NOAS

NOTICE OF APPEAL TO THE SUPREME COURT
FROM A JUDGMENT OR ORDER OF A DISTRICT COURT

No. A-20-814819-C

Department 15

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK

Tenkasi Viswanathan, Plaintiff }
v. }
Clark County School District, }
Board of Trustees of the Clark)
County School District,)
Pat Skorkowski in his Official)
and Individual Capacity,)
Dr, Edward Goldman in his)
Official and Individual Capacity,)
Dr. Jeffrey Geihs in his Official)
and Individual Capacity,)
Neddy Alvarez in her Official)
and Individual Capacity,)
Sonia Houghton in her Official)
and Individual Capacity,)
and)
Louis Markouzis in his Official)
and Individual Capacity,)
Defendants }

PLAINTIFF'S NOTICE OF APPEAL

Notice is hereby given that Tenkasi Viswanathan, Plaintiff above named, hereby appeals to the Supreme Court of Nevada from the final judgments and from the orders entered in this action on the days indicated as below:

(1) From the final judgment entered on October 20, 2021 (Docket No. 132), granting Defendant Clark County School

District Board of Trustees' Motion for Summary Judgment; granting Defendant Dr. Edward Goldman's joinder to Defendant Clark County School District Board of Trustees' Motion for Summary Judgment; denying Plaintiff's motion to strike Defendant Clark County School District Board of Trustees' Motion for Summary judgment; and denying Plaintiff's objections to and motion to strike parts or all of the declarations in support of Defendant Clark County School District Board of Trustees' Motion for Summary Judgment.

(2) From the final judgment entered on October 20, 2021 (Docket No. 131), granting Defendant Dr. Edward Goldman's Motion for Summary Judgment; denying Plaintiff's motion to strike Defendant Goldman's Motion for Summary judgment; and denying Plaintiff's objections to and motion to strike Defendant Goldman's declaration in support of Defendant Goldman's Motion for Summary Judgment.

(3) From the Order entered on January 27, 2021 (Docket No. 77)granting Defendant Louis Markouzis' Motion to Dismiss and denying Plaintiff's Countermotion.

(4) From the Order entered on February 23, 2022 denying Plaintiff's Motion Under NRCP Rules 52 and 59.

Dated this 24th day of March 2022.

/s/ Tenkasi Viswanathan, Plaintiff Pro Se
8220 Hollister Ave
Las Vegas, NV 89131
Phone: (252) 706-0169
Email: Viswanathan.tenkasi@gmail.com

CERTIFICATE OF SERVICE

I, TENKASI VISWANATHAN, the plaintiff Pro Se in this action, HEREBY CERTIFY that on this 24th Day of March 2022, I served true and correct copies of the foregoing Document

PLAINTIFF'S NOTICE OF APPEAL (TO THE SUPREME COURT OF NEVADA)

upon the defendants mentioned hereinbelow:

The documents were served electronically through the District Court's Electronic Filing System at the e-mail addresses indicated below:

(1) Attorney Crystal J. Herrera, ESQ
Office of the General Counsel
Clark County School District
5100 W Sahara Ave.
Las Vegas, NV 89146
Herrec4@nv.ccsd.net
Attorney for Defendants
Clark County School District
CCSD Board of Trustees
Louis Markouzis
Pat Skorkowski

(2) Attorney James R. Olson, ESQ
Attorney Stephanie A. Barker, ESQ.
OLSON CANNON, GORMLEY & STOBERSKI
9950 West Cheyenne Ave
Las Vegas, NV 89129

jolson@ocgas.com
sbarker@ocgas.com
Attorney for Defendant
Dr. Edward Goldman

Per NRS 53.045, I declare under penalty of perjury that the foregoing is true and correct.

Respectfully, this the 24th Day of March 2022.

/s/ Tenkasi Viswanathan
Tenkasi M. Viswanathan, pro se
8220 Hollister Ave
Las Vegas, NV 89131
Phone: 252-706-0169
E-mail: Viswanathan.tenkasi@gmail.com

Electronically Filed
3/28/2022 10:10 AM
Steven D. Grierson
CLERK OF THE COURT

ASTA

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK

TENKASI VISWANATHAN,

Plaintiff(s),

vs.

CLARK COUNTY SCHOOL DISTRICT; BOARD OF TRUSTEES OF THE CLARK COUNTY SCHOOL DISTRICT; DR. EDWARD GOLDMAN in his Official and Individual Capacity; DR. JEFFREY GEIHS in his Official and Individual Capacity; NEDDY ALVAREZ in her Official and Individual Capacity; SONYA HOUGHTON in her Official and Individual Capacity; LOUIS MARKOUZIS in his Official and Individual Capacity,

Defendant(s),

Case No: A-20-814819-C

Dept No: XV

CASE APPEAL STATEMENT

1. Appellant(s): Tenkasi Viswanathan

2. Judge: Joe Hardy

3. Appellant(s): Tenkasi Viswanathan

Counsel:

Tenkasi Viswanathan
8220 Hollister Ave.
Las Vegas, NV 89131

Case Number: A-20-814819-C

4. Respondent (s): Clark County School District; Board of Trustees of the Clark County School District; Louis Markouzis in his Official and Individual Capacity

Counsel:

Crystal J. Herrera, Esq.
5100 W. Sahara Ave.
Las Vegas, NV 89146

Respondent (s): Dr. Edward Goldman in his Official and Individual Capacity

Counsel:

James R. Olson, Esq.
9950 W. Cheyenne Ave.
Las Vegas, NV 89129

Respondent (s): Dr. Jeffrey Geihs in his Official and Individual Capacity; Neddy Alvarez in her Official and Individual Capacity; Sonya Houghton in her Official and Individual Capacity

Counsel:

Unknown

5. Appellant(s)'s Attorney Licensed in Nevada: N/A
Permission Granted: N/A

Respondent(s)'s Attorney Licensed in Nevada: Yes
Permission Granted: N/A

Respondent(s)'s Attorney Licensed in Nevada: Yes
Permission Granted: N/A

Respondent(s)'s Attorney Licensed in Nevada: N/A
Permission Granted: N/A

6. Has Appellant Ever Been Represented by Appointed Counsel In District Court: No

7. Appellant Represented by Appointed Counsel On Appeal: N/A

8. Appellant Granted Leave to Proceed in Forma Pauperis**: N/A
***Expires 1 year from date filed*
Appellant Filed Application to Proceed in Forma Pauperis: No
Date Application(s) filed: N/A

9. Date Commenced in District Court: May 11, 2020

10. Brief Description of the Nature of the Action: Construction Defect

Type of Judgment or Order Being Appealed: Dismissal

11. Previous Appeal: Yes

Supreme Court Docket Number(s): 83836

12. Child Custody or Visitation: N/A

13. Possibility of Settlement: Unknown

Dated This 28 day of March 2022.

Steven D. Grierson, Clerk of the Court

/s/ Heather Ungermann

Heather Ungermann, Deputy Clerk
200 Lewis Ave
PO Box 551601
Las Vegas, Nevada 89155-1601
(702) 671-0512

cc: Tenkasi Viswanathan

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-20-814819-C

Tenkasi Viswanathan, Plaintiff(s)	§	Location:	**Department 15**
vs.	§	Judicial Officer:	**Hardy, Joe**
Board of Trustees of the Clark County School District,	§	Filed on:	**05/11/2020**
Defendant(s)	§	Cross-Reference Case Number:	**A814819**
	§	Supreme Court No.:	**83836**

CASE INFORMATION

Statistical Closures
10/20/2021 Summary Judgment

Case Type: **Employment Contract**

Case Status: **10/20/2021 Closed**

DATE — CASE ASSIGNMENT

Current Case Assignment

Case Number	A-20-814819-C
Court	Department 15
Date Assigned	05/11/2020
Judicial Officer	Hardy, Joe

PARTY INFORMATION

		Lead Attorneys
Plaintiff	**Viswanathan, Tenkasi**	**Pro Se** 252-706-0169(H)
Defendant	**Alvarez, Neddy**	
	Board of Trustees of the Clark County School District	**Herrera, Crystal J.** *Retained* 702-382-1500(W)
	Clark County School District	**Herrera, Crystal J.** *Retained* 702-382-1500(W)
	Geihs, Jeffrey	
	Goldman, Edward	**Olson, James R.** *Retained* 7023844012(W)
	Houghton, Sonya	
	Markouzis, Louis	**Herrera, Crystal J.** *Retained* 702-382-1500(W)
	Skorkowski, Pat Removed: 11/02/2020 Dismissed	**Herrera, Crystal J.** *Retained* 702-382-1500(W)
Arbitrator	**Fontano, James A.**	

DATE — EVENTS & ORDERS OF THE COURT — INDEX

EVENTS

05/11/2020

Complaint
Filed By: Plaintiff Viswanathan, Tenkasi
Complaint for Breach of Contract, Declaratory Judgment and for Recovery of Property

	Damages
08/04/2020	Amended Complaint Filed By: Plaintiff Viswanathan, Tenkasi *Amended Complaint, Pursuant to NRCP 15(a)(1)(A) for Breach of Contract, Declaratory Judgment and for Recovery of Damages*
08/04/2020	Affidavit of Service Filed By: Plaintiff Viswanathan, Tenkasi *Affidavit for Service of Process on Defendant Board of Trustee of the Clark County School District*
08/04/2020	Affidavit of Service Filed By: Plaintiff Viswanathan, Tenkasi *Affidavit of Service of Process on Defendant Pat Skorkowski in his Offical and Individual Capacity*
08/04/2020	Amended Complaint Filed By: Plaintiff Viswanathan, Tenkasi *Amended Complaint, Pursuant to NRCP 15(a)(1)(A) for Breach of Contract, Declaratory Judgment and for Recovery of Damages*
08/06/2020	Certificate of Service *Plaintiff's Certificate of Service*
08/11/2020	Motion for Order Extending Time Filed by: Plaintiff Viswanathan, Tenkasi *Plaintiff's Motion for Order Extending Time to File Proof of Service of Process on Defendant Dr. Goldman Hearing Not Requested*
08/11/2020	Affidavit in Support Filed By: Plaintiff Viswanathan, Tenkasi *Affidavit in Support of Motion for Order Extending Time to File Proof of Service on Defendant Dr. Goldman*
08/13/2020	Clerk's Notice of Nonconforming Document *Clerk's Notice of Nonconforming Document*
08/17/2020	Certificate of Service Filed by: Plaintiff Viswanathan, Tenkasi *Plaintiff's Certificate of Service*
08/17/2020	Certificate of Service Filed by: Plaintiff Viswanathan, Tenkasi *Plaintiff's Certificate of Service*
08/17/2020	Affidavit of Service Filed By: Plaintiff Viswanathan, Tenkasi *Affidavit of Service of Process on Defendant Dr. Edward Goldman in his Official and Individual Capacity*
08/18/2020	Clerk's Notice of Nonconforming Document and Curative Action *Clerk's Notice of Curative Action*
08/19/2020	Clerk's Notice of Hearing

Notice of Hearing

08/26/2020 Motion for Order Extending Time
Filed by: Plaintiff Viswanathan, Tenkasi
Plaintiff's Motion for Order Extending Time to Serve Process on Five of the 8 Defendants Hearing Not Requested

08/26/2020 Affidavit in Support
Filed By: Plaintiff Viswanathan, Tenkasi
Plaintiff's Affidavit in Support of his Motion for Order Extending Time to Serve Process on Five of the Eight Defendants

08/27/2020 Clerk's Notice of Hearing
Notice of Hearing

08/27/2020 Motion to Dismiss
Filed By: Defendant Board of Trustees of the Clark County School District
Defendant Clark County School District Board of Trustees' Motion to Dismiss Hearing Date Requested

08/27/2020 Motion to Dismiss
Filed By: Defendant Skorkowski, Pat
Defendant Pat Skorkowsky's Motion to Dismiss Hearing Date Requested

08/28/2020 Clerk's Notice of Hearing
Notice of Hearing

08/28/2020 Clerk's Notice of Hearing
Notice of Hearing

08/31/2020 Motion to Dismiss
Filed By: Defendant Goldman, Edward
Defendant Dr. Edward Goldman's Motion to Dismiss

08/31/2020 Initial Appearance Fee Disclosure
Filed By: Defendant Goldman, Edward
Initial Appearance Fee Disclosure (NRS Chapter 19)

08/31/2020 Clerk's Notice of Hearing
Notice of Hearing

09/14/2020 Opposition and Countermotion
Filed By: Plaintiff Viswanathan, Tenkasi
Plaintiff's Opposition and Countermotion to Defendant Clark County School District Board of Trustees' Motion to Dismiss Hearing Scheduled

09/14/2020 Affidavit in Support
Filed By: Plaintiff Viswanathan, Tenkasi
Plaintiff's Affidavit in Support of his Opposition and Countermotion to Defendant Clark County School District Board of Trustees' Motion to Dismiss

09/14/2020 Opposition to Motion
Filed By: Plaintiff Viswanathan, Tenkasi
Plaintiff's Opposition to Defendant Pat Skorkowsky's Motion to Dismiss Hearing Scheduled

09/16/2020	Notice of Change of Hearing *Notice of Change of Hearing*
09/16/2020	Notice of Change of Hearing *Notice of Change of Hearing*
09/16/2020	Clerk's Notice of Hearing *Notice of Amended Hearing*
09/16/2020	Clerk's Notice of Hearing *Notice of Amended Hearing*
09/17/2020	Opposition and Countermotion Filed By: Plaintiff Viswanathan, Tenkasi *Plaintiff's Opposition and Countermotion to Defendant Dr. Edward Goldman's Motion to Dismiss Hearing Scheduled*
09/17/2020	Affidavit in Support Filed By: Plaintiff Viswanathan, Tenkasi *Plaintiff's Affidavit in Support of Plaintiff's Opposition and Countermotion to Defendant Dr. Edward Goldman's Motion to Dismiss*
09/18/2020	Clerk's Notice of Hearing *Notice of Hearing*
09/21/2020	Affidavit of Service Filed By: Plaintiff Viswanathan, Tenkasi *Affidavit of Service of Process on Defendant Louis Markouzis in his Official and Individual Capacity*
09/23/2020	Stipulation and Order Filed by: Defendant Board of Trustees of the Clark County School District; Defendant Skorkowski, Pat *Stipulation and Order to Consolidate Motion Hearings*
09/23/2020	Notice of Entry of Stipulation and Order Filed By: Defendant Board of Trustees of the Clark County School District; Defendant Skorkowski, Pat *Notice of Entry of Stipulation and Order to Consolidate Motion Hearings*
09/28/2020	Order Denying *Order Denying Extension of Time to File Proof of Service*
09/28/2020	Order Extending Time to Serve *Order Extending Time to Serve Process*
10/01/2020	Opposition Filed By: Defendant Board of Trustees of the Clark County School District *Defendant Clark County School District Board of Trustees' Limited Opposition to Plaintiff's Countermotion*
10/02/2020	Reply to Opposition Filed by: Defendant Goldman, Edward

Defendant Dr. Edward Goldman's Reply to Plaintiff's Opposition to Motion to Dismiss, and Dr. Edward Goldman's Opposition to Plaintiff's Countermotion

10/08/2020 Amended Summons
Amended Summons

10/12/2020 Reply to Opposition
Filed by: Defendant Board of Trustees of the Clark County School District
Defendant Clark County School District Board of Trustees' Reply to Plaintiff's Opposition to its Motion to Dismiss

10/12/2020 Reply to Opposition
Filed by: Defendant Skorkowski, Pat
Defendant Pat Skorkowsky's Reply to Plaintiff's Opposition to Motion to Dismiss

10/13/2020 Joinder to Opposition to Motion
Filed by: Defendant Goldman, Edward
Defendant Dr. Edward Goldman's Joinder in Defendant Clark County School District Board of Trustees' Reply to Plaintiff's Opposition to its Motion to Dismiss

10/28/2020 Order
Filed By: Defendant Goldman, Edward
Order Granting in Part and Denying in Part Defendant Dr. Edward Goldman's Motion to Dismiss and Granting in Part Plaintiff's Counter-Motion

11/02/2020 Order Granting Motion
Filed By: Defendant Skorkowski, Pat
Order Granting Defendant Pat Skorkowsky's Motion to Dismiss

11/02/2020 Order
Filed By: Defendant Board of Trustees of the Clark County School District
Order Granting in Part and Denying in Part Defendant Clark County School District Board of Trustees' Motion to Dismiss and Plaintiff's Counter-Motion

11/02/2020 Notice of Entry of Order
Filed By: Defendant Skorkowski, Pat
Notice of Entry of Order Granting Defendant Pat Skorkowsky's Motion to Dismiss

11/02/2020 Notice of Entry of Order
Filed By: Defendant Board of Trustees of the Clark County School District
Notice of Entry of Order Granting in Part and Denying in Part Defendant Clark County School District Board of Trustees' Motion to Dismiss and Plaintiff's Countermotion

11/05/2020 Notice of Entry of Order
Filed By: Defendant Goldman, Edward
Notice of Entry of Order Granting in Part and Denying in Part Defendant Dr. Edward Goldman's Motion to Dismiss and Granting in Part Plaintiff's Counter-Motion

11/09/2020 Motion to Dismiss
Filed By: Defendant Markouzis, Louis
Defendant Louis Markouzis' Motion to Dismiss Hearing Date Requested

11/10/2020 Clerk's Notice of Hearing
Notice of Hearing

11/12/2020	Answer Filed By: Defendant Goldman, Edward *Defendant Dr. Edward Goldman's Answer to Plaintiff's Amended Complaint*
11/12/2020	Demand for Jury Trial Filed By: Defendant Goldman, Edward *Defendant Dr. Edward Goldman's Demand for Jury Trial*
11/16/2020	Answer to Amended Complaint Filed By: Defendant Board of Trustees of the Clark County School District *Defendant Clark County School District Board of Trustees' Answer to Plaintiff's Amended Complaint*
11/16/2020	Motion to Reconsider Filed By: Plaintiff Viswanathan, Tenkasi *Plaintiff's Motion for Reconsideration of the Order Entered on 11-02-2020 Granting Defendant Pat Skorkowsky's Motion to Dismiss Hearing Not Requested*
11/16/2020	Affidavit in Support Filed By: Plaintiff Viswanathan, Tenkasi *Plaintiff's Affidavit in Support of Plaintiff's Motion for Reconsideration of Order Entered on 11/2/20 Granting Defendant Pat Skorkowsky's Motion to Dismiss*
11/17/2020	Clerk's Notice of Hearing *Notice of Hearing*
11/23/2020	Opposition and Countermotion Filed By: Plaintiff Viswanathan, Tenkasi *Plaintiff's Partial Opposition and Countermotion to Defendant Louis Markouzis' Motion to Dismiss*
11/23/2020	Affidavit in Support Filed By: Plaintiff Viswanathan, Tenkasi *Plaintiff's Affidavit in Support of Plaintiff's Partial Opposition and Countermotion to Defendant Louis Markouzis' Motion to Dismiss*
11/26/2020	Amended Certificate of Service Party: Plaintiff Viswanathan, Tenkasi *Plaintiff's Amended Certificate of Service*
12/01/2020	Opposition to Motion Filed By: Defendant Clark County School District *Defendant Pat Skorkowsky's Opposition to Plaintiff's Motion for Reconsideration*
12/07/2020	Stipulation and Order Filed by: Defendant Markouzis, Louis; Defendant Clark County School District *Stipulation and Order to Continue Hearing*
12/08/2020	Reply to Opposition Filed by: Plaintiff Viswanathan, Tenkasi *Plaintiff's Reply to Defendant Pat Skorkowsky's Opposition to Plaintiff's Motion for Reconsideration*
12/14/2020	Notice of Entry of Stipulation and Order

Filed By: Defendant Markouzis, Louis
Notice of Entry of Stipulation and Order to Continue Hearing

12/16/2020 Arbitration Selection List
Filed by: Defendant Goldman, Edward
Arbitration Selection List (Confidential)

12/19/2020 Arbitration Selection List
Filed by: Plaintiff Viswanathan, Tenkasi
Arbitration Selection List (Confidential)

12/19/2020 Notice
Filed By: Plaintiff Viswanathan, Tenkasi
Arbitration Selection List Notice of Plaintiff's Returned Strike List

12/21/2020 Arbitration Selection List
Filed by: Defendant Board of Trustees of the Clark County School District; Defendant Markouzis, Louis; Defendant Clark County School District
Arbitration Selection List (Confidential)

01/03/2021 Notice of Hearing
Filed By: Plaintiff Viswanathan, Tenkasi
Plaintiff's Notice of Hearing

01/04/2021 Reply in Support
Filed By: Defendant Markouzis, Louis
Defendant Louis Markouzis' Reply in Support of Motion to Dismiss

01/07/2021 Appointment of Arbitrator
Appointment of Arbitrator

01/19/2021 Notice of Early Arbitration Conference
Filed By: Arbitrator Fontano, James A.
Notice of Early Arbitration Conference

01/22/2021 Notice to Appear for Arbitration Hearing
Filed by: Arbitrator Fontano, James A.
Notice to Appear for Arbitration Hearing

01/22/2021 Arbitration Discovery Order
Filed By: Arbitrator Fontano, James A.
Arbitration Discovery Order

01/26/2021 Order Denying Motion
Filed By: Defendant Board of Trustees of the Clark County School District
Order Denying Plaintiff's Motion to Reconsideration of Order Entered on November 2, 2020 Granting Defendant Pat Skorkowsky's Motion to Dismiss

01/26/2021 Notice of Entry of Order
Filed By: Defendant Board of Trustees of the Clark County School District; Defendant Markouzis, Louis; Defendant Clark County School District
Notice of Entry of Order Denying Plaintiff's Motion for Reconsideration of Order Entered on November 2, 2020 Granting Defendant Pat Skorkowsky's Motion to Dismiss

01/27/2021

	Order Granting Motion Filed By: Defendant Markouzis, Louis *Order Granting Defendant Louis Markouzis' Motion to Dismiss and Denying Plaintiff's Counter-Motion*
01/28/2021	Notice of Entry of Order Filed By: Defendant Board of Trustees of the Clark County School District; Defendant Markouzis, Louis; Defendant Clark County School District *Notice of Entry of Order Granting Defendant Louis Markouzis' Motion to Dismiss and Denying Plaintiff's Counter-Motion*
02/04/2021	Order Granting Motion *Order Granting Motion*
04/20/2021	Change of Address Filed By: Plaintiff Viswanathan, Tenkasi *Change of Plaintiff's Physical Address*
05/12/2021	Order Filed By: Arbitrator Fontano, James A. *Order Granting in Part Motion for Deposing Dismissed Defendants*
05/19/2021	Notice to Appear for Arbitration Hearing *Amended Notice to Appear for Arbitration Hearing*
05/19/2021	Order of Arbitrator Filed By: Arbitrator Fontano, James A. *Order Denying Motion to Arbitrator Requesting Protective Order Under NRCP Rule 26(c)*
05/24/2021	Order Denying Motion Filed By: Arbitrator Fontano, James A. *Order Denying Plaintiff's Motion for Reconsideration*
06/08/2021	Demand for Jury Trial Filed By: Plaintiff Viswanathan, Tenkasi *Plaintff Viswanathan's Demand for Jury Trial*
06/14/2021	Motion for Summary Judgment Filed By: Defendant Goldman, Edward *Defendant Dr. Edward Goldman's Motion for Summary Judgment*
06/14/2021	Motion for Summary Judgment Filed By: Defendant Board of Trustees of the Clark County School District *Defendant Clark County School District Board of Trustees' Motion for Summary Judgement Hearing Date Requested*
06/14/2021	Motion for Partial Summary Judgment Filed By: Plaintiff Viswanathan, Tenkasi *Plaintiff's Motion for Partial Summary Judgment (10/20/21 Withdrawn)*
06/15/2021	Affidavit in Support Filed By: Plaintiff Viswanathan, Tenkasi *Plaintiff Viswanathan's Affidavit in Support of Plaintiff's Motion for Partial Summary Judgment*

06/15/2021 Clerk's Notice of Hearing
Notice of Hearing

06/15/2021 Clerk's Notice of Hearing
Notice of Hearing

06/15/2021 Clerk's Notice of Hearing
Notice of Hearing

06/15/2021 Joinder to Motion For Summary Judgment
Filed By: Defendant Goldman, Edward
Defendant Dr. Edward Goldman's Joinder to Defendant Clark County School District Board of Trustees' Motion for Summary Judgment

06/20/2021 Miscellaneous Filing
Filed by: Plaintiff Viswanathan, Tenkasi
Plaintiff Viswanathan's Letter to the Honorable Clerk of the Court Withdrawing Plaintiff's MPSJ and the Affidavit in Support

06/20/2021 Motion to Amend
Filed By: Plaintiff Viswanathan, Tenkasi
Plaintiff's First Amended Partial Summary Judgment Motion Withdrawing the Filings Hearing Not Requested

06/21/2021 Motion to Strike
Filed By: Plaintiff Viswanathan, Tenkasi
Plaintiff's Motion to Strike Defendant Clark County School District Board of Trustees' Motion for Summary Judgment

06/21/2021 Motion to Strike
Filed By: Plaintiff Viswanathan, Tenkasi
Plaintiff's Motion to Strike Defendant Dr. Edward Goldman's Motion for Summary Judgment and His Joinder to the Defendant Clark County School District Board of Trustee's Motion for Summary Judgment Hearing Not Requested

06/22/2021 Clerk's Notice of Hearing
Notice of Hearing

06/23/2021 Objection
Filed By: Plaintiff Viswanathan, Tenkasi
Plaintiff's Objections Under Rule 16.1(a)(c)(b)(ii) to the Documents with Bate Numbers CCSD000277-CCSD000307- that were Served on 06-09-21

06/25/2021 Opposition to Motion For Summary Judgment
Filed By: Defendant Board of Trustees of the Clark County School District
Defendant Clark County School District Board of Trustees' Opposition to Plaintiff's Motion for Partial Summary Judgment

06/25/2021 Opposition and Countermotion
Filed By: Defendant Board of Trustees of the Clark County School District
Defendant Clark County School District Board of Trustees' Opposition to Plaintiff's Motion to Strike the Defendant Board's Motion for Summary Judgment and Countermotion to Extend the Dispositive Motion Deadline

06/28/2021 Motion for Order Extending Time
Filed by: Plaintiff Viswanathan, Tenkasi
Plaintiff's Motion Requesting Order for a Seven-Day Extension of Time to Serve and File his Opposition to "Defendant Clark County School District Board of Trustees' Motion for Summary Judgment", "Defendant Dr. Edward Goldman's Motion for Summary Judgment" and Dr. Edward Goldman's Joinder to Defendant Clark County School District Board of Trustees' Motion for Summary Judgment" Plaintiff's First Request for Extension

06/28/2021 Affidavit in Support
Filed By: Plaintiff Viswanathan, Tenkasi
Plaintiff's Affidavit in Support of Plaintiff's Motion Requesting Order for a Seven-Day Extension of Time to Serve and File his Opposition to "Defendant Clark County School District Board of Trustees' Motion for Summary Judgment", "Defendant Dr. Edward Goldman's Motion for Summary Judgment" and Dr. Edward Goldman's Joinder to Defendant Clark County School District Board of Trustees' Motion for Summary Judgment"

06/29/2021 Response
Filed by: Defendant Goldman, Edward
Defendant Dr. Edward Goldman's Response to Plaintiff's Motion to Strike Goldman's Motion for Summary Judgment and to Strike Defendant Goldman's Joinder in the Motion for Summary Judgment by the CCSD Board of Trustees

06/29/2021 Notice of Non Opposition
Filed By: Defendant Goldman, Edward
Defendant Dr. Edward Goldman's Notice of Non-Opposition to Plaintiff's Motion Requesting a Seven-Day Extension of Time to Serve and File Plaintiff's Opposition to Defendant Goldman's Motion for Summary Judgment

06/29/2021 Joinder to Opposition to Motion
Filed by: Defendant Goldman, Edward
Defendant Dr. Edward Goldman's Joinder in Defendant Clark County School District Board of Trustees' Opposition to Plaintiff's Motion to Strike the Defendant Board's Motion for Summary Judgment and Countermotion to Extend the Dispositive Motion Deadline

06/29/2021 Clerk's Notice of Nonconforming Document
Clerk's Notice of Nonconforming Document

07/04/2021 Affidavit in Support
Plaintiff's Affidavit in Support of Plaintiff's Motion Requesting Order for a Seven-Day Extension of the Time to Serve and File His Opposition to "Defendant Clark County School District Board of Trustees' Motion for Summary Judgment", "Defendant Dr. Edward Goldman's Motion for Summary Judgment" and Dr. Edward Goldman's Joinder to Defendant Clark County School District Board of Trustees' Motion for Summary Judgment" Hearing Not Requested

07/06/2021 Motion to Strike
Filed By: Plaintiff Viswanathan, Tenkasi
Plaintiff's Motion to Strike all or Parts of the Declarations Attached as Exhibit A, Exhibit B, and Exhibit C to Defendant Clark County School District Board of Trustees' Motion for Summary Judgment, and the Exhibits Thereto; Plaintiff's Objections to the said Summary Judgment Motion and Exhibits Thereto

07/06/2021 Declaration
Filed By: Plaintiff Viswanathan, Tenkasi
Plaintiff Viswanathan's Declaration - in Support of Plaintiff's Motion to Strike the Rule56 Declarations

07/06/2021 Objection

Filed By: Plaintiff Viswanathan, Tenkasi
Plaintiff's Objection to the Declaration of Defendant Goldman Served with his Motion for Summary Judgment and Motion to Strike the Declaration; Goldman's Joinder may be Moot Because of Plaintiff's Motion to Strike the Declarations in Part of Whole Served with the Defendant Clark County School District Board of Trustees' Motion for Summary Judgment

07/07/2021 Clerk's Notice of Hearing
Notice of Hearing

07/08/2021 Clerk's Notice of Nonconforming Document and Curative Action
Clerk's Notice of Curative Action

07/08/2021 Clerk's Notice of Hearing
Notice of Hearing

07/09/2021 Opposition
Filed By: Plaintiff Viswanathan, Tenkasi
Plaintiff' Viswanathan's Opposition to Defendant Clark County School District Board of Trustees' Countermotion to Extend the Dispositive Motion Deadline and to Defendant Goldman's Joinder to the Said Countermotion

07/11/2021 Amended Certificate of Service
Party: Plaintiff Viswanathan, Tenkasi
Plaintiff's Amended Certificate of Service to Plaintiff's Motion to Strike all or Parts of the Declarations Attached as Exhibit A, Exhibit B, and Exhibit C to Defendant Clark County School District Board of Trustees' Motion for Summary Judgment, and the Exhibits Thereto; Plaintiff's Objections to the Said Summary Judgment Motion and Exhibits Thereto

07/12/2021 Amended
Filed By: Plaintiff Viswanathan, Tenkasi
First Amended Motion Amending Plaintiff's Motion to Strike All or Parts of the Declarations Attached as Exhibit A, Exhibit B, and Exhibit C to Defendant Clark County School District Board of Trustees' Motion for Summary Judgment, and the Exhibits Thereto; Plaintiff's Objections to the Said Judgment Motion and Exhibits Thereto

07/12/2021 Clerk's Notice of Nonconforming Document
Clerk's Notice of Nonconforming Document

07/12/2021 Non Opposition
Filed By: Defendant Board of Trustees of the Clark County School District
Defendant Clark County School District Board of Trustees' Non-Opposition to Plaintiff's Motion Requesting a Seven-Day Extension of Time to Serve and File Plaintiff's Opposition to Defendant's Motion for Summary Judgment

07/13/2021 Stipulation and Order
Filed by: Defendant Goldman, Edward
Stipulation and Order to Consolidate Hearings

07/13/2021 Order
Order Continuing Arbitration Hearing

07/14/2021 Notice of Entry of Stipulation and Order
Filed By: Defendant Goldman, Edward
Notice of Entry of Stipulation and Order to Consolidate Hearings

07/20/2021 Reply to Opposition

Filed by: Plaintiff Viswanathan, Tenkasi
Plaintiff's Reply to Defendant Clark County School District Board of Trustees' Opposition to Plaintiff's Motion to Strike the Defendant Board's Motion for Summary Judgment

07/20/2021 Reply to Opposition
Filed by: Plaintiff Viswanathan, Tenkasi
Plaintiff's Reply to Defendant Dr. Edward Goldman's Joinder in Defendant Clark County School District Board of Trustees' Opposition to Plaintiff's Motion for Strike the Defendant Board's Motion for Summary Judgment

07/21/2021 Opposition to Motion
Filed By: Defendant Board of Trustees of the Clark County School District
Defendant Clark County School District Board of Trustee's Opposition to Plaintiff's Motion to Strike the Declarations in Support of Defendant Board's Motion for Summary Judgment

08/05/2021 Response
Filed by: Defendant Goldman, Edward
Defendant Dr. Edward Goldman's Response to Plaintiff's Objections to the Declaration of Defendant Goldman Served with his Motion for Summary Judgment and Motion to Strike the Declaration

08/05/2021 Stipulation and Order
Filed by: Defendant Goldman, Edward
Stipulation and Order to Continue August 18, 2021 Hearing to August 25, 2021

08/06/2021 Notice of Entry of Stipulation and Order
Filed By: Defendant Goldman, Edward
Notice of Entry of Stipulation and Order to Continue August 18, 2021 Hearing to August 25, 2021

08/13/2021 Notice of Change of Arbitration Hearing
Notice of Change of Arbitration Hearing Date & Time

08/18/2021 Reply
Filed by: Plaintiff Viswanathan, Tenkasi
Plaintiff's Reply to Defendant Dr. Goldman's Response to Plaintiff's Objections to and Motion to Strike the Declaration of Defendant Goldman Served with Goldman's Motion for Summary Judgment

10/20/2021 Order
Filed By: Defendant Goldman, Edward
Order Granting Defendant Dr. Edward Goldman's Motion for Summary Judgment; Granting Plaintiff's Motion to Extend the Time to Oppose Defendant Goldman's Motion for Summary Judgment; Denying Plaintiff's Motion to Strike Defendant Goldman's Motion for Summary Judgment; Denying Plaintiff's Objections to, and Motion to Strike Defendant Goldman's Declaration in Support of Defendant Goldman's Motion for Summary Judgment; and Denying as Moot Defendant Goldman's Joinder in Defendant Clark County School District Board of Trustee's Countermotion to Extend the Dispositive Motion Deadline

10/20/2021 Order
Filed By: Defendant Board of Trustees of the Clark County School District; Defendant Clark County School District
Order Granting Defendant Clark County School District Board of Trustee's Motion for Summary Judgment; Granting Defendant Dr. Edward Goldman's Joinder to Defendant Clark County School District Board of Trustee's Motion for Summary Judgment; Granting Plaintiff's Motion to Extend the Time to Oppose Clark County School District Board of Trustees' Motion for Summary Judgment; Denying Plaintiff's Motion to Strike Defendant Clark County School District Board of Trustees' Motion for Summary Judgment; Denying Plaintiff's Objections to

	and Motion to Strike Parts or all of the Declarations in Support of Defendant Clark County School District Board of Trustees' Motion for Summary Judgment; Denying as Moot Defendant Clark County School District Board of Trustees' Countermotion to Extend the Dispositive Motion Deadline; and Granting Plaintiff's Request to Withdraw Plaintiff's Motion for Partial Summary Judgment
10/20/2021	Notice of Entry of Order Filed By: Defendant Board of Trustees of the Clark County School District; Defendant Clark County School District *Notice of Entry of Order*
10/20/2021	ADR - Change of Status *Change of Status*
10/20/2021	Arbitrators Bill for Fees and Costs *Arbitrator's Bill for Fees and Costs*
10/21/2021	Notice of Entry of Order Filed By: Defendant Goldman, Edward *Notice of Entry of Order Granting Defendant Dr. Edward Goldman's Motion for Summary Judgment; Granting Plaintiff's Motion to Extend the Time to Oppose Defendant Goldman's Motion for Summary Judgment; Denying Plaintiff's Motion to Strike Defendant Goldman's Motion for Summary Judgment; Denying Plaintiff's Objections to, and Motion to Strike Defendant Goldman's Declaration in Support of Defendant Goldman's Motion for Summary Judgment*
11/17/2021	Motion to Amend Filed By: Plaintiff Viswanathan, Tenkasi *Plaintiff's Motion Under NRCP Rule 52 and Rule 59 Hearing Requested*
11/17/2021	Declaration Filed By: Plaintiff Viswanathan, Tenkasi *Plaintiff Viswanathan's Declaration dated November 15, 2021 in Support of Plaintiff's Motion Under NRCP Rules 52 and 59*
11/19/2021	Clerk's Notice of Hearing *Notice of Hearing*
11/19/2021	Notice of Appeal Filed By: Plaintiff Viswanathan, Tenkasi *Plaintiff's Notice of Appeal*
11/23/2021	Case Appeal Statement Filed By: Plaintiff Viswanathan, Tenkasi *Case Appeal Statement*
12/01/2021	Opposition to Motion Filed By: Defendant Board of Trustees of the Clark County School District *Defendant Clark County School District Board of Trustees' Opposition to Plaintiff's Motion Under NRCP Rules 52 and 59*
12/04/2021	Notice of Posting Bond Filed By: Plaintiff Viswanathan, Tenkasi *Plaintiff's Payment of Costs on Appeal - Proper Person (Supreme Court)*
12/14/2021	Request

