affiliated, would be a greater injustice. *See Loomis*, 116 Nev. at 905-06 (recognizing "that there are other equities to be considered in the reverse piercing situation – namely, whether the rights of innocent shareholders or creditors are harmed by the pierce").

In any event, Plaintiffs' argument fundamentally misconstrues the basis of the third alter-ego factor. "In cases finding the injustice prong met, there is usually evidence proving the controlling entity somehow used the alter-ego company to commit tortious conduct, hide assets, or prevent debtors from collecting their debts." *DFR Apparel Co., Inc.*, 2014 WL 4828874, *3; *In re W. States Wholesale Natural Gas Antitrust Litigation*, 2009 WL 455653, at *12 (rejecting alter-ego claim where plaintiff failed to show "fraudulent intent or perpetration of a fraud through use of the corporate structure on the parent's part"). *Here, there is no evidence whatsoever that the trusteeship was merely a ruse to commit tortious conduct or perpetuate fraud*. In fact, the United States District Court for the District of Nevada rejected the argument that the trusteeship was imposed in bad faith, and instead concluded that SEIU imposed the trusteeship for a lawful, and critically important, purpose – because, among other reasons, "board meetings were marked by yelling and near physical confrontations that impacted the board's ability to function," the union was "chaotic and dysfunctional," "the Local was not meeting its obligations to members," and "[m]embers and staff were filing charges against each other, calling the police on each other, and taking out temporary protective orders against each other."[9] *Garcia v. Serv. Employees Int'l Union, et al.*, Case No. 2:17-cv-01349-APG-NJK, 2019 WL 4279024, *13 (D. Nev. Sep. 10, 2019).

Finally, Plaintiffs have failed to demonstrate that Local 1107 would be unable to satisfy an eventual judgment in favor of the Plaintiffs. *Cf. Lorenz v. Belito, Ltd.*, 114 Nev. 795, 809 (1998) (holding that plaintiffs satisfied third alter-ego factor where "[i]f the Strubles are not held personally liable for Beltio, Ltd.'s debt, the Lorenzes will never have a chance to receive the rent or other payments they deserve because Betlio, Ltd. filed for bankruptcy").

/ / /

[9] Citing to SEIU's emergency trusteeship order, Plaintiffs repeatedly claim that the trusteeship was imposed in part "for the purposes of preventing disruption of contracts." *See, e.g.*, Pltffs' Opp. at 10 (citing Fitzpatrick Appx. at 204). Based on that contention, they claim it is somehow inconsistent with the emergency trusteeship order to sanction the Trustees' termination of their employment, despite their employment agreements. This argument is specious. The purpose of the trusteeship, as found by the District Court and as recited in the trusteeship order, was to prevent Local 1107 from slipping any further into chaos and dysfunction, not to protect the Plaintiffs' employment with Local 1107. *See Garcia*, 2019 WL 4279024, *12-14.

In sum, Plaintiffs have failed to establish a genuine issue of material fact regarding the third alter-ego factor.

III. Plaintiffs Have Failed to Create a Genuine Issue of Material Fact Regarding their Claim for Interference with Contract.

Plaintiffs have failed to create a genuine issue of material fact regarding their claim against SEIU and Henry for intentional interference with contractual relations.

Plaintiffs' argument in support of their claim is somewhat confusing. First, they argue that the "Trustees are the individuals who interfered with Plaintiffs' contract." Pltffs' Opp. at 18:8-9. But the Trustees acted on behalf *of Local 1107*, not SEIU or Henry. *Campbell*, 69 F. Supp. 2d at 385; *Dillard*, 2012 WL 12951189, at *9; *Perez*, 2002 WL 31027580, at *5; *Fields*, 23 S.W.3d at 525. Hence, taking Plaintiffs at their word that the Local 1107 Trustees were the ones that interfered with their contracts, their claim is really one against Local 1107 for breach of contract, not a claim against SEIU or Henry.

However, Plaintiffs also contend that SEIU "was promoting and recommending that the Trustees terminate Plaintiffs' employment with Local 1107 to further the new program, and was recommending replacing Plaintiffs with employees the SEIU International was recommending." Pltffs' Opp. at 18:22-25. Again, Plaintiffs rely on the email chain discussed in Section II.B, *supra*. Pltffs' Opp. at 18 (citing Pltffs' Appx., Ex. 12, 758-60).

As already discussed at length above, *nothing in those emails demonstrates that SEIU or Henry recommended the Plaintiffs' terminations*, let alone that they took any concrete action "intended or designed to disrupt the contractual relationship" between Local 1107 and Plaintiffs. *See J.J. Indus., LLC v. Bennett*, 119 Nev. 269, 274 (2003). To the contrary, the emails show that then-Local 1107 Trustee Blue reported to SEIU about the terminations of Plaintiffs *after they occurred*. Hence, as a matter of timing alone, the emails fail to demonstrate that SEIU or Henry did anything designed to disrupt Plaintiffs' contracts.

Furthermore, aside from Blue's report to Fitzpatrick, the emails reflect only an internal conversation between SEIU about the fact of Plaintiffs' terminations and the status of the trusteeship. Indeed, the emails fail to show that SEIU or Henry *did anything at all to disrupt*

Plaintiffs' employment with Local 1107. Put simply, nothing in the emails creates a genuine issue of material fact that SEIU or Henry engaged in any "intentional acts designed to disrupt the contractual relationship" between Plaintiffs and Local 1107. *See J.J. Indus., LLC*, 119 Nev. at 274.

Finally, Plaintiffs' attempt to distinguish the decisions in *Pape v. Local 390 of Int'l Bhd. of Teamsters*, 315 F. Supp. 2d 1297, 1318 (S.D. Fla. 2004), and *Dean v. General Teamsters Union, Local No. 406*, No. G87–286–CA7, 1989 WL 223013 (W.D. Mich. Sept. 18, 1989), fails. In each case, as here, the international union constitution authorized an appointed trustee to terminate the plaintiffs. *See* SEIU Motion for Summary Judgment, at 19-20. In each case, as here, the plaintiff's claim to a contractual right of continued employment with the local union was subject to the right of the international union to appoint a trustee who could terminate that employment. *See id*. Thus, as in both *Pape* and *Dean*, Plaintiffs' intentional interference with contract claims fail.

In sum, Plaintiffs fail to present even a scintilla of evidence that SEIU or Henry took some action with "an improper objective of harming Plaintiff[s] or wrongful means that in fact caused injury to Plaintiff[s'] contractual" relationship with Local 1107. *See Nat'l Right to Life Political Action Comm. v. Friends of Bryan*, 741 F. Supp. 807, 815 (D. Nev. 1990).

IV. LMRDA Preemption Applies Here.

In their opposition to Local 1107's motion for summary judgment, Plaintiffs argue that LMRDA preemption does not apply here for two main reasons. Since their arguments apply equally to SEIU's and Henry's LMRDA preemption defense, SEIU and Henry address the arguments here.

A. The LMRDA Protects an Unelected Union Leader's Ability to Terminate Appointed Staff.

Plaintiffs argue that LMRDA preemption does not apply because they were terminated by an appointed trustee, not an elected officer. SEIU and Henry have already addressed this argument at length in their opposition to Plaintiffs' motion for partial summary judgment. *See* SEIU Opposition to Plaintiffs' Motion for Partial Summary Judgment, at 5-9. They therefore

refer the Court to that briefing instead of repeating it here.

B. Plaintiffs Were Policymaking and Confidential Staff Subject to LMRDA Preemption.

Plaintiffs argue that they were not the type of appointed employees that are subject to LMRDA preemption. Pltffs' Opp. to Local 1107's Motion for Summary Judgment ("Pltffs' Local 1107 Opp."), at 20-27. Their arguments are not convincing.

1. *Screen Extras Guild* Applies to Managers Like Plaintiffs.

First, Plaintiffs argue that the holding of *Screen Extras Guild, Inc. v. Superior Court*, 51 Cal. 3d 1017 (1990), only applies to policymaking or confidential employees, not "management employees."[10] Pltffs' Local 1107 Opp. at 20.

That argument is easy to refute: As the Court held in *Screen Extras Guild*, "Congress intends that elected union officials shall be free to discharge *management* or policymaking personnel." 51 Cal. 3d at 1028 (emphasis added); *see also id.* at 1031-32 (noting that "Smith herself acknowledges . . . that she was considered a management employee"). Ultimately, however, the distinction between policymaking and managerial personnel is a semantic one; managers of an organization are by definition policymaking personnel.

2. Undisputed Evidence Establishes Plaintiffs' Policymaking Responsibilities.

Next, despite having already admitted that they were managers, Plaintiffs argue that they were not policymaking personnel. Pltffs' Local 1107 Opp. at 21. Their argument rests primarily on two points: They note that their positions are not defined by the Local 1107 or SEIU constitutions, and they claim that an organizational chart from Local 1107 shows their lack of policymaking authority. *Id.*

Whether their positions are defined or identified by either union's constitution is irrelevant. Indeed, Plaintiffs fail to cite a single case identifying that as a consideration in evaluating LMRDA preemption in this context. Rather, the key consideration here is the role

[10] This is a key point for Plaintiffs, since they already conceded in earlier briefing to this Court that they were managers at Local 1107. *See* SEIU Motion for Summary Judgment, at 25, 27.

Plaintiffs played in carrying out the programs and policies of the union's leadership. *See Screen Extras Guild, Inc.*, 51 Cal. 3d at 1031. SEIU and Henry have already briefed at length the Plaintiffs' significant responsibility in that regard, and refer the Court to that briefing. *See* SEIU Motion for Summary Judgment, at 25-29.

Nor does the organizational chart reveal anything about their duties and responsibilities. That is especially so, since Plaintiffs do not dispute *any* of the substantial evidence that they had significant responsibility in connection with implementing Local 1107 policy, *which is based on, inter alia, their own sworn deposition testimony, their detailed job descriptions which they admitted were accurate, and their own written descriptions of their job duties following implementation of the trusteeship.*[11]

3. Plaintiffs Were Also Confidential Employees.

Plaintiffs also contend that neither of them was a confidential employee within the meaning of *Screen Extras Guild* and its progeny. Pltffs' Local 1107 Opp. at 21-25.

The undisputed facts belie that claim.[12] Given the nature of their job duties, it is obvious

[11] Adding to the mountain of evidence against the Plaintiffs on this point, former Local 1107 Executive Board member (and current Local 1107 President) Brenda Marzan testified as follows regarding Gentry's policymaking responsibility: "But let me be clear on this. As the communications director, [Gentry] would have had complete authority to bring information to [former Local 1107 President] Cherie Mancini that would have been used the help create policy. [¶] So as management, she would have had the ability to influence policy." Supp. Cohen Decl., Ex. B, Depo. Tr. 237:9-14. When asked, "But did she [Gentry] make policy?" Marzan responded, "*That is making policy. If you're influencing policy, you are helping make policy*." *Id*., Ex. B, Depo. Tr. 237:15-17 (emphasis added).

[12] Plaintiffs do not dispute that Gentry, the union's Director of Communications, was responsible for, *inter alia*, devising and implementing all of the union's strategic external and internal communications plans regarding collective bargaining, political, and other vital matters, advising the union's leadership about strategic communications, acting as the union's public spokesperson, and advising the union about its legislative strategy. SEIU Motion at 4-6. Plaintiffs likewise do not dispute that Clarke, the Finance and Human Resources Director, *inter alia*, had access to and oversaw all of the union's finances, including all of its bank accounts; oversaw payroll and accounts payable and receivable; led in budget planning; was responsible for legal compliance regarding human resources matters; coordinated the union's annual audit; oversaw the union's tax and Department of Labor reporting obligations; maintained all of the union's personnel records; and oversaw personnel administration. SEIU Motion at 6-7. Clarke also played a key role providing financial advice to Local 1107 in connection with its collective bargaining negotiations with its staff, and participating in disciplinary hearings for staff. *See*

that each of them, in addition to being policymaking employees, were also confidential employees. *See Thunderburk v. United Food and Commercial Workers' Union*, 92 Cal. App. 4th 1332, 1343 (2001) (holding that union's executive secretary was confidential employee within meaning of *Finnegan v. Leu*, 456 U.S. 431 (1982), where she "had access to confidential union information, which, if disclosed, could have thwarted union policies and objectives"); *Burrell v. Cal. Teamsters, Public Professional and Medical Employees Union, Local 911*, Case No. B166276, 2004 WL 2163421, *4 (Cal. Ct. App. 2004) (holding that union office manager was confidential employee within meaning of *Finnegan* where she "had access to confidential information regarding the Union, its members and officers, and its financial and legal matters"); *Hodge v. Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees & Helpers Local Union 695*, 707 F.2d 961, 964 (7th Cir. 1983) (holding that union secretary was confidential employee within meaning of *Finnegan* where she had "wide-ranging . . . access to sensitive material concerning vital union matters").[13]

4. The Caselaw Plaintiffs Rely On is Inapposite.

Plaintiffs also rely on several inapposite cases in support of their argument that LMRDA preemption does not apply here. Pltffs' Local 1107 Opp. at 24-25.

First, *Shuck v. Int'l Ass'n of Machinists and Aerospace Workers, Dist. 837*, Case No. 4:16-CV-309 RLW, 2017 WL 908188 (E.D. Mo. March 7, 2017), is a case about removal on the basis of complete preemption, not the defense of conflict preemption. And while the decision disagrees with the holding of *Screen Extras Guild*, SEIU and Henry are not aware of a single other case that has cited it as authority. It is therefore of limited persuasive authority here.

Supp. Cohen Decl., Ex. C, Depo. Tr. at 50:5-53:3.

[13] Plaintiffs cite *NLRB v. Henricks Cty. Rural Elec. Membership Corp.*, 454 U.S. 170 (1981), and related cases as support for their argument that a confidential employee is one who acts in a confidential capacity "to persons who exercise managerial functions in the field of labor relations." Pltffs' Local 1107 Opp. at 22-23. As an initial matter, *Hendricks* addresses a distinct issue from LMRDA preemption – it concerns what type of individual is considered an employee under §2(3) of the National Labor Relations Act. *See id.* at 177. In any event, even if the Court were to consider that test here, Plaintiffs easily satisfy it, *since they themselves were managers overseeing sensitive, confidential matters related to the union's collective bargaining and related strategic goals.*

Second, Plaintiffs cite *Lyons v. Teamsters Local Union No. 961*, 903 P.2d 1214 (Ct. App. Colo. 1995), which addressed the termination of a union secretary and bookkeeper. But the court expressly noted that "there has been no contention or showing that [the plaintiff] was instrumental in establishing the Union's administrative policies or that her firing was related to her views on union policy." *Id*. at 1220. By contrast, Plaintiffs, not mere clerical employees but former Directors at Local 1107, were regularly engaged in management-level decision making in connection with their respective duties.

Third, Plaintiffs cite *Young v. Int'l Bhd. of Locomotive Engineers*, 114 N.E.2d 420 (Ct. App. Ohio 1996). But that case is more helpful to SEIU and Henry than it is to Plaintiffs, *since the court acknowledged that whether the action was preempted depended on "whether the appellee was a policy-making or confidential employee*." *Id*. at 504.[14] Citing *Lyons, supra*, the court noted that "[a] purely clerical employee, such as a secretary/bookkeeper, is not the type of employee to whom preemption applies." *Id*. Here, however, neither Plaintiff was a "purely clerical employee;" each was a manager and Director with significant policymaking responsibility.

5. Plaintiffs Ignore Evidence of Their Disloyalty.

Last, Plaintiffs simply ignore the undisputed evidence of their disloyalty to the Local 1107 Trustees, perhaps hoping the Court will too.

Such evidence should not be ignored. That evidence is a key reason that LMRDA preemption exists – to prevent policymaking employees from undermining the administration of the union. *See Screen Extras Guild, Inc.*, 51 Cal. 3d at 1029. Given the widespread dysfunction and chaos that plagued Local 1107 prior to the trusteeship, *see Garcia*, 2019 WL 4279024, *13, the Local 1107 Trustees had every reason for wanting to replace the former management-level staff of the union. Federal law gave them that right.

/ / /

[14] *Young* reflects that Ohio, yet another jurisdiction in addition to California, Montana, Michigan, and New Jersey, *See* SEIU Motion for Summary Judgment, at 24, & n.5-7, has applied the reasoning of *Screen Extras Guild*.

V. SEIU President Henry Must Be Dismissed from This Case.

Aside from any earlier point in this brief, *there is no reason that SEIU President Henry belongs in this case*.

Plaintiffs do not dispute that Henry had no contract with them. Plaintiffs do not dispute that Henry did not employ them. In fact, Plaintiffs have failed to present evidence that Henry had a single contact or communication with them, or took any action relevant to this lawsuit, other than imposing the trusteeship over Local 1107 at the request of Local 1107's former executive board and pursuant to her undisputed authority under the SEIU Constitution.

It therefore appears that the only reason Plaintiffs have sued SEIU President Henry is because she is the top elected official of SEIU, not because she personally did anything to subject her to liability. As a result, she should be dismissed from this lawsuit.

Conclusion

For the foregoing reasons, SEIU and Henry respectfully request summary judgment in their favor on all claims against them in the first amended complaint.

DATED: November 22, 2019

ROTHNER, SEGALL & GREENSTONE

CHRISTENSEN JAMES & MARTIN

By */s/ Jonathan Cohen*
JONATHAN COHEN
Attorneys for Service Employees International Union and Mary Kay Henry

CERTIFICATE OF SERVICE

I am an employee of Rothner, Segall & Greenstone; my business address is 510 South Marengo Avenue, Pasadena, California 91101. On November 22, 2019, I served the foregoing document described as **SERVICE EMPLOYEES INTERNATIONAL UNION'S AND MARY KAY HENRY'S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** on the interested parties in this action as follows:

[X] **(By ELECTRONIC SERVICE)**
Pursuant to Rule 8.05 of the Rules of Practice for the Eighth Judicial District Court of the State of Nevada, the document was electronically served on all parties registered in the case through the E-Filing System.

Michael Macavoyamaya: mmcavoyamayalaw@gmail.com

Evan James: elj@cjmlv.com

[ ] **(By U.S. MAIL)**
By depositing a true and correct copy of the above-referenced document into the United States Mail with prepaid first-class postage, addressed as follows:

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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. XXVI

SUPPLEMENTAL DECLARATION OF JONATHAN COHEN IN SUPPORT OF SERVICE EMPLOYEES INTERNATIONAL UNION'S AND MARY KAY HENRY'S MOTION FOR SUMMARY JUDGMENT

Date: December 3, 2019
Time: 9:30 a.m.
Ctrm: 10D

I, Jonathan Cohen, declare as follows:

1. I am a member of the law firm Rothner, Segall & Greenstone and am counsel to defendants Service Employees International Union ("SEIU") and Mary Kay Henry. I make this declaration in support of SEIU's and Henry's motion for summary judgment.

2. Attached hereto as Exhibit A are true and correct copies of excerpts of the certified transcript of the deposition of Diedre Fitzpatrick, taken on July 29, 2019.

3. Attached hereto as Exhibit B are true and correct copies of excerpts of the certified transcript of the deposition of Brenda Marzan, taken on September 24, 2019.

4. Attached hereto as Exhibit C are true and correct copies of excerpts of the certified transcript of the deposition of Robert Clarke, taken on May 30, 2019.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Executed on November 22, 2019, in Pasadena, California.

By */s/ Jonathan Cohen*
JONATHAN COHEN

CERTIFICATE OF SERVICE

I am an employee of Rothner, Segall & Greenstone; my business address is 510 South Marengo Avenue, Pasadena, California 91101. On November 22, 2019, I served the foregoing document described as **SUPPLEMENTAL DECLARATION OF JONATHAN COHEN IN SUPPORT OF SERVICE EMPLOYEES INTERNATIONAL UNION'S AND MARY KAY HENRY'S MOTION FOR SUMMARY JUDGMENT** on the interested parties in this action as follows:

[X] **(By ELECTRONIC SERVICE)**
Pursuant to Rule 8.05 of the Rules of Practice for the Eighth Judicial District Court of the State of Nevada, the document was electronically served on all parties registered in the case through the E-Filing System.

Michael Macavoyamaya: mmcavoyamayalaw@gmail.com

Evan James: elj@cjmlv.com

[ ] **(By U.S. MAIL)**
By depositing a true and correct copy of the above-referenced document into the United States Mail with prepaid first-class postage, addressed as follows:

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/s/ Lisa C. Posso
Lisa C. Posso

EXHIBIT A

EIGHTH JUDICIAL DISTRICT COURT

DISTRICT OF NEVADA

DANA GENTRY, an individual;	:	
and	:	Case No.
ROBERT CLARKE, an individual,	:	A-17-764942-C
Plaintiffs,	:	Dept. No: 26
v.	:	
SERVICE EMPLOYEES	:	
INTERNATIONAL UNION, a	:	
nonprofit cooperative	:	
corporation; et al.	:	
Defendants.	:	

Washington, D.C.

Monday, July 29, 2019

Deposition of DEIRDRE FITZPATRICK, a witness herein, called for examination by counsel for Plaintiffs in the above-entitled matter, pursuant to notice, the witness being duly sworn by STEPHANIE BARNES, a Notary Public in and for the District of Columbia, taken at the offices of SEIU Headquarters,

1800 Massachusetts Avenue, Northwest, Washington, D.C., at 10:47 a.m., Monday, July 29, 2019, and the proceedings being taken down by Stenotype by STEPHANIE BARNES, and transcribed under her direction.

APPEARANCES:

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Q. So the e-mail to you from Mary Kay Henry, you see where it says -- it's bullet point 2 -- "She's on the program to get rid of staff quickly. She is documenting the staff."

A. Yes, I see that.

Q. Why was -- I mean, who was she referring to there?

A. I --

MR. ROTHNER: Objection. Lacks foundation.

THE WITNESS: Do I answer?

MR. ROTHNER: I made an objection. If you can answer, go ahead.

THE WITNESS: I'm only inferring, but it looks like she's referring to Luisa.

BY MR. MCAVOYAMAYA:

Q. So Luisa Blue the trustee?

A. The trustee.

Q. So why is Mary Kay Henry saying that Luisa was on the program to get rid of staff quickly? What's the program?

MR. ROTHNER: Objection. Lacks

foundation.

BY MR. MCAVOYAMAYA:

Q. Is there an SEIU International program to get rid of staff when a trusteeship was imposed?

A. No, there is not. That's not how I would interpret that.

Q. Okay. Are you aware that there's been a -- so with regards to the trusteeship, I'm sure you're aware there's a number of cases that I'm involved in. Do you understand that?

A. I know about the one in which I was deposed and I know about this one.

Q. Are you aware that there was an NLRB case that recently went to trial and it now has an order?

A. I think heard something about an NLRB case and I don't know anything other than that. I didn't know it had gotten an order.

Q. Okay. If you could put this e-mail aside just real quick.

MR. MCAVOYAMAYA: And, Glenn, if you could hand her the transcript from the NLRB trial that I sent over.

foundation.

THE WITNESS: I don't know if the local fired staff after that trusteeship.

BY MR. MCAVOYAMAYA:

Q. So if there's existing contracts at a local union, how do you instruct your -- the SEIU International trustees to proceed?

MR. ROTHNER: Objection. Assumes facts not in evidence --

BY MR. MCAVOYAMAYA:

Q. For the staff. Sorry about that.

A. Do you mean collective bargaining agreements?

Q. Or any kind of other contract, employee contract?

MR. ROTHNER: Objection. Assumes facts not in evidence. Lacks foundation.

THE WITNESS: The International union doesn't advise or direct in way around staff contract and management of the decision-making around staff.

BY MR. MCAVOYAMAYA:

Q. So you don't --

A. Of a union matter.

Q. Do you instruct your trustees to honor existing contracts that local union has or --

MR. ROTHNER: Objection. Lacks foundation.

BY MR. MCAVOYAMAYA:

Q. Are they permitted to breach those contracts? I mean, is there just no guidance whatsoever that you provide to them?

MR. ROTHNER: Objection. Compound. Lacks foundation.

THE WITNESS: So if I can just unpack your questions, what we typically do in a trusteeship is provide a checklist that includes a best practice process to assess and evaluate the staff capacity and to learn what the work is that's happening inside the local. It's a template with blanks. The International union often provides that to trustees.

The trustees stand in the shoes of the local and they make all decisions for the local around staffing. And I don't think I could say that there is a policy or practice or a usual, and I'm not

aware that the International union ever requires anything from local leaders, including trustees.
BY MR. MCAVOYAMAYA:
Q. Do you train the trustees that you appointment to operate and manage a trusteeship?
MR. ROTHNER: Objection.
MR. MCAVOYAMAYA: Provide any training?
MR. ROTHNER: Beyond the scope of the 30(b)(6) deposition notice and lacks foundation.
THE WITNESS: You're asking if we provide training for how to run a local union?
BY MR. MCAVOYAMAYA:
Q. Yeah, while it's under a trusteeship? Do you provide any training for the trustees before they go and serve as trustee?
THE WITNESS: No. Typically folks who are asked by the International president to be asked trustees are asked because they have relevant experience in running a local union organization.
BY MR. MCAVOYAMAYA:
Q. What was Martin Manteca's prior experience?

to be performed in effectuation of the trusteeship that couldn't be performed by the current staff.

BY MR. MCAVOYAMAYA:

Q. Why couldn't it be performed by the current staff? That's my question.

MR. ROTHNER: Objection. Lacks foundation.

THE WITNESS: I have no idea. It would depend on the work.

BY MR. MCAVOYAMAYA:

Q. Do you see where it says -- where you respond at the top? It says, they are getting rid of the managers who are not fit with the new direction of the local?

A. I see it.

Q. What was the new direction of the local?

MR. ROTHNER: Objection. Assumes facts not in evidence and lacks foundation.

THE WITNESS: This was several days after the imposition of the trusteeship, and I believe that what I was referring to here was Luisa's report that she had let staff go and my sort of general awareness

that they were running a process of interviewing all of the staff to learn about sort of what the work in progress was and to verify that they were willing to work under the direction of the trustees.

BY MR. MCAVOYAMAYA:

Q. Why did you not -- why was there an opinion that they couldn't work under the direction of the trustees?

MR. ROTHNER: Objection. Lacks foundation. Calls for speculation.

THE WITNESS: I don't know.

BY MR. MCAVOYAMAYA:

Q. See in the next sentence on that -- well, I mean, this is positive steps, so where it says -- where you say in response, "They need to temper themselves on the rest for a variety of reasons. Documenting is a good," what did you mean by that? And I just want to direct you to Mary Kay's e-mail where she says she was on the program to get rid of staff quickly. She is documenting the staff. So then you respond they need to temper themselves on the rest for a variety of reasons. Documenting is

good.

What does that exchange mean?

A. I can tell you what it means to me. I don't know --

Q. Okay. Yeah, what did you mean in your e-mail?

A. Yeah. What I meant in my e-mail was that I was conveying what I learned from Luisa, the trustee of the local, about the course they were on to assess the staff and to ensure that they could run the local union. I thought it was a positive development that they were assessing the staff and making progress on getting the function of local union back up, period.

Q. What do -- what's the documenting part? What are you documenting? Documenting for the purpose of termination, or --

A. I don't -- I wouldn't read it that way. I read it as the conversations with staff to learn everything about what they're doing, what pressing work is coming up, what the scope of their work is, and confirming their willingness to cooperate under

the direction of the trustees.

Q. Okay. And that's what you meant by your e-mail or is that how you're reading it?

A. That's how --

Q. I'm trying to get what you mean in the e-mail.

A. That's how I'm interpreting it sitting here today.

Q. Okay. Well, I'm asking you what you meant, like, when you sent it. Like, I mean, you're -- yeah. What did you mean when you sent it?

A. I've just given you my best recollection of what I meant when I said that.

Q. Okay. So now you're saying it's your best recollection that that's what you meant?

A. Yes, that's what I'm now saying.

Q. Okay. Just trying to keep it clear. Okay.

A. Appreciate that.

Q. Yep.

Next you talk about the racial dynamics of the local union in this e-mail. Why does that

were included as evidence at the internal needs and internal charges hearings?

A. No, I was not.

Q. Okay. If the International had known that Robert, Peter, and Dana had for-cause contracts with the local, would you have advised the trustees to maintain their employment?

MR. ROTHNER: Objection. Calls for speculation.

THE WITNESS: Are you asking me as a 30(b)(6) witness whether it's our practice to advise locals in that circumstance?

BY MR. MCAVOYAMAYA:

Q. Yeah. To honor an employment contract if one exists?

A. It is our practice not to advise locals, period. Locals employ staff.

Q. If you'll hand her SEIU 75. It's an e-mail earlier from that day, 6:09 a.m.

MR. ROTHNER: Would you like it marked?

MR. MCAVOYAMAYA: Yes, please.

(FITZPATRICK Exhibit No. 4 was marked

for identification.)

THE WITNESS: Thank you.

BY MR. MCAVOYAMAYA:

Q. If you'll look in the middle of that first paragraph, it says MK'S policy is that needs to go -- or that needs to know when we are suggesting asking other locals to support a trusteed local.

What's that policy?

A. There is no written policy. This is probably more -- would have been better put as a practice, that Mary Kay's operating need is to know when we're making asks for a trusteeship of other local unions within SEIU, because the International union is in all kinds of transaction with other local unions and she needs to be aware when we're asking local unions to commit capacity to a trusteeship in the event that it pulls against another priority for that local.

Q. Commit capacity. What do you mean? Does that mean staff?

A. Yeah, it means staff.

Q. So the SEIU International is involved in

the staffing of a trusteed local then?

MR. ROTHNER: Objection. Misstates the evidence. Misstates the testimony and assumes facts not in evidence.

THE WITNESS: I would say involved only in the broadest sense, that a local in trusteeship very often identifies urgent operating needs and areas of expertise and staffing shortfalls and asks the International union if we can help locate people who could go in and work under the trustees' direction in the local. And in that way, the International sometimes reaches to local unions to say do you have two field organizers who could come in for two weeks and work with the trustees in Local ABC.

BY MR. MCAVOYAMAYA:

Q. So the International is -- essentially, they go out and find the staff to go on loan for the locals?

MR. ROTHNER: Objection --

BY MR. MCAVOYAMAYA:

Q. Is that how you -- you guys facilitate the loaning of the staff? Is that what you're trying to

say?

MR. ROTHNER: Objection. It's compound and misstates the testimony.

THE WITNESS: I would say that when the trustees of a local union request help from the International around capacity, just as when local unions who are not trusteed ask for help with capacity, we try to help. And that can sometimes mean going to other locals finding out whether they'd be willing to loan staff or provide other kinds of capacity expertise.

BY MR. MCAVOYAMAYA:

Q. Okay. I want to go back to something you said earlier --

MR. ROTHNER: Could you hold that thought for just a moment?

MR. MCAVOYAMAYA: Sure.

MR. ROTHNER: I need to explain something to the court reporter.

So this Exhibit 2, as you marked it, had writing on the back of the page and another document. So it's substituted with a clean version of Exhibit 2

financial/accounting staff.

What does temp mean?

A. What I meant by temp was hiring somebody on a temporary basis.

Q. So like a temporary is like a temporary employment agency?

A. It could be or it could also be a freelancer who we know does this kind of work or has this capacity who works on a project basis.

Q. And so if you've had success using temp agencies for financial/accounting staff, does that indicate that typically in other trusteeships financial/accounting staff were terminated and you bring new people in?

A. No, it does not.

Q. Are you aware there was a collective bargaining agreement between Local 1107 and the nonmanagerial staff at Local 1107?

A. Yes, I am today aware of that.

Q. What is SEIU International's policy or practice of honoring those collective bargaining agreements? Do they meet those terms? Are the

trustees instructed to meet the terms of those agreements?

MR. ROTHNER: Assumes facts not in evidence and it is beyond the scope of topics enumerated in the 30(b)(6) deposition notice.

THE WITNESS: The trustees of the local union make determinations about how to handle all of their contracts and staffing.

BY MR. MCAVOYAMAYA:

Q. Do you give them any training on how to handle collective bargaining agreements with existing staff?

MR. ROTHNER: Objection. It's beyond the scope of the 30(b)(6) deposition notice topics.

THE WITNESS: No, we don't train trustees in particular, but, as I said, trustees are often selected because of their experience in managing aspects of local unions.

BY MR. MCAVOYAMAYA:

Q. So you're chief of staff for SEIU International?

A. I am.

BY MR. MCAVOYAMAYA:

Q. This states that Mr. Manteca skipped the steps of progressive discipline in the CBA between Local 1107 and the staff union?

A. It says --

MR. ROTHNER: Same objection.

THE WITNESS: -- Manteca at first testified that progressive discipline was followed. Then later, after being led to the language of the CBA, changed his testimony to suggest that the actions were severe enough to skip progressive discipline.

It describes his testimony.

BY MR. MCAVOYAMAYA:

Q. So the SEIU International trustee skipped the progressive discipline steps then?

MR. ROTHNER: You continue to mischaracterize prior testimony and assume facts not in evidence. The trustee was the trustee of the local union.

MR. MCAVOYAMAYA: That's correct.

MR. ROTHNER: And what his testimony was

and what the content of this decision is is reflected in document, which are the best evidence of those topics.

BY MR. MCAVOYAMAYA:

Q. Go ahead and answer.

MR. ROTHNER: And it's beyond the scope of the 30(b)(6) deposition notice in this case.

BY MR. MCAVOYAMAYA:

Q. Go ahead and answer.

A. I don't know what Mr. Manteca did or didn't do. I don't know.

Q. Is that because SEIU International wasn't monitoring what the Local 1107 trustees were doing?

A. It's because the Local 1107 trustees are charged with the responsibility of running the local union. And the International union does not monitor the activities of trustees in running the local union.

Q. Okay. So if the International trustees appointed and the trustees appointed by SEIU International just start breaching contracts at a local union, SEIU International just allows them to

CERTIFICATE OF DEPONENT

I hereby certify that I have read and examined the foregoing transcript, and the same is a true and accurate record of the testimony given by me. Any additions or corrections that I feel are necessary, I will attach on a separate sheet of paper to the original transcript.

Signature of Deponent

I hereby certify that the individual representing himself/herself to be the above-named individual, appeared before me this 9th day of September, 2019, and executed the above certificate in my presence.

NOTARY PUBLIC IN AND FOR

District of Columbia

County Name

MY COMMISSION EXPIRES:

4-30-22

BERLY A. GIBBS NOTARY PUBLIC DISTRICT OF COLUMBIA Exp. 04/30/22

EXHIBIT B

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; et al.,

Defendants.

CERTIFIED COPY

Case No. A-17-764942-C
Dept. No. 26

CONFIDENTIAL

* * * CONFIDENTIAL * * *

DEPOSITION OF BRENDA MARZAN

PRESIDENT OF LOCAL 1107 & AS

30(b)(6) REPRESENTATIVE FOR LOCAL 1107'S FINANCES

Taken on Tuesday, September 24, 2019

At 9:14 a.m.

Held at Foley & Oakes, P.C.

1210 South Valley View Boulevard, Suite 208

Las Vegas, Nevada 89102

Reported By: Gale Salerno, RMR, CCR No. 542

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A. No.

Q. Going back a little bit, I think some things have changed so I'm going to go over some of the background.

What is your current position with Local 1107?

A. I am the president.

MR. JAMES: Objection. Vague and ambiguous. Are you talking about her current position as a 30(b)(6) witness or as a fact witness?

MR. MCAVOYAMAYA: Well, I mean that's just personal background.

MR. JAMES: Are you wanting an answer a particular way?

MR. MCAVOYAMAYA: As a fact witness.

MR. JAMES: Okay.

THE WITNESS: Then I am a business analyst for Clark County, Nevada.

BY MR. MCAVOYAMAYA:

Q. No, no. What's your position with the union?

A. I'm the president.

Q. Okay. And that was in the recent election of officers in May of 2018? Or no, no, no. It would have been March of 2019?

A. Yes.
Q. And what was your position prior to that?
A. I was the vice president of the nonsupervisory unit of Clark County and an executive board member.
MR. JAMES: Of what?
THE WITNESS: Of Local 1107.
BY MR. MCAVOYAMAYA:
Q. And who was the executive director of Local 1107?
A. There was no executive director of Local 1107.
Q. Right now.
A. Grace Vergara-Mactal.
Q. And what position did she hold prior to the election in March?
A. She was -- I don't know her title. She worked for International.
Q. So you're saying she was not an employee of the Local?
MR. JAMES: Objection. Vague and ambiguous. It's unclear whether or not you're asking her as a 30(b)(6) witness or as a fact witness.
MR. MCAVOYAMAYA: I will let her know when the -- when I am asking a question from the 30(b)(6)

A. Correct.
Q. But the staff is under Mancini?
A. Yes.
Q. Okay. So who creates the policies of the local union?
A. What time frame?
Q. 2016. If you take a look at SEIU 938. SEIU 938, Article 8. Under Section 2 "Authority," under bullet point A: "It is the board's authority to establish plans, policies, procedures that are required for the direction and operation of the local union and the carrying out of the decisions of the membership"?
A. Yes.
Q. So the directors aren't charged with establishment of plans, policies or procedures, are they?
A. That is not correct.
Q. Okay.
A. So what is meant by -- here the establishment is actually the adoption.

So normally the board did not break into groups and come up with policy. Policy was brought to the board for adoption. So that's the establishment of that policy.

Q. Okay. Did you make any testimony at the October 29th and 30th, 2016, hearings regarding the lack of policy at Local 1107?

A. Yes.

Q. And did you testify at all at that hearing that it was the board's responsibility to develop those policies?

A. Actually, I think what I said is I could help develop policies because that's what I do in my job.

Q. Okay. So what policy did Dana Gentry create for Local 1107 --

MR. COHEN: Objection. Vague.

BY MR. MCAVOYAMAYA:

Q. -- that did not go through Mancini or the executive board?

A. So first of all, I would say number one was that the newsletter that the -- there was never any authority given by the board to do the newsletter. That would have probably been some kind of -- that should have been in some kind of policy.

As to what money is allowed to be spent on certain things, if -- who should be brought into things should have been a policy. Who information should go out to could have possibly been a policy.

Q. Could have been?
A. Probably should have been.
Q. Okay. But what I'm saying is, so you mentioned the newsletter. Are you saying Dana Gentry just created the newsletter on her own and decided to spend the money to create the newsletter?
A. I don't know how the newsletter came about. I just know that it showed up.
But let me be clear on this. As the communication director, she would have had complete authority to bring information to Cherie Mancini that would have been used to help create policy.
So as management, she would have had the ability to influence policy.
Q. Okay. But did she make policy?
A. That is making policy. If you're influencing policy, you are helping make policy.
Q. But didn't you say that -- so then Cherie Mancini could just make policy on her own?
A. It has to be adopted by the board.
Q. So she recommends it to Cherie and then Cherie brings it to the board, then the board has to approve it and the membership could overturn it if they wanted to? Is that a correct, you know, description of the organizational structure?

CERTIFICATE OF DEPONENT

PAGE	LINE	CHANGE	REASON
8	18	Peter Nguyen	name incorrect
12	3	Grace Vergara	name incorrect
31	17	FMCS	typo

* * * * *

I, BRENDA MARZAN, deponent herein, do hereby certify and declare under penalty of perjury the within and foregoing transcription to be my deposition in said action; that I have read, corrected and do hereby affix my signature to said deposition.

Brenda Marzan
BRENDA MARZAN
Deponent

RECEIVED
OCT 17 2019
BY:

CERTIFICATE OF REPORTER

I, the undersigned, a Certified Shorthand Reporter of the State of Nevada, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were duly sworn; that a record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; that the foregoing transcript is a true record of the testimony given to the best of my ability.

Further, that before completion of the proceedings, review of the transcript [X] was [ ] was not requested pursuant to NRCP 30(e).

I further certify I am neither financially interested in the action, nor a relative or employee of any attorney or party to this action.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: September 30, 2019

GALE SALERNO, RMR, CCR #542

EXHIBIT C

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

DANA GENTRY, an individual; and ROBERT CLARKE, an individual,	)	
Plaintiffs,	)	Case No. A-17-764942-C
vs.	)	
SERVICE EMPLOYEES INTERNATIONAL UNION, a nonprofit cooperative corporation; et al.,	)	
Defendants.	)	

DEPOSITION OF ROBERT L. F. CLARKE

Taken on Thursday, May 30, 2019

By a Certified Court Reporter

At 9:33 a.m.

At 7440 West Sahara Avenue

Las Vegas, Nevada

Reported by: Wendy Sara Honable, CCR No. 875
Nevada CSR No. 875
California CSR No. 13186
Washington CCR No. 2267
Utah CCR No. 7357039-7801
Job No. 34103

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<<<<<< >>>>>>

by International.

Q. Oh.

A. So you send a payment for pension or for health, I mean, I can record the payment was sent, but I can't -- you know, there are times when clearly International just didn't process the health insurance, even though they received the check.

So there are those types of situations. So what International does when they receive the money, I have no oversight over that --

Q. Understood.

A. -- so it's listed like it, but that's not really how it works.

Q. Okay. So once Local 1107 made a payment to International, you had no further responsibility?

A. I had no -- I had no oversight or insight into what they were doing at that point.

Q. Understood.

The second bullet point says, Maintain staff personnel records, and it lists, you know, different aspects of that.

So you were responsible for maintaining personnel files for all the different employees of the local?

A. Correct.

Q. Okay. And who, if anybody, assisted you in your human resources responsibilities?

A. I believe it would have been Ken and, I think, maybe Jennifer.

Q. Okay. Were you responsible for discipline -- meting out discipline to employees at the local, other than the ones in your direct line of supervision?

A. You know, it would depend. I know that there was a disciplinary hearing with one staff member. I was there in my role as HR manager, but that person's supervisor was the one, I think, you know, leading the meeting, and I believe Cherie was there, you know, as well.

So those conversations, that would take place, though, yeah.

Q. Okay. And was there only one instance of you sitting in on a disciplinary meeting for Local 1107 employees during the time you were --

A. No. There might have been -- there might have been two of those instances.

Q. Okay. And those are separate from the two instances you described earlier where you recommended discipline for your own staff, correct?

A. No. I think there's one overlap.

Q. Okay. Was that the universe of disciplinary measures taken by the local during the time you were the HR director, or were there other instances of discipline that you just weren't a part of?

A. I would have to really look at the records to recall all of that. I haven't really stored all of that, you know, for purposes of this meeting. I'm trying to give you the best that I can recall.

I do believe there were definitely at least, you know, one where the person was -- did not report to me, that I can -- you know, that I can recall, and at least a couple others that I mentioned earlier.

And as I mentioned, one of those, I believe, I don't think we actually moved forward on it. It was also right -- the time frame was around that same time frame where the trusteeship came in, too.

I think there was conversation around that, but if I had their records and reviewed it, it would probably come back.