Filed by: Plaintiff Viswanathan, Tenkasi
Pro Se Appellant's Request for Transcript of District Court Hearing and Payment of the Deposit for Transcription (Supreme Court)

12/14/2021 Request
Filed by: Plaintiff Viswanathan, Tenkasi
Pro Se Appellant's Request for Transcript of District Court Hearing and Payment of the Deposit for Transcription (Supreme Court)

12/29/2021 Reply to Opposition
Filed by: Plaintiff Viswanathan, Tenkasi
Plaintiff's Reply to Defendant Clark County School District Board of Trustees' Opposition to Plaintiff's Motion Under NRCP Rules 52 and 59

12/29/2021 Declaration
Filed By: Plaintiff Viswanathan, Tenkasi
Plaintiff's Declaration Started on November 28, 2021 in Support of Plaintiff"s Reply to CCSD BOT's Opposition to Plaintiff's Motion Under NRCP Rules 52 and 59

02/02/2022 Notice
Filed By: Plaintiff Viswanathan, Tenkasi
Notice of Readiness for Decision

02/23/2022 NV Supreme Court Clerks Certificate/Judgment - Dismissed
Nevada Supreme Court Clerk's Certificate/Remittitur Judgment - Dismissed

02/23/2022 Order Denying Motion
Filed By: Defendant Clark County School District
Order Denying Plaintiff's Motion Under NRCP Rules 52 and 59

02/24/2022 Notice of Entry of Order
Filed By: Defendant Board of Trustees of the Clark County School District
Notice of Entry of Order Denying Plaintiff's Motion Under NRCP Rules 52 and 59

03/02/2022 Request for Judgment
Filed By: Plaintiff Viswanathan, Tenkasi
[152] Plaintiff's Explanation, Pursuant to EDCR 5.522(c) on Alernate Form of Proposed Order

03/02/2022 Filing
Filed By: Plaintiff Viswanathan, Tenkasi
Unsigned Plaintiff's Proposed Order Denying Plaintiffs Motion Under Rules 52 and 59 - indicating the changes in Defenant Board's Proposal for Plaintiff's Rule 52/59 Motion

03/24/2022 Notice of Appeal
Filed By: Plaintiff Viswanathan, Tenkasi
Plaintiff's Notice, Appealing his case to the Nevada Supreme Court

03/24/2022 Notice of Appeal
Filed By: Plaintiff Viswanathan, Tenkasi
Plaintiff's Notice of Appeal

03/25/2022 Miscellaneous Filing
Filed by: Plaintiff Viswanathan, Tenkasi
Attempt to facilitate ASTA for the Clerk's Office

03/28/2022	Case Appeal Statement *Case Appeal Statement*
03/28/2022	Case Appeal Statement *Case Appeal Statement*

DISPOSITIONS

10/28/2020	**Order of Dismissal Without Prejudice** (Judicial Officer: Hardy, Joe) Debtors: Tenkasi Viswanathan (Plaintiff) Creditors: Dr. Edward Goldman (Defendant) Judgment: 10/28/2020, Docketed: 11/03/2020 Comment: Certain Claim
11/02/2020	**Order of Dismissal Without Prejudice** (Judicial Officer: Hardy, Joe) Debtors: Tenkasi Viswanathan (Plaintiff) Creditors: Pat Skorkowski (Defendant) Judgment: 11/02/2020, Docketed: 11/04/2020
11/02/2020	**Order of Dismissal Without Prejudice** (Judicial Officer: Hardy, Joe) Debtors: Tenkasi Viswanathan (Plaintiff) Creditors: Board of Trustees of the Clark County School District (Defendant) Judgment: 11/02/2020, Docketed: 11/04/2020 Comment: In Part/ Certain Claim
01/27/2021	**Order of Dismissal** (Judicial Officer: Hardy, Joe) Debtors: Tenkasi Viswanathan (Plaintiff) Creditors: Louis Markouzis (Defendant) Judgment: 01/27/2021, Docketed: 01/28/2021 Comment: Certain Claims
10/20/2021	**Summary Judgment** (Judicial Officer: Hardy, Joe) Debtors: Tenkasi Viswanathan (Plaintiff) Creditors: Board of Trustees of the Clark County School District (Defendant), Dr. Edward Goldman (Defendant), Clark County School District (Defendant) Judgment: 10/20/2021, Docketed: 10/21/2021
10/20/2021	**Summary Judgment** (Judicial Officer: Hardy, Joe) Debtors: Tenkasi Viswanathan (Plaintiff) Creditors: Dr. Edward Goldman (Defendant) Judgment: 10/20/2021, Docketed: 10/21/2021
02/23/2022	**Clerk's Certificate** (Judicial Officer: Hardy, Joe) Debtors: Tenkasi Viswanathan (Plaintiff) Creditors: Board of Trustees of the Clark County School District (Defendant), Dr. Edward Goldman (Defendant), Louis Markouzis (Defendant), Clark County School District (Defendant) Judgment: 02/23/2022, Docketed: 02/24/2022 Comment: Supreme Court No. 83836 Appeal Dismissed

HEARINGS

09/21/2020	**Motion for Order** (3:00 AM) (Judicial Officer: Hardy, Joe) *Plaintiff's Motion for Order Extending Time to File Proof of Service of Process on Defendant Dr. Goldman* Denied Without Prejudice;
09/21/2020	**Motion for Order** (3:00 AM) (Judicial Officer: Hardy, Joe) *Plaintiff's Motion for Order Extending Time to Serve Process on Five of the 8 Defendants* Motion Granted;

09/21/2020	**All Pending Motions** (3:00 AM) (Judicial Officer: Hardy, Joe) Minute Order - No Hearing Held; Journal Entry Details: *PLAINTIFF'S MOTION FOR ORDER EXTENDING TIME TO FILE PROOF OF SERVICE OF PROCESS ON DEFENDANT DR. GOLDMAN...PLAINTIFF'S MOTION FOR ORDER EXTENDING TIME TO SERVE PROCESS ON FIVE OF THE 8 DEFENDANTS COURT ORDERED Plaintiff s Motion to Extend Time to Serve Process on Remaining Defendants is hereby GRANTED pursuant to NRCP 4(e)(4), and for all the reasons set forth in the Motion and Affidavit in Support. Plaintiff is to prepare the written order, submit it directly to Department 15 s chambers within ten days pursuant to EDCR 7.21. All proposed orders must be submitted via email at dc15inbox@clarkcountycourts.us pursuant to Administrative Order 20-17. COURT ORDERED Plaintiff s Motion for Order Extending Time to File Proof of Service of Process is hereby DENIED WITHOUT PREJUDICE. The Court finds the instant Motion is moot given the Affidavit of Service of Process filed on August 17, 2020. See NRCP 4 (d)(5) (Failure to make proof of service does not affect the validity of the service). CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Kristin Duncan, to all registered parties for Odyssey File & Serve. (KD 9/22/2020);*
10/19/2020	**Motion to Dismiss** (9:00 AM) (Judicial Officer: Hardy, Joe) *Defendant Clark County School District Board of Trustees' Motion to Dismiss* Granted in Part;
10/19/2020	**Motion to Dismiss** (9:00 AM) (Judicial Officer: Hardy, Joe) *Defendant Pat Skorkowsky's Motion to Dismiss* Motion Granted;
10/19/2020	**Motion to Dismiss** (9:00 AM) (Judicial Officer: Hardy, Joe) *Defendant Dr. Edward Goldman's Motion to Dismiss* Clerical Error Granted in Part;
10/19/2020	**Opposition and Countermotion** (9:00 AM) (Judicial Officer: Hardy, Joe) *Plaintiff's Oppositio and Countermotion to Defendant CCSD Board of Trustees' Motion to Dismiss* Granted in Part;
10/19/2020	**Motion to Dismiss** (9:00 AM) (Judicial Officer: Hardy, Joe) *Plaintiff's Opposition to Defendant Goldman's Motion to Dismiss* Granted in Part;
10/19/2020	**All Pending Motions** (9:00 AM) (Judicial Officer: Hardy, Joe) Matter Heard; Journal Entry Details: *All parties present via Blue Jeans. DEFENDANT PAT SKORKOWSKY'S MOTION TO DISMISS Ms. Herrera argued in support of the instant Motion, stating that Plaintiff attempted to serve Defendant Skorkowsky through the School District's legal department, and the legal department did not accept service on behalf of Defendant Skorkowsky, nor were they authorized to accept service on behalf of Defendant Skorkowsky. Mr. Viswanathan argued in opposition, stating that an Affidavit was filed by the process server, indicating that Defendant Skorkowsky had been properly served. COURT ORDERED the instant Motion was hereby GRANTED WITHOUT PREJUDICE for all of the reasons set forth in the Motion and Reply, FINDING the following: (1) Defendant Skorkowsky was not properly served with the Summons and Complaint; and (2) the Affidavit of Service indicated that the manner of service was substitute business, which was not proper. Ms. Herrera to prepare the written Order, incorporating the reasons in the Motion and Reply, as the Court's ruling, and forward it to Mr. Viswanathan via e-mail, for approval as to form and content; Mr. Viswanathan shall have two (2) days from receipt of the Proposed Order, to make any corrections, before Ms. Herrera submitted the Proposed Order to the Court. DEFENDANT CLARK COUNTY SCHOOL DISTRICT BOARD OF TRUSTEES' MOTION TO DISMISS...PLAINTIFF'S OPPOSITION AND COUNTERMOTION TO DEFENDANT CCSD BOARD OF TRUSTEES' MOTION TO DISMISS Ms. Herrera argued in support of Defendant CCSD's Motion, stating that breach of fiduciary duty, breach of contract, and breach of covenant of good faith and fair dealing claims, must be dismissed based upon the statute of limitations. Mr. Viswanathan argued in*

opposition, stating that Defendant raised issued in their Reply that were not raised in the Motion, which deprived him of the opportunity to address those issues. COURT ORDERED Defendant Clark County School District Board of Trustees' Motion to Dismiss, was hereby GRANTED IN PART / DENIED IN PART WITHOUT PREJUDICE, FINDING and ORDERING the following: (1) the claim for breach of fiduciary duty was hereby DISMISSED, as the three year statute of limitations applied to said claim; (2) as Plaintiff admitted on page 8, lines 18-21 of the Opposition, time began to run on April 28, 2014, when the breach was discovered; (3) the Complaint was not filed until May 11, 2020, and whether the Court considered that Complaint, or the Amended Complaint (filed August 4, 2020), the result would be the same; (4) for the purpose of the instant Motion, the Court accepted the factual allegations contained in the original Complaint as true, including the procedural aspects; (5) the breach of fiduciary duty claim must be dismissed as a matter of law; (6) the remainder of the requested relief was DENIED WITHOUT PREJUDICE; (7) the Court considered the substance of the Plaintiff's claims, and accepted all facts as pled as true, as it must under the Motion to Dismiss standard; (8) the breach of contract and breach of covenant of good faith and fair dealing claims, both had six year statutes of limitations; (9) based upon the statutes of limitations, the tolling from Governor Sisolak's April 1, 2020, Executive Order, and Court's Administrative Orders, the Complaint was timely filed as to the breach of contract and breach of covenant of good faith and fair dealing claims; and (10) the preemption arguments were essentially raised for the first time in the Reply; therefore, it would not be proper to consider them at this time. COURT FURTHER ORDERED Plaintiff's Countermotion was hereby GRANTED IN PART / DENIED IN PART WITHOUT PREJUDICE, FINDING and ORDERING the following: (1) the Countermotion was GRANTED IN PART to construe the Amended Complaint (filed on August 4, 2020 at 4:00 PM), as having been filed on August 3, 2020; and (2) the remainder of the requested relief, was hereby DENIED WITHOUT PREJUDICE. Ms. Herrera to prepare the written Order for the Motion and Countermotion, and forward it to Mr. Viswanathan via e-mail, for approval as to form and content; Mr. Viswanathan shall have two (2) days from receipt of the Proposed Order, to make any corrections, before Ms. Herrera submitted the Proposed Order to the Court. DEFENDANT DR. EDWARD GOLDMAN'S MOTION TO DISMISS...PLAINTIFF'S OPPOSITION TO DEFENDANT GOLDMAN'S MOTION TO DISMISS Ms. Barker argued in support of Defendant Goldman's Motion, stating that Defendant Goldman was not a party to the contract between the School District and Mr. Viswanathan. Additionally, Ms. Barker argued that Governor Sisolak's Executive Order did not toll the statutes of limitations; NRS 391.100 and NRS 391.120 cited. Mr. Viswanathan argued in opposition, stating that Defendant Goldman was the manger of employee relations; therefore, it was appropriate to include him as a party in the Complaint. COURT ORDERED Defendant Dr. Edward Goldman's Motion to Dismiss, was hereby GRANTED IN PART / DENIED IN PART WITHOUT PREJUDICE, FINDING and ORDERING the following: (1) the claim for breach of fiduciary duty was hereby DISMISSED, as the three year statute of limitations applied to said claim; (2) as Plaintiff admitted on page 8, lines 18-21 of the Opposition, time began to run on April 28, 2014, when the breach was discovered; (3) the Complaint was not filed until May 11, 2020, and whether the Court considered that Complaint, or the Amended Complaint (filed August 4, 2020), the result would be the same; (4) for the purpose of the instant Motion, the Court accepted the factual allegations contained in the original Complaint as true, including the procedural aspects; (5) the breach of fiduciary duty claim must be dismissed as a matter of law; (6) the remainder of the requested relief was DENIED WITHOUT PREJUDICE; (7) the Court considered the substance of the Plaintiff's claims, and accepted all facts as pled as true, as it must under the Motion to Dismiss standard; (8) the breach of contract and breach of covenant of good faith and fair dealing claims, both had six year statutes of limitations; and (9) based upon the statutes of limitations, the tolling from Governor Sisolak's April 1, 2020, Executive Order, and Court's Administrative Orders, the Complaint was timely filed as to the breach of contract and breach of covenant of good faith and fair dealing claims. COURT FURTHER ORDERED Plaintiff's Countermotion was hereby GRANTED IN PART / DENIED IN PART WITHOUT PREJUDICE, FINDING and ORDERING the following: (1) the Countermotion was GRANTED IN PART to construe the Amended Complaint (filed on August 4, 2020 at 4:00 PM), as having been filed on August 3, 2020; and (2) the remainder of the requested relief, was hereby DENIED WITHOUT PREJUDICE. Ms. Barker to prepare the written Order for the Motion and Countermotion, and forward it to Mr. Viswanathan via e-mail, for approval as to form and content; Mr. Viswanathan shall have two (2) days from receipt of the Proposed Order, to make any corrections, before Ms. Barker submitted the Proposed Order to the Court. ;

01/06/2021 **Motion For Reconsideration** (3:00 AM) (Judicial Officer: Hardy, Joe)
Plaintiff's Motion for Reconsideration of Order Entered on 11-02-2020 Granting Defendant Skorkowsky's Motion to Dismiss

Minute Order - No Hearing Held;
Journal Entry Details:
COURT ORDERED, Plaintiff s Motion to Reconsideration of the Order Granting Defendant Pat Skorkowsky s Motion to Dismiss is hereby DENIED WITHOUT PREJUDICE. The Court finds that Plaintiff has not provided any new law, new evidence, or shown that the Court s ruling was clearly erroneous. On that basis, the Court finds that Plaintiff has not met her burden on reconsideration. See Masonry & Title Contractors Ass n v. Jolley, Urga & Wirth LTD, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). Counsel for Defendant Pat Skorkowsky is to prepare the written order, submit it to all counsel for review and approval, and submit it to Department 15 s chambers within ten days pursuant to EDCR 7.21. All proposed orders must be submitted via email at dc15inbox@clarkcountycourts.us pursuant to Administrative Order 20-17. CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Kristin Duncan, to all registered parties for Odyssey File & Serve. (KD 1/6/2021);

01/11/2021 **Motion to Dismiss** (9:00 AM) (Judicial Officer: Hardy, Joe)
Defendant Louis Markouzis' Motion to Dismiss
Motion Granted;

01/11/2021 **Opposition and Countermotion** (9:00 AM) (Judicial Officer: Hardy, Joe)
Plaintiff's Partial Opposition and Counter Motion to Defendant Louis Markouzis Motion To Dismiss
Motion Denied;

01/11/2021 **All Pending Motions** (9:00 AM) (Judicial Officer: Hardy, Joe)
Matter Heard;
Journal Entry Details:
DEFENDANT LOUIS MARKOUZIS' MOTION TO DISMISS...PLAINTIFF'S PARTIAL OPPOSITION AND COUNTER MOTION TO DEFENDANT LOUIS MARKOUZIS' MOTION TO DISMISS All parties present via Blue Jeans. The Court noted that it reviewed the Motion, Opposition and Countermotion, and the Reply. Ms. Herrera argued in support of Defendant Markouzis' Motion to Dismiss, stating that Plaintiff conceded that the Breach of Fiduciary Duty claims should be dismissed. Additionally, Ms. Herrera argued that Defendant Markouzis was not a party to the subject contract; therefore, the Breach of Contract and Breach of Implied Covenant of Good Faith and Fair Dealing claims against Mr. Markouzis should be dismissed. Furthermore, Ms. Herrera argued that the official capacity claims may be able to stand against an employee or officer, however, those claims were redundant when the actual entity was named as a Defendant, as was the scenario in the instant case. Mr. Viswanathan argued in opposition to Defendant Markouzis' Motion to Dismiss, and in support of the Counter Motion, stating that Defendant's counsel raised issues outside of the pleadings during their oral arguments; therefore, the Court should not consider those arguments. COURT ORDERED Defendant Louis Markouzis' Motion to Dismiss was hereby GRANTED WITHOUT PREJUDICE, FINDING the following: (1) as conceded by the Plaintiff, the Breach of Fiduciary Duty claim against Defendant Markouzis, was hereby DISMISSED; (2) The Breach of Contract claim against Defendant Markouzis, as well as the Breach of Implied Covenant of Good Faith and Fair Dealing claim against Defendant Markouzis, were hereby DISMISSED; (3) Plaintiff's Partial Opposition and Counter Motion to Defendant Louis Markouzis' Motion to Dismiss, was hereby DENIED; (4) the Court made its ruling under the NRCP 12(b)(5) standard; therefore, Court must consider all factual allegations as true; (5) as pled, there was not contract between the Plaintiff and Defendant Markouzis; therefore, there could not be any breach of contract, or breach of the implied covenant of good faith and fair dealing; (6) Plaintiff's arguments ignored, or contradicted, their own pleadings; (7) the proposed amendment to the Complaint was futile, as there was no contract between the Plaintiff and Defendant Markouzis, based upon the current pleadings; (8) the Counter Motion was denied, as there was no proposed amended Complaint attached, as required under the rules; and (9) the preemption argument was moot, given the dismissal under the NRCP 12(b)(5) standard. Ms. Herrera to prepare the written Order, and forward it to Mr. Viswanathan for approval as to form and content.;

08/25/2021 **Motion for Summary Judgment** (9:00 AM) (Judicial Officer: Hardy, Joe)
Events: 06/14/2021 Motion for Summary Judgment
Defendant Dr. Edward Goldman's Motion for Summary Judgment
Motion Granted;

08/25/2021 **Motion for Summary Judgment** (9:00 AM) (Judicial Officer: Hardy, Joe)

	Events: 06/14/2021 Motion for Summary Judgment *Defendant Clark County School District Board of Trustees' Motion for Summary Judgement* Motion Granted;
08/25/2021	**Motion for Partial Summary Judgment** (9:00 AM) (Judicial Officer: Hardy, Joe) Events: 06/14/2021 Motion for Partial Summary Judgment *Plaintiff's Motion for Partial Summary Judgment* Denied Without Prejudice;
08/25/2021	**Joinder** (9:00 AM) (Judicial Officer: Hardy, Joe) Events: 06/15/2021 Joinder to Motion For Summary Judgment *Defendant Dr. Edward Goldman's Joinder to Defendant Clark County School District Board of Trustees' Motion for Summary Judgment* Granted;
08/25/2021	**Motion to Strike** (9:00 AM) (Judicial Officer: Hardy, Joe) *Plaintiff's Motion to Strike Defendant Clark County School District Board of Trustees' Motion for Summary Judgment* Motion Denied;
08/25/2021	**Motion to Strike** (9:00 AM) (Judicial Officer: Hardy, Joe) *Plaintiff's Motion to Strike Defendant Dr. Edward Goldman's Motion for Summary Judgment and His Joinder to the Defendant Clark County School District Board of Trustee's Motion for Summary Judgment* Motion Denied;
08/25/2021	**Opposition and Countermotion** (9:00 AM) (Judicial Officer: Hardy, Joe) *Defendant Clark County School District Board of Trustees' Opposition to Plaintiff's Motion to Strike the Defendant Board's Motion for Summary Judgment and Countermotion to Extend the Dispositive Motion Deadline* Moot;
08/25/2021	**Motion to Strike** (9:00 AM) (Judicial Officer: Hardy, Joe) *Plaintiff's Motion to Strike all or Parts of the Declarations attached as Exhibit A, Exhibit B, and Exhibit C to Defendant Clark County School District Board of Trustees' Motion for Summary Judgment, and the Exhibits Thereto; Plaintiff's Objections to the said summary Judgment Motion and Exhibits Thereto* Motion Denied;
08/25/2021	**Motion for Order Extending Time** (9:00 AM) (Judicial Officer: Hardy, Joe) *Plaintiff's Motion Requesting Order for a Seven-Day Extension of Time to Serve and File his Opposition to "Defendant Clark County School District board of Trustees' Motion for Summary Judgment", "Defendant Dr. Edward Goldman's Motion for Summary Judgment" and Dr. Edward Goldman's Joinder to Defendant Clark County School Distrit Board of Trustees' Motion for Summary Judgment" Plaintiff's First Request for Extension* Motion Granted;
08/25/2021	**Joinder** (9:00 AM) (Judicial Officer: Hardy, Joe) *Defendant Dr. Edward Goldman's Joinder in Defendant Clark County School District Board of Trustees' Opposition to Plaintiff's Motion to Strike the Defendant Board's Motion for Summary Judgment and Countermotion to Extend the Dispositive Motion Deadline* Denied;
08/25/2021	**Motion to Strike** (9:00 AM) (Judicial Officer: Hardy, Joe) *Plaintiff's Motion to Strike the Declaration of Defendant Goldman* Motion Denied;
08/25/2021	**All Pending Motions** (9:00 AM) (Judicial Officer: Hardy, Joe) Matter Heard; Journal Entry Details:

All parties present via Blue Jeans. PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT Upon Court's inquiry, Mr. Viswanathan confirmed that he wished to withdraw the instant Motion. COURT ORDERED Plaintiff's Motion for Partial Summary Judgment, was hereby WITHDRAWN. DEFENDANT DR. EDWARD GOLDMAN'S MOTION FOR SUMMARY JUDGMENT...DEFENDANT CLARK COUNTY SCHOOL DISTRICT BOARD OF TRUSTEES' MOTION FOR SUMMARY JUDGMENT...DEFENDANT DR. EDWARD GOLDMAN'S JOINDER TO DEFENDANT CLARK COUNTY SCHOOL DISTRICT BOARD OF TRUSTEES' MOTION FOR SUMMARY JUDGMENT...PLAINTIFF'S MOTION TO STRIKE DEFENDANT CLARK COUNTY SCHOOL DISTRICT BOARD OF TRUSTEES' MOTION FOR SUMMARY JUDGMENT...PLAINTIFF'S MOTION TO STRIKE THE DECLARATION OF DEFENDANT GOLDMAN...PLAINTIFF'S MOTION TO STRIKE DEFENDANT DR. EDWARD GOLDMAN'S MOTION FOR SUMMARY JUDGMENT AND HIS JOINDER TO THE DEFENDANT CLARK COUNTY SCHOOL DISTRICT BOARD OF TRUSTEE'S MOTION FOR SUMMARY JUDGMENT...PLAINTIFF'S MOTION TO STRIKE ALL OR PARTS OF THE DECLARATION ATTACHED AS EXHIBIT A, EXHIBIT B, AND EXHIBIT C TO DEFENDANT CLARK COUNTY SCHOOL DISTRICT BOARD OF TRUSTEES' MOTION FOR SUMMARY JUDGMENT, AND THE EXHIBITS THERETO; PLAINTIFF'S OBJECTIONS TO THE SAID SUMMARY JUDGMENT MOTION AND EXHIBITS THERETO Ms. Herrera and Ms. Barker submitted on arguments set forth in the Motions for Summary Judgment and Joinder. The Court noted that, although the Defendants did not oppose Mr. Viswanathan request for additional time to file an Opposition to the Motions and Joinder, Mr. Viswanathan chose not to do so. Mr. Viswanathan confirmed that, rather than file an Opposition, he chose to file his various Motions to Strike. The Court noted that Plaintiff filed his Motion for Summary Judgment the same day that Defendants filed theirs. Mr. Viswanathan argued in opposition to the Motions for Summary Judgment, as well as the Joinder, stating that he was entitled to judgment as a matter of law; however, the Defendants were not entitled to summary judgment under the law. Ms. Herrera argued in opposition to the Plaintiff's various Motions to Strike, stating that there was no opposition to the Plaintiff's request for additional time. Additionally, Ms. Herrera stated that arbitration was moved to October 6, 2021, which also moved the dispositive Motion deadline to forty-five days prior to arbitration; therefore the request for additional time was moot. Ms. Barker joined Ms. Herrera's arguments. Arguments in support of the Motions to Strike by Mr. Viswanathan. COURT ORDERED ALL of the Plaintiff's Motions to Strike, were hereby DENIED for all of the reasons set forth in the Oppositions, FINDING the following: (1) Plaintiff's argument that Defendants' Motions for Summary Judgment were not timely filed, was moot, given the continuance of the arbitration hearing; (2) Plaintiff filed his Motion for Summary Judgment on the same day the Defendants filed theirs; therefore, the Plaintiff calculated the deadline for the Motions for Summary Judgment the same as the Defendants; therefore, it was disingenuous for the Plaintiff to withdraw his Motion for Summary Judgment, so that he could then argue that Defendants Motions were not timely filed; (3) Plaintiff has had time, opportunity, and notice, and could have responded to the Defendants' Motions, if he chose; (4) public policy favored decisions based on the substance of Motions for Summary Judgment, rather than striking a Motion for no good cause; and (5) there was an extended period of time between the Defendants filing their Motions for Summary Judgment, and the instant hearing, which provided the Plaintiff with plenty of time to respond. COURT ORDERED that Defendant Clark County School District's Motion for Summary Judgment, Defendant Dr. Edward Goldman's Motion for Summary Judgment, and Dr. Edward Goldman's Joinder to Defendant Clark County School District's Motion for Summary Judgment, were hereby GRANTED for all of the reasons set forth in the Motions and Joinder, FINDING the following: (1) there were no genuine issues of material fact; (2) Plaintiff's claims against the Defendants were based upon an alleged premature non-renewal of the Plaintiff's probationary contract; (3) the Court incorporated the statement of undisputed facts set forth on pages three through five of CCSD's Motion for Summary Judgment in its ruling; (4) the Court incorporated the legal standards set forth on pages six through seven of CCSD's Motion for Summary Judgment in its ruling; (5) Plaintiff's breach of contract claim failed as a matter of law; (6) the Board had a contractual and statutory right not to renew Plaintiff's probationary contract; (7) the Board's right of non-renewal had limited temporal limitations; (8) Plaintiff was permitted to submit a response to his evaluation, only for inclusion into his personnel file; however, that right did not affect the Board's right to terminate the contract; (9) Plaintiff failed to exercise the appropriate administrative remedies under NRS 288.110(2) and NRS 288.280; (10) the Court incorporated the undisputed facts set forth in Dr. Goldman's Motion for Summary Judgment, as set forth on pages four through seven in its ruling; (11) the Court incorporated the legal arguments set forth in Dr. Goldman's Motion for Summary Judgment, as set forth on pages seven through sixteen, in its ruling; (12) the Court's ruling was based upon NRCP 56, as well as the accompanying case law; (13) the breach of contract claim, as well as the breach of the covenant of good faith and fair dealing claim, against Dr. Goldman, could not stand as a matter of law; (14) as a matter of law, Dr. Goldman was not a proper party to the instant suit; (15) a claim against Dr. Goldman in his official capacity was redundant to the

suit against the CCSD Board of Trustees; (16) Dr. Goldman had no authority to grant the relief being sought by the Plaintiff; (17) the negotiated agreement governing the Plaintiff's probationary teaching contract, provided the exclusive remedy for challenging the non-renewal of the contract; (18) the Court incorporated the entirety of the instant case's procedural history into its ruling; (19) although the Plaintiff was made aware of the Defendants' Motions for Summary Judgment on June 14, 2021, and the Defendants did not oppose an extension of time for the Plaintiff to file Oppositions, the Plaintiff failed to file any Oppositions; (20) Plaintiff was given the opportunity to respond to the Motions for Summary Judgment orally at the instant hearing, but took the position that opposition was not necessary, as he had filed multiple Motions to Strike; and (21) the instant Order CONSTITUTED A FINAL JUDGMENT. Ms. Herrera to prepare the written Order regarding the Motions to Strike, as well as the Motions / Joinder for Summary Judgment, including Findings of Fact, Conclusions of Law, and forward it to Ms. Barker and Mr. Viswanathan for approval as to form and content. DEFENDANT CLARK COUNTY SCHOOL DISTRICT BOARD OF TRUSTEES' OPPOSITION TO PLAINTIFF'S MOTION TO STRIKE THE DEFENDANT BOARD'S MOTION FOR SUMMARY JUDGMENT AND COUNTERMOTION TO EXTEND THE DISPOSITIVE MOTION DEADLINE...DEFENDANT DR. EDWARD GOLDMAN'S JOINDER IN DEFENDANT CLARK COUNTY SCHOOL DISTRICT BOARD OF TRUSTEES' OPPOSITION TO PLAINTIFF'S MOTION TO STRIKE THE DEFENDANT BOARD'S MOTION FOR SUMMARY JUDGMENT AND COUNTERMOTION TO EXTEND THE DISPOSITIVE MOTION DEADLINE Given the proceedings in the case, COURT ORDERED the instant Motion and Joinder were hereby DENIED AS MOOT. PLAINTIFF'S MOTION REQUESTING ORDER FOR A SEVEN-DAY EXTENSION OF TIME TO SERVE AND FILE HIS OPPOSITION TO "DEFENDANT DR. EDWARD GOLDMAN'S MOTION FOR SUMMARY JUDGMENT", "DEFENDANT DR. EDWARD GOLDMAN'S MOTION FOR SUMMARY JUDGMENT" AND DR. EDWARD GOLDMAN'S JOINDER TO DEFENDANT CLARK COUNTY SCHOOL DISTRICT BOARD OF TRUSTEES' MOTION FOR SUMMARY JUDGMENT; PLAINTIFF'S FIRST REQUEST FOR EXTENSION Given that Defendants agreed to the Plaintiff's request for an extension of time to file an Opposition, COURT ORDERED the instant Motion was hereby GRANTED.;

10/06/2021 *CANCELED* **Arbitration Hearing** (7:00 AM)
Vacated

01/05/2022 **Motion to Amend** (3:00 AM) (Judicial Officer: Hardy, Joe)
Plaintiff's Motion Under NRCP Rule 52 and Rule 59
Minute Order - No Hearing Held;
Journal Entry Details:
COURT ORDERED, Plaintiff s Motion Under NRCP Rules 52 and 59 is DENIED WITHOUT PREJUDICE for the reasons set forth in Defendant s opposition. Defendant s counsel is to prepare the written order and include therein Defendant s arguments modified to be the Court s conclusions; submit the order to Plaintiff s counsel for review and approval; and then submit the order to Department 15 s chambers within 10 days of this minute order pursuant to EDCR 7.21. CLERK'S NOTE: Minute order electronically served by Courtroom Clerk, Kristin Duncan, on all parties registered for Odyssey File & Serve. (KD 1/10/22);

DATE	FINANCIAL INFORMATION	
	Defendant Board of Trustees of the Clark County School District	
	Total Charges	423.00
	Total Payments and Credits	423.00
	Balance Due as of 3/28/2022	**0.00**
	Defendant Goldman, Edward	
	Total Charges	200.00
	Total Payments and Credits	200.00
	Balance Due as of 3/28/2022	**0.00**
	Plaintiff Viswanathan, Tenkasi	
	Total Charges	518.00
	Total Payments and Credits	518.00
	Balance Due as of 3/28/2022	**0.00**
	Plaintiff Viswanathan, Tenkasi	
	Appeal Bond Balance as of 3/28/2022	**500.00**

DISTRICT COURT CIVIL COVER SHEET

CLARK County, Nevada

Case No. *(Assigned by Clerk's Office)*

CASE NO: A-20-814819-C
Department 15

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

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

Tenkasi Viswanathan, Prose
8220 Hollister Ave
Las Vegas, NV 89131

Attorney (name/address/phone):

Prose

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

Board of Trustees of the Clark County School District, Pat Skorkowski, Dr Edwards Goldman, Dr. Jeffrey Geihs, Neddy Alvarez, Sonya Houghton, Louis Markouzis
Clark County School District, not otherwise known

Attorney (name/address/phone):

Not known

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

Civil Case Filing Types

Real Property

Landlord/Tenant
- [ ] Unlawful Detainer
- [ ] Other Landlord/Tenant

Title to Property
- [ ] Judicial Foreclosure
- [ ] Other Title to Property

Other Real Property
- [ ] Condemnation/Eminent Domain
- [ ] Other Real Property

Torts

Negligence
- [ ] Auto
- [ ] Premises Liability
- [ ] Other Negligence

Malpractice
- [ ] Medical/Dental
- [ ] Legal
- [ ] Accounting
- [ ] Other Malpractice

Other Torts
- [ ] Product Liability
- [ ] Intentional Misconduct
- [ ] Employment Tort
- [ ] Insurance Tort
- [ ] Other Tort

Probate

Probate *(select case type and estate value)*
- [ ] Summary Administration
- [ ] General Administration
- [ ] Special Administration
- [ ] Set Aside
- [ ] Trust/Conservatorship
- [ ] Other Probate

Estate Value
- [ ] Over $200,000
- [ ] Between $100,000 and $200,000
- [ ] Under $100,000 or Unknown
- [ ] Under $2,500

Construction Defect & Contract

Construction Defect
- [ ] Chapter 40
- [ ] Other Construction Defect

Contract Case
- [ ] Uniform Commercial Code
- [ ] Building and Construction
- [ ] Insurance Carrier
- [ ] Commercial Instrument
- [ ] Collection of Accounts
- [x] Employment Contract
- [ ] Other Contract

Judicial Review/Appeal

Judicial Review
- [ ] Foreclosure Mediation Case
- [ ] Petition to Seal Records
- [ ] Mental Competency

Nevada State Agency Appeal
- [ ] Department of Motor Vehicle
- [ ] Worker's Compensation
- [ ] Other Nevada State Agency

Appeal Other
- [ ] Appeal from Lower Court
- [ ] Other Judicial Review/Appeal

Civil Writ

Civil Writ
- [ ] Writ of Habeas Corpus
- [ ] Writ of Mandamus
- [ ] Writ of Quo Warrant
- [ ] Writ of Prohibition
- [ ] Other Civil Writ

Other Civil Filing

Other Civil Filing
- [ ] Compromise of Minor's Claim
- [ ] Foreign Judgment
- [ ] Other Civil Matters

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

04/28/2020
Date

Tmviswanathan
Signature of initiating party or representative

RECEIVED
APR 30 2020
CLERK OF THE COURT

See other side for family-related case filings.

CLARK COUNTY SCHOOL DISTRICT
OFFICE OF THE GENERAL COUNSEL
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Attorneys for Defendant,
CCSD Board of Trustees

DISTRICT COURT

CLARK COUNTY, NEVADA

Tenkasi Viswanathan, Plaintiff, v. Board of Trustees of the Clark County School District; Pat Skorkowski in his Official and Individual Capacity; Dr, Edward Goldman in his Official and Individual Capacity, Dr. Jeffrey Geihs in his Official and Individual Capacity; Neddy Alvarez in her Official and Individual Capacity; Sonya Houghton in her Official and Individual Capacity; and Louis Markouzis in his Official and Individual Capacity, Defendants.	Case No.: A-20-814819-C Dept. No.: 15 **Hearing Date: August 25, 2021** **Hearing Time: 9:00 a.m.**

ORDER

***GRANTING* DEFENDANT CLARK COUNTY SCHOOL DISTRICT BOARD OF TRUSTEES' MOTION FOR SUMMARY JUDGMENT;**

***GRANTING* DEFENDANT DR. EDWARD GOLDMAN'S JOINDER TO DEFENDANT CLARK COUNTY SCHOOL DISTRICT BOARD OF TRUSTEES' MOTION FOR SUMMARY JUDGMENT;**

***GRANTING* PLAINTIFF'S MOTION TO EXTEND THE TIME TO OPPOSE CLARK COUNTY SCHOOL DISTRICT BOARD OF TRUSTEES' MOTION FOR SUMMARY JUDGMENT;**

***DENYING* PLAINTIFF'S MOTION TO STRIKE DEFENDANT CLARK COUNTY SCHOOL DISTRICT BOARD OF TRUSTEES' MOTION FOR SUMMARY JUDGMENT;**

***DENYING* PLAINTIFF'S OBJECTIONS TO AND MOTION TO STRIKE PARTS OR ALL OF THE DECLARATIONS IN SUPPORT OF DEFENDANT CLARK COUNTY SCHOOL DISTRICT BOARD OF TRUSTEES' MOTION FOR SUMMARY JUDGMENT;**

***DENYING* AS MOOT DEFENDANT CLARK COUNTY SCHOOL DISTRICT BOARD OF TRUSTEES' COUNTERMOTION TO EXTEND THE DISPOSITIVE MOTION DEADLINE;**

AND

***GRANTING* PLAINTIFF'S REQUEST TO WITHDRAW PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

Defendant CLARK COUNTY SCHOOL DISTRICT BOARD OF TRUSTEES' Motion for Summary Judgment and related motions, having come on for hearing on August 25, 2021, Plaintiff TENKASI VISWANATHAN having been present and representing himself pro se, Defendant GOLDMAN having been represented by STEPHANIE A. BARKER, ESQ., of the law firm of Olson Cannon Gormley & Stoberski, and Defendant CLARK COUNTY SCHOOL DISTRICT (CCSD) BOARD OF TRUSTEES (BOT) having been represented by attorney CRYSTAL HERRERA, ESQ., of the Clark County School District Office of General Counsel;

The Court having read and considered the pleadings and papers on file herein, specifically as set forth in the procedural history hereinbelow;

AND the Court having entertained the oral arguments of counsel and of Plaintiff pro se, including Plaintiff's oral argument in opposition to Defendant Clark County School District Board of Trustees' Motion for Summary Judgment;

AND GOOD CAUSE APPEARING, the Court hereby makes the following Findings of Fact and Conclusions of Law, GRANTING Defendant Clark County School District Board of Trustees' Motion for Summary Judgment; GRANTING Plaintiff's Motion to Extend the Time to Oppose Clark County School District's Board of Trustees' Motion for Summary Judgment; DENYING Plaintiff's Motion to Strike Defendant Clark County School District's Board of

Trustees' Motion for Summary Judgment; DENYING Plaintiff's Objections to and Motion to Strike Parts or All of the Declarations in Support of Defendant Clark County School District's Board of Trustees' Motion for Summary Judgment; DENYING as Moot Defendant Clark County School District's Board of Trustees' Countermotion to Extend the Dispositive Motion Deadline; and Granting Plaintiff's Request to Withdraw Plaintiff's Motion for Partial Summary Judgment.

FINDINGS OF FACT

I. Plaintiff's Employment by the CCSD BOT

1. For the 2013-2014 school year, Plaintiff was employed by the CCSD BOT as a probationary teacher, pursuant to a Probationary Teaching Contract (Contract). The Contract contained a written provision stating that: "Probationary employees agree that they are employed only on an annual basis and that they have *no right to employment after the last day of the school year specified in this Contract* specified in writing." (Emphasis added.)

2. In 2013-2014, CCSD teacher contracts were governed by a Negotiated Agreement between the CCSD and the Clark County Education Association (Negotiated Agreement.), of which Plaintiff was a member. Article 36-8-2 of the Negotiated Agreement stated non-renewal of a probationary teacher's contract "shall not be subject to a hearing or arbitration under the provisions of this Article (36-8)."

3. For the 2013-2014 school year, Plaintiff's teaching performance was evaluated by way of three evaluations issued on November 25, 2013, January 30, 2014, and April 1, 2014, respectively.

4. Article 14-2 of the Negotiated Agreement provided:

> Any written response by the employee to any written report, comment, reprimand, or other document as provided for in Article 14-1 above shall also become a part of that employee's personnel file and shall remain a part of said file as long as the written report, comment, reprimand, or other document responded to remains a part of the file.

5. Plaintiff's second and third evaluations rated Plaintiff's overall teaching performance as not satisfactory and in each evaluation Plaintiff was advised that his performance

needed to improve and that his teaching contract may not be renewed for the subsequent school year.

6. During the 2013-2014 school year, Plaintiff also received two disciplinary documents concerning performance deficiencies– an Oral Warning dated January 24, 2014, and a Written Warning dated March 24, 2014.

7. Based on observations and other evidence stated in his evaluations and related discipline, CCSD administration recommended to the CCSD BOT that Plaintiff's contract not be renewed for the 2014-2015 school year.

8. On April 10, 2014, the CCSD BOT approved a resolution declining to offer Plaintiff a teaching contract for the 2014-2015 school year.

9. On April 28, 2014, Plaintiff was given written Notice of Non-Reemployment of Probationary Employee. The Notice, dated April 25, 2014, stated that Plaintiff's Contract would not be renewed for the coming school year.

10. On May 28, 2014, after his receipt of the Notice of Non-Renewal, Plaintiff forwarded a Grievance to CCSD's Employee Management Relations Department. The Grievance challenged the CCSD BOT's non-renewal decision.

11. Article 4-1 of the Negotiated Agreement provided:

> A grievance is defined as any dispute which arises regarding an interpretation, application or alleged violation of any of the provision of this Agreement.

12. Plaintiff did not submit a written grievance to any of his three evaluations before he submitted a Grievance on May 28, 2014, on the non-renewal decision by the CCSD BOT.

13. Article 4-5(a) of the Negotiated Agreement provided:

> If the grievance is not resolved at Step One, the grievant may submit in writing the unresolved grievance to the Associate Superintendent, Human Resources Division, or the Superintendent's designee not later than thirty (30) days after the grievant first knew of the act or condition upon which the grievance is based.

14. On August 1, 2014, Defendant Edward Goldman responded to Plaintiff's Grievance. Defendant Goldman's correspondence told Plaintiff that to the extent this Grievance was attempting to grieve Plaintiff's January 30, 2014, and April 1, 2014 performance

evaluations, the Grievance was untimely pursuant to Article 4-5(a) of the Negotiated Agreement which required that a grievance be filed not later than "thirty (30) days after the grievant first knew of the act or condition upon which the grievance is based." To the extent Plaintiff sought to contest his second and third evaluations, the Grievance was not submitted within 30 days of each evaluation and could not, therefore, be considered.

15. The CCSD BOT's decision not to renew Plaintiff's Contract was not grievable pursuant to the terms of the Negotiated Agreement and/or Nevada statute.

II. <u>Procedural Progress of This Litigation</u>

16. On May 11, 2020, slightly over six years after the non-renewal of Plaintiff's probationary teaching contract, Plaintiff filed the Complaint initiating this litigation. (Doc ID #1.) On August 4, 2020, Plaintiff filed an Amended Complaint. (Doc ID #6). As to Defendant CCSD BOT, Plaintiff contended its decision to non-renew Plaintiff's Contract was premature because the CCSD BOT did not grant him time to respond to his third evaluation.

17. Defendant CCSD BOT filed a Motion to Dismiss on August 27, 2020. (Doc ID #18). Plaintiff opposed the motion on September 14, 2020 (Doc ID #25), and Defendant CCSD BOT Replied to the opposition on October 12, 2020. (Doc ID #44).

18. On November 2, 2020, the Court granted in part, and denied in part, Defendant CCSD BOT's Motion to Dismiss (Doc ID #49), leaving two remaining claims for relief against Defendant CCSD BOT:

(1) Breach of Contract, and

(2) Breach of the Covenant of Good Faith and Fair Dealing.

19. On January 7, 2021, no Request for Exemption from Arbitration having been filed, the Court's Alternative Dispute Resolution office appointed an Arbitrator to hear this matter. (Doc ID #71).

20. After the close of discovery, Defendant Goldman and Defendant CCSD BOT filed separate motions for summary judgment on June 14, 2021. (Doc ID #86 and #87.) Defendant Goldman joined in the CCSD BOT Motion for Summary Judgment on June 15, 2021. (Doc ID #93). Plaintiff did not file opposition to either motion for summary judgment.

21. On June 14, 2021, Plaintiff filed a Motion for Partial Summary Judgment as to the CCSD BOT, (Doc ID #88), and on June 20, 2021, Plaintiff sought a withdrawal of the motion. (Doc ID #94 and #95). CCSD BOT opposed Plaintiff's Motion for Partial Summary Judgment on June 25, 2021. (Doc ID #100).

22. As of June 14, 2021, the date all parties' motions for summary judgment were filed, the Arbitration hearing was scheduled for July 28, 2021. (Doc ID #82).

23. On June 21, 2021, Plaintiff filed a Motion to Strike Defendant Goldman's Motion for Summary Judgment (Doc ID #96), and on that same day filed a Motion to Strike the CCSD BOT Motion for Summary Judgment. (Doc ID #96). Defendant CCSD BOT filed an Opposition to Plaintiff's Motion to Strike its Motion for Summary Judgment and Countermotion to Extend the Dispositive Motion Deadline, on June 25, 2021 (Doc ID #101). Defendant Goldman joined in the Opposition and Countermotion, on June 29, 2021. (Doc ID #106). Plaintiff's replies were filed on July 20, 2021. (Doc ID #123 and #124.).

24. On June 28, 2021, Plaintiff filed a Motion for Order Extending Time, seeking a seven-day extension of time to file and serve opposition to both Defendants' Motions for Summary Judgment. (Doc ID #102). Both Defendant Goldman and Defendant CCSD BOT filed notices of Non-Opposition to Plaintiff's requested extension of time. (Doc ID #105 and #119).

25. On July 6, 2021, Plaintiff filed Objections to and Motion to Strike all of parts of the Declarations in support of Defendant CCSD BOT's Motion for Summary Judgment and an amendment thereto on July 12, 2021. (Doc ID #109 and #117). Defendant CCSD BOT opposed the motion on July 21, 2021 (Doc ID #125).

26. On July 9, 2020, Plaintiff filed an Opposition to the CCSD BOT Countermotion to Extend the Dispositive Motion Deadline and to Defendant Goldman's Joinder in that Countermotion. (Doc ID #115).

27. The foregoing Motions were initially calendared for hearing on multiple dates – July 26, July 28, and August 9, 2021. On July 13, 2021, the parties stipulated to consolidate

hearing of the motions, and an Order was entered consolidating hearings for all motions to July 28, 2021. (Doc ID #120).

28. On July 13, 2021, the Arbitrator entered an order continuing the Arbitration hearing from July 28, 2021, to August 27, 2021. (Doc ID #121).

29. On July 26, 2021, the Court reset the consolidated hearings to be heard on August 18, 2021.

30. On August 13, 2021, the Arbitrator again entered an Order extending the Arbitration, resetting the hearing to October 6, 2021. (Doc ID #129).

31. On August 5, 2021, upon stipulation of the parties, the consolidated hearing was re-scheduled to August 25, 2021. (Doc ID #127).

32. On August 25, 2021, the Court heard and considered all pending motions in this matter, as set forth hereinabove.

33. As of the August 25, 2021 hearing on the motions for summary judgment, Plaintiff had filed no Opposition to Defendant CCSD BOT's Motion for Summary Judgment, even after seeking an extension of time to serve and file an opposition, with notice of non-opposition to the extension having been filed by Defendant Goldman and by Defendant CCSD BOT.

34. Plaintiff stated at oral argument that his intent was to strike the motions for summary judgment as untimely and to strike the Declarations in support thereof; then, if Plaintiff's Motions to Strike were denied, to thereafter file oppositions.

35. Plaintiff presented oral argument after the Court's ruling which was considered.

If any of the foregoing Findings of Fact is deemed more appropriately categorized as a Conclusion of Law, it shall be so treated.

CONCLUSIONS OF LAW

1. Plaintiff, as a pro se litigant must comply with the Rules of Civil Procedure. *Rodriguez v. Fiesta Palms*, 134 Nev. 654, 659, 428 P.3d 255, 258-59 (2018) ("a pro se litigant cannot use his alleged ignorance as a shield to protect him from the consequences of failing to comply with basic procedural requirements").

2. Public policy favors disposition on the merits of a case. *Huckabay Props., Inc. v. NC Auto Parts, LLC*, 322 P.3d 429, 433-34, 130 Nev. Adv. Op. 23 (2014).

I. Plaintiff's Motion To Extend the Time to Oppose Defendant CCSD BOT's Motion For Summary Judgment.

3. Plaintiff's Motion sought a seven (7) day extension of time to oppose Defendant CCSD BOT's Motion for Summary Judgment, Defendant Goldman's Joinder thereto, and Defendant Goldman's Motion for Summary Judgment pursuant to NRCP 6(b) and based on his personal circumstances.

4. Based on good cause shown and Defendants' filed non-oppositions, Plaintiff's request for additional time to oppose Defendants CCSD BOT's Motion for Summary Judgment and the corresponding Joinder, up to an including July 6, 2021, is appropriate.

II. Plaintiff's Motion To Strike Defendant CCSD BOT's Motion For Summary Judgment.

5. Plaintiff's Motion to Strike Defendant CCSD BOT's Motion for Summary Judgment is predicated on an asserted late filing of the summary judgment motion pursuant to NAR 4(E), which provides that dispositive motions be filed 45 days before an arbitration hearing. As applied to the July 28, 2021 Arbitration hearing in this matter, the filing date fell on June 13, 2021 – a Sunday. All parties, including Plaintiff, filed their summary judgment motions on June 14, 2021, the immediately following Monday. Plaintiff asserts that the motions were more appropriately due on the immediately preceding Friday – a difference of a single judicial day.

6. The Rules of Civil Procedure "should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding." NRCP 1.

7. Plaintiff's Motion for Partial Summary Judgment was filed the same date as Defendant CCSD BOT's Motion for Summary Judgment. Plaintiff calculated the deadline for the Motions for Summary Judgment the same as the Defendants and, therefore, it was disingenuous for the Plaintiff to seek a withdrawal of his Motion for Partial Summary Judgment

so that he could then argue that Defendants' Motions for Summary Judgment, including Defendant CCSD BOT's Motion, were untimely.

8. Plaintiff's Motion to Strike Defendant CCSD BOT's Motion for Summary Judgment is not properly brought under NRCP 12 which governs submission of motions regarding the pleadings as set forth therein. It does not govern response to a summary judgment motion brought pursuant to NRCP 56. NRCP 12 does not provide a procedural vehicle to strike a motion for summary judgment, timely or otherwise.

9. The timing of the filing of Defendant CCSD BOT's Motion for Summary Judgment caused no prejudice to Plaintiff as Plaintiff has had ample opportunity to oppose the Motion. Defendant CCSD BOT did not oppose Plaintiff's request for an extension of time to respond to the Motion, and the Motion did not come on for hearing until approximately ten weeks after the Motion for Summary Judgment was filed.

10. At the time Defendant CCSD BOT's Motion for Summary Judgment was filed, the Arbitration hearing was scheduled for July 28, 2021. It was subsequently moved by Stipulation of the parties first to August 25, 2021, and then to October 6, 2021, resulting in the Motion having been filed more than the 45 days allotted by NAR 4 for submission. The argument that Defendant CCSD BOT's Motion for Summary Judgment was untimely pursuant to NAR 4(E) is, therefore, mooted by the extension of the arbitration hearing date.

11. Plaintiff received full and fair notice of Defendant CCSD BOT's Motion for Summary Judgment, more than 45 days before an arbitration hearing in this matter and was given full and fair opportunity to oppose the Motion and to be heard in opposition.

12. There is no legal authority cited by Plaintiff which would justify striking Defendant CCSD BOT's Motion for Summary judgment in the circumstances presented.

III. CCSD BOT's Motion For Summary Judgment

A. Standard for Summary Judgment.

13. Summary judgment is appropriate and shall be granted if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to a judgment as a matter of law. NRCP 56. Summary judgment is a procedural tool by which "factually

insufficient claims or defenses [may] be isolated and prevented from going to trial with the attendant unwarranted consumption of public and private resources." *Boesiger v. Desert Appraisals*, 135 Nev. Adv. Op. 25, p. 4 (2019), quoting *Celotex Corp v. Catrett*, 477 U.S. 317, 327 (1986).

14. Summary judgment is appropriate under NRCP 56 when the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law. *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005).

15. When the nonmoving party bears the burden of persuasion at trial, as Plaintiff does here, then the moving party may show an absence of a genuine issue of material fact by either putting forth evidence that negates an essential element of the nonmoving party's claim or by pointing to the absence of evidence in support of the nonmoving party's case. *Cuzze v. University and Community College System of Nevada*, 123 Nev. 598, 602-603, 172 P.3d. 131 (2007), citing *Celotex*, 477 U.S. at 331.

16. To survive summary judgment, the nonmoving party must rely upon more than general allegations and conclusions set forth in the pleadings and must present specific facts demonstrating the existence of a genuine issue. *Boesiger v. Desert Appraisals*, 135 Nev. Adv. Op. 25, p. 4 (2019), citing *Wood, supra*, 121 Nev. at 732, 121 P.3d at 1031 (internal quotations omitted); *see also Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986) (the nonmoving party bears the burden to do more than simply show that there is some metaphysical doubt as to the operative facts in order to avoid summary judgment being entered in the moving party's favor.)

17. In accordance with NRCP 56 and the foregoing direction from the Nevada Supreme Court, the Court has read and considered Defendant CCSD BOT's Motion for Summary Judgment along with all of the declarations and exhibits attached thereto.

B. Breach of Contract.

18. The elements of a breach of contract claim in Nevada are: 1) plaintiff and defendant entered into a valid and existing contract; 2) plaintiff performed or was excused from performance; 3) defendant breached the contract; and 4) plaintiff sustained damage as a result of the breach. *Calloway v. City of Reno*, 116 Nev. 250, 993 P.2d 1259 (2000); *Saint v. Int'l Game Tech*, 434 F. Supp. 2d 913, 919-20 (D. Nev. 2006).

19. When a contract is clear on its face, it will be construed from the written language and enforced as written. *Ellison v. C.S.A.A.*, 106 Nev. 601, 603, 797 P.2d 975, 977 (1990); *White Cap Indus., Inc. v. Ruppert*, 119 Nev. 126, 128, 67 P.3d 318, 319 (2003) (unambiguous contracts are construed according to their plain language).

20. Plaintiff's Contract was between Plaintiff and the CCSD BOT.

21. By the written terms of the Contract, Plaintiff had no right to or expectation of continued employment beyond the 2013-2014 school year. The non-renewal by the CCSD BOT was contemplated by the Contract and was not in breach of its precise terms. The non-renewal by the CCSD BOT was even in accordance with the requirements set forth in NRS 391.31216 (2013).

22. By the written terms of the Contract, Plaintiff's ability to submit a response to his evaluations, did not postpone or delay the CCSD BOT's right not to renew his probationary contract, as argued by Plaintiff. The non-renewal by the CCSD BOT was even in accordance with the requirements set forth in NRS 391.31214 (2013).

23. The only temporal limitation as to when the CCSD BOT could notify a probationary employee, like Plaintiff, of the decision not to renew their contract was provided under Nevada law. In this respect, the law plainly and unambiguously stated:

> The board shall notify each probationary employee *in writing on or before May 1 of the first, second and third school years of the employee's probationary period*, as appropriate, whether the employee is to be reemployed for the second or third year of the probationary period of for the fourth school year as a postprobationary employee…

NRS 391.31216 (3) (2013) (Emphasis added); *see also, Clark County School Dist. v. Harris*, 913 P.2d 1268 (Nev. 1996) (per curiam) (explaining that because performance evaluations of annual probationary employees must be conducted no later than December 1, February 1, and April 1 of the school year, with a notice of reemployment to be sent by May 1, "this pattern reflects the legislature's intent to have the notice of reemployment issued after three performance evaluations are completed." The outer limit set forth in Nevada statute was satisfied in this case seeing as Plaintiff was notified of his Contract non-renewal on April 28, 2014.

24. The Contract was governed by the Negotiated Agreement which stated at Article 14-2 that "Any written response by the employee to any written report, comment, reprimand, or other document as provided for in Article 14-1 above shall also become a part of that employee's personnel file and shall remain a part of said file as long as the written report, comment, reprimand, or other document responded to remains a part of the file."

25. By the written terms of the Contract and Negotiated Agreement, Plaintiff's ability to submit a response to his evaluations did not change the evaluation—the response was to be attached to the evaluation in the teacher's personnel file. The Contract and Negotiated Agreement were consistent with NRS 391.31214 (7) (2013) ("A copy of the evaluation and the teacher's response must be permanently attached to the teacher's personnel file").

26. The Contract was governed by the Negotiated Agreement which stated at Article 36-8-2 that that non-renewal of a probationary teacher's contract "shall not be subject to a hearing or arbitration under the provisions of this Article (36-8)."

27. The Contract was governed by the Negotiated Agreement which stated at Article 4-5(a) that a grievance must be filed no later than "thirty (30) days after the grievant first knew of the act or condition upon which the grievance is based."

28. The CCSD BOT's decision not renew Plaintiff's Contract was in conformity with the Contract. The CCSD BOT has not committed a breach of contract with regard to Plaintiff's Contract.

C. Breach of the Implied Covenant of Good Faith and Fair Dealing.

29. Every contract imposes upon the contracting parties a duty of good faith and fair dealing. *Hilton Hotels Corp. v. Butch Lewis Prods., Inc.*, 107 Nev. 226, 808 P.2d 919, 922-23 (1991). The covenant of good faith and fair dealing that exists in every Nevada contract forbids arbitrary, unfair acts by one party to a contract that disadvantage the other. *Nelson v. Heer*, 123 Nev. 217, 226, 163 P.3d 420, 427 (2007).

30. A claim alleging breach of the implied covenant of good faith and fair dealing cannot be based on the same conduct establishing a separately pled breach of contract claim. *Id.*; *Shaw v. CitiMortgage, Inc.*, 201 F. Supp. 3d 1222, 1252 (D. Nev. 2016) (holding that the defendant's conduct that was a "direct and actual breach" of the subject contract could not support the plaintiff's implied-covenant claim).

31. Where there is no contractual duty to perform a specific act, the omission to perform that act does not constitute an arbitrary or unfair act to the plaintiff's disadvantage. *Nelson v. Heer*, 123 Nev. 226, 163 P.3d 420 (2007).

32. To establish a contractual breach of the implied covenant of good faith and fair dealing, a plaintiff must prove each of the elements of the claim: 1) plaintiff and defendant were parties to a contract; 2) defendant owed a duty of good faith to plaintiff; 3) defendant breached that duty by performing in a manner that was unfaithful to the purpose of the contract; and 4) plaintiff's justified expectations were thus denied. *See Perry v. Jordan*, 111 Nev. 943, 900 P.2d 335 (1995).

33. Plaintiff's Contract was between Plaintiff and the CCSD BOT.

34. Plaintiff's claim of breach of the implied covenant of good faith and fair dealing is based on the same act as the breach of contract claim—the CCSD BOT's decision to non-renew Plaintiff's Contract before Plaintiff submitted a response to his third evaluation. The action giving rise to Plaintiff's breach of contract claim against CCSD BOT cannot also give rise to Plaintiff's breach of the implied covenant of good faith and fair dealing claim against CCSD BOT.

35. Even if it could, CCSD BOT's actions were consistent with the Negotiated Agreement governing the Contract and faithful to the purpose of the Contract. By the written terms of the Contract, the CCSD BOT's non-renewal of Plaintiff was contemplated by the Contract and was not in breach of its precise terms. The CCSD BOT's non-renewal of Plaintiff was even in accordance with the requirements set forth in NRS 391.31216 (2013) and NRS 391.31214 (2013).

36. By the very written terms of the Contract, Plaintiff had no justified expectation in renewal of the Contract or to have the non-renewal decision postponed or delayed pending Plaintiff's response to his third evaluation. Neither the Contract nor the Negotiated Agreement gave rise to an evaluation process wherein the CCSD BOT had to wait for Plaintiff's response to his third evaluation before determining whether to renew his Contract.

37. Defendant CCSD BOT has not committed a breach of the covenant of good faith and fair dealing with regard to Plaintiff's Contract.

D. <u>The Negotiated Agreement Provides the Exclusive Remedy for Plaintiff's Contract-Based Claims to the Extent Based on the Terms of the Negotiated Agreement</u>.

38. Plaintiff's employment with CCSD was governed by NRS Chapter 288 and covered by the Negotiated Agreement. NRS Chapter 288 is "intended to apply similar principles" as recognized by federal labor laws. *Truckee Meadows Fire Protection District v. International Ass'n of Firefighters, Local 2487*, 109 Nev. 367, 374, 849 P.2d 343 (1993).

39. The Negotiated Agreement, as the collective bargaining agreement governing Plaintiff's employment, provides the "uniform and exclusive method for orderly settlement of employee grievance." *Republic Steel Corp. v. Maddox*, 379 U.S. 650, 653 (1952). ("If a grievance procedure cannot be made exclusive, it loses much of its desirability as a method of settlement. A rule creating such a situation would inevitably exert a disruptive influence upon both the negotiation and administration of collective agreements."); *see also* NRS 288.150(o) (identifying that a mandatory subject of collective bargaining includes "grievance and arbitration procedures for resolution of disputes relating to interpretation or application of collective bargaining agreements").

40. An employee covered by a collective bargaining agreement may not challenge his employment status through state law claims which would require interpretation of the collective bargaining agreement. *MGM Grand Hotel-Reno, Inc. v. Insley*, 102 Nev. 513, 517, 728 P.2d 821 (1986) (citing *Allis Chalmers v. Lueck*, 471 U.S. 202 (1985)) (alleged breach of implied covenant of good faith and fair dealing arising from collective bargaining agreement claim legally insufficient). The rule applies to claims "which would require the court to interpret the meaning and scope of a term" of the collective bargaining agreement. *MGM Grand Hotel-Reno, Inc. v. Insley*, supra, 102 Nev. at 517.

41. Plaintiff's claim against Defendant CCSD BOT is a result of his dissatisfaction with Defendant CCSD BOT's interpretation and/or application of the Negotiated Agreement, to Plaintiff's Grievance. Plaintiff's Grievance, whether as to his evaluations, the ability to respond to those evaluations, or the timeline to respond to the evaluations as against the non-renewal decision, is governed by the Negotiated Agreement.

42. Plaintiff's suit against Defendant CCSD BOT seeks this Court's interpretation of the Contract as governed by the Negotiated Agreement, and in pertinent part, Defendant CCSD BOT's compliance therewith.

43. The Negotiated Agreement governing Plaintiff's employment with the CCSD BOT provides the exclusive remedy for challenging disputes which arise regarding an interpretation, application or alleged violation of any of the provisions of the Negotiated Agreement.

44. Therefore, Plaintiff's contract-based claims are preempted by the Negotiated Agreement and Defendant CCSD BOT is entitled to summary judgment thereon.

E. <u>Plaintiff Did Not Exhaust Administrative Remedies under NRS 288.110(2) and NRS 288.280</u>.

45. The Employment Management Relations Board (EMRB) was created to oversee the implementation of Chapter 288 of Nevada Revised Statutes, and to relieve a burden on the courts. *Rosequist v. Int'l Ass;n of Firefighters*, 118 Nev. 444, 450-51, 49 P.3d 651, 655 (2002) *(abrogated on other grounds by Allstate Ins. Co. v. Thorpe*, 123 Nev. 565, 573 n. 22, 170 P.3d

989, 995 n. 22 (2007); *also abrogated in part by City of Henderson v. Kilgore*, 122 Nev. 331, 336 n. 10, 131 P.3d 11, 15 n. 10 (2006)); *see also* Hearing on S.B. 87 Before the Senate Comm. on Federal, State and Local Governments, 55th Leg. (Nev., Feb. 25, 1969).

46. "Once the Employee-Management Relations Act applies to a complaint, the remedies provided under the Act and before the [EMRB] must be exhausted before the district court [may hear the action]." *Rosequist* at 450-51, 655.

47. A claim of breach of contract based on the Negotiated Agreement must be heard by the EMRB to the extent that Plaintiff is contending he was prohibited from utilizing the grievance and arbitration process in the Negotiated Agreement. *City of Mesquite v. Eighth Judicial Dist. Court*, 135 Nev. 240, 243, 445 P.3d 1244, 1248 (2019).

48. Therefore, any attempt by Plaintiff to bring an action against the CCSD BOT for breach of the Negotiated Agreement fails because there is no evidence to support Plaintiff exhausted his administrative remedies before the EMRB.

IV. Plaintiff's Objections to and Motion To Strike Defendant CCSD BOT's Declarations in Support of its Motion For Summary Judgment

49. NRCP 56(c)(1) provides that a party may support a motion for summary judgment by "citing to particular parts of materials in the record, including . . . documents . . . affidavits or declarations . . . or other materials."

50. Affidavits or declarations must be based on personal knowledge, a competent declarant or affiant, and present admissible facts. NRCP 56(c)(4).

51. Plaintiff improperly takes issue with the declarations attached to Defendant CCSD BOT's Motion for Summary Judgment on the basis that the declarants were not competent, lacked personal knowledge, and/or made a typographical error.

52. The Declarations, made under penalty of perjury, set forth the basis of the declarant's respective knowledge of the facts stated therein, attesting to CCSD documents referenced therein – documents which authenticity has not been challenged by Plaintiff (NRCP 16.1(a)(3)(B)(ii)(b))—, and constitutes testimony to be offered by the declarants at the time of trial. The Declarations were made based on personal knowledge, attest to matters which the

declarants are competent to testify as stated in the Declarations, and attest to the truth and accuracy of the statements contained therein. *See* NRCP 55(c)(4), and NRS 50.015 ([e]very person is competent to be a witness except as otherwise provided in this title).

53. The Declarations sufficiently comply with the requirements of NRCP 56(c)(1) and (c)(4), and Plaintiff's Objections to and Motion to Strike the Declarations is denied.

V. <u>Defendant CCSD BOT's Countermotion to Extend the Dispositive Motion Deadline</u>.

54. At the time Defendant CCSD BOT's Motion for Summary Judgment was filed, the Arbitration hearing was scheduled for July 28, 2021.

55. NAR 4(E) provides for dispositive motions to be filed 45 days in advance of an arbitration hearing date.

56. All parties filed their motions for summary judgment on Monday, June 14, 2021, including Plaintiff. Plaintiff's motions to strike Defendants' motions for summary judgment asserts motions for summary judgment were due pursuant to NAR(E) on Friday, June 11 – a difference of a single judicial day. The CCSD BOT's countermotion, joined by Defendant Goldman, to extend the time for filing dispositive motions by the single judicial day to Monday, June 14, 2021, was both in good faith and reasonable in light of Plaintiff's own filing on June 14, 2021.

57. Further, the Arbitration hearing was subsequently moved by Stipulation of the parties first to August 25, 2021, and then to October 6, 2021. The change in the Arbitration hearing date resulted in Defendant CCSD BOT's Motion having been filed more than the 45 days allotted by NAR 4(E) for submission and consideration of dispositive motions in advance of the arbitration hearing.

58. Defendant CCSD BOT's request, joined by Defendant Goldman, for an extension of time to extend the dispositive motion deadline calendared from the July 28, 2021 Arbitration hearing is, therefore, without prejudice to Plaintiff – the original 45 day deadline was mooted by the extension of the Arbitration hearing date and by Defendants' non-opposition to the extension of time sought by Plaintiff to oppose Defendants' motions for summary judgment.

VI. Plaintiff's Motion for Partial Summary Judgment.

59. Plaintiff filed a Motion for Partial Summary Judgement as to CCSD BOT and subsequently sought to withdraw his motion.

60. Plaintiff's request to withdraw his Motion for Partial Summary Judgment is granted.

If any of the foregoing Conclusions of Law is deemed more appropriately categorized as a Finding of Fact, it shall be so treated.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

Plaintiff's Motion to Strike Defendant CCSD BOT's Motion for Summary Judgment is DENIED;

Defendant CCSD BOT's Countermotion to Extend the Dispositive Motion Deadline is DENIED as moot;

Plaintiff's Motion to Extend the Time to Oppose CCSD BOT's Motion for Summary Judgment is GRANTED;

Plaintiff's Objections to and Motion To Strike Defendant CCSD BOT's Declarations in Support of Defendant CCSD BOT's Motion For Summary Judgment, is DENIED;

Defendant CCSD BOT's Motion for Summary Judgment and Defendant Goldman's Joinder thereto are GRANTED on their merits; and

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Plaintiff's request to withdraw his Motion for Partial Summary Judgement is GRANTED.

IT IS SO ORDERED this _____ day of _____, 2021.

Dated this 20th day of October, 2021

DISTRICT COURT JUDGE

5C9 628 B7CB B8E8
Joe Hardy
District Court Judge

Submitted by:

CLARK COUNTY SCHOOL DISTRICT
OFFICE OF THE GENERAL COUNSEL

By: */s/ Crystal J. Herrera*
CRYSTAL J. HERRERA, ESQ.
Nevada Bar No. 12396
5100 West Sahara Avenue
Las Vegas, NV 89146
Attorneys for Defendant, CCSD Board of Trustees

Approved as to Form and Content by:

OLSON CANNON GORMLEY & STOBERSKI

By: */s/ Stephanie A. Barker*
STEPHANIE A. BARKER, ESQ.
Nevada Bar No. 3176
9950 West Cheyenne Ave.
Las Vegas, NV 89129
Attorneys for Defendant Dr. Edward Goldman

Approved as to Form and Content by:

Unable to Agree
TENKASI VISWANATHAN
Plaintiff, Pro Se

LETTER TO BOT on 10/14/21

Greetings, Attorney Herrera. I object to the inclusion of the paragraph below. It should be removed. The Court did not use language anywhere close to these words during the hearing.

Page 11: Paragraph 17

17. In accordance with NRCP 56 and the foregoing direction from the Nevada Supreme Court, the Court has read and considered Defendant's Motion for Summary Judgment along with all of the exhibits attached thereto, . . .

****

Page 18, Revised Order 3rd version. Line 15. There is some confusion with respect to the expression: "objections to" in the context of the Motion to Strike the Declarations.

Page 18 of The Revised Order, Line 15.

The expression "Objections to and" should be removed only on this Page 18 where the explicit "ORDER" of the Court appears. The Court never mentioned "objections."

You had responded to the suggestion as follows:

BOT RESPONSE**:** I will remove the references to "Objections to" with the exception of Paragraph 25 on page 6.

I had requested removal of the expression only in the ORDER PART, where it says :It is Ordered . . . " and lists a number of items. I referred to only this part of the "Proposed Order" as "Order Part". The rest set up the background and argument for the "ORDER".

So, I request that you put back "objections to" wherever "motion to strike declarations" appear and remove it from the concluding part, which I had referred to as "ORDER". It was so before in the 2nd Revised Order.

++

Attorney Barker had mentioned the advice given by the Judicial Executive Assistant to the Honorable Judge Joe Hardy. I assume that the same is applicable to your "Proposed" ORDER. You may attach this letter to the Proposed Order and submit it to the Court. I am, of course, open to further discussion.

May I request you to include in your letter to the Executive Assistant the following: I have communicated the same to you before.

(1) In spite of your answer to the issue of two separate orders, I am worried that the proposed Order does not comply with the Court's Minutes, which states clearly on Page 3 the following. (Please see top of Page 3 of minutes):

> Ms. Herrera to prepare the written Order regarding the Motions to Strike, as well as the Motions / Joinder for Summary Judgment, including Findings of Fact, Conclusions of Law, and forward it to Ms. Barker and Mr. Viswanathan for approval as to form and content.

It seems to me that the Court wants all motions to be consolidated and prepare a single order incorporating all findings and decisions. In my understanding, no separate order for Dr. Goldman's case was contemplated. I have raised this issue before.