Q. Got it.

So there's two other headings on that

second page, "Political Reporting and Office Administration." Under Political Reporting, it has one bullet point.

Does that accurately describe your responsibility with respect to political reporting?

A. No, because that was, I think, mostly the International that really did that --

Q. Okay.

A. -- so it's listed there, but I -- that's, I think, an International -- that was International's --

Q. Okay. Got it.

And what about under Office Administration? There's one bullet point.

Does that accurately describe your responsibility with respect to office administration?

A. That's relatively accurate, yeah.

Q. Okay. Did you have any role in the negotiation of the staff union contract?

A. Yeah. From a budgetary standpoint, yeah.

Q. Okay. And describe what your role was.

A. Saying how much money we have and how much we can spend.

Q. Okay. And who were you advising

regarding that aspect?

A. The advice would have been through Cherie.

Q. Okay.

A. I mean, there could have been other people in the room, but -- so --

Q. Okay. Other than providing Cherie advice about what the union could afford with respect to negotiations, did you have any other role in those negotiations with the staff union?

A. No.

Q. Did you actually sit in on the negotiations on the management side?

A. I -- I don't recall. I don't recall that.

Q. Okay. What about policies?

Did you help develop any personnel policies for staff?

A. No. I mean, conversations with Cherie -- like I said, you know, all of my staff were dealing directly with Cherie. So if we're having any conversations about anything, it would be opinions, advice. You know, that would be -- that would be how I work with Cherie.

Q. During the time that you were there, did

REPORTER'S CERTIFICATE

STATE OF NEVADA)
) ss
COUNTY OF CLARK)

I, Wendy Sara Honable, CCR No. 875, a duly certified court reporter licensed in and for the State of Nevada, do hereby certify:

That I reported the taking of the deposition of the witness, ROBERT L. F. CLARKE, at the time and place aforesaid;

That prior to being examined, the witness was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth;

That I thereafter transcribed my shorthand notes into typewriting and that the typewritten transcript of said deposition is a complete, true and accurate record of testimony provided by the witness at said time to the best of my ability.

I further certify (1) that I am not a relative, employee or independent contractor of counsel of any of the parties; nor a relative, employee or independent contractor of the parties involved in said action; nor a person financially interested in the action; nor do I have any other relationship with any of the parties or with counsel of any of the parties involved in the action that may reasonably cause my impartiality to be questioned; and (2) that transcript review pursuant to NRCP 30(e) was requested.

IN WITNESS WHEREOF, I have hereunto set my hand in the County of Clark, State of Nevada, this 19th day of June 2019.

Wendy Sara Honable, CCR No. 875

REPLY
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Attorneys for Local 1107, Luisa Blue and Martin Manteca

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

DANA GENTRY, an individual; and ROBERT CLARKE, an individual, Plaintiffs, vs. 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. No. XXVI **REPLY TO OPPOSITION TO MOTION FOR SUMMARY JUDGMENT** HEARING REQUESTED

CHRISTENSEN JAMES & MARTIN, CHTD.
7440 WEST SAHARA AVE., LAS VEGAS, NEVADA 89117
PH: (702) 255-1718 § FAX: (702) 255-0871

LUISA BLUE ("Blue"), MARTIN MANTECA ("Manteca"), and NEVADA SERVICE EMPLOYEES UNION ("Local 1107"), misnamed as "CLARK COUNTY PUBLIC EMPLOYEES ASSOCIATION UNION aka SEIU 1107" (Luisa, Martin, and Local 1107 are collectively referred to as "Local 1107 Defendants"), by and through the law firm Christensen James & Martin, hereby reply to Plaintiffs' Opposition to Motion for Summary Judgment.

///

///

DATED this 22nd day of November 2019.

CHRISTENSEN JAMES & MARTIN

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

MEMORANDUM OF POINTS AND AUTHORITIES

I

UNDISPUTED FACTS[1]

Service Employees International Union's ("SEIU") constitution contains the following pertinent language that undisputedly applies to Local 1107:

> (a) Whenever the International President has reason to believe that, in order to protect the interests of the membership, it is necessary to appoint a Trustee for the purpose of correcting corruption or financial malpractice, assuring the performance of collective bargaining agreements or other duties of a bargaining representative, restoring democratic procedures, or otherwise carrying out the legitimate objects of this International Union, he or she may appoint such Trustee to take charge and control of the affairs of a Local Union or of an affiliated body and such appointment shall have the effect of removing the officers of the Local Union or affiliated body.
>
> (b) The Trustee shall be authorized and empowered to take full charge of the affairs of the Local Union or affiliated body and its related benefit funds, to remove any of its employees, agents … and appoint such agents, employees … and to take such other action as in his or her judgment is necessary for the preservation of the Local

[1] To make locating cited facts easier, exhibits are contained in an Appendix pursuant to Local Rule 2.27(b) and have been marked with Bates stamp numbers of "Appendix 001" through "Appendix 248". Citations to the documents in the Appendix include 1) the document, 2) the location in that document and 3) the Appendix Bates number.

Union or affiliated body and for the protection of the interests of the membership.[2]

SEIU Const. Art. VII §§ 7(a) & (b), App. 167.

III

LEGAL ANALYSIS & ARGUMENT

1. Plaintiffs' prove the propriety of their employment termination because of a special relationship with their President Mancini.

Plaintiffs assert, "Plaintiffs' had a special relationship with L1107 via President Mancini, who promised them continued employment with L1107 as evidenced by their contracts." See Opp'n at 29:2-3. Plaintiffs just summed up why their claims are preempted, "a special relationship with" the removed union leader. She had their back and they had hers, as evidenced by their conspiracy to overthrow the Trusteeship, calling the Trustees' actions toward Manci "repugnant and unjustified." Plaintiffs even destroyed evidence of their insubordination to the Trusteeship prior to their employment termination:

Clarke: Be careful – Dana [Gentry] is using union phone to text – I spoke with her so don't text her about it.

Clarke: She transferred her personal phone to the union phone.

…

Clarke: If they get ahold of Dana [Gentry's] texts then probably all of us on the texts are OUT.

Nguyen: Tell her to delete them!

Nguyen: She probably needs to do a clean reset.

[2] Gentry and Clarke's argument that their special friend, former President Mancini, unilaterally voided these SEIU constitutional provisions is a bit like arguing that a United States President may unilaterally change provisions of the United States Constitution—a proposition that we all should agree is wrong.

> Clarke: I told her – she doesn't seem to quite understand…thinks that she hasn't said anything bad.

Clarke Depo. 119-121:1-5 (App. 089-91). Yes, there was a special relationship between Plaintiffs and Mancini, a relationship strong enough to lead high ranking management officials to destroy evidence and seek to thwart the Trustees' governance of Local 1107.

2. Plaintiffs' arguments regarding the LMRDA's state law saving clauses do not apply because Plaintiffs are not union members nor are criminal acts at issue.

The savings clauses of the LMRDA do not apply to Plaintiffs.

> Bloom first argues that his wrongful discharge action cannot be preempted by the LMRDA because it is specifically "saved" from preemption by the Act itself. He cites 29 U.S.C. §§ 413, 523, and 524, which he asserts "save" his state claim. Sections 413 and 523(a), however, save causes of action enjoyed by union members, and, as discussed above, Bloom is not bringing this action as a union member but as a union employee. Just as he is not entitled to the substantive protections of the LMRDA as an employee, so he cannot enjoy its savings clauses. The remaining section, 29 U.S.C. § 524, saves only state criminal laws and thus cannot directly save appellant's civil action.

Bloom v. General Truck Drivers, Office, Food & Warehouse Union, Local 952, 783 F.2d 1356, 1360 (9th Cir. 1986). Plaintiffs have never been members of Local 1107 nor is criminal activity alleged in their First Amended Complaint. The LMRDA preemption savings clauses cited by Plaintiffs do not apply.

3. Plaintiffs' elected union official argument fails because the need for effective union governance is an independent reason for preempting Plaintiffs' claims.

LMRDA preemption applies to ensure effective union governance in addition to securing union democracy. *English v. Service Employees International Union, Local 73*, 2019 WL 4735400, at *4 (N.D.Ill., 2019). In *English*, like here, trustees were appointed by SEIU over a local union, which was Local 73. The *English* court concluded the

following in rejecting the elected vs. appointed argument now advanced by Gentry and Clarke:

> Thus, in enacting the LMRDA, "Congress decided that the harm that may occasionally flow from union leadership's ability to terminate appointed employees is less than the harm that would occur in the absence of this power," *Vought*, 558, F.3d at 623, namely, the organizational paralysis that would result from retaining employees whose "'views ... were not compatible [with those of management] and thus would interfere with smooth application of the new regime's policy,' " *id*. (*quoting Hodge v. Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees & Helpers' Local Union 695*, 707 F.2d 961, 964 (7th Cir. 1983)); *see Finnegan*, 456 U.S. at 441-42. The courts have no power to "second-guess that legislative judgment." *Vought*, 558 F.3d at 623.

English at *4 (alterations in original). "'[I]t was rank-and-file union members—not union officers or employees, as such—whom Congress sought to protect'" *Id.* (*quoting Vought*, 558 F.3d at 621) *(quoting Finnegan*, 456 U.S. at 436-37, 438). *See also, Vought v. Wisconsin Teamsters Joint Council No. 39*, 558 F.3d 617, 623 (7th Cir., 2009) (rejecting the argument that *Finnegan* only applies if the union leader is elected.)

The *English* court's member protection rationale is central to the Ninth Circuit Court of Appeals' application of the *Finnegan* case. "The federal interest in promoting union democracy ***and the rights of union members***, therefore, includes an interest in allowing union leaders to discharge incumbent administrators." *Bloom v. General Truck Drivers, Office, Food & Warehouse Union, Local 952*, 783 F.2d 1356, 1362 (9th Cir. 1986) (emphasis added). This means that the LMRDA's trusteeship and federal labor policy preempt the Plaintiffs' state law claims because "[t]he Act [LMRDA] seeks uniformity in the regulation of employee, union and management relations [,...] 'an integral part of ensuring a union administration's responsiveness…'" *Tyra v. Kearney*, 200 Cal.Rptr. 716, 720, 153 Cal.App.3d 921, 927 (Cal.App. 4 Dist. 1984)(conc. opn. Crosby, A.J.). *English, Bloom and Tyra* all identify why Gentry and Clarkes' elected vs.

appointed argument fails; it is the "union administration's responsiveness" to member needs that is of critical concern in federal labor policy.

4. Federal preemption applies regardless of a union's constitution.

Two lines of case law have evolved from the *Finnegan* case, 1) cases relying solely on the LMRDA and 2) cases applying union constitutions. Neither *English*,[3] nor *Vought*, considered the union's constitution when applying LMRDA preemption. These cases make clear that LMRDA preemption applies regardless of a union's constitution.

Contrary to Plaintiffs' assertions, *Screen Extras Guild* did not consider the union's constitution when applying LMRDA preemption. Rather, it merely noted the board of directors was an elected body under the constitution. The court was not stating, as Plaintiffs incorrectly assert, that the union's constitution had to specifically address a plaintiff's job position before LMRDA preemption applies. In *Bloom*, and contrary to Plaintiffs' argument, the union's constitution was not an issue associated with preemption of the employment law claims. Rather, the constitution was a topic of discussion for union membership rights. In *Tyra*, the union's constitution is not even mentioned or discussed, making Plaintiffs' assertion that *Tyra* was premised upon consideration of the union's constitution patently false.

Cases relying upon a union's constitution to defeat employment claims include *Dean* and *Pape*. The *Dean* court discussed the union's constitution as it related to Mr. Dean's position as a Business Agent and specifically found that "Dean's argument that

[3] The *English* case did involve SEIU's constitution but only in the context of freedom of speech rights. The *English* court's ruling on preemption of employment law claims was made independent of any evidence regarding SEIU's constitutional provisions. While there is no record of the *English* court considering SEIU's constitution in regard to preemption of employment law claims, it is obvious that preemption applies because the court reached its preemption decision with or without SEIU's constitution. Thus, if SEIU's constitution required preemption in *English*, it certainly is going to require preemption to this Litigation given that the same constitution is at issue.

his employment contract does not include the provisions of the constitution and the bylaws ignores the vital function that those provisions were intended to fulfill—that is, the preservation of internal democracy and order." *Dean v. General Teamsters Union, Local No. 406*, 1989 WL 223013, at *6 (W.D.Mich. 1989). In short, the union's constitution in Dean served the same function as LMRDA preemption. Like the *Dean* case, Plaintiffs' contracts were subject to the international's constitution that authorized the Trustees to "remove any of [Local 1107's] employees." In *Pape*, the court relied upon *Dean* and applied the union's constitution that allowed an appointed trustee to remove an employee. SEIU's constitution also allows for the removal of employees. As such, Gentry and Clarke's claims, as a matter of federal labor policy applying union constitutions, are preempted and not enforceable.

Either way, pursuant to SEIU's constitution or directly by LMRDA, federal preemption of Plaintiffs' claims applies.

5. LMRDA preemption applies to any appointed employee who may thwart effective union governance.

Plaintiffs' reliance on "policy making employee" and "confidential employee" language found in case law ignores congressional intent and federal labor policy that a union employee, regardless of position, is not allowed to thwart effective union governance. The *Womack* court noted that the United States Supreme Court intended LMRDA preemption to apply to "**administrators**, policy-makers, and **other appointees**." *Womack v. United Service Employees Union Local 616*, 1999 WL 219738, at *4 (N.D.Cal. 1999)(emphasis added). The *Womack* court also noted that the "Court was not troubled by the effect this interpretation of LMRDA would have on the job security of union appointees. *Id.* The *Womack* court then noted that the *Screen Extras Guild* case applied to a "terminated **management** or policy-making employee" *Id.* (emphasis added). It is undisputed that Gentry and Clarke were management employees with substantial responsibilities. (Motion for Summ. J., Job Descriptions, App. 142-147.)

Thus, Plaintiffs' election to focus solely on two phrases from case law ignores the purpose of the rulings and the reality of their management roles.

Plaintiffs' effort to insert a "labor-nexus" into the LMRDA preemption doctrine is found in no LMRDA preemption cases. Plaintiffs' citation to cases such as *N.L.R.B. v. Hendricks County Rural Elec. Membership Corp.*, 454 U.S. 170 (1981)[4] ignores federal labor policy applying the LMRDA. It also ignores that such cases address unfair labor practices relating to bargaining rather than the LMRDA preemption fulcrum of effective union governance.

6. Related tort claims.

Plaintiffs argue that the breach of covenant of good faith and fair dealing claims must survive because the Trustees did not act faithful. However, the Trustees were not parties to the contracts nor were they at Local 1107 when the contracts were entered or performed. As noted by the Plaintiffs, their employment contracts came from a special relationship with Mancini and not the Trustees. The Trustees therefore, as a matter of fact, could not have acted badly under the contracts, making a breach of the covenant of good faith and fair dealing impossible.

Plaintiffs argue that Gentry's threatening a defamation lawsuit is sufficient to save the bad faith discharge and negligence claims. First, she never actually sued on the defamation claim while employed at Local 1107,[5] so Plaintiffs' argument fails because

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[4] Plaintiffs' sophistic use of case law is highlighted in *Shuck v. International Association of Machinists and Aerospace Workers, District 837*, 2017 WL 908188 (E.D.Mo. 2017). *Shuck*, contrary to Plaintiffs' selective use of language from the case, involved the defendant's effort to remove the case to federal court despite the plaintiff having alleged wrongful termination for reporting illegal conduct; "Shuck's claims arise from allegedly illegal misconduct under state law." *Id.* at 2. The federal court refused removal and noted that reporting illegal conduct is not preempted by the LMRDA.

[5] The defamation claim was first asserted in Plaintiffs' First Amended Complaint filed on March 25, 2019, almost two years after the Trustees were appointed on April 28, 2018. See First Amended Complaint at 4:¶16.

no legal right was exercised prior to employment termination. Second and as stated above, the Trustees were not part of Local 1107 when Gentry made the litigation threat in 2016. Gentry's employment termination occurred on May 4, 2017, within days of the Trustees' appointment on April 28, 2017. Third, there also is no evidence that the Trustees fired Gentry because of a litigation threat.

7. Gentry addressed two of the four argued defamation defenses—preemption and internal business communications—and ignored required communications and common interest privilege defenses.

Failure to address an argument is consent to that argument. "The nonmoving party "'is not entitled to build a case on the gossamer threads of whimsy, speculation, and conjecture.'" *Wood v. Safeway, Inc.*, 121 P.3d 1026, 1031, 121 Nev. 724, 732 (2005).

a. *As to preemption, Gentry failed to show any evidence of malice necessary to overcome summary judgment.*

Gentry needed to show some evidence that Kisling acted with malice to overcome federal preemption of her defamation claim. *See Linn v. United Plant Guard Workers of America, Local 114,* 86 S.Ct. 657, 659, 383 U.S. 53, 55 (1966) (stating the need to plead and prove malice to overcome federal preemption of defamation claims). All evidence shows that Kisling reported information she had received from others. It also shows that she reported the information as a "concern" and not as fact.

Contrary to Gentry's assertion, Defendants have no burden to prove Kisling made the statements believing them to be true. Rather it is Plaintiffs' burden to provide evidence that Kisling made the statements with malice. Gentry has provided no evidence.

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b. Gentry's argument that the internal business communication privilege does not apply—asserting that statements were published to SEIU representatives and Local 1107 personnel—fails because SEIU has a common interest in Local 1107's functions and no evidence regarding outside publication by Kisling exists.[6]

Local 1107 and SEIU have to share internal business communications to adhere to organizational documents. SEIU had and has an internal interest in the effective and proper management of affiliated locals, including Local 1107. See SEIU Constitution Art. XXI, App. 193 (setting forth a local's duty to enforce the SEIU Constitution); SEIU Const. Art. VII §§ 7(a) & (b), App. 167 (setting forth the ability to appoint a trustee to correct mismanagement of a local); and SEIU Const. Code of Ethics, App. 197 (stating that "Corruption in all forms will not be tolerated.") The only way SEIU will know of issues relating to its constitution is by hearing about those issues from individuals associated with local unions. Thus, Kisling's communications to Local 1107 and SEIU were internal.

In regard to the declarations of Peter Nguyen (unsigned) and Javier Cabrera,[7] there is no evidence that Local 1107 or Kisling circulated the report. The supposed defamatory statement of alcohol use originated from the staff and the credit card verification purchases issue was part of the Finance Committee's deliberations. Thus, the

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[6] Gentry argued that Local 1107 and SEIU are alter egos. See Opposition to SEIU's Motion for Summary J. Although Local 1107 disputes that argument, if true, the SEIU representatives and Local 1107 representatives are treated as one and the same. Gentry's conflicting arguments defeat one another.

[7] Peter Nguyen and Javier Cabrera are known haters of the Defendants, both having filed lawsuits against the union and the Trusteeship, *Nguyen v. SEIU*, Case No. A-19-794662-C in this Court, and *Cabrera v. SEIU*, Case No. 2:18-cv-00304 RFB in the United States District Court for the District of Nevada. In fact, Nguyen is one of Gentry's and Clarke's evidence destroying coconspirators.

issues claimed as defamatory were clearly common knowledge among Local 1107 personnel.

c. Gentry did not oppose the argument that Kisling's report to the Executive Board was privileged as a required communication.

Gentry did not dispute that Kisling's communications were required by law. (See Motion at 19)(*supported by U.S. v. International Broth. of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO,* 981 F.2d 1362 (2nd Cir. 1992) and *Cucinotta v. Deloitte & Touche, L.L.P.*, 302 P.3d 1099, 1102, 129 Nev. 322, 326 (2013)). Thus, there is no evidence disputing Kisling's duty to disclose. Summary judgment is proper.

d. Gentry did not oppose the argument that Kisling's report to the Executive Board was privileged as a common interest communication.

Had Gentry addressed the common interest privilege, she could not have argued that Kisling's report was improperly disclosed to SEIU representatives. As shown above, Local 1107 and SEIU both have a common interest in the proper and effective management of Local 1107. Summary judgment in favor of Local 1107 is proper.

CONCLUSION

Summary judgment in favor of the Local 1107 Defendants is proper.

Dated this 22nd day of November 2019.

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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 in the following manner on the date it was filed with the Court:

✓ ELECTRONIC SERVICE: Pursuant to Rule 8.05 of the Rules of Practice for the Eighth Judicial District Court of the State of Nevada, the document was electronically served on all parties registered in the case through the E-Filing System.

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__ UNITED STATES MAIL: By depositing a true and correct copy of the above-referenced document into the United States Mail with prepaid first-class postage, addressed as follows:

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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

☐ Voluntary Dismissal	☐ Summary Judgment
☐ Involuntary Dismissal	☐ Stipulated Judgment
☐ Stipulated Dismissal	☐ Default Judgment
☒ Motion to Dismiss by Deft(s)	☐ Judgment of Arbitration

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

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

I. Preemption Under the Labor Management Reporting and Disclosure Act

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

"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. v. Depository Trust and Clearing Corp.*, 123 Nev. 362, 371 (2007). For example, "Congress's intent to preempt state law is implied to the extent that federal law actually conflicts with any state law." *Id.* Conflict preemption requires a court to determine 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 372.

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

> Indeed, neither the language nor the legislative history of the [LMRDA] suggests that it was intended even to address the issue of union patronage. To the contrary, 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. Far from being inconsistent with this purpose, the ability of an elected union president to select his own administrators is an integral part of ensuring a union administration's responsiveness to the mandate of the union election.

Id. (internal citation omitted).

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

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

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

Based on the foregoing, the Court finds and concludes that Plaintiffs are policymaking and/or confidential staff whose claims are preempted under the LMRDA. Notably, Plaintiffs have described themselves in briefs to this Court as former managers at Local 1107.[2] *See Screen Extras Guild*, 51 Cal.3d at 1028 (concluding that "Congress intends that elected union officials shall be free to discharge management or policymaking personnel."); *see id.* at 1031 ("Smith herself acknowledges . . . she was considered a management employee."). The evidence of Plaintiffs' former job duties and responsibilities reinforces that conclusion, establishing that they each had significant responsibility for developing and implementing union policy in a wide range of matters. *See id.* at 1031. The evidence also establishes that Plaintiffs had access to sensitive confidential materials regarding the internal affairs of Local 1107. *See id.* at 1029 (noting that "confidential staff are in a position to thwart the implementation of policies and programs" at a union); *Thunderburk v. United Food and Commercial Workers' Union*, 92 Cal. App. 4th 1332, 1343 (2001) (holding that secretary was confidential employee within meaning of *Finnegan*

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[1] Plaintiffs argue that *Screen Extras Guild* does not apply here because the Local 1107 Trustees who terminated their employment were not elected to their positions, but instead appointed pursuant to SEIU's emergency trusteeship order. The Court disagrees. Several courts have concluded that the holding of *Finnegan* applies equally to appointed union leaders. *See Vought 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).

[2] *See* Plaintiffs' Motion for Partial Summary Judgment, filed 9/26/18, at 11:19-20 ("It cannot be disputed that Ms. Gentry and Mr. Clarke were hired *to their management positions* with Local 1107 by former Local 1107 President Cherie Mancini.") (emphasis added); *see also id.* at 11:21 (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).

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

II. Preemption of Plaintiff Gentry's Defamation Claim

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

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

III. Liability of SEIU and Henry.

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

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

IT IS SO ORDERED.

DATED: December 30, 2019

EIGTH JUDICIAL DISTRICT COURT

HONORABLE GLORIA J. STURMAN
DISTRICT COURT JUDGE

Submitted By:

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By _____
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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. No. XXVI

NOTICE OF ENTRY OF ORDER

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

DATED this 3rd day of January 2020.

CHRISTENSEN JAMES & MARTIN

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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

☐ Voluntary Dismissal	☐ Summary Judgment
☐ Involuntary Dismissal	☐ Stipulated Judgment
☐ Stipulated Dismissal	☐ Default Judgment
☒ Motion to Dismiss by Deft(s)	☐ Judgment of Arbitration

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

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

I. Preemption Under the Labor Management Reporting and Disclosure Act

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

"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. v. Depository Trust and Clearing Corp.*, 123 Nev. 362, 371 (2007). For example, "Congress's intent to preempt state law is implied to the extent that federal law actually conflicts with any state law." *Id.* Conflict preemption requires a court to determine 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 372.

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

> Indeed, neither the language nor the legislative history of the [LMRDA] suggests that it was intended even to address the issue of union patronage. To the contrary, 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. Far from being inconsistent with this purpose, the ability of an elected union president to select his own administrators is an integral part of ensuring a union administration's responsiveness to the mandate of the union election.

Id. (internal citation omitted).

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

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

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

Based on the foregoing, the Court finds and concludes that Plaintiffs are policymaking and/or confidential staff whose claims are preempted under the LMRDA. Notably, Plaintiffs have described themselves in briefs to this Court as former managers at Local 1107.[2] *See Screen Extras Guild*, 51 Cal.3d at 1028 (concluding that "Congress intends that elected union officials shall be free to discharge management or policymaking personnel."); *see id.* at 1031 ("Smith herself acknowledges . . . she was considered a management employee."). The evidence of Plaintiffs' former job duties and responsibilities reinforces that conclusion, establishing that they each had significant responsibility for developing and implementing union policy in a wide range of matters. *See id.* at 1031. The evidence also establishes that Plaintiffs had access to sensitive confidential materials regarding the internal affairs of Local 1107. *See id.* at 1029 (noting that "confidential staff are in a position to thwart the implementation of policies and programs" at a union); *Thunderburk v. United Food and Commercial Workers' Union*, 92 Cal. App. 4th 1332, 1343 (2001) (holding that secretary was confidential employee within meaning of *Finnegan*

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[1] Plaintiffs argue that *Screen Extras Guild* does not apply here because the Local 1107 Trustees who terminated their employment were not elected to their positions, but instead appointed pursuant to SEIU's emergency trusteeship order. The Court disagrees. Several courts have concluded that the holding of *Finnegan* applies equally to appointed union leaders. *See Vought 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).

[2] *See* Plaintiffs' Motion for Partial Summary Judgment, filed 9/26/18, at 11:19-20 ("It cannot be disputed that Ms. Gentry and Mr. Clarke were hired *to their management positions* with Local 1107 by former Local 1107 President Cherie Mancini.") (emphasis added); *see also id.* at 11:21 (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).

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

II. Preemption of Plaintiff Gentry's Defamation Claim

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

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

III. Liability of SEIU and Henry.

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

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

IT IS SO ORDERED.

DATED: December 30, 2019

EIGTH JUDICIAL DISTRICT COURT

HONORABLE GLORIA J. STURMAN
DISTRICT COURT JUDGE

Submitted By:

CHRISTENSEN JAMES & MARTIN

By _____
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Attorneys for Service Employees International Union, Local 1107, Martin Manteca and Luisa Blue

ROTHNER, SEGALL & GREENSTONE

By _____
JONATHAN COHEN
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Reviewed By:

By _____
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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. No. XXVI **MOTION FOR ATTORNEY FEES AND AWARD OF COSTS** HEARING REQUESTED

CHRISTENSEN JAMES & MARTIN, CHTD.
7440 WEST SAHARA AVE., LAS VEGAS, NEVADA 89117
PH: (702) 255-1718 § FAX: (702) 255-0871

LUISA BLUE ("Blue"), MARTIN MANTECA ("Manteca"), and NEVADA SERVICE EMPLOYEES UNION ("Local 1107"), misnamed as "CLARK COUNTY PUBLIC EMPLOYEES ASSOCIATION UNION aka SEIU 1107" (Luisa, Martin, and Local 1107 are collectively referred to as "Local 1107 Defendants"), by and through the law firm Christensen James & Martin, hereby move for legal fees and costs.[1]

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[1] The costs claim is before the Court on Plaintiffs' Motion to Retax Costs and is therefore not discussed in this motion.

DATED this 14th day of January 2020.

CHRISTENSEN JAMES & MARTIN

By:*/s/ Evan L. James*
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MEMORANDUM OF POINTS AND AUTHORITIES

I

FACTS

Plaintiffs filed their Complaint on November 20, 2017. Ten months later, Plaintiffs filed a motion for summary judgment on September 26, 2018. Defendants opposed Plaintiffs' motion for summary judgment and filed a counter motion for summary judgment on October 15, 2018. Defendants argued that Plaintiffs' claim are preempted by federal labor law, citing a substantial volume of case law supporting the preemption argument. However, some exceptions, such as allegations of criminal conduct, exist to the preemptive power of federal labor law. The Court denied the motions for summary judgment and allowed the Defendants an opportunity to develop more facts through additional discovery.

The initial discovery completion date was April 15, 2019. See Scheduling Order entered October 10, 2018 at 1 ¶ 5. To accommodate for further discovery, the parties stipulated to extend the discovery completion date to July 15, 2019. See Stipulation and Order entered March 28, 2019 at 3 ln. 4. The undersigned was involved in a serious cycling accident in mid-June 2019, so despite discovery being almost closed, the parties further stipulated to extend discovery to August 15, 2019. See Scheduling Order entered June 28, 2019 at ln. 15.

On July 16, 2017, Defendants issued an apportioned offer of judgment to each of the Plaintiffs. Each Plaintiff was offered $30,000.00. See Ex. A attached hereto. Prior to issuing the offer of judgment, the undersigned met with Plaintiffs' counsel to inform him that the offer of judgment issuance was imminent. I explained that no new facts had been or would be developed in the case and that accepting the offer of judgment would be prudent given the preemption case law. Plaintiffs' counsel refused the idea of anything other than full payment of Plaintiffs' claims. See Declaration of Evan James.

Plaintiffs valued their claims by employing an expert. The expert valued Ms. Gentry's claims at $107,391.00. See Ex. B. The expert valued Mr. Clarke's claims at $92,305.00. See Ex. C.[2]

The Court entered summary judgment in favor of the Defendants on Friday, January 3, 2020. Post offer of Judgment fees, incurred since July 16, 2019 through December 31, 2019 amount to $56,277.00. See Ex. D. The Local 1107 Defendants filed a Verified Memorandum of Costs on Monday, January 6, 2020.

III

LEGAL ANALYSIS & ARGUMENT

A. Legal fees are allowed pursuant Nevada law.

"The purpose of NRS 17.115 and NRCP 68 is to save time and money for the court system, the parties and the taxpayers. They reward a party who makes a reasonable offer and punish the party who refuses to accept such an offer. *Dillard Dept. Stores, Inc. v. Beckwith*, 115 Nev. 372, 382, 989 P.2d 882, 888 (1999). However, "the decision to award attorney fees rests within the district court's discretion…." *O'Connell v. Wynn Las Vegas, LLC*, 134 Nev. 550, 554, 429 P.3d 664, 668 (Nev.App., 2018).

[2] The expert's reports were subject to challenge had the case proceeded to trial. For example, Gentry was awarded an auto allowance of $6,000.00. However, that allowance was not a benefit and was for vehicle use reimbursement. Since Gentry did not use her vehicle for Local 1107 after employment termination, she was not eligible to receive the reimbursement.

In considering whether to award attorney fees for either a plaintiff or defendant the court must consider the following four *Beattie* factors:

> (1) whether the plaintiff's claim was brought in good faith; (2) whether the defendants' offer of judgment was reasonable and in good faith in both its timing and amount; (3) whether the plaintiff's decision to reject the offer and proceed to trial was grossly unreasonable or in bad faith; and (4) whether the fees sought by the offeror are reasonable and justified in amount.

Id., quoting Beattie v. Thomas, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983).

> Each factor need not favor awarding attorney fees because "no one factor under *Beattie* is determinative." *Yamaha Motor Co., U.S.A. v. Arnoult*, 114 Nev. 233, 252 n. 16, 955 P.2d 661, 673 n. 16 (1998). Instead, a district court is to consider and balance the factors in determining the reasonableness of an attorney fees award.
>
> "[E]xplicit findings on every Beattie factor [are not] required for the district court to adequately exercise its discretion." *Certified Fire Prot., Inc. v. Precision Constr., Inc.*, 128 Nev. ——, ——, 283 P.3d 250, 258 (2012). Instead, the district court may adequately exercise its discretion if the parties brief the application of the *Beattie* factors. *See Uniroyal Goodrich Tire Co. v. Mercer*, 111 Nev. 318, 324, 890 P.2d 785, 789 (1995)

Scott-Hopp v. Bassek, 2014 WL 859181, 5 (Nev., 2014).

1. ***Plaintiffs' knowledge that their claims were subject to dismissal made rejection of the offer of judgment unreasonable.***

Plaintiffs failed to maintain the action in good faith because they unreasonably rejected the offer of judgment. "Factors which go to reasonableness include whether the offeree eventually recovered more than the rejected offer and whether the offeree's rejection unreasonably delayed the litigation with no hope of greater recovery." *Cormier v. Manke*, 108 Nev. 316, 318, 830 P.2d 1327, 1328 (1992). Plaintiffs obviously received nothing when the Court entered summary judgment in favor of Defendants. In addition, Plaintiffs knew in October 2018 that preemption was a valid defense argument capable of defeating their claims. They were granted months of additional discovery to develop

facts that would distinguish them from the plethora of case law across the United States applying federal labor law preemption to claims just like theirs. By July 2019, Plaintiffs had failed to establish any facts that would distinguish them from cases such as *Screen Extras Guild.*

Indeed, all developed facts supported a finding that Plaintiffs were management employees subject to dismissal without regard to their written contracts. Plaintiffs admitted to being high level union employees appointed by the removed President Mancini. Plaintiffs even argued in their summary judgment briefing of September 2019 that "Plaintiffs' had a special relationship with L1107 via President Mancini, who promised them continued employment with L1107 as evidenced by their contracts." See Plaintiffs' Opp'n to L1107 Defendants Motion for Summ. J., filed November 12, 2019, at 29:2-3. It is clear that Plaintiffs chose to ignore case facts and law that supported Defendants' preemption arguments based upon "Plaintiffs' … special relationship with L1107 via President Mancini". As a matter of fact, Plaintiffs' did more than ignore case law holding that special relationships such as theirs were preempted by federal labor law; they admitted to the special relationship but then brazenly ignored their management roles as Local 1107 "Directors" in arguing that they were not "confidential employees" subject to the Labor Management Reporting and Disclosure Act ("LMRDA"). Id. at 26:23-24. Based upon the facts and law, it is clear that Plaintiffs assumed and maintained an unreasonable position that they might recover more than the $60,000.00 offered by the Defendants to resolve the litigation. The first *Beattie* factor weighs in favor of awarding attorney fees and costs.

2. Defendants' offer of judgment was made in good faith and at a reasonable time because it was made 20 months after litigation started and nine months after Plaintiffs knew their claims were subject to dismissal.

Defendants' offer of judgment was made in good faith and at a reasonable time. Offers of judgment made after parties have had an opportunity to evaluate their case and

at least 10 days before trial are reasonable. *See Scott-Hopp* at 5. In *Scott-Hopp*, the court noted that the offer of judgment was reasonable because it was made more than two years after the plaintiff filed the lawsuit and 10 days before trial. Plaintiffs filed their Complaint on November 20, 2017. The offer of judgment was issued twenty months later. Plaintiffs also knew nine months before the offer of judgment was issued that their claims were subject to a federal preemption defense. They had nine months to develop facts that would defeat the federal preemption argument. They failed to do so. As such, the timing of the offer of judgment was reasonable.

Defendants' offer of judgment was also reasonable in amount. In *Scott-Hopp,* the court concluded an offer of judgment for 16% of the claim amount to be reasonable because liability was contested based upon the facts. The defendant in *Scott-Hopp* offered $25,000.00 to settle $150,000.00 in medical claims. In our case, Defendants offered Gentry 27.9% of her maximum claim. Defendants also offered Clarke 32.5% of his maximum claim. Like *Scott-Hopp,* the Defendants offered the Plaintiffs substantial money to resolve contested claims. In fact, Defendants' offer of judgment exceeded the *Scott-Hopp* offer in percent value. The value of Defendants' offer of judgment in light of the likelihood of their claims being preempted made the offer of judgment reasonable. The second *Beattie* factor therefore weighs in favor of awarding attorney fees and costs.

3. Plaintiffs' rejection of the offer of judgment was grossly unreasonable because they ignored case facts that paralleled case law applying preemption and they significantly misapplied case law that was obviously not on point in a vain effort to avoid preemption.

Plaintiffs knew and ignored the facts and law. In *Scott-Hopp,* the court found it grossly unreasonable to reject an offer of judgment when the offeree had access to key facts and knew their claims were contested. Like *Scott-Hopp,* Plaintiffs knew the applicable preemption facts and factors. Plaintiffs had at least nine months to develop case facts before the offer of judgment was issued. With no facts developed, Plaintiffs

knew or should have known when the offer of judgment was issued that they stood a substantial likelihood of losing. Rather than accept Defendants' offer of judgment, Plaintiffs demanded full payment of their claimed damages. Such positions are grossly unreasonable as identified by the *Scott-Hopp* court. The third *Beattie* factor weighs in favor of awarding attorney fees and costs to Defendants.

4. Defendants' fees are reasonable because they are well below the market rate and Plaintiffs' positions forced Defendants to spend substantial time and effort in litigation.

Defense counsel had to perform substantial legal work due to Plaintiffs' actions. "In Nevada, 'the method upon which a reasonable fee is determined is subject to the discretion of the court,' which 'is tempered only by reason and fairness.'" *Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 864, 124 P.3d 530, 548-49 (2005) (*quoting University of Nevada v. Tarkanian*, 110 Nev. 581, 594, 591, 879 P.2d 1180, 1188, 1186 (1994)). The Court uses the Lodestar approach to calculate a legal fee value award, which "involves multiplying 'the number of hours reasonably spent on the case by a reasonable hourly rate.'" Id. (*quoting Herbst v. Humana Health Ins. of Nev.*, 105 Nev. 586, 590, 781 P.2d 762, 764 (1989). However, the Court must continue its analysis and enter findings upon certain factors, "NAMELY, THE ADVOCATE'S professional qualities, the nature of the litigation, the work performed, and the result." *Shuette*, 865, 549. *See also Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

a. <u>The Professional Qualities of the Advocate</u>.

Local 1107 Defendants' counsel, Mr. James, is a partner in Christensen James & Martin. He graduated from the J. Reuben Clark Law School at Brigham Young University in 2001. He is a member of the Nevada State Bar (2001 Admission), the Utah State Bar (2002 Admission), and the Washington State Bar (2012 Admission) and thereby authorized to practice law in the respective state courts. He is also admitted to practice before the Court of Federal Claims in Washington, D.C.; the Ninth Circuit Court

of Appeals; and the United States District Courts of Nevada, Utah, Western District of Washington and Eastern District of Washington. He directs and/or participates in appeals or litigation cases before many of the listed courts. He also maintains an active administrative law practice before Nevada state agencies such as the Employee Management Relations Board, the Nevada Labor Commissioner, and the Nevada State Contractors Board. He also practices before the National Labor Relations Board.

Mr. James's legal experience includes prosecuting claims under the Employee Retirement Income Securities Act (ERISA) on behalf of multiemployer health, welfare and pension benefit trusts. He also acts as counsel for numerous joint apprenticeship-training trust funds, joint labor management committees and certain union locals in Nevada. In addition to his benefits, wage and hour, and labor practice, Mr. James advises and defends employers on employment practices and discrimination claims. Mr. James has authored many employment manuals and directed the implementation of employment policies at a number of the premier homeowner associations in the Las Vegas Valley. Mr. James's experience is not limited to labor and employment law issues. He maintains a vibrant civil litigation practice that includes business litigation and property encumbrance issues. For example, he was defense counsel for the construction defect litigation for the McCarran Airport Parking Garage, defeated a contract claim in the United States District Court for the District of Colorado arguing minimum contacts, and recently completed litigating a property case involving third-party encumbrances in excess of 40 million dollars that lasted for 12 years and wound its way through the state and federal courts in Utah.

b. The nature of the litigation.

The nature of the litigation was unusual. Plaintiffs' lawsuit is one of the following five lawsuits being prosecuted by Plaintiffs' counsel against the Local 1107 Defendants:

1. *Mancini v. SEIU International, et al.*, Case No. 2:17-cv-02137-APG-NJK;
2. *Garcia v. SEIU International, et al.*, Case No. 2:17-cv-01340-APG-NJK,

3. *Gentry v. SEIU International, et al.*, Case No. A-17-764942-C;

4. *Cabrera v. SEIU International, et al.*, Case No.: 2:18-CV-00304-RFB-CWH

5. *Nguyen v. SEIU International, et al.*, Case No. A-19-794662-C.

The nature of each case dealt with the imposition of a trusteeship by the Service Employees International Union ("SEIU") over Local 1107 and the appointment of Blue and Manteca as the trustees. Plaintiffs and their counsel initiated a litigation barrage that has required substantial effort to strategically evaluate, plan and implement case strategies that are not present under a normal one case scenario. Even then, the undersigned has just recently discovered that this litigation was used by Plaintiffs' counsel to obtain discovery in the *Cabrera* litigation.

Of particular note, Cheri Mancini—to whom Plaintiffs' tied their "special relationship" claims as Local 1107's former president—prosecuted the *Mancini* case cited above and is also a plaintiff in the *Cabrera* case cited above. ***Plaintiffs and their counsel had substantial and direct access to former President Mancini but failed to produce even a declaration from her asserting facts supportive of an exception to Defendants' federal preemption argument.*** Implicit in that failure is a knowledge that truthful testimony from former President Mancini would confirm the facts upon which Defendants' federal preemption argument is based. Therefore, it is reasonable to accept that Plaintiffs knew early in the litigation that Defendants' preemption argument was substantially supported by law and fact.

The litigation was also contentious, a review of the Court's docket shows that the following fifteen motions were filed:

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

2. Plaintiff's First Motion for Partial Summary Judgment;

3. Counter Motion for Summary Judgment by Local 1107;

4. Counter Motion for Summary Judgment by SEIU;

5. Motion to Amend Complaint;

6. Application for Default Judgment of Sharon Kisling;

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

8. Motion to Associate Counsel;

9. Motion to Determine Attorney-Client Privilege;

10. Motion to Compel;

11. Plaintiffs' Second Motion for Partial Summary Judgment;

12. Motion for Summary Judgment by Local 1107;

13. Motion for Summary Judgment by SEIU; and

14. Motion to Coordinate Cases;

15. Motion for Attorney Fees and Costs.

Plaintiffs' asserted substantial case law in each motion that had to be reviewed, analyzed, and synthesized to case facts. Plaintiffs asserted dicta as holdings and argued cases were applicable when they were clearly distinguishable. Plaintiffs' positions and arguments required substantial time and effort from Defense Counsel to ensure the propriety of case law holdings.

c. <u>The work performed</u>.

As just shown, Plaintiffs required Defendants to perform a substantial amount of work. Fifteen motions on a breach of contract claim is substantial. These fifteen motions required Local 1107 to prepare and submit at least 15 briefs to the Court. In addition, most of the motions required substantial review and analysis of material. For example, Plaintiffs' Partial Motion for Summary Judgment filed on October 13, 2019 consisted of 1309 pages of material. In an effort to make Plaintiffs' momentous filing a reasonable size for Court review, Local 1107 Defendants distilled the motion down to a 24 page Opposition Brief, including exhibits.

Defense counsel also appeared before this Court 8 times as of December 31, 2019. Each appearance requires preparation time so as to be able to answer the Court's questions and responses to Plaintiffs' assertions.

Defense attorneys also performed a substantial amount of work in addition to the multiple briefs produced and court appearances attended. Three of the five depositions were taken by the Defendants. These depositions include Plaintiffs Dana Gentry and Robert Clarke and their expert witness Kevin B. Kirkendall. The billing summary in Exhibit D also shows numerous issues addressed between counsel that did not involve the Court.

d. The result.

Plaintiffs were given an opportunity to prove a case but lost on summary judgment.

e. The hourly of $185 and time spent on this matter were reasonable.

Mr. James's $185.00 hourly rate is reasonable. With over 19 years of experience in multiple venues, Mr. James could charge substantially more than $185.00 per hour. The Nevada Supreme Court has upheld a $250.00 per hour rate as reasonable. *See Cuzze v. Univ. & Cmtv. Coll. Svs. of Nevada*, 123 Nev. 598, 607, 172 P.3d 131, 137 (2007). *See also, John Bryant Lawson v. William M. Lawson, Jr.*, No. 3: l4—CV—00345—WGC, 2016 WL 1171010, at *4 (D. Nev. Mar. 24, 2016) (finding $275.00 per hour for an attorney with 10 years of experience, $325.00 per hour for an attorney with 12 years of experience, $235.00 per hour for a first year associate, and $175.00 per hour for a paralegal reasonable market rates.)

The lower hourly rate allows for a better work product through effective briefing and the proper vetting of legal theories and case law. The Court is (hopefully) better educated. Good work takes time. The lower hourly rate leaves more money for workers as Local 1107's funds come from membership dues.

The hours expended are reasonable and justified because they accurately reflect detailed accurate work. Defense counsel did not just throw something together to get in front of the Court on a hope of winning. Defense counsel proceeded thoughtfully, judiciously and thoroughly. Such careful conduct benefited all involved.

CONCLUSION

The Local 1107 Defendants respectfully request an award of legal fees in the amount of $56,277.00, which consists of legal fees from January 16, 2019 through December 31, 2019.

Dated this 14th day of January 2020.

CHRISTENSEN JAMES & MARTIN

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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 in the following manner on the date it was filed with the Court:

✓ ELECTRONIC SERVICE: Pursuant to Rule 8.05 of the Rules of Practice for the Eighth Judicial District Court of the State of Nevada, the document was electronically served on all parties registered in the case through the E-Filing System.

Michael Macavoyamaya: mmcavoyamayalaw@gmail.com

Jonathan Cohen: jcohen@rsglabor.com

Glenn Rothner: grothner@rsglabor.com

__ UNITED STATES MAIL: By depositing a true and correct copy of the above-referenced document into the United States Mail with prepaid first-class postage, addressed as follows:

__ FACSIMILE: By sending the above-referenced document via facsimile as follows:

__ EMAIL: By sending the above-referenced document to the following:

CHRISTENSEN JAMES & MARTIN

By: */s/ Natalie Saville*
Natalie Saville

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

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

DANA GENTRY, an individual; and ROBERT CLARKE, an individual, Plaintiffs, vs. 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. No. XXVI **DECLARATION OF EVAN JAMES IN SUPPORT OF MOTION FOR ATTORNEY FEES AND AWARD OF COSTS**

I hereby declare as follows:

1. I have personal knowledge of the matters set forth herein.

2. Discovery was about to complete in June of 2019. I was involved in a cycling accident in June and could not timely complete discovery responses. As such, discovery was extended. At that time, Plaintiffs began a barrage of discovery even though they had had months prior to engage in discovery.

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3. On July 16, 2017, Defendants issued an offer of judgment to the Plaintiffs. Each Plaintiff was offered $30,000.00. Exhibit A attached hereto contains a true and correct copy of the offer of judgment.

4. Prior to issuing the offer of judgment, I met with Plaintiffs' counsel at my office. I explained that no new facts had been or would be developed in the case and that accepting the offer of judgment would be prudent given the preemption case law.

5. Plaintiffs' counsel refused the idea of settling for anything other than full payment of Plaintiffs' claims.

6. Plaintiffs hired an expert to evaluate their damages in the event legal liability was determined against the Defendants. Exhibit B attached hereto is a true and correct copy of Plaintiffs' expert evaluation for Plaintiff Dana Gentry. Her claim was valued at $107,391.00. Exhibit C attached hereto is a true and correct copy of Plaintiffs' expert evaluation for Plaintiff Robert Clark. His claim was valued at $92,305.00. Defendants were prepared to challenge these damages in the event of trial.

7. Exhibit D hereto contains an itemized statement of legal services extended and fees incurred by Local 1107 from the date of the offer of judgment—July 16, 2019—through December 31, 2019. Some small redactions were made to protect attorney-client information. Each of the items listed were incurred for the purpose of defending against Plaintiffs' claims.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 14, 2020.

/s/ Evan L. James
Evan L. James

EXHIBIT

A

OFFR
CHRISTENSEN JAMES & MARTIN
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7440 W. Sahara Avenue
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Telephone: (702) 255-1718
Facsimile: (702) 255-0871
Email: elj@cjmlv.com,
Attorneys for Local 1107, Luisa Blue and Martin Manteca
Local Counsel for SEIU International

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. No. XXVI **OFFER OF JUDGMENT**

Pursuant to NRCP 68, Defendants Nevada Service Employees Union, misnamed as Clark Count Public Employees Association Union aka SEIU Local 1107, and Service Employees International Union, jointly, hereby offer to allow judgment to be taken against them to resolve all claims against all of the Defendants and apportioned between Plaintiffs as follows: in favor of Plaintiff Dana Gentry for Thirty Thousand and 00/100 Dollars ($30,000.00), including all accrued interest, costs, attorney's fees, and any other sums that could be claimed by Plaintiff Dana Gentry against Defendants in the above-captioned action; and in favor of Plaintiff Robert Clarke for Thirty Thousand and 00/100

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Dollars ($30,000.00), including all accrued interest, costs, attorney's fees, and any other sums that could be claimed by Plaintiff Robert Clark against Defendants in the above-captioned action. This apportioned offer of judgment is conditioned upon the acceptance by all Plaintiffs against the offerors pursuant to NRCP 68(b).

This is not an admission of liability but is an offer of compromise submitted for the purposes of NRCP 68.

NOTICE TO CLERK OF THE COURT: If accepted by Plaintiff, this Offer of Judgment shall expressly be designated as a compromise settlement pursuant to NRCP 68(d). Defendant shall pay the amount of this Offer of Judgment in a reasonable time and therefore requests that any entry thereof by the Clerk be recorded as a dismissal of the claim instead of an entry of judgment.

DATED this 16th day of July 2019.

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

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 July 16, 2019 upon the following:

MICHAEL J. MCAVOYAMAYA
Michael J. Mcavoyamaya (14082)
3539 Paseo Del Ray
Las Vegas, NV 89121
Attorney for Plaintiffs

The document was also served electronically to the following:

Michael Macavoyamaya: mmcavoyamayalaw@gmail.com

Jonathan Cohen: jcohen@rsglabor.com

Evan L. James: elj@cjmlv.com

CHRISTENSEN JAMES & MARTIN

By: */s/ Natalie Saville*
Natalie Saville

EXHIBIT

B

Gentry, Dana, et al. vs. Service Employees International Union, et al.
Wrongful Termination Calculations
Lost Earnings & Benefits
Exhibit A

Notes Ms. Gentry was terminated from her position with SIEU Local 1107 on May 4, 2017, and obtained replacement employment with the Hopewell Fund. From March 19, 2018, through April 8, 2018, Ms. Gentry was to work half-time and commence full time work beginning April 9, 2019. Ms. Gentry was unemployed for a full-time equivalent of .9 years or 10.8 months. Lost earnings and benefits are calculated over a 10.8-month time period.

SEIU Annual Salary (1)		$ 70,000
Employer-paid Benefits		
Pension Contribution - 20% of Gross Salary (1)	$ 14,000	
Sick Leave, Vacation or Personal Leave - 8 hours per bi-weekly pay period (1) (2)	7,000	
Medical Insurance, Life Insurance and Governmentally Required Benefits as a Percent of Salary - 31.75 % (3)	22,224	
Annual Auto Allowance (1)	6,000	
Total Employer-paid Benefits		49,224
Total Annual Earnings and Benefits		$ 119,224
Years Unemployed due to Wrongful Termination		90.08%
Lost Earnings & Benefits		$ 107,391

Notes:
(1) Bates Gentry-Clarke000006.
(2) Calculated as the annual salary divided by 2,080 annual straight-time hours ($33.65 per hour) multiplied by 8 hours per each of 26 bi-weekly pay periods in a year.
(3) See Exhibit C.

EXHIBIT

C

CLARK CLAIMED DAMAGES

Clarke, Robert, et al. vs. Service Employees International Union, et al.

Wrongful Termination Calculations

Lost Earnings & Benefits

Exhibit A

Notes Mr. Clarke was terminated from his position with SIEU Local 1107 on May 4, 2017, and obtained replacement employment Approximately 8 months (.68 years) later. Lost earnings and benefits are calculated for that 8-month time period.

SEIU Annual Salary (1)		$ 80,000
Employer-paid Benefits		
Pension Contribution - 20% of Gross Salary (1)	$ 16,000	
Sick Leave, Vacation or Personal Leave - 8 hours per bi-weekly pay period (1) (2)	8,000	
Medical Insurance, Life Insurance and Governmentally Required Benefits as a Percent of Salary - 31.75 % (3)	25,399	
Annual Auto Allowance (1)	6,000	
Total Employer-paid Benefits		55,399
Total Annual Earnings and Benefits		$ 135,399
Years Unemployed due to Wrongful Termination		68.17%
Lost Earnings & Benefits		$ 92,305

Notes:

(1) Bates Gentry-Clarke000007.

(2) Calculated as the annual salary divided by 2,080 annual straight-time hours ($38.46 per hour) multiplied by 8 hours per each of 26 bi-weekly pay periods in a year.

(3) See Exhibit C.

EXHIBIT

D

ITEMIZED LEGAL FEES

STATEMENT

Christensen James & Martin

7440 W. Sahara Ave.
Las Vegas, NV 89117
702/255-1718
702/255-0871 Fax
Carma@CJMLV.com

History of Billing

Nevada Service Employees Union

SEIU Local 1107
2250 S. Rancho Drive, #165
Las Vegas, NV 89102

January 13, 2020

Professional Services

				Hrs/Rate	Amount
7/16/2019	-	LJW	Review Garcia Documents for Production Requests; email to E James	0.70 185.00/hr	129.50
	-	ELJ	Telephone call from J Cohen regarding new Discovery Requests, Discovery of Recordings, Protective Order and Offer of Judgment (.7); Research Caselaw and Plaintiff's Discovery positions (2.7); preparation of Response to Demand Letter regarding Discovery (1.4); emails with S Ury [redacted] (.1); serve Offer of Judgment (.3)	3.80 185.00/hr	703.00
7/17/2019	-	ELJ	Telephone calls to and from S Ury and G Rothner [redacted]	0.60 185.00/hr	111.00
7/18/2019	-	LJW	Review Garcia Documents for Disclosures	1.00 185.00/hr	185.00
	-	ELJ	Telephone call from G Rothner regarding Pro Hac Vice; preparation of Reply Letter to Plaintiff's Objections to Local 1107's Discovery Responses	5.70 185.00/hr	1,054.50
7/19/2019	-	ELJ	E-mails with S McDonald obtaining Evidence for Responses to Discovery Requests (.4); preparation of documents for Discovery (1); preparation of Supplemental Disclosures and Serve (1.6); preparation of Response to Demand Letter with supporting positions and Caselaw	5.00 185.00/hr	925.00
	-	LJW	Review Garcia Production of Document Requests	3.00 185.00/hr	555.00
7/22/2019	-	ELJ	Preparation of Responses to 2nd Set of Requests for Admission; preparation of email and letter to Plaintiff's Attorney; preparation of Stipulation and Protective Order	3.60 185.00/hr	666.00

				Hrs/Rate	Amount
7/22/2019	-	DEM	Review and revise Letter to opposing counsel; conference with E James	0.60 185.00/hr	111.00
7/23/2019	-	ELJ	Review letter from Rothner to Macavoymaya regarding Order of Deposition (.2); review filings; review Audio file (1.3); telephone call from J Cohen	2.90 185.00/hr	536.50
	-	LJW	Review Garcia Production of Document Requests	4.70 185.00/hr	869.50
7/24/2019	-	KBC	Conference with E James regarding Objections to Documents and Information Requests	0.40 185.00/hr	74.00
	-	DEM	Review draft letter to opposing counsel	0.50 185.00/hr	92.50
	-	ELJ	Review Audio file of August 31, 2015 Executive Board Meeting (1.4); Meeting with D Martin regarding Opinion on Attorney Client Privilege; preparation of letter to Plaintiff's Attorney regarding Deposition; telephone call from Grace regarding [redacted](.8); emails with B Martin; teleconference J Cohen and G Rothner; review Audio files (1.3)	9.10 185.00/hr	1,683.50
7/25/2019	-	KBC	Conference with E James regarding Discovery and potential Conflict Issues	0.20 185.00/hr	37.00
	-	ELJ	Conference call with J Cohen, Elia and Steve discussing Discovery Requests served jointly on Local and International (1); review emails from Local 1107 Staff with Evidence; preparation of Evidence; preparation of Supplemental Disclosures; telephone call to Plaintiff's Attorney regarding Deposition (.2); email Grace with confirmation [redacted]Directives and Deposition Instructions (.1); email to B Marzan regarding Deposition Date (.1)	5.80 185.00/hr	1,073.00
	-	LJW	Review Garcia Documents for Production Requests	2.50 185.00/hr	462.50
7/26/2019	-	LJW	Preparation of Responses to Request for Production of Documents; preparation of Supplemental Document Production Requests; conference with E James regarding Caselaw and Strategy	1.30 185.00/hr	240.50
	-	ELJ	Complete 3rd Supplemental Documents Production (1); complete Supplemental Responses to Interrogatories (.5); complete Supplemental Responses to Documents Production (.5); letter to M Mcavoyamaya regarding Graces Deposition (.3)	1.30 185.00/hr	240.50
7/29/2019	-	ELJ	Preparation for and Appearance at Fitzpatrick Deposition (6); review Audio of Emergency Board Meeting (.6); review Audio of 9/27/16 Board Meeting (.5)	7.10 185.00/hr	1,313.50
7/30/2019	-	LJW	Preparation of Responses to Request for Production of Document; preparation of Supplemental Documents Production Requests	2.50 185.00/hr	462.50

				Hrs/Rate	Amount
7/30/2019	-	ELJ	Telephone calls to and from J Cohen discussing Issues (.8); review Board Meeting Recordings for October 26, 2016 (1); emails with Brenda and Grace; preparation of Discovery Responses	5.90 185.00/hr	1,091.50
7/31/2019	-	ELJ	Letter from S McDonald (.8); email documents to Brenda for Deposition; review letter from Plaintiff's Attorney regarding Attorney-Client Privilege; review cited Caselaw; preparation of Reply letter	6.30 185.00/hr	1,165.50
	-	LJW	Preparation of Responses to Request for Production of Documents; preparation of Supplemental Documents Production Requests	1.10 185.00/hr	203.50
8/1/2019	-	ELJ	Telephone call to Mcavoyamaya requesting immediate Meet and Confer as requested in yesterday's letter (.1); Meet and Confer with Michael on Privilege Issues (.8); Meeting with Marzan to prepare for Deposition (3); preparation of Responses to 4th Document Production Request (2.9)	6.80 185.00/hr	1,258.00
8/2/2019	-	LJW	Conference with E James; review Documents for Production	0.10 185.00/hr	18.50
	-	ELJ	E-mails with Grace Vergara and Plaintiff's Attorney regarding Deposition Date (.2); telephone call to D Springer regarding Deposition (.1); preparation of Motion for Order Shortening Time to Determine Attorney Client Privilege (.9); preparation of Motion to Determine Attorney Client Privilege (1.4); telephone call to Court regarding Order Shortening Time; emails regarding Discovery	3.90 185.00/hr	721.50
8/5/2019	-	LJW	Conference with E James; review Production of Documents	3.80 185.00/hr	703.00
	-	ELJ	E-mails with S McDonald and Brenda Marzan regarding [redacted] (.7); emails with B Marzan regarding [redacted] and Deposition Testimony Transcript (.8); preparation of Joinder to SEIU's Opposition to Motion to Take Judicial Notice (.8); preparation of Opposition to Motion to Take Judicial Notice (1.9); preparation of Notice of Entry of Order (.4)	4.60 185.00/hr	851.00
8/6/2019	-	ELJ	Appearance at Motion for Default Judgment Hearing (2); conference with International Attorney regarding Deposition and Discovery (.9); conference with Plaintiff's Attorney regarding Discovery Deadlines (.3); Meeting with D Springer to discuss Deposition (2.5); preparation of Response to Discovery Questions (.4); preparation for Deposition (1.9)	8.00 185.00/hr	1,480.00
	-	LJW	Review Documents for Production	0.10 185.00/hr	18.50
8/7/2019	-	ELJ	Appearance at Hearing to Determine Attorney Client Privilege (1); conference with International Attorney regarding Discovery (.4); conference with Plaintiff's Attorney regarding Discovery (.4); conference with S Kisling (.2); Appearance at D Springer Deposition (6.5)	8.50 185.00/hr	1,572.50

				Hrs/Rate	Amount
8/7/2019	-	LJW	Review Garcia Documents for Production	2.90 185.00/hr	536.50
8/8/2019	-	LJW	Review Garcia Documents for Production in Gentry Case	5.00 185.00/hr	925.00
8/9/2019	-	KBC	Conference with E James regarding Joint Defense Issues, Discovery and Board Decision	0.40 185.00/hr	74.00
	-	LJW	Review Garcia Documents for Production in Gentry Case	4.30 185.00/hr	795.50
8/12/2019	-	LJW	Preparation of Supplemental Production to First Request for Production of Documents; preparation of Supplemental Production to Second Request for Production of Documents; preparation of Supplemental Production to Third Request for Production of Documents	3.80 185.00/hr	703.00
	-	ELJ	Review and edit Stipulation and Order regarding Discovery; emails regarding Extending Discovery	2.10 185.00/hr	388.50
8/13/2019	-	LJW	Preparation of Supplemental Production to First Request for Production of Documents; preparation of Supplemental Production to Second Request for Production of Documents; preparation of Supplemental Production to Third Request for Production of Documents; email to E James	1.80 185.00/hr	333.00
	-	ELJ	Review Notice of Hearing on Motion to Take Judicial Notice (.3); review proposed revisions to Stipulation and Order regarding Discovery (.4); email to Plaintiff's Attorney requesting an accessible electronic file (.1); complete Responses to Requests for Admission (2.5); complete Responses to Interrogatory Requests (3.5); send Responses to Client for review and approval (.3)	7.10 185.00/hr	1,313.50
8/14/2019	-	ELJ	Telephone conference with Eli regarding Discovery (.4); obtain Client Approval and Signature for Discovery Responses; complete Responses to Request for Production of Documents, Interrogatories and Admissions (3.2); preparation of Supplemental Disclosures of emails received from B Marzan (1); preparation of Notice of Entry of Order Denying Default Judgment Motion (.2)	5.00 185.00/hr	925.00
8/15/2019	-	ELJ	Review proposed Protective Order (.1); review Speaking Agent Caselaw and Bar Opinion; email to Grace and Brenda with [redacted] and Investigation Request	1.90 185.00/hr	351.50
8/19/2019	-	ELJ	E-mails with opposing counsel regarding Discovery Commissioner Report and Recommendations (.1); review and reject proposed Discovery Commissioner Report; emails with Attorney (.8)	0.90 185.00/hr	166.50
8/20/2019	-	ELJ	Review and edit updated proposed Report and Recommendations of Discovery Commissioner (1.2); email revisions to opposing counsel and International Counsel (.1); telephone call to D Springer Deposition Transcript (.1); email and text to D Springer regarding Deposition Transcript (.1)	1.50 185.00/hr	277.50

				Hrs/Rate	Amount
8/21/2019	-	ELJ	E-mails with Grace recommending [redacted] (.1); telephone call from Eli regarding Case Calendar Dates (.2); Research Caselaw and Defense Theory to Defamation (1.4); preparation of Notice of Entry of Order for Stipulated Protective Order (.3); review International's Disclosures (1.2)	3.20 185.00/hr	592.00
8/23/2019	-	ELJ	Telephone call from J Cohen	0.50 185.00/hr	92.50
8/26/2019	-	ELJ	Update Plaintiff's Discovery Disclosures; review Bates Numbers with International Attorney and request missing Bates Numbers	1.10 185.00/hr	203.50
8/27/2019	-	ELJ	Review Plaintiff's Motion to Compel (.7); prepare Opposition, annotate Motion with Arguments (.6); Research Arguments relating to Attorney Client Privilege and Defamation (2.1)	3.40 185.00/hr	629.00
8/28/2019	-	ELJ	Review Court Ordered Alterations to Scheduling Order and Re-Calendar (.3); review Kisling Deposition Notice; review Document Production Request to Kisling; emails regarding Discovery and Attorney Client Privilege; review Court Minute Order	2.90 185.00/hr	536.50
8/29/2019	-	ELJ	E-mail and texts with D Springer regarding Deposition Transcript review	0.10 185.00/hr	18.50
8/30/2019	-	ELJ	Telephone call with J Cohen regarding Attorney Client Privilege (.4); email [redacted] (.4); email [redacted] (.2); Expert Witness Call (.5); emails to Client	1.50 185.00/hr	277.50
9/3/2019	-	ELJ	Conference with S McDonald, M Urban and J Cohen regarding [redacted] (.9); telephone call to Mcavoyamaya regarding Attorney-Client and Attorney-Work Product Privileges (.2)	1.10 185.00/hr	203.50
9/4/2019	-	ELJ	Review and edit Stipulation on Attorney-Client Privilege (1); email Stipulation and Order to Counsel for review (.2); emails regarding Depositions; telephone call to B Marzan and Kisling regarding Deposition (.3)	1.50 185.00/hr	277.50
9/9/2019	-	ELJ	Letter to Court regarding Motion to Take Judicial Notice (.4); review Briefs for Hearing on Motion to Take Judicial Notice (.5)	0.90 185.00/hr	166.50
9/10/2019	-	ELJ	Appearance at Hearing and Argue Motion to Take Judicial Notice	1.50 185.00/hr	277.50
	-	DEM	Review Briefs on Motion for Judicial Notice	0.40 185.00/hr	74.00
9/12/2019	-	ELJ	Conference call with J Cohen regarding Depositions	0.30 185.00/hr	55.50
9/17/2019	-	ELJ	Preparation of Order Denying Motion to Take Judicial Notice and present to Counsel (.4); preparation of Urban Report and Kisling Report for Disclosure and disclose (1.2); emails with Counsel (.3)	1.90 185.00/hr	351.50

			Hrs/Rate	Amount
9/23/2019 -	ELJ	Appearance at Kisling Deposition (1); Meeting with B Marzan for Deposition preparation (2)	3.00 185.00/hr	555.00
9/24/2019 -	ELJ	Preparation for and Appearance at B Marzan Deposition	7.50 185.00/hr	1,387.50
9/25/2019 -	ELJ	Review Order and file (.2); preparation of Notice of Entry of Order (.4)	0.60 185.00/hr	111.00
10/3/2019 -	ELJ	Review letter from Plaintiff's Attorney to Discovery Commissioner regarding Hearing of Motion to Compel (.2); telephone calls to and from J Cohen regarding Declaration; conference call with J Cohen and Luisa Blue [redacted]; preparation of Stipulation and Order to Coordinate with Nguyen Case	3.30 185.00/hr	610.50
10/4/2019 -	ELJ	Review Proposed [redacted] Martin and Commenst; preparation of Summary Judgment Motion	4.20 185.00/hr	777.00
10/7/2019 -	ELJ	Preparation of Summary Judgment Motion	6.00 185.00/hr	1,110.00
10/8/2019 -	ELJ	Preparation of Summary Judgment Motion	4.10 185.00/hr	758.50
10/9/2019 -	ELJ	Preparation of Summary Judgment Motion	4.30 185.00/hr	795.50
10/10/2019 -	ELJ	Preparation of Summary Judgment Motion	2.10 185.00/hr	388.50
10/16/2019 -	ELJ	Conference call with Martin Manteca (.4); preparation of Summary Judgment Motion; telephone call from J Cohen regarding Trial Date; email to Attorneys regarding Trial Date; telephone call to Grace; Meeting with Brendan regarding Documents Certificate	3.10 185.00/hr	573.50
10/18/2019 -	ELJ	E-mails regarding Confidential Documents (.3); email to Client regarding Confidential Documents (.2)	0.50 185.00/hr	92.50
10/23/2019 -	ELJ	Preparation of Summary Judgment Motion	3.80 185.00/hr	703.00
10/24/2019 -	ELJ	Preparation of Summary Judgment Motion	3.20 185.00/hr	592.00
10/25/2019 -	ELJ	Preparation of Summary Judgment Motion; preparation of Marzan Declaration regarding Confidential Documents	9.60 185.00/hr	1,776.00
10/26/2019 -	ELJ	Preparation of Appendix to Summary Judgment Motion	5.00 185.00/hr	925.00
10/28/2019 -	DEM	Review and revise Motion for Summary Judgment; conference with E James; Research	1.60 185.00/hr	296.00

			Hrs/Rate	Amount
10/28/2019 -	ELJ	Revisions to Summary Judgment Motion from D Martin	1.00 185.00/hr	185.00
11/1/2019 -	ELJ	Preparation of Opposition to Plaintiff's Summary Judgment Motion	4.90 185.00/hr	906.50
11/2/2019 -	ELJ	Research Caselaw to oppose Plaintiff's Summary Judgment Motion; Research Caselaw for LMRA Preemption where Union official not Elected; draft Opposition to Plaintiff's Summary Judgment Motion	4.80 185.00/hr	888.00
11/4/2019 -	ELJ	Conference with J Cohen regarding Stipulation to Continue Trial and Opposition to Plaintiff's Summary Judgment Motion	1.00 185.00/hr	185.00
11/5/2019 -	ELJ	Preparation of Opposition to Plaintiff's Summary Judgment Motion	3.00 185.00/hr	555.00
11/6/2019 -	ELJ	Preparation of Stipulation and Order to Continue Trial Date and Summary Judgment Motion Hearing	0.40 185.00/hr	74.00
11/7/2019 -	ELJ	Preparation of Opposition to Plaintiff's Summary Judgment Motion	3.30 185.00/hr	610.50
11/11/2019 -	ELJ	Preparation of Opposition to Summary Judgment Motion	8.00 185.00/hr	1,480.00
11/19/2019 -	ELJ	Preparation of Motion to Coordinate Cases	0.90 185.00/hr	166.50
11/20/2019 -	ELJ	Preparation of Reply to Opposition to Motion for Summary Judgment	4.60 185.00/hr	851.00
11/21/2019 -	ELJ	Preparation of Reply to Opposition to Motion for Summary Judgment	4.90 185.00/hr	906.50
11/22/2019 -	ELJ	Preparation of Reply to Opposition to Local 1107's Summary Judgment Motion	3.20 185.00/hr	592.00
11/25/2019 -	ELJ	Review SEIU's Reply to Opposition to Summary Judgment Motion	0.40 185.00/hr	74.00
11/27/2019 -	ELJ	Review Reply to Opposition to Plaintiff's Summary Judgment Motion	0.50 185.00/hr	92.50
12/2/2019 -	ELJ	Review all Briefs on Summary Judgment and prepare for Oral Argument by reviewing caselaw; email with counsel for Hearing	7.00 185.00/hr	1,295.00
12/3/2019 -	ELJ	Appearance at Summary Judgment Argument (3.5); email Client update on Summary Judgment Motion (.2)	3.70 185.00/hr	684.50
12/9/2019 -	ELJ	Telephone call from J Cohen regarding Memorandum of Costs and Motion for Attorney Fees	0.40 185.00/hr	74.00

			Hrs/Rate	Amount
12/13/2019 -	ELJ	E-mail J Cohen seeking Plaintiffs; Response to prepare Summary Judgment Order; telephone call to J Cohen regarding Costs and Fees	0.40 185.00/hr	74.00
12/16/2019 -	ELJ	E-mails with Grace, Brenda and Brian regarding information request from Dana Gentry	0.20 185.00/hr	37.00
12/17/2019 -	ELJ	E-mails with Counsel regarding signature to Summary Judgment Order (.2); preparation of Summary Judgment Order for Court (.1); preparation of Memorandum of Costs (2.5)	2.80 185.00/hr	518.00
12/18/2019 -	ELJ	Complete review of all Costs; preparation of Verified Memorandum of Costs	3.50 185.00/hr	647.50
12/26/2019 -	ELJ	Preparation of Motion for Attorney Fees	5.20 185.00/hr	962.00
12/27/2019 -	ELJ	Preparation of Motion for Attorney Fees and Costs	4.90 185.00/hr	906.50
12/30/2019 -	ELJ	Preparation of Affidavit of Fees and Costs Motion	4.90 185.00/hr	906.50
		For professional services rendered	304.20	$56,277.00

MATF
ROTHNER, SEGALL & GREENSTONE
Glenn Rothner (*Pro hac vice*)
Jonathan Cohen (10551)
Maria Keegan Myers (12049)
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Las Vegas, Nevada 89117
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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

SERVICE EMPLOYEES INTERNATIONAL UNION'S AND MARY KAY HENRY'S MOTION FOR ATTORNEYS' FEES

HEARING REQUESTED

NOTICE OF MOTION AND MOTION

Service Employees International Union ("SEIU") and Mary Kay Henry ("Henry") (collectively, "Defendants") hereby move for an award of their reasonable attorneys' fees pursuant to Nevada Rule of Civil Procedure 68(f)(1)(B).[1] Defendants are entitled to their reasonable attorneys' fees because Plaintiffs Dana Gentry and Robert Clarke rejected Defendants' statutory settlement offer, but did not recover a more favorable judgment.

This motion is based on this notice, the following Memorandum of Points and Authorities, the Declaration of Jonathan Cohen filed herewith, the pleadings and papers filed in this action, and upon such other matters that may be presented to the Court in connection with this motion.

A hearing on SEIU Local 1107's Motion for Attorneys' Fees is scheduled for February 18, 2020, at 9 a.m. Defendants respectfully request that their motion for attorneys' fees be heard at the same time.

DATED: January 16, 2020

ROTHNER, SEGALL & GREENSTONE

CHRISTENSEN JAMES & MARTIN

By */s/ Jonathan Cohen*
JONATHAN COHEN
Attorneys for Service Employees International Union and Mary Kay Henry

[1] Defendants have already filed a Memorandum of Costs, and therefore do not discuss their costs in this motion.

MEMORANDUM OF POINTS AND AUTHORITIES

Introduction

Service Employees International Union ("SEIU") and Mary Kay Henry ("Henry") (collectively, "Defendants") hereby move for an award of their reasonable attorneys' fees pursuant to Nevada Rule of Civil Procedure 68(f)(1)(B). Defendants made an offer of settlement to plaintiffs Robert Clarke and Dana Gentry (collectively, "Plaintiffs") pursuant to Rule 68 on July 16, 2019. Plaintiffs rejected the offer, but did not recover a more favorable judgment. As a result, Defendants request an order requiring Plaintiffs to pay Defendants' reasonable attorneys' fees beginning on July 16, 2019, the date of Defendants' rejected Rule 68 offer, in the amount of $57,206.50.

Statement of Facts

The Court is already familiar with the facts and issues in this case. In short, Plaintiffs are former managers with defendant Service Employees International Union, Local 1107 ("Local 1107"). Shortly after the imposition of a trusteeship over Local 1107 by SEIU in April 2017, the Local 1107 Trustees terminated the Plaintiffs' employment. Plaintiffs thereafter sued SEIU, Henry, Local 1107, and former Local 1107 Trustees Luisa Blue and Martin Manteca, for breach of contract, wrongful termination, interference with contract, negligence, and defamation.

On September 26, 2018, Plaintiffs moved for partial summary judgment. On October 15, 2018, all defendants opposed that motion, and cross-moved for summary judgment on all claims. Among other things, all defendants sought summary judgment on the grounds that the claims in the complaint were preempted by the Labor Management Reporting and Disclosure Act, 29 U.S.C. § 401, *et seq*. ("LMRDA"). On March 22, 2019, the Court issued a minute order denying the motions without prejudice to allow for additional discovery.

Defendants issued written discovery requests to Plaintiffs on October 11, 2018, and again on March 11, 2019, and received Plaintiffs' responses to those requests on or about January 4, 2019, and April 24, 2019, respectively. Declaration of Jonathan Cohen in Support of Motion for Attorneys' Fees ("Cohen Decl."), ¶ 2. Defendants then took the depositions of Plaintiffs on May 29 and 30, 2019. *Id.* Defendants also took the deposition of Plaintiffs' damages expert on

May 31, 2019. *Id*. According to the written report of Plaintiffs' damages expert, Clarke's economic damages were $92,305.00, and Gentry's economic damages were $107,391.00. Cohen Decl., ¶ 2, Ex. A.

Based on Defendants' evaluation of Plaintiffs' discovery responses, the deposition testimony of Plaintiffs, and the deposition testimony and the report of Plaintiffs' damages expert, Defendants, together with defendants Local 1107, Manteca, and Blue, made a joint offer of judgment pursuant to Rule 68 to Gentry in the amount of $30,000.00, and a joint offer of judgment pursuant to Rule 68 to Clarke in the amount of $30,000.00. Cohen Decl., ¶ 3. Plaintiffs did not accept the offer. *Id*.

Notably, despite alleging breach of contract and wrongful termination claims against SEIU and Henry, Plaintiffs were unable to establish any factual or legal basis whatsoever for such claims against them. Indeed, it is undisputed that Plaintiffs did not have an employment contract with SEIU or Henry, and that Plaintiffs did not work for SEIU or Henry. Nor did Plaintiffs' first amended complaint allege any legal theory to hold SEIU and/or Henry liable for such claims in the absence of those essential facts.

On October 29, 2019, all defendants renewed their motions for summary judgment. Plaintiffs also renewed their motion for partial summary judgment. On December 3, 2019, the Court granted summary judgment in favor of all defendants. The Court ruled that Plaintiffs' claims were preempted by the LMRDA. The Court further ruled that, given the absence of employment contracts or employment with SEIU and Henry, Plaintiffs' breach of contract and wrongful termination claims against them failed.

Argument

1. The Court Has Discretion to Award Defendants Reasonable Attorneys' Fees Pursuant to Nevada Rule of Civil Procedure 68.

Nevada Rule of Civil Procedure 68 permits any party to "serve an offer in writing to allow judgment to be taken in accordance with its terms and conditions." Nev. R. Civ. P. 68(a). Rule 68 further provides that "[a]n apportioned offer of judgment to more than one party may be conditioned upon the acceptance by all parties to whom the offer is directed," and that "[a] joint

offer may be made by multiple offerors." Nev. R. Civ. P. 68(b) & (c). If the offeree rejects an offer and fails to obtain a more favorable judgment,

> the offeree must pay the offeror's post-offer costs and expenses, including a reasonable sum to cover any expenses incurred by the offeror for each expert witness whose services were reasonably necessary to prepare for and conduct the trial of the case, applicable interest on the judgment from the time of the offer to the time of entry of the judgment and *reasonable attorney fees, if any be allowed, actually incurred by the offeror from the time of the offer*. If the offeror's attorney is collecting a contingent fee, the amount of any attorney fees awarded to the party for whom the offer is made must be deducted from that contingent fee.

Nev. R. Civ. P. 68(f)(B) (emphasis added).

In determining whether to award reasonable attorneys' fees, a court must consider the following factors:

> (1) whether the plaintiff's claim was brought in good faith; (2) whether the defendants' offer of judgment was reasonable and in good faith in both its timing and amount; (3) whether the plaintiff's decision to reject the offer and proceed to trial was grossly unreasonable or in bad faith; and (4) whether the fees sought by the offeror are reasonable and justified in amount.

Beattie v. Thomas, 99 Nev. 579, 588-89 (1983); *Yamaha Motor Co. v. Arnoult*, 114 Nev. 233, 251 (1998). "After weighing the foregoing factors, the district judge may, where warranted, award up to the full amount of fees requested." *Beattie*, 99 Nev. at 589. "No one factor under *Beattie* is determinative" and the district court "has broad discretion to grant the request so long as all appropriate factors are considered." *Yamaha Motor Co.*, 114 Nev. at 252 n.16.

2. The *Beattie* Factors Favor an Award of Reasonable Attorneys' Fees to Defendants.

An award of Defendants' reasonable attorneys' fees in the amount of $57,206.50 is warranted here. Indeed, there is no dispute that Plaintiffs failed to accept Defendants' offer of judgment. *See* Nev. R. Civ. P. 68(e) ("If the offer is not accepted within 14 days after service, it will be considered rejected by the offeree and deemed withdrawn by the offeror."). Nor is there

any dispute that Plaintiffs failed to obtain a more favorable judgment.

The *Beattie* factors favor an award of Defendants' reasonable attorneys' fees. First, Plaintiffs' claims against SEIU and Henry were not brought in good faith. It is undisputed that Plaintiffs did not work for SEIU and/or Henry, and that Plaintiffs had no employment contracts with SEIU and/or Henry. Moreover, neither the initial complaint nor the first amended complaint alleged any legal basis for holding SEIU and/or Henry liable for breach of contract or wrongful termination despite the glaring absence of those essential facts. Thus, at the very outset of this case there was not a reasonable factual or legal basis for Plaintiffs' claims against SEIU and/or Henry. Nevertheless, Plaintiffs pursued their claims against SEIU and Henry and imposed substantial costs and attorneys' fees on Defendants.

Moreover, even assuming *arguendo* that Plaintiffs initially brought their claims in good faith, they were aware as early as October 2018, when Defendants first moved for summary judgment, that their claims were likely subject to LMRDA preemption. In fact, Plaintiffs admitted in their September 2018 motion for partial summary judgment that they held management-level positions at Local 1107, a dispositive concession for purposes of LMRDA preemption.[2] *Screen Extras Guild v. Superior Court*, 51 Cal. 3d 1017, 1028 (1990) (concluding that "Congress intends that elected union officials shall be free to discharge *management* or policymaking personnel.") (emphasis added). Despite that additional undisputed and glaring factual weakness in their case, Plaintiffs continued to pursue their claims for another year at significant cost to Defendants.

Second, Defendants' offer was reasonable and in good faith both in timing and amount. Defendants made their offer pursuant to Rule 68 following receipt of Plaintiffs' discovery responses and expert's report, and the depositions of Plaintiffs and their expert. Based on that

[2] In their September 2018 motion for partial summary judgment, Plaintiffs stated that "[i]t cannot be disputed that Ms. Gentry and Mr. Clarke were hired *to their management positions* with Local 1107 by former Local 1107 President Cherie Mancini." Plaintiffs' Motion, at 11:19-20 (emphasis added); *see also id*. at 11:21 (stating that Plaintiffs were "*management employees* that were not covered by" staff union collective bargaining agreement) (emphasis added). They made the same admission in their November 2018 reply brief, describing themselves as "*management employees* that answered to [the union's former president]." Reply, at 18 (emphasis added).

discovery, Defendants were able to reasonably assess both the merits and value of Plaintiffs' claims. Defendants offered Clarke a payment equal to nearly 33% of the economic loss found by his expert, and offered Gentry a payment equal to nearly 28% of the economic loss found by her expert. Given the absence of any contractual or employment relationship between Plaintiffs and SEIU and/or Henry, and the significant persuasive authority supporting the conclusion that Plaintiffs' claims were preempted by the LMRDA, Defendants acted reasonably and in good faith by offering to settle for approximately one-third of the alleged damages determined by the Plaintiffs' expert.

Third, Plaintiffs' decision to reject the offer and continue litigating this action was unreasonable. Indeed, as the Court is aware, Plaintiffs never established the existence of an employment or contractual relationship between them and SEIU and/or Henry, or any legal basis for holding SEIU and/or Henry liable for breach of contract or wrongful termination in the absence of those essential facts. Additionally, even if there is no binding Nevada authority regarding LMRDA preemption in this context, by the time of Defendants' Rule 68 offer Plaintiffs were aware of the substantial persuasive authority holding that the LMRDA preempted the type of claims at issue here. By rejecting Defendants' Rule 68 offer and continuing to litigate this case – despite no employment or contractual relationship with SEIU and/or Henry, and in the face of their earlier admissions that they held management-level positions at Local 1107 – Plaintiffs did little more than unnecessarily increase attorneys' fees and costs for Defendants.

Finally, as discussed more in the next section, the attorneys' fees sought by Defendants are reasonable and justified in amount. Defendants seek a modest fee of between $185.00 and $225 an hour, and the hours expended on this matter since July 2019, when Plaintiffs' rejected Defendants' Rule 68 offer, were reasonable.

3. Defendants' Request for Attorneys' Fees is Supported by the *Brunzell* Factors.

In determining whether a request for attorneys' fees is reasonable and justified, courts should consider the following factors:

> (1) the qualities of the advocate: his ability, his training, education, experience, professional standing and skill; (2) the character of the work to be done: its difficulty,

> its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation; (3) the work actually performed by the lawyer: the skill, time and attention given to the work; (4) the result: whether the attorney was successful and what benefits were derived.

Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345, 346 (1969). Each factor should be "given consideration by the trier of fact and . . . no one element should predominate or be given undue weight." *Id*. at 349-50.

A. Counsel for Defendants Have Significant Relevant Experience in Labor Law.

As detailed in the accompanying Cohen Declaration, counsel for Defendants have the ability, training, education, experience, professional standing, and skill to warrant the attorneys' fees sought by Defendants SEIU and Henry. *See* Cohen Decl., ¶¶ 4-5, 8; *cf. Easley v. U.S. Corp.*, Case No. 2:11-cv-00357-ECR-CWH, 2012 WL 3245526, * (D. Nev. Aug. 7, 2012) (finding hourly rate of $340.00 reasonable for attorney with ten years of specialized experience in labor and employment law). Indeed, in proceedings related to the trusteeship by SEIU over Local 1107, the United States District Court for the District of Nevada awarded hourly rates of $375.00 to Defendants' counsel in January 2019. Cohen Decl., ¶ 8.