(2) There is too much of repetition without justification for the same. On the other hand, it adds weight to some arguments. For example, your concession of extending the time to file a response to your motion for summary judgment.

(3) Secondly, the proposed Order is a verbatim adaptation of BOT'S Papers, among which are Your RESPONSE and OPPOSITION to Plaintiff's Objections to and Motion to strike the Declarations in Support of Defendants Motion for Summary Judgment, and BOT'S MOTION for Summary Judgment. I object to the verbatim adaptation. There are additions as pointed out via insertion of Paragraph 17, for example.

(4) Thirdly, I have other objections I have transmitted to you before. In particular, the question of mootness was raised for the first time during the hearing of August 25, 2021 in the context of Defendant BOT'S Countermotion for extending the time to file a dispositive motion. (Minutes, P.2, Line 6). Plaintiff raised the issue of exemptions to the Doctrine of Mootness (*Valdez-Jimenez v. Eighth Judicial Dist. Court, 460 P.3d 976 (Nev. 2020)*. But the Court did not deal with it. It is the Court which applied the question of mootness to the Motions for Summary Judgment.

(5) The Court never used the word "merits" and your proposed order uses the word as the concluding word of the Order in the portion granting MSJD.

(6) The court summarily rejected plaintiff's objections to and the motion to strike the declarations of BOT attached to the MSJD, even though they constitute a form of opposition to the motion for summary judgment and was filed on the date (07/06/2021) for which plaintiff had requested an extension of time to respond in opposition to the Defendant's Motion for Summary Judgment. Plaintiff's argument during the hearing was that BOT's MSJD did not meet the "threshold conditions" of Rule 56(c)(B)(2) and (4) on "Declarations". This argument made in the hearing is not included in the proposed order. On that basis plaintiff objected to the Declarations submitted by BOT. Without the

Declarations of Houghton and of Markouzis , Defendant BOT'S Motion for Summary judgment has no basis and no merit.

/s/ Tenkasi Viswanathan
8220 Hollister Ave
Las Vegas, NV 89131
T: (252) 706-0169
E: Viswanathan.tenkasi@gmail.com

Thank you.

Yours sincerely,
Tenkasi Viswanathan
8220 Hollister Ave
Las Vegas, NV 89131
T: (252) 706-0169

CCSD

Crystal Herrera [Office of the General Counsel] <herrec4@nv.ccsd.net>

Final Suggestions: Letter of 10-14-21

3 messages

Tenkasi Viswanathan <viswanathan.tenkasi@gmail.com> Thu, Oct 14, 2021 at 5:41 AM
To: "Crystal Herrera [Office of the General Counsel]" <herrec4@nv.ccsd.net>
Cc: "Attorney Stephanie Barker, Barker," <sbarker@ocgas.com>, "CCSD Case:Asst. Gl. Counsel: Crystal Herrera (5258), Elsa Pena (5373)," <penaec@nv.ccsd.net>, Nan Langenderfer <nlangenderfer@ocgas.com>

Greetings, Attorney Herrera. Attached is my Letter of 10-14-21. It clears the confusion regarding the insertion and removal of the expression "Objections to" . I am sorry for the confusion. Attached also is your 3rd Revised Order. Please excuse the delay. I am mailing this at dawn!

Thank you for your consideration and patience.

Sincerely,
Viso
Tenkasi Viswanathan
8220 Hollister Ave
Las Vegas, NV 89131
T: (252) 706-0169

3 attachments

10-14-21-Letter-To-BOT-Comments.docx
19K

10-13-21-Order re BOT MSJ (3rd revised).doc
135K

10-13-21-Order re BOT MSJ (3rd revised).doc
135K

Crystal Herrera [Office of the General Counsel] <herrec4@nv.ccsd.net> Thu, Oct 14, 2021 at 12:08 PM
To: Tenkasi Viswanathan <viswanathan.tenkasi@gmail.com>
Cc: "Attorney Stephanie Barker, Barker," <sbarker@ocgas.com>, "CCSD Case:Asst. Gl. Counsel: Crystal Herrera (5258), Elsa Pena (5373)," <penaec@nv.ccsd.net>, Nan Langenderfer <nlangenderfer@ocgas.com>

Mr. Viswanathan-

Attached is my response to your latest request for revisions. Please let me know by the end of the day if we have agreement on those terms. If we do, I will submit the Proposed Order with a copy of the letter that you provided outlining your outstanding objections to the Proposed Order.

Thank you,

Crystal Herrera

Senior Assistant General Counsel
Office of the General Counsel
Clark County School District
5100 West Sahara Avenue
Las Vegas, Nevada 89146
Ph: (702) 799-5373
Fax: (702) 799-5505
Email: herrec4@nv.ccsd.net

[Quoted text hidden]

10-14-21-Letter-To-BOT-Comments (4th revisions).docx
19K

Crystal Herrera [Office of the General Counsel] <herrec4@nv.ccsd.net> Fri, Oct 15, 2021 at 2:41 PM
To: Tenkasi Viswanathan <viswanathan.tenkasi@gmail.com>
Cc: "Attorney Stephanie Barker, Barker," <sbarker@ocgas.com>, "CCSD Case:Asst. Gl. Counsel: Crystal Herrera (5258), Elsa Pena (5373)," <penaec@nv.ccsd.net>, Nan Langenderfer <nlangenderfer@ocgas.com>

Mr. Viswanthan-

Not having heard from you. I will be submitting the CCSD BOT's proposed order to the Court today with a copy of your last correspondence outlining your objections.

Thank you,

Crystal Herrera

Senior Assistant General Counsel
Office of the General Counsel
Clark County School District
5100 West Sahara Avenue
Las Vegas, Nevada 89146
Ph: (702) 799-5373
Fax: (702) 799-5505
Email: herrec4@nv.ccsd.net

[Quoted text hidden]

CCSD

Crystal Herrera [Office of the General Counsel] <herrec4@nv.ccsd.net>

RE: Viswanathan Order Re: CCSD BOT MSJ

1 message

Stephanie Barker <sbarker@ocgas.com> Thu, Oct 14, 2021 at 12:33 PM
To: "Crystal Herrera [Office of the General Counsel]" <herrec4@nv.ccsd.net>
Cc: Tenkasi Viswanathan <viswanathan.tenkasi@gmail.com>, Nan Langenderfer <nlangenderfer@ocgas.com>, "Elsa Pena [Office of the General Counsel]" <penaec@nv.ccsd.net>

Yes. You are authorized to file the Order with my electronic signature.

Thank you.

Stephanie A. Barker, Esq.

Olson Cannon Gormley & Stoberski

9950 West Cheyenne Avenue

Las Vegas, Nevada 89129

PH: 702-384-4012

sbarker@ocgas.com

From: Crystal Herrera [Office of the General Counsel] <herrec4@nv.ccsd.net>
Sent: Thursday, October 14, 2021 12:31 PM
To: Stephanie Barker <sbarker@ocgas.com>
Cc: Tenkasi Viswanathan <viswanathan.tenkasi@gmail.com>; Nan Langenderfer <nlangenderfer@ocgas.com>; Elsa Pena [Office of the General Counsel] <penaec@nv.ccsd.net>
Subject:

Ms. Barker-

Please disregard my previous email. I inadvertently attached the wrong document.

Attached is a copy of the final proposed Order on the Clark County School District Board of Trustees' Motion for Summary Judgment, et al. Please let me know if I am authorized to affix your electronic signature to the Order.

Thank you,

Crystal Herrera

Senior Assistant General Counsel

Office of the General Counsel

Clark County School District

5100 West Sahara Avenue

Las Vegas, Nevada 89146

Ph: (702) 799-5373

Fax: (702) 799-5505

Email: herrec4@nv.ccsd.net

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Tenkasi Viswanathan, Plaintiff(s) vs. Board of Trustees of the Clark County School District, Defendant(s)	CASE NO: A-20-814819-C DEPT. NO. Department 15

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 10/20/2021

James Fontano	jim@heatonfontano.com
Nan Langenderfer	nlangenderfer@ocgas.com
Cheri Hartle	chartle@ocgas.com
Crystal Herrera	herrec4@nv.ccsd.net
Elsa Pena	penaec@nv.ccsd.net
Stephanie Barker	sbarker@ocgas.com
Tenkasi Viswanathan	Viswanathan.tenkasi@gmail.com

CLARK COUNTY SCHOOL DISTRICT
OFFICE OF THE GENERAL COUNSEL
CRYSTAL J. HERRERA, ESQ.
Nevada Bar No. 12396
5100 West Sahara Avenue
Las Vegas, Nevada 89146
Telephone: (702) 799-5373
Facsimile: (702) 799-7243
Herrec4@nv.ccsd.net
Attorneys for Defendant CCSD Board of Trustees

DISTRICT COURT

CLARK COUNTY, NEVADA

Tenkasi Viswanathan, Plaintiff, v. Board of Trustees of the Clark County School District; Pat Skorkowski in his Official and Individual Capacity; Dr, Edward Goldman in his Official and Individual Capacity, Dr. Jeffrey Geihs in his Official and Individual Capacity; Neddy Alvarez in her Official and Individual Capacity; Sonya Houghton in her Official and Individual Capacity; and Louis Markouzis in his Official and Individual Capacity, Defendants.	Case No.: A-20-814819-C Dept. No.: 15

NOTICE OF ENTRY OF ORDER

NOTICE IS HEREBY GIVEN that an Order was entered in the above-captioned matter on October 20, 2021. A copy of said Order is attached hereto as Exhibit "A".

DATED this 20th day of October, 2021.

CLARK COUNTY SCHOOL DISTRICT
OFFICE OF THE GENERAL COUNSEL

By: */s/ Crystal J. Herrera*
Crystal J. Herrera (#12396)
5100 West Sahara Avenue
Las Vegas, Nevada 89146
Attorney for Defendant CCSD Board of Trustees

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 20th day of October, 2021, I served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER** to be electronically served, via the EFP Vendor System, upon the following:

Tenkasi M. Viswanathan
8220 Hollister Ave.
Las Vegas, NV 89131
Viswanathan.Tenkasi@gmail.com
Plaintiff pro se

Stephanie A. Barker, Esq.
OLSON CANNON GORMELY & STOBERSKI
9950 W. Cheyenne Ave.
Las Vegas, NV 89129
sbarker@ocgas.com
Attorneys for Defendant Dr. Edward Goldman

/s/ Elsa C. Peña
AN EMPLOYEE OF THE OFFICE OF THE GENERAL COUNSEL-CCSD

EXHIBIT A

Electronically Filed
10/20/2021 1:18 PM
CLERK OF THE COURT

CLARK COUNTY SCHOOL DISTRICT
OFFICE OF THE GENERAL COUNSEL
CRYSTAL J. HERRERA, ESQ.
Nevada Bar No. 12396
5100 West Sahara Avenue
Las Vegas, Nevada 89146
Telephone: (702) 799-5373
Facsimile: (702) 799-7243
herrec4@nv.ccsd.net
Attorneys for Defendant,
CCSD Board of Trustees

DISTRICT COURT

CLARK COUNTY, NEVADA

Tenkasi Viswanathan, Plaintiff, v. Board of Trustees of the Clark County School District; Pat Skorkowski in his Official and Individual Capacity; Dr, Edward Goldman in his Official and Individual Capacity, Dr. Jeffrey Geihs in his Official and Individual Capacity; Neddy Alvarez in her Official and Individual Capacity; Sonya Houghton in her Official and Individual Capacity; and Louis Markouzis in his Official and Individual Capacity, Defendants.	Case No.: A-20-814819-C Dept. No.: 15 **Hearing Date: August 25, 2021** **Hearing Time: 9:00 a.m.**

ORDER

***GRANTING* DEFENDANT CLARK COUNTY SCHOOL DISTRICT BOARD OF TRUSTEES' MOTION FOR SUMMARY JUDGMENT;**

***GRANTING* DEFENDANT DR. EDWARD GOLDMAN'S JOINDER TO DEFENDANT CLARK COUNTY SCHOOL DISTRICT BOARD OF TRUSTEES' MOTION FOR SUMMARY JUDGMENT;**

***GRANTING* PLAINTIFF'S MOTION TO EXTEND THE TIME TO OPPOSE CLARK COUNTY SCHOOL DISTRICT BOARD OF TRUSTEES' MOTION FOR SUMMARY JUDGMENT;**

***DENYING* PLAINTIFF'S MOTION TO STRIKE DEFENDANT CLARK COUNTY SCHOOL DISTRICT BOARD OF TRUSTEES' MOTION FOR SUMMARY JUDGMENT;**

***DENYING* PLAINTIFF'S OBJECTIONS TO AND MOTION TO STRIKE PARTS OR ALL OF THE DECLARATIONS IN SUPPORT OF DEFENDANT CLARK COUNTY SCHOOL DISTRICT BOARD OF TRUSTEES' MOTION FOR SUMMARY JUDGMENT;**

***DENYING* AS MOOT DEFENDANT CLARK COUNTY SCHOOL DISTRICT BOARD OF TRUSTEES' COUNTERMOTION TO EXTEND THE DISPOSITIVE MOTION DEADLINE;**

AND

***GRANTING* PLAINTIFF'S REQUEST TO WITHDRAW PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

Defendant CLARK COUNTY SCHOOL DISTRICT BOARD OF TRUSTEES' Motion for Summary Judgment and related motions, having come on for hearing on August 25, 2021, Plaintiff TENKASI VISWANATHAN having been present and representing himself pro se, Defendant GOLDMAN having been represented by STEPHANIE A. BARKER, ESQ., of the law firm of Olson Cannon Gormley & Stoberski, and Defendant CLARK COUNTY SCHOOL DISTRICT (CCSD) BOARD OF TRUSTEES (BOT) having been represented by attorney CRYSTAL HERRERA, ESQ., of the Clark County School District Office of General Counsel;

The Court having read and considered the pleadings and papers on file herein, specifically as set forth in the procedural history hereinbelow;

AND the Court having entertained the oral arguments of counsel and of Plaintiff pro se, including Plaintiff's oral argument in opposition to Defendant Clark County School District Board of Trustees' Motion for Summary Judgment;

AND GOOD CAUSE APPEARING, the Court hereby makes the following Findings of Fact and Conclusions of Law, GRANTING Defendant Clark County School District Board of Trustees' Motion for Summary Judgment; GRANTING Plaintiff's Motion to Extend the Time to Oppose Clark County School District's Board of Trustees' Motion for Summary Judgment; DENYING Plaintiff's Motion to Strike Defendant Clark County School District's Board of

Trustees' Motion for Summary Judgment; DENYING Plaintiff's Objections to and Motion to Strike Parts or All of the Declarations in Support of Defendant Clark County School District's Board of Trustees' Motion for Summary Judgment; DENYING as Moot Defendant Clark County School District's Board of Trustees' Countermotion to Extend the Dispositive Motion Deadline; and Granting Plaintiff's Request to Withdraw Plaintiff's Motion for Partial Summary Judgment.

FINDINGS OF FACT

I. Plaintiff's Employment by the CCSD BOT

1. For the 2013-2014 school year, Plaintiff was employed by the CCSD BOT as a probationary teacher, pursuant to a Probationary Teaching Contract (Contract). The Contract contained a written provision stating that: "Probationary employees agree that they are employed only on an annual basis and that they have *no right to employment after the last day of the school year specified in this Contract* specified in writing." (Emphasis added.)

2. In 2013-2014, CCSD teacher contracts were governed by a Negotiated Agreement between the CCSD and the Clark County Education Association (Negotiated Agreement.), of which Plaintiff was a member. Article 36-8-2 of the Negotiated Agreement stated non-renewal of a probationary teacher's contract "shall not be subject to a hearing or arbitration under the provisions of this Article (36-8)."

3. For the 2013-2014 school year, Plaintiff's teaching performance was evaluated by way of three evaluations issued on November 25, 2013, January 30, 2014, and April 1, 2014, respectively.

4. Article 14-2 of the Negotiated Agreement provided:

> Any written response by the employee to any written report, comment, reprimand, or other document as provided for in Article 14-1 above shall also become a part of that employee's personnel file and shall remain a part of said file as long as the written report, comment, reprimand, or other document responded to remains a part of the file.

5. Plaintiff's second and third evaluations rated Plaintiff's overall teaching performance as not satisfactory and in each evaluation Plaintiff was advised that his performance

needed to improve and that his teaching contract may not be renewed for the subsequent school year.

6. During the 2013-2014 school year, Plaintiff also received two disciplinary documents concerning performance deficiencies– an Oral Warning dated January 24, 2014, and a Written Warning dated March 24, 2014.

7. Based on observations and other evidence stated in his evaluations and related discipline, CCSD administration recommended to the CCSD BOT that Plaintiff's contract not be renewed for the 2014-2015 school year.

8. On April 10, 2014, the CCSD BOT approved a resolution declining to offer Plaintiff a teaching contract for the 2014-2015 school year.

9. On April 28, 2014, Plaintiff was given written Notice of Non-Reemployment of Probationary Employee. The Notice, dated April 25, 2014, stated that Plaintiff's Contract would not be renewed for the coming school year.

10. On May 28, 2014, after his receipt of the Notice of Non-Renewal, Plaintiff forwarded a Grievance to CCSD's Employee Management Relations Department. The Grievance challenged the CCSD BOT's non-renewal decision.

11. Article 4-1 of the Negotiated Agreement provided:

> A grievance is defined as any dispute which arises regarding an interpretation, application or alleged violation of any of the provision of this Agreement.

12. Plaintiff did not submit a written grievance to any of his three evaluations before he submitted a Grievance on May 28, 2014, on the non-renewal decision by the CCSD BOT.

13. Article 4-5(a) of the Negotiated Agreement provided:

> If the grievance is not resolved at Step One, the grievant may submit in writing the unresolved grievance to the Associate Superintendent, Human Resources Division, or the Superintendent's designee not later than thirty (30) days after the grievant first knew of the act or condition upon which the grievance is based.

14. On August 1, 2014, Defendant Edward Goldman responded to Plaintiff's Grievance. Defendant Goldman's correspondence told Plaintiff that to the extent this Grievance was attempting to grieve Plaintiff's January 30, 2014, and April 1, 2014 performance

evaluations, the Grievance was untimely pursuant to Article 4-5(a) of the Negotiated Agreement which required that a grievance be filed not later than "thirty (30) days after the grievant first knew of the act or condition upon which the grievance is based." To the extent Plaintiff sought to contest his second and third evaluations, the Grievance was not submitted within 30 days of each evaluation and could not, therefore, be considered.

15. The CCSD BOT's decision not to renew Plaintiff's Contract was not grievable pursuant to the terms of the Negotiated Agreement and/or Nevada statute.

II. <u>Procedural Progress of This Litigation</u>

16. On May 11, 2020, slightly over six years after the non-renewal of Plaintiff's probationary teaching contract, Plaintiff filed the Complaint initiating this litigation. (Doc ID #1.) On August 4, 2020, Plaintiff filed an Amended Complaint. (Doc ID #6). As to Defendant CCSD BOT, Plaintiff contended its decision to non-renew Plaintiff's Contract was premature because the CCSD BOT did not grant him time to respond to his third evaluation.

17. Defendant CCSD BOT filed a Motion to Dismiss on August 27, 2020. (Doc ID #18). Plaintiff opposed the motion on September 14, 2020 (Doc ID #25), and Defendant CCSD BOT Replied to the opposition on October 12, 2020. (Doc ID #44).

18. On November 2, 2020, the Court granted in part, and denied in part, Defendant CCSD BOT's Motion to Dismiss (Doc ID #49), leaving two remaining claims for relief against Defendant CCSD BOT:

(1) Breach of Contract, and

(2) Breach of the Covenant of Good Faith and Fair Dealing.

19. On January 7, 2021, no Request for Exemption from Arbitration having been filed, the Court's Alternative Dispute Resolution office appointed an Arbitrator to hear this matter. (Doc ID #71).

20. After the close of discovery, Defendant Goldman and Defendant CCSD BOT filed separate motions for summary judgment on June 14, 2021. (Doc ID #86 and #87.) Defendant Goldman joined in the CCSD BOT Motion for Summary Judgment on June 15, 2021. (Doc ID #93). Plaintiff did not file opposition to either motion for summary judgment.

21. On June 14, 2021, Plaintiff filed a Motion for Partial Summary Judgment as to the CCSD BOT, (Doc ID #88), and on June 20, 2021, Plaintiff sought a withdrawal of the motion. (Doc ID #94 and #95). CCSD BOT opposed Plaintiff's Motion for Partial Summary Judgment on June 25, 2021. (Doc ID #100).

22. As of June 14, 2021, the date all parties' motions for summary judgment were filed, the Arbitration hearing was scheduled for July 28, 2021. (Doc ID #82).

23. On June 21, 2021, Plaintiff filed a Motion to Strike Defendant Goldman's Motion for Summary Judgment (Doc ID #96), and on that same day filed a Motion to Strike the CCSD BOT Motion for Summary Judgment. (Doc ID #96). Defendant CCSD BOT filed an Opposition to Plaintiff's Motion to Strike its Motion for Summary Judgment and Countermotion to Extend the Dispositive Motion Deadline, on June 25, 2021 (Doc ID #101). Defendant Goldman joined in the Opposition and Countermotion, on June 29, 2021. (Doc ID #106). Plaintiff's replies were filed on July 20, 2021. (Doc ID #123 and #124.).

24. On June 28, 2021, Plaintiff filed a Motion for Order Extending Time, seeking a seven-day extension of time to file and serve opposition to both Defendants' Motions for Summary Judgment. (Doc ID #102). Both Defendant Goldman and Defendant CCSD BOT filed notices of Non-Opposition to Plaintiff's requested extension of time. (Doc ID #105 and #119).

25. On July 6, 2021, Plaintiff filed Objections to and Motion to Strike all of parts of the Declarations in support of Defendant CCSD BOT's Motion for Summary Judgment and an amendment thereto on July 12, 2021. (Doc ID #109 and #117). Defendant CCSD BOT opposed the motion on July 21, 2021 (Doc ID #125).

26. On July 9, 2020, Plaintiff filed an Opposition to the CCSD BOT Countermotion to Extend the Dispositive Motion Deadline and to Defendant Goldman's Joinder in that Countermotion. (Doc ID #115).

27. The foregoing Motions were initially calendared for hearing on multiple dates – July 26, July 28, and August 9, 2021. On July 13, 2021, the parties stipulated to consolidate

hearing of the motions, and an Order was entered consolidating hearings for all motions to July 28, 2021. (Doc ID #120).

28. On July 13, 2021, the Arbitrator entered an order continuing the Arbitration hearing from July 28, 2021, to August 27, 2021. (Doc ID #121).

29. On July 26, 2021, the Court reset the consolidated hearings to be heard on August 18, 2021.

30. On August 13, 2021, the Arbitrator again entered an Order extending the Arbitration, resetting the hearing to October 6, 2021. (Doc ID #129).

31. On August 5, 2021, upon stipulation of the parties, the consolidated hearing was re-scheduled to August 25, 2021. (Doc ID #127).

32. On August 25, 2021, the Court heard and considered all pending motions in this matter, as set forth hereinabove.

33. As of the August 25, 2021 hearing on the motions for summary judgment, Plaintiff had filed no Opposition to Defendant CCSD BOT's Motion for Summary Judgment, even after seeking an extension of time to serve and file an opposition, with notice of non-opposition to the extension having been filed by Defendant Goldman and by Defendant CCSD BOT.

34. Plaintiff stated at oral argument that his intent was to strike the motions for summary judgment as untimely and to strike the Declarations in support thereof; then, if Plaintiff's Motions to Strike were denied, to thereafter file oppositions.

35. Plaintiff presented oral argument after the Court's ruling which was considered.

If any of the foregoing Findings of Fact is deemed more appropriately categorized as a Conclusion of Law, it shall be so treated.

CONCLUSIONS OF LAW

1. Plaintiff, as a pro se litigant must comply with the Rules of Civil Procedure. *Rodriguez v. Fiesta Palms*, 134 Nev. 654, 659, 428 P.3d 255, 258-59 (2018) ("a pro se litigant cannot use his alleged ignorance as a shield to protect him from the consequences of failing to comply with basic procedural requirements").

2. Public policy favors disposition on the merits of a case. *Huckabay Props., Inc. v. NC Auto Parts, LLC*, 322 P.3d 429, 433-34, 130 Nev. Adv. Op. 23 (2014).

I. Plaintiff's Motion To Extend the Time to Oppose Defendant CCSD BOT's Motion For Summary Judgment.

3. Plaintiff's Motion sought a seven (7) day extension of time to oppose Defendant CCSD BOT's Motion for Summary Judgment, Defendant Goldman's Joinder thereto, and Defendant Goldman's Motion for Summary Judgment pursuant to NRCP 6(b) and based on his personal circumstances.

4. Based on good cause shown and Defendants' filed non-oppositions, Plaintiff's request for additional time to oppose Defendants CCSD BOT's Motion for Summary Judgment and the corresponding Joinder, up to an including July 6, 2021, is appropriate.

II. Plaintiff's Motion To Strike Defendant CCSD BOT's Motion For Summary Judgment.

5. Plaintiff's Motion to Strike Defendant CCSD BOT's Motion for Summary Judgment is predicated on an asserted late filing of the summary judgment motion pursuant to NAR 4(E), which provides that dispositive motions be filed 45 days before an arbitration hearing. As applied to the July 28, 2021 Arbitration hearing in this matter, the filing date fell on June 13, 2021 – a Sunday. All parties, including Plaintiff, filed their summary judgment motions on June 14, 2021, the immediately following Monday. Plaintiff asserts that the motions were more appropriately due on the immediately preceding Friday – a difference of a single judicial day.

6. The Rules of Civil Procedure "should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding." NRCP 1.

7. Plaintiff's Motion for Partial Summary Judgment was filed the same date as Defendant CCSD BOT's Motion for Summary Judgment. Plaintiff calculated the deadline for the Motions for Summary Judgment the same as the Defendants and, therefore, it was disingenuous for the Plaintiff to seek a withdrawal of his Motion for Partial Summary Judgment

so that he could then argue that Defendants' Motions for Summary Judgment, including Defendant CCSD BOT's Motion, were untimely.

8. Plaintiff's Motion to Strike Defendant CCSD BOT's Motion for Summary Judgment is not properly brought under NRCP 12 which governs submission of motions regarding the pleadings as set forth therein. It does not govern response to a summary judgment motion brought pursuant to NRCP 56. NRCP 12 does not provide a procedural vehicle to strike a motion for summary judgment, timely or otherwise.

9. The timing of the filing of Defendant CCSD BOT's Motion for Summary Judgment caused no prejudice to Plaintiff as Plaintiff has had ample opportunity to oppose the Motion. Defendant CCSD BOT did not oppose Plaintiff's request for an extension of time to respond to the Motion, and the Motion did not come on for hearing until approximately ten weeks after the Motion for Summary Judgment was filed.

10. At the time Defendant CCSD BOT's Motion for Summary Judgment was filed, the Arbitration hearing was scheduled for July 28, 2021. It was subsequently moved by Stipulation of the parties first to August 25, 2021, and then to October 6, 2021, resulting in the Motion having been filed more than the 45 days allotted by NAR 4 for submission. The argument that Defendant CCSD BOT's Motion for Summary Judgment was untimely pursuant to NAR 4(E) is, therefore, mooted by the extension of the arbitration hearing date.

11. Plaintiff received full and fair notice of Defendant CCSD BOT's Motion for Summary Judgment, more than 45 days before an arbitration hearing in this matter and was given full and fair opportunity to oppose the Motion and to be heard in opposition.

12. There is no legal authority cited by Plaintiff which would justify striking Defendant CCSD BOT's Motion for Summary judgment in the circumstances presented.

III. CCSD BOT's Motion For Summary Judgment

A. Standard for Summary Judgment.

13. Summary judgment is appropriate and shall be granted if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to a judgment as a matter of law. NRCP 56. Summary judgment is a procedural tool by which "factually

insufficient claims or defenses [may] be isolated and prevented from going to trial with the attendant unwarranted consumption of public and private resources." *Boesiger v. Desert Appraisals*, 135 Nev. Adv. Op. 25, p. 4 (2019), quoting *Celotex Corp v. Catrett*, 477 U.S. 317, 327 (1986).

14. Summary judgment is appropriate under NRCP 56 when the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law. *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005).

15. When the nonmoving party bears the burden of persuasion at trial, as Plaintiff does here, then the moving party may show an absence of a genuine issue of material fact by either putting forth evidence that negates an essential element of the nonmoving party's claim or by pointing to the absence of evidence in support of the nonmoving party's case. *Cuzze v. University and Community College System of Nevada*, 123 Nev. 598, 602-603, 172 P.3d. 131 (2007), citing *Celotex*, 477 U.S. at 331.

16. To survive summary judgment, the nonmoving party must rely upon more than general allegations and conclusions set forth in the pleadings and must present specific facts demonstrating the existence of a genuine issue. *Boesiger v. Desert Appraisals*, 135 Nev. Adv. Op. 25, p. 4 (2019), citing *Wood, supra*, 121 Nev. at 732, 121 P.3d at 1031 (internal quotations omitted); *see also Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986) (the nonmoving party bears the burden to do more than simply show that there is some metaphysical doubt as to the operative facts in order to avoid summary judgment being entered in the moving party's favor.)

17. In accordance with NRCP 56 and the foregoing direction from the Nevada Supreme Court, the Court has read and considered Defendant CCSD BOT's Motion for Summary Judgment along with all of the declarations and exhibits attached thereto.

B. Breach of Contract.

18. The elements of a breach of contract claim in Nevada are: 1) plaintiff and defendant entered into a valid and existing contract; 2) plaintiff performed or was excused from performance; 3) defendant breached the contract; and 4) plaintiff sustained damage as a result of the breach. *Calloway v. City of Reno*, 116 Nev. 250, 993 P.2d 1259 (2000); *Saint v. Int'l Game Tech*, 434 F. Supp. 2d 913, 919-20 (D. Nev. 2006).

19. When a contract is clear on its face, it will be construed from the written language and enforced as written. *Ellison v. C.S.A.A.*, 106 Nev. 601, 603, 797 P.2d 975, 977 (1990); *White Cap Indus., Inc. v. Ruppert*, 119 Nev. 126, 128, 67 P.3d 318, 319 (2003) (unambiguous contracts are construed according to their plain language).

20. Plaintiff's Contract was between Plaintiff and the CCSD BOT.

21. By the written terms of the Contract, Plaintiff had no right to or expectation of continued employment beyond the 2013-2014 school year. The non-renewal by the CCSD BOT was contemplated by the Contract and was not in breach of its precise terms. The non-renewal by the CCSD BOT was even in accordance with the requirements set forth in NRS 391.31216 (2013).

22. By the written terms of the Contract, Plaintiff's ability to submit a response to his evaluations, did not postpone or delay the CCSD BOT's right not to renew his probationary contract, as argued by Plaintiff. The non-renewal by the CCSD BOT was even in accordance with the requirements set forth in NRS 391.31214 (2013).

23. The only temporal limitation as to when the CCSD BOT could notify a probationary employee, like Plaintiff, of the decision not to renew their contract was provided under Nevada law. In this respect, the law plainly and unambiguously stated:

> The board shall notify each probationary employee *in writing on or before May 1 of the first, second and third school years of the employee's probationary period*, as appropriate, whether the employee is to be reemployed for the second or third year of the probationary period of for the fourth school year as a postprobationary employee…

NRS 391.31216 (3) (2013) (Emphasis added); *see also, Clark County School Dist. v. Harris*, 913 P.2d 1268 (Nev. 1996) (per curiam) (explaining that because performance evaluations of annual probationary employees must be conducted no later than December 1, February 1, and April 1 of the school year, with a notice of reemployment to be sent by May 1, "this pattern reflects the legislature's intent to have the notice of reemployment issued after three performance evaluations are completed." The outer limit set forth in Nevada statute was satisfied in this case seeing as Plaintiff was notified of his Contract non-renewal on April 28, 2014.

24. The Contract was governed by the Negotiated Agreement which stated at Article 14-2 that "Any written response by the employee to any written report, comment, reprimand, or other document as provided for in Article 14-1 above shall also become a part of that employee's personnel file and shall remain a part of said file as long as the written report, comment, reprimand, or other document responded to remains a part of the file."

25. By the written terms of the Contract and Negotiated Agreement, Plaintiff's ability to submit a response to his evaluations did not change the evaluation—the response was to be attached to the evaluation in the teacher's personnel file. The Contract and Negotiated Agreement were consistent with NRS 391.31214 (7) (2013) ("A copy of the evaluation and the teacher's response must be permanently attached to the teacher's personnel file").

26. The Contract was governed by the Negotiated Agreement which stated at Article 36-8-2 that that non-renewal of a probationary teacher's contract "shall not be subject to a hearing or arbitration under the provisions of this Article (36-8)."

27. The Contract was governed by the Negotiated Agreement which stated at Article 4-5(a) that a grievance must be filed no later than "thirty (30) days after the grievant first knew of the act or condition upon which the grievance is based."

28. The CCSD BOT's decision not renew Plaintiff's Contract was in conformity with the Contract. The CCSD BOT has not committed a breach of contract with regard to Plaintiff's Contract.

C. Breach of the Implied Covenant of Good Faith and Fair Dealing.

29. Every contract imposes upon the contracting parties a duty of good faith and fair dealing. *Hilton Hotels Corp. v. Butch Lewis Prods., Inc.*, 107 Nev. 226, 808 P.2d 919, 922-23 (1991). The covenant of good faith and fair dealing that exists in every Nevada contract forbids arbitrary, unfair acts by one party to a contract that disadvantage the other. *Nelson v. Heer*, 123 Nev. 217, 226, 163 P.3d 420, 427 (2007).

30. A claim alleging breach of the implied covenant of good faith and fair dealing cannot be based on the same conduct establishing a separately pled breach of contract claim. *Id.*; *Shaw v. CitiMortgage, Inc.*, 201 F. Supp. 3d 1222, 1252 (D. Nev. 2016) (holding that the defendant's conduct that was a "direct and actual breach" of the subject contract could not support the plaintiff's implied-covenant claim).

31. Where there is no contractual duty to perform a specific act, the omission to perform that act does not constitute an arbitrary or unfair act to the plaintiff's disadvantage. *Nelson v. Heer*, 123 Nev. 226, 163 P.3d 420 (2007).

32. To establish a contractual breach of the implied covenant of good faith and fair dealing, a plaintiff must prove each of the elements of the claim: 1) plaintiff and defendant were parties to a contract; 2) defendant owed a duty of good faith to plaintiff; 3) defendant breached that duty by performing in a manner that was unfaithful to the purpose of the contract; and 4) plaintiff's justified expectations were thus denied. *See Perry v. Jordan*, 111 Nev. 943, 900 P.2d 335 (1995).

33. Plaintiff's Contract was between Plaintiff and the CCSD BOT.

34. Plaintiff's claim of breach of the implied covenant of good faith and fair dealing is based on the same act as the breach of contract claim—the CCSD BOT's decision to non-renew Plaintiff's Contract before Plaintiff submitted a response to his third evaluation. The action giving rise to Plaintiff's breach of contract claim against CCSD BOT cannot also give rise to Plaintiff's breach of the implied covenant of good faith and fair dealing claim against CCSD BOT.

35. Even if it could, CCSD BOT's actions were consistent with the Negotiated Agreement governing the Contract and faithful to the purpose of the Contract. By the written terms of the Contract, the CCSD BOT's non-renewal of Plaintiff was contemplated by the Contract and was not in breach of its precise terms. The CCSD BOT's non-renewal of Plaintiff was even in accordance with the requirements set forth in NRS 391.31216 (2013) and NRS 391.31214 (2013).

36. By the very written terms of the Contract, Plaintiff had no justified expectation in renewal of the Contract or to have the non-renewal decision postponed or delayed pending Plaintiff's response to his third evaluation. Neither the Contract nor the Negotiated Agreement gave rise to an evaluation process wherein the CCSD BOT had to wait for Plaintiff's response to his third evaluation before determining whether to renew his Contract.

37. Defendant CCSD BOT has not committed a breach of the covenant of good faith and fair dealing with regard to Plaintiff's Contract.

D. <u>The Negotiated Agreement Provides the Exclusive Remedy for Plaintiff's Contract-Based Claims to the Extent Based on the Terms of the Negotiated Agreement</u>.

38. Plaintiff's employment with CCSD was governed by NRS Chapter 288 and covered by the Negotiated Agreement. NRS Chapter 288 is "intended to apply similar principles" as recognized by federal labor laws. *Truckee Meadows Fire Protection District v. International Ass'n of Firefighters, Local 2487*, 109 Nev. 367, 374, 849 P.2d 343 (1993).