B. The Character of Defendants' Legal Work, as Well as the Skill, Time and Attention Required to Complete It, Warrants an Award of Reasonable Attorneys' Fees.

The character of Defendants' legal work warrants an award of reasonable attorneys' fees. So too does the skill, time, and attention required to complete that work.

As this Court is aware, one of the principal legal issues upon which summary judgment was granted involved federal preemption under the LMRDA. Defendants spent a significant amount of time and attention preparing briefing for this Court that addressed federal preemption in a clear and persuasive fashion. That task, which required extensive research and review of cases in jurisdictions nationwide, was especially important given the absence of binding Nevada authority on point.

Also, as is evident from review of the Court's docket and counsel's billing records, *see* Cohen Decl., Ex. C, between Defendants' Rule 68 offer and their successful motion for summary judgment, Defendants spent considerable time and attention on this case. Among other things, counsel spent time researching and briefing various motions,[3] addressing ongoing discovery,[4] and attending court appearances required to advance this litigation to completion.[5] Defendants completed those demanding but necessary tasks in an efficient and skilled manner.

Last, it bears mentioning that this case is one of five lawsuits brought by Plaintiffs' counsel in connection with the trusteeship by SEIU over Local 1107.[6] Managing litigation and discovery in that context is a difficult task, and it should be taken into account in assessing the work of Defendants' counsel in this case.

C. Defendants Obtained Favorable Results.

Last, by obtaining summary judgment on all claims against them in the first amended complaint, Defendants' counsel achieved a favorable result.

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[3] Plaintiffs filed a request for judicial notice on July 22, 2019, which Defendants opposed; defendants SEIU Local 1107, Manteca, and Blue filed a motion to determine attorney-client/work product privilege on August 5, 2019; Plaintiffs filed a motion to compel on August 26, 2019, which was resolved by stipulation filed on September 20, 2019; and the parties filed motions for summary judgment and partial summary judgment on October 29 and 30, 2019. Each of these filings required research and attention by Defendants' counsel.

[4] Among other things, Plaintiffs took the depositions of Deirdre Fitzpatrick and SEIU on July 29, 2019; Plaintiffs took the deposition of Debbie Springer on August 7, 2019; and Plaintiffs took the depositions of Brenda Marzan and SEIU Local 1107 on September 24, 2019. In addition, Defendants responded to Plaintiffs' third set of requests for admission, second set of interrogatories, and fifth request for production of documents on August 14, 2019. All such discovery required substantial time and attention by Defendants' counsel.

[5] Counsel for Defendants appeared at a hearing on August 6, 2019, related to Plaintiffs' request for default judgment; a hearing on August 7, 2019, related to the motion to determine attorney-client/work product privilege; a hearing on September 10, 2019, related to Plaintiffs' request for judicial notice (telephonic appearance); and a hearing on the parties' motions for summary judgment on December 3, 2019.

[6] *See Mancini v. SEIU, et al.*, Case No. 2:17-cv-02137-APG-NJK; *Garcia v. SEIU, et al.*, Case No. 2:17-cv-01340-APG-NJK; *Gentry v. SEIU, et al.*, Case No. A-17-764942-C; *Cabrera v. SEIU, et al.*, Case No.: 2:18-CV-00304-RFB-CWH; *Nguyen v. SEIU, et al.*, Case No. A-19-794662-C.

Conclusion

For the foregoing reasons, Defendants SEIU and Henry respectfully request an award of attorneys' fees in the amount of $57,206.50.

DATED: January 16, 2020

ROTHNER, SEGALL & GREENSTONE

CHRISTENSEN JAMES & MARTIN

By */s/ Jonathan Cohen*
JONATHAN COHEN
Attorneys for Service Employees International Union and Mary Kay Henry

CERTIFICATE OF SERVICE

Gentry, et al. v. Service Employees International Union, et al.
Case No. A-17-764942-C

I am an employee of Rothner, Segall & Greenstone; my business address is 510 South Marengo Avenue, Pasadena, California 91101. On January 16, 2020, I served the foregoing document described as **SERVICE EMPLOYEES INTERNATIONAL UNION'S AND MARY KAY HENRY'S MOTION FOR ATTORNEYS' FEES** on the interested parties in this action as follows:

[X] **(By ELECTRONIC SERVICE)**
Pursuant to Rule 8.05 of the Rules of Practice for the Eighth Judicial District Court of the State of Nevada, the document was electronically served on all parties registered in the case through the E-Filing System.

Michael Macavoyamaya: mmcavoyamayalaw@gmail.com

Evan James: elj@cjmlv.com

[ ] **(By U.S. MAIL)**
By depositing a true and correct copy of the above-referenced document into the United States Mail with prepaid first-class postage, addressed as follows:

Michael J. Mcavoyamaya 4539 Paseo Del Ray Las Vegas, NV 89121 Tel: (702) 685-0879 Email: Mmcavoyamayalaw@gmail.com	Evan L. James Christensen James & Martin 7440 W. Sahara Avenue Las Vegas, NV 89117 Tel: (702) 255-1718 Fax: (702) 255-0871 Email: elj@cjmlv.com

/s/ Lisa C. Posso
Lisa C. Posso

DECL
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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. XXVI

DECLARATION OF JONATHAN COHEN IN SUPPORT OF SERVICE EMPLOYEES INTERNATIONAL UNION'S AND MARY KAY HENRY'S MOTION FOR ATTORNEYS' FEES PURSUANT TO NEV. R. CIV. P. 68

I, Jonathan Cohen, declare as follows:

1. [Identification] I am a member of the law firm Rothner, Segall & Greenstone and am counsel to defendants Service Employees International Union ("SEIU") and Mary Kay Henry ("Henry") in the above-captioned matter. I make this declaration in support of SEIU's and Henry's motion for attorneys' fees pursuant to Nevada Rule of Civil Procedure 68.

2. [Discovery] SEIU and Henry served their First Requests for Production of Documents on Plaintiffs Dana Gentry and Robert Clarke on October 11, 2018. Gentry and Clarke served their discovery responses on or about January 4, 2019. SEIU and Henry served their First Set of Interrogatories and Second Request for Production of Documents on Plaintiffs Gentry and Clarke on March 11, 2019. Gentry and Clarke served their discovery responses on or about April 24, 2019.

SEIU and Henry took the depositions of Plaintiffs Gentry and Clarke on May 29, and 30, 2019, respectively. SEIU and Henry took the deposition of Plaintiffs' damages expert on May 31, 2019. According to the written report of Plaintiffs' expert, Gentry's economic damages were $107,391.00, and Clarke's economic damages were $92,305.00. A true and correct copy of Plaintiffs' expert report is attached hereto as Exhibit A.

3. [Rule 68 Offer] On July 16, 2019, all defendants, including SEIU and Henry, served an offer of judgment on Plaintiffs Gentry and Clarke pursuant to Nevada Rule of Civil Procedure 68. Attached hereto as Exhibit B is a true and correct copy of defendants' Rule 68 offer of judgment. Plaintiffs did not accept the offer.

4. [Relevant Experience] I was the principal attorney from my firm that worked on this action. I graduated Order of the Coif from UCLA School of Law in 2004, where I was in the Program for Public Interest Law and Policy. Following graduation, I clerked for one year for Judge Harry Pregerson of the United States Court of Appeal for the Ninth Circuit. Since that

time, I have practiced union-side labor and employment law almost exclusively. I am licensed to practice law in both California and Nevada.

From 2005 and 2006, I was an associate with the union-side labor law firm Geffner and Bush (now Bush Gottlieb), where I worked on a variety of matters involving unions and union trust funds. From 2007 until 2010, I was an associate with Rothner, Segall & Greenstone, which is also a union-side labor law firm. I have been a partner with the same firm since 2011. I am also a co-author of a regular column entitled "NLRA Case Notes" in the California Labor & Employment Law Review, the official publication of the State Bar of California Labor and Employment Law Section.

At Rothner, Segall & Greenstone, I have represented union and individual clients in federal and state courts, in federal, state and local administrative agencies, and before labor arbitrators. Among the appellate cases I have worked on are the following, which resulted in published cases: *Travis v. Bd. of Trustees of Cal. State University*, 161 Cal. App. 4th 335 (2008); *Cal. Faculty Ass'n v. Public Employment Relations Bd.*, 160 Cal. App. 4th 609 (2008); *Service Employees Int'l Union, Local 99 v. Options - A Child Care and Human Srvcs. Agency*, 200 Cal. App. 4th 869 (2011); *Williams v. Public Employment Relations Bd.*, 204 Cal. App. 4th 1119 (2012); and *County of Los Angeles v. Los Angeles County Civil Serv. Comm'n*, 22 Cal. App. 5th 174 (2018). I also helped prepare briefs on behalf of amicus curiae in the following published cases: *San Leandro Teachers Ass'n v. San Leandro Sch. Dist.*, 46 Cal. 4th 822 (2009); *City of Los Angeles v. Superior Court*, 56 Cal. 4th 1086 (2013); and *County of Los Angeles v. Los Angeles County Employee Relations Comm'n*, 56 Cal. 4th 905 (2013).

5. [Relevant Experience of Other Billing Attorneys] Glenn Rothner, a founding partner of our firm, also worked on this matter. He graduated from UCLA School of Law. Prior to the founding of Rothner, Segall & Greenstone, he worked as staff counsel to the United Farm Workers of America, AFL-CIO, from 1975 and 1978. Since that time, he has represented a wide variety of local unions, intermediate bodies, and international unions. He is currently General Counsel to two statewide unions in California.

He served as Chair of the Labor Law Section of the Los Angeles County Bar Association in 1988-89 and Chair of the State Bar Labor and Employment Law Section in 1992-93; has served as a Lawyer Representative to the Ninth Circuit Judicial Conference; is a longstanding member of the California Public Employment Relations Board Advisory Committee; served, by appointment of the State Senate Rules Committee, as a member of the California Commission for the Review of the Master Plan for Higher Education in 1986 and 1987; served as a member of Senator Barbara Boxer's Judicial Advisory Committee for the Central District of California from 1999 to 2001; and was a member of the Board of Directors of the Legal Aid Foundation of Los Angeles from 1994 to 1997.

He has lectured on public and private sector collective bargaining for the University of San Diego School of Law, the Public Law Section of the State Bar of California, the State Bar Labor and Employment Law Section, the UCLA Institute of Industrial Relations, the AFL-CIO Lawyers Coordinating Committee, the Orange County Industrial Relations Research Association, and the American Arbitration Association. In addition to lecturing on labor law topics, Glenn was a contributing author to *California Public Sector Labor Relations* (Matthew Bender 1990); a consultant to the *Pocket Guide to Unfair Practices: California Public Sector* (CPER, 1992); a consultant to *California Administrative Mandamus* (CEB, 2d ed. 1989).

6. [Billing and Timekeeping] The attorneys in our firm prepare contemporaneous daily time records on the basis of six minute billing increments, indicating the task performed for each entry. Our firm maintains an archive of billing records for each matter and/or client.

7. [Billing Records] Attached hereto as Exhibit C is a true and correct copy of billing records reflecting the tasks performed and time billed in this matter from July 16, 2019, when defendants served their Rule 68 offer of judgment, through December 20, 2019. I have exercised billing judgment and marked down, or eliminated altogether, certain entries in the attached records. Additionally, the attached records have been redacted where necessary to protect attorney-client and/or work-production information.

8. [Billing Rates] SEIU and Henry were billed $185.00 an hour for this matter until October 31, 2019, after which SEIU and Henry were billed $225.00 an hour. Those rates are substantially lower than the rates our firm has been awarded in connection with other fee motions. For example, in 2009, the United States District Court for the Central District of California awarded attorneys' fees for my work at an hourly rate of $243.00. In January 2019, in proceedings related to the trusteeship by SEIU over SEIU Local 1107, the United States District Court for the District of Nevada awarded attorneys' fees for my work at an hourly rate of $375.00.

Moreover, in 2013, the Los Angeles Superior Court awarded attorneys' fees for Mr. Rothner's work at an hourly rate of $600.00. That same year, the United States District Court for the Central District of California awarded attorneys' fees for Mr. Rothner's work at an hourly rate of $600.00.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Executed on January 16, 2020, in Pasadena, California.

By *__/s/ Jonathan Cohen__*
JONATHAN COHEN

EXHIBIT A

Kirkendall Consulting Group, LLC
1522 West Warm Springs Road, Henderson, NV 89014 • Telephone: 702-313-1560 • Fax: 702-313-1617

May 15, 2019

Michael J. Mcavoyamaya, Esq.
Michael J. Mcavoyama Law, LLC
4539 Paseo Del Ray Dr.
Las Vegas, Nevada 89121

RE: **Clarke, Robert, et al. vs. Service Employees International Union, et al.**
Clark County District Court Case No.: A-17-764942-C

Dear Mr. Mcavoyamaya,

At your request, I am providing you with this report of my opinions concerning economic damages alleged by Mr. Clarke. The following sections of this report set forth my understanding of the background of this matter, the documents I have relied upon in arriving at my opinions and my analysis and opinions. Accompanying this report you will find a copy of my current CV, fee schedule and my expert trial and deposition testimony listing.

Background

It is my understanding that Mr. Clarke is alleging economic damages relating to his alleged wrongful termination as the Director of Finance and Human Resources of the Service Employees International Union, Local 1107 ("Local 1107"). Economic damages alleged as of this writing include lost earnings and benefits. Mr. Clarke began his employment with Local 1107 on September 6, 2016. and was terminated on May 4, 2017. Subsequent to his termination Mr. Clarke obtained employment with Bloomberg BNA beginning on January 8, 2018.

Documents Reviewed

Documents utilized and/or reviewed by me in the preparation of my opinions in this matter include the documents noted below:

1. Plaintiffs' Responses To Defendants First Requests for Interrogatories
2. U.S. Individual Income Tax Returns of Robert Clarke, 2016 - 2017
3. Nevada Department of Employement, Training and Rehabilitation, Employment Security Division, Notice of Monetary Redetermination, June 29, 2017

4. Robert Clark Employment Search Documents and Communications (BATES Gentry-Clarke000007 - 000158)

Opinions

As noted above, Mr. Clarke was terminated from his position with Local 1107 on May 4, 2017, and began a new position with Bloomberg BNA on January 8, 2018. Subsequent to his termination he was unemployed for 8.16 months. Economic damages are calculated based upon Mr. Clarke's annual salary with Local 1107 and the value of employer-paid benefits. Employer-paid benefits are based upon benefits noted in the employment agreement from Local 1107 dated August 23, 2016. Lost earnings and benefits over the noted damage period total $92,305 (see Exhibit A).

The opinions set forth above are based upon analyses performed to date. I reserve the right to update this report based on information and/or events which may occur or become known to me in connection with the above referenced litigation proceedings. Such documentation and/or events may impact my analysis and that impact may be material. Thank you for the opportunity to serve you in this matter. If you have any questions concerning this report of my opinions, please call me.

Sincerely,

Kevin B. Kirkendall

Kevin B. Kirkendall, MBA, CPA, CFE
Kirkendall Consulting Group, L.L.C.

Appendix

Exhibit	**Description**
Exhibit A	Lost Earnings & Benefits
Exhibit B	Basic Data
Exhibit C	Employer-Paid Benefits

Clarke, Robert, et al. vs. Service Employees International Union, et al.

Wrongful Termination Calculations

Lost Earnings & Benefits

Exhibit A

Notes Mr. Clarke was terminated from his position with SIEU Local 1107 on May 4, 2017, and obtained replacement employment Approximately 8 months (.68 years) later. Lost earnings and benefits are calculated for that 8-month time period.

SEIU Annual Salary (1)		$ 80,000
Employer-paid Benefits		
Pension Contribution - 20% of Gross Salary (1)	$ 16,000	
Sick Leave, Vacation or Personal Leave - 8 hours per bi-weekly pay period (1) (2)	8,000	
Medical Insurance, Life Insurance and Governmentally Required Benefits as a Percent of Salary - 31.75 % (3)	25,399	
Annual Auto Allowance (1)	6,000	
Total Employer-paid Benefits		55,399
Total Annual Earnings and Benefits		$ 135,399
Years Unemployed due to Wrongful Termination		68.17%
Lost Earnings & Benefits		$ 92,305

Notes:

(1) Bates Gentry-Clarke000007.

(2) Calculated as the annual salary divided by 2,080 annual straight-time hours ($38.46 per hour) multiplied by 8 hours per each of 26 bi-weekly pay periods in a year.

(3) See Exhibit C.

Clarke, Robert, et al. vs. Service Employees International Union, et al.
Wrongful Termination Calculations
Basic Data
Exhibit B

Basic Data:

Date of Termination	05/04/17
New Position Begin Date	01/08/18
Date of Birth	12/18/55
Years since date of termination	0.68
Age at date of termination	61.38
Age at date of Bloomberg BNA Position on 1/8/2018	62.06

Clarke, Robert, et al. vs. Service Employees International Union, et al.
Wrongful Termination Calculations
Employer-Paid Benefit Rates
Exhibit C

Note: This exhibit sets forth the benefits as a percentage of wages utilized in estimating the value of Mr. Clarke's employer-paid benefits according to the offer he received on August 23, 2016. The benefits noted below are those set forth in the offer letter and the percentages are obtained from Employer Costs for Employee Compensation - December 2018, Bureau of Labor Statistics, United States Department of Labor. Specifically, rates are those for Private Industry Workers in Unions, Table 5.

			Private Industry Workers - Union
Wages & Salaries as a percentage of total compensation			58.90%
Insurance			
Medical	13.30%		
Life	0.20%		
		13.50%	
Legally Required Benefits			
Social Security		4.20%	
Medicare		1.00%	
Total Benefits			18.70%
Benefits as a Percentage of Wages and Salaries			31.75%

Kirkendall Consulting Group, L.L.C.
1522 West Warm Springs
Henderson, Nevada 89014
(702) 313-1560

Michael J. Mcavoyamaya, Esq.
Michael J. Mcavoyamya Law, LLC
4539 Paseo Del Ray Dr.
Las Vegas, Nevada 89121

Invoice Date: 5/15/2019
Due Date: 5/15/2019

Regarding: Clarke, Robert, et al. vs. Service Employees International
Invoice No: 05572

Services Rendered

Date	Staff	Description	Hours	Rate	Charges
4/29/2019	KBK	Telephone call with Michael Mcavoyamaya	0.20	$ 385.00	$ 77.00
5/01/2019	EJ	Document processing	0.50	$ 75.00	$ 37.50
5/02/2019	EJ	Document processing	0.30	$ 75.00	$ 22.50
5/13/2019	KBK	Review of documents and preparation of report	2.80	$ 385.00	$ 1,078.00
5/14/2019	KBK	Preparation of report and analyses	1.10	$ 385.00	$ 423.50
5/15/2019	KBK	Completion of report and analyses	0.80	$ 385.00	$ 308.00
		Total Hours	5.70	Total Fees	$ 1,946.50

Total New Charges $ 1,946.50

This invoice is due and payable upon receipt. Please send payment immediately. Thank you!

Kirkendall Consulting Group, L.L.C. Tax ID#: 88-0474902

Curriculum Vitae — Kevin B. Kirkendall, MBA, CPA-CGMA, CFE

POSITION

Principal, Kirkendall Consulting Group, L.L.C.

EDUCATION

Masters of Business Administration – Idaho State University, 1995
Bachelor of Accounting – Utah State University, 1994
Associates of Accounting – Brigham Young University – Idaho, 1992

PROFESSIONAL DESIGNATIONS

Certified Public Accountant (**CPA**)
Certified Fraud Examiner (**CFE**)

PROFESSIONAL AFFILIATIONS

American Academy of Economic and Financial Experts (**AAEFE**)
National Association of Forensic Economics (**NAFE**)
Association of Certified Fraud Examiners (**ACFE**)
Collegium of Pecuniary Damages Experts – Treasurer **(CPDE)**
Nevada State Bar; Fee Dispute Arbitrator
Nevada State Bar; Fee Dispute Mediator

BUSINESS HISTORY

Kirkendall Consulting Group, L.L.C. (Las Vegas): *Principal* (2000 - current)

Main Stuart & Co. (Las Vegas): *Director – Litigation Support/Business Valuation Services* (1998 - 2000)

PricewaterhouseCoopers LLP (Las Vegas/Phoenix): *Senior Associate – Litigation Support Services* (1996–1998)

Piercy, Bowler, Taylor & Kern (Las Vegas): *Associate 1995*

Nevada CLE Course Authored and Taught

Hedonic Damages in Personal Injury and Wrongful Death

Economic Damages in Commercial Litigation

Economic Damages in Personal Injury and Wrongful Death

The Use of Financial Statements in Litigation

Kirkendall Consulting Group, LLC

1522 West Warm Springs Road, Henderson, NV 89014 • Telephone: 702-313-1560 • Fax: 702-313-1617

2019 Fee Schedule

Kevin B. Kirkendall, MBA, CPA, CFE

Standard hourly rate	$ 385
Testimony fee (up to two hours)	$ 1,000
Hourly testimony rate for time in excess of 2 hours	$ 500
Hourly travel time	$ 385
Reviewing Experts	$ 385
Staff hourly rates	$100 - $265
Secretarial hourly rate	$ 75
Wage Loss Retainer:	$ 2,000
Business Damages Retainer:	$ 5,000

Testimony (deposition, mediation, arbitration or trial) fees are **required 5 business days prior to the day of testimony**. Failure to pay testimony fees 5 business days prior to the day of testimony may result in cancellation. Failure to pay testimony fees 2 business days in advance will result in cancellation and a rescheduling fee equal to the minimum fee of $1,000. Cancellation of the deposition with less than 2 business days-notice will result in cancellation of the deposition and forfeiture of the deposition fee.

There is a 2-hour minimum for any engagement at the standard hourly rate. Travel time is billed at the standard hourly rate. Travel expenses are billed as incurred. All bills are due upon receipt. Any deposition cancelled without 24 hours' notice will incur a cancellation fee of $1,000 prior to rescheduling.

Kirkendall Consulting Group Tax ID #: 88-0474902

Testimony List

Kevin B. Kirkendall, MBA, CPA, CFE

TRIAL	YEAR	CASE NUMBER	COURT
➤ Gonzalez, Juan v. Anaya, Maria et al.	2019	A-16-740823-C	Clark County District Court
➤ Sampson, Della v. Dobarro, Vincent, et al. (Plaintiff)	2018	A-16-72997-C	Clark County District Court
➤ Advantage 1 LLC v. 3300 Partners, LLC et al. (Plaintiff)	2018	A-15-723037-B	Clark County District Court
➤ Shani Investments v. Go Investments, et al. (Defendant/Counter-Claimant)	2017	A-14-698891-C	Clark County District Court
➤ GWS Design and Solutions, Ltd. v. Nexnovo Technology Co., Ltd., et al. (Plaintiff)	2017	A-16-737975-B	Clark County District Court
➤ Barragan, Lucia v. Terra Contracting, et al. (Defendant)	2017	A-13-686334-C	Clark County District Court
➤ Daichendt, Denise v. Chen, Eric Shangiyh (Defendant)	2016	A-13-685546-C	Clark County District Court
➤ McCrosky, Tawni v. Carson Tahoe Regional Medical Center (Plaintiff)	2016	13-TRT-000281-B	Carson City District Court
➤ Alexander, Brett v. Mauren, Brett (Defendant)	2015	A-13-687062-C	Clark County District Court
➤ Natalie M. Hansen v. Chloe J. Snethen, et al. (Plaintiff)	2014	120905484	3rd Judicial Court of Salt Lake County
➤ Sharmila Singh v. Steven Goldberg (Defendant)	2013	A-11-635017-C	Clark County District Court
➤ Turner, Taquisha v. Russell, Pamela, MD, et al. (Plaintiff)	2010	CV07-01756	Washoe County District Court
➤ Debra Fox v. Valley Health System, LLC (Plaintiff)	2010	08A556715	Clark County District Court
➤ Obayashi/PSM Construction USA, Inc., JV. v. American Bridge (Plaintiff)	2009	not available	not available
➤ McClendon, et al. v. Elliot, Wilco et al. (Defendant)	2009	06A518678	Clark County District Court
➤ Edward R. McWilliams v. Columbia 300 Classic, Inc., et al. (Plaintiff)	2008	03A476442	Clark County District Court
➤ Delgado, Cochran v. Borysewich, Diebold et al. (Defendant)	2007	04A482360	Clark County District Court
➤ Colvin v. Colvin (Plaintiff)	2007	USDC-CV-409-AA	US District Court
➤ William Wilhite vs. Serenity Homes, et al. (Plaintiff)	2005	02A444748	Clark County District Court
➤ Margaret Rose v. Charles Walton, MD (Defendant)	2004	02A458098	Clark County District Court
➤ LGD - Las Vegas Whitney Ranch Ltd, et al. v. OTR, et al. (Plaintiff)	2004	01A438326	Clark County District Court
➤ Flibotte v. Ewing Brothers, Inc., et al. (Plaintiff)	2003	00A417958	Clark County District Court
➤ Brenda Nunez v. Work Professional Services, LLP, et al. (Plaintiff)	2003	00A421608	Clark County District Court
➤ R. J. Hiel & Assoc. v. Ivie, Sweet Jackpots Inc., et al. (Defendant)	2002	03A475336	Clark County District Court
➤ Peter Oh v. Sonya Oh (Divorce)	2002	00D250314	Clark County District Court
➤ John D. Gumm v. Albertson's Inc., et al. (Plaintiff)	2001	97A378040	Clark County District Court
➤ Clark County of v. John Ackerman et al. (evidentiary hearing)	2000	91A300062	Clark County District Court
➤ Clark County of v. Bonnie Lou Snyder, et al. (evidentiary hearing)	2000	97A370637	Clark County District Court
➤ Clark County of v. Tien Fu Hsu, et al. (evidentiary hearing)	2000	94A332441	Clark County District Court
ARBITRATION/MEDIATION			
➤ Nicholas Gulli et al. v. Jackie Vohs, et al. (Defendant), 2014	2014	A-10-621479-C	Clark County District Court
➤ Wayne Dawson v. Nevada Checker Cab Corp, et al. (Plaintiff), 2013	2013	08A576959	Clark County District Court
➤ Lawrence Brown v. Mont Anderson, et al. (Defendant), 2010	2010	not available	not available
➤ C & L Refrigeration Nevada LLC v. Scott Fisher (Defendant), 2010	2010	08A577229	Clark County District Court
➤ JAC Inc. v. Crescent Electric Supply, et al. (Plaintiff) 2008	2008	05A500170	Clark County District Court
➤ David Bold, et al. v. Carol Rice, et al. (Plaintiff) 2007	2007	06A530923	Clark County District Court
➤ Curry v. Brennan (Defendant), 2004	2004	79-180-136-03-MAVI	US District Court
➤ Complete v. Behade (Defendant), 2003	2003	79-181-00046-03-01-S1R-C	US District Court
➤ Mary Sisolak v. Ash-Car Inc., et al. (Defendant), 2001	2001	00A423620	Clark County District Court

Testimony List

Kevin B. Kirkendall, MBA, CPA, CFE

DEPOSITIONS	YEAR	CASE NUMBER	COURT
Shah, Kenneth J. v. Bernstein, Edward, et al.	2019	A-15-723496-C	Clark County District Court
➤ Bailey, Michael v. Kruger, Gregory et al	2018	A-17-752450-C	Clark County District Court
➤ Johnson, Ada et al v. Par 3 Landscape and Maintenance, Inc. et al (Defendant)	2018	A-16-748260-C	Clark County District Court
➤ Ousdale, Ryan v. Target Corporation (Defendant)	2018	A-17-762794-C	Clark County District Court:
➤ Roberts, Richard & Jane v. CCRP/AG (Defendant)	2018	A-15-713245-C	Clark County District Court:
➤ Bouza, Llamila v. Las Vegas Sands, LLC (Defendant)	2018	A-15-728400-C	Clark County District Court:
➤ Serhal, Joseph v. NV Energy, Inc., et al (Defendant)	2018	A-16-733964-C	Clark County District Court:
➤ Ferraro, Gino v. Khavkin, Yevgeniy M.D. et. Al. (Defendant)	2017	A-15-714688-C	Clark County District Court:
➤ Agtual, Chona, et al. v. Global Experience Specialists, Inc., et al. (Defendant)	2017	A-15-721886-C	Clark County District Court:
➤ Advantage 1 LLC v. 3300 Partners, LLC et al. (Plaintiff)	2017	A-15-723037-B	Clark County District Court:
➤ Gish, Panje L. v. Global Experience Specialists, Inc., et al. (Defendant)	2017	A-15-721882-C	Clark County District Court:
➤ Smith, Kallum v. 7-Eleven, Inc., et al. (Defendant)	2017	A-15-723448-C	Clark County District Court:
➤ Gonzales, Tyson v. Navarro, Erik, et al. (Defendant)	2017	A-15-725994-C	Clark County District Court:
➤ Baja Insurance Services, Inc. v. Shanze Enterprises, Inc. et al. (Plaintiff)	2017	2:14-cv-02423-KJM-AC	United States District Court, Eastern District of California
➤ Jaz Investment Corp, et al. v. Laboratory Medicine Consultants, Ltd. (Plaintiff)	2017	A-16-731542-C	Clark County District Court
➤ Lamberth, Jason, et al. v. Clark County School District, et al. (Defendant)	2016	A-14-708849-C	Clark County District Court
➤ Taylor, Steven et al. v. Robert J. Kilroy (Plaintiff)	2016	09A580860	Clark County District Court
➤ Shani Investments v. Go Investments, et al. (Defendant/Counter-Claimant)	2016	A-14-698891-C	Clark County District Court
➤ College Villas, L.P. v. Burke Construction Group, Inc., et al. (Defendant)	2016	A-13-681635-C	Clark County District Court
➤ Virani, Shah v. Virani, Arif, et al. (Defendant)	2016	A-14-697066-C	Clark County District Court
➤ Oasis Las Vegas, LLC v. Lamar Central Outdoor, LLC (Defendant)	2015	A-12-659108-C	Clark County District Court
➤ Moraga Holdings Ltd. v. Advent Holdings, LLC (Plaintiff)	2015	A-11-646628-C	Clark County District Court
➤ Mautner, Michael v. Segerblom, Sharon (Defendant)	2015	A-14-696211-C	Clark County District Court
➤ McCrosky, Tawni v. Carson Tahoe Regional Medical Center (Plaintiff)	2015	13-TRT-000281-B	Carson City District Court
➤ Dudley, Bobbie, et al. v. Lamplight Village HOA (Plaintiff)	2015	A-14-706284C	Clark County District Court
➤ Juwono, Michelle v. Big Poppa's, LLC, et al. (Plaintiff)	2015	A-13-676222-C	Clark County District Court
➤ Alexander, Brett v. Mauren, Brett (Defendant)	2015	A-13-687062-C	Clark County District Court
➤ Urban, Shayla v. Billica, MD, William, et al. (Plaintiff)	2015	2013CV031015	Larimer County District Court, State of Colorado
➤ Williams, Memrie v. Calfee, Gregory, et al. (Defendant)	2015	A-13-686049-C	Clark County District Court
➤ Geslak, David v. Foster, Lois (Defendant)	2015	A-13-676144-C	Clark County District Court
➤ OPH of Las Vegas, Inc. v. Oregon Mutual Insurance Company, et al. (Defendant)	2015	A-12-672158-C	Clark County District Court
➤ Merrill, Jay, et al. v. ProPoint, Inc., et al. (Defendant)	2015	A-12-671324-C	Clark County District Court
➤ Lovett, Carolyn v. Titan Demolition, LLC, et al. (Defendant)	2015	A-14-696381-C	Clark County District Court
➤ Dennett, William, et al. v. Treasure Island, et al. (Defendant)	2015	A-13-678847-C	Clark County District Court
➤ Terrell, William, et al. v. Central Washington Asphalt, Inc., et al. (Defendant)	2015	2:11-cv-00142-APG-VCF	United States District Court for the District of Nevada
➤ Morrow, Brooks, et al. v. Cogburn Law Offices (Plaintiff)	2015	CV13-01627	Washoe County
➤ Buchanan, Jacquelyn et al. v. Rebel Oil Company, Inc. (Defendant)	2015	A-13-691004-C	Clark County District Court
➤ Smith, Bobby, et al. v. Coast Hotels and Casinos (Defendant)	2014	A-10-625626-C	Clark County District Court
➤ Flamm, Fred v. Simon Property Group, et al. (Defendant)	2014	A-11-634479-C	Clark County District Court
➤ Merrill, Jay, et al. v. ProPoint, Inc., et al. (Defendant)	2014	A-12-671324-C	Clark County District Court
➤ Waters-Maria, Deanna v. Centennial Hills Hospital, et al. (Plaintiff)	2014	A-12-663473-C	Clark County District Court
➤ Estes, Grant v. Gonzalez, Alicia (Defendant)	2014	A-13-679544-C	Clark County District Court
➤ Speranza, George v. Serna, Jose, et al. (Defendant)	2014	A-13-675237-C	Clark County District Court
➤ Castle, Lois v. Las Vegas North Strip Holdings, LLC, et al. (Plaintiff)	2014	A-09-605940-C	Clark County District Court
➤ Skunkrunner Media, LLC v. Mandalay Corp, et al. (Defendant)	2014	A-10-628725-C	Clark County District Court
➤ Nicholas, Tommy, et al. v. Nevada Checker Cab Corporation, et al. (Defendant)	2014	A-11-652330-C	Clark County District Court
➤ Stabler, Elvira S. v. Zion Healthcare, et al. (Plaintiff)	2014	2:11-cv-01044-TC	United States District Court for the District of Utah - Central Division
➤ Cumer, Dale v. Wells Cargo (Defendant)	2014	A671791	Clark County District Court

DEPOSITIONS CONTINUED	YEAR	CASE NUMBER	COURT
Langford, Janise, et al. v. John Deere & Company (Plaintiff)	2014	2:13-cv-00182-J	US District Court: Northern District of Texas, Amarillo Division
Wallace, George, et al. v. Bellagio LLC, et al. (Defendant)	2014	A604440	Clark County District Court
Maritza Diaz v. Venetian Casino resort, LLC. (Plaintiff)	2013	A-12-658640-C	Clark County District Court
Catherine F. Harmon v. Toll South LV, LLC (Defendant)	2013	A-12-664-793-C	Clark County District Court
Gary Singleton v. Jupiter Communities, LLC (Plaintiff)	2013	2:12-cv-2056-JAD-PAL	United States District Court: Nevada
Katrina Hancock v. Ronald Sanchez, et al. (Defendant)	2013	A-12-667072-C	Clark County District Court
Ganesha Breaux-Williams v. Sunrise Mountain View Hospital (Plaintiff)	2013	A-12-661406-C	Clark County District Court
Peter S. Delalis et al. v. Albie J. Colotto, et al. (Defendant)	2013	A-10-630729-C	Clark County District Court
Shane Walsh v. Triumph Motorcycles Ltd., et al. (Defendant)	2013	08A557586	Clark County District Court
Sherri Loving v. Ryan Gubler et al. (Defendant)	2013	A-10-630767-C	Clark County District Court
Kattie Marshall v. Nikola Bogdanovic et al. (Defendant)	2012	A-10-612849-C	Clark County District Court
Rosalita Christman v. US Protect, et al. (Defendant)	2012	A-09-596861-C	Clark County District Court
Nicholas Gulli, Jr. v. Jackie Vohs, et al. (Defendant)	2012	A-10-621479-C	Clark County District Court
Becky Irvin v. Land Air Express, et al. (Defendant)	2012	A-10-608332-C	Clark County District Court
Shamika Locklin v. Crystal Sithovong (Defendant)	2012	A-09-595258-C	Clark County District Court
Terry Lamuraglia v. Clark County (Defendant)	2012	A-09-604331-C	Clark County District Court
Arthur Wagner v. Aramark Entertainment, LLC (Plaintiff)	2011	A-09-596031-C	Clark County District Court
Dawna Cortright v. Quality Communications Inc. (Defendant)	2011	06A532112	Clark County District Court
Linda Munden v. Nevada Coaches, LLC, et al. (Plaintiff)	2011	A-10-609416-C	Clark County District Court
Hazlett, et al. v. American Asphalt, et al. (Defendant)	2011	07A538519	Clark County District Court
Rolando Riel v. Timothy Cunningham (Defendant)	2011	A-10-611329-C	Clark County District Court
Danny Eastep v. Dal-Tile Inc., et al. (Defendant)	2010	05A504928	Clark County District Court
Tyler Pinnegar v. Boy Scouts of America, et al. (Plaintiff)	2010	08A571534	Clark County District Court
Antonio Gomez v. Yanelys Thomas (Plaintiff)	2010	09A585196	Clark County District Court
Bruce Slater v. Corey Sweeny (Defendant)	2010	08A559860	Clark County District Court
Arcelia Lopez v. Federal Cleaning Contractors, Inc., et al. (Defendant)	2010	08A565986	Clark County District Court
Bacon, et al. v. Brett Knudsen, et al. (Defendant)	2010	08A572449	Clark County District Court
Satterfield, et al. v. Karen Solheim (Defendant)	2010	07A540836	Clark County District Court
Hersh, et al. v. Kenneth Madison, et al. (Defendant)	2010	07A552938	Clark County District Court
Leo Archambault, et al. v. Sterling Auto Sales, et al. (Defendant)	2010	08A565843	Clark County District Court
Vicki Wright v Corey Geib (Defendant)	2010	05A507277	Clark County District Court
Gary Colafrancesco v. Central Garden & Pet Co, et al. (Defendant)	2010	07A552820	Clark County District Court
C & L Refrigeration LLC v. Scott Fisher (Defendant)	2009	08A577229	Clark County District Court
Susan McCloud, et al. v. Veolia Transportation, et al. (Defendant)	2009	07A538914	Clark County District Court
Obayashi/PSM Construction USA, Inc., JV. V. American Bridge (Plaintiff)	2009	not available	US District Court
David Reynolds v. Swift Transportation Co, et al. (Defendant)	2009	07A549583	Clark County District Court
Alexandra Striegel, et al. v. Rujake Gross, et al. (Defendant)	2009	06A530938	Clark County District Court
Melissa L. Burnside v. FKI Logistex Integration, Inc., et al. (Defendant)	2009	06A519537	Clark County District Court
Diane Wiley v. Jose Varela-Breton, et al. (Defendant)	2009	06A527805	Clark County District Court
Andre Richmond v. Geraldine Callow (Defendant)	2009	CV-24617	Nye County Court
Oakview Construction, Inc. v. Spencer Chung (Defendant)	2008	79110-Y-00048-08-WYGI	US District Court
Harvey Bridges, et al. v. Thomas Wieczorek, et al. (Plaintiff),	2008	06A522738	Clark County District Court
Mary Cooks v. JCN Courier Services Inc., et al. (Plaintiff)	2008	06A524730	Clark County District Court

DEPOSITIONS CONTINUED	YEAR	CASE NUMBER	COURT
➤ Park Avenue Homeowner's Assoc. v. Amland Development, et al. (Defendant)	2008	06A521169	Clark County District Court
➤ Harsco v. Saunders (Defendant)	2008	2:04-CV-096-JCM-(LDL)	US District Court
➤ Todd Kasian v. Baja Fresh, et al. (Defendant)	2008	06A519993	Clark County District Court
➤ Coast Converters Inc. v. Hyden Electrical Inc., et al. (Defendant)	2008	06A516451	Clark County District Court
➤ Ray Lewis v. Joseph Cervantes (Defendant)	2008	04A494194	Clark County District Court
➤ Edward R. McWilliams v. Columbia 300 Classic Inc., et al. (Plaintiff)	2008	03A476442	Clark County District Court
➤ Frank Yu, et al. v. Pacific Diamond Plaza, LP, et al. (Defendant)	2008	04A497381	Clark County District Court
➤ JAC Inc. v. Crescent Electric Supply, et al. (Plaintiff)	2008	05A500170	Clark County District Court
➤ Robert Bachtel, et al. vs. Claudio Hernandez, et al. (Defendant)	2007	06A515526	Clark County District Court
➤ Delgado, Cochran v. Borysewich, Diebold et al. (Defendant)	2007	04A482360	Clark County District Court
➤ Rodney Yanke v. Kelleher Corp., et al. (Plaintiff)	2007	05A503362	Clark County District Court
➤ Vitus Teng, et al. v. Sodexho Inc., et al. (Defendant)	2006	05A500871	Clark County District Court
➤ Max W. Taylor v. David Levy et al. (Defendant)	2006	04A482780	Clark County District Court
➤ Guerin v. Smart City (Plaintiff)	2006	CV-S-05-0587-LDG(GWF)	US District Court
➤ Natalie Schaffer v. Sosa Trucking, et al. (Defendant)	2006	03A465474	Clark County District Court
➤ Joyce Clark v. Wheeler's Las Vegas RV, et al. (Plaintiff)	2005	03A476428	Clark County District Court
➤ William Wilhite vs. Serenity Homes, et al. (Plaintiff)	2005	02A444748	Clark County District Court
➤ Green, et al. v. Four Seasons Hotels Inc., et al. (Plaintiff)	2005	02A455333	Clark County District Court
➤ Samson Lewis v. Fletcher Jones Las Vegas, et al. (Defendant)	2004	03A466937	Clark County District Court
➤ Margaret Rose v. Charles Walton, MD (Defendant)	2004	02A458098	Clark County District Court
➤ LGD - Las Vegas Whitney Ranch Ltd, et al. v. OTR, et al. (Plaintiff)	2004	01A438326	Clark County District Court
➤ Anntoinette Conover v. Young Kim, et al. (Plaintiff)	2003	01A442236	Clark County District Court
➤ Tammy Green, et al. v. Shandong Industrial Inc. et al. (Defendant)	2003	00A422600	Clark County District Court
➤ Aqueous Labs Inc. v. Agro-Mar Inc., et al. (Plaintiff)	2003	99A410697	Clark County District Court
➤ Steve Sisolak v. Clark County of, et al. (Defendant)	2002	01A434337	Clark County District Court
➤ Cadeau Express Inc. v. Desert Fire & Protection Inc., et al. (Plaintiff)	2002	97A377113	Clark County District Court
➤ Brenda Nunez v. Work Professional Services, LLP, et al. (Plaintiff)	2002	00A421608	Clark County District Court
➤ Morrow Equipment Co LLC, et al. v. Circus Circus Dev. Corp., et al. (Defendant)	2002	99A398999	Clark County District Court
➤ Robert Lively Jr. v. American Premiere Homes, et al. (Receivership)	2001	01A437131	Clark County District Court
➤ Christiansen, et al. v. Walgreens Co., et al. (Defendant)	2001	00A414587	Clark County District Court
➤ Huntzinger, et al. v. Don Winegar (Plaintiff)	2001	98A386988	Clark County District Court
➤ Scruton, et al. v. Bahr, et al. (Plaintiff)	2001	98A391119	Clark County District Court
➤ Caledrone, et al. v. Superior Tire Inc., et al. (Plaintiff)	2001	99A404130	Clark County District Court
➤ Scott v. Roy, et al. (Plaintiff)	2001	not available	not available
➤ John D. Gumm v. Albertson's Inc., et al. (Plaintiff)	2001	97A378040	Clark County District Court

Kirkendall Consulting Group, LLC
1522 West Warm Springs Road, Henderson, NV 89014 • Telephone: 702-313-1560 • Fax: 702-313-1617

May 15, 2019

Michael J. Mcavoyamaya, Esq.
Michael J. Mcavoyama Law, LLC
4539 Paseo Del Ray Dr.
Las Vegas, Nevada 89121

RE: **Gentry, Dana, et al. vs. Service Employees International Union, et al.**
Clark County District Court Case No.: A-17-764942-C

Dear Mr. Mcavoyamaya,

At your request, I am providing you with this report of my opinions concerning economic damages alleged by Ms. Gentry. The following sections of this report set forth my understanding of the background of this matter, the documents I have relied upon in arriving at my opinions and my analysis and opinions. Accompanying this report, you will find a copy of my current CV, fee schedule and my expert trial and deposition testimony listing.