39. The Negotiated Agreement, as the collective bargaining agreement governing Plaintiff's employment, provides the "uniform and exclusive method for orderly settlement of employee grievance." *Republic Steel Corp. v. Maddox*, 379 U.S. 650, 653 (1952). ("If a grievance procedure cannot be made exclusive, it loses much of its desirability as a method of settlement. A rule creating such a situation would inevitably exert a disruptive influence upon both the negotiation and administration of collective agreements."); *see also* NRS 288.150(o) (identifying that a mandatory subject of collective bargaining includes "grievance and arbitration procedures for resolution of disputes relating to interpretation or application of collective bargaining agreements").

40. An employee covered by a collective bargaining agreement may not challenge his employment status through state law claims which would require interpretation of the collective bargaining agreement. *MGM Grand Hotel-Reno, Inc. v. Insley*, 102 Nev. 513, 517, 728 P.2d 821 (1986) (citing *Allis Chalmers v. Lueck*, 471 U.S. 202 (1985)) (alleged breach of implied covenant of good faith and fair dealing arising from collective bargaining agreement claim legally insufficient). The rule applies to claims "which would require the court to interpret the meaning and scope of a term" of the collective bargaining agreement. *MGM Grand Hotel-Reno, Inc. v. Insley*, supra, 102 Nev. at 517.

41. Plaintiff's claim against Defendant CCSD BOT is a result of his dissatisfaction with Defendant CCSD BOT's interpretation and/or application of the Negotiated Agreement, to Plaintiff's Grievance. Plaintiff's Grievance, whether as to his evaluations, the ability to respond to those evaluations, or the timeline to respond to the evaluations as against the non-renewal decision, is governed by the Negotiated Agreement.

42. Plaintiff's suit against Defendant CCSD BOT seeks this Court's interpretation of the Contract as governed by the Negotiated Agreement, and in pertinent part, Defendant CCSD BOT's compliance therewith.

43. The Negotiated Agreement governing Plaintiff's employment with the CCSD BOT provides the exclusive remedy for challenging disputes which arise regarding an interpretation, application or alleged violation of any of the provisions of the Negotiated Agreement.

44. Therefore, Plaintiff's contract-based claims are preempted by the Negotiated Agreement and Defendant CCSD BOT is entitled to summary judgment thereon.

E. <u>Plaintiff Did Not Exhaust Administrative Remedies under NRS 288.110(2) and NRS 288.280</u>.

45. The Employment Management Relations Board (EMRB) was created to oversee the implementation of Chapter 288 of Nevada Revised Statutes, and to relieve a burden on the courts. *Rosequist v. Int'l Ass;n of Firefighters*, 118 Nev. 444, 450-51, 49 P.3d 651, 655 (2002) *(abrogated on other grounds by Allstate Ins. Co. v. Thorpe*, 123 Nev. 565, 573 n. 22, 170 P.3d

989, 995 n. 22 (2007); *also abrogated in part by City of Henderson v. Kilgore*, 122 Nev. 331, 336 n. 10, 131 P.3d 11, 15 n. 10 (2006)); *see also* Hearing on S.B. 87 Before the Senate Comm. on Federal, State and Local Governments, 55th Leg. (Nev., Feb. 25, 1969).

46. "Once the Employee-Management Relations Act applies to a complaint, the remedies provided under the Act and before the [EMRB] must be exhausted before the district court [may hear the action]." *Rosequist* at 450-51, 655.

47. A claim of breach of contract based on the Negotiated Agreement must be heard by the EMRB to the extent that Plaintiff is contending he was prohibited from utilizing the grievance and arbitration process in the Negotiated Agreement. *City of Mesquite v. Eighth Judicial Dist. Court*, 135 Nev. 240, 243, 445 P.3d 1244, 1248 (2019).

48. Therefore, any attempt by Plaintiff to bring an action against the CCSD BOT for breach of the Negotiated Agreement fails because there is no evidence to support Plaintiff exhausted his administrative remedies before the EMRB.

IV. Plaintiff's Objections to and Motion To Strike Defendant CCSD BOT's Declarations in Support of its Motion For Summary Judgment

49. NRCP 56(c)(1) provides that a party may support a motion for summary judgment by "citing to particular parts of materials in the record, including . . . documents . . . affidavits or declarations . . . or other materials."

50. Affidavits or declarations must be based on personal knowledge, a competent declarant or affiant, and present admissible facts. NRCP 56(c)(4).

51. Plaintiff improperly takes issue with the declarations attached to Defendant CCSD BOT's Motion for Summary Judgment on the basis that the declarants were not competent, lacked personal knowledge, and/or made a typographical error.

52. The Declarations, made under penalty of perjury, set forth the basis of the declarant's respective knowledge of the facts stated therein, attesting to CCSD documents referenced therein – documents which authenticity has not been challenged by Plaintiff (NRCP 16.1(a)(3)(B)(ii)(b))—, and constitutes testimony to be offered by the declarants at the time of trial. The Declarations were made based on personal knowledge, attest to matters which the

declarants are competent to testify as stated in the Declarations, and attest to the truth and accuracy of the statements contained therein. *See* NRCP 55(c)(4), and NRS 50.015 ([e]very person is competent to be a witness except as otherwise provided in this title).

53. The Declarations sufficiently comply with the requirements of NRCP 56(c)(1) and (c)(4), and Plaintiff's Objections to and Motion to Strike the Declarations is denied.

V. <u>Defendant CCSD BOT's Countermotion to Extend the Dispositive Motion Deadline</u>.

54. At the time Defendant CCSD BOT's Motion for Summary Judgment was filed, the Arbitration hearing was scheduled for July 28, 2021.

55. NAR 4(E) provides for dispositive motions to be filed 45 days in advance of an arbitration hearing date.

56. All parties filed their motions for summary judgment on Monday, June 14, 2021, including Plaintiff. Plaintiff's motions to strike Defendants' motions for summary judgment asserts motions for summary judgment were due pursuant to NAR(E) on Friday, June 11 – a difference of a single judicial day. The CCSD BOT's countermotion, joined by Defendant Goldman, to extend the time for filing dispositive motions by the single judicial day to Monday, June 14, 2021, was both in good faith and reasonable in light of Plaintiff's own filing on June 14, 2021.

57. Further, the Arbitration hearing was subsequently moved by Stipulation of the parties first to August 25, 2021, and then to October 6, 2021. The change in the Arbitration hearing date resulted in Defendant CCSD BOT's Motion having been filed more than the 45 days allotted by NAR 4(E) for submission and consideration of dispositive motions in advance of the arbitration hearing.

58. Defendant CCSD BOT's request, joined by Defendant Goldman, for an extension of time to extend the dispositive motion deadline calendared from the July 28, 2021 Arbitration hearing is, therefore, without prejudice to Plaintiff – the original 45 day deadline was mooted by the extension of the Arbitration hearing date and by Defendants' non-opposition to the extension of time sought by Plaintiff to oppose Defendants' motions for summary judgment.

VI. Plaintiff's Motion for Partial Summary Judgment.

59. Plaintiff filed a Motion for Partial Summary Judgement as to CCSD BOT and subsequently sought to withdraw his motion.

60. Plaintiff's request to withdraw his Motion for Partial Summary Judgment is granted.

If any of the foregoing Conclusions of Law is deemed more appropriately categorized as a Finding of Fact, it shall be so treated.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

Plaintiff's Motion to Strike Defendant CCSD BOT's Motion for Summary Judgment is DENIED;

Defendant CCSD BOT's Countermotion to Extend the Dispositive Motion Deadline is DENIED as moot;

Plaintiff's Motion to Extend the Time to Oppose CCSD BOT's Motion for Summary Judgment is GRANTED;

Plaintiff's Objections to and Motion To Strike Defendant CCSD BOT's Declarations in Support of Defendant CCSD BOT's Motion For Summary Judgment, is DENIED;

Defendant CCSD BOT's Motion for Summary Judgment and Defendant Goldman's Joinder thereto are GRANTED on their merits; and

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Plaintiff's request to withdraw his Motion for Partial Summary Judgement is GRANTED.

IT IS SO ORDERED this _____ day of _____, 2021.

Dated this 20th day of October, 2021

DISTRICT COURT JUDGE

5C9 628 B7CB B8E8
Joe Hardy
District Court Judge

Submitted by:

CLARK COUNTY SCHOOL DISTRICT
OFFICE OF THE GENERAL COUNSEL

By: */s/ Crystal J. Herrera*
CRYSTAL J. HERRERA, ESQ.
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Las Vegas, NV 89146
Attorneys for Defendant, CCSD Board of Trustees

Approved as to Form and Content by:

OLSON CANNON GORMLEY & STOBERSKI

By: */s/ Stephanie A. Barker*
STEPHANIE A. BARKER, ESQ.
Nevada Bar No. 3176
9950 West Cheyenne Ave.
Las Vegas, NV 89129
Attorneys for Defendant Dr. Edward Goldman

Approved as to Form and Content by:

Unable to Agree
TENKASI VISWANATHAN
Plaintiff, Pro Se

LETTER TO BOT on 10/14/21

Greetings, Attorney Herrera. I object to the inclusion of the paragraph below. It should be removed. The Court did not use language anywhere close to these words during the hearing.

Page 11: Paragraph 17

17. In accordance with NRCP 56 and the foregoing direction from the Nevada Supreme Court, the Court has read and considered Defendant's Motion for Summary Judgment along with all of the exhibits attached thereto, . . .

****

Page 18, Revised Order 3rd version. Line 15. There is some confusion with respect to the expression: "objections to" in the context of the Motion to Strike the Declarations.

Page 18 of The Revised Order, Line 15.

The expression "Objections to and" should be removed only on this Page 18 where the explicit "ORDER" of the Court appears. The Court never mentioned "objections."

You had responded to the suggestion as follows:

BOT RESPONSE**:** I will remove the references to "Objections to" with the exception of Paragraph 25 on page 6.

I had requested removal of the expression only in the ORDER PART, where it says :It is Ordered . . . " and lists a number of items. I referred to only this part of the "Proposed Order" as "Order Part". The rest set up the background and argument for the "ORDER".

So, I request that you put back "objections to" wherever "motion to strike declarations" appear and remove it from the concluding part, which I had referred to as "ORDER". It was so before in the 2nd Revised Order.

++

Attorney Barker had mentioned the advice given by the Judicial Executive Assistant to the Honorable Judge Joe Hardy. I assume that the same is applicable to your "Proposed" ORDER. You may attach this letter to the Proposed Order and submit it to the Court. I am, of course, open to further discussion.

May I request you to include in your letter to the Executive Assistant the following: I have communicated the same to you before.

(1) In spite of your answer to the issue of two separate orders, I am worried that the proposed Order does not comply with the Court's Minutes, which states clearly on Page 3 the following. (Please see top of Page 3 of minutes):

> Ms. Herrera to prepare the written Order regarding the Motions to Strike, as well as the Motions / Joinder for Summary Judgment, including Findings of Fact, Conclusions of Law, and forward it to Ms. Barker and Mr. Viswanathan for approval as to form and content.

It seems to me that the Court wants all motions to be consolidated and prepare a single order incorporating all findings and decisions. In my understanding, no separate order for Dr. Goldman's case was contemplated. I have raised this issue before.

(2) There is too much of repetition without justification for the same. On the other hand, it adds weight to some arguments. For example, your concession of extending the time to file a response to your motion for summary judgment.

(3) Secondly, the proposed Order is a verbatim adaptation of BOT'S Papers, among which are Your RESPONSE and OPPOSITION to Plaintiff's Objections to and Motion to strike the Declarations in Support of Defendants Motion for Summary Judgment, and BOT'S MOTION for Summary Judgment. I object to the verbatim adaptation. There are additions as pointed out via insertion of Paragraph 17, for example.

(4) Thirdly, I have other objections I have transmitted to you before. In particular, the question of mootness was raised for the first time during the hearing of August 25, 2021 in the context of Defendant BOT'S Countermotion for extending the time to file a dispositive motion. (Minutes, P.2, Line 6). Plaintiff raised the issue of exemptions to the Doctrine of Mootness (*Valdez-Jimenez v. Eighth Judicial Dist. Court, 460 P.3d 976 (Nev. 2020)*. But the Court did not deal with it. It is the Court which applied the question of mootness to the Motions for Summary Judgment.

(5) The Court never used the word "merits" and your proposed order uses the word as the concluding word of the Order in the portion granting MSJD.

(6) The court summarily rejected plaintiff's objections to and the motion to strike the declarations of BOT attached to the MSJD, even though they constitute a form of opposition to the motion for summary judgment and was filed on the date (07/06/2021) for which plaintiff had requested an extension of time to respond in opposition to the Defendant's Motion for Summary Judgment. Plaintiff's argument during the hearing was that BOT's MSJD did not meet the "threshold conditions" of Rule 56(c)(B)(2) and (4) on "Declarations". This argument made in the hearing is not included in the proposed order. On that basis plaintiff objected to the Declarations submitted by BOT. Without the

Declarations of Houghton and of Markouzis , Defendant BOT'S Motion for Summary judgment has no basis and no merit.

/s/ Tenkasi Viswanathan
8220 Hollister Ave
Las Vegas, NV 89131
T: (252) 706-0169
E: Viswanathan.tenkasi@gmail.com

Thank you.

Yours sincerely,
Tenkasi Viswanathan
8220 Hollister Ave
Las Vegas, NV 89131
T: (252) 706-0169

CCSD

Crystal Herrera [Office of the General Counsel] <herrec4@nv.ccsd.net>

Final Suggestions: Letter of 10-14-21

3 messages

Tenkasi Viswanathan <viswanathan.tenkasi@gmail.com> Thu, Oct 14, 2021 at 5:41 AM
To: "Crystal Herrera [Office of the General Counsel]" <herrec4@nv.ccsd.net>
Cc: "Attorney Stephanie Barker, Barker," <sbarker@ocgas.com>, "CCSD Case:Asst. Gl. Counsel: Crystal Herrera (5258), Elsa Pena (5373)," <penaec@nv.ccsd.net>, Nan Langenderfer <nlangenderfer@ocgas.com>

Greetings, Attorney Herrera. Attached is my Letter of 10-14-21. It clears the confusion regarding the insertion and removal of the expression "Objections to" . I am sorry for the confusion. Attached also is your 3rd Revised Order. Please excuse the delay. I am mailing this at dawn!

Thank you for your consideration and patience.

Sincerely,
Viso
Tenkasi Viswanathan
8220 Hollister Ave
Las Vegas, NV 89131
T: (252) 706-0169

3 attachments

10-14-21-Letter-To-BOT-Comments.docx
19K

10-13-21-Order re BOT MSJ (3rd revised).doc
135K

10-13-21-Order re BOT MSJ (3rd revised).doc
135K

Crystal Herrera [Office of the General Counsel] <herrec4@nv.ccsd.net> Thu, Oct 14, 2021 at 12:08 PM
To: Tenkasi Viswanathan <viswanathan.tenkasi@gmail.com>
Cc: "Attorney Stephanie Barker, Barker," <sbarker@ocgas.com>, "CCSD Case:Asst. Gl. Counsel: Crystal Herrera (5258), Elsa Pena (5373)," <penaec@nv.ccsd.net>, Nan Langenderfer <nlangenderfer@ocgas.com>

Mr. Viswanathan-

Attached is my response to your latest request for revisions. Please let me know by the end of the day if we have agreement on those terms. If we do, I will submit the Proposed Order with a copy of the letter that you provided outlining your outstanding objections to the Proposed Order.

Thank you,

Crystal Herrera

Senior Assistant General Counsel
Office of the General Counsel
Clark County School District
5100 West Sahara Avenue
Las Vegas, Nevada 89146
Ph: (702) 799-5373
Fax: (702) 799-5505
Email: herrec4@nv.ccsd.net

[Quoted text hidden]

10-14-21-Letter-To-BOT-Comments (4th revisions).docx
19K

Crystal Herrera [Office of the General Counsel] <herrec4@nv.ccsd.net> Fri, Oct 15, 2021 at 2:41 PM
To: Tenkasi Viswanathan <viswanathan.tenkasi@gmail.com>
Cc: "Attorney Stephanie Barker, Barker," <sbarker@ocgas.com>, "CCSD Case:Asst. Gl. Counsel: Crystal Herrera (5258), Elsa Pena (5373)," <penaec@nv.ccsd.net>, Nan Langenderfer <nlangenderfer@ocgas.com>

Mr. Viswanthan-

Not having heard from you. I will be submitting the CCSD BOT's proposed order to the Court today with a copy of your last correspondence outlining your objections.

Thank you,

Crystal Herrera

Senior Assistant General Counsel
Office of the General Counsel
Clark County School District
5100 West Sahara Avenue
Las Vegas, Nevada 89146
Ph: (702) 799-5373
Fax: (702) 799-5505
Email: herrec4@nv.ccsd.net

[Quoted text hidden]

CCSD

Crystal Herrera [Office of the General Counsel] <herrec4@nv.ccsd.net>

RE: Viswanathan Order Re: CCSD BOT MSJ

1 message

Stephanie Barker <sbarker@ocgas.com> Thu, Oct 14, 2021 at 12:33 PM
To: "Crystal Herrera [Office of the General Counsel]" <herrec4@nv.ccsd.net>
Cc: Tenkasi Viswanathan <viswanathan.tenkasi@gmail.com>, Nan Langenderfer <nlangenderfer@ocgas.com>, "Elsa Pena [Office of the General Counsel]" <penaec@nv.ccsd.net>

Yes. You are authorized to file the Order with my electronic signature.

Thank you.

Stephanie A. Barker, Esq.

Olson Cannon Gormley & Stoberski

9950 West Cheyenne Avenue

Las Vegas, Nevada 89129

PH: 702-384-4012

sbarker@ocgas.com

From: Crystal Herrera [Office of the General Counsel] <herrec4@nv.ccsd.net>
Sent: Thursday, October 14, 2021 12:31 PM
To: Stephanie Barker <sbarker@ocgas.com>
Cc: Tenkasi Viswanathan <viswanathan.tenkasi@gmail.com>; Nan Langenderfer <nlangenderfer@ocgas.com>; Elsa Pena [Office of the General Counsel] <penaec@nv.ccsd.net>
Subject:

Ms. Barker-

Please disregard my previous email. I inadvertently attached the wrong document.

Attached is a copy of the final proposed Order on the Clark County School District Board of Trustees' Motion for Summary Judgment, et al. Please let me know if I am authorized to affix your electronic signature to the Order.

Thank you,

Crystal Herrera

Senior Assistant General Counsel

Office of the General Counsel

Clark County School District

5100 West Sahara Avenue

Las Vegas, Nevada 89146

Ph: (702) 799-5373

Fax: (702) 799-5505

Email: herrec4@nv.ccsd.net

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Tenkasi Viswanathan, Plaintiff(s) vs. Board of Trustees of the Clark County School District, Defendant(s)	CASE NO: A-20-814819-C DEPT. NO. Department 15

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 10/20/2021

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Elsa Pena	penaec@nv.ccsd.net
Stephanie Barker	sbarker@ocgas.com
Tenkasi Viswanathan	Viswanathan.tenkasi@gmail.com

JAMES R. OLSON, ESQ.
Nevada Bar No. 000116
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Attorneys for Defendant
Dr. Edward Goldman

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9950 West Cheyenne Avenue
Las Vegas, Nevada 89129
(702) 384-4012 Fax (702) 383-0701

DISTRICT COURT

CLARK COUNTY NEVADA

Tenkasi Viswanathan;

Plaintiff,

vs.

Board of Trustees of the Clark County School District; Pat Skorkowski in his Official and Individual Capacity; Dr. Edward Goldman in his Official and Individual Capacity; Neddy Alvarez in her Official and Individual Capacity; Sonya Houghton in her Official and Individual Capacity; and Louis Markouzis in his Official and Individual Capacity,

Defendants.

Case No.: A-20-814819-C
Dept. No.: 15

Hearing Date: August 25, 2021
Hearing Time: 9:00 a.m.

ORDER

GRANTING DEFENDANT DR. EDWARD GOLDMAN'S MOTION FOR SUMMARY JUDGMENT;

GRANTING PLAINTIFF'S MOTION TO EXTEND THE TIME TO OPPOSE DEFENDANT GOLDMAN'S MOTION FOR SUMMARY JUDGMENT;

DENYING PLAINTIFF'S MOTION TO STRIKE DEFENDANT GOLDMAN'S MOTION FOR SUMMARY JUDGMENT;

DENYING PLAINTIFF'S OBJECTIONS TO, AND MOTION TO STRIKE DEFENDANT GOLDMAN'S DECLARATION IN SUPPORT OF DEFENDANT GOLDMAN'S MOTION FOR SUMMARY JUDGMENT;

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AND

***DENYING* AS MOOT DEFENDANT GOLDMAN'S JOINDER IN DEFENDANT CLARK COUNTY SCHOOL DISTRICT BOARD OF TRUSTEES' COUNTERMOTION TO EXTEND THE DISPOSITIVE MOTION DEADLINE**

Defendant DR. EDWARD GOLDMAN's Motion for Summary Judgment and related motions having come on for hearing on August 25, 2021, Plaintiff TENKASI VISWANATHAN having been present and representing himself pro se, Defendant GOLDMAN having been represented by STEPHANIE A. BARKER, ESQ., of the law firm of Olson Cannon Gormley & Stoberski, and Defendants CLARK COUNTY SCHOOL DISTRICT (CCSD) BOARD OF TRUSTEES (BOT) having been represented by attorney CRYSTAL HERRERA, ESQ., of the Clark County School District Office of General Counsel;

The Court having read and considered the pleadings and papers on file herein, specifically as set forth in the procedural history hereinbelow;

AND the Court having entertained the oral arguments of counsel and of Plaintiff pro se, including Plaintiff's oral argument in opposition to Defendant Goldman's Motion for Summary Judgment;

AND GOOD CAUSE APPEARING, the Court hereby makes the following Findings of Fact and Conclusions of Law, GRANTING Defendant Dr. Edward Goldman's Motion For Summary Judgment; GRANTING Plaintiff's Motion to Extend the Time to Oppose Defendant Dr. Edward Goldman's Motion for Summary Judgment; DENYING Plaintiff's Motion To Strike Defendant Goldman's Motion For Summary Judgment; DENYING Plaintiff's Objections to and Motion To Strike Defendant Goldman's Declaration Served with Defendant Goldman's Motion For Summary Judgment; and DENYING as moot Defendant Goldman's Joinder in the CCSD BOT Counter-Motion to Extend Dispositive Motion Deadline.

FINDINGS OF FACT

I. Plaintiff's Employment by the CCSD BOT

1. For the 2013-2014 school year, Plaintiff was employed by the CCSD BOT as a probationary teacher, pursuant to a Probationary Teaching Contract (Contract). The Contract

contained a written provision stating that: "Probationary employees agree that they are employed only on an annual basis and that they have no right to employment after the last day of the school year specified in this Contract specified in writing." (Emphasis added.)

2. In 2013-2014, CCSD teacher contracts were governed by a Negotiated Agreement between the CCSD and the Clark County Education Association. (Negotiated Agreement.) Article 36-8-2 of the Negotiated Agreement stated non-renewal of a probationary teacher's contract "shall not be subject to a hearing or arbitration under the provisions of this Article (36-8)."

3. On April 28, 2014, Plaintiff was given written Notice of Non-Reemployment of Probationary Employee. The Notice, dated April 25, 2014, stated that Plaintiff's Contract would not be renewed for the coming school year. The non-renewal decision was made by the CCSD BOT. It was not made by Defendant Goldman.

4. On May 28, 2014, after his receipt of the Notice of Non-Renewal, Plaintiff forwarded a grievance to CCSD's Employee Management Relations. (Grievance.) The Grievance challenged the BOT non-renewal decision as the "opposite of [Plaintiff's] expectation" and requested three remedies:

(1) reappointment "for another year within CCSD;"

(2) that Plaintiff's second and third evaluations be "rendered null and void;" and

(3) other remedies "that are deemed just and appropriate."

5. Article 4-1 of the Negotiated Agreement provided:

> A grievance is defined as any dispute which arises regarding an interpretation, application, or alleged violation of any of the provisions of this Agreement.

6. Plaintiff's first, second, and third evaluations were issued on November 25, 2013, January 30, 2014, and April 1, 2014, respectively. Plaintiff did not submit a written grievance to any of these evaluations before he submitted the May 28, 2014, Grievance of the non-renewal decision by the CCSD BOT.

7. In May 2014, Defendant Goldman was an employee of the CCSD, holding the position of Assistant Superintendent of Employee Management Relations.

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8. Defendant Goldman was not a party to the Contract, did not have authority to non-renew a probationary teaching contract, and did not have authority to review a decision by the BOT to non-renew a probationary teaching contract.

9. In his position as Assistant Superintendent of Employee Management Relations, Defendant Goldman responded to Plaintiff's Grievance via email on July 28, 2014. Therein Defendant Goldman told Plaintiff that he could not grieve the non-renewal pursuant to Article 36-8-2 of the Negotiated Agreement and NRS 391, because the non-renewal of a probationary teacher's contract is not subject to a hearing or arbitration. This determination was made based upon the stated nature of Plaintiff's grievance in seeking reappointment to a teaching position.

10. Article 36-8-2 of the Negotiated Agreement stated:

> Pursuant to NRS 391, the non-renewal of a probationary teacher's contract shall not be subject to a hearing or arbitration under the provisions of this Article (36-8) . . .

11. After consultation with the CCSD Office of General Counsel, on August 1, 2014, Defendant Goldman further responded to Plaintiff's Grievance to address Plaintiff's request that Plaintiff's second and third evaluations be "rendered null and void." Defendant Goldman's correspondence told Plaintiff that to the extent this Grievance was attempting to grieve Plaintiff's January 30, 2014, and April 1, 2014 performance evaluations, the Grievance was untimely pursuant to Article 4-5(a) of the Negotiated Agreement which required that a grievance be filed not later than "thirty (30) days after the grievant first knew of the act or condition upon which the grievance is based." To the extent Plaintiff's Grievance sought to have his second and third evaluations "rendered null and void," it was not submitted within 30 days of each evaluation and could not, therefore, be considered.

12. Article 4-5(a) of the Negotiated Agreement provided:

> If the grievance is not resolved at Step One, the grievant may submit in writing the unresolved grievance to the Associate Superintendent, Human Resources Division, or the Superintendent's designee not later than thirty (30) days after the grievant first knew of the act or condition upon which the grievance is based.

13. On August 19, 2014, Defendant Goldman again sent correspondence in response to Plaintiff's Grievance, advising that Plaintiff's Grievance was never properly before Defendant

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Goldman because the Board of School Trustees' decision not to renew Plaintiff's Contract was not grievable pursuant to the terms of the Negotiated Agreement and/or statute.

14. Defendant Goldman responded to Plaintiff's Grievance on three separate occasions – July 28, August 1, and August 19, 2014 – each time addressing Defendant Goldman's inability to consider the substance of the Grievance based upon the terms of Plaintiff's Contract and of the Negotiated Agreement.

15. The CCSD BOT's decision not to renew Plaintiff's Contract was not grievable pursuant to the terms of the Negotiated Agreement and/or Nevada statute.

II. Procedural Progress of This Litigation

16. On May 11, 2020, slightly over six years after the non-renewal of Plaintiff's probationary teaching contract, Plaintiff filed the Complaint initiating this litigation. (Doc ID #1.) On August 4, 2020, Plaintiff filed an Amended Complaint. (Doc ID #6.) As to Defendant Goldman, Plaintiff's only allegations are that he appealed the BOT's non-renewal decision to "the higher authorities, which included Dr. Goldman," and that Dr. Goldman "did not address the issue."

17. Defendant Goldman filed a Motion to Dismiss on August 30, 2020. (Doc ID #22.) Plaintiff opposed the motion on September 17, 2020 (Doc ID #33), and Defendant Goldman Replied to the opposition on October 2, 2020. (Doc ID #42.)

18. On October 28, 2020, the Court granted in part, and denied in part, Defendant Goldman's Motion to Dismiss (Doc ID #48), leaving two remaining claims for relief against Defendant Goldman:

(1) Breach of Contract, and

(2) Breach of the Covenant of Good Faith and Fair Dealing.

19. On January 7, 2021, no Request for Exemption from Arbitration having been filed, the Court's Alternative Dispute Resolution office appointed an Arbitrator to hear this matter. (Doc ID #71.)

20. After the close of discovery, Defendant Goldman and Defendant CCSD BOT filed separate motions for summary judgment on June 14, 2021. (Doc ID #86 and #87.) Defendant

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Goldman joined in the CCSD BOT Motion for Summary Judgment on June 15, 2021. (Doc ID #93.) Plaintiff did not file opposition to either motion for summary judgment.

21. On June 14, 2021, Plaintiff filed a Motion for Partial Summary Judgment as to the CCSD BOT, (Doc ID #88), and on June 20, 2021, Plaintiff withdrew the motion. (Doc ID #94 and #95.)

22. As of June 14, 2021, the date all parties' motions for summary judgment were filed, the Arbitration hearing was scheduled for July 28, 2021. (Doc ID #82.)

23. On June 21, 2021, Plaintiff filed Motion to Strike Defendant Goldman's Motion for Summary Judgment (Doc ID #97), and on that same day filed a Motion to Strike the CCSD BOT Motion for Summary Judgment. (Doc ID #96.) Defendant Goldman filed a Response in Opposition to Plaintiff's Motion to Strike Defendant Goldman's Motion for Summary Judgment on June 29, 2021 (Doc ID #104), along with a Joinder (Doc ID #106) to the CCSD BOT Opposition to Plaintiff's Motion to Strike the CCSD BOT Motion for Summary Judgment and to the CCSD BOT Countermotion to Extend the Dispositive Motion Deadline. (Doc ID #101.) Plaintiff's replies were filed on July 20, 2021. (Doc ID #123 and #124.)

24. On June 28, 2021, Plaintiff filed a Motion for Order Extending Time, seeking a seven-day extension of time to file and serve opposition to both Defendants' Motions for Summary Judgment. (Doc ID #102.) Both Defendant Goldman and Defendant CCSD BOT filed notice of Non-Opposition to Plaintiff's requested extension of time. (Doc ID #105 and #119.)

25. On July 6, 2021, Plaintiff filed Objections to and Motion to Strike Dr. Edward Goldman's Declaration in support of Defendant Goldman's Motion for Summary Judgment. (Doc ID #111.) Defendant Goldman opposed the motion on August 5, 2021 (Doc ID #126), and Plaintiff replied thereto on August 18, 2021. (Doc ID #130.)

26. On July 9, 2020, Plaintiff filed an Opposition to the CCSD BOT Countermotion to Extend the Dispositive Motion Deadline and to Defendant Goldman's Joinder in that Countermotion. (Doc ID #116.)

27. The foregoing Motions were initially calendared for hearing on multiple dates – July 26, July 28, and August 9, 2021. On July 13, 2021, the parties stipulated to consolidate

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hearing of the motions, and an Order was entered consolidating hearing for all motions to July 28, 2021. (Doc ID #120.)

28. On July 13, 2021, the Arbitrator entered an order continuing the Arbitration hearing from July 28, 2021, to August 27, 2021. (Doc ID #121.)

29. On July 28, 2021, the Court reset the consolidated hearings to be heard on August 18, 2021.

30. On August 13, 2021, the Arbitrator again entered an Order extending the Arbitration, resetting the hearing to October 6, 2021. (Doc ID #129.)

31. On August 5, 2021, upon stipulation of the parties, the consolidated hearing was re-scheduled to August 25, 2021. (Doc ID #127.)

32. On August 25, 2021, the Court heard and considered all pending motions in this matter, as set forth hereinabove.

33. As of the August 25, 2021 hearing on the motions for summary judgment, Plaintiff had filed no Opposition to Defendant Goldman's Motion for Summary Judgment, even after seeking an extension of time to serve and file an opposition, with notice of non-opposition to the extension having been filed by Defendant Goldman and by Defendant CCSD BOT.

34. Plaintiff stated at oral argument that his intent was to strike the motions for summary judgment as untimely and to strike the Declarations and Affidavits in support thereof; then, if Plaintiff's Motions to Strike were denied, to thereafter file oppositions.

35. Plaintiff presented oral argument in opposition to Defendants' Motions for Summary Judgment, as well as the Joinder, stating that he was entitled to judgment as a matter of law on his motions to strike, and that opposition to the Motions for Summary Judgment was not necessary as he had filed multiple Motions to Strike.

If any of the foregoing Findings of Fact is deemed more appropriately categorized as a Conclusion of Law, it shall be so treated.

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CONCLUSIONS OF LAW

1. Plaintiff, as a pro se litigant must comply with the Rules of Civil Procedure. *Rodriguez v. Fiesta Palms,* 134 Nev. 654, 659, 428 P.3d 255, 258-59 (2018) ("a pro se litigant cannot use his alleged ignorance as a shield to protect him from the consequences of failing to comply with basic procedural requirements").

2. Public policy favors disposition on the merits of a case. *Huckabay Props., Inc. v. NC Auto Parts, LLC*, 322 P.3d 429, 433-34, 130 Nev. Adv. Op. 23 (2014).

I. Plaintiff's Motion to Extend the time to Oppose Defendant Goldman's Motion for Summary Judgment

3. Plaintiff's Motion sought a seven (7) day extension of time to oppose Defendant Goldman's Motion for Summary Judgment, Defendant CCSD BOT's Motion for Summary Judgment and Defendant Goldman's Joinder thereto, pursuant to NRCP 6(b) and based on his personal circumstances.

4. Based on good cause shown and on Defendants' filed non-oppositions, Plaintiff's request for additional time up to an including July 6, 2021, to oppose Defendants Goldman's Motion for Summary Judgment, Defendant CCSD BOT's Motion for Summary Judgment and Defendant Goldman's Joinder thereto, is appropriate.

II. Plaintiff's Motion To Strike Defendant Goldman's Motion For Summary Judgment

5. Plaintiff's Motion to Strike Defendant Goldman's Motion for Summary Judgment is predicated on an asserted late filing of the summary judgment motion pursuant to NAR 4(E), which provides that dispositive motions be filed 45 days before an arbitration hearing. As applied to the July 28, 2021 Arbitration hearing in this matter, the filing date fell on June 13, 2021 – a Sunday. All parties, including Plaintiff, filed their summary judgment motions on June 14, 2021, the immediately following Monday. Plaintiff asserts that the motions were more appropriately due on the immediately preceding Friday – a difference of a single judicial day.

6. The Rules of Civil Procedure "should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding." NRCP 1.

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7. Plaintiff's Motion for Partial Summary Judgment was filed the same date as Defendant Goldman's Motion for Summary Judgment. Plaintiff calculated the deadline for the Motions for Summary Judgment the same as the Defendants and, therefore, it was disingenuous for the Plaintiff to withdraw his Motion for Partial Summary Judgment so that he could then argue that Defendants' Motions for Summary Judgment, including Defendant Goldman's Motion for Summary Judgment, were not timely filed.

8. Plaintiff's Motion is not properly brought under NRCP 12 which governs submission of motions regarding the pleadings as set forth therein. It does not govern response to a summary judgment motion brought pursuant to NRCP 56. NRCP 12 does not provide a procedural vehicle to strike a motion for summary judgment, timely or otherwise.

9. The timing of the filing of Defendant Goldman's Motion for Summary Judgment caused no prejudice to Plaintiff as Plaintiff has had ample opportunity to oppose the motion; Defendant Goldman did not oppose Plaintiff's request for an extension of time to respond to the motion, and the motion did not come on for hearing until approximately ten weeks after the Motion for Summary Judgment was filed.

10. At the time Defendant Goldman's Motion for Summary Judgment was filed, the Arbitration hearing was scheduled for July 28, 2021. It was subsequently moved by Stipulation of the parties first to August 25, 2021, and then to October 6, 2021, resulting in the motion having been filed more than the 45 days allotted by NAR 4 for submission and consideration of dispositive motions in advance of the arbitration hearing. The argument that Defendant Goldman's Motion for Summary Judgment was untimely pursuant to NAR 4(E) is, therefore, mooted by the extension of the arbitration hearing date.

11. Plaintiff received full and fair notice of Defendant Goldman's Motion for Summary Judgment, more than 45 days before an arbitration hearing in this matter and was given full and fair opportunity to oppose the motion and to be heard in opposition.

12. There is no legal authority cited by Plaintiff which would justify striking Defendant Goldman's Motion for Summary judgment in the circumstances presented.

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III. Goldman's Motion For Summary Judgment

A. Standard of For Summary Judgment

13. Summary judgment is appropriate and shall be granted if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to a judgment as a matter of law. NRCP 56. It is a procedural tool by which "factually insufficient claims or defenses [may] be isolated and prevented from going to trial with the attendant unwarranted consumption of public and private resources." *Boesiger v. Desert Appraisals*, 135 Nev. Adv. Op. 25, p. 4 (2019), quoting *Celotex Corp v. Catrett*, 477 U.S. 317, 327 (1986).