Background

It is my understanding that Ms. Gentry is alleging economic damages relating to her alleged wrongful termination as the Communications Director of the Service Employees International Union, Local 1107 ("Local 1107"). Economic damages alleged as of this writing include lost earnings and benefits. Ms. Gentry began her employment with Local 1107 on April 18, 2016 and was terminated on May 4, 2017. Subsequent to her termination Ms. Gentry obtained employment with as a senior reporter with the Hopewell Fund, beginning full-time work on April 9, 2018.

Documents Reviewed

Documents utilized and/or reviewed by me in the preparation of my opinions in this matter include the documents noted below:

1. Plaintiffs' Responses To Defendants First Requests for Interrogatories
2. U.S. Individual Income Tax Returns of Dama M. Gentry, 2016 - 2017
3. SEIU Employment Agreement, Termination Letter and Related
4. Hopewell Fund Offer Letter, March 13, 2018

Opinions

As noted above, Ms. Gentry was terminated from her position with Local 1107 on May 4, 2017 and began full-time employment with Hopewell Fund on April 9, 2018. Subsequent to her termination she was unemployed for 10.8 months. Economic damages are calculated based upon Ms. Gentry's annual salary with Local 1107 and the value of employer-paid benefits. Employer-paid benefits are based upon benefits noted in the employment agreement from Local 1107 dated April 18, 2016. Lost earnings and benefits over the noted damage period total $107,391 (see Exhibit A).

The opinions set forth above are based upon analyses performed to date. I reserve the right to update this report based on information and/or events which may occur or become known to me in connection with the above referenced litigation proceedings. Such documentation and/or events may impact my analysis and that impact may be material. Thank you for the opportunity to serve you in this matter. If you have any questions concerning this report of my opinions, please call me.

Sincerely,

Kevin B. Kirkendall

Kevin B. Kirkendall, MBA, CPA, CFE
Kirkendall Consulting Group, L.L.C.

Appendix

Exhibit	**Description**
Exhibit A	Lost Earnings & Benefits
Exhibit B	Basic Data
Exhibit C	Employer-Paid Benefits

Gentry, Dana, et al. vs. Service Employees International Union, et al.
Wrongful Termination Calculations
Lost Earnings & Benefits
Exhibit A

Notes Ms. Gentry was terminated from her position with SIEU Local 1107 on May 4, 2017, and obtained replacement employment with the Hopewell Fund. From March 19, 2018, through April 8, 2018, Ms. Gentry was to work half-time and commence full time work beginning April 9, 2019. Ms. Gentry was unemployed for a full-time equivalent of .9 years or 10.8 months. Lost earnings and benefits are calculated over a 10.8-month time period.

SEIU Annual Salary (1)		$ 70,000
Employer-paid Benefits		
Pension Contribution - 20% of Gross Salary (1)	$ 14,000	
Sick Leave, Vacation or Personal Leave - 8 hours per bi-weekly pay period (1) (2)	7,000	
Medical Insurance, Life Insurance and Governmentally Required Benefits as a Percent of Salary - 31.75 % (3)	22,224	
Annual Auto Allowance (1)	6,000	
Total Employer-paid Benefits		49,224
Total Annual Earnings and Benefits		$ 119,224
Years Unemployed due to Wrongful Termination		90.08%
Lost Earnings & Benefits		$ 107,391

Notes:
(1) Bates Gentry-Clarke000006.
(2) Calculated as the annual salary divided by 2,080 annual straight-time hours ($33.65 per hour) multiplied by 8 hours per each of 26 bi-weekly pay periods in a year.
(3) See Exhibit C.

Gentry, Dana, et al. vs. Service Employees International Union, et al.
Wrongful Termination Calculations
Basic Data
Exhibit B

Basic Data:

Date of Termination	05/04/17
New Position Part-time Begin Date	03/19/18
New Position Full-time Begin Date	04/09/18
Date of Birth	12/18/55
Full-time equivalent years since date of termination	0.90
Age at date of termination	61.38
Age at date of Hopewell Fund Position on 3/19/2018	62.28

Gentry, Dana, et al. vs. Service Employees International Union, et al.
Wrongful Termination Calculations
Employer-Paid Benefit Rates
Exhibit C

Note: This exhibit sets forth the benefits as a percentage of wages utilized in estimating the value of Ms. Gentry's employer-paid benefits according to the offer she received from SEIU Local 1107, on August 23, 2016. The benefits noted below are those set forth in the offer letter and the percentages are obtained from Employer Costs for Employee Compensation - December 2018, Bureau of Labor Statistics, United States Department of Labor. Specifically, rates are those for Private Industry Workers in Unions, Table 5.

			Private Industry Workers - Union
Wages & Salaries as a percentage of total compensation			58.90%
Insurance			
Medical	13.30%		
Life	0.20%		
		13.50%	
Legally Required Benefits			
Social Security		4.20%	
Medicare		1.00%	
Total Benefits			18.70%
Benefits as a Percentage of Wages and Salaries			31.75%

Kirkendall Consulting Group, L.L.C.
1522 West Warm Springs
Henderson, Nevada 89014
(702) 313-1560

Michael J. Mcavoyamaya, Esq.
Michael J. Mcavoyamya Law, LLC
4539 Paseo Del Ray Dr.
Las Vegas, Nevada 89121

Invoice Date: 5/15/2019
Due Date: 5/15/2019

Regarding: Gentry, Dana, et al. vs. Service Employees International U
Invoice No: 05573

Services Rendered

Date	Staff	Description	Hours	Rate	Charges
5/01/2019	EJ	Document processing	0.50	$ 75.00	$ 37.50
5/02/2019	EJ	Document processing	0.20	$ 75.00	$ 15.00
5/02/2019	KBK	Review of documents	0.10	$ 385.00	$ 38.50
5/13/2019	KBK	Review of documents, preparation of analyses and report	3.00	$ 385.00	$ 1,155.00
5/15/2019	KBK	Completion of report and analyses	1.20	$ 385.00	$ 462.00
		Total Hours	5.00	Total Fees	$ 1,708.00

Total New Charges $ 1,708.00

This invoice is due and payable upon receipt. Please send payment immediately. Thank you!

Kirkendall Consulting Group, L.L.C. Tax ID#: 88-0474902

Curriculum Vitae — Kevin B. Kirkendall, MBA, CPA-CGMA, CFE

POSITION

Principal, Kirkendall Consulting Group, L.L.C.

EDUCATION

Masters of Business Administration – Idaho State University, 1995
Bachelor of Accounting – Utah State University, 1994
Associates of Accounting – Brigham Young University – Idaho, 1992

PROFESSIONAL DESIGNATIONS

Certified Public Accountant (**CPA**)
Certified Fraud Examiner (**CFE**)

PROFESSIONAL AFFILIATIONS

American Academy of Economic and Financial Experts (**AAEFE**)
National Association of Forensic Economics (**NAFE**)
Association of Certified Fraud Examiners (**ACFE**)
Collegium of Pecuniary Damages Experts – Treasurer **(CPDE)**
Nevada State Bar; Fee Dispute Arbitrator
Nevada State Bar; Fee Dispute Mediator

BUSINESS HISTORY

Kirkendall Consulting Group, L.L.C. (Las Vegas): *Principal* (2000 - current)

Main Stuart & Co. (Las Vegas): *Director – Litigation Support/Business Valuation Services* (1998 - 2000)

PricewaterhouseCoopers LLP (Las Vegas/Phoenix): *Senior Associate – Litigation Support Services* (1996–1998)

Piercy, Bowler, Taylor & Kern (Las Vegas): *Associate 1995*

Nevada CLE Course Authored and Taught

Hedonic Damages in Personal Injury and Wrongful Death

Economic Damages in Commercial Litigation

Economic Damages in Personal Injury and Wrongful Death

The Use of Financial Statements in Litigation

Kirkendall Consulting Group, LLC

1522 West Warm Springs Road, Henderson, NV 89014 • Telephone: 702-313-1560 • Fax: 702-313-1617

2019 Fee Schedule

Kevin B. Kirkendall, MBA, CPA, CFE

Standard hourly rate	$ 385
Testimony fee (up to two hours)	$ 1,000
Hourly testimony rate for time in excess of 2 hours	$ 500
Hourly travel time	$ 385
Reviewing Experts	$ 385
Staff hourly rates	$100 - $265
Secretarial hourly rate	$ 75
Wage Loss Retainer:	$ 2,000
Business Damages Retainer:	$ 5,000

Testimony (deposition, mediation, arbitration or trial) fees are **required 5 business days prior to the day of testimony**. Failure to pay testimony fees 5 business days prior to the day of testimony may result in cancellation. Failure to pay testimony fees 2 business days in advance will result in cancellation and a rescheduling fee equal to the minimum fee of $1,000. Cancellation of the deposition with less than 2 business days-notice will result in cancellation of the deposition and forfeiture of the deposition fee.

There is a 2-hour minimum for any engagement at the standard hourly rate. Travel time is billed at the standard hourly rate. Travel expenses are billed as incurred. All bills are due upon receipt. Any deposition cancelled without 24 hours' notice will incur a cancellation fee of $1,000 prior to rescheduling.

Kirkendall Consulting Group Tax ID #: 88-0474902

Testimony List

Kevin B. Kirkendall, MBA, CPA, CFE

TRIAL	YEAR	CASE NUMBER	COURT
➤ Gonzalez, Juan v. Anaya, Maria et al.	2019	A-16-740823-C	Clark County District Court
➤ Sampson, Della v. Dobarro, Vincent, et al. (Plaintiff)	2018	A-16-72997-C	Clark County District Court
➤ Advantage 1 LLC v. 3300 Partners, LLC et al. (Plaintiff)	2018	A-15-723037-B	Clark County District Court
➤ Shani Investments v. Go Investments, et al. (Defendant/Counter-Claimant)	2017	A-14-698891-C	Clark County District Court
➤ GWS Design and Solutions, Ltd. v. Nexnovo Technology Co., Ltd., et al. (Plaintiff)	2017	A-16-737975-B	Clark County District Court
➤ Barragan, Lucia v. Terra Contracting, et al. (Defendant)	2017	A-13-686334-C	Clark County District Court
➤ Daichendt, Denise v. Chen, Eric Shangiyh (Defendant)	2016	A-13-685546-C	Clark County District Court
➤ McCrosky, Tawni v. Carson Tahoe Regional Medical Center (Plaintiff)	2016	13-TRT-000281-B	Carson City District Court
➤ Alexander, Brett v. Mauren, Brett (Defendant)	2015	A-13-687062-C	Clark County District Court
➤ Natalie M. Hansen v. Chloe J. Snethen, et al. (Plaintiff)	2014	120905484	3rd Judicial Court of Salt Lake County
➤ Sharmila Singh v. Steven Goldberg (Defendant)	2013	A-11-635017-C	Clark County District Court
➤ Turner, Taquisha v. Russell, Pamela, MD, et al. (Plaintiff)	2010	CV07-01756	Washoe County District Court
➤ Debra Fox v. Valley Health System, LLC (Plaintiff)	2010	08A556715	Clark County District Court
➤ Obayashi/PSM Construction USA, Inc., JV. v. American Bridge (Plaintiff)	2009	not available	not available
➤ McClendon, et al. v. Elliot, Wilco et al. (Defendant)	2009	06A518678	Clark County District Court
➤ Edward R. McWilliams v. Columbia 300 Classic, Inc., et al. (Plaintiff)	2008	03A476442	Clark County District Court
➤ Delgado, Cochran v. Borysewich, Diebold et al. (Defendant)	2007	04A482360	Clark County District Court
➤ Colvin v. Colvin (Plaintiff)	2007	USDC-CV-409-AA	US District Court
➤ William Wilhite vs. Serenity Homes, et al. (Plaintiff)	2005	02A444748	Clark County District Court
➤ Margaret Rose v. Charles Walton, MD (Defendant)	2004	02A458098	Clark County District Court
➤ LGD - Las Vegas Whitney Ranch Ltd, et al. v. OTR, et al. (Plaintiff)	2004	01A438326	Clark County District Court
➤ Flibotte v. Ewing Brothers, Inc., et al. (Plaintiff)	2003	00A417958	Clark County District Court
➤ Brenda Nunez v. Work Professional Services, LLP, et al. (Plaintiff)	2003	00A421608	Clark County District Court
➤ R. J. Hiel & Assoc. v. Ivie, Sweet Jackpots Inc., et al. (Defendant)	2002	03A475336	Clark County District Court
➤ Peter Oh v. Sonya Oh (Divorce)	2002	00D250314	Clark County District Court
➤ John D. Gumm v. Albertson's Inc., et al. (Plaintiff)	2001	97A378040	Clark County District Court
➤ Clark County of v. John Ackerman et al. (evidentiary hearing)	2000	91A300062	Clark County District Court
➤ Clark County of v. Bonnie Lou Snyder, et al. (evidentiary hearing)	2000	97A370637	Clark County District Court
➤ Clark County of v. Tien Fu Hsu, et al. (evidentiary hearing)	2000	94A332441	Clark County District Court
ARBITRATION/MEDIATION			
➤ Nicholas Gulli et al. v. Jackie Vohs, et al. (Defendant), 2014	2014	A-10-621479-C	Clark County District Court
➤ Wayne Dawson v. Nevada Checker Cab Corp, et al. (Plaintiff), 2013	2013	08A576959	Clark County District Court
➤ Lawrence Brown v. Mont Anderson, et al. (Defendant), 2010	2010	not available	not available
➤ C & L Refrigeration Nevada LLC v. Scott Fisher (Defendant), 2010	2010	08A577229	Clark County District Court
➤ JAC Inc. v. Crescent Electric Supply, et al. (Plaintiff) 2008	2008	05A500170	Clark County District Court
➤ David Bold, et al. v. Carol Rice, et al. (Plaintiff) 2007	2007	06A530923	Clark County District Court
➤ Curry v. Brennan (Defendant), 2004	2004	79-180-136-03-MAVI	US District Court
➤ Complete v. Behade (Defendant), 2003	2003	79-181-00046-03-01-S1R-C	US District Court
➤ Mary Sisolak v. Ash-Car Inc., et al. (Defendant), 2001	2001	00A423620	Clark County District Court

Testimony List

Kevin B. Kirkendall, MBA, CPA, CFE

DEPOSITIONS	YEAR	CASE NUMBER	COURT
Shah, Kenneth J. v. Bernstein, Edward, et al.	2019	A-15-723496-C	Clark County District Court
➤ Bailey, Michael v. Kruger, Gregory et al	2018	A-17-752450-C	Clark County District Court
➤ Johnson, Ada et al v. Par 3 Landscape and Maintenance, Inc. et al (Defendant)	2018	A-16-748260-C	Clark County District Court
➤ Ousdale, Ryan v. Target Corporation (Defendant)	2018	A-17-762794-C	Clark County District Court:
➤ Roberts, Richard & Jane v. CCRP/AG (Defendant)	2018	A-15-713245-C	Clark County District Court:
➤ Bouza, Llamila v. Las Vegas Sands, LLC (Defendant)	2018	A-15-728400-C	Clark County District Court:
➤ Serhal, Joseph v. NV Energy, Inc., et al (Defendant)	2018	A-16-733964-C	Clark County District Court:
➤ Ferraro, Gino v. Khavkin, Yevgeniy M.D. et. Al. (Defendant)	2017	A-15-714688-C	Clark County District Court:
➤ Agtual, Chona, et al. v. Global Experience Specialists, Inc., et al. (Defendant)	2017	A-15-721886-C	Clark County District Court:
➤ Advantage 1 LLC v. 3300 Partners, LLC et al. (Plaintiff)	2017	A-15-723037-B	Clark County District Court:
➤ Gish, Panje L. v. Global Experience Specialists, Inc., et al. (Defendant)	2017	A-15-721882-C	Clark County District Court:
➤ Smith, Kallum v. 7-Eleven, Inc., et al. (Defendant)	2017	A-15-723448-C	Clark County District Court:
➤ Gonzales, Tyson v. Navarro, Erik, et al. (Defendant)	2017	A-15-725994-C	Clark County District Court:
➤ Baja Insurance Services, Inc. v. Shanze Enterprises, Inc. et al. (Plaintiff)	2017	2:14-cv-02423-KJM-AC	United States District Court, Eastern District of California
➤ Jaz Investment Corp, et al. v. Laboratory Medicine Consultants, Ltd. (Plaintiff)	2017	A-16-731542-C	Clark County District Court
➤ Lamberth, Jason, et al. v. Clark County School District, et al. (Defendant)	2016	A-14-708849-C	Clark County District Court
➤ Taylor, Steven et al. v. Robert J. Kilroy (Plaintiff)	2016	09A580860	Clark County District Court
➤ Shani Investments v. Go Investments, et al. (Defendant/Counter-Claimant)	2016	A-14-698891-C	Clark County District Court
➤ College Villas, L.P. v. Burke Construction Group, Inc., et al. (Defendant)	2016	A-13-681635-C	Clark County District Court
➤ Virani, Shah v. Virani, Arif, et al. (Defendant)	2016	A-14-697066-C	Clark County District Court
➤ Oasis Las Vegas, LLC v. Lamar Central Outdoor, LLC (Defendant)	2015	A-12-659108-C	Clark County District Court
➤ Moraga Holdings Ltd. v. Advent Holdings, LLC (Plaintiff)	2015	A-11-646628-C	Clark County District Court
➤ Mautner, Michael v. Segerblom, Sharon (Defendant)	2015	A-14-696211-C	Clark County District Court
➤ McCrosky, Tawni v. Carson Tahoe Regional Medical Center (Plaintiff)	2015	13-TRT-000281-B	Carson City District Court
➤ Dudley, Bobbie, et al. v. Lamplight Village HOA (Plaintiff)	2015	A-14-706284C	Clark County District Court
➤ Juwono, Michelle v. Big Poppa's, LLC, et al. (Plaintiff)	2015	A-13-676222-C	Clark County District Court
➤ Alexander, Brett v. Mauren, Brett (Defendant)	2015	A-13-687062-C	Clark County District Court
➤ Urban, Shayla v. Billica, MD, William, et al. (Plaintiff)	2015	2013CV031015	Larimer County District Court, State of Colorado
➤ Williams, Memrie v. Calfee, Gregory, et al. (Defendant)	2015	A-13-686049-C	Clark County District Court
➤ Geslak, David v. Foster, Lois (Defendant)	2015	A-13-676144-C	Clark County District Court
➤ OPH of Las Vegas, Inc. v. Oregon Mutual Insurance Company, et al. (Defendant)	2015	A-12-672158-C	Clark County District Court
➤ Merrill, Jay, et al. v. ProPoint, Inc., et al. (Defendant)	2015	A-12-671324-C	Clark County District Court
➤ Lovett, Carolyn v. Titan Demolition, LLC, et al. (Defendant)	2015	A-14-696381-C	Clark County District Court
➤ Dennett, William, et al. v. Treasure Island, et al. (Defendant)	2015	A-13-678847-C	Clark County District Court
➤ Terrell, William, et al. v. Central Washington Asphalt, Inc., et al. (Defendant)	2015	2:11-cv-00142-APG-VCF	United States District Court for the District of Nevada
➤ Morrow, Brooks, et al. v. Cogburn Law Offices (Plaintiff)	2015	CV13-01627	Washoe County
➤ Buchanan, Jacquelyn et al. v. Rebel Oil Company, Inc. (Defendant)	2015	A-13-691004-C	Clark County District Court
➤ Smith, Bobby, et al. v. Coast Hotels and Casinos (Defendant)	2014	A-10-625626-C	Clark County District Court
➤ Flamm, Fred v. Simon Property Group, et al. (Defendant)	2014	A-11-634479-C	Clark County District Court
➤ Merrill, Jay, et al. v. ProPoint, Inc., et al. (Defendant)	2014	A-12-671324-C	Clark County District Court
➤ Waters-Maria, Deanna v. Centennial Hills Hospital, et al. (Plaintiff)	2014	A-12-663473-C	Clark County District Court
➤ Estes, Grant v. Gonzalez, Alicia (Defendant)	2014	A-13-679544-C	Clark County District Court
➤ Speranza, George v. Serna, Jose, et al. (Defendant)	2014	A-13-675237-C	Clark County District Court
➤ Castle, Lois v. Las Vegas North Strip Holdings, LLC, et al. (Plaintiff)	2014	A-09-605940-C	Clark County District Court
➤ Skunkrunner Media, LLC v. Mandalay Corp, et al. (Defendant)	2014	A-10-628725-C	Clark County District Court
➤ Nicholas, Tommy, et al. v. Nevada Checker Cab Corporation, et al. (Defendant)	2014	A-11-652330-C	Clark County District Court
➤ Stabler, Elvira S. v. Zion Healthcare, et al. (Plaintiff)	2014	2:11-cv-01044-TC	United States District Court for the District of Utah - Central Division
➤ Cumer, Dale v. Wells Cargo (Defendant)	2014	A671791	Clark County District Court

DEPOSITIONS CONTINUED	YEAR	CASE NUMBER	COURT
➤ Langford, Janise, et al. v. John Deere & Company (Plaintiff)	2014	2:13-cv-00182-J	US District Court: Northern District of Texas, Amarillo Division
➤ Wallace, George, et al. v. Bellagio LLC, et al. (Defendant)	2014	A604440	Clark County District Court
➤ Maritza Diaz v. Venetian Casino resort, LLC. (Plaintiff)	2013	A-12-658640-C	Clark County District Court
➤ Catherine F. Harmon v. Toll South LV, LLC (Defendant)	2013	A-12-664-793-C	Clark County District Court
➤ Gary Singleton v. Jupiter Communities, LLC (Plaintiff)	2013	2:12-cv-2056-JAD-PAL	United States District Court: Nevada
➤ Katrina Hancock v. Ronald Sanchez, et al. (Defendant)	2013	A-12-667072-C	Clark County District Court
➤ Ganesha Breaux-Williams v. Sunrise Mountain View Hospital (Plaintiff)	2013	A-12-661406-C	Clark County District Court
➤ Peter S. Delalis et al. v. Albie J. Colotto, et al. (Defendant)	2013	A-10-630729-C	Clark County District Court
➤ Shane Walsh v. Triumph Motorcycles Ltd., et al. (Defendant)	2013	08A557586	Clark County District Court
➤ Sherri Loving v. Ryan Gubler et al. (Defendant)	2013	A-10-630767-C	Clark County District Court
➤ Kattie Marshall v. Nikola Bogdanovic et al. (Defendant)	2012	A-10-612849-C	Clark County District Court
➤ Rosalita Christman v. US Protect, et al. (Defendant)	2012	A-09-596861-C	Clark County District Court
➤ Nicholas Gulli, Jr. v. Jackie Vohs, et al. (Defendant)	2012	A-10-621479-C	Clark County District Court
➤ Becky Irvin v. Land Air Express, et al. (Defendant)	2012	A-10-608332-C	Clark County District Court
➤ Shamika Locklin v. Crystal Sithovong (Defendant)	2012	A-09-595258-C	Clark County District Court
➤ Terry Lamuraglia v. Clark County (Defendant)	2012	A-09-604331-C	Clark County District Court
➤ Arthur Wagner v. Aramark Entertainment, LLC (Plaintiff)	2011	A-09-596031-C	Clark County District Court
➤ Dawna Cortright v. Quality Communications Inc. (Defendant)	2011	06A532112	Clark County District Court
➤ Linda Munden v. Nevada Coaches, LLC, et al. (Plaintiff)	2011	A-10-609416-C	Clark County District Court
➤ Hazlett, et al. v. American Asphalt, et al. (Defendant)	2011	07A538519	Clark County District Court
➤ Rolando Riel v. Timothy Cunningham (Defendant)	2011	A-10-611329-C	Clark County District Court
➤ Danny Eastep v. Dal-Tile Inc., et al. (Defendant)	2010	05A504928	Clark County District Court
➤ Tyler Pinnegar v. Boy Scouts of America, et al. (Plaintiff)	2010	08A571534	Clark County District Court
➤ Antonio Gomez v. Yanelys Thomas (Plaintiff)	2010	09A585196	Clark County District Court
➤ Bruce Slater v. Corey Sweeny (Defendant)	2010	08A559860	Clark County District Court
➤ Arcelia Lopez v. Federal Cleaning Contractors, Inc., et al. (Defendant)	2010	08A565986	Clark County District Court
➤ Bacon, et al. v. Brett Knudsen, et al. (Defendant)	2010	08A572449	Clark County District Court
➤ Satterfield, et al. v. Karen Solheim (Defendant)	2010	07A540836	Clark County District Court
➤ Hersh, et al. v. Kenneth Madison, et al. (Defendant)	2010	07A552938	Clark County District Court
➤ Leo Archambault, et al. v. Sterling Auto Sales, et al. (Defendant)	2010	08A565843	Clark County District Court
➤ Vicki Wright v Corey Geib (Defendant)	2010	05A507277	Clark County District Court
➤ Gary Colafrancesco v. Central Garden & Pet Co, et al. (Defendant)	2010	07A552820	Clark County District Court
➤ C & L Refrigeration LLC v. Scott Fisher (Defendant)	2009	08A577229	Clark County District Court
➤ Susan McCloud, et al. v. Veolia Transportation, et al. (Defendant)	2009	07A538914	Clark County District Court
➤ Obayashi/PSM Construction USA, Inc., JV. V. American Bridge (Plaintiff)	2009	not available	US District Court
➤ David Reynolds v. Swift Transportation Co, et al. (Defendant)	2009	07A549583	Clark County District Court
➤ Alexandra Striegel, et al. v. Rujake Gross, et al. (Defendant)	2009	06A530938	Clark County District Court
➤ Melissa L. Burnside v. FKI Logistex Integration, Inc., et al. (Defendant)	2009	06A519537	Clark County District Court
➤ Diane Wiley v. Jose Varela-Breton, et al. (Defendant)	2009	06A527805	Clark County District Court
➤ Andre Richmond v. Geraldine Callow (Defendant)	2009	CV-24617	Nye County Court
➤ Oakview Construction, Inc. v. Spencer Chung (Defendant)	2008	79110-Y-00048-08-WYGI	US District Court
➤ Harvey Bridges, et al. v. Thomas Wieczorek, et al. (Plaintiff),	2008	06A522738	Clark County District Court
➤ Mary Cooks v. JCN Courier Services Inc., et al. (Plaintiff)	2008	06A524730	Clark County District Court

DEPOSITIONS CONTINUED	YEAR	CASE NUMBER	COURT
➤ Park Avenue Homeowner's Assoc. v. Amland Development, et al. (Defendant)	2008	06A521169	Clark County District Court
➤ Harsco v. Saunders (Defendant)	2008	2:04-CV-096-JCM-(LDL)	US District Court
➤ Todd Kasian v. Baja Fresh, et al. (Defendant)	2008	06A519993	Clark County District Court
➤ Coast Converters Inc. v. Hyden Electrical Inc., et al. (Defendant)	2008	06A516451	Clark County District Court
➤ Ray Lewis v. Joseph Cervantes (Defendant)	2008	04A494194	Clark County District Court
➤ Edward R. McWilliams v. Columbia 300 Classic Inc., et al. (Plaintiff)	2008	03A476442	Clark County District Court
➤ Frank Yu, et al. v. Pacific Diamond Plaza, LP, et al. (Defendant)	2008	04A497381	Clark County District Court
➤ JAC Inc. v. Crescent Electric Supply, et al. (Plaintiff)	2008	05A500170	Clark County District Court
➤ Robert Bachtel, et al. vs. Claudio Hernandez, et al. (Defendant)	2007	06A515526	Clark County District Court
➤ Delgado, Cochran v. Borysewich, Diebold et al. (Defendant)	2007	04A482360	Clark County District Court
➤ Rodney Yanke v. Kelleher Corp., et al. (Plaintiff)	2007	05A503362	Clark County District Court
➤ Vitus Teng, et al. v. Sodexho Inc., et al. (Defendant)	2006	05A500871	Clark County District Court
➤ Max W. Taylor v. David Levy et al. (Defendant)	2006	04A482780	Clark County District Court
➤ Guerin v. Smart City (Plaintiff)	2006	CV-S-05-0587-LDG(GWF)	US District Court
➤ Natalie Schaffer v. Sosa Trucking, et al. (Defendant)	2006	03A465474	Clark County District Court
➤ Joyce Clark v. Wheeler's Las Vegas RV, et al. (Plaintiff)	2005	03A476428	Clark County District Court
➤ William Wilhite vs. Serenity Homes, et al. (Plaintiff)	2005	02A444748	Clark County District Court
➤ Green, et al. v. Four Seasons Hotels Inc., et al. (Plaintiff)	2005	02A455333	Clark County District Court
➤ Samson Lewis v. Fletcher Jones Las Vegas, et al. (Defendant)	2004	03A466937	Clark County District Court
➤ Margaret Rose v. Charles Walton, MD (Defendant)	2004	02A458098	Clark County District Court
➤ LGD - Las Vegas Whitney Ranch Ltd, et al. v. OTR, et al. (Plaintiff)	2004	01A438326	Clark County District Court
➤ Anntoinette Conover v. Young Kim, et al. (Plaintiff)	2003	01A442236	Clark County District Court
➤ Tammy Green, et al. v. Shandong Industrial Inc. et al. (Defendant)	2003	00A422600	Clark County District Court
➤ Aqueous Labs Inc. v. Agro-Mar Inc., et al. (Plaintiff)	2003	99A410697	Clark County District Court
➤ Steve Sisolak v. Clark County of, et al. (Defendant)	2002	01A434337	Clark County District Court
➤ Cadeau Express Inc. v. Desert Fire & Protection Inc., et al. (Plaintiff)	2002	97A377113	Clark County District Court
➤ Brenda Nunez v. Work Professional Services, LLP, et al. (Plaintiff)	2002	00A421608	Clark County District Court
➤ Morrow Equipment Co LLC, et al. v. Circus Circus Dev. Corp., et al. (Defendant)	2002	99A398999	Clark County District Court
➤ Robert Lively Jr. v. American Premiere Homes, et al. (Receivership)	2001	01A437131	Clark County District Court
➤ Christiansen, et al. v. Walgreens Co., et al. (Defendant)	2001	00A414587	Clark County District Court
➤ Huntzinger, et al. v. Don Winegar (Plaintiff)	2001	98A386988	Clark County District Court
➤ Scruton, et al. v. Bahr, et al. (Plaintiff)	2001	98A391119	Clark County District Court
➤ Caledrone, et al. v. Superior Tire Inc., et al. (Plaintiff)	2001	99A404130	Clark County District Court
➤ Scott v. Roy, et al. (Plaintiff)	2001	not available	not available
➤ John D. Gumm v. Albertson's Inc., et al. (Plaintiff)	2001	97A378040	Clark County District Court

EXHIBIT B

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

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. No. XXVI **OFFER OF JUDGMENT**

Pursuant to NRCP 68, Defendants Nevada Service Employees Union, misnamed as Clark Count Public Employees Association Union aka SEIU Local 1107, and Service Employees International Union, jointly, hereby offer to allow judgment to be taken against them to resolve all claims against all of the Defendants and apportioned between Plaintiffs as follows: in favor of Plaintiff Dana Gentry for Thirty Thousand and 00/100 Dollars ($30,000.00), including all accrued interest, costs, attorney's fees, and any other sums that could be claimed by Plaintiff Dana Gentry against Defendants in the above-captioned action; and in favor of Plaintiff Robert Clarke for Thirty Thousand and 00/100

CHRISTENSEN JAMES & MARTIN, CHTD.
7440 WEST SAHARA AVE., LAS VEGAS, NEVADA 89117
PH: (702) 255-1718 § FAX: (702) 255-0871

Dollars ($30,000.00), including all accrued interest, costs, attorney's fees, and any other sums that could be claimed by Plaintiff Robert Clark against Defendants in the above-captioned action. This apportioned offer of judgment is conditioned upon the acceptance by all Plaintiffs against the offerors pursuant to NRCP 68(b).

This is not an admission of liability but is an offer of compromise submitted for the purposes of NRCP 68.

NOTICE TO CLERK OF THE COURT: If accepted by Plaintiff, this Offer of Judgment shall expressly be designated as a compromise settlement pursuant to NRCP 68(d). Defendant shall pay the amount of this Offer of Judgment in a reasonable time and therefore requests that any entry thereof by the Clerk be recorded as a dismissal of the claim instead of an entry of judgment.

DATED this 16th day of July 2019.

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

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 July 16, 2019 upon the following:

MICHAEL J. MCAVOYAMAYA
Michael J. Mcavoyamaya (14082)
3539 Paseo Del Ray
Las Vegas, NV 89121
Attorney for Plaintiffs

The document was also served electronically to the following:

Michael Macavoyamaya: mmcavoyamayalaw@gmail.com

Jonathan Cohen: jcohen@rsglabor.com

Evan L. James: elj@cjmlv.com

CHRISTENSEN JAMES & MARTIN

By: */s/ Natalie Saville*
Natalie Saville

EXHIBIT C

Client	Trans Date	Tmk	H P	Tcode/ Task Code	Rate	Hours to Bill	Amount		Ref #
Client ID SEIU.00088 Service Employees Int'l Union									
SEIU.00088	07/16/2019	4	A	1	185	0.6	111	Develop case strategy with GR and MM re protective order and new discovery	ARCH
SEIU.00088	07/16/2019	5	A	1	185	0.8	148	Develop case strategy re discovery	ARCH
SEIU.00088	07/16/2019	4	A	1	185	0.6	111	Telephone call with Evan James re new discovery and protective order, etc.	ARCH
SEIU.00088	07/16/2019	5	A	1	185	0.8	148	Review NLRB proceeding related to Cabrera	ARCH
SEIU.00088	07/16/2019	4	A	1	185	0.5	92.5	Telephone call with Steve Ury; discuss letter to MM re 30(b)(6) deposition with GR	ARCH
SEIU.00088	07/16/2019	1	A	1	185	0.8	148	Review revised discovery; Develop case strategy re response; Telephone call with Ury	ARCH
SEIU.00088	07/17/2019	5	A	1	185	3.8	703	Review NLRB transcript in Cabrera matter	ARCH
SEIU.00088	07/17/2019	4	A	1	185	0.5	92.5	Telephone call with Steve Ury	ARCH
SEIU.00088	07/17/2019	1	A	1	185	0.3	55.5	Telephone calls with Evan James	ARCH
SEIU.00088	07/17/2019	1	A	1	185	0.2	37	Telephone call with Ury	ARCH
SEIU.00088	07/18/2019	4	A	1	185	1.8	333	Telephone call with GR and SEIU re 30(b)(6) deposition preparation	ARCH
SEIU.00088	07/18/2019	5	A	1	185	0.5	92.5	Develop case strategy response to discovery	ARCH
SEIU.00088	07/18/2019	4	A	1	185	0.4	74	Develop case strategy with GR and ENW re written discovery responses	ARCH
SEIU.00088	07/18/2019	1	A	1	185	2.6	481	Prepare depo. prep of Deedee; Conference call - depo. prep.	ARCH
SEIU.00088	07/19/2019	1	A	1	185	0.2	37	Review correspondence from Michael re depos.	ARCH
SEIU.00088	07/19/2019	1	A	1	185	1.7	314.5	Legal research re [REDACTED]	ARCH
SEIU.00088	07/22/2019	5	A	1	185	0.2	37	Develop case strategy re depositions	ARCH
SEIU.00088	07/22/2019	4	A	1	185	0.3	55.5	Review plaintiffs' request for judicial notice (in Gentry/Clarke) for Cabrera NLRB decision	ARCH
SEIU.00088	07/22/2019	4	A	1	185	0.3	55.5	Review Local 1107 responses to plaintiffs' discovery requests (3d request for production and second requests for admission)	ARCH
SEIU.00088	07/22/2019	4	A	1	185	0.2	37	Review correspondence from Evan James to plaintiffs' counsel re discovery objections	ARCH
SEIU.00088	07/22/2019	1	A	1	185	1.2	222	Legal research; Develop case strategy re 30(b)(6)/fact depositions; Telephone call with Ury re Deedee's deposition	ARCH
SEIU.00088	07/22/2019	1	A	1	185	0.8	148	Prepare draft letter to Mcavoyamaya re depos.; Develop case strategy, finalize letter	ARCH
SEIU.00088	07/22/2019	1	A	1	185	0.1	18.5	Review correspondence from Evan re pro hac application	ARCH
SEIU.00088	07/23/2019	4	A	1	185	0.2	37	Telephone call with Evan James re various	ARCH
SEIU.00088	07/23/2019	4	A	1	185	2.7	499.5	review file re additional disclosures; discuss	ARCH

								discovery strategy with G. Rothner and E Naduris-Weissman; Telephone call with Evan James re additional disclosures; legal research	
SEIU.00088	07/23/2019	5	A	1	185	0.6	111	Review Discovery requests; Develop case strategy	ARCH
SEIU.00088	07/23/2019	1	A	1	185	0.4	74	Correspondence to Ury, Correspondence with James re pro hac application; Review correspondence from Mcavoyamaya	ARCH
SEIU.00088	07/24/2019	4	A	1	185	0.5	92.5	Telephone call with Steve Ury; discuss supplemental disclosures with GR	ARCH
SEIU.00088	07/24/2019	4	A	1	185	0.9	166.5	multiple telephone calls with Evan James re discovery	ARCH
SEIU.00088	07/24/2019	5	A	1	185	3.6	666	Review e-mails for discovery	ARCH
SEIU.00088	07/24/2019	5	A	1	185	0.4	74	Telephone call with Evan James	ARCH
SEIU.00088	07/24/2019	1	A	1	185	0.7	129.5	Develop case strategy re discovery Conference call with Evan	ARCH
SEIU.00088	07/24/2019	4	A	1	185	0.2	37	Review correspondence from Evan James re various discovery matters	ARCH
SEIU.00088	07/25/2019	5	A	1	185	5.6	1036	Review E-mail correspondence for response to Discovery	ARCH
SEIU.00088	07/25/2019	4	A	1	185	1.3	240.5	Telephone call with with S. Ury re discovery responses	ARCH
SEIU.00088	07/25/2019	5	A	1	185	1.5	277.5	Telephone call with client and Develop case strategy re response to discovery	ARCH
SEIU.00088	07/25/2019	4	A	1	185	1.2	222	Revise supplemental witness disclosure re Fitzpatrick and Marzan; review documents with GR and ENW	ARCH
SEIU.00088	07/25/2019	4	A	1	185	1.3	240.5	Prepare discovery responses (RFAs)	ARCH
SEIU.00088	07/25/2019	4	A	1	185	0.7	129.5	Review documents in preparation for conference call with D. Fitzpatrick	ARCH
SEIU.00088	07/25/2019	1	A	1	185	0.7	129.5	Prepare for deposition preparation w/ Deedee	ARCH
SEIU.00088	07/25/2019	1	A	1	185	0.1	18.5	Review correspondence from Evan	ARCH
SEIU.00088	07/26/2019	4	A	1	185	0.8	148	continue preparing RFA responses; begin preparing interrogatory responses	ARCH
SEIU.00088	07/26/2019	4	A	1	185	2	370	Telephone call with DeeDee Fitzpatrick, Steve Ury, and GR re deposition preparation	ARCH
SEIU.00088	07/26/2019	5	A	1	185	0.3	55.5	Develop case strategy and Review prior declarations in preparation of 30(b)(6) deposition	ARCH
SEIU.00088	07/26/2019	4	A	1	185	0.5	92.5	Review file; Prepare correspondence re production of additional responsive documents	ARCH
SEIU.00088	07/26/2019	4	A	1	185	0.4	74	Review supplemental discovery responses by SEIU 1107	ARCH
SEIU.00088	07/26/2019	1	A	1	185	2.4	444	Review add'l documents; Conference call re Deedee prep.	ARCH
SEIU.00088	07/28/2019	1	A	1	185	7	1295	Travel time	ARCH
SEIU.00088	07/29/2019	4	A	1	185	5.5	1017.5	continue preparing discovery response - RFAs and Second Interrogatories	ARCH
SEIU.00088	07/29/2019	1	A	1	185	7.5	1387.5	Attend Deposition.	ARCH
SEIU.00088	07/30/2019	4	A	1	185	2.5	462.5	continue preparing responses to Second Set of	ARCH