14. Summary judgment is appropriate under NRCP 56 when the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law. *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005).

15. When the nonmoving party bears the burden of persuasion at trial, as Plaintiff does here, then the moving party may show an absence of a genuine issue of material fact by either putting forth evidence that negates an essential element of the nonmoving party's claim or by pointing to the absence of evidence in support of the nonmoving party's case. *Cuzze v. University and Community College System of Nevada*, 123 Nev. 598, 602-603, 172 P.3d. 131 (2007), citing *Celotex*, 477 U.S. at 331.

16. To survive summary judgment, the nonmoving party must rely upon more than general allegations and conclusions set forth in the pleadings and must present specific facts demonstrating the existence of a genuine issue. *Boesiger v. Desert Appraisals*, 135 Nev. Adv. Op. 25, p. 4 (2019), citing *Wood, supra,* 121 Nev. at 732, 121 P.3d at 1031 (internal quotations omitted). *See also Matsushita Elec. Indus. Co. v. Zenith Radio Corp.,* 475 U.S. 574, 586 (1986) (the nonmoving party bears the burden to do more than simply show that there is some metaphysical doubt as to the operative facts in order to avoid summary judgment being entered in the moving party's favor.)

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17. In accordance with NRCP 56 and the foregoing direction from the Nevada Supreme Court, the Court has read and considered Defendant Goldman's Motion for Summary Judgment along with all of the exhibits attached thereto, including but not limited to the Declaration of Dr. Edward Goldman.

B. Breach of Contract

18. The elements of a breach of contract claim in Nevada are: 1) plaintiff and defendant entered into a valid and existing contract; 2) plaintiff performed or was excused from performance; 3) defendant breached the contract; and 4) plaintiff sustained damage as a result of the breach. *Calloway v. City of Reno*, 116 Nev. 250, 993 P.2d 1259 (2000); *Saint v. Int'l Game Tech.*, 434 F. Supp. 2d 913, 919-920 (D. Nev. 2006). Q

19. When a contract is clear on its face, it will be construed from the written language and enforced as written. *Ellison v. C.S.A.A.*, 106 Nev. 601, 603, 797 P.2d 975, 977 (1990); *White Cap Indus., Inc. v. Ruppert*, 119 Nev. 126, 128, 67 P.3d 318, 319 (2003) (unambiguous contracts are construed according to their plain language).

20. Plaintiff's Contract was between Plaintiff and the CCSD BOT and was not a contract between Plaintiff and Defendant Goldman. The non-renewal by the CCSD BOT cannot constitute breach by Defendant Goldman who was not a party to the Contract and did not make the non-renewal.

21. By the written terms of the Contract, Plaintiff had no right to or expectation of continued employment beyond the 2013-2014 school year – the non-renewal by the CCSD BOT was contemplated by the Contract and was not in breach of its express terms.

22. Defendant Goldman did not breach the Contract by rejecting Plaintiff's May 28, 2014 request to grieve the non-renewal – the Contract was governed by the Negotiated Agreement which stated at Article 36-8-2 that that non-renewal of a probationary teacher's contract "shall not be subject to a hearing or arbitration under the provisions of this Article (36-8)."

23. Defendant Goldman did not breach the contract by rejecting Plaintiff's May 28, 2014, request to grieve the January 30, 2014, and April 1, 2014, performance evaluations – the Contract was governed by the Negotiated Agreement which stated at Article 4-5(a) that a

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grievance must be filed no later than "thirty (30) days after the grievant first knew of the act or condition upon which the grievance is based." The May 28, 2014 Grievance was untimely as to any challenge of the January 30, 2014, and April 1, 2014, performance evaluations.

24. Defendant Goldman addressed to Plaintiff's Grievance on three separate occasions – July 28, August 1, and August 19, 2014; Defendant Goldman's response to the Grievance did not breach of any provision of the Contract and Defendant Goldman cannot, therefore, be liable to Plaintiff for an alleged breach of the Contract for a failure to "address the issue" raised by the Grievance, as alleged by Plaintiff.

C. Breach of the Covenant of Good Faith and Fair Dealing

25. Every contract imposes upon the contracting parties a duty of good faith and fair dealing. A wrongful act committed during the course of a contractual relationship may give rise to both contractual and tort remedies. *Albert H. Wohlers & Co. v. Bartgis,* 114 Nev. 1249, 969 P.2d 949 (1998); *Hilton Hotels Corp. v. Butch Lewis Prods., Inc.*, 109 Nev. 1043, 862 P.2d 1207 (1993).

26. The covenant of good faith and fair dealing that exists in every Nevada contract forbids arbitrary, unfair acts by one party to a contract that disadvantage the other. *See Frantz v. Johnson*, 116 Nev. 455, 999 P.2d 351 (2000).

27. Errors of judgment are not evidence of bad faith. NRS 453.030; 453.080(1). *Hulse v. Sheriff, Clark County*, 88 Nev. 393, 498 P.2d 1317 (1972).

28. A claim alleging breach of the implied covenant of good faith and fair dealing cannot be based on the same conduct establishing a separately pled breach of contract claim. *Id.*; *Shaw v. CitiMortgage, Inc.*, 201 F. Supp. 3d 1222, 1252 (D. Nev. 2016) (holding that the defendant's conduct that was a "direct and actual breach" of the subject contract could not support the plaintiff's implied-covenant claim).

29. Where there is no contractual duty to perform a specific act, the omission to perform that act does not constitute an arbitrary or unfair act to the plaintiff's disadvantage. *Nelson v. Heer*, 123 Nev. 226, 163 P.3d 420 (2007).

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Contractual breach of the covenant of good faith and fair dealing

30. To establish a contractual breach of the implied covenant of good faith and fair dealing, a plaintiff must prove each of the elements of the claim: 1) plaintiff and defendant were parties to a contract; 2) defendant owed a duty of good faith to plaintiff; 3) defendant breached that duty by performing in a manner that was unfaithful to the purpose of the contract; and 4) plaintiff's justified expectations were thus denied. *See Perry v. Jordan*, 111 Nev. 943, 900 P.2d 335 (1995); *Hilton Hotels v. Butch Lewis Prods.*, 107 Nev. 226, 808 P.2d 919 (1991). The elements are conjunctive.

31. Defendant Goldman was not a party to the Contract.

32. Plaintiff's claim against Defendant Goldman for breach of the implied covenant of good faith and fair dealing, is based on the same alleged actions or inactions – namely Defendant Goldman's rejection Plaintiff's May 28, 2014 request to grieve the non-renewal. The action giving rise to Plaintiff's breach of contract claim against Dr. Goldman cannot also give rise to Plaintiff's breach of the implied covenant of good faith and fair dealing claim against Defendant Goldman.

33. Even if it could, Defendant Goldman's response to Plaintiff's Grievance, consistent with the Negotiated Agreement governing the Contract, was faithful to the purpose of the Contract.

34. By the very written terms of the Contract, Plaintiff had no justified expectation in renewal of the Contract.

35. Neither the Contract nor the Negotiated Agreement gave rise to a "review" process to challenge a non-renewal, and Defendant Goldman did not breach the covenant of good faith and fair dealing "by failing to address the issue" of Plaintiff's non-renewal as alleged by Plaintiff, when advising Plaintiff, in writing, that Plaintiff had no right to a review of the non-renewal, or to challenge his performance evaluations as of the date of Plaintiff's Grievance.

36. Defendant Goldman has not committed a contractual breach of the covenant of good faith and fair dealing with regard to Plaintiff's Contract.

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Tortious breach of the covenant of good faith and fair dealing

37. To establish a tortious breach of the implied covenant of good faith and fair dealing, Plaintiff must prove each element of the claim: 1) plaintiff and defendant were parties to a contract; 2) defendant owed a duty of good faith to plaintiff arising from the contract; 3) A special element of reliance of fiduciary duty existed between plaintiff and defendant where defendant was in a superior or entrusted position; 4) defendant breached the duty of good faith by engaging in misconduct; and 5) plaintiff suffered damages as a result of the breach. *Great Ameri. Ins. Co. v. Gen Builders, Inc.*, 113 Nev. 346, 934 P.2d 257 (1997). The elements are conjunctive.

38. Tort liability for breach of the implied covenant of good faith and fair dealing is appropriate where the party in the superior or entrusted position has engaged in "grievous and perfidious misconduct." *State, Univ. and Community College System v. Sutton*, 120 Nev. 972, 103 P.3d 8 (2004).

39. Defendant Goldman was not a party to the Contract.

40. Defendant Goldman's response to Plaintiff's grievance consistent with the Negotiated Agreement governing the Contract, was faithful to the purpose of the Contract.

41. Defendant Goldman responded in writing to Plaintiff's Grievance on three separate occasions, advising that the terms of the Contract and the Negotiated Agreement did not allow Plaintiff to challenge the non-renewal of his Contract, and that the grievance was untimely as to any challenge of the performance evaluations. Where those conclusions were based upon the clear written language of the Contract and the Negotiated Agreement, Defendant Goldman has not engaged in misconduct, much less "grievous and perfidious misconduct," in reaching them.

42. By the very written terms of the Contract, Plaintiff had no justified expectation in renewal of the Contract.

43. Defendant Goldman has not engaged in conduct constituting a tortious breach of the covenant of good faith and fair dealing.

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D. Defendant Goldman is Not a Proper Party to this Suit

Individual Capacity

44. Plaintiff's allegation against Defendant Goldman is solely that Goldman failed "to address the issue" raised in Plaintiff's Grievance.

45. The Amended Complaint is void of any allegation that Defendant Goldman's actions were personally motivated or in some manner separate and apart from his role as the CCSD Assistant Superintendent of Employee Management Relations.

46. Plaintiff has presented no opposition to Defendant Goldman's Motion for Summary Judgment and has not presented argument or evidence to support an allegation against Defendant Goldman in his individual capacity.

47. Defendant Goldman owed no duty to Plaintiff beyond his duty as a CCSD actor.

48. Defendant Goldman is entitled to summary judgment in his individual capacity.

Official Capacity

49. A suit against a public officer or employee in his official capacity is the same as a claim against the governmental entity itself. *See* e.g., *Brandon v. Hold*, 469 U.S. 464, 469-70 (1984) ("Official capacity suits generally represent an action against an entity of which an officer is an agent."); *Larez v. City of Los Angeles*, 946 F.2d 630, 646 (9th Cir. 1991) (stating "a suit against a government office in his official capacity is equivalent to a suit against the governmental entity itself.")

50. Duplicative, redundant, or superfluous claims are properly dismissed if they are based on the same operative facts and allege the same injury. *See Hoagland ex rel. Midwest Transit, Inc. v. Sandberg, Phoenix & von Gontard, P.C.*, 385 F.3d 737, 744 (7th Cir. 2004); *see also* NRCP 12(f) (authorizing courts to strike redundant material from pleadings). *See also Robinson v. District of Columbia*, 403 F. Supp. 2d 39, 49 (D.D.C. 2005) ("it is duplicative to name both a governmental entity and the entity's employees in their official capacity," [thus] "courts have routinely dismissed corresponding claims against individuals named in their official capacity as redundant and an inefficient use of judicial resources.")

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51. Plaintiff's suit against Defendant Goldman in his official capacity is redundant to the suit against the CCSD BOT as it is based on the same operative facts and alleges the same injury.

52. Defendant Goldman is entitled to judgment in his official capacity as an employee of the CCSD.

Discretionary Immunity

53. CCSD is a political subdivision of the state of Nevada. NRS 386.010. NRS Chapter 41 governs suits against and liability of political subdivisions and their employees. Defendant Goldman's liability as an employee of CCSD is, therefore, subject to NRS Chapter 41.

54. Plaintiff's Amended Complaint prays for "[g]eneral damages for the past and present suffering" – a tort damage.

55. An employee of a political subdivision has discretionary immunity for acts or omissions based upon the exercise or performance, or the failure to exercise or perform, a discretionary function or duty, whether or not the discretion involved is abused. NRS 41.032

56. The *Berkovitz-Gaubert* test determines if a public employee is entitled to discretionary immunity. *Martinez v. Maruszczak,* 123 Nev. 433, 168 P.3d 720 (2007), *citing Berkovitz v. United States*, 486 U.S. 531, 536-37, 108 S. Ct. 1954 (1988), and *United States v. Gaubert*, 499 U.S. 315, 322, 111 S. Ct. 1267 (1991.) A public employee's act is discretionary in nature when "the acts . . . involve an 'element of judgment or choice," and "[the] judgment [exercised] is of the kind that the discretionary-function exception was designed to shield." *Id.*

57. The focus of the inquiry is not the employee's subjective intent but is instead on the nature of the actions taken and whether they are susceptible to policy analysis. *Martinez, supra,* 123 Nev. at 445, 168 P.2d at 728. Decisions at all levels of government may be protected by discretionary immunity if they require analysis of government policy concerns. *Martinez, supra,* 123 Nev. at 446-47, 168 P.2d at 729.

58. Defendant Goldman's response to Plaintiff's Grievance required analysis and consideration of the public policy embodied in Plaintiff's Contract and the Negotiated Agreement.

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59. Defendant Goldman has discretionary immunity from suit for tort damages. NRS 41.032.

Authority For Relief Sought

60. Plaintiff's allegations against Defendant Goldman arise from Defendant Goldman's perceived duties as the CCSD Assistant Superintendent of Employee Management Relations. Defendant Goldman has no authority to review the BOT's non-renewal or to extend a new contract to Plaintiff.

61. NRS 41.0349 requires the CCSD BOT to indemnify Defendant Goldman as a public employee, for conduct within the course and scope of his employment. Defendant Goldman is entitled to indemnification by the CCSD.

62. The damages sought by Plaintiff are not recoverable against Defendant Goldman.

E. The Negotiated Agreement Provides the Exclusive Remedy for Plaintiff's Contract-Based Claims as Based on the Terms of the Negotiated Agreement

63. Plaintiff's employment with CCSD was governed by NRS Chapter 288 and covered by the Negotiated Agreement. NRS Chapter 288 is "intended to apply similar principles" as recognized by federal labor laws." *Truckee Meadows Fire Protection District v. International Ass'n of Firefighters, Local 2487,* 109 Nev. 367, 374, 849 P.2d 343 (1993).

64. The Negotiated Agreement, as the collective bargaining agreement governing Plaintiff's employment, provides the "uniform and exclusive method for orderly settlement of employee grievance." *Republic Steel Corp. v. Maddox*, 379 U.S. 650, 653 (1952). ("If a grievance procedure cannot be made exclusive, it loses much of its desirability as a method of settlement. A rule creating such a situation would inevitably exert a disruptive influence upon both the negotiation and administration of collective agreements."); *see also* NRS 288.150(o) (identifying that a mandatory subject of collective bargaining includes "grievance and arbitration procedures for resolution of disputes relating to interpretation or application of collective bargaining agreements").

65. An employee covered by a collective bargaining agreement may not challenge his employment status through state law claims which would require interpretation of the collective

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bargaining agreement. *MGM Grand Hotel-Reno, Inc. v. Insley,* 102 Nev. 513, 517, 728 P.2d 821 (1986) (citing *Allis Chalmers v.* Lueck, 471 U.S. 202 (1985)) (alleged breach of implied covenant of good faith and fair dealing arising from collective bargaining agreement claim legally insufficient). The rule applies to claims "which would require the court to interpret the meaning and scope of a term" of the collective bargaining agreement. *MGM Grand Hotel-Reno, Inc. v. Insley, supra*, 102 Nev. at 517.

66. Plaintiff's claim against Defendant Goldman is a direct result of his dissatisfaction with Defendant Goldman's response, in application of the Negotiated Agreement, to Plaintiff's Grievance. Plaintiff's Grievance, whether as to the non-renewal of his Contract or as to his evaluations and the timeline for response thereto, is governed by the Negotiated Agreement.

67. Plaintiff's suit against Defendant Goldman seeks this Court's interpretation of the Contract as governed by the Negotiated Agreement, and in pertinent part, Defendant Goldman's compliance therewith.

68. The Negotiated Agreement governing Plaintiff's employment with the CCSD provides the exclusive remedy for challenging disputes which arise regarding an interpretation, application, or alleged violation of any of the provisions of the Negotiated Agreement.

69. Therefore, Plaintiff's contract-based claims are preempted by the Negotiated Agreement and Defendant Goldman is entitled to summary judgment thereon.

IV. Plaintiff's Motion To Strike Defendant Goldman's Declaration in Support of Defendant Goldman's Motion For Summary Judgment

70. A motion must be filed with a memorandum of points and authorities in support of each ground therefore, the absence of which may be construed as an admission that the motion is not meritorious and is cause for its denial. EDCR 2.20(c).

71. Plaintiff's Motion to Strike the Declaration of Dr. Edward Goldman in Support of Defendant Goldman's Motion for Summary Judgment, contains no points or authorities discussing how Defendant Goldman's Declaration is deemed insufficient, and instead sets forth deficiencies of a Declaration by an *America Lomeli* – a Declaration not submitted by Defendant Goldman.

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~~72.~~ Plaintiff's Motion to Strike, unsupported by reference to Defendant Goldman's Declaration, is insufficient on its face. A motion must be filed with a memorandum of points and authorities in support of each ground therefore, the absence of which may be construed as an admission that the motion is not meritorious and is cause for its denial. EDCR 2.20(c). Plaintiff's objection and motion to strike poses no specific objection to the testimony stated in Defendant Goldman's Declaration and instead makes a blanket argument without reference to Defendant Goldman's Declaration itself.

73. NRCP 56(c)(1) provides that a party may support a motion for summary judgment by "citing to particular parts of materials in the record, including . . . documents . . . affidavits or declarations . . . or other materials." Defendant Goldman's Motion for Summary Judgment, made under penalty of perjury, setting forth the basis of his knowledge of the facts stated therein, and attesting to the CCSD documents referenced therein – documents which authenticity has not been challenged by Plaintiff – constitutes testimony to be offered by him at the time of trial. The Declaration is made based on personal knowledge, attests to matters concerning which Defendant Goldman is competent to testify as stated in the Declaration, and attests to the truth and accuracy of the statements contained therein. *See* NRCP 55(c)(4), and NRS 50.015 ([e]very person is competent to be a witness except as otherwise provided in this title).

74. Based upon the foregoing, Defendant Goldman's Declaration sufficiently complies with the requirements of NRCP 56(c)(1) and (c)(4), and Plaintiff's Motion to Strike the Declaration is denied.

V. Defendant Goldman's Joinder in CCSD BOT's Countermotion to Extend the Dispositive Motion Deadline.

75. At the time Defendant Goldman's Motion for Summary Judgment was filed, the Arbitration hearing was scheduled for July 28, 2021.

76. NAR 4(E) provides for dispositive motions to be filed 45 days in advance of an Arbitration hearing date.

77. All parties filed their motions for summary judgment on Monday, June 14, 2021, including Plaintiff. Plaintiff's motions to strike Defendants' motions for summary judgment

asserts motions for summary judgment were due pursuant to NAR(E) on Friday, June 11 – a difference of a single judicial day. The CCSD BOT's countermotion, joined by Defendant Goldman, to extend the time for filing dispositive motions by the single judicial day to Monday, June 14, 2021, is both in good faith and reasonable in light of Plaintiff's own filing on June 14, 2021.

78. Further, the Arbitration hearing was subsequently moved by Stipulation of the parties first to August 25, 2021, and then to October 6, 2021. The change in the Arbitration hearing date resulted in Defendant Goldman's Motion having been filed more than the 45 days allotted by NAR 4(E) for submission and consideration of dispositive motions in advance of the arbitration hearing.

79. Defendant CCSD BOT's request, joined by Defendant Goldman, for an extension of time to extend the dispositive motion deadline calendared from the July 28, 2021 Arbitration hearing is, therefore, without prejudice to Plaintiff – the original 45 day deadline was mooted by the extension of the Arbitration hearing date and by Defendant's non-opposition to the extension of time sought by Plaintiff to oppose Defendants' motions for summary judgment.

If any of the foregoing Conclusions of Law is deemed more appropriately categorized as a Finding of Fact, it shall be so treated.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

Plaintiff's Motion To Strike Defendant Goldman's Motion For Summary Judgment is DENIED;

Plaintiff's Motion to Extend the Time to Oppose Defendant Dr. Edward Goldman's Motion for Summary Judgment is GRANTED;

Defendant Goldman's Joinder in the CCSD BOT Counter-Motion to Extend Dispositive Motion Deadline is DENIED as moot;

Plaintiff's Motion To Strike Defendant Goldman's Declaration in Support of Defendant Goldman's Motion For Summary Judgment, is DENIED; and

///

///

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Defendant Dr. Edward Goldman's Motion For Summary Judgment is GRANTED on its merits.

IT IS SO ORDERED this _____ day of _____, 2021.

Dated this 20th day of October, 2021

_____
DISTRICT COURT JUDGE

0B9 860 132B B493
Joe Hardy
District Court Judge

Submitted By:

OLSON CANNON GORMLEY & STOBERSKI

STEPHANIE A. BARKER, ESQ.
Nevada Bar No. 3176
9950 West Cheyenne Ave.
Las Vegas, NV 89129
Attorneys for Defendant Dr. Edward Goldman

Approved as to Form and Content By:
CLARK COUNTY SCHOOL DISTRICT
OFFICE OF THE GENERAL COUNSEL

/s/ *Crystal J. Herrera*
_____
CRYSTAL J. HERRERA, ESQ.
Nevada Bar No. 12396
5100 West Sahara Avenue
Las Vegas, Nevada 89146
Attorney for Defendant CCSD Board of Trustees

Approved as to Form and Content By:

Unable to Agree
_____
TENKASI VISWANATHAN
Plaintiff, Pro Se

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Stephanie Barker

From: Crystal Herrera [Office of the General Counsel] <herrec4@nv.ccsd.net>
Sent: Tuesday, October 12, 2021 1:53 PM
To: Stephanie Barker
Cc: Tenkasi Viswanathan; Nan Langenderfer; penaec@nv.ccsd.net
Subject: Re: Viswanathan v. CCSD BOT & Goldman

Yes.

Thank you,

Crystal Herrera

Senior Assistant General Counsel
Office of the General Counsel
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5100 West Sahara Avenue
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Email: herrec4@nv.ccsd.net

On Tue, Oct 12, 2021 at 1:11 PM Stephanie Barker <sbarker@ocgas.com> wrote:

> Good afternoon Ms. Herrera:
>
> Do I have your permission to submit the attached order Granting Goldman's Motion for Summary Judgment, etc., with your electronic signature?
>
> Thank you.
>
> **Stephanie A. Barker, Esq.**
>
> **Olson Cannon Gormley & Stoberski**
>
> 9950 West Cheyenne Avenue
>
> Las Vegas, Nevada 89129

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Tenkasi Viswanathan, Plaintiff(s) vs. Board of Trustees of the Clark County School District, Defendant(s)	CASE NO: A-20-814819-C DEPT. NO. Department 15

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 10/20/2021

James Fontano	jim@heatonfontano.com
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JAMES R. OLSON, ESQ.
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Attorneys for Defendant
Dr. Edward Goldman

DISTRICT COURT

CLARK COUNTY NEVADA

Tenkasi Viswanathan;

Plaintiff,

vs.

Board of Trustees of the Clark County School District; Pat Skorkowski in his Official and Individual Capacity; Dr. Edward Goldman in his Official and Individual Capacity; Neddy Alvarez in her Official and Individual Capacity; Sonya Houghton in her Official and Individual Capacity; and Louis Markouzis in his Official and Individual Capacity,

Defendants.

Case No.: A-20-814819-C
Dept. No.: 15

NOTICE OF ENTRY OF ORDER GRANTING DEFENDANT DR. EDWARD GOLDMAN'S MOTION FOR SUMMARY JUDGMENT; GRANTING PLAINTIFF'S MOTION TO EXTEND THE TIME TO OPPOSE DEFENDANT GOLDMAN'S MOTION FOR SUMMARY JUDGMENT; DENYING PLAINTIFF'S MOTION TO STRIKE DEFENDANT GOLDMAN'S MOTION FOR SUMMARY JUDGMENT; DENYING PLAINTIFF'S OBJECTIONS TO, AND MOTION TO STRIKE DEFENDANT GOLDMAN'S DECLARATION IN SUPPORT OF DEFENDANT GOLDMAN'S MOTION FOR SUMMARY JUDGMENT

. . .

TO: ALL PARTIES OF INTEREST AND THEIR COUNSEL OF RECORD:

YOU AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the Court entered an Order Granting Defendant Dr. Edward Goldman's Motion for Summary Judgment; Granting Plaintiff's Motion to Extend the Time to Oppose Defendant Goldman's Motion for Summary Judgment; Denying Plaintiff's Motion to Strike Defendant Goldman's Motion for Summary Judgment; Denying Plaintiff's Objections to, and Motion to Strike Defendant Goldman's Declaration in Support of Defendant Goldman's Motion for Summary Judgment, a copy of which is attached hereto, filed on the 20th day of October, 2021.

DATED this 21st day of October, 2021.

OLSON CANNON GORMLEY & STOBERSKI

/s/ *Stephanie A. Barker*
JAMES R. OLSON, ESQ.
Nevada Bar No. 000116
STEPHANIE A. BARKER
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9950 West Cheyenne Ave.
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Attorneys for Defendant Dr. Edward Goldman

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CERTIFICATE OF SERVICE

On the 21st day of October, 2021, the undersigned employee of Olson Cannon Gormley & Stoberski, hereby served a true copy of **NOTICE OF ENTRY OF ORDER GRANTING DEFENDANT DR. EDWARD GOLDMAN'S MOTION FOR SUMMARY JUDGMENT; GRANTING PLAINTIFF'S MOTION TO EXTEND THE TIME TO OPPOSE DEFENDANT GOLDMAN'S MOTION FOR SUMMARY JUDGMENT; DENYING PLAINTIFF'S MOTION TO STRIKE DEFENDANT GOLDMAN'S MOTION FOR SUMMARY JUDGMENT; DENYING PLAINTIFF'S OBJECTIONS TO, AND MOTION TO STRIKE DEFENDANT GOLDMAN'S DECLARATION IN SUPPORT OF DEFENDANT GOLDMAN'S MOTION FOR SUMMARY JUDGMENT** on the parties listed below via the EFP Program, pursuant to the Court's Electronic Filing Service Order effective June 1, 2014 and/or mailed to the following:

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Attorney for Defendants
CCSD Board of Trustees and
Pat Skorkowsky

An Employee of OLSON CANNON GORMLEY & STOBERSKI

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10/20/2021 1:16 PM

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10/20/2021 1:15 PM
CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY NEVADA

Tenkasi Viswanathan;

Plaintiff,

vs.

Board of Trustees of the Clark County School District; Pat Skorkowski in his Official and Individual Capacity; Dr. Edward Goldman in his Official and Individual Capacity; Neddy Alvarez in her Official and Individual Capacity; Sonya Houghton in her Official and Individual Capacity; and Louis Markouzis in his Official and Individual Capacity,

Defendants.

Case No.: A-20-814819-C
Dept. No.: 15

Hearing Date: August 25, 2021
Hearing Time: 9:00 a.m.

ORDER

***GRANTING* DEFENDANT DR. EDWARD GOLDMAN'S MOTION FOR SUMMARY JUDGMENT;**

GRANTING PLAINTIFF'S MOTION TO EXTEND THE TIME TO OPPOSE DEFENDANT GOLDMAN'S MOTION FOR SUMMARY JUDGMENT;

***DENYING* PLAINTIFF'S MOTION TO STRIKE DEFENDANT GOLDMAN'S MOTION FOR SUMMARY JUDGMENT;**

***DENYING* PLAINTIFF'S OBJECTIONS TO, AND MOTION TO STRIKE DEFENDANT GOLDMAN'S DECLARATION IN SUPPORT OF DEFENDANT GOLDMAN'S MOTION FOR SUMMARY JUDGMENT;**

AND

***DENYING* AS MOOT DEFENDANT GOLDMAN'S JOINDER IN DEFENDANT CLARK COUNTY SCHOOL DISTRICT BOARD OF TRUSTEES' COUNTERMOTION TO EXTEND THE DISPOSITIVE MOTION DEADLINE**

Defendant DR. EDWARD GOLDMAN's Motion for Summary Judgment and related motions having come on for hearing on August 25, 2021, Plaintiff TENKASI VISWANATHAN having been present and representing himself pro se, Defendant GOLDMAN having been represented by STEPHANIE A. BARKER, ESQ., of the law firm of Olson Cannon Gormley & Stoberski, and Defendants CLARK COUNTY SCHOOL DISTRICT (CCSD) BOARD OF TRUSTEES (BOT) having been represented by attorney CRYSTAL HERRERA, ESQ., of the Clark County School District Office of General Counsel;

The Court having read and considered the pleadings and papers on file herein, specifically as set forth in the procedural history hereinbelow;

AND the Court having entertained the oral arguments of counsel and of Plaintiff pro se, including Plaintiff's oral argument in opposition to Defendant Goldman's Motion for Summary Judgment;

AND GOOD CAUSE APPEARING, the Court hereby makes the following Findings of Fact and Conclusions of Law, GRANTING Defendant Dr. Edward Goldman's Motion For Summary Judgment; GRANTING Plaintiff's Motion to Extend the Time to Oppose Defendant Dr. Edward Goldman's Motion for Summary Judgment; DENYING Plaintiff's Motion To Strike Defendant Goldman's Motion For Summary Judgment; DENYING Plaintiff's Objections to and Motion To Strike Defendant Goldman's Declaration Served with Defendant Goldman's Motion For Summary Judgment; and DENYING as moot Defendant Goldman's Joinder in the CCSD BOT Counter-Motion to Extend Dispositive Motion Deadline.

FINDINGS OF FACT

I. <u>Plaintiff's Employment by the CCSD BOT</u>

1. For the 2013-2014 school year, Plaintiff was employed by the CCSD BOT as a probationary teacher, pursuant to a Probationary Teaching Contract (Contract). The Contract

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contained a written provision stating that: "Probationary employees agree that they are employed only on an annual basis and that they have no right to employment after the last day of the school year specified in this Contract specified in writing." (Emphasis added.)

2. In 2013-2014, CCSD teacher contracts were governed by a Negotiated Agreement between the CCSD and the Clark County Education Association. (Negotiated Agreement.) Article 36-8-2 of the Negotiated Agreement stated non-renewal of a probationary teacher's contract "shall not be subject to a hearing or arbitration under the provisions of this Article (36-8)."

3. On April 28, 2014, Plaintiff was given written Notice of Non-Reemployment of Probationary Employee. The Notice, dated April 25, 2014, stated that Plaintiff's Contract would not be renewed for the coming school year. The non-renewal decision was made by the CCSD BOT. It was not made by Defendant Goldman.

4. On May 28, 2014, after his receipt of the Notice of Non-Renewal, Plaintiff forwarded a grievance to CCSD's Employee Management Relations. (Grievance.) The Grievance challenged the BOT non-renewal decision as the "opposite of [Plaintiff's] expectation" and requested three remedies:

(1) reappointment "for another year within CCSD;"

(2) that Plaintiff's second and third evaluations be "rendered null and void;" and

(3) other remedies "that are deemed just and appropriate."

5. Article 4-1 of the Negotiated Agreement provided:

> A grievance is defined as any dispute which arises regarding an interpretation, application, or alleged violation of any of the provisions of this Agreement.

6. Plaintiff's first, second, and third evaluations were issued on November 25, 2013, January 30, 2014, and April 1, 2014, respectively. Plaintiff did not submit a written grievance to any of these evaluations before he submitted the May 28, 2014, Grievance of the non-renewal decision by the CCSD BOT.

7. In May 2014, Defendant Goldman was an employee of the CCSD, holding the position of Assistant Superintendent of Employee Management Relations.

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8. Defendant Goldman was not a party to the Contract, did not have authority to non-renew a probationary teaching contract, and did not have authority to review a decision by the BOT to non-renew a probationary teaching contract.

9. In his position as Assistant Superintendent of Employee Management Relations, Defendant Goldman responded to Plaintiff's Grievance via email on July 28, 2014. Therein Defendant Goldman told Plaintiff that he could not grieve the non-renewal pursuant to Article 36-8-2 of the Negotiated Agreement and NRS 391, because the non-renewal of a probationary teacher's contract is not subject to a hearing or arbitration. This determination was made based upon the stated nature of Plaintiff's grievance in seeking reappointment to a teaching position.

10. Article 36-8-2 of the Negotiated Agreement stated:

> Pursuant to NRS 391, the non-renewal of a probationary teacher's contract shall not be subject to a hearing or arbitration under the provisions of this Article (36-8) . . .

11. After consultation with the CCSD Office of General Counsel, on August 1, 2014, Defendant Goldman further responded to Plaintiff's Grievance to address Plaintiff's request that Plaintiff's second and third evaluations be "rendered null and void." Defendant Goldman's correspondence told Plaintiff that to the extent this Grievance was attempting to grieve Plaintiff's January 30, 2014, and April 1, 2014 performance evaluations, the Grievance was untimely pursuant to Article 4-5(a) of the Negotiated Agreement which required that a grievance be filed not later than "thirty (30) days after the grievant first knew of the act or condition upon which the grievance is based." To the extent Plaintiff's Grievance sought to have his second and third evaluations "rendered null and void," it was not submitted within 30 days of each evaluation and could not, therefore, be considered.

12. Article 4-5(a) of the Negotiated Agreement provided:

> If the grievance is not resolved at Step One, the grievant may submit in writing the unresolved grievance to the Associate Superintendent, Human Resources Division, or the Superintendent's designee not later than thirty (30) days after the grievant first knew of the act or condition upon which the grievance is based.

13. On August 19, 2014, Defendant Goldman again sent correspondence in response to Plaintiff's Grievance, advising that Plaintiff's Grievance was never properly before Defendant

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Goldman because the Board of School Trustees' decision not to renew Plaintiff's Contract was not grievable pursuant to the terms of the Negotiated Agreement and/or statute.

14. Defendant Goldman responded to Plaintiff's Grievance on three separate occasions – July 28, August 1, and August 19, 2014 – each time addressing Defendant Goldman's inability to consider the substance of the Grievance based upon the terms of Plaintiff's Contract and of the Negotiated Agreement.

15. The CCSD BOT's decision not to renew Plaintiff's Contract was not grievable pursuant to the terms of the Negotiated Agreement and/or Nevada statute.

II. Procedural Progress of This Litigation

16. On May 11, 2020, slightly over six years after the non-renewal of Plaintiff's probationary teaching contract, Plaintiff filed the Complaint initiating this litigation. (Doc ID #1.) On August 4, 2020, Plaintiff filed an Amended Complaint. (Doc ID #6.) As to Defendant Goldman, Plaintiff's only allegations are that he appealed the BOT's non-renewal decision to "the higher authorities, which included Dr. Goldman," and that Dr. Goldman "did not address the issue."

17. Defendant Goldman filed a Motion to Dismiss on August 30, 2020. (Doc ID #22.) Plaintiff opposed the motion on September 17, 2020 (Doc ID #33), and Defendant Goldman Replied to the opposition on October 2, 2020. (Doc ID #42.)

18. On October 28, 2020, the Court granted in part, and denied in part, Defendant Goldman's Motion to Dismiss (Doc ID #48), leaving two remaining claims for relief against Defendant Goldman:

(1) Breach of Contract, and

(2) Breach of the Covenant of Good Faith and Fair Dealing.

19. On January 7, 2021, no Request for Exemption from Arbitration having been filed, the Court's Alternative Dispute Resolution office appointed an Arbitrator to hear this matter. (Doc ID #71.)

20. After the close of discovery, Defendant Goldman and Defendant CCSD BOT filed separate motions for summary judgment on June 14, 2021. (Doc ID #86 and #87.) Defendant

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Goldman joined in the CCSD BOT Motion for Summary Judgment on June 15, 2021. (Doc ID #93.) Plaintiff did not file opposition to either motion for summary judgment.

21. On June 14, 2021, Plaintiff filed a Motion for Partial Summary Judgment as to the CCSD BOT, (Doc ID #88), and on June 20, 2021, Plaintiff withdrew the motion. (Doc ID #94 and #95.)

22. As of June 14, 2021, the date all parties' motions for summary judgment were filed, the Arbitration hearing was scheduled for July 28, 2021. (Doc ID #82.)