								Interrogatories; Third Set of Requests for Admissions, and Fifth Request for Production of Documents; discuss same with ENW; Telephone call with S. Ury	
SEIU.00088	07/30/2019	4	A	1	185	0.3	55.5	Review correspondence from opposing counsel re L. 1107 discovery responses	ARCH
SEIU.00088	07/30/2019	4	A	1	185	1.2	222	Prepare for default hearing; Telephone call with Evan James re same	ARCH
SEIU.00088	07/30/2019	4	A	1	185	0.2	37	Review correspondence from opposing counsel re L. 1107 depositions	ARCH
SEIU.00088	07/30/2019	5	A	1	185	3.5	647.5	Review Discovery responses; Review documents responsive to RFP; Develop case strategy	ARCH
SEIU.00088	07/31/2019	4	A	1	185	2.2	407	Legal research re [REDACTED]	ARCH
SEIU.00088	07/31/2019	4	A	1	185	0.8	148	Review documents with ENW in response to Fifth Request for Production	ARCH
SEIU.00088	07/31/2019	4	A	1	185	0.5	92.5	Telephone call with Steve Ury re discovery responses	ARCH
SEIU.00088	07/31/2019	4	A	1	185	0.2	37	Review letter from Local 1107 counsel re depositions	ARCH
SEIU.00088	07/31/2019	5	A	1	185	0.4	74	Telephone call with client Steve re discovery response	ARCH
SEIU.00088	07/31/2019	5	A	1	185	3.6	666	Review Documents and prepare in response to discovery	ARCH
SEIU.00088	08/01/2019	5	A	1	185	1	185	Review email from Steve Ury re disclosures and Develop case strategy re RFP	ARCH
SEIU.00088	08/01/2019	4	A	1	185	1.3	240.5	begin drafting summary judgment	ARCH
SEIU.00088	08/01/2019	6	A	1	185	0.4	74	Develop case strategy re motion for summary judgment and discovery.	ARCH
SEIU.00088	08/02/2019	4	A	1	185	1.5	277.5	Prepare for default hearing; prepare for depositions; review file	ARCH
SEIU.00088	08/02/2019	1	A	1	185	0.2	37	Review correspondence	ARCH
SEIU.00088	08/02/2019	4	A	1	185	0.2	37	Review Local 1107's responses to Fourth Request for Production of Documents	ARCH
SEIU.00088	08/05/2019	4	A	1	185	2.6	481	travel to Las Vegas	ARCH
SEIU.00088	08/05/2019	4	A	1	185	0.8	148	Prepare for default hearing	ARCH
SEIU.00088	08/06/2019	4	A	1	185	1.7	314.5	Attend default hearing	ARCH
SEIU.00088	08/06/2019	4	A	1	185	4	740	Meeting with Evan James and witness to prepare for deposition; Review deposition transcripts from Garcia litigation to prepare for depositions; Prepare for hearing re: attorney client privilege/waiver	ARCH
SEIU.00088	08/07/2019	4	A	1	185	0.8	148	Attend hearing re attorney-client privilege/waiver; confer with co-counsel	ARCH
SEIU.00088	08/07/2019	4	A	1	185	6	1110	Attend Debbie Springer deposition	ARCH
SEIU.00088	08/07/2019	4	A	1	185	2.6	481	travel to Los Angeles	ARCH
SEIU.00088	08/07/2019	1	A	1	185	0.5	92.5	Telephone calls with Cohen re Nevada depos.	ARCH
SEIU.00088	08/08/2019	4	A	1	185	0.2	37	Review Local 1107 financial disclosures	ARCH
SEIU.00088	08/08/2019	4	A	1	185	0.3	55.5	Review and revise RFA and Interrogatory responses	ARCH
SEIU.00088	08/08/2019	4	A	1	185	4.5	832.5	Prepare summary judgment motion	ARCH

SEIU.00088	08/09/2019	4	A	1	185	0.8	148	continue preparing summary judgment motion	ARCH
SEIU.00088	08/09/2019	4	A	1	185	3.1	573.5	Prepare motion regarding waiver of attorney-client privilege; discuss same with Evan James	ARCH
SEIU.00088	08/09/2019	4	A	1	185	1.9	351.5	Review and revise discovery responses; email to ENW re status of same; discuss same with ENW;	ARCH
SEIU.00088	08/09/2019	5	A	1	185	0.8	148	Develop case strategy re court hearings, upcoming discovery	ARCH
SEIU.00088	08/12/2019	5	A	1	185	3	555	Review documents for responses to Plaintiffs' requests for discovery	ARCH
SEIU.00088	08/12/2019	5	A	1	185	0.7	129.5	Review proposed stipulation re extension of discovery and make edits; Email to adverse attorney	ARCH
SEIU.00088	08/12/2019	1	A	1	185	0.3	55.5	Review correspondence from court reporter; Telephone call with court reporter	ARCH
SEIU.00088	08/12/2019	1	A	1	185	0.2	37	Develop case strategy re discovery extension limitations	ARCH
SEIU.00088	08/12/2019	1	A	1	185	0.2	37	Correspondence to court reporter	ARCH
SEIU.00088	08/12/2019	1	A	1	185	0.2	37	Review correspondence from court reporter down load deposition and exhibit files	ARCH
SEIU.00088	08/13/2019	5	A	1	185	2.3	425.5	Review documents and Prepare response to RFP-5	ARCH
SEIU.00088	08/13/2019	1	A	1	185	1.7	314.5	Review Fitzpatrick Deposition Transcript; Correspondence to client	ARCH
SEIU.00088	08/13/2019	1	A	1	185	0.3	55.5	Review correspondence - multiple	ARCH
SEIU.00088	08/14/2019	9	A	1	185	0.2	37	Telephone call with Local 1107's attorney re discovery issues.	ARCH
SEIU.00088	08/14/2019	1	A	1	185	0.2	37	Review e-filings for the day	ARCH
SEIU.00088	08/19/2019	5	A	1	185	0.2	37	Review email from McAvoyamaya re Discovery Commissioner Ruling	ARCH
SEIU.00088	08/19/2019	1	A	1	185	0.5	92.5	Telephone call, correspondence with Deedee re deposition transcript	ARCH
SEIU.00088	08/20/2019	1	A	1	185	0.2	37	Review correspondence	ARCH
SEIU.00088	08/21/2019	5	A	1	185	0.2	37	Review discovery stipulation and Review email from McAvoyamaya re Discovery commissioner	ARCH
SEIU.00088	08/22/2019	5	A	1	185	0.4	74	Develop case strategy re pending matters and deadlines	ARCH
SEIU.00088	08/22/2019	4	A	1	185	1.4	259	continue drafting summary judgment motion	ARCH
SEIU.00088	08/22/2019	1	A	1	185	0.2	37	Review correspondence	ARCH
SEIU.00088	08/23/2019	4	A	1	185	1.9	351.5	Review L. 1107 responses to interrogatories, requests for admissions and requests for production; review new document disclosures from L. 1107	ARCH
SEIU.00088	08/23/2019	4	A	1	185	0.5	92.5	Develop case strategy with Evan James re various (protective order, discovery, depositions)	ARCH
SEIU.00088	08/23/2019	4	A	1	185	2.5	462.5	continue drafting summary judgment; review plaintiffs' document productions	ARCH
SEIU.00088	08/26/2019	4	A	1	185	2.4	444	Review Springer deposition	ARCH
SEIU.00088	08/26/2019	4	A	1	185	1.1	203.5	Review plaintiffs' motion to compel; discuss same with GR and ENW	ARCH
SEIU.00088	08/26/2019	5	A	1	185	0.5	92.5	Develop case strategy re Plaintiffs' motion re waiver	ARCH

								of attorney client privilege	
SEIU.00088	08/26/2019	4	A	1	185	0.5	92.5	Review FItzpatrick deposition for confidential information	ARCH
SEIU.00088	08/27/2019	4	A	1	185	1.4	259	continue reviewing Fitzpatrick deposition re: confidentiality, etc.	ARCH
SEIU.00088	08/27/2019	4	A	1	185	3	555	continue reviewing and summarizing Debbie Springer deposition	ARCH
SEIU.00088	08/27/2019	4	A	1	185	0.4	74	continue preparing summary judgment motion	ARCH
SEIU.00088	08/27/2019	1	A	1	185	0.3	55.5	Correspondence with client; Review correspondence - multiple	ARCH
SEIU.00088	08/28/2019	4	A	1	185	0.6	111	Telephone call with Evan James re motion to compel/attorney client privilege	ARCH
SEIU.00088	08/28/2019	4	A	1	185	0.7	129.5	Review Urban deposition re waiver of a/c privilege concerning Kisling investigation	ARCH
SEIU.00088	08/28/2019	4	A	1	185	0.3	55.5	Review and calendar Kisling deposition notice; review plaintiffs' request for production of documents to Kisling	ARCH
SEIU.00088	08/29/2019	4	A	1	185	0.5	92.5	Telephone call with Steve Ury re attorney-client privilege issues/plaintiffs' motion to compel	ARCH
SEIU.00088	08/29/2019	4	A	1	185	2.2	407	continue preparing summary judgment motion	ARCH
SEIU.00088	08/30/2019	4	A	1	185	4.2	777	continue preparing summary judgment motion	ARCH
SEIU.00088	09/03/2019	4	A	1	185	0.5	92.5	continue preparing summary judgment motion	ARCH
SEIU.00088	09/03/2019	4	A	1	185	2.8	518	Telephone call with M. Urban re attorney-client privilege waiver; Telephone call with opposing counsel re same; Prepare stipulation re same	ARCH
SEIU.00088	09/03/2019	1	A	1	185	0.2	37	Review stipulation re waiver of A/C privilege	ARCH
SEIU.00088	09/04/2019	4	A	1	185	0.2	37	Review and respond to edits by E James to draft attorney client privilege stipulation	ARCH
SEIU.00088	09/09/2019	4	A	1	185	0.3	55.5	Prepare for hearing on request for judicial notice	ARCH
SEIU.00088	09/10/2019	4	A	1	185	1.2	222	Prepare for hearing on request for judicial notice; attend hearing via court call	ARCH
SEIU.00088	09/10/2019	4	A	1	185	0.2	37	Prepare letter to opposing counsel re Fitzpatrick deposition; review file	ARCH
SEIU.00088	09/10/2019	1	A	1	185	0.1	18.5	Review Deedee's deposition corrections	ARCH
SEIU.00088	09/13/2019	4	A	1	185	0.2	37	E-mail to Evan James re deposition schedules; confer with GR re same	ARCH
SEIU.00088	09/13/2019	1	A	1	185	0.2	37	Review correspondence re deposition scheduling - multiple	ARCH
SEIU.00088	09/20/2019	4	A	1	185	2.4	444	Prepare for Kisling and Marzan depositions; review file; review previous deposition testimony and exhibits	ARCH
SEIU.00088	09/22/2019	4	A	1	185	2.6	481	Travel time - Los Angeles to Las Vegas	ARCH
SEIU.00088	09/23/2019	4	A	1	185	1.3	240.5	Attend Kisling deposition and travel to and from deposition	ARCH
SEIU.00088	09/23/2019	4	A	1	185	1.1	203.5	Prepare for Marzan deposition	ARCH
SEIU.00088	09/23/2019	4	A	1	185	1.6	296	Telephone call with Evan James and Brenda Marzan	ARCH
SEIU.00088	09/24/2019	4	A	1	185	8	1480	Attend deposition of Brenda Marzan	ARCH

SEIU.00088	09/24/2019	4	A	1	185	2.6	481	Travel time - Las Vegas to Los Angeles	ARCH
SEIU.00088	09/25/2019	4	A	1	185	0.3	55.5	Telephone call with Steve Ury re litigation update	ARCH
SEIU.00088	09/27/2019	4	A	1	185	2.4	444	Prepare summary judgment - declaration of D. Fitzpatrick; revise memo of points and authorities	ARCH
SEIU.00088	09/27/2019	4	A	1	185	0.5	92.5	Review NLRB transcript from Cabrera trial re relevant testimony	ARCH
SEIU.00088	09/28/2019	4	A	1	185	1.4	259	continue reviewing and summarizing transcript from Cabrera NLRB trial	ARCH
SEIU.00088	10/01/2019	4	A	1	185	0.8	148	Review plaintiffs' supplemental discovery responses and supplemental disclosures	ARCH
SEIU.00088	10/01/2019	4	A	1	185	2	370	continue summarizing testimony from Cabrera NLRB trial	ARCH
SEIU.00088	10/01/2019	1	A	1	185	0.1	18.5	Review correspondence	ARCH
SEIU.00088	10/02/2019	4	A	1	185	2.1	388.5	continue reviewing and summarizing transcript from Cabrera NLRB trial	ARCH
SEIU.00088	10/02/2019	4	A	1	185	0.2	37	Review correspondence from opposing counsel to discovery commissioner	ARCH
SEIU.00088	10/02/2019	4	A	1	185	0.6	111	continue preparing Fitzpatrick declaration ISO summary judgment; discuss same with GR	ARCH
SEIU.00088	10/02/2019	4	A	1	185	2.2	407	Prepare Cohen declaration ISO motion for summary judgment - highlight relevant excerpts of deposition transcripts	ARCH
SEIU.00088	10/02/2019	1	A	1	185	0.3	55.5	Develop case strategy re trial witnesses	ARCH
SEIU.00088	10/03/2019	4	A	1	185	0.2	37	Telephone call with Steve Ury re various	ARCH
SEIU.00088	10/03/2019	4	A	1	185	0.5	92.5	Telephone call with Evan James	ARCH
SEIU.00088	10/03/2019	4	A	1	185	0.6	111	Telephone call with Luisa Blue and Evan James	ARCH
SEIU.00088	10/03/2019	4	A	1	185	0.7	129.5	discuss Blue declaration with GR; prepare same	ARCH
SEIU.00088	10/08/2019	4	A	1	185	0.4	74	Correspondence to opposing counsel re confidential documents	ARCH
SEIU.00088	10/10/2019	4	A	1	185	0.7	129.5	Review email from opposing counsel re confidential documents and proposed redactions; email client re same; review Eighth Judicial District rules re sealing court records	ARCH
SEIU.00088	10/10/2019	1	A	1	185	0.7	129.5	Review MSJ draft; declaration draft; Develop case strategy	ARCH
SEIU.00088	10/11/2019	4	A	1	185	1.5	277.5	final revisions to draft summary judgment motion and declarations; send to S Ury	ARCH
SEIU.00088	10/11/2019	4	A	1	185	0.5	92.5	Review district court's decision sustaining motion to dismiss in English, et al. v. SEIU 73, and cases cited therein	ARCH
SEIU.00088	10/14/2019	4	A	1	185	0.3	55.5	Prepare documents - summary judgment declarations and exhibits	ARCH
SEIU.00088	10/15/2019	4	A	1	185	1.1	203.5	Review and prepare excerpts from plaintiffs' deposition in support of summary judgment	ARCH
SEIU.00088	10/15/2019	4	A	1	185	0.8	148	Prepare Ury declaration ISO motion to seal	ARCH
SEIU.00088	10/15/2019	1	A	1	185	0.2	37	Review correspondence - multiple	ARCH
SEIU.00088	10/16/2019	4	A	1	185	0.5	92.5	Telephone call with Evan James and Martin Manteca	ARCH

								re declaration	
SEIU.00088	10/16/2019	4	A	1	185	0.4	74	Review email from S. Ury re Fitzpatrick declaration; revise same; review file	ARCH
SEIU.00088	10/16/2019	4	A	1	185	0.3	55.5	Telephone call with Evan James re trial continuance; discus same with GR	ARCH
SEIU.00088	10/16/2019	4	A	1	185	1.7	314.5	Review revised Cohen Decl and exhibits ISO summary judgment; revise SJ motion	ARCH
SEIU.00088	10/17/2019	4	A	1	185	1	185	Telephone call with Ury; Prepare draft dec ISO motion to seal; revise same	ARCH
SEIU.00088	10/17/2019	4	A	1	185	0.4	74	final edits to point and authorities ISO summary judgment	ARCH
SEIU.00088	10/18/2019	4	A	1	185	0.3	55.5	Review email from S. Ury; revise decl. ISO motion to seal	ARCH
SEIU.00088	10/18/2019	4	A	1	185	0.2	37	E-mail to opposing counsel re Ury declaration and motion to seal	ARCH
SEIU.00088	10/18/2019	4	A	1	185	0.4	74	begin preparing trial exhibit list	ARCH
SEIU.00088	10/21/2019	4	A	1	185	2.9	536.5	continue evaluating documents for exhibit list; review and analyze plaintiffs' supp. Disclosures	ARCH
SEIU.00088	10/21/2019	4	A	1	185	0.2	37	Review Local 1107's draft motion for summary judgment	ARCH
SEIU.00088	10/23/2019	4	A	1	185	1	185	Review final motion for summary judgment; edits to same	ARCH
SEIU.00088	10/24/2019	4	A	1	185	0.2	37	prepare and review exhibits to Cohen decl ISO summary judgment	ARCH
SEIU.00088	10/25/2019	4	A	1	185	0.4	74	review and revise appendices ISO summary judgment	ARCH
SEIU.00088	10/31/2019	4	A	1	185	2.2	407	Review plaintiffs motion for summary judgment	ARCH
SEIU.00088	11/01/2019	4	A	1	225	0.8	180	Prepare stipulation to continue trial dates; review file	ARCH
SEIU.00088	11/01/2019	4	A	1	225	0.8	180	Review pretrial rules (motions in limine, calendar call, pretrial memo, trial briefs, exhibit lists, etc); continue preparing exhibit list	ARCH
SEIU.00088	11/01/2019	5	A	1	225	0.5	112.5	Develop case strategy summary judgment	ARCH
SEIU.00088	11/01/2019	4	A	1	225	3.4	765	prepare opposition to plaintiffs' summary judgment motion	ARCH
SEIU.00088	11/04/2019	4	A	1	225	1	225	Telephone call with Evan James re trial continuance, summary judgment opposition	ARCH
SEIU.00088	11/04/2019	4	A	1	225	0.4	90	Revise stipulation to continue trial	ARCH
SEIU.00088	11/04/2019	4	A	1	225	5.7	1282.5	continue preparing summary judgment opposition	ARCH
SEIU.00088	11/05/2019	4	A	1	225	2.6	585	continue preparing summary judgment opposition	ARCH
SEIU.00088	11/06/2019	4	A	1	225	2.3	517.5	continue preparing opposition to Plaintiffs' motion for partial summary judgment	ARCH
SEIU.00088	11/08/2019	4	A	1	225	0.6	135	prepare draft of opposition to plaintiffs' motion for summary judgment	ARCH
SEIU.00088	11/11/2019	4	A	1	225	1.8	405	continue drafting summary judgment opposition	ARCH
SEIU.00088	11/11/2019	4	A	1	225	0.4	90	Review L. 1107 draft opposition to Plaintiffs' summary judgment	ARCH
SEIU.00088	11/12/2019	4	A	1	225	1.8	405	continue drafting opposition to Plaintiffs' motion for	ARCH

								partial summary judgment	
SEIU.00088	11/12/2019	1	A	1	225	0.7	157.5	Review Opp. to MSJ; Revise document; Review Plaintiff's Opp. to our MSJ	ARCH
SEIU.00088	11/13/2019	4	A	1	225	0.5	112.5	Review plaintffs' opp. to SEIU's MSJ	ARCH
SEIU.00088	11/13/2019	4	A	1	225	2.7	607.5	Prepare reply ISO MSJ	ARCH
SEIU.00088	11/18/2019	4	A	1	225	5	1125	Prepare reply ISO motion for summary judgment	ARCH
SEIU.00088	11/18/2019	#	A	1	225	1.7	382.5	Legal research re [REDACTED]	ARCH
SEIU.00088	11/19/2019	4	A	1	225	6.7	1507.5	Prepare reply ISO summary judgment	ARCH
SEIU.00088	11/19/2019	5	A	1	225	0.2	45	Develop case strategy re response to Plaintiffs' MSJ	ARCH
SEIU.00088	11/19/2019	#	A	1	225	0.7	157.5	Legal research re [REDACTED]	ARCH
SEIU.00088	11/20/2019	4	A	1	225	2.1	472.5	Prepare reply ISO motion for summary judgment	ARCH
SEIU.00088	11/21/2019	4	A	1	225	4.3	967.5	Prepare reply ISO summary judgment	ARCH
SEIU.00088	11/21/2019	4	A	1	225	0.5	112.5	Review Local 1107 reply ISO summary judgment; discuss same with E. James	ARCH
SEIU.00088	11/22/2019	4	A	1	225	1.8	405	Prepare final reply ISO summary judgment	ARCH
SEIU.00088	11/22/2019	1	A	1	225	0.6	135	Review draft reply in support of MSJ; Develop case strategy	ARCH
SEIU.00088	11/25/2019	4	A	1	225	1.4	315	Prepare for summary judgment hearing	ARCH
SEIU.00088	11/26/2019	4	A	1	225	1.5	337.5	Prepare for summary judgment hearing;	ARCH
SEIU.00088	11/26/2019	4	A	1	225	1.5	337.5	Review Pltffs' reply ISO motion for partial summary judgment; review cases cited therein	ARCH
SEIU.00088	11/26/2019	1	A	1	225	0.4	90	Review Mcavoyamaya reply ISO MSJ; Develop case strategy	ARCH
SEIU.00088	11/27/2019	4	A	1	225	3.3	742.5	Review cases cited by Plaintiffs in reply ISO motion for partial summary judgment; continue preparing for hearing	ARCH
SEIU.00088	12/02/2019	4	P	1	225	1	225	Prepare for summary judgment hearing	487
SEIU.00088	12/02/2019	4	P	1	225	2.6	585	Travel time from Los Angeles to Las Vegas	491
SEIU.00088	12/03/2019	5	P	1	225	0.3	67.5	Develop case strategy re ruling on MSJ ruling, next steps, impact on other cases	488
SEIU.00088	12/03/2019	4	P	1	225	3.4	765	Attend summary judgment hearing; travel to and from courthouse	489
SEIU.00088	12/03/2019	4	P	1	225	2.6	585	Travel time from Las Vegas to Los Angeles; Telephone call with S. Ury re summary judgment	490
SEIU.00088	12/04/2019	4	P	1	225	1.3	292.5	Prepare proposed order re summary judgment	493
SEIU.00088	12/05/2019	4	P	1	225	2.5	562.5	Prepare proposed order granting summary judgment; review comments by L. 1107 counsel; revise same	494
SEIU.00088	12/05/2019	4	P	1	225	0.3	67.5	Review deadlines for claiming fees and costs as prevailing party under Nevada law	495
SEIU.00088	12/05/2019	1	P	1	225	0.3	67.5	Review draft SJ order; Develop case strategy	497
SEIU.00088	12/09/2019	4	P	1	225	2.8	630	review file re costs/fees; research re [REDACTED] Telephone call with E. James re same; email proposed summary judgment order to plaintiffs' counsel	499
SEIU.00088	12/10/2019	4	P	1	225	2.7	607.5	Research re recoverable costs; Prepare memorandum of costs	501

SEIU.00088	12/12/2019	4	P	1	225	0.2	45	Review receipts with Lisa Posso to prepare bill of costs	502
SEIU.00088	12/13/2019	4	P	1	225	0.3	67.5	Telephone call with Evan James re costs and fees motion	503
SEIU.00088	12/13/2019	4	P	1	225	0.1	22.5	E-mail to opposing counsel re proposed order	504
SEIU.00088	12/16/2019	4	P	1	225	0.5	112.5	Review draft cost memorandum	505
SEIU.00088	12/17/2019	4	P	1	225	0.4	90	review revised draft memorandum of costs	507
SEIU.00088	12/20/2019	4	P	1	225	0.2	45	update memo of costs to include IU costs incurred by Christensen, James & Martin	510
Total for Client ID SEIU.00088					Billable	292.1	57206.5	Service Employees Int'l Union Dana Gentry, et al. v. SEIU	

GRAND TOTALS

Billable	292.1	57206.5

CERTIFICATE OF SERVICE

Gentry, et al. v. Service Employees International Union, et al.
Case No. A-17-764942-C

I am an employee of Rothner, Segall & Greenstone; my business address is 510 South Marengo Avenue, Pasadena, California 91101. On January 16, 2020, I served the foregoing document described as **DECLARATION OF JONATHAN COHEN IN SUPPORT OF SERVICE EMPLOYEES INTERNATIONAL UNION'S AND MARY KAY HENRY'S MOTION FOR ATTORNEYS' FEES PURSUANT TO NEV. R. CIV. P. 68** on the interested parties in this action as follows:

[X] **(By ELECTRONIC SERVICE)**
Pursuant to Rule 8.05 of the Rules of Practice for the Eighth Judicial District Court of the State of Nevada, the document was electronically served on all parties registered in the case through the E-Filing System.

Michael Macavoyamaya: mmcavoyamayalaw@gmail.com

Evan James: elj@cjmlv.com

[ ] **(By U.S. MAIL)**
By depositing a true and correct copy of the above-referenced document into the United States Mail with prepaid first-class postage, addressed as follows:

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/s/ Lisa C. Posso
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EIGHTH JUDICIAL DISTRICT COURT

DISTRICT COURT, CLARK COUNTY OF NEVADA

*** * * ***

DANA GENTRY, an individual, *et al.*

Plaintiffs,

vs.

SERVICE EMPLOYEES INT'L UNION ("SEIU"), a nonprofit cooperative corporation; *et al.*

Defendants.

CASE NO.: A-17-764942-C

Dept. 26

PLAINTIFFS' OPPOSITION TO THE LOCAL 1107 DEFENDANTS MOTION FOR ATTORNEYS' FEES AND COSTS

(Hearing Requested)

COMES NOW, Plaintiffs, by and through their attorney of record, MICHAEL MCAVOYAMAYA, ESQ., and hereby brings this Opposition to the Defendants' Motion for Attorneys' Fees and Costs.

These objections are made and based upon the complaint on file herein, the memorandum of points and authorities submitted herewith, and the affidavits and exhibits attached hereto.

Dated this 28th day of January, 2020.

/s/ Michael J. Mcavaoyamaya

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MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF FACTS.

Plaintiffs filed their Complaint on November 20, 2017. Discovery completed on August 15, 2019. On July 16, 2017, the Defendants issued an offer of judgment to each of the Plaintiffs for $30,000.00 each. *See* Defs' Ex. A. The offer was not apportioned between the Defendants, and was not approved by their co-Defendant, Sharon Kisling. *Id.* Plaintiffs' refused the offer given that the facts and evidence demonstrated, without question, that the Defendants had breached Plaintiffs' for cause contracts with Local 1107. Plaintiffs' expert valued Ms. Gentry's actual damages at $107,391.00. *See* Defs' Ex. B. Plaintiffs' expert valued Mr. Clarke's actual damages at $92,305.00. *See* Defs' Ex. C. The parties filed motions for summary judgment on October 29th and 30th 2019. The motions came up for hearing on December 3, 2019, and the Court created new Nevada law adopting the California Supreme Court's Labor Management Reporting and Disclosure Act ("LMRDA") preemption doctrine concluding that, while there was no dispute that Plaintiffs' for cause contracts existed and were breached, they were unenforceable because of LMRDA preemption of Nevada's wrongful termination law. Defendants' now seek attorneys' fees because this Court has adopted new Nevada law invalidating Plaintiffs' for cause contracts.

II. ARGUMENT.

A. Standard Of Review.

"The purpose of NRS 17.115 and NRCP 68 is to save time and money for the court system, the parties and the taxpayers. They reward a party who makes a reasonable offer and punish the party who refuses to accept such an offer." *Dillard Dept. Stores, Inc. v. Beckwith,* 115 Nev. 372, 382, 989 P.2d 882, 888 (1999). However, "the decision to award attorney fees rests within the district court's discretion…." *O'Connell v. Wynn Las Vegas, LLC,* 134 Nev. 550, 554, 429 P.3d 664, 668 (Nev.App., 2018).

In considering whether to award attorney fees for either a plaintiff or defendant the court must consider the following four *Beattie* factors:

> (1) whether the plaintiff's claim was brought in good faith; (2) whether the defendants' offer of judgment was reasonable and in good faith in both its timing and amount; (3) whether the plaintiff's decision to reject the offer and proceed to

> trial was grossly unreasonable or in bad faith; and (4) whether the fees sought by the offeror are reasonable and justified in amount.

Id., quoting Beattie v. Thomas, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983).

When evaluating the factors, "no one factor under *Beattie* is determinative." *Yamaha Motor Co., U.S.A. v. Arnoult,* 114 Nev. 233, 252 n. 16, 955 P.2d 661, 673 n. 16 (1998). Rather, a district court is charged with considering and balancing the factors in determining the reasonableness of an attorney fees award. *Id.* "Although explicit findings with respect to these factors are preferred, the district court's failure to make explicit findings is not a per se abuse of discretion… If the record clearly reflects that the district court properly considered the Beattie factors." *Wynn v. Smith*, 117 Nev. 6, 13, 16 P.3d 424, 428 (2001) *citing Schwartz v. Estate of Greenspun*, 110 Nev. 1042, 1049, 881 P.2d 638, 642 (1994). However, the Nevada Supreme Court has noted that explicit findings are preferred. *Id. see also Certified Fire Prot., Inc. v. Precision Constr., Inc*., 128 Nev. _, 283 P.3d 250, 258 (2012).

B. <u>The Defendants' Offers Of Judgment Are Defective As A Matter Of Law.</u>

Before getting into the *Beattie* factors, the defects in the Defendants' offers of judgment must first be addressed. In Nevada, "[a]t any time more than 21 days before trial, any party may serve an offer in writing to allow judgment to be taken in accordance with its terms and conditions. Unless otherwise specified, an offer made under this rule is an offer to resolve all claims in the action between the parties to the date of the offer, including costs, expenses, interest, and if attorney fees are permitted by law or contract, attorney fees." *See* Nev. R.Civ. P. 68(a). "An apportioned offer of judgment to more than one party may be conditioned upon the acceptance by all parties to whom the offer is directed." *See* Nev. R.Civ. P. 68(b). An offer of judgment is unapportioned if it made to multiple offerees and fails to apportion the amount that will be paid be paid to each offeree. *Albios v. Horizon Cmtys., Inc.*, 122 Nev. 409, 422, 132 P.3d 1022, 1030 (2006). An offer of judgment is also unapportioned if the offer fails to "indicate how much of the" amount offered will "be paid by the respective defendants." *Parodi v. Budetti*, 115 Nev. 236, 239, 984 P.2d 172, 174 (1999). To be apportioned, in a case involving numerous claims, by multiple plaintiffs asserting numerous theories of liability against multiple defendants, an offer of judgment must be

apportioned both in terms of the amounts to be paid to each plaintiff, and the amount each defendant will pay to resolve the claims against it. *Id.*

In *Parodi*, the plaintiff brought breach of contract claims against one group of defendants, Budettis, and slander claims against another, separate defendant, Musico. *Parodi*, 115 Nev. at 239. "Prior to trial, three offers of judgment were served upon Parodi. The first and second were made in 1996 by the Budettis alone. The last was made on March 19, 1997, for the sum of $ 20,000 inclusive of all fees, costs and pre-judgment interest ('97 offer). **This final written offer was made by the Budettis and Musico. It did not indicate how much of the $ 20,000 was to be paid by the respective defendants and was therefore unapportioned**." *Id.*

> There is no doubt the '97 offer was unapportioned. **The offer did not indicate whether the $ 20,000 was being offered to settle the contractual claims against the Budettis or the tort claims for slander against Musico**. Further, **the offer did not distinguish how much would be paid by each defendant to settle the respective claims**.

Id. at 240.

The *Parodi* case is very similar to the case at bar. Like in *Parodi*, the Plaintiffs sued one group of Defendants, SEIU and Local 1107, for breach of contract, and another group of Defendants, Local 1107 and Sharon Kisling, for defamation. *Id.* Like in *Parodi*, less than all of the Defendants, SEIU and Local 1107, made offers of judgment prior to trial. *See* L1107's Ex. A, at 1:20-2:4. The Defendants' offers of judgment to the Plaintiffs states that it is an "offer to allow judgment to be taken against them **to resolve all claims against all of the Defendants** and apportioned between Plaintiffs as follows: in favor of Plaintiff Dana Gentry for Thirty Thousand and 00/100 Dollars ($30,000.00), including all accrued interest, costs, attorney's fees, and any other sums that could be claimed by Plaintiff Dana Gentry against Defendants in the above-captioned action; and in favor of Plaintiff Robert Clarke for Thirty Thousand and 00/100 Dollars ($30,000.00), including all accrued interest, costs, attorney's fees, and any other sums that could be claimed by Plaintiff Robert Clark against Defendants in the above-captioned action. This apportioned offer of judgment is conditioned upon the acceptance by all Plaintiffs against the offerors pursuant to NRCP 68(b)." *See* L1107's Ex. A, at 1:20-2:4. However, like in *Parodi*, the

offer of judgment made by the SEIU and Local 1107 Defendants did not indicate how much of the $30,000.00 that each Plaintiff was supposed to receive would be paid by the respective Defendants, and was therefore unapportioned. *Id.*

The Local 1107 and SEIU Defendants' offer of judgment also does not clearly indicate that it would resolve all the claims in the action, as required by NRCP 68(a). The offer of judgment refers to SEIU and Local 1107 as the Defendants, and seeks to "resolve all claims against all of the Defendants." *Id.* However, the offer of judgment does not appear to indicate that the Defendants sought and obtained authority to settle Plaintiffs' claims against the Defendants from Defendants Sharon Kisling. *Id.* This is even more problematic, given the fact that the offer does not indicate what Defendant would pay what amount to what Plaintiff. Thus, for example, if Plaintiffs had accepted the offer of judgment, and subsequently sought recovery of some of the money due to Plaintiff Gentry from Sharon Kisling, it is likely that Kisling could then file a motion to vacate the offer of judgment because she never agreed to settle the claim or pay any sum of money to Plaintiff Gentry. The failure to apportion the amount each Defendant would pay for what claims makes the offer of judgment unapportioned pursuant to *Paroidi*. For this reason, the SEIU and Local 1107 Defendants' offer of judgment is invalid, as it did not give the Plaintiffs reasonable opportunity to settle all claims in the suit because it was unapportioned as to which of the Defendants would be the source of payment of the funds.

In *Parodi*, the defendants argued that the 97 offer of judgment was valid because "[t]he Budettis assert[ed] that Musico was their agent and, as such, this is a case of defendants who are acting jointly, as one entity, similar to the defendants in *Uniroyal Goodrich Tire v. Mercer*, 111 Nev. 318, 890 P.2d 785 (1995)." *See Parodi*, 115 Nev. at 240-41. The *Parodi* Court disagreed, noting that "[t]he record does not support a finding that Musico was considered to be an agent of the Budettis at the time Parodi rejected the '97 offer." *Id.* According to the *Parodi* Court, the facts showed that "Musico was sued because she allegedly made false and defamatory statements about Parodi. **The Budettis were not included in these claims, nor was Musico included in the contractual and lien claims against the Budettis**. There is no indication that the Budettis stipulated to be liable for Musico's actions at the time the offer was made or to pay any judgment

that might be entered against Musico." *Id.* The *Parodi* case, therefore, did "not fall within the exception contemplated by *Uniroyal*. The district court could not award fees and costs based upon Rule 68 or NRS 17.115." *Id.*

Again, this case is very similar to the *Parodi* case. Here, Plaintiffs sued the SEIU and Local 1107 Defendants pursuant to various breach of contract theories of liability, and Defendant Sharon Kisling, for defamation. As the case proceeded through discovery, Local 1107 was added to the defamation claim, but not the SEIU Defendants. Like in *Parodi*, there is no evidence that Kisling was considered to be an agent of the SEIU and Local 1107 Defendants, or vice versa, at the time the offer was rejected by Plaintiffs. Kisling was not party to the breach of contract claims against the SEIU and Local 1107 Defendants. There is no indication in the record that Local 1107 or SEIU agreed to be liable for the claims against Kisling. This case does not, therefore, fall within the *Uniroyal* exception, and attorneys fees and costs based upon Rule 68 or NRS 17.115 cannot be awarded to the Defendants based on their unapportioned offer. *Id.*

Now, the recent amendments to NRS 68 permit unapportioned joint offers of judgment to multiple Plaintiffs so long as several conditions are met:

> An offer made to multiple plaintiffs will invoke the penalties of this rule only if:
>
> (A) the damages claimed by all the offeree plaintiffs are solely derivative, such as where the damages claimed by some offerees are entirely derivative of an injury to the others or where the damages claimed by all offerees are derivative of an injury to another; and
>
> (B) the same entity, person, or group is authorized to decide whether to settle the claims of the offerees.

See Nev. R. Civ. P. 68(c).

Here, while the Plaintiffs are represented by the same counsel, Plaintiffs' counsel was not authorized to decide whether to settle all the claims on behalf of both Plaintiffs because each Plaintiff had a separate for-cause contract of continued employment with Local 1107 and each Plaintiff had individual contract rights and damages that were not derivative. Neither Plaintiff was authorized to settle the claims on behalf of the other Plaintiff. The Plaintiffs claims were not brought together because they were derivative of each other, but, rather, because the individual

claims arose under similar factual circumstances so that bringing them as individual lawsuits would have resulted in consolidation of the cases anyway. The SEIU and Local 1107 Defendants' offer of judgment runs afoul of both the requirements for unapportioned joint offers. The damages claimed by all offeree Plaintiffs were not soley derivative, each deriving from individual contracts and individual damages resulting from the breach of those contracts. Plaintiff Clarke was also not party to Plaintiff Gentry's defamation claim. Finally, neither Plaintiff had the authority to agree to settle the claim for the other Plaintiff. Further, given the fact that Plaintiff Gentry had both defamation and contract claims, and Plaintiff Clarke had only contract claims, the equal amount of $30,000.00 offered to both Plaintiffs to resolve all claims was highly likely to be rejected by Plaintiff Gentry, especially considering the fact that Sharon Kisling did not approve of the SEIU and Local 1107 Defendants' offer of judgment, and the offer did not indicate which of the three Defendants would be paying to settle the respective claims. In sum, the Defendants' offer of judgment was, quite simply, legally invalid as a matter of law, and like in *Parodi*, this Court may not award fees and costs pursuant to Rule 68 or NRS 17.115 based on this unapportioned offer.

C. <u>None Of The *Beattie* Factors Militate In The Defendants' Favor.</u>

This is a unique case where Plaintiffs have proven the merits of their breach of contract claims under Nevada law at the time of the offer, but the Court has none-the-less ruled in the Defendants favor by applying a California preemption doctrine creating new Nevada law rendering Plaintiffs' for-cause contracts unenforceable. The unique circumstances of this case demonstrate that none of *Beattie* factors weigh in the Defendants' favor. Both Defendants appear to recognize that they are the prevailing party not because they succeeded on the merits of the case, but, rather, because they succeeded on getting this Court to apply the California Supreme Court's LMRDA preemption doctrine despite the strong presumption against preemption of Nevada law. *See Screen Extras Guild, Inc. v. Superior Court*, 51 Cal. 3d 1017 (1990); *see also W. Cab Co. v. Eighth Judicial Dist. Court of Nev.*, 390 P.3d 662, 667 (Nev. 2017); *MGM Grand Hotel-Reno v. Insley*, 102 Nev. 513, 518, 728 P.2d 821, 824 (1986); *see also* SEIU Mot. Atty Fees, at 6:11-13; L1107 Mot. Atty Fees, at 4:26-27.

The ultimate issue, therefore, is whether it was reasonable for Plaintiffs to reject an offer of judgment based on Nevada law at the time the offer was made. The answer to this question is clearly yes, Plaintiffs' rejection of the Defendants' offers of judgment was both reasonable and in good faith because Nevada law at the time of the offer of judgment was that Plaintiffs' contracts were enforceable.

1. Plaintiffs' Claims Were Brought In Good Faith.

The Local 1107 Defendants do not argue that Plaintiffs' claims were brought in bad faith. *See* L1107 Mot. Atty Fees, at 4:18-28. Instead, they argue that "Plaintiffs failed to maintain the action in good faith because they unreasonably rejected the offer of judgment." *Id.* While the Local 1107 Defendants include a section that appears to be discussing the first of the *Beattie* factors, the Local 1107 Defendants have actually argued the third *Beattie* factor in two different sections of their brief. *Id.* at 4:18-28, 7:6-12:4. The two sections both address the reasonableness of rejecting the offer of judgment, not whether Plaintiffs claims in the Complaint were brought in good faith.

SEIU International argues that the claims brought against them not brought in good faith, but misrepresents that there was not "any legal basis for holding SEIU and/or Henry liable for breach of contract or wrongful termination." *See* SEIU Mot. Atty Fees, at 6:5-10. It is undisputed that it was SEIU International that imposed the trusteeship over Local 1107. It is undisputed that the Trustees appointed to oversee Local 1107's operations, SEIU International Executive Vice President Luisa Blue, and Martin Manteca were both SEIU International employees. It is undisputed that it was those two SEIU International employees that terminated Plaintiffs in breach of their for cause contracts. SEIU International was a necessary party because, had Plaintiffs only sued Local 1107 only, Local 1107 could have claimed that a third party, SEIU International, was the entity responsible for the terminations. Alter-ego liability is recognized in Nevada, and SEIU International's liability in this case proceeded under an alter-ego theory of liability.

At the hearing on the parties summary judgment motions, Local 1107 counsel, Evan James, Esq. did not dispute the existence of the for-cause contracts between Plaintiffs and Local 1107. Mr. James did not dispute that Trustees Luisa Blue and Martin Manteca breached those contracts when they terminated Plaintiffs. Local 1107 and SEIU's only argument was that the California

Supreme Court's Labor-Management Reporting and Disclosure Act ("LMRDA") preemption doctrine articulated in *Screen Extras Guild, Inc. v. Superior Court*, 51 Cal. 3d 1017 (1990) should be adopted in Nevada, and that it rendered Plaintiffs' contracts unenforceable. For this reason, Defendants did not win summary judgment in their favor on the merits of this case. Rather, Defendants have succeeded in convincing this Court that despite Plaintiffs proving the merits of their breach of contract claims, recovery is barred because of this new preemption doctrine that this Court adopted for the first time in Nevada on December 3, 2019. Because *Screen Extras Guild* was not the law of Nevada before this Court applied it for the first time on December 3, 2019, Plaintiffs' claims were clearly brought and maintained in good faith, and proven on the merits.

2. Defendants' Offer Of Judgment Was Not Reasonable Nor Made In Good Faith In Both Its Timing And Amount Pursuant To Nevada Law At The Time Of The Offer.

The Defendants offers of judgment were not reasonable nor in good faith in both timing and amount because it forced Plaintiffs and their counsel to speculate on whether this Court, and ultimately the Nevada Supreme Court would establish new Nevada law invalidating their contracts despite the facts and evidence in the case being it indisputable that the contracts existed, and were breached by the Defendants. *See* Plaintiffs' Contracts, attached as **Exhibit "1,"** at 1-2; *see also* Plaintiffs' Termination letters, attached as **Exhibit "2,"** at 1-4. "The purpose of an offer of judgment under former NRS 17.115 and NRCP 68 is to facilitate and encourage a settlement by placing a risk of loss on the offeree who fails to accept the offer, with no risk to the offeror, thus encouraging both offers and acceptance of offers." *Mendenhall v. Tassinari*, 403 P.3d 364, 374 (Nev. 2017) *citing Matthews v. Collman*, 110 Nev. 940, 950, 878 P.2d 971, 978 (1994); *see also Marek v. Chesny*, 473 U.S. 1, 5, 105 S. Ct. 3012, 87 L. Ed. 2d 1 (1985) (noting that the primary purpose behind offers of judgment is to encourage the compromise and settlement of litigation and that they "prompt [] both parties to a suit to evaluate the risks and costs of litigation, and **to balance them against the likelihood of success upon trial on the merits**"); 12 Charles Alan Wright, Arthur R. Miller & Richard L. Marcus, *Federal Practice and Procedure §* 3001 (2014) (stating that by encouraging compromise, **offers of judgment** discourage both protracted litigation and vexatious law suits).