23. On June 21, 2021, Plaintiff filed Motion to Strike Defendant Goldman's Motion for Summary Judgment (Doc ID #97), and on that same day filed a Motion to Strike the CCSD BOT Motion for Summary Judgment. (Doc ID #96.) Defendant Goldman filed a Response in Opposition to Plaintiff's Motion to Strike Defendant Goldman's Motion for Summary Judgment on June 29, 2021 (Doc ID #104), along with a Joinder (Doc ID #106) to the CCSD BOT Opposition to Plaintiff's Motion to Strike the CCSD BOT Motion for Summary Judgment and to the CCSD BOT Countermotion to Extend the Dispositive Motion Deadline. (Doc ID #101.) Plaintiff's replies were filed on July 20, 2021. (Doc ID #123 and #124.)

24. On June 28, 2021, Plaintiff filed a Motion for Order Extending Time, seeking a seven-day extension of time to file and serve opposition to both Defendants' Motions for Summary Judgment. (Doc ID #102.) Both Defendant Goldman and Defendant CCSD BOT filed notice of Non-Opposition to Plaintiff's requested extension of time. (Doc ID #105 and #119.)

25. On July 6, 2021, Plaintiff filed Objections to and Motion to Strike Dr. Edward Goldman's Declaration in support of Defendant Goldman's Motion for Summary Judgment. (Doc ID #111.) Defendant Goldman opposed the motion on August 5, 2021 (Doc ID #126), and Plaintiff replied thereto on August 18, 2021. (Doc ID #130.)

26. On July 9, 2020, Plaintiff filed an Opposition to the CCSD BOT Countermotion to Extend the Dispositive Motion Deadline and to Defendant Goldman's Joinder in that Countermotion. (Doc ID #116.)

27. The foregoing Motions were initially calendared for hearing on multiple dates – July 26, July 28, and August 9, 2021. On July 13, 2021, the parties stipulated to consolidate

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hearing of the motions, and an Order was entered consolidating hearing for all motions to July 28, 2021. (Doc ID #120.)

28. On July 13, 2021, the Arbitrator entered an order continuing the Arbitration hearing from July 28, 2021, to August 27, 2021. (Doc ID #121.)

29. On July 28, 2021, the Court reset the consolidated hearings to be heard on August 18, 2021.

30. On August 13, 2021, the Arbitrator again entered an Order extending the Arbitration, resetting the hearing to October 6, 2021. (Doc ID #129.)

31. On August 5, 2021, upon stipulation of the parties, the consolidated hearing was re-scheduled to August 25, 2021. (Doc ID #127.)

32. On August 25, 2021, the Court heard and considered all pending motions in this matter, as set forth hereinabove.

33. As of the August 25, 2021 hearing on the motions for summary judgment, Plaintiff had filed no Opposition to Defendant Goldman's Motion for Summary Judgment, even after seeking an extension of time to serve and file an opposition, with notice of non-opposition to the extension having been filed by Defendant Goldman and by Defendant CCSD BOT.

34. Plaintiff stated at oral argument that his intent was to strike the motions for summary judgment as untimely and to strike the Declarations and Affidavits in support thereof; then, if Plaintiff's Motions to Strike were denied, to thereafter file oppositions.

35. Plaintiff presented oral argument in opposition to Defendants' Motions for Summary Judgment, as well as the Joinder, stating that he was entitled to judgment as a matter of law on his motions to strike, and that opposition to the Motions for Summary Judgment was not necessary as he had filed multiple Motions to Strike.

If any of the foregoing Findings of Fact is deemed more appropriately categorized as a Conclusion of Law, it shall be so treated.

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CONCLUSIONS OF LAW

1. Plaintiff, as a pro se litigant must comply with the Rules of Civil Procedure. *Rodriguez v. Fiesta Palms,* 134 Nev. 654, 659, 428 P.3d 255, 258-59 (2018) ("a pro se litigant cannot use his alleged ignorance as a shield to protect him from the consequences of failing to comply with basic procedural requirements").

2. Public policy favors disposition on the merits of a case. *Huckabay Props., Inc. v. NC Auto Parts, LLC*, 322 P.3d 429, 433-34, 130 Nev. Adv. Op. 23 (2014).

I. Plaintiff's Motion to Extend the time to Oppose Defendant Goldman's Motion for Summary Judgment

3. Plaintiff's Motion sought a seven (7) day extension of time to oppose Defendant Goldman's Motion for Summary Judgment, Defendant CCSD BOT's Motion for Summary Judgment and Defendant Goldman's Joinder thereto, pursuant to NRCP 6(b) and based on his personal circumstances.

4. Based on good cause shown and on Defendants' filed non-oppositions, Plaintiff's request for additional time up to an including July 6, 2021, to oppose Defendants Goldman's Motion for Summary Judgment, Defendant CCSD BOT's Motion for Summary Judgment and Defendant Goldman's Joinder thereto, is appropriate.

II. Plaintiff's Motion To Strike Defendant Goldman's Motion For Summary Judgment

5. Plaintiff's Motion to Strike Defendant Goldman's Motion for Summary Judgment is predicated on an asserted late filing of the summary judgment motion pursuant to NAR 4(E), which provides that dispositive motions be filed 45 days before an arbitration hearing. As applied to the July 28, 2021 Arbitration hearing in this matter, the filing date fell on June 13, 2021 – a Sunday. All parties, including Plaintiff, filed their summary judgment motions on June 14, 2021, the immediately following Monday. Plaintiff asserts that the motions were more appropriately due on the immediately preceding Friday – a difference of a single judicial day.

6. The Rules of Civil Procedure "should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding." NRCP 1.

7. Plaintiff's Motion for Partial Summary Judgment was filed the same date as Defendant Goldman's Motion for Summary Judgment. Plaintiff calculated the deadline for the Motions for Summary Judgment the same as the Defendants and, therefore, it was disingenuous for the Plaintiff to withdraw his Motion for Partial Summary Judgment so that he could then argue that Defendants' Motions for Summary Judgment, including Defendant Goldman's Motion for Summary Judgment, were not timely filed.

8. Plaintiff's Motion is not properly brought under NRCP 12 which governs submission of motions regarding the pleadings as set forth therein. It does not govern response to a summary judgment motion brought pursuant to NRCP 56. NRCP 12 does not provide a procedural vehicle to strike a motion for summary judgment, timely or otherwise.

9. The timing of the filing of Defendant Goldman's Motion for Summary Judgment caused no prejudice to Plaintiff as Plaintiff has had ample opportunity to oppose the motion; Defendant Goldman did not oppose Plaintiff's request for an extension of time to respond to the motion, and the motion did not come on for hearing until approximately ten weeks after the Motion for Summary Judgment was filed.

10. At the time Defendant Goldman's Motion for Summary Judgment was filed, the Arbitration hearing was scheduled for July 28, 2021. It was subsequently moved by Stipulation of the parties first to August 25, 2021, and then to October 6, 2021, resulting in the motion having been filed more than the 45 days allotted by NAR 4 for submission and consideration of dispositive motions in advance of the arbitration hearing. The argument that Defendant Goldman's Motion for Summary Judgment was untimely pursuant to NAR 4(E) is, therefore, mooted by the extension of the arbitration hearing date.

11. Plaintiff received full and fair notice of Defendant Goldman's Motion for Summary Judgment, more than 45 days before an arbitration hearing in this matter and was given full and fair opportunity to oppose the motion and to be heard in opposition.

12. There is no legal authority cited by Plaintiff which would justify striking Defendant Goldman's Motion for Summary judgment in the circumstances presented.

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III. Goldman's Motion For Summary Judgment

A. Standard of For Summary Judgment

13. Summary judgment is appropriate and shall be granted if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to a judgment as a matter of law. NRCP 56. It is a procedural tool by which "factually insufficient claims or defenses [may] be isolated and prevented from going to trial with the attendant unwarranted consumption of public and private resources." *Boesiger v. Desert Appraisals*, 135 Nev. Adv. Op. 25, p. 4 (2019), quoting *Celotex Corp v. Catrett*, 477 U.S. 317, 327 (1986).

14. Summary judgment is appropriate under NRCP 56 when the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law. *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005).

15. When the nonmoving party bears the burden of persuasion at trial, as Plaintiff does here, then the moving party may show an absence of a genuine issue of material fact by either putting forth evidence that negates an essential element of the nonmoving party's claim or by pointing to the absence of evidence in support of the nonmoving party's case. *Cuzze v. University and Community College System of Nevada*, 123 Nev. 598, 602-603, 172 P.3d. 131 (2007), citing *Celotex*, 477 U.S. at 331.

16. To survive summary judgment, the nonmoving party must rely upon more than general allegations and conclusions set forth in the pleadings and must present specific facts demonstrating the existence of a genuine issue. *Boesiger v. Desert Appraisals*, 135 Nev. Adv. Op. 25, p. 4 (2019), citing *Wood, supra,* 121 Nev. at 732, 121 P.3d at 1031 (internal quotations omitted). *See also Matsushita Elec. Indus. Co. v. Zenith Radio Corp.,* 475 U.S. 574, 586 (1986) (the nonmoving party bears the burden to do more than simply show that there is some metaphysical doubt as to the operative facts in order to avoid summary judgment being entered in the moving party's favor.)

17. In accordance with NRCP 56 and the foregoing direction from the Nevada Supreme Court, the Court has read and considered Defendant Goldman's Motion for Summary Judgment along with all of the exhibits attached thereto, including but not limited to the Declaration of Dr. Edward Goldman.

B. Breach of Contract

18. The elements of a breach of contract claim in Nevada are: 1) plaintiff and defendant entered into a valid and existing contract; 2) plaintiff performed or was excused from performance; 3) defendant breached the contract; and 4) plaintiff sustained damage as a result of the breach. *Calloway v. City of Reno*, 116 Nev. 250, 993 P.2d 1259 (2000); *Saint v. Int'l Game Tech.*, 434 F. Supp. 2d 913, 919-920 (D. Nev. 2006). Q

19. When a contract is clear on its face, it will be construed from the written language and enforced as written. *Ellison v. C.S.A.A.*, 106 Nev. 601, 603, 797 P.2d 975, 977 (1990); *White Cap Indus., Inc. v. Ruppert*, 119 Nev. 126, 128, 67 P.3d 318, 319 (2003) (unambiguous contracts are construed according to their plain language).

20. Plaintiff's Contract was between Plaintiff and the CCSD BOT and was not a contract between Plaintiff and Defendant Goldman. The non-renewal by the CCSD BOT cannot constitute breach by Defendant Goldman who was not a party to the Contract and did not make the non-renewal.

21. By the written terms of the Contract, Plaintiff had no right to or expectation of continued employment beyond the 2013-2014 school year – the non-renewal by the CCSD BOT was contemplated by the Contract and was not in breach of its express terms.

22. Defendant Goldman did not breach the Contract by rejecting Plaintiff's May 28, 2014 request to grieve the non-renewal – the Contract was governed by the Negotiated Agreement which stated at Article 36-8-2 that that non-renewal of a probationary teacher's contract "shall not be subject to a hearing or arbitration under the provisions of this Article (36-8)."

23. Defendant Goldman did not breach the contract by rejecting Plaintiff's May 28, 2014, request to grieve the January 30, 2014, and April 1, 2014, performance evaluations – the Contract was governed by the Negotiated Agreement which stated at Article 4-5(a) that a

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grievance must be filed no later than "thirty (30) days after the grievant first knew of the act or condition upon which the grievance is based." The May 28, 2014 Grievance was untimely as to any challenge of the January 30, 2014, and April 1, 2014, performance evaluations.

24. Defendant Goldman addressed to Plaintiff's Grievance on three separate occasions – July 28, August 1, and August 19, 2014; Defendant Goldman's response to the Grievance did not breach of any provision of the Contract and Defendant Goldman cannot, therefore, be liable to Plaintiff for an alleged breach of the Contract for a failure to "address the issue" raised by the Grievance, as alleged by Plaintiff.

C. Breach of the Covenant of Good Faith and Fair Dealing

25. Every contract imposes upon the contracting parties a duty of good faith and fair dealing. A wrongful act committed during the course of a contractual relationship may give rise to both contractual and tort remedies. *Albert H. Wohlers & Co. v. Bartgis,* 114 Nev. 1249, 969 P.2d 949 (1998); *Hilton Hotels Corp. v. Butch Lewis Prods., Inc.*, 109 Nev. 1043, 862 P.2d 1207 (1993).

26. The covenant of good faith and fair dealing that exists in every Nevada contract forbids arbitrary, unfair acts by one party to a contract that disadvantage the other. *See Frantz v. Johnson*, 116 Nev. 455, 999 P.2d 351 (2000).

27. Errors of judgment are not evidence of bad faith. NRS 453.030; 453.080(1). *Hulse v. Sheriff, Clark County*, 88 Nev. 393, 498 P.2d 1317 (1972).

28. A claim alleging breach of the implied covenant of good faith and fair dealing cannot be based on the same conduct establishing a separately pled breach of contract claim. *Id.*; *Shaw v. CitiMortgage, Inc.*, 201 F. Supp. 3d 1222, 1252 (D. Nev. 2016) (holding that the defendant's conduct that was a "direct and actual breach" of the subject contract could not support the plaintiff's implied-covenant claim).

29. Where there is no contractual duty to perform a specific act, the omission to perform that act does not constitute an arbitrary or unfair act to the plaintiff's disadvantage. *Nelson v. Heer*, 123 Nev. 226, 163 P.3d 420 (2007).

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Contractual breach of the covenant of good faith and fair dealing

30. To establish a contractual breach of the implied covenant of good faith and fair dealing, a plaintiff must prove each of the elements of the claim: 1) plaintiff and defendant were parties to a contract; 2) defendant owed a duty of good faith to plaintiff; 3) defendant breached that duty by performing in a manner that was unfaithful to the purpose of the contract; and 4) plaintiff's justified expectations were thus denied. *See Perry v. Jordan*, 111 Nev. 943, 900 P.2d 335 (1995); *Hilton Hotels v. Butch Lewis Prods.*, 107 Nev. 226, 808 P.2d 919 (1991). The elements are conjunctive.

31. Defendant Goldman was not a party to the Contract.

32. Plaintiff's claim against Defendant Goldman for breach of the implied covenant of good faith and fair dealing, is based on the same alleged actions or inactions – namely Defendant Goldman's rejection Plaintiff's May 28, 2014 request to grieve the non-renewal. The action giving rise to Plaintiff's breach of contract claim against Dr. Goldman cannot also give rise to Plaintiff's breach of the implied covenant of good faith and fair dealing claim against Defendant Goldman.

33. Even if it could, Defendant Goldman's response to Plaintiff's Grievance, consistent with the Negotiated Agreement governing the Contract, was faithful to the purpose of the Contract.

34. By the very written terms of the Contract, Plaintiff had no justified expectation in renewal of the Contract.

35. Neither the Contract nor the Negotiated Agreement gave rise to a "review" process to challenge a non-renewal, and Defendant Goldman did not breach the covenant of good faith and fair dealing "by failing to address the issue" of Plaintiff's non-renewal as alleged by Plaintiff, when advising Plaintiff, in writing, that Plaintiff had no right to a review of the non-renewal, or to challenge his performance evaluations as of the date of Plaintiff's Grievance.

36. Defendant Goldman has not committed a contractual breach of the covenant of good faith and fair dealing with regard to Plaintiff's Contract.

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Tortious breach of the covenant of good faith and fair dealing

37. To establish a tortious breach of the implied covenant of good faith and fair dealing, Plaintiff must prove each element of the claim: 1) plaintiff and defendant were parties to a contract; 2) defendant owed a duty of good faith to plaintiff arising from the contract; 3) A special element of reliance of fiduciary duty existed between plaintiff and defendant where defendant was in a superior or entrusted position; 4) defendant breached the duty of good faith by engaging in misconduct; and 5) plaintiff suffered damages as a result of the breach. *Great Ameri. Ins. Co. v. Gen Builders, Inc.*, 113 Nev. 346, 934 P.2d 257 (1997). The elements are conjunctive.

38. Tort liability for breach of the implied covenant of good faith and fair dealing is appropriate where the party in the superior or entrusted position has engaged in "grievous and perfidious misconduct." *State, Univ. and Community College System v. Sutton*, 120 Nev. 972, 103 P.3d 8 (2004).

39. Defendant Goldman was not a party to the Contract.

40. Defendant Goldman's response to Plaintiff's grievance consistent with the Negotiated Agreement governing the Contract, was faithful to the purpose of the Contract.

41. Defendant Goldman responded in writing to Plaintiff's Grievance on three separate occasions, advising that the terms of the Contract and the Negotiated Agreement did not allow Plaintiff to challenge the non-renewal of his Contract, and that the grievance was untimely as to any challenge of the performance evaluations. Where those conclusions were based upon the clear written language of the Contract and the Negotiated Agreement, Defendant Goldman has not engaged in misconduct, much less "grievous and perfidious misconduct," in reaching them.

42. By the very written terms of the Contract, Plaintiff had no justified expectation in renewal of the Contract.

43. Defendant Goldman has not engaged in conduct constituting a tortious breach of the covenant of good faith and fair dealing.

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D. Defendant Goldman is Not a Proper Party to this Suit

Individual Capacity

44. Plaintiff's allegation against Defendant Goldman is solely that Goldman failed "to address the issue" raised in Plaintiff's Grievance.

45. The Amended Complaint is void of any allegation that Defendant Goldman's actions were personally motivated or in some manner separate and apart from his role as the CCSD Assistant Superintendent of Employee Management Relations.

46. Plaintiff has presented no opposition to Defendant Goldman's Motion for Summary Judgment and has not presented argument or evidence to support an allegation against Defendant Goldman in his individual capacity.

47. Defendant Goldman owed no duty to Plaintiff beyond his duty as a CCSD actor.

48. Defendant Goldman is entitled to summary judgment in his individual capacity.

Official Capacity

49. A suit against a public officer or employee in his official capacity is the same as a claim against the governmental entity itself. *See* e.g., *Brandon v. Hold*, 469 U.S. 464, 469-70 (1984) ("Official capacity suits generally represent an action against an entity of which an officer is an agent."); *Larez v. City of Los Angeles*, 946 F.2d 630, 646 (9th Cir. 1991) (stating "a suit against a government office in his official capacity is equivalent to a suit against the governmental entity itself.")

50. Duplicative, redundant, or superfluous claims are properly dismissed if they are based on the same operative facts and allege the same injury. *See Hoagland ex rel. Midwest Transit, Inc. v. Sandberg, Phoenix & von Gontard, P.C.*, 385 F.3d 737, 744 (7th Cir. 2004); *see also* NRCP 12(f) (authorizing courts to strike redundant material from pleadings). *See also Robinson v. District of Columbia*, 403 F. Supp. 2d 39, 49 (D.D.C. 2005) ("it is duplicative to name both a governmental entity and the entity's employees in their official capacity," [thus] "courts have routinely dismissed corresponding claims against individuals named in their official capacity as redundant and an inefficient use of judicial resources.")

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51. Plaintiff's suit against Defendant Goldman in his official capacity is redundant to the suit against the CCSD BOT as it is based on the same operative facts and alleges the same injury.

52. Defendant Goldman is entitled to judgment in his official capacity as an employee of the CCSD.

Discretionary Immunity

53. CCSD is a political subdivision of the state of Nevada. NRS 386.010. NRS Chapter 41 governs suits against and liability of political subdivisions and their employees. Defendant Goldman's liability as an employee of CCSD is, therefore, subject to NRS Chapter 41.

54. Plaintiff's Amended Complaint prays for "[g]eneral damages for the past and present suffering" – a tort damage.

55. An employee of a political subdivision has discretionary immunity for acts or omissions based upon the exercise or performance, or the failure to exercise or perform, a discretionary function or duty, whether or not the discretion involved is abused. NRS 41.032

56. The *Berkovitz-Gaubert* test determines if a public employee is entitled to discretionary immunity. *Martinez v. Maruszczak,* 123 Nev. 433, 168 P.3d 720 (2007), *citing Berkovitz v. United States*, 486 U.S. 531, 536-37, 108 S. Ct. 1954 (1988), and *United States v. Gaubert*, 499 U.S. 315, 322, 111 S. Ct. 1267 (1991.) A public employee's act is discretionary in nature when "the acts . . . involve an 'element of judgment or choice," and "[the] judgment [exercised] is of the kind that the discretionary-function exception was designed to shield." *Id.*

57. The focus of the inquiry is not the employee's subjective intent but is instead on the nature of the actions taken and whether they are susceptible to policy analysis. *Martinez, supra,* 123 Nev. at 445, 168 P.2d at 728. Decisions at all levels of government may be protected by discretionary immunity if they require analysis of government policy concerns. *Martinez, supra,* 123 Nev. at 446-47, 168 P.2d at 729.

58. Defendant Goldman's response to Plaintiff's Grievance required analysis and consideration of the public policy embodied in Plaintiff's Contract and the Negotiated Agreement.

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59. Defendant Goldman has discretionary immunity from suit for tort damages. NRS 41.032.

Authority For Relief Sought

60. Plaintiff's allegations against Defendant Goldman arise from Defendant Goldman's perceived duties as the CCSD Assistant Superintendent of Employee Management Relations. Defendant Goldman has no authority to review the BOT's non-renewal or to extend a new contract to Plaintiff.

61. NRS 41.0349 requires the CCSD BOT to indemnify Defendant Goldman as a public employee, for conduct within the course and scope of his employment. Defendant Goldman is entitled to indemnification by the CCSD.

62. The damages sought by Plaintiff are not recoverable against Defendant Goldman.

E. The Negotiated Agreement Provides the Exclusive Remedy for Plaintiff's Contract-Based Claims as Based on the Terms of the Negotiated Agreement

63. Plaintiff's employment with CCSD was governed by NRS Chapter 288 and covered by the Negotiated Agreement. NRS Chapter 288 is "intended to apply similar principles" as recognized by federal labor laws." *Truckee Meadows Fire Protection District v. International Ass'n of Firefighters, Local 2487,* 109 Nev. 367, 374, 849 P.2d 343 (1993).

64. The Negotiated Agreement, as the collective bargaining agreement governing Plaintiff's employment, provides the "uniform and exclusive method for orderly settlement of employee grievance." *Republic Steel Corp. v. Maddox*, 379 U.S. 650, 653 (1952). ("If a grievance procedure cannot be made exclusive, it loses much of its desirability as a method of settlement. A rule creating such a situation would inevitably exert a disruptive influence upon both the negotiation and administration of collective agreements."); *see also* NRS 288.150(o) (identifying that a mandatory subject of collective bargaining includes "grievance and arbitration procedures for resolution of disputes relating to interpretation or application of collective bargaining agreements").

65. An employee covered by a collective bargaining agreement may not challenge his employment status through state law claims which would require interpretation of the collective

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bargaining agreement. *MGM Grand Hotel-Reno, Inc. v. Insley,* 102 Nev. 513, 517, 728 P.2d 821 (1986) (citing *Allis Chalmers v.* Lueck, 471 U.S. 202 (1985)) (alleged breach of implied covenant of good faith and fair dealing arising from collective bargaining agreement claim legally insufficient). The rule applies to claims "which would require the court to interpret the meaning and scope of a term" of the collective bargaining agreement. *MGM Grand Hotel-Reno, Inc. v. Insley, supra*, 102 Nev. at 517.

66. Plaintiff's claim against Defendant Goldman is a direct result of his dissatisfaction with Defendant Goldman's response, in application of the Negotiated Agreement, to Plaintiff's Grievance. Plaintiff's Grievance, whether as to the non-renewal of his Contract or as to his evaluations and the timeline for response thereto, is governed by the Negotiated Agreement.

67. Plaintiff's suit against Defendant Goldman seeks this Court's interpretation of the Contract as governed by the Negotiated Agreement, and in pertinent part, Defendant Goldman's compliance therewith.

68. The Negotiated Agreement governing Plaintiff's employment with the CCSD provides the exclusive remedy for challenging disputes which arise regarding an interpretation, application, or alleged violation of any of the provisions of the Negotiated Agreement.

69. Therefore, Plaintiff's contract-based claims are preempted by the Negotiated Agreement and Defendant Goldman is entitled to summary judgment thereon.

IV. Plaintiff's Motion To Strike Defendant Goldman's Declaration in Support of Defendant Goldman's Motion For Summary Judgment

70. A motion must be filed with a memorandum of points and authorities in support of each ground therefore, the absence of which may be construed as an admission that the motion is not meritorious and is cause for its denial. EDCR 2.20(c).

71. Plaintiff's Motion to Strike the Declaration of Dr. Edward Goldman in Support of Defendant Goldman's Motion for Summary Judgment, contains no points or authorities discussing how Defendant Goldman's Declaration is deemed insufficient, and instead sets forth deficiencies of a Declaration by an *America Lomeli* – a Declaration not submitted by Defendant Goldman.

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~~72.~~ Plaintiff's Motion to Strike, unsupported by reference to Defendant Goldman's Declaration, is insufficient on its face. A motion must be filed with a memorandum of points and authorities in support of each ground therefore, the absence of which may be construed as an admission that the motion is not meritorious and is cause for its denial. EDCR 2.20(c). Plaintiff's objection and motion to strike poses no specific objection to the testimony stated in Defendant Goldman's Declaration and instead makes a blanket argument without reference to Defendant Goldman's Declaration itself.

73. NRCP 56(c)(1) provides that a party may support a motion for summary judgment by "citing to particular parts of materials in the record, including . . . documents . . . affidavits or declarations . . . or other materials." Defendant Goldman's Motion for Summary Judgment, made under penalty of perjury, setting forth the basis of his knowledge of the facts stated therein, and attesting to the CCSD documents referenced therein – documents which authenticity has not been challenged by Plaintiff – constitutes testimony to be offered by him at the time of trial. The Declaration is made based on personal knowledge, attests to matters concerning which Defendant Goldman is competent to testify as stated in the Declaration, and attests to the truth and accuracy of the statements contained therein. *See* NRCP 55(c)(4), and NRS 50.015 ([e]very person is competent to be a witness except as otherwise provided in this title).

74. Based upon the foregoing, Defendant Goldman's Declaration sufficiently complies with the requirements of NRCP 56(c)(1) and (c)(4), and Plaintiff's Motion to Strike the Declaration is denied.

V. Defendant Goldman's Joinder in CCSD BOT's Countermotion to Extend the Dispositive Motion Deadline.

75. At the time Defendant Goldman's Motion for Summary Judgment was filed, the Arbitration hearing was scheduled for July 28, 2021.

76. NAR 4(E) provides for dispositive motions to be filed 45 days in advance of an Arbitration hearing date.

77. All parties filed their motions for summary judgment on Monday, June 14, 2021, including Plaintiff. Plaintiff's motions to strike Defendants' motions for summary judgment

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asserts motions for summary judgment were due pursuant to NAR(E) on Friday, June 11 – a difference of a single judicial day. The CCSD BOT's countermotion, joined by Defendant Goldman, to extend the time for filing dispositive motions by the single judicial day to Monday, June 14, 2021, is both in good faith and reasonable in light of Plaintiff's own filing on June 14, 2021.

78. Further, the Arbitration hearing was subsequently moved by Stipulation of the parties first to August 25, 2021, and then to October 6, 2021. The change in the Arbitration hearing date resulted in Defendant Goldman's Motion having been filed more than the 45 days allotted by NAR 4(E) for submission and consideration of dispositive motions in advance of the arbitration hearing.

79. Defendant CCSD BOT's request, joined by Defendant Goldman, for an extension of time to extend the dispositive motion deadline calendared from the July 28, 2021 Arbitration hearing is, therefore, without prejudice to Plaintiff – the original 45 day deadline was mooted by the extension of the Arbitration hearing date and by Defendant's non-opposition to the extension of time sought by Plaintiff to oppose Defendants' motions for summary judgment.

If any of the foregoing Conclusions of Law is deemed more appropriately categorized as a Finding of Fact, it shall be so treated.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

Plaintiff's Motion To Strike Defendant Goldman's Motion For Summary Judgment is DENIED;

Plaintiff's Motion to Extend the Time to Oppose Defendant Dr. Edward Goldman's Motion for Summary Judgment is GRANTED;

Defendant Goldman's Joinder in the CCSD BOT Counter-Motion to Extend Dispositive Motion Deadline is DENIED as moot;

Plaintiff's Motion To Strike Defendant Goldman's Declaration in Support of Defendant Goldman's Motion For Summary Judgment, is DENIED; and

///

///

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A Professional Corporation
9950 West Cheyenne Avenue
Las Vegas, Nevada 89129
(702) 384-4012 Fax (702) 383-0701

Defendant Dr. Edward Goldman's Motion For Summary Judgment is GRANTED on its merits.

IT IS SO ORDERED this _____ day of _____, 2021.

Dated this 20th day of October, 2021

DISTRICT COURT JUDGE

0B9 860 132B B493
Joe Hardy
District Court Judge

Submitted By:

OLSON CANNON GORMLEY & STOBERSKI

STEPHANIE A. BARKER, ESQ.
Nevada Bar No. 3176
9950 West Cheyenne Ave.
Las Vegas, NV 89129
Attorneys for Defendant Dr. Edward Goldman

Approved as to Form and Content By:
CLARK COUNTY SCHOOL DISTRICT
OFFICE OF THE GENERAL COUNSEL

/s/ *Crystal J. Herrera*

CRYSTAL J. HERRERA, ESQ.
Nevada Bar No. 12396
5100 West Sahara Avenue
Las Vegas, Nevada 89146
Attorney for Defendant CCSD Board of Trustees

Approved as to Form and Content By:

Unable to Agree

TENKASI VISWANATHAN
Plaintiff, Pro Se

Law Offices of
OLSON CANNON GORMLEY & STOBERSKI
A Professional Corporation
9950 West Cheyenne Avenue
Las Vegas, Nevada 89129
(702) 384-4012 Fax (702) 383-0701

Stephanie Barker

From: Crystal Herrera [Office of the General Counsel] <herrec4@nv.ccsd.net>
Sent: Tuesday, October 12, 2021 1:53 PM
To: Stephanie Barker
Cc: Tenkasi Viswanathan; Nan Langenderfer; penaec@nv.ccsd.net
Subject: Re: Viswanathan v. CCSD BOT & Goldman

Yes.

Thank you,

Crystal Herrera

Senior Assistant General Counsel
Office of the General Counsel
Clark County School District
5100 West Sahara Avenue
Las Vegas, Nevada 89146
Ph: (702) 799-5373
Fax: (702) 799-5505
Email: herrec4@nv.ccsd.net

On Tue, Oct 12, 2021 at 1:11 PM Stephanie Barker <sbarker@ocgas.com> wrote:

> Good afternoon Ms. Herrera:
>
> Do I have your permission to submit the attached order Granting Goldman's Motion for Summary Judgment, etc., with your electronic signature?
>
> Thank you.
>
> **Stephanie A. Barker, Esq.**
>
> **Olson Cannon Gormley & Stoberski**
>
> 9950 West Cheyenne Avenue
>
> Las Vegas, Nevada 89129

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Tenkasi Viswanathan, Plaintiff(s) vs. Board of Trustees of the Clark County School District, Defendant(s)	CASE NO: A-20-814819-C DEPT. NO. Department 15

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 10/20/2021

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Stephanie Barker	sbarker@ocgas.com
Tenkasi Viswanathan	Viswanathan.tenkasi@gmail.com

CLARK COUNTY SCHOOL DISTRICT
OFFICE OF THE GENERAL COUNSEL
CRYSTAL J. HERRERA, ESQ.
Nevada Bar No. 12396
5100 West Sahara Avenue
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Herrec4@nv.ccsd.net
Attorneys for Defendant, Louis Markouzis

DISTRICT COURT

CLARK COUNTY, NEVADA

Tenkasi Viswanathan, Plaintiff, v. Board of Trustees of the Clark County School District; Pat Skorkowski in his Official and Individual Capacity; Dr, Edward Goldman in his Official and Individual Capacity, Dr. Jeffrey Geihs in his Official and Individual Capacity; Neddy Alvarez in her Official and Individual Capacity; Sonya Houghton in her Official and Individual Capacity; and Louis Markouzis in his Official and Individual Capacity, Defendants.	Case No.: A-20-814819-C Dept. No.: 15 **HEARING DATE: January 11, 2021** **HEARING TIME: 9:00 a.m.**

ORDER GRANTING
DEFENDANT LOUIS MARKOUZIS' MOTION TO DISMISS AND DENYING PLAINTIFF'S COUNTER-MOTION

DEFENDANT LOUIS MARKOUZIS' Motion to Dismiss Plaintiff's Amended Complaint having come on for hearing on January 11, 2021, Plaintiff TENKASI VISWANATHAN having represented himself pro se, DEFENDANT LOUIS MARKOUZIS ("Defendant") having been represented by attorney CRYSTAL J. HERRERA, ESQ. of the Clark County School District Office of the General Counsel, and Defendant DR. EDWARD GOLDMAN having been represented by attorney STEPHANIE A. BARKER, ESQ. of the law firm of Olson, Cannon,

Gormley & Stoberski, and the Court having read and considered Defendant's Motion to Dismiss, Plaintiff's Opposition and Countermotion, and Defendant's Reply in Support of the Motion to Dismiss, the Court construing the factual allegations contained in Plaintiff's Amended Complaint (filed August 4, 2020) as true in accordance with NRCP 12(b)(5), and good cause appearing,

THE COURT HEREBY ORDERS DEFENDANT LOUIS MARKOUZIS' MOTION TO DISMISS GRANTED, WITHOUT PREJUDICE, FINDING AND ORDERING THE FOLLOWING:

(1) Plaintiff's claim for Breach of Fiduciary Duty against Defendant, as conceded by Plaintiff, is hereby DISMISSED, in accordance with the Court's Order entered on November 2, 2020;

(2) Plaintiff's claims for Breach of Contract and the Implied Covenant of Good Faith and Fair Dealing against Defendant are hereby DISMISSED. As pled, there was no contract between Plaintiff and Defendant, therefore, there could not be any breach of contract or breach of the implied covenant of good faith and fair dealing. Plaintiff's arguments ignored or contradicted his own pleadings. Plaintiff's proposed amendment was also futile, because there was no contract between Plaintiff and Defendant, based on the current pleadings; and

(3) The preemption arguments are moot given the Court's dismissal of Plaintiff's claims against Defendant under the NRCP 12(b)(5) standard.

THE COURT FURTHER ORDERS PLAINTIFF'S COUNTERMOTION IS HEREBY DENIED, WITHOUT PREJUDICE, FINDING AND ORDERING THE FOLLOWING:

(1) Plaintiff's Countermotion is hereby DENIED, as Plaintiff sought leave to amend his Amended Complaint, but did not attach a proposed amended complaint as required under Eighth Judicial District Court Rule 2.30(a).

DATED this _____ day of _____, 2021. Dated this 27th day of January, 2021

DISTRICT COURT JUDGE

5EB ED5 0C53 EDFF
Joe Hardy
District Court Judge

Submitted by:

CLARK COUNTY SCHOOL DISTRICT
OFFICE OF THE GENERAL COUNSEL

By: */s/ Crystal J. Herrera*
Crystal J. Herrera (#12396)
5100 West Sahara Avenue
Las Vegas, Nevada 89146
Attorney for Defendant, Louis Markouzis

Approved as to Form by:

/s/ Tenkasi Viswanathan
TENKASI VISWANATHAN
Plaintiff, Pro Se

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Tenkasi Viswanathan, Plaintiff(s) vs. Board of Trustees of the Clark County School District, Defendant(s)	CASE NO: A-20-814819-C DEPT. NO. Department 15

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 1/27/2021

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Cheri Hartle	chartle@ocgas.com
Crystal Herrera	herrec4@nv.ccsd.net
Elsa Pena	penaec@nv.ccsd.net
Stephanie Barker	sbarker@ocgas.com
Tenkasi Viswanathan	Viswanathan.tenkasi@gmail.com

CLARK COUNTY SCHOOL DISTRICT
OFFICE OF THE GENERAL COUNSEL
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Facsimile: (702) 799-7243
Herrec4@nv.ccsd.net
Attorneys for Defendant, Louis Markouzis

DISTRICT COURT

CLARK COUNTY, NEVADA

Tenkasi Viswanathan,

Plaintiff,

v.

Board of Trustees of the Clark County School District; Pat Skorkowski in his Official and Individual Capacity; Dr, Edward Goldman in his Official and Individual Capacity, Dr. Jeffrey Geihs in his Official and Individual Capacity; Neddy Alvarez in her Official and Individual Capacity; Sonya Houghton in her Official and Individual Capacity; and Louis Markouzis in his Official and Individual Capacity,

Defendants.

Case No.: A-20-814819-C
Dept. No.: 15

NOTICE OF ENTRY OF ORDER GRANTING DEFENDANT LOUIS MARKOUZIS' MOTION TO DISMISS AND DENYING PLAINTIFF'S COUNTER-MOTION

NOTICE IS HEREBY GIVEN that an Order Granting Defendant Louis Markouzis' Motion to Dismiss and Denying Plaintiff's Counter-Motion was entered in the above-captioned matter on January 27, 2021. A copy of said Order is attached hereto as Exhibit "A".