The defects in the SEIU and Local 1107 Defendants' unapportioned offer of judgment aside, the Defendants' offer of judgment was neither reasonable nor in good faith because it required speculation on this Court, and ultimately the Nevada Supreme Court's adoption of an LMRDA preemption doctrine that has been adopted by only two state Supreme Courts when the merits of Plaintiffs' breach of contract case if the doctrine was not adopted were indisputable. A similar situation occurred in the case of *Zhang v. Frank*, Case No.: A481513, Dept. No. XVI, Order 7/19/2006, attached as **Exhibit "3,"** at 6:20-7:22. In *Zhang*, the parties were involved in a contract dispute that resulted in several rulings that were issues of first impression to the Nevada Supreme Court. *Id.* The District Court had ruled in favor of the Defendants dismissing the Plaintiffs' Complaint against them under existing Nevada law. *Id*. The Nevada Supreme Court reversed the decision allowing the case to proceed to trial. During litigation, the Plaintiff sent offers of judgment to the Defendants to settle the claims, which the Defendants rejected based on existing Nevada law. Following a trial in 2008, the Plaintiff appealed the ruling in favor of the lenders, and "As a matter of first impression, the Nevada Supreme Court took a fresh look at the bona fide encumbrancer law regarding actual and constructive notice, and a lender's duty to look beyond solely the recorded documents in making a detennination about whether or not an exception to marketable title exists on a property." *Id.* at 4:6-11. The Nevada Supreme Court created new Nevada law imposing additional duties on lenders, reversed the Judgment of the District Court, and remanded the case with instructions to enter judgment in favor of the Plaintiff. The Plaintiff then moved for attorneys' fees pursuant to NRCP 68.

The Defendants argued that "Zhang was not entitled to an award of attorneys fees and costs because, under an analysis of the Beattie factors, the Lenders rejected Zhang's Offers of Judgment and maintained their defenses against Zhang in good faith, because, under Nevada law as it existed at that time, the Lenders had a plausible and valid basis for asserting complete priority over Zhang's specific performance rights based on their bona fide encumbrancer defense. The Lenders' bona fide encumbrancer defense was not overturned by the Nevada Supreme Court until the Supreme Court entered its February 26, 2010 Order of Reversal and Remand (nearly two years after the

Offers of Judgment were made by Zhang)." *Id.* at 6:20-7:4. The district court that addressed the Motion for Attorneys' Fees and Costs held that:

> With regard to the first Beattie factor, the Court finds that the defenses of Countrywide and Silver State were litigated in good faith, based upon a bona fide encumbrancer for value defense, and on Countrywide's fall back defense of equitable subrogation.
>
> With regard to the second Beattie factor, the Court finds that Zhang's two Offers of Judgment, which mirror the equitable subrogation award, were made in good faith, and were both reasonable in timing and amount.
>
> With regard to the third factor, the Court finds that the liability issues in this matter were quite intricate and involved issues of first impression in Nevada. Therefore, the Court finds that the decisions of Countrywide and Silver State to reject Zhang's Offers of Judgment was not in bad faith or grossly unreasonable.
>
> **Therefore, the Court having fully considered and weighed all of the Beattie factors, the facts and circumstances of this case, and based on the complexity of the issues presented in this case, chooses not to award Zhang any attorney fees. However, Zhang's Motion for Costs is granted.**

Id.

The *Zhang* Defendants ultimately had to move a second time for relief from the attorney fee award, and Judge Williams concurred with the prior ruling finding that it was not unreasonable for the defendants to reject the offers of judgment because "it was not the law in Nevada at the time that a title insurance company and/or lender had an 'inquiry notice' duty to look in Court records, beyond what was contained in the Official Public Records, in order to discover any issues regarding exceptions to marketable title for a certain property. The Nevada Supreme Court's February 26, 2010 Order of Reversal and Remand for the first time extended the duty of "inquiry notice" for an investigating title insurance company and/or lender so that they were also required to research Court records, through available Court searching tools, in order to discover any possible exceptions to marketable title for a property. Thus, at the time that the Offers of Judgment were extended, the Lenders had a "good faith" basis for rejecting the same, and pursuing their bona fide encumbrancer defense, based on what they had discovered in the Official Public Records, and

based on the facts and the law as they existed when the Offers of Judgment were made." *Id.* at 11:23-12:9.

Judge Williams' ruling in *Zhang* is highly persuasive, and demonstrates that an award of attorneys' fees and costs to a prevailing party is improper when the law at the time an offer of judgment is made is altered by the Court. Here, like in *Zhang*, the law of Nevada at the time the offers of judgment were made was that Plaintiffs contracts were valid and enforceable. Nevada has not, and still may not adopt the *Screen Extras Guild* LMRDA preemption doctrine, and even if it does on appeal, Plaintiffs were not unreasonable in rejecting the Defendants' offers of judgment based on existing Nevada law. Rather, the Defendants' offer of judgment was both unreasonable and in bad faith, as it was not predicated on the merits of the case nor Nevada law at the time it was made. Unlike *Zhang*, where the offer of judgment was based on the equitable subrogation award, the Defendants' offer of judgment is based on a gamble that the Nevada Supreme Court will ultimately adopt the *Screen Extras Guild* LMRDA preemption doctrine as a defense to wrongful termination claims in Nevada.

In addition to the offer not being based on existing Nevada law, nor a credible dispute on the merits of the claims, the Defendants sent defective offers of judgment were for an amount less than 1/3 of Plaintiffs actual losses from the Defendants' breach of contract based on their gamble that this Court, and ultimately the Nevada Supreme Court, will adopt the *Screen Extras Guild* LMRDA preemption doctrine. NRCP 68 was not intended to permit parties to gamble on changes in Nevada law in the future. Rather, the statue is intended to compel an offeree to evaluate the merits of the case based on applicable Nevada law at the time the offer is made.

Unlike the plaintiff in *Zhang*, who issued an offer of judgment based on an equitable subrogation award while the case was on appeal, here the Defendants sent an offer of judgment gambling on this Court, and ultimately the Nevada Supreme Court changing Nevada law as it relates to union employer liability for claims brought by management employees pursuant to for-cause contracts negotiated under Nevada law. The fact that Defendants' offer of judgment for a fraction of the actual damages was not based on applicable Nevada law at the time of the offer, nor any credible dispute of the merits of the case, it was unreasonable in both timing and amount.

Plaintiffs cannot be expected to pay attorneys' fees and costs for rejecting the Defendants' offer of judgment based on the law as it existed at the time the offer was made, when the facts and evidence unquestionable demonstrated the Defendants' liability for breach of the contracts.

The Local 1107 Defendants cite to *Scott-Hopp v. Bassek*, 2014 WL 859181, 5 (Nev., 2014) in support of their position that their offer of judgment was made in good faith in both timing and amount. *See* L1107 Defs' Mot. Atty Fees, at 4:8-17, 5:23-18. Plaintiffs agree that *Scott-Hopp* is instructive, but disagrees that the holding supports their argument that their offer of judgment was reasonable in timing and amount. First, *Scott-Hopp* is a personal injury case, and liability under Nevada law for personal injury is both well defined, and relatively straightforward. "Bassek made her offer of judgment nearly two years after the start of the case, **and after each party had an opportunity to conduct discovery and to assess the strengths and weaknesses of its case**." *Scott-Hopp,* Nos. 60501, 61943, 2014 Nev. Unpub. LEXIS 352, at *14. The *Scott-Hopp* Court concluded that the offer was reasonable in time because it was made after discovery had concluded, and both parties had the opportunity to evaluate the strength of the merits of the case based on the facts and the evidence, being offered one day after summary judgment motions were filed. *Id.* The *Scott-Hopp* Court noted that "the offer was of a reasonable amount" because:

> Bassek offered $25,000 to settle Scott-Hopp's claims, which included over $150,000 in alleged medical expenses. **Though this offer covered only a fraction of Scott-Hopp's alleged damages, it was reasonable in light of the dispute of factual issues and Bassek's summary judgment motion**. While she conceded that her vehicle struck Scott-Hopp, **Bassek contested causation and liability**, and **proffered expert witnesses to testify to a lack of causation**. In addition, the **eyewitness testimony was ambiguous about liability and causation. Because of the uncertainty about the strength of Scott-Hopp' case, there was substantial evidence that the offer was of a reasonable amount**. Since Basset's offer was reasonable in time and amount, the second *Beattie* factor was met.

Id. at *15.

Nothing about *Scott-Hopp* is similar to the facts of this case but the fact that the Defendants' offer of judgment was for a fraction of what the actual damages were. The Local 1107 Defendants acknowledge that Plaintiffs' expert "valued Ms. Gentry's claims at $107,391.00" and "Mr. Clarke's claims at $92,305.00." *See* L1107 Defs' Mot. Atty Fees, at 3:8-27. The only part of

Plaintiffs' expert's calculation of damages that the Defendants dispute is Plaintiff Gentry's "auto allowance of $6,000.00," asserting that "[s]ince Gentry did not use her vehicle for Local 1107 after employment termination, she was not eligible to receive the reimbursement." *Id.* Assuming *arguendo*, that the Defendants' argument regarding the allowance is correct, Plaintiffs Genty and Clarke's actual damages are $101,391.00 and $92,305.00 respectively. Defendants did not retain a rebuttal expert, so they have no evidence in the record to dispute these amounts. *Id.*

Unlike *Scott-Hopp*, here, the Defendants' offer of judgment came well before the close of discovery, and before Plaintiffs had deposed any of the Defendants' witnesses, and as such, the Plaintiffs had not had an opportunity to evaluate the factual strength of the merits of the case. *See* Declaration of Counsel, at 1-2. Also unlike *Scott-Hopp*, the Defendants' offer a judgment was not based on any dispute of the factual issues in the case, or any reasonable question of liability under applicable Nevada law at the time of the offer. The factual issues in this case are indisputable that the Defendants are guilty of breaching the contracts. Unlike *Scott-Hopp*, where the offer of judgment was based in part on a Summary Judgment motion filed by the defendants, which outlined the facts and evidence that called into serious question the issues of causation and liability, here, the Local 1107 Defendants did not dispute that Plaintiffs had for-cause contracts and that those contracts were breached by the SEIU International Trustees in charge of Local 1107. Indeed, at no point in Local 1107's Motion for Summary Judgment, their Reply in Support of their Motion for Summary Judgment, their Opposition to Plaintiffs' Motion for Summary Judgment, or at the hearing on those motions before this Court, did Local 1107 ever dispute that Plaintiffs had for-cause contracts, and that those contracts were breached. In this case, the Defendants' offer a judgment was not based on any factual dispute of liability nor based on existing Nevada law at the time the offer was made.

Rather, the Defendants made their offers of judgment based on a gamble that the Nevada Supreme Court will adopt the *Screen Extras Guild* preemption doctrine, a matter of first impression on appeal. Thus, unlike *Scott-Hopp*, where the Court found that the defendant's offer of judgment was reasonable in time because it was made after discovery so the parties had time and evidence to evaluate the strength of the case, and reasonable in amount because it was based on serious

factual issues in dispute, the Defendants' offer of judgment was neither. The Defendants offer of judgment was made before Plaintiffs deposed a single defense witness in effort to maximize the attorney fee award before Plaintiffs had discovery, and unreasonable in amount because Plaintiffs damages were undisputed and liability under existing Nevada law was clear until this Court created new Nevada exception to union liability for wrongful termination in breach of a for-cause employment contracts. The second factor weighs in favor of denying attorneys' fees and costs.

3. Plaintiffs' Rejection Of The SEIU And Local 1107 Defendants' Offer Of Judgment Was Both Reasonable And In Good Faith Based On Existing Nevada Law At The Time The Offers Were Made.

For the same reason cited in the previous section, it was not at all unreasonable for Plaintiffs to reject an offer of judgment by Defendants because it was not based on the existing law of Nevada at the time the offer was made, and the facts and evidence pointed to Defendants clear liability on the merits of the breach of contract claims. It cannot be disputed that the Nevada Supreme Court had not, and has not adopted the holding of *Screen Extras Guild, Inc. v. Superior Court*, 51 Cal. 3d 1017 (1990) with regards to LMRDA preemption. Plaintiffs' evaluation of their claims based on Nevada law at the time the offer was made was both reasonable and in good faith. It is undisputed that Plaintiffs had for-cause contracts. It is undisputed that those contracts were breached. *See* L1107 MSJ, at 13:11-16. Nowhere in Local 1107's Motion for Summary Judgment, or Opposition to Plaintiffs' Motion for Summary Judgment, did Local 1107 dispute that the contracts existed and were breached by the SEIU International Trustees. It is also undisputed that Local 1107's preemption defense rested entirely on "an issue of first impression in Nevada." *See* Order Granting Defs' MSJ, 12/30/19, at 3:25-28. When an offer of judgment is presented to a party should not be expected to evaluate the offer based on what Nevada law might be years after the case has concluded.

Plaintiffs stress the LMRDA preemption doctrine adopted by this Court from *Screen Extras Guild, Inc. v. Superior Court*, is not yet the law of Nevada. As a matter of first impression Plaintiffs are appealing the Court's ruling to the Nevada Supreme Court, and it will take some time before this Court or the parties actually find out if this doctrine is going to be adopted in Nevada. Existing binding Nevada law makes abundantly clear that "[w]hen starting a…preemption analysis, courts

should presume 'that Congress [did] not intend to supplant state law.'" *W. Cab Co.*, 390 P.3d at 669. "[P]re-emption should not be lightly inferred." *Id.* at 667. The Nevada Supreme Court has "emphasized that the intent of Congress is the touchstone to preemption analysis and that, **absent a clear and manifest intent of Congress, there is a presumption that federal laws do not preempt the application of state or local laws regulating matters that fall within the traditional police powers of the state**." *Cervantes v. Health Plan of Nev., Inc.*, 127 Nev. 789, 794, 263 P.3d 261, 265 (2011).

The Nevada Supreme Court has concluded that "the establishment of labor standards falls within the traditional police power of the State." *W. Cab Co.*, 390 P.3d at 667. Only "when a conflict exists between federal and state law, [does] valid federal law overrides, i.e., preempts, an otherwise valid state law." *Nanopierce Techs., Inc. v. Depository Tr. & Clearing Corp.*, 123 Nev. 362, 370-71, 168 P.3d 73, 79 (2007). "Whether a federal enactment preempts state law is fundamentally a question of congressional intent--did Congress expressly or impliedly intend to preempt state law? Even when implied, Congress's intent to preempt state law, in light of a **strong presumption** that areas historically regulated by the states generally are not superseded by a subsequent federal law, must be 'clear and manifest.'" *Id.* The Nevada Supreme Court has recognized two guiding principles in all preemption cases. "The Court has instructed that "'[i]n all pre-emption cases, and particularly in those in which Congress has legislated . . . in a field which the States have traditionally occupied, . . . we start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.' The second principle, known as the presumption against preemption, arises out of 'respect for the States as 'independent sovereigns in our federal system.'" *Rolf Jensen & Assocs. v. Eighth Judicial Dist. Court of Nev.*, 282 P.3d 743, 746 (2012).

Nevada's treatment of conflict preemption reflects the holdings of the United States Supreme Court. The United States Supreme Court "decisions establish that a high threshold must be met if a state law is to be pre-empted for conflicting with the purposes of a federal Act. **Any conflict must be 'irreconcilable . . . . The existence of a hypothetical or potential conflict is insufficient to warrant the pre-emption of the state statute**.'" *Gade v. Nat'l Solid Wastes Mgmt.*

Ass'n, 505 U.S. 88, 110, 112 S. Ct. 2374, 2389 (1992) *quoting Rice v. Norman Williams Co.*, 458 U.S. 654, 659, 73 L. Ed. 2d 1042, 102 S. Ct. 3294 (1982). "The 'teaching of this Court's decisions . . . enjoins seeking out conflicts between state and federal regulation where none clearly exists." *English v. Gen. Elec. Co.*, 496 U.S. 72, 90, 110 S. Ct. 2270, 2281 (1990). Supreme Court Justice Sotomyor, when serving as a Judge for the Southern District of New York, noted in a case similar to this one that "Since the LMRDA's enactment, the 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); *De Veau v. Braisted*, 363 U.S. 144, 157, 4 L. Ed. 2d 1109, 80 S. Ct. 1146 (1960). Indeed, in *De Veau*, the United States Supreme Court expressly stated that:

> **When Congress meant pre-emption to flow from the 1959 Act it expressly so provided**. …**In addition, two sections of the 1959 Act, both relevant to this case, affirmatively preserve the operation of state laws**. That § 504 (a) was not to restrict state criminal law enforcement regarding the felonies there enumerated as federal bars to union office is provided by § 604 of the 1959 Act…And to make the matter conclusive, § 603 (a) is an express disclaimer of pre-emption of state laws regulating the responsibilities of union officials, except where such pre-emption is expressly provided in the 1959 Act.

De Veau, 363 U.S. at 156-57.

It is undisputed that no federal court outside of the California federal District Courts, which are bound by the *Screen Extras Guild* ruling when passing on state law claims, have concluded that the LMRDA preempts state wrongful termination law. When Plaintiffs first analyzed the preemption defendants advanced by the Defendants, Plaintiffs were instructed, pursuant to existing and binding Nevada law, to presume that preemption did not apply. This alone should end the analysis of whether Plaintiffs' claims were made in good faith, and whether Plaintiffs rejection of the offers of judgment was reasonable and in good faith. Existing Nevada law at the time of the offer stated Plaintiffs contracts were enforceable, and commanded a presumption that Defendants' preemption defense would fail as a matter of law.

Also of note is the fact that only one other state Supreme Court, the Montana Supreme Court, has actually adopted the *Screen Extras Guild* LMRDA preemption doctrine. *See e.g., Vitullo v. Int'l Bhd. of Elec. Workers, Local 206*, 75 P.3d 1250, 1256 (Mont. Sup. Ct. 2003). Defendants cite *Packowski v. United Food & Commercial Workers Local 951*, 796 N.W.2d 94, 100 (Mich. Ct. App. 2010), *Dzwonar* v. *McDevitt*, 791 A.2d 1020, 1024 (N.J. App. Div. 2002), and *Young v Int'l Bhd. of Locomotive Eng'rs*, 683 N.E.2d 420 (Ohio Ct. App. 1996), for their argument that their preemption defense was "particularly persuasive" because other jurisdictions have adopted the *Screen Extras Guild* holding. *See* Order Granting Defs' MSJ, 12/30/19, at 2:25-4:5. Only one of these cases is a state Supreme Court case, *Vitullo*. *Id.* On the other hand, a greater number of state supreme courts have either outright rejected the *Screen Extras Guild* preemption doctrine, or expressly declined to adopt it when affirming or overruling the lower court on other grounds.

For example, on appeal to the New Jersey Supreme Court in *Dzwonar*, the New Jersey Supreme Court affirmed the appellate court on the issue that the plaintiff had "failed to present a CEPA claim," and for that reason, it was "unnecessary to address the panel's holding that federal labor law preempts plaintiff's state law claim." *See Dzwonar v. McDevitt*, 177 N.J. 451, 456, 828 A.2d 893, 896 (2003). Thus, while the New Jersey court of appeals believed that the *Screen Extras Guild* holding should be adopted, when the New Jersey Supreme Court was given an opportunity to adopt the doctrine, it refused to adopt the doctrine. *Id.*

In *Lyons v. Teamsters Local Union No. 961*, the Colorado appellate court noted that *Finnegan* is not a preemption case, and concluded "that Lyons' breach of [employment] contract and promissory estoppel claims are not preempted by the federal labor laws," expressly rejecting the LMRDA preemption argument. 903 P.2d 1214, 1220 (Colo. App. 1995). "Lyons alleged that the Union hired her in 1989 as a secretary and bookkeeper." *Id.* The Union president had promised Lyons that her employment would be governed by the same terms as the collective bargaining agreement ("CBA") the union had negotiated with the employer they bargained with. *Id.* at 1217. The *Lyons* Court found it notable that "Finnegan is not a preemption case. The Supreme Court merely held that an appointed policymaking union employee has no wrongful discharge remedy under the LMRDA, which addresses the relationship between union officials and union employees

in their status as members, not in their status as employees." *Id.* at 1220. The *Lyons* Court rejected the *Screen Extras Guild* preemption analysis holding that:

> Here, there has been **no contention or showing that Lyons was instrumental in establishing the Union's administrative policies or that her firing was related to her views on union policy**. The Union's stated reason for firing Lyons, who was a secretary and bookkeeper, was her alleged insubordination and poor job performance. **Lyons' claims implicate no legitimate union policy and do not threaten any federal interest in ensuring democratic union governance**. Thus, permitting Lyons to pursue her claims would neither impermissibly interfere with the ability of democratically elected Union officials to respond to their mandate to govern, nor frustrate the effective administration of national labor policy. **Thus, we conclude that Lyons' breach of contract and promissory estoppel claims are not preempted by the federal labor laws**.

Id.

In *Casumpang v. ILWU, Local 142*, the Hawaii Supreme Court, cited the *Screen Extras Guild* case and expressly held "that the LMRDA does not preempt Casumpang's state law action at issue in this appeal." 94 Haw. 330, 342, 13 P.3d 1235, 1247 (2000). The *Casumpang* Court noted that "[a]s 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.'" *Id.* at 1245 *quoting O'Hara v. Teamsters Union Local # 856*, 151 F.3d 1152, 1161 (9th Cir. 1998) (citing 29 U.S.C. § 523, see infra note 13). "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, which provide in relevant part that 'the remedy . . . for challenging an election [of union officers] shall be exclusive[ly]' pursued through the Secretary of Labor." *Id.* While Casumpang's "claim apparently results from his discharge as a union business agent, following a disciplinary action that culminated in his suspension as a union member, which in turn caused his disqualification for election to union office, the claim nevertheless has no direct bearing upon either the validity of the Union's election or Casumpang's eligibility as a candidate." *Id.*

Other state courts have consistently permitted union employees and officers to bring wrongful termination and defamation claims against their unions despite the LMRDA. In *Murphy v. Am. Fed'n of Grain Millers*, a local union's international parent union imposed a trusteeship

over the local union and removed its top executive officer from his position. 261 N.W.2d 496, 499 (Iowa 1978). The officer had a for-cause contract with the local union. *Id.* The *Murphy* Court held that, "[i]n the instant case no one disputes the authority of the international union to remove plaintiff from office. However the jury found no failure by plaintiff in the performance of his duties. Under these circumstances we believe the policy interests mentioned by the union are sufficiently supported by the power of removal. **The union removed plaintiff without cause. In doing so it became liable to him for damages**" relating to breach of his for cause employment contract. *Id.* In *Amalgamated Transit Union, Local 1300 v. Lovelace*, a union officer who lost reelection sued his union for defamation because the union president, during his election campaign, accused the former officer, the union's financial secretary, of stealing union money. 441 Md. 560, 575, 109 A.3d 96, 105 (2015). The Maryland Supreme Court upheld the judgment in favor of the former union officer.

In *Daignault v. Pac. Northwest Reg'l Council of Carpenters*, a the plaintiff, a former union council representative discharged from his position over a "difference in opinion" between him and the union council president on how the council should run, and affiliation with another larger union. 2010 Wash. Super. LEXIS 1019, *4. The plaintiff raised "two causes of action, (1) the tort of wrongful discharge, in violation of public policy, and (2) breach of an express or. implied contract as set forth in the Council's Personnel Policy." *Id.* The appellate court found that Diagnault's claims for wrongful discharge did not state a claim under Washington law. *Id.* The Council urged "the court to rule that Mr. Daignault's claims are preempted by the LMRDA." *Id.* The *Daignault* Court rejected the argument, ruling "that the claims are not preempted." *Id.*

Further, every single federal court outside of California has expressly rejected the notion of LMRDA preemption. *Shuck v. Int'l Ass'n of Machinist & Aero. Workers*, Dist. 837, No. 4:16-CV-309 RLW, 2017 U.S. Dist. LEXIS 31992, at *2-5 (E.D. Mo. Mar. 7, 2017); *Ardingo v. Local 951, United Food & Commer. Workers Union*, 333 F. App'x 929, 933 (6th Cir. 2009); *Toensmeier v. Amalgamated Transit Union, Div. 757*, No. 3:15-CV-01998-HZ, 2016 U.S. Dist. LEXIS 29152, at *2 (D. Or. Mar. 8, 2016); *Hahn v. Rauch*, 602 F. Supp. 2d 895, 911 (N.D. Ohio 2008); *Davis v. Int'l Union, UAW*, 392 F.3d 834, 838 (6th Cir. 2004); *O'Hara v. Teamsters Union Local #856*, 151

F.3d 1152, 1162 (9th Cir. 1998); *Simo v. Union of Needletrades*, 322 F.3d 602, 612 (9th Cir. 2003); *Brookens v. Binion*, No. 99-7030, 2000 U.S. App. LEXIS 2055, at *7 (D.C. Cir. Jan. 28, 2000); *Davis v. United Auto.*, No. 1:03CV1311, 2003 U.S. Dist. LEXIS 28190, at *26 (N.D. Ohio Dec. 31, 2003); *Schepis v. Local Union No. 17, United Bhd. of Carpenters & Joiners*, 989 F. Supp. 511, 515 (S.D.N.Y. 1998); *Reed v. United Transp. Union*, 633 F. Supp. 1516, 1528 (W.D.N.C. 1986); *Sowell v. Int'l Bhd. of Teamsters*, No. H-09-1739, 2009 U.S. Dist. LEXIS 110339, at *11-13 (S.D. Tex. Nov. 24, 2009). The fact of the matter is that the cases rejecting arguments of LMRDA preemption are far more numerous than those that have adopted it.

When evaluating the Defendants offer of judgment, Plaintiffs were faced with: (1) Nevada's strong presumption that Congress did not intend to preempt Nevada wrongful termination law; (2) the corresponding federal presumption that preemption is inapplicable and the high standard for finding conflict preemption; (3) the fact that only two state supreme courts have actually adopted the *Screen Extras Guild* preemption doctrine; (4) the fact that four state supreme courts have either rejected it or refused to adopt the doctrine when given the chance; (5) the fact that every federal court not bound by the *Screen Extras Guild* holding has expressly rejected it, including the Sixth Circuit Court of Appeals; (6) the fact that no federal appellate court, nor the United States Supreme Court has held that state wrongful termination claims by union employees of any category are preempted; (7) the six separate anti-preemption statutes in the LMRDA that expressly disclaim preemption; (8) the wealth of United States Supreme Court precedent acknowledging that "When Congress meant pre-emption to flow from the 1959 Act it expressly so provided" (*De Veau*, 363 U.S. at 156-57); (9) the numerous factual differences between the cases applying the *Screen Extras Guild* LMRDA preemption doctrine and Plaintiffs' wrongful discharge claims in this case; and (10) the still unidentified actual conflict between enforcement of Plaintiffs' contracts and the democracy concerns of the LMRDA. Under these circumstances, rejecting the offers of judgment was both reasonable and in good faith pursuant to the law of Nevada at the time of the offer. As Judge Williams held in *Zhang*, this Court should hold, with regard to the third factor, the liability defense that Defendants ultimately prevailed on was quite intricate, and involved issues of first impression in Nevada. Therefore, the decisions of Plaintiffs

to reject Defendants' offer of judgment were not in bad faith or grossly unreasonable, and attorneys fees and costs should be denied.

4. The Fees Sought By The SEIU And Local 1107 Defendants Are Not Reasonable Nor Justified In Amount.

"In Nevada, 'the method upon which a reasonable fee is determined is subject to the discretion of the court,' which 'is tempered only by reason and fairness.'" *Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 864-65, 124 P.3d 530, 548-49 (2005). "[T]he court is not limited to one specific approach; its analysis may begin with any method rationally designed to calculate a reasonable amount, including those based on a "lodestar" amount or a contingency fee." *Id.* Nevada courts are instructed to conduct "its analysis by considering the requested amount in light of the factors enumerated by this court in *Brunzell v. Golden Gate National Bank*, namely, the advocate's professional qualities, the nature of the litigation, the work performed, and the result." *Id*. The *Brunzell* factors are "(1) the qualities of the advocate: his ability, his training, education, experience, professional standing and skill; (2) the character of the work to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation; (3) the work actually performed by the lawyer: the skill, time and attention given to the work; (4) the result: whether the attorney was successful and what benefits were derived." *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

i. The Fourth Beattie Factor Alone Is Not Sufficient To Justify An Award Of Attorneys' Fees.

The first three of the *Beattie* "factors all relate to the parties' motives in making or rejecting the offer and continuing the litigation, whereas the fourth factor relates to the amount of fees requested." *Frazier v. Drake*, 357 P.3d 365, 372, 2015 Nev. App. LEXIS 12, *17, 131 Nev. Adv. Rep. 64. While "[n]one of these factors are outcome determinative," the Nevada Court of Appeals has held that when "the three good-faith *Beattie* factors weigh in favor of the party that rejected the offer of judgment, the reasonableness of the fees requested by the offeror becomes irrelevant, and cannot, by itself, support a decision to award attorney fees to the offeror." *Id.* at 373; *see also* **Ex. 3,** at 10:11-20.

It cannot be disputed that Plaintiffs claims were brought in good faith. The law at the time Plaintiffs filed their Complaint, through until the date of the hearing on the motions for summary judgment, December 3, 2019, did not exempt unions from liability for breach of for-cause employment contracts given management level employees. The first *Beattie* factor unquestionably cuts in Plaintiffs' favor. Judge Williams' thoughtful and persuasive opinion in *Zhang* that when complex issues affecting liability turn on matters of first impression in Nevada, and an offeree reasonably rejects an offer of judgment based on the applicable law at the time the offer was made, it cannot be said that the offeree rejected the offer unreasonably or in bad faith. Here, Plaintiffs rejected the Defendants' offer of judgment based on existing Nevada law at the time the offer was made, and the facts and evidence in this case. But for the exception established by this Court in this case on December 3, 2019, the Defendants were unquestionably guilty of breach of contract. Thus, the third *Beattie* factor unquestionably cuts in Plaintiffs' favor.

Finally, pursuant to both *Zhang* and *Scott-Hudd*, because the Defendants' offer of judgment was based on a gamble that the Nevada Supreme Court will eventually adopt the *Screen Extras Guild* LMRDA preemption doctrine in the future, was made before discovery in the case was concluded, and was not based on any actual matter of contested liability on the facts and evidence, the second *Beattie* factor cuts in Plaintiffs' favor as well. Under these circumstances, because the first three good faith *Beattie* factors weigh in favor of Plaintiffs' rejection of the offer of judgment, "the reasonableness of the fees requested by the offeror becomes irrelevant, and cannot, by itself, support a decision to award attorney fees to the offeror." *Frazier*, 357 P.3d at 372. The bottom line is that neither Plaintiffs nor Plaintiffs' counsel are mind readers, and Nevada's offer of judgment statute is intended to "discourage both protracted litigation and vexatious law suits," by requiring the offeree to evaluate the case on the merits pursuant to existing law at the time of the offer. *Mendenhall*, 403 P.3d at 374. "[W]hile NRCP 68 and NRS 17.115 allow an award of attorney fees where a party rejects an offer of judgment and fails to obtain a more favorable judgment at trial, '**offers of judgment are designed to encourage settlement and are not intended to unfairly force parties to forego legitimate claims**.'" *Jones v. Gugino*, 2015 Nev. App. Unpub. LEXIS 505, *7.

Defendants' offer of judgment defeats the purpose of NRCP 68 and NRS 17.115, because it was intended to unfairly force Plaintiffs to forgo legitimate claims pursuant to the applicable Nevada law at the time the offer was made based on the possibility that the Nevada Supreme Court would adopt the *Screen Extras Guild* ruling after judgment in this case was final. Had Plaintiffs accepted the offers, they would have been forgoing more than $60,000 in undisputed actual damages each, based on the possibility that the Nevada Supreme Court would apply the *Screen Extras Guild* LMRDA preemption exception to wrongful termination claims against union-employers. The acceptance of the Defendants' offer of judgment would have, therefore, left open the question of whether *Screen Extras Guild* would be found applicable to Plaintiffs' claims, resulting in an acceptance of an offer of judgment based on the prospect of a change in law that would never actually occur because this Court would not have been given the opportunity to apply it, and it would not have been appealed to the Nevada Supreme Court for review. Forcing parties to forgo legitimate claims based on the possibility that Nevada law might change at some point in the future after the case is concluded is, quite simply, not what the offer of judgment statutes were intended to accomplish. It is for this reason that the first three *Beattie* factors unquestionably weigh in Plaintiffs' favor. Because it is not permissible to award attorneys' fees based on the reasonableness of the fees requested, the reasonableness of the fees requested is not necessary to analyze. However, even if it were, the Defendants' requested fees are quite unreasonable.

ii. The Defendants' Request For Attorneys' Fees Is Unreasonable And Unjustified In Amount.

In this case, the fourth *Beattie* factor is inextricably intertwined to the unreasonableness of the Defendants' offer in timing and amount. The Defendants made their offer of judgment gambling on their belief that the Nevada Supreme Court would adopt the *Screen Extras Guild* LMRDA preemption doctrine after judgment in this case was issued. That is, if this Court had not adopted the doctrine, the Defendants would be arguing against awarding of fees and costs, seeking a stay of any such award, and appealing the judgment against them to the Nevada Supreme Court asking for them to adopt the LMRDA preemption doctrine anyway. Because the Defendants' offer of judgment was based entirely on the proposition of the Nevada Supreme Court adopting new

law, they advanced it well before Plaintiffs had the opportunity to obtain discovery in this case resulting in an unreasonable amount of attorneys' fees requested.

The date of the offer is evidence of the unreasonable amount of fees sought in this case. The Defendants made their offer of judgment before discovery in this case was concluded because they were not actually making their decision to serve the offer of judgment based on the merits. *See* Order Granting Defs' MSJ, 12/30/19, at 3:25-28 (this Court ruling that LMRDA preemption "is an issue of first impression in Nevada.") The Defendants advanced no defense to the merits of this case on summary judgment, and given that courts routinely decline to award attorneys' fees and costs based on offers of judgment when matters of liability that determine the prevailing party in the case are based on complex issues of first impression, like in *Zhang*, even if they lost, they could make the same argument Plaintiffs make now asking the Court to excuse their bad faith offer as a reasonable belief that the *Screen Extras Guild* preemption defense would be adopted in Nevada.

Because the Local 1107 Defendants knew they had no defense to the merits of this case under Nevada law at the time they made their offer, they had no reason to wait until discovery concluded to make an offer of judgment because they knew that without preemption, they had no other actual defense to the breach of contract claims. For this reason, to unfairly and unreasonably maximize their potential attorney fee award, they sent their offer of judgment before the majority of discovery had been completed. *See* L1107 Defs' Ex. D, at 1-8. At the same time, the Local 1107 Defendants consistently disputed the validity of Plaintiffs' for-cause contracts during the discovery process forcing Plaintiffs to conduct additional discovery that could have been avoided had they simply admitted what they ultimately did not dispute on summary judgment, to wit: that Plaintiffs had for-cause contracts and that those contracts were breached. Indeed, in the Local 1107 Defendants' responses to Plaintiffs' Second Requests for Admission, the Defendants admitted that "that an employment contract between Local 1107 and Robert Clarke [and Dana Gentry] existed. Local 1107 denies that the contract could only be terminated for cause. Local 1107 denies that any such termination was appealable to the Local 1107 Executive Board." *See* L1107 Defs' Resp. 2nd

RFA, attached as **Exhibit "4,"** at 3:16-4:11. Defendants seek to recover attorneys' fees for these responses and the discovery that was necessitated by them. *See* L1107 Ex. D, at 1.

The Defendants failed to indicate the basis for their objection or their denial of these ultimately undisputed facts, forcing Plaintiffs to obtain additional discovery, depositions, written discovery requests etc., to understand the basis of the Local 1107 Defendants' fact based defense that Plaintiffs' contracts were not for-cause and appealable to the Local 1107 Executive Board. *Id. see also* **Ex. 1,** at 1-2. Had the Defendants admitted at the outset of the case, or in response to Plaintiffs' discovery requests what they ultimately did not dispute when summary judgment motions were filed, that Plaintiffs had for-cause contracts with clear terms regarding the termination appeal procedure that were breached, they would have a better argument that their requested fees were reasonable. However, the Defendants disputed the facts of the case, and did everything they could to preclude disclosure of relevant discovery, requiring Plaintiffs to move to compel documents they ultimately produced anyway, and in the end did not dispute the merits of the breach of contract case. The date of the Defendants' offer of judgment before Plaintiffs were able to conduct discovery in the case, and their denial of facts they ultimately did not dispute on summary judgment, demonstrates that their offer of judgment was intended to maximize recovery of fees, not a reasonable analysis of the facts, evidence, and applicable law.

Although an offer of judgment made before discovery is not, "in and of itself, necessarily unreasonable," the Nevada Supreme Court has indicated that if a party identifies "specific information that they needed to evaluate the reasonableness of the offer of judgment that they did not have at the time that the offer was extended," it could be unreasonable. *Anderson v. Doi Huynh*, 2015 Nev. App. Unpub. LEXIS 150, *2, 2015 WL 1280093. The Local 1107 Defendants' unreasonable dispute of the factual merits of this case that they ultimately did not dispute on summary judgment is a prime example of the bad faith in their offer of judgment. If the Defendants had simply admitted that Plaintiffs had for-cause employment contracts, and that those contracts were breached, the depositions, additional discovery requests, discovery extensions, etc. would not have been necessary, and the vast majority of Defendants' claimed fees would not have occurred. Local 1107 knew their only defense to this action was preemption, and had they been

forthcoming about that, the case could have proceeded to summary judgment without any need for an extension of discovery. Instead, their responses to Plaintiffs' discovery requests necessitated the additional discovery for which they now seek attorneys' fees and cost.

In a similar case, where an employee sued his former employer for wrongful termination and the employer sent an offer of judgment before discovery concluded, after a bench trial that was decided on the merits in favor of the employer, the employer moved for attorneys' fees. *Niculescu v. Sun Cab, Inc.*, No. 61761, 2013 Nev. Unpub. LEXIS 577, at *1 (May 15, 2013). "[T]he district court evaluated the *Beattie* and *Brunzell* factors and awarded respondent **approximately half of its requested fees** as reasonable attorney fees." *Id.* at *3. The Nevada Supreme Court upheld the district court's decision to award only half the attorney fees. *Id.* It is reasonable to assume that the district court awarded only half of the fees requested, in part, because of the timing of the offer.

iii. The Brunzell Factors.

Defendants argue their qualifications as an attorney under the first *Brunzell* factor, and Plaintiffs to not seek to dispute Mr. James's claims about his education and experience as an advocate. However, when discussing the second factor, the Defendants appear to overstate the complexity of this case, the preemption issue that will be going up on appeal, and the actual attorney work that was conducted after the offer of judgment. The majority of the Defendants' claimed attorneys' fees in this case were not for complex legal work, but, rather, minor review of documents and producing responses to discovery requests. *See* L1107 Ex. D, at 1-8. In fact, while the Defendants list fifteen motions in their Motion for Attorneys' Fees, only four on the list were actually drafted and filed after the offer of judgment was sent. *Id.* The only motion that Local 1107 defense counsel actually claims he participated in drafting were the Local 1107 Motion for Summary Judgment, the Local 1107 Opposition to Plaintiffs' Motion for Summary Judgment, and the Motion for Attorneys' Fees. *Id.* at 6-8. The rest of the motions listed in the Local 1107 Defendants' Exibit D demonstrate that Local 1107 defense counsel either merely reviewed or edited the documents drafted by others. In fact, of the Local 1107 Defendants 304.20 hours of attorney work claimed in their Motion for Attorneys' Fees, 106.30 hours are for minor document

or discovery review. *Id.* at 1-8. This number includes 5.10 hours of audio file review, and 50.20 hours of review of documents from the *Garcia* case, which the parties agreed to not to do duplicate discovery. *See* JCCR, at 6:20-23. This duplicate review of documents was clearly unnecessary.

The Local 1107 Defendants claim recovery of attorneys' fees for drafting emails, however, it is impossible to ascertain exactly how much time the Defendants are claiming for most of the email drafting because much of the emails they seek attorneys' fees for are bundled with other actions, and do not include an amount of time spent on drafting the emails. For example, Defendants assert that they spent 2.10 hours reviewing and editing "Stipulation and Order regarding Discovery; emails regarding Extending Discovery." *See* L1107 Defs' Ex. D, at 4. This item fails to indicate how much time was spend on review the stipulation and how much time was spend on the emails. The fact is, the claims in this case were not complex. This case was a straight forward a breach of for-cause contract and defamation case. The Defendants argued a complex preemption defense adopted by the California and Montana Supreme Courts. However, the Defendants conducted all the complex legal research and analysis of the facts and evidence regarding their preemption defense very early on in the case in their Counter-Motion for Summary Judgment filed in 2018, well before the offer of judgment. Indeed, the Defendants' Motions for Summary Judgment are almost a copy and paste from the Counter-Motions for Summary Judgment the Defendants filed back in early 2018 before discovery had been conducted. *See* L1107 Counter-MSJ, at 1-14 *contrast to* L1107 MSJ, at 1-21. These documents advance identical preemption arguments and nearly identical factual analysis, adding only Plaintiffs' deposition testimony to their overall preemption analysis. In fact, of the Defendants list of fifteen (15) documents filed in this case demonstrating the supposedly difficult nature of this suit, ten (10) were filed before the offer of judgment. *See* L1107 Mot. Atty. Fees, at 9:18-10:16.

To be clear, Plaintiffs do not argue that the preemption issue was complex in nature, as all preemption analysis is considered to be complex. However, because the Defendants' arguments regarding preemption were advanced early on in the case, and did not change as the case progressed, it is difficult to say that the character of the work to be done after the offer of judgment was served was difficult, intricate, important, or took significant time and skill to warrant over

$100,000 in attorneys' fees that the Defendants' claim. The majority of the work included in the Local 1107 Defendants' attorneys' fees billing statement could have been done by a clerk, rather than a partner in the firm.

With regards to the third factor, the Defendants once again cite to the fact that "[t]hese fifteen motions required Local 1107 to prepare and submit at least 15 briefs to the Court." *See* L1107 Mot. Atty Fees, at 10:18-21. However, again, only five of these motions were submitted after the offer of judgment and cannot be considered in the *Brunzell* analysis. Defendants argue that "[d]efense counsel also appeared before the Court 8 times as of December 31, 2019." *Id.* at 11:1-3. However, only four (4) of those appearances occurred after the offer of judgment. *See* L1107 Ex. D, at 1-8. This case involved only five deposition, and the Defendants' acknowledge that "[t]hree of the five depositions were taken by the Defendants." *See* L1107 Mot. Atty Fees, at 11:4-9.

As of the date of this opposition, the fourth factor is still yet to be determined. The Nevada Supreme Court must formally adopt the *Screen Extras Guild* LMRDA preemption doctrine before it becomes the law of the state of Nevada. The Defendants failed to dispute the merits of the breach of contract claim in this case, and if *Screen Extras Guild* exception is rejected by the Nevada Supreme Court, Plaintiffs are the prevailing party in this lawsuit. Thus, any award of attorneys' fees and costs in this lawsuit now would need to be returned, with interest, and any damages resulting from such an award would end up added to Plaintiffs overall damages in this case. With regards to the *Brunzell* factors, only the first factor cuts in favor of Defendants' request for attorneys' fees. The second and third are predicated on work conducted prior to the offer of judgment, and the majority of what is claimed for attorneys' fees is for document review, much of it unnecessary, and emails. This is simply not the kind of work attorneys' fees and costs are granted for, especially considering a low level clerk or paralegal could have done the work. Finally, the fourth factor is yet to be determined as the matter the Defendants ultimately won on summary judgment is a matter of first impression on appeal to the Nevada Supreme Court, which if rejected, would make Plaintiffs the prevailing party. The *Brunzell* factors militate in favor of denying attorneys' fees and costs all together.

D. <u>The Defendants Have A More Than $200,000 Windfall And Equity Demands That Defendants Pay Their Own Attorneys' Fees And Costs.</u>

Finally, as a matter of equity, it must be noted that the Defendants have a more than $200,000 windfall in this case. By terminating Plaintiff Gentry and Clarke's contracts, the Defendants do not dispute that they saved $107,391.00 and $92,305.00 respectively. *See* L1107 Mot. Atty Fees, at 3:8-10. The termination letters clearly indicate that the Defendants intended to run the local without the assistance of directors. *See* **Ex. 2,** at 1-4. In fact, the SEIU International Trustees brought in several SEIU International officials to serve in managerial and director level positions at Local 1107. By having SEIU International employees manage Local 1107, the Local 1107 Defendants saved $199,696.00 in salary and benefit payments they would otherwise have had to pay Plaintiffs.

Nevada courts, like most courts in the United States, have powers in equity to fashion reasonable and just damage awards when a party reasonably relies on the promise of another and that promise is breached, even when no contract exists. This is known as promissory estoppel. *Dynalectric Co. of Nev., Inc. v. Clark & Sullivan Constructors, Inc.*, 127 Nev. 480, 484-85, 255 P.3d 286, 289 (2011). "Following the lead of the Restatement, we hold that the district court may award expectation, reliance, or restitutionary damages for promissory estoppel claims." *Id.* "Although the doctrine of promissory estoppel is conceptually distinct from traditional contract principles, there is no rational reason 'for distinguishing the two situations in terms of the damages that may be recovered.'" *Id.* "[N]o single measure of damages will apply to each and every promissory estoppel claim; instead, to determine the appropriate measure of damages for promissory estoppel claims, the district court **should consider the measure of damages that justice requires and that comports with the Restatement's general requirements that damages be foreseeable and reasonably certain**." *Id. citing* Restatement (Second) of Contracts §§ 351, 352 (1981).

Here, it is undisputed that Local 1107 entered into for-cause employment contracts with Plaintiffs. It is undisputed that the SEIU International Trustees breached those contracts despite Nevada law at the time of the breach not providing unions with an exception to Nevada wrongful termination law. The Defendants are the wrongdoers. The Defendants made a promise. The

Defendants breached the promise. Plaintiffs sought to recover under their contracts that this Court ultimately found unenforceable for LMRDA preemption, a matter of first impression before the Nevada Supreme Court. Regardless of whether the *Screen Extras Guild* LMRDA preemption doctrine becomes the law of Nevada, the fact is, Plaintiffs, not Defendants, are the ones with actual damages of $199,696.00. The Defendants saved $199,696.00 when breaching Plaintiffs' contracts. As a matter of equity, it would be remarkably unjust to award the Defendants attorneys' fees and costs when the Defendants breached their duties under the contracts, and their claimed attorneys' fees do exceed the amount they saved from breaching the contracts. Indeed, Local 1107 claims $56,277.00 in fees. *See* L1107 Mot. Atty Fees, at 3:11-14. SEIU International claims $57,206.50 in fees. *See* SEIU Mot. Atty Fees, at 3:7-10. SEIU International has claimed $14,449.67 in costs. *See* SEIU Errata To Memorandum of Costs, at 2:6-12. Local 1107 has claimed $8,829.80 in costs. *See* L1107 Memorandum of Costs, at 2:1-9. The Defendants' total combined attorneys' fees and costs, without retaxing or reduction, are $136,762.47.

The question Plaintiffs ask this Court is whether it is just and equitable to award the Defendants, who did not dispute that Local 1107 entered into for-cause contracts with Plaintiffs, nor that the SEIU International trustees breached those contracts, should be permitted to profit from that breach. That is, should the Defendants be permitted to recover attorneys' fees and costs, when those attorneys' fees and costs are not more than the money they saved breaching the contracts, when Plaintiffs already have $199,696.00 in combined and undisputed damages? The Defendants have a $62,933.53 windfall, and as a matter of equity, and based on the doctrine of promissory estoppel, this Court should deny both the requests for attorneys' fees and costs, given that it is undisputed that Plaintiffs are the only party to have actual losses stemming from the undisputed breach of their contracts.

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III. CONCLUSION.

Therefore, based on the foregoing, Plaintiffs respectfully request this Court deny the Defendants' Motions for Attorneys' Fees.

Dated this 28th day of January 2020.

/s/ Michael J. Mcavoyamaya

MICHAEL J. MCAVOYAMAYA, ESQ.
Nevada Bar No.: 14082
4539 Paseo Del Ray
Las Vegas, NV, 89121
Telephone: (702) 299-5083
Mmcavoyamayalaw@gmail.com
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of MICHAEL J. MCAVOYAMAYA, and that on January 28, 2020, I caused the foregoing document entitled **PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR ATTORNEYS' FEES** to be served upon those persons designated by the parties in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules.

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Dated this 28th day of January, 2020.

/s/ Michael J. Mcavoyamaya

_____

MICHAEL MCAVOYAMAYA, ESQ.
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Las Vegas, NV, 89121
Telephone: (702) 299-5083
Mmcavoyamayalaw@gmail.com
Attorney for Plaintiffs

Exhibit 1

Paintiffs' Contracts

SEIU NEVADA

April 18, 2016

Dana Gentry

I am pleased, on behalf of the membership of the Service Employees International Union, Local 1107, to extend to you this offer of employment with our organization, in the capacity of **Communications Director**. This offer of employment shall commence on April 18, 2016.

After a Six (6) month probation period, you will meet with the President of the Local to evaluate your performance and position.

The wage and benefit package for this position includes the following:

1. Effective **April 18, 2016**, you will commence employment with Local 1107, the annual salary for your position will be $70,000.

2. Effective **June 1, 2016**, you will be entitled to a fully employer funded health care including medical, dental, vision and prescription benefits.

3. Pension benefit where 20% of your gross salary is contributed to the Affiliates Officers and Employees Pension Fund administered by the Service Employee International Union Benefits Office. Such contributions shall be in addition to the other wage and economic benefits provided herein.

4. Commencing on your first full pay period, you will accrue eight (8) hours of leave for each bi-weekly pay period, which may be used for sick leave, vacation, or personal leave.

5. An auto allowance of $500.00 will be paid once a month, usually the first pay period of that month.

6. Termination of this employment agreement may be initiated by the SEIU Nevada President for cause and is appealable to the local's Executive Board, which shall conduct a full and fair hearing before reaching a final determination regarding your employment status.

On behalf of the Officers and staff of Local 1107, I would like to express how very excited we are that you have decided to join us.

Sincerely,

Cherie Mancini
President
SEIU Nevada Local 1107

I accept this offer and will begin work on April 18, 2016.

Signed: Dana Gentry Date: 4/18/16

Dana Gentry

SERVICE EMPLOYEES
INTERNATIONAL UNION
LOCAL 1107, CTW, CLC

3785 E. Sunset Drive
Las Vegas, NV 89120

PHONE 702-386-8849
FAX 702-386-4883

www.seiunv.org

SEIU NEVADA

August 23, 2016

Robert Clarke

I am pleased, on behalf of the membership of the Service Employees International Union, Local 1107, to extend to you this offer of employment with our organization, in the capacity of **Director of Finance & Human Resources.** This offer of employment shall commence on September 6, 2016.

The wage and benefit package for this position includes the following:

1. Effective **September 6, 2016**, you will commence employment with Local 1107. The annual salary for your position will be $80,000.

2. Effective **October 1, 2016**, you will be entitled to a fully employer-funded health care plan including medical, dental, vision and prescription benefits.

3. Pension benefit where 20% of your gross salary is contributed to the Affiliates Officers and Employees Pension Fund administered by the Service Employee International Union Benefits Office. Such contributions shall be in addition to the other wage and economic benefits provided herein.

4. Commencing on your first full pay period, the accrual of eight (8) hours of leave for each bi-weekly pay period, which may be used for sick leave, vacation, or personal leave.

5. An auto allowance of $500.00 will be paid once a month, usually the first pay period of that month.

6. A one-time relocation reimbursement of $2,500.00 will be paid within two weeks of the commencement of your employment.

7. Termination of this employment agreement may be initiated by the SEIU Nevada President for cause and is appealable to the local's Executive Board, which shall conduct a full and fair hearing before reaching a final determination regarding your employment status.

On behalf of the officers and staff of Local 1107, I would like to express how very excited we are that you have decided to join us.

Sincerely,

Cherie Mancini
President
SEIU Nevada Local 1107

I accept this offer and will begin work on September 6, 2016.

Signed: Robert Clarke Date: 8/23/2016

Robert Clarke

SERVICE EMPLOYEES
INTERNATIONAL UNION
LOCAL 1107, CTW, CLC

3785 E. Sunset Drive
Las Vegas, NV 89120

PHONE 702.386.8849
FAX 702.386.4883

www.seiunv.org

Exhibit 2

Termination Letters

SEIU Nevada Local 1107

2250 S. Rancho Drive, Suite 165

Las Vegas, NV 89102

Phone (702) 386-8849

May 4, 2017

HAND DELIVERED

To: Dana Gentry

Dear Ms. Gentry:

As you know, Local 1107 has been placed under trusteeship by the Service Employees International Union. The Trustees of Local 1107 have been charged with the restoration of democratic procedures of Local 1107. In connection with formulating a program and implementing policies that will achieve this goal, going forward the Trustees will fill management and other positions at the Local with individuals they are confidant can and will carry out the Local's new program and policies. In the interim, the Trustees will largely be managing the Local themselves with input from member leaders.

For these reasons, the Trustees have decided to terminate your employment with Local 1107, effective immediately. You are hereby directed to immediately return any property of the Local that you have in your possession, including but not limited to credit cards, phones, keys or key cards, vehicles, computers, files (both electronic and hard copy) and any other property in your possession.

Sincerely,

Martin Manteca
Deputy Trustee, SEIU Local 1107

SEIU Nevada Local 1107

2250 S. Rancho Drive, Suite 165

Las Vegas, NV 89102

Phone (702) 386-8849

May 4, 2017

HAND DELIVERED

To: Robert Clarke

Dear Mr. Clarke:

As you know, Local 1107 has been placed under trusteeship by the Service Employees International Union. The Trustees of Local 1107 have been charged with the restoration of democratic procedures of Local 1107. In connection with formulating a program and implementing policies that will achieve this goal, going forward the Trustees will fill management and other positions at the Local with individuals they are confidant can and will carry out the Local's new program and policies. In the interim, the Trustees will largely be managing the Local themselves with input from member leaders.

For these reasons, the Trustees have decided to terminate your employment with Local 1107, effective immediately. You are hereby directed to immediately return any property of the Local that you have in your possession, including but not limited to credit cards, phones, keys or key cards, vehicles, computers, files (both electronic and hard copy) and any other property in your possession.

Sincerely,

Martin Manteca
Deputy Trustee, SEIU Local 1107

Exhibit 3

Zhang Order Denying Fees

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(702) 796-4000
Attorneys for Defendants,
COUNTRYWIDE HOME LOANS, INC.,
NATIONAL TITLE COMPANY, SILVER
STATE FINANCIAL SERVICE, INC., and
RECONTRUST COMPANY, N.A.

DISTRICT COURT

CLARK COUNTY, NEVADA

LANLIN ZHANG,

Plaintiff,

vs.

FRANK V. SORICHETTI, RECONTRUST COMPANY, N.A.; COUNTRYWIDE HOME LOANS, INC., a New York corporation; NATIONAL TITLE COMPANY, a Nevada corporation; SILVER STATE FINANCIAL SERVICES, INC., a Nevada corporation; DOE individuals I through X inclusive; ROE CORPORATIONS XI through XX, inclusive,

Defendants.

AND ALL RELATED MATTERS

Case No. A481513
Dept. No. XVI

ORDER GRANTING DEFENDANTS' SECOND RENEWED MOTION FOR RELIEF FROM ORDER GRANTING ATTORNEYS' FEES,

AND

ORDER DENYING PLAINTIFF'S COUNTERMOTION TO AMEND FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT REGARDING ZHANG'S MOTION FOR ATTORNEY FEES AND COSTS

GERRARD, COX & LARSEN
2450 St. Rose Parkway, Suite 200
Henderson, Nevada 89074
(702) 796-4000

THIS MATTER, having come before the Court on May 31, 2016, on Defendants' COUNTRYWIDE HOME LOANS, INC. ("Countrywide"), NATIONAL TITLE COMPANY ("National Title"), SILVER STATE FINANCIAL SERVICE, INC. ("Silver State"), and RECONTRUST COMPANY, N.A. ("Recontrust") (hereinafter, collectively "Lenders" or

"Defendants") Second Renewed Motion for Relief from Order Granting Attorneys' Fees, and Motion for Turnover, and on Plaintiff LANLIN ZHANG (hereinafter "Zhang" or "Plaintiff") Countermotion to Amend Findings of Fact, Conclusions of Law and Judgment Regarding Zhang's Motion for Attorney Fees and Costs; the Lenders having appeared by and through their attorney of record, Douglas D. Gerrard, Esq., of the law firm of Gerrard Cox Larsen; Zhang having appeared by and through her attorney of record, Scott A. Marquis, Esq., of the law firm of Marquis Aurbach Coffing; the Court having heard oral arguments of counsel, having examined the records and documents on file, and being fully advised in the premises, and good cause appearing, NOW THEREFORE:

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FINDINGS OF FACT

1. In 2004, Zhang entered into a contract to purchase a home located at 240 Royal Wood Crest in Las Vegas, Nevada ("Property") from Defendant Frank Sorichetti ("Sorichetti") for the sum of $532,500.00. Sorichetti subsequently attempted to back out of the deal with Zhang, and raise the purchase price. As a result, Zhang filed a Complaint against Sorichetti for specific performance of the purchase agreement, and simultaneously recorded a Lis Pendens against the Property.[1]

2. Upon Sorichetti's motions, the District Court (Judge Adair) initially ordered Zhang's Complaint dismissed; and, in a separate order, also cancelled Zhang's Lis Pendens. However, neither order was ever operative as they were consistently stayed throughout appeal, through a series of orders issued by both the District Court and the Nevada Supreme Court.

3. The Supreme Court subsequently issued a published Opinion and declared the District Court's Order Granting Motion to Dismiss Complaint void, declared the Order Cancelling Lis Pendens void, and reinstated Zhang's Complaint against Sorichetti. The Supreme Court also issued a Writ of Mandamus directing the District Court to reinstate Zhang's Complaint and vacate the Order Cancelling Lis Pendens, and the District Court acknowledged the receipt of the Writ of Mandamus and complied accordingly.

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[1] The Court's Findings of Fact, Conclusions of Law, and Judgment Regarding Zhang's Motion for Attorney's Fees and Costs, filed herein on March 24, 2016, are restated and incorporated in this Order, and where applicable.

4. Nine months later, while litigation involving Zhang's complaint was still ongoing, Sorichetti sought and obtained two refinancing loans (for $585,000 and $117,000 respectively) from Silver State Mortgage, both of which were secured by the Property. Sorichetti, subsequently defaulted on the first Silver State loans, and foreclosure proceedings were commenced by the new holder of the note, Countrywide Home Loans, Inc.

5. After being informed of the foreclosure proceedings scheduled for the Property, Zhang recorded a notice of fraudulent release of lis pendens.

6. Zhang then amended her complaint to assert claims against the lenders (Silver State and Countrywide), the title company that handled the escrow (National Title Co.) and the trustee on the first Deed of Trust securing the $585,000 note owed to Countrywide (ReconTrust Company).

7. On January 10, 2008, during the course of this litigation, approximately six (6) months before the original trial took place in this case, Zhang made two related Offers of Judgment to the Defendants in the following amounts:

(i) **$281,190.12** to Defendant Countrywide - in exchange for removal of the $585,000.00 Deed of Trust that was recorded against the subject Property;

(ii) **$1.00** to Defendant Silver State - in exchange for removal of the $117,000.00 Deed of Trust that was recorded against the subject Property;

(collectively, the "Offers of Judgment").

8. The Defendants rejected both of Zhang's Offers of Judgment.

9. On July 7, 2008, this Court conducted its first bench trial regarding whether the deeds of trust of Silver State and Countrywide had priority over Zhang's right to purchase the subject Property. At trial, the Lenders argued that Plaintiff's Lis Pendens did not impart constructive notice of her right to purchase the Property because of a recorded release of lis pendens, and therefore Countrywide and Silver State were to be treated as a bona fide encumbrancer and the deeds of trust had priority over any purchase rights of Plaintiff. The Lenders prevailed at the 2008 trial, and this Court issued its ruling that the Lenders' $702,000.00 worth of

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deeds of trust (the "Silver State Deeds of Trust") had priority over Plaintiff's purchase right, based on the Lenders' status as a bona fide encumbrancer (the "2008 Judgment").

10. Following the 2008 trial, Zhang appealed the 2008 Judgment to the Nevada Supreme Court, arguing that her Lis Pendens had been fraudulently removed form the Property, and as a result still imparted constructive notice to the Lenders, regarding her lawsuit (and her right to purchase the Property), and therefore that her interest in the Property had priority over the Lenders' deeds of trust. As a matter of first impression, the Nevada Supreme Court took a fresh look at the bona fide encumbrancer law regarding actual and constructive notice, and a lender's duty to look beyond solely the recorded documents in making a determination about whether or not an exception to marketable title exists on a property. In its ruling on appeal, the Nevada Supreme Court held in relevant part:

> We conclude that the equity afforded Garner in NC-DSH should be extended to Zhang based upon the facts of this case. **The burden to check the current status of the case and the lis pendens upon performing a title search is not unreasonable. . . .**[4]
> . . .
>
> [4] **We further note that certain search tools such as Blackstone, are commonly used by title companies to check and verify documents filed with the Eighth Judicial District Court Clerk's office. If a recorded judgment or exception to marketable title was discovered during the title search, a title company should conduct an investigation into whether it has been satisfied.**

See Order of Reversal and Remand, dated February 26, 2010 (the "February 26, 2010 Order of Reversal and Remand"), p. 5, and n. 4 (emphasis added). Thus, in its ruling the Nevada Supreme Court held that in order for a lender to claim bona fide encumbrancer status, when investigating a parcel of property, the inquiring lender was further required to make sufficient "inquiry notice" into the marketability of a real property by searching court records, and utilizing court search tools that were at its disposal (such as Blackstone), in order to determine the current status of any lis pendens, and status of the litigation that was referenced therein. This was even if there was a recorded release of Lis Pendens, as was the case in this matter. This ruling created new law in the State of Nevada regarding constructive notice, inquiry notice, and the burden imposed on a title searcher.

11. Ruling the foregoing, the Supreme Court then reversed the District Court's 2008 Judgment on the specific priority issue, holding that Zhang's interest in the property, which she had

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obtained from a 2007 judgment against Defendant Sorichetti (i.e., giving Zhang the specific performance right to purchase the Property), had priority over the Lenders' Deeds of Trust, based upon the lenders having "inquiry" constructive notice of the existence of this litigation. The Supreme Court determined that (1) Zhang's lis pendens has priority over both of the Silver State Deeds of Trust, and (2) Zhang was successful in her claims for quiet title and declaratory relief. The Supreme Court otherwise affirmed this Court's decision dismissing Zhang's claims for negligence and slander of title. On February 26, 2010, the Order of Reversal and Remand was filed by the Nevada Supreme Court. The Supreme Court then ultimately remanded the case back to this Court on or about December 21, 2010.

12. Related to the February 26, 2010 Order of Reversal and Remand, on or about December 20, 2010 Zhang filed an amended verified memorandum of costs. Moreover, on or about January 5, 2011, Zhang filed a motion for attorneys fees. Thereafter, on May 23, 2011, this Court entered an Order granting Zhang's motion for attorney's fees, therein awarding Zhang the sum of $113,635.00 for attorneys fees and $26,928.86 for costs (the "May 23, 2010 Fees Order").

13. On or about June 22, 2011, the Zhang obtained a Writ of Execution to levy and seize funds belonging to Countrywide from Bank of America. As a result of the May 23, 2010 Fees Order and Writ of Execution, Countrywide paid Zhang the sum of $142,060.00 for attorneys' fees and costs.

14. On or about August 2, 2011, Zhang filed a Satisfaction of Judgment in this case, pertaining to the Lenders' satisfaction of the May 23, 2010 Fees Order.

15. With the case remanded back pursuant to the Nevada Supreme Court's February 26, 2010 Order of Reversal and Remand, the issue then arose before this Court about whether this Court had jurisdiction to rule on Countrywide's previously undecided claim of equitable subrogation, which had been raised by the Defendants in the litigation, but which the Court did not issue a ruling on following the 2008 trial.

16. With regard to the undecided equitable subrogation issue, on or about August 8, 2011 this Court entered an Order Granting in Part and Denying in Part Defendants' Motion to Reopen Case and Enter Final Judgment (the "Second Judgment"). In the Second Judgment, this

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Court declared that it did not feel it could award equitable subrogation because it did not believe it was given jurisdiction to do so by the Supreme Court's February 26, 2010, the Order of Reversal and Remand.

17. On or about December 22, 2011, the Lenders filed a Notice of Appeal, appealing the Second Judgment to the Nevada Supreme Court.

18. On or about January 30, 2014, the Nevada Supreme Court entered a decision vacating the Second Judgment, and remanding the case back to the District Court for a decision on Countrywide's Equitable Subrogation defense (the "Decision").

19. In its Decision, the Nevada Supreme Court also made the following ruling with regard to the prior $142,060.00 award of attorneys fees and costs which had been awarded and paid to Zhang, which ruling is now incorporated by reference in this order:

> **Vacating the judgment removes the predicate for the award of fees and costs contested on cross-appeal. We therefore vacate and remand as to attorney fees and costs as well.**

See Decision, dated January 30, 2014, pps. 12-13 (emphasis added).

20. Upon remand, on May 11, 2015, this Court held its evidentiary hearing on equitable subrogation, and on July 30, 2015, entered its Final Judgment in this case, ruling that Countrywide (the assignee of the First Silver State Deed of Trust) was equitably subrogated to, and received an assignment of, the Etrade DOT and USBank DOT, in the amount of $281,090.12. *See* Final Judgment, dated July 30, 2015, on file in this case.

21. Thereafter, Zhang moved for an award of fees against Defendants Countrywide and Silver State, and for an award of costs against all Defendants. Zhang argued that she was entitled to an award of fees under NRCP 68 due to her offers of judgment, and an award of all her costs under NRCP 68 and NRS 18.020(5). The Lenders asserted Zhang was not entitled to any award of fees and costs by arguing that Zhang had not succeeded with any of her claims, had not won anything in this litigation. The Lenders also argued that Zhang was not entitled to an award of attorneys fees and costs because, under an analysis of the Beattie factors, the Lenders rejected Zhang's Offers of Judgement and maintained their defenses against Zhang in good faith, because, under Nevada law as it existed at that time, the Lenders had a plausible and valid basis for asserting complete priority

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over Zhang's specific performance rights based on their bona fide encumbrancer defense. The Lenders' bona fide encumbrancer defense was not overturned by the Nevada Supreme Court until the Supreme Court entered its February 26, 2010 Order of Reversal and Remand (nearly two years after the Offers of Judgment were made by Zhang).

22. On December 1, 2015, this Court heard Zhang's Motion for Attorney Fees and Costs. Thereafter, on March 24, 2016, the Court entered its Findings of Fact, Conclusions of Law, and Judgment Regarding Zhang's Motion for Attorney Fee and Costs (the "March 24, 2016 Fees Order"), making the following conclusions of law in Paragraphs 4 through 8, each of which is incorporated by reference into this Order:

> 4. The Court also considered the Beattie factors.
>
> 5. With regard to the first Beattie factor, the Court finds that the defenses of Countrywide and Silver State were litigated in good faith, based upon a bona fide encumbrancer for value defense, and on Countrywide's fall back defense of equitable subrogation.
>
> 6. With regard to the second Beattie factor, the Court finds that Zhang's two Offers of Judgment, which mirror the equitable subrogation award, were made in good faith, and were both reasonable in timing and amount.
>
> 7. With regard to the third factor, the Court finds that the liability issues in this matter were quite intricate and involved issues of first impression in Nevada. Therefore, the Court finds that the decisions of Countrywide and Silver State to reject Zhang's Offers of Judgment was not in bad faith or grossly unreasonable.
>
> 8. **Therefore, the Court having fully considered and weighed all of the Beattie factors, the facts and circumstances of this case, and based on the complexity of the issues presented in this case, chooses not to award Zhang any attorney fees. However, Zhang's Motion for Costs is granted.**
>
> . . .
>
> IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Zhang's Motion for Attorney Fees is DENIED; and
>
> IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Zhang's Motion for Costs pursuant to N.R.S. § 17.115 and N.R.C.P. 68 is GRANTED, and Zhang is awarded her Costs from the Lenders in the amount of $46,192.46.

See March 24, 2016 Fees Order, p. 5-6 (emphasis added).

23. Following the Court's entry of the March 24, 2016 Fees Order, on April 27, 2016, the Lenders filed their Second Renewed Motion for Relief from Order Granting Attorneys' Fees, and Motion for Turnover (the "Motion for Turnover"). The Lenders' Motion for Turnover sought a

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return, turnover and disgorgement of the prior $142,060.00 attorney's fees and costs sum that the Lenders had paid to Zhang, but which award had been reversed and vacated by the Nevada Supreme Court's January 30, 2014, Decision. The Lenders also sought to reconcile the $142,060.00 payment with the Court's ruling in the March 24, 2015, Fees Order, which awarded Zhang her costs, but not any attorney's fees, from the Lenders.

24. On May 16, 2016, Zhang filed her Opposition to the Lenders' Motion for Turnover, and Countermotion to Amend Findings of Fact, Conclusions of Law and Judgment Regarding Zhang's Motion for Attorney Fees and Costs (the "Motion for Reconsideration"). In her Motion For Reconsideration, Zhang asked the Court to reconsider and reverse its decision in the March 24, 2016 Fees Order, regarding the Court's ruling to not award Zhang attorney fees. Zhang also argued that the Court should not disgorge the attorney's fees that were previously paid by the Lenders.

25. On May 25, 2016, the Lenders filed their Reply in Support of the Motion for Turnover, and Opposition to Zhang's Motion for Reconsideration.

CONCLUSIONS OF LAW

26. The Nevada Supreme Court has held that under the "law-of-the case doctrine", when an appellate court has decided a principle or rule of law, "that decision governs the same issues in subsequent proceedings in that case". Dictor v. Creative Management Services, LLC, 223 P.3d 332, 334, 126 Nev. Adv. Rep. 4 (2010); Tien Fu Hsu v. County of Clark, 123 Nev. 625, 173 P.3d 724, 728 (2007); Wheeler Springs Plaza, LLC v. Beemon, 119 Nev. 260, 266, 71 P.3d 1258, 1262 (2003). The doctrine applies to issues that were previously determined by the appellate court. *See* Beemon, 119 Nev. at 266, P.3d 1258 at 1262.

27. Related to the "law-of-the-case" doctrine, Courts have also recognized the "rule of mandate" doctrine. "The rule of mandate is similar to, but broader than, the law of the case doctrine." *See* United States v. Cote, 51 F.3d 178, 181 (9th Cir. 1995) (citing Herrington v. County of Sonoma, 12 F.3d 901, 904 (9th Cir. 1993)). "The rule of mandate requires a lower court to act on the mandate of an appellate court, without variance or examination, only execution." Id.; *see also*, In re Sanford Fork & Tool Co., 160 U.S. 247, 255, 16 S. Ct. 291, 40 L. Ed. 414 (1895); *accord* Stamper v. Baskerville, 724 F.2d 1106, 1107 (4th Cir. 1984). Specifically, the "rule of

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mandate" doctrine provides:

> When a case has been once decided by this court on appeal, and remanded to the [district court], **whatever was before this court, and disposed of by its decree, is considered as finally settled. The [district court] is bound by the decree as the law of the case, and must carry it into execution according to the mandate**. That court cannot vary it, or examine it for any other purpose than execution; or give any other or further relief; or review it, even for apparent error, upon any matter decided on appeal; or intermeddle with it, further than to settle so much as has been remanded.... But the [district court] may consider and decide any matters left open by the mandate of this court.... (emphasis added)

United States v. Thrasher, 483 F.3d 977, 981-982 (9th Cir.2007) (citing In re Sanford Fork & Tool Co., 160 U.S. 247, 255-56, 16 S.Ct. 291, 40 L.Ed. 414 (1895)).

28. An N.R.C.P. 59(e) motion to alter or amend the judgment is proper where there has been judicial error, as opposed to clerical error, in a judgment of the Court. *See, e.g.*, Koester v. Administrator of Estate of Koester, 101 Nev. 68, 73, 693 P.2d 569, 573 (describing the court's general power to correct clerical errors); 4 Litigating Tort Cases § 46:14 (2011) ("**The motion must seek to "alter or amend" the judgment, i.e., requesting to correct judicial error as opposed to clerical error.**"). A "judicial error" is one in which the Court made an error in the consideration of the matters before it, as opposed to an error in the judgment itself that did not reflect the true intention of the Court. *See, e.g.*, Presidential Estates Apartment Associates v. Barrett, 917 P.2d 100, 103-04 (Wash. 1996).

29. Finally, the Nevada Supreme Court has determined that "[a] district court may reconsider a previously decided issue if substantially different evidence is subsequently introduced or the decision is clearly erroneous." Masonry & Tile Contractors Ass'n v. Jolley, Urga & Wirth, Ltd.,113 Nev. 737, 741, 941 P.2d 486, 489 (1997) (citing Little Earth of United Tribes v. Dep't of Hous., 807 F.2d 1433, 1441 (8th Cir. 1986); Moore v. City of Las Vegas, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976)).

30. The policy considerations behind reconsideration and rehearing are the same. The Nevada Supreme Court, in reaching its decision regarding reconsideration in Masonry & Tile Contractors Ass'n, cited Moore: "**[o]nly in very rare instances in which new issues of fact or law are raised supporting a ruling contrary to the ruling already reached should a motion for rehearing be granted.**" *Moore*, 92 Nev. at 405, 551 P.2d at 246 (emphasis added).

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31. The Nevada Supreme Court has held that, notwithstanding N.R.S. 17.115 and N.R.C.P. 68, an award of attorney's fees still ultimately lies within the district court's discretion. *See* RTTC Communications, LLC v. The Saratoga Flier, Inc., 110 P.3d 24, 28, 2005 Nev. LEXIS 6, 12. In considering an award, the court must evaluate the following factors:

> (1) whether the plaintiff's claim was brought in good faith;
>
> (2) whether the defendants' offer of judgment was reasonable and in good faith in both its timing and amount;
>
> (3) whether the plaintiff's decision to reject the offer and proceed to trial was grossly unreasonable or in bad faith; and
>
> (4) whether the fees sought by the offeror are reasonable and justified in amount.

Beattie v. Thomas, 99 Nev. 579, 588-89, 669 P.2d 268, 274 (1983); Dillard Department Stores, Inc. v. Beckwith, 115 Nev. 372, 382, 989 P.2d 882, 888 (1999); Wynn v. Smith, 117 Nev. 6, 13, 16 P.3d 424, 428 (2001); RTTC, 110 P.3d at 28, 2005 Nev. LEXIS at 13. After weighing the foregoing factors, the district judge may, only where warranted, award the attorney's fees requested. Beattie at 589, 668 P.2d at 274.

32. The Nevada Court of Appeals held that:

> We conclude that where, as here, the district court determines that three good-faith Beattie factors weigh in favor of the party that rejected the offer of judgment, **[then the 4th Beattie factor], the reasonableness of the fees requested by the offeror becomes irrelevant** . . . .

Frazer v. Drake, 131 Nev. Adv. Op 64, 357 P.3d 365, 373 (2015).

33. This Court hereby finds that the plain, unambiguous language of the Supreme Court's January 30, 2014 Decision provides that "[v]acating the judgment removes the predicate for the award of fees and costs contested on cross-appeal. We therefore vacate and remand as to attorney fees and costs as well." *See* Decision pp. 12-13 (emphasis added).

34. The Court rules that pursuant to the Nevada Supreme Court's Decision, this Court's prior, May 23, 2011, Fees Order (under which Zhang was awarded a combined sum of $142,060.00 for attorneys fees and costs that was paid by Countrywide), was unequivocally reversed and vacated by the Nevada Supreme Court, and is no longer in force or effect.

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35. The Court further determines that Zhang has not demonstrated any "judicial error" under N.R.C.P. 59(e), and has not presented any "substantially different evidence" or "new evidence or law" that was not already before the Court, which would warrant the Court reconsidering and/or altering or amending its prior decision on awarding attorney fees and costs in this case, as set forth in its March 24, 2016, Fees Order.

36. Furthermore, as fully set forth in the March 24, 2016, Fees Order, the Court has fully considered and weighed all of the Beattie factors with regard to Zhang's Motion for Attorney Fees and Costs. Moreover, with regard to Zhang's current Motion for Reconsideration, the Court has again considered and weighed all of the Beattie factors and circumstances of this case, as articulated below.

37. Therefore, the Court rules that pursuant to the Nevada Supreme Court's Decision, Countrywide is entitled to a return of the entire sum of money that it paid to Zhang under the May 23, 2011 Fees Order ($142,060.00), unless this Court exercises its discretion to award attorney's fees, or awards costs, to Zhang at the conclusion of this case.

38. With regard to the first Beattie factor, the Court finds that the defenses of Countrywide and Silver State were litigated in good faith, based upon a bona fide encumbrancer for value defense, arising from the public record as it existed at the time that the two Silver State Loans were extended and the trust deeds recorded, and also based upon a fall back defense of equitable subrogation.

39. With regard to the second Beattie factor, the Court finds that Zhang's Offers of Judgment, which mirror the equitable subrogation award, were made in good faith, and were reasonable in timing and amount.

40. With regard to the third Beattie factor, the Court finds that the Defendants' decision to reject Zhang's Offers of Judgment and proceed to trial was not grossly unreasonable or in bad faith. Of utmost importance, and underpinning the Court's decision is the fact that Zhang's Offers of Judgment were made prior (i.e., January 10, 2008) to the Nevada Supreme Court's February 26, 2010, Order of Reversal and Remand. On the date of the Offers of Judgment, it was not the law in Nevada at the time that a title insurance company and/or lender had an "inquiry notice" duty to look

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in Court records, beyond what was contained in the Official Public Records, in order to discover any issues regarding exceptions to marketable title for a certain property. The Nevada Supreme Court's February 26, 2010 Order of Reversal and Remand for the first time extended the duty of "inquiry notice" for an investigating title insurance company and/or lender so that they were also required to research Court records, through available Court searching tools, in order to discover any possible exceptions to marketable title for a property. Thus, at the time that the Offers of Judgment were extended, the Lenders had a "good faith" basis for rejecting the same, and pursuing their bona fide encumbrancer defense, based on what they had discovered in the Official Public Records, and based on the facts and the law as they existed when the Offers of Judgment were made.

41. In light of the foregoing, in order to reconcile the return and disgorgement of the $142,060.00 sum (ordered under the Nevada Supreme Court's January 30, 2014, Decision), with this Court's post-trial award to Zhang of her costs in the amount of $46,192.46 (ordered under the March 24, 2016, Fees Order), the Court rules that Zhang is required to pay the sum of **$95,867.54** ($142,060.00 - $46,192.46 = $95,867.54) to Gerrard Cox Larsen (on behalf of Countrywide) and its successors-in-interest), and that Zhang's costs are hereby deemed paid.

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ORDER

NOW THEREFORE:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Zhang's Motion for Reconsideration is DENIED; and

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Lenders' Motion for Turnover is GRANTED; and

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court's March 24, 2016, Fees Order is supplemented and superseded in part by this Order; and

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Zhang is hereby ordered to pay to Gerrard Cox Larsen (on behalf of Countrywide), the sum of Ninety-Five Thousand Eight Hundred Sixty-Seven and 54/100 Dollars ($95,867.54), plus interest, at the statutory judgment rate, until satisfied in full.

IT IS SO ORDERED THIS 12th day of ~~June~~ July, 2016.

DISTRICT COURT JUDGE

NH

Prepared and submitted by:

GERRARD COX LARSEN

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NATIONAL TITLE COMPANY, SILVER
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RECONTRUST COMPANY, N.A.

Read and approved by:

MARQUIS AURBACH COFFING

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Exhibit 4

L1107 Resp. 2nd Req. For Admission

RSPN
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Attorneys for Local 1107, Luisa Blue and Martin Manteca
Local Counsel for SEIU International

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. No. XXVI **LOCAL 1107'S RESPONSES TO PLAINTIFFS' SECOND REQUESTS FOR ADMISSIONS**

NEVADA SERVICE EMPLOYEES UNION ("Local 1107"), misnamed as "CLARK COUNTY PUBLIC EMPLOYEES ASSOCIATION UNION aka SEIU 1107" ("Local 1107"), by and through the law firm Christensen James & Martin, hereby responds to Plaintiffs' Second Requests for Admissions.

DATED this 22nd day of July 2019.

CHRISTENSEN JAMES & MARTIN

By:*/s/ Evan L. James*
Evan L. James, Esq. (7760)
7440 W. Sahara Avenue

Las Vegas, NV 89117
Telephone: (702) 255-1718
Fax: (702) 255-0871
Attorneys for Local 1107, Luisa Blue and Martin Manteca

INITIAL EXPLANATION

Only Local 1107 responds to the Requests for Admissions because the title of the requests is directed specifically to Local 1107.

OBJECTION TO DEFINITIONS

Local 1107 objects to Plaintiffs' propounded definition of "Local 1107" as it includes attorneys and seeks to characterize certain individuals, i.e. SEIU International Trustees over Local 1107 and "other person acting … on SEIU International's behalf", in a particular legal light and legal relationships that have not been established as a matter of law or fact. Such a definition requires Local 1107 to assume who was and was not acting on behalf of SEIU International and is therefore argumentative. The definition is also too broad, indefinite and argumentative as it includes "any other person … purporting to act on SEIU International's behalf."

Local 1107 objects to the Plaintiffs' propounded definition of "Defendants" as it includes attorneys and requires speculation with regard to someone who may be working on behalf of a defendant. One defendant cannot speculate upon who might be acting on behalf of other defendants nor can a one defendant bind another defendant as to who may be acting on behalf of that defendant.

Local 1107 objects to the Plaintiffs' propounded definition of "Subordinate local union" as argumentative.

Local 1107 objects to the Plaintiffs' propounded definition of "Complaint" as vague.

Without waiving the objections, even where additional specific objections are made, Local 1107's responses are set forth below.

RESPONSES

Request for Admission No. 1. Admit that you are not disputing that Sharon Kisling made statements to SEIU Local 1107 members that Plaintiff Dana Gentry was misusing the Local 1107 credit card.

Response to Request for Admission No. 1. Deny.

Request for Admission No. 2. Admit that you are not disputing that Sharon Kisling made statements to SEIU Local 1107 members that Plaintiff Dana Gentry was consuming alcohol at work.

Response to Request for Admission No. 2. Deny.

Request for Admission No. 3. Admit that you are not disputing that the Kisling statements referenced in Requests No. 1 and 2 were false.

Response to Request for Admission No. 3. Objection. Request for Admission No. 3 is argumentative. It requires an acceptance that statements were made, especially as argued. Without waiving the objection and to the extent necessary, all allegations and inferences in Request for Admission No. 3 are denied.

Request for Admission No. 4. Admit that you are not disputing that Local 1107 and Plaintiff Dana Gentry entered into a contract for employment that included a provision that Ms. Gentry's employment could only be terminated for cause and that any such termination was appealable to the Local 1107 Executive Board.

Response to Request for Admission No. 4. Objections. Compound. Vague and ambiguous as to the meaning of "for cause". Calls for a legal conclusion as to the meaning of "for cause". Without waving the objections, the following responses are given in an effort to cooperate: Local 1107 admits that an employment contract between Local 1107 and Dana Gentry existed. Local 1107 denies that the contract could only be terminated for cause. Local 1107 denies that any such termination was appealable to the Local 1107 Executive Board. Any other express or implied admission is denied.

Request for Admission No. 5. Admit that you are not disputing that Local 1107 and Plaintiff Robert Clarke entered into a contract for employment that included a provision that Mr. Clark's employment could only be terminated for cause and that any such termination was appealable to the Local 1107 Executive Board.

Response to Request for Admission No. 5. Objections. Compound. Vague and ambiguous as to the meaning of "for cause". Calls for a legal conclusion as to the meaning of "for cause". Without waving the objections, the following responses are given in an effort to cooperate: Local 1107 admits that an employment contract between Local 1107 and Robert Clarke existed. Local 1107 denies that the contract could only be terminated for cause. Local 1107 denies that any such termination was appealable to the Local 1107 Executive Board. Any other express or implied admission is denied.

Dated this 22nd day of July 2019.

CHRISTENSEN JAMES & MARTIN

By: */s/ Evan L. James*

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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 in the following manner on the date it was filed with the Court:

✓ ELECTRONIC SERVICE: Through the Court's E-Service System to the following:

Michael Macavoyamaya: mmcavoyamayalaw@gmail.com

Jonathan Cohen: jcohen@rsglabor.com

Evan L. James: elj@cjmlv.com

CHRISTENSEN JAMES & MARTIN

By: */s/ Natalie Saville*
Natalie Saville

CERTIFICATE OF SERVICE

Clarke v. Service Employees International Union, et al.
Supreme Court No. 80520 and 81166
Case No. A-17-764942-C

I hereby certify that on this date 7th day of October, 2020, I submitted the foregoing **APPENDIX OF SERVICE EMPLOYEES INTERNATIONAL UNION AND CLARK COUNTY PUBLIC EMPLOYEES ASSOCIATION A/K/A SEIU LOCAL 1107, VOLUME 6** for filing and service through the Court's eFlex electronic filing service. According to the system, electronic notification will automatically be sent to the following:

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/s/ Jonathan Cohen
Jonathan Cohen