DATED this 28th day of January, 2021.

CLARK COUNTY SCHOOL DISTRICT
OFFICE OF THE GENERAL COUNSEL

By: */s/ Crystal J. Herrera*
Crystal J. Herrera (#12396)
5100 West Sahara Avenue
Las Vegas, Nevada 89146
Attorney for Defendant, Louis Markouzis

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28th day of January, 2021, I served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING DEFENDANT LOUIS MARKOUZIS' MOTION TO DISMISS AND DENYING PLAINTIFF'S COUNTER-MOTION** to be electronically served, via the EFP Vendor System, upon the following:

Tenkasi M. Viswanathan
8220 Hollister Ave.
Las Vegas, NV 89131
Viswanathan.Tenkasi@gmail.com
Plaintiff pro se

Stephanie A. Barker, Esq.
OLSON CANNON GORMELY & STOBERSKI
9950 W. Cheyenne Ave.
Las Vegas, NV 89129
sbarker@ocgas.com
Attorneys for Defendant Dr. Edward Goldman

/s/ Elsa C. Peña
AN EMPLOYEE OF THE OFFICE OF THE GENERAL COUNSEL-CCSD

EXHIBIT A

CLARK COUNTY SCHOOL DISTRICT
OFFICE OF THE GENERAL COUNSEL
CRYSTAL J. HERRERA, ESQ.
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Facsimile: (702) 799-7243
Herrec4@nv.ccsd.net
Attorneys for Defendant, Louis Markouzis

DISTRICT COURT

CLARK COUNTY, NEVADA

Tenkasi Viswanathan, Plaintiff, v. Board of Trustees of the Clark County School District; Pat Skorkowski in his Official and Individual Capacity; Dr, Edward Goldman in his Official and Individual Capacity, Dr. Jeffrey Geihs in his Official and Individual Capacity; Neddy Alvarez in her Official and Individual Capacity; Sonya Houghton in her Official and Individual Capacity; and Louis Markouzis in his Official and Individual Capacity, Defendants.	Case No.: A-20-814819-C Dept. No.: 15 **HEARING DATE: January 11, 2021** **HEARING TIME: 9:00 a.m.**

ORDER GRANTING
DEFENDANT LOUIS MARKOUZIS' MOTION TO DISMISS AND DENYING PLAINTIFF'S COUNTER-MOTION

DEFENDANT LOUIS MARKOUZIS' Motion to Dismiss Plaintiff's Amended Complaint having come on for hearing on January 11, 2021, Plaintiff TENKASI VISWANATHAN having represented himself pro se, DEFENDANT LOUIS MARKOUZIS ("Defendant") having been represented by attorney CRYSTAL J. HERRERA, ESQ. of the Clark County School District Office of the General Counsel, and Defendant DR. EDWARD GOLDMAN having been represented by attorney STEPHANIE A. BARKER, ESQ. of the law firm of Olson, Cannon,

Gormley & Stoberski, and the Court having read and considered Defendant's Motion to Dismiss, Plaintiff's Opposition and Countermotion, and Defendant's Reply in Support of the Motion to Dismiss, the Court construing the factual allegations contained in Plaintiff's Amended Complaint (filed August 4, 2020) as true in accordance with NRCP 12(b)(5), and good cause appearing,

THE COURT HEREBY ORDERS DEFENDANT LOUIS MARKOUZIS' MOTION TO DISMISS GRANTED, WITHOUT PREJUDICE, FINDING AND ORDERING THE FOLLOWING:

(1) Plaintiff's claim for Breach of Fiduciary Duty against Defendant, as conceded by Plaintiff, is hereby DISMISSED, in accordance with the Court's Order entered on November 2, 2020;

(2) Plaintiff's claims for Breach of Contract and the Implied Covenant of Good Faith and Fair Dealing against Defendant are hereby DISMISSED. As pled, there was no contract between Plaintiff and Defendant, therefore, there could not be any breach of contract or breach of the implied covenant of good faith and fair dealing. Plaintiff's arguments ignored or contradicted his own pleadings. Plaintiff's proposed amendment was also futile, because there was no contract between Plaintiff and Defendant, based on the current pleadings; and

(3) The preemption arguments are moot given the Court's dismissal of Plaintiff's claims against Defendant under the NRCP 12(b)(5) standard.

THE COURT FURTHER ORDERS PLAINTIFF'S COUNTERMOTION IS HEREBY DENIED, WITHOUT PREJUDICE, FINDING AND ORDERING THE FOLLOWING:

(1) Plaintiff's Countermotion is hereby DENIED, as Plaintiff sought leave to amend his Amended Complaint, but did not attach a proposed amended complaint as required under Eighth Judicial District Court Rule 2.30(a).

DATED this _____ day of _____, 2021. Dated this 27th day of January, 2021

DISTRICT COURT JUDGE

5EB ED5 0C53 EDFF
Joe Hardy
District Court Judge

Submitted by:

CLARK COUNTY SCHOOL DISTRICT
OFFICE OF THE GENERAL COUNSEL

By: */s/ Crystal J. Herrera*
Crystal J. Herrera (#12396)
5100 West Sahara Avenue
Las Vegas, Nevada 89146
Attorney for Defendant, Louis Markouzis

Approved as to Form by:

/s/ Tenkasi Viswanathan
TENKASI VISWANATHAN
Plaintiff, Pro Se

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Tenkasi Viswanathan, Plaintiff(s) vs. Board of Trustees of the Clark County School District, Defendant(s)	CASE NO: A-20-814819-C DEPT. NO. Department 15

AUTOMATED CERTIFICATE OF SERVICE

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Service Date: 1/27/2021

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Tenkasi Viswanathan	Viswanathan.tenkasi@gmail.com

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herrec4@nv.ccsd.net
Attorneys for Defendant,
CCSD Board of Trustees

DISTRICT COURT

CLARK COUNTY, NEVADA

Tenkasi Viswanathan, Plaintiff, v. Board of Trustees of the Clark County School District; Pat Skorkowski in his Official and Individual Capacity; Dr, Edward Goldman in his Official and Individual Capacity, Dr. Jeffrey Geihs in his Official and Individual Capacity; Neddy Alvarez in her Official and Individual Capacity; Sonya Houghton in her Official and Individual Capacity; and Louis Markouzis in his Official and Individual Capacity, Defendants.	Case No.: A-20-814819-C Dept. No.: 15 **Hearing Date: January 5, 2022** **Hearing Time: In Chambers**

ORDER DENYING PLAINTIFF'S MOTION UNDER NRCP RULES 52 AND 59

This matter came before the Court on January 5, 2022, in chambers, regarding Plaintiff's Motion under Nevada Rules of Civil Procedure 52 and 59 ("Motion"). NOW THEREFORE, the Court having reviewed the Motion and the papers and pleadings on file hereby FINDS and ORDERS as follows:

1. On June 14, 2021, Defendant Clark County School Board of Trustees ("CCSD BOT") filed its Motion for Summary Judgment. (Doc ID #87). At the time, the case remained in the court-annexed arbitration program.

2. Plaintiff filed a dispositive motion on June 14, 2021 entitled Plaintiff's Motion for Partial Summary Judgment. (Doc ID #88).

3. On June 20, 2021, Plaintiff filed a First Amended Partial Summary Judgment Motion wherein he withdrew his Motion for Partial Summary Judgment. (Doc ID #95).

4. On June 21, 2021, Plaintiff filed a Motion to Strike the CCSD BOT's Motion for Summary Judgment under NRCP 12(f) (Doc ID #96) ("Motion to Strike CCSD BOT MSJ"). Plaintiff's argument in this Motion was that CCSD BOT's Motion for Summary Judgment was filed later than 45 days prior to the Arbitration hearing as required by NAR 4(E).

5. On July 6, 2021, Plaintiff filed a Motion to Strike All or Parts of the Declarations Attached as Exhibit A, Exhibit B, and Exhibit C to Defendant CCSD BOT's Motion for Summary Judgment and Objections to said Motion for Summary Judgment and Exhibits Thereto ("Motion to Strike Declarations"). (Doc ID # 109).

6. As related motions were filed, the Clerk of the Court issued Clerk's Notice of Hearing, resulting in motions being calendared for hearing on multiple dates: July 26, July 28 and August 9, 2021. The parties agreed to consolidate the hearings to July 28, 2021 and submitted a Stipulation reflecting the agreement. (Doc ID #120). Ultimately, the hearing did not take place until August 25, 2021. (Doc ID #127).

7. On July 13, 2021, the Arbitrator issued an Order continuing the arbitration hearing from July 28, 2021 to August 27, 2021. (Doc ID #121). The arbitration was subsequently moved by Stipulation of the parties to October 6, 2021. (Doc ID #129).

8. On August 25, 2021, the Court heard oral argument on pending motions and granted CCSD BOT's Motion for Summary Judgment in its entirety. (Doc ID #132). The Court also denied Plaintiff's Motion to Strike the CCSD BOT's MSJ and Motion to Strike Declarations.

9. In supporting its decision, the Court summarily provided an overview of the facts and legal issues presented. The Court was clear that Plaintiff had a fair opportunity to submit an opposition to CCSD BOT's Motion for Summary Judgment and was not prejudiced by any belated filing of the CCSD BOT's Motion for Summary Judgment, even if filed late, which the

Court concluded was moot under NAR 4(E) given the extension of the arbitration hearing date. The Court ruled that Plaintiff's Motion to Strike the CCSD BOT's MSJ was procedurally improper and that there was no legal authority provided by Plaintiff supporting striking CCSD BOT's Motion for Summary Judgment in the circumstances presented. The Court further found that Plaintiff's Motion to Strike Declarations was unsupported as the declarations supporting the CCSD BOT's Motion for Summary Judgment sufficiently complied with the requirements of NRCP 56(c).

10. On November 17, 2021, Plaintiff filed the Motion seeking to alter and amend the Order related to CCSD BOT's Motion for Summary Judgment ("Order") entered on October 20, 2021 (Doc ID #133).

11. On December 1, 2021, CCSD BOT opposed Plaintiff's Motion. (Doc ID #142).

12. NRCP 52 provides "[o]n a party's motion filed no later than 28 days after service of written notice of entry of judgment, the court may amend its findings – or make additional findings – and may amend the judgment accordingly. NRCP 52(b). "Findings of fact by a trial court will not be set aside unless clearly erroneous." *See* NRCP 52(a)(6); Szc*zeraski v. Richard*, 89 Nev. 581, 582, 517 P.2d 791, 791 (1973).

13. NRCP 59(e) allows a party to move the district to alter or amend a judgment. Grounds for a Rule 59(e) motion include correcting manifesting errors of law or fact, newly discovered or previously unavailable evidence, the need to prevent manifest injustice or a change in controlling law. *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 581–82, 245 P.3d 1190, 1192 (2010) (citing *United Pac. Ins. Co. v. St. Denis,* 81 Nev. 103, 106–07, 399 P.2d 135, 137 (1965)). Evidence qualifies as newly discovered if it could not have been discovered and produced, even with the exercise of reasonable diligence. *Servin v. State*, 117 Nev. 775, 791, 32 P.3d 1277, 1289 (2001).

14. The Court having reviewed the arguments and points of law provided by the parties within the Motion and Opposition on file herein, including the supporting declarations and exhibits, hereby DENIES the request to amend or modify, in its entirety.

15. Plaintiff has identified no manifest error of law or fact, no newly discovered or previously unavailable evidence nor any change in controlling law. Nor has Plaintiff shown a need to prevent any manifest injustice. To the extent Plaintiff presents arguments not previously raised pertaining to the mootness, the Court declines to consider such arguments, as they do not constitute previously unavailable evidence or facts and because any such arguments do not persuade the Court sufficient rationale has been presented to alter this Court's decision.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

Plaintiff's Motion under NRCP Rules 52 and 59 is DENIED WITHOUT PREJUDICE.

~~**IT IS SO ORDERED** this _____ day of _____, 2022.~~

Dated this 23rd day of February, 2022

DISTRICT COURT JUDGE

5CB 37A F84D BEBF
Joe Hardy
District Court Judge

Submitted by:

CLARK COUNTY SCHOOL DISTRICT
OFFICE OF THE GENERAL COUNSEL

By: */s/ Crystal J. Herrrera*
CRYSTAL J. HERRERA, ESQ.
Nevada Bar No. 12396
5100 West Sahara Avenue
Las Vegas, Nevada 89146
Attorneys for Defendant, CCSD Board of Trustees

Approved as to Form and Content by:

REFUSED TO SIGN
TENKASI VISWANATHAN
Plaintiff, Pro Se

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Tenkasi Viswanathan, Plaintiff(s) vs. Board of Trustees of the Clark County School District, Defendant(s)	CASE NO: A-20-814819-C DEPT. NO. Department 15

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order Denying Motion was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 2/23/2022

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Elsa Pena	penaec@nv.ccsd.net
Stephanie Barker	sbarker@ocgas.com
Tenkasi Viswanathan	Viswanathan.tenkasi@gmail.com

CLARK COUNTY SCHOOL DISTRICT
OFFICE OF THE GENERAL COUNSEL
CRYSTAL J. HERRERA, ESQ.
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Facsimile: (702) 799-7243
herrec4@nv.ccsd.net
Attorneys for Defendant CCSD Board of Trustees

DISTRICT COURT

CLARK COUNTY, NEVADA

Tenkasi Viswanathan, Plaintiff, v. Board of Trustees of the Clark County School District; Pat Skorkowski in his Official and Individual Capacity; Dr, Edward Goldman in his Official and Individual Capacity, Dr. Jeffrey Geihs in his Official and Individual Capacity; Neddy Alvarez in her Official and Individual Capacity; Sonya Houghton in her Official and Individual Capacity; and Louis Markouzis in his Official and Individual Capacity, Defendants.	Case No.: A-20-814819-C Dept. No.: 15

NOTICE OF ENTRY OF ORDER DENYING PLAINTIFF'S MOTION UNDER NRCP RULES 52 AND 59

NOTICE IS HEREBY GIVEN that an Order Denying Plaintiff's Motion Under NRCP Rules 52 and 59 was entered in the above-captioned matter on February 23, 2022. A copy of said Order is attached hereto as Exhibit "A".

DATED this 24th day of February, 2022.

CLARK COUNTY SCHOOL DISTRICT
OFFICE OF THE GENERAL COUNSEL

By: */s/ Crystal J. Herrera*
Crystal J. Herrera (#12396)
5100 West Sahara Avenue
Las Vegas, Nevada 89146
Attorney for Defendant CCSD Board of Trustees

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 24th day of February, 2022, I served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER DENYING PLAINTIFF'S MOTION UNDER NRCP RULES 52 AND 59** to be electronically served, via the EFP Vendor System, upon the following:

Tenkasi M. Viswanathan
8220 Hollister Ave.
Las Vegas, Nevada 89131
Viswanathan.Tenkasi@gmail.com
Plaintiff pro se

Stephanie A. Barker, Esq.
OLSON CANNON GORMELY & STOBERSKI
9950 W. Cheyenne Ave.
Las Vegas, Nevada 89129
sbarker@ocgas.com
Attorneys for Defendant Dr. Edward Goldman

/s/ Elsa C. Peña
AN EMPLOYEE OF THE OFFICE OF THE GENERAL COUNSEL-CCSD

EXHIBIT A

CLARK COUNTY SCHOOL DISTRICT
OFFICE OF THE GENERAL COUNSEL
CRYSTAL J. HERRERA, ESQ.
Nevada Bar No. 12396
5100 West Sahara Avenue
Las Vegas, Nevada 89146
Telephone: (702) 799-5373
Facsimile: (702) 799-7243
herrec4@nv.ccsd.net
Attorneys for Defendant,
CCSD Board of Trustees

DISTRICT COURT

CLARK COUNTY, NEVADA

Tenkasi Viswanathan, Plaintiff, v. Board of Trustees of the Clark County School District; Pat Skorkowski in his Official and Individual Capacity; Dr, Edward Goldman in his Official and Individual Capacity, Dr. Jeffrey Geihs in his Official and Individual Capacity; Neddy Alvarez in her Official and Individual Capacity; Sonya Houghton in her Official and Individual Capacity; and Louis Markouzis in his Official and Individual Capacity, Defendants.	Case No.: A-20-814819-C Dept. No.: 15 **Hearing Date: January 5, 2022** **Hearing Time: In Chambers**

ORDER DENYING PLAINTIFF'S MOTION UNDER NRCP RULES 52 AND 59

This matter came before the Court on January 5, 2022, in chambers, regarding Plaintiff's Motion under Nevada Rules of Civil Procedure 52 and 59 ("Motion"). NOW THEREFORE, the Court having reviewed the Motion and the papers and pleadings on file hereby FINDS and ORDERS as follows:

1. On June 14, 2021, Defendant Clark County School Board of Trustees ("CCSD BOT") filed its Motion for Summary Judgment. (Doc ID #87). At the time, the case remained in the court-annexed arbitration program.

2. Plaintiff filed a dispositive motion on June 14, 2021 entitled Plaintiff's Motion for Partial Summary Judgment. (Doc ID #88).

3. On June 20, 2021, Plaintiff filed a First Amended Partial Summary Judgment Motion wherein he withdrew his Motion for Partial Summary Judgment. (Doc ID #95).

4. On June 21, 2021, Plaintiff filed a Motion to Strike the CCSD BOT's Motion for Summary Judgment under NRCP 12(f) (Doc ID #96) ("Motion to Strike CCSD BOT MSJ"). Plaintiff's argument in this Motion was that CCSD BOT's Motion for Summary Judgment was filed later than 45 days prior to the Arbitration hearing as required by NAR 4(E).

5. On July 6, 2021, Plaintiff filed a Motion to Strike All or Parts of the Declarations Attached as Exhibit A, Exhibit B, and Exhibit C to Defendant CCSD BOT's Motion for Summary Judgment and Objections to said Motion for Summary Judgment and Exhibits Thereto ("Motion to Strike Declarations"). (Doc ID # 109).

6. As related motions were filed, the Clerk of the Court issued Clerk's Notice of Hearing, resulting in motions being calendared for hearing on multiple dates: July 26, July 28 and August 9, 2021. The parties agreed to consolidate the hearings to July 28, 2021 and submitted a Stipulation reflecting the agreement. (Doc ID #120). Ultimately, the hearing did not take place until August 25, 2021. (Doc ID #127).

7. On July 13, 2021, the Arbitrator issued an Order continuing the arbitration hearing from July 28, 2021 to August 27, 2021. (Doc ID #121). The arbitration was subsequently moved by Stipulation of the parties to October 6, 2021. (Doc ID #129).

8. On August 25, 2021, the Court heard oral argument on pending motions and granted CCSD BOT's Motion for Summary Judgment in its entirety. (Doc ID #132). The Court also denied Plaintiff's Motion to Strike the CCSD BOT's MSJ and Motion to Strike Declarations.

9. In supporting its decision, the Court summarily provided an overview of the facts and legal issues presented. The Court was clear that Plaintiff had a fair opportunity to submit an opposition to CCSD BOT's Motion for Summary Judgment and was not prejudiced by any belated filing of the CCSD BOT's Motion for Summary Judgment, even if filed late, which the

Court concluded was moot under NAR 4(E) given the extension of the arbitration hearing date. The Court ruled that Plaintiff's Motion to Strike the CCSD BOT's MSJ was procedurally improper and that there was no legal authority provided by Plaintiff supporting striking CCSD BOT's Motion for Summary Judgment in the circumstances presented. The Court further found that Plaintiff's Motion to Strike Declarations was unsupported as the declarations supporting the CCSD BOT's Motion for Summary Judgment sufficiently complied with the requirements of NRCP 56(c).

10. On November 17, 2021, Plaintiff filed the Motion seeking to alter and amend the Order related to CCSD BOT's Motion for Summary Judgment ("Order") entered on October 20, 2021 (Doc ID #133).

11. On December 1, 2021, CCSD BOT opposed Plaintiff's Motion. (Doc ID #142).

12. NRCP 52 provides "[o]n a party's motion filed no later than 28 days after service of written notice of entry of judgment, the court may amend its findings – or make additional findings – and may amend the judgment accordingly. NRCP 52(b). "Findings of fact by a trial court will not be set aside unless clearly erroneous." *See* NRCP 52(a)(6); Szc*zeraski v. Richard*, 89 Nev. 581, 582, 517 P.2d 791, 791 (1973).

13. NRCP 59(e) allows a party to move the district to alter or amend a judgment. Grounds for a Rule 59(e) motion include correcting manifesting errors of law or fact, newly discovered or previously unavailable evidence, the need to prevent manifest injustice or a change in controlling law. *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 581–82, 245 P.3d 1190, 1192 (2010) (citing *United Pac. Ins. Co. v. St. Denis,* 81 Nev. 103, 106–07, 399 P.2d 135, 137 (1965)). Evidence qualifies as newly discovered if it could not have been discovered and produced, even with the exercise of reasonable diligence. *Servin v. State*, 117 Nev. 775, 791, 32 P.3d 1277, 1289 (2001).

14. The Court having reviewed the arguments and points of law provided by the parties within the Motion and Opposition on file herein, including the supporting declarations and exhibits, hereby DENIES the request to amend or modify, in its entirety.

15. Plaintiff has identified no manifest error of law or fact, no newly discovered or previously unavailable evidence nor any change in controlling law. Nor has Plaintiff shown a need to prevent any manifest injustice. To the extent Plaintiff presents arguments not previously raised pertaining to the mootness, the Court declines to consider such arguments, as they do not constitute previously unavailable evidence or facts and because any such arguments do not persuade the Court sufficient rationale has been presented to alter this Court's decision.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

Plaintiff's Motion under NRCP Rules 52 and 59 is DENIED WITHOUT PREJUDICE.

~~**IT IS SO ORDERED** this _____ day of _____, 2022.~~

Dated this 23rd day of February, 2022

DISTRICT COURT JUDGE

5CB 37A F84D BEBF
Joe Hardy
District Court Judge

Submitted by:

CLARK COUNTY SCHOOL DISTRICT
OFFICE OF THE GENERAL COUNSEL

By: */s/ Crystal J. Herrrera*
CRYSTAL J. HERRERA, ESQ.
Nevada Bar No. 12396
5100 West Sahara Avenue
Las Vegas, Nevada 89146
Attorneys for Defendant, CCSD Board of Trustees

Approved as to Form and Content by:

REFUSED TO SIGN
TENKASI VISWANATHAN
Plaintiff, Pro Se

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Tenkasi Viswanathan, Plaintiff(s) vs. Board of Trustees of the Clark County School District, Defendant(s)	CASE NO: A-20-814819-C DEPT. NO. Department 15

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order Denying Motion was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 2/23/2022

Nan Langenderfer	nlangenderfer@ocgas.com
Cheri Hartle	chartle@ocgas.com
Crystal Herrera	herrec4@nv.ccsd.net
Elsa Pena	penaec@nv.ccsd.net
Stephanie Barker	sbarker@ocgas.com
Tenkasi Viswanathan	Viswanathan.tenkasi@gmail.com

DISTRICT COURT
CLARK COUNTY, NEVADA

Employment Contract	**COURT MINUTES**	**September 21, 2020**

A-20-814819-C Tenkasi Viswanathan, Plaintiff(s)
vs.
Board of Trustees of the Clark County School District, Defendant(s)

September 21, 2020 3:00 AM All Pending Motions

HEARD BY: Hardy, Joe **COURTROOM:** Chambers

COURT CLERK: Kristin Duncan

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- PLAINTIFF'S MOTION FOR ORDER EXTENDING TIME TO FILE PROOF OF SERVICE OF PROCESS ON DEFENDANT DR. GOLDMAN...PLAINTIFF'S MOTION FOR ORDER EXTENDING TIME TO SERVE PROCESS ON FIVE OF THE 8 DEFENDANTS

COURT ORDERED Plaintiff s Motion to Extend Time to Serve Process on Remaining Defendants is hereby GRANTED pursuant to NRCP 4(e)(4), and for all the reasons set forth in the Motion and Affidavit in Support.

Plaintiff is to prepare the written order, submit it directly to Department 15 s chambers within ten days pursuant to EDCR 7.21. All proposed orders must be submitted via email at dc15inbox@clarkcountycourts.us pursuant to Administrative Order 20-17.

COURT ORDERED Plaintiff s Motion for Order Extending Time to File Proof of Service of Process is hereby DENIED WITHOUT PREJUDICE. The Court finds the instant Motion is moot given the Affidavit of Service of Process filed on August 17, 2020. See NRCP 4(d)(5) (Failure to make proof of service does not affect the validity of the service).

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Kristin Duncan, to all registered parties for Odyssey File & Serve. (KD 9/22/2020)

DISTRICT COURT
CLARK COUNTY, NEVADA

Employment Contract	**COURT MINUTES**	**October 19, 2020**

A-20-814819-C Tenkasi Viswanathan, Plaintiff(s)
vs.
Board of Trustees of the Clark County School District, Defendant(s)

October 19, 2020 **9:00 AM** **All Pending Motions**

HEARD BY: Hardy, Joe **COURTROOM:** RJC Courtroom 11D

COURT CLERK: Kristin Duncan

RECORDER: Matt Yarbrough

REPORTER:

PARTIES PRESENT:

Barker, Stephanie A.	Attorney
Herrera, Crystal J.	Attorney
Viswanathan, Tenkasi	Plaintiff

JOURNAL ENTRIES

- All parties present via Blue Jeans.

DEFENDANT PAT SKORKOWSKY'S MOTION TO DISMISS

Ms. Herrera argued in support of the instant Motion, stating that Plaintiff attempted to serve Defendant Skorkowsky through the School District's legal department, and the legal department did not accept service on behalf of Defendant Skorkowsky, nor were they authorized to accept service on behalf of Defendant Skorkowsky. Mr. Viswanathan argued in opposition, stating that an Affidavit was filed by the process server, indicating that Defendant Skorkowsky had been properly served. COURT ORDERED the instant Motion was hereby GRANTED WITHOUT PREJUDICE for all of the reasons set forth in the Motion and Reply, FINDING the following: (1) Defendant Skorkowsky was not properly served with the Summons and Complaint; and (2) the Affidavit of Service indicated that the manner of service was substitute business, which was not proper.

Ms. Herrera to prepare the written Order, incorporating the reasons in the Motion and Reply, as the

Court's ruling, and forward it to Mr. Viswanathan via e-mail, for approval as to form and content; Mr. Viswanathan shall have two (2) days from receipt of the Proposed Order, to make any corrections, before Ms. Herrera submitted the Proposed Order to the Court.

DEFENDANT CLARK COUNTY SCHOOL DISTRICT BOARD OF TRUSTEES' MOTION TO DISMISS...PLAINTIFF'S OPPOSITION AND COUNTERMOTION TO DEFENDANT CCSD BOARD OF TRUSTEES' MOTION TO DISMISS

Ms. Herrera argued in support of Defendant CCSD's Motion, stating that breach of fiduciary duty, breach of contract, and breach of covenant of good faith and fair dealing claims, must be dismissed based upon the statute of limitations. Mr. Viswanathan argued in opposition, stating that Defendant raised issued in their Reply that were not raised in the Motion, which deprived him of the opportunity to address those issues. COURT ORDERED Defendant Clark County School District Board of Trustees' Motion to Dismiss, was hereby GRANTED IN PART / DENIED IN PART WITHOUT PREJUDICE, FINDING and ORDERING the following: (1) the claim for breach of fiduciary duty was hereby DISMISSED, as the three year statute of limitations applied to said claim; (2) as Plaintiff admitted on page 8, lines 18-21 of the Opposition, time began to run on April 28, 2014, when the breach was discovered; (3) the Complaint was not filed until May 11, 2020, and whether the Court considered that Complaint, or the Amended Complaint (filed August 4, 2020), the result would be the same; (4) for the purpose of the instant Motion, the Court accepted the factual allegations contained in the original Complaint as true, including the procedural aspects; (5) the breach of fiduciary duty claim must be dismissed as a matter of law; (6) the remainder of the requested relief was DENIED WITHOUT PREJUDICE; (7) the Court considered the substance of the Plaintiff's claims, and accepted all facts as pled as true, as it must under the Motion to Dismiss standard; (8) the breach of contract and breach of covenant of good faith and fair dealing claims, both had six year statutes of limitations; (9) based upon the statutes of limitations, the tolling from Governor Sisolak's April 1, 2020, Executive Order, and Court's Administrative Orders, the Complaint was timely filed as to the breach of contract and breach of covenant of good faith and fair dealing claims; and (10) the preemption arguments were essentially raised for the first time in the Reply; therefore, it would not be proper to consider them at this time.

COURT FURTHER ORDERED Plaintiff's Countermotion was hereby GRANTED IN PART / DENIED IN PART WITHOUT PREJUDICE, FINDING and ORDERING the following: (1) the Countermotion was GRANTED IN PART to construe the Amended Complaint (filed on August 4, 2020 at 4:00 PM), as having been filed on August 3, 2020; and (2) the remainder of the requested relief, was hereby DENIED WITHOUT PREJUDICE.

Ms. Herrera to prepare the written Order for the Motion and Countermotion, and forward it to Mr. Viswanathan via e-mail, for approval as to form and content; Mr. Viswanathan shall have two (2) days from receipt of the Proposed Order, to make any corrections, before Ms. Herrera submitted the Proposed Order to the Court.

DEFENDANT DR. EDWARD GOLDMAN'S MOTION TO DISMISS...PLAINTIFF'S OPPOSITION TO DEFENDANT GOLDMAN'S MOTION TO DISMISS

Ms. Barker argued in support of Defendant Goldman's Motion, stating that Defendant Goldman was not a party to the contract between the School District and Mr. Viswanathan. Additionally, Ms. Barker argued that Governor Sisolak's Executive Order did not toll the statutes of limitations; NRS 391.100 and NRS 391.120 cited. Mr. Viswanathan argued in opposition, stating that Defendant Goldman was the manger of employee relations; therefore, it was appropriate to include him as a party in the Complaint. COURT ORDERED Defendant Dr. Edward Goldman's Motion to Dismiss, was hereby GRANTED IN PART / DENIED IN PART WITHOUT PREJUDICE, FINDING and ORDERING the following: (1) the claim for breach of fiduciary duty was hereby DISMISSED, as the three year statute of limitations applied to said claim; (2) as Plaintiff admitted on page 8, lines 18-21 of the Opposition, time began to run on April 28, 2014, when the breach was discovered; (3) the Complaint was not filed until May 11, 2020, and whether the Court considered that Complaint, or the Amended Complaint (filed August 4, 2020), the result would be the same; (4) for the purpose of the instant Motion, the Court accepted the factual allegations contained in the original Complaint as true, including the procedural aspects; (5) the breach of fiduciary duty claim must be dismissed as a matter of law; (6) the remainder of the requested relief was DENIED WITHOUT PREJUDICE; (7) the Court considered the substance of the Plaintiff's claims, and accepted all facts as pled as true, as it must under the Motion to Dismiss standard; (8) the breach of contract and breach of covenant of good faith and fair dealing claims, both had six year statutes of limitations; and (9) based upon the statutes of limitations, the tolling from Governor Sisolak's April 1, 2020, Executive Order, and Court's Administrative Orders, the Complaint was timely filed as to the breach of contract and breach of covenant of good faith and fair dealing claims.

COURT FURTHER ORDERED Plaintiff's Countermotion was hereby GRANTED IN PART / DENIED IN PART WITHOUT PREJUDICE, FINDING and ORDERING the following: (1) the Countermotion was GRANTED IN PART to construe the Amended Complaint (filed on August 4, 2020 at 4:00 PM), as having been filed on August 3, 2020; and (2) the remainder of the requested relief, was hereby DENIED WITHOUT PREJUDICE.

Ms. Barker to prepare the written Order for the Motion and Countermotion, and forward it to Mr. Viswanathan via e-mail, for approval as to form and content; Mr. Viswanathan shall have two (2) days from receipt of the Proposed Order, to make any corrections, before Ms. Barker submitted the Proposed Order to the Court.

DISTRICT COURT
CLARK COUNTY, NEVADA

Employment Contract	**COURT MINUTES**	**January 06, 2021**

A-20-814819-C Tenkasi Viswanathan, Plaintiff(s)
vs.
Board of Trustees of the Clark County School District, Defendant(s)

January 06, 2021 **3:00 AM** **Motion For Reconsideration**

HEARD BY: Hardy, Joe **COURTROOM:** Chambers

COURT CLERK: Kristin Duncan

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- COURT ORDERED, Plaintiff s Motion to Reconsideration of the Order Granting Defendant Pat Skorkowsky s Motion to Dismiss is hereby DENIED WITHOUT PREJUDICE. The Court finds that Plaintiff has not provided any new law, new evidence, or shown that the Court s ruling was clearly erroneous. On that basis, the Court finds that Plaintiff has not met her burden on reconsideration. See Masonry & Title Contractors Ass n v. Jolley, Urga & Wirth LTD, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997).

Counsel for Defendant Pat Skorkowsky is to prepare the written order, submit it to all counsel for review and approval, and submit it to Department 15 s chambers within ten days pursuant to EDCR 7.21. All proposed orders must be submitted via email at dc15inbox@clarkcountycourts.us pursuant to Administrative Order 20-17.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Kristin Duncan, to all registered parties for Odyssey File & Serve. (KD 1/6/2021)

DISTRICT COURT
CLARK COUNTY, NEVADA

Employment Contract	**COURT MINUTES**	**January 11, 2021**

A-20-814819-C Tenkasi Viswanathan, Plaintiff(s)
vs.
Board of Trustees of the Clark County School District, Defendant(s)

January 11, 2021 **9:00 AM** **All Pending Motions**

HEARD BY: Hardy, Joe **COURTROOM:** RJC Courtroom 11D

COURT CLERK: Kristin Duncan

RECORDER: Matt Yarbrough

REPORTER:

PARTIES PRESENT:

Barker, Stephanie A.	Attorney
Herrera, Crystal J.	Attorney
Viswanathan, Tenkasi	Plaintiff

JOURNAL ENTRIES

- DEFENDANT LOUIS MARKOUZIS' MOTION TO DISMISS...PLAINTIFF'S PARTIAL OPPOSITION AND COUNTER MOTION TO DEFENDANT LOUIS MARKOUZIS' MOTION TO DISMISS

All parties present via Blue Jeans.

The Court noted that it reviewed the Motion, Opposition and Countermotion, and the Reply. Ms. Herrera argued in support of Defendant Markouzis' Motion to Dismiss, stating that Plaintiff conceded that the Breach of Fiduciary Duty claims should be dismissed. Additionally, Ms. Herrera argued that Defendant Markouzis was not a party to the subject contract; therefore, the Breach of Contract and Breach of Implied Covenant of Good Faith and Fair Dealing claims against Mr. Markouzis should be dismissed. Furthermore, Ms. Herrera argued that the official capacity claims may be able to stand against an employee or officer, however, those claims were redundant when the actual entity was named as a Defendant, as was the scenario in the instant case. Mr. Viswanathan

argued in opposition to Defendant Markouzis' Motion to Dismiss, and in support of the Counter Motion, stating that Defendant's counsel raised issues outside of the pleadings during their oral arguments; therefore, the Court should not consider those arguments. COURT ORDERED Defendant Louis Markouzis' Motion to Dismiss was hereby GRANTED WITHOUT PREJUDICE, FINDING the following: (1) as conceded by the Plaintiff, the Breach of Fiduciary Duty claim against Defendant Markouzis, was hereby DISMISSED; (2) The Breach of Contract claim against Defendant Markouzis, as well as the Breach of Implied Covenant of Good Faith and Fair Dealing claim against Defendant Markouzis, were hereby DISMISSED; (3) Plaintiff's Partial Opposition and Counter Motion to Defendant Louis Markouzis' Motion to Dismiss, was hereby DENIED; (4) the Court made its ruling under the NRCP 12(b)(5) standard; therefore, Court must consider all factual allegations as true; (5) as pled, there was not contract between the Plaintiff and Defendant Markouzis; therefore, there could not be any breach of contract, or breach of the implied covenant of good faith and fair dealing; (6) Plaintiff's arguments ignored, or contradicted, their own pleadings; (7) the proposed amendment to the Complaint was futile, as there was no contract between the Plaintiff and Defendant Markouzis, based upon the current pleadings; (8) the Counter Motion was denied, as there was no proposed amended Complaint attached, as required under the rules; and (9) the preemption argument was moot, given the dismissal under the NRCP 12(b)(5) standard.

Ms. Herrera to prepare the written Order, and forward it to Mr. Viswanathan for approval as to form and content.

DISTRICT COURT
CLARK COUNTY, NEVADA

Employment Contract	**COURT MINUTES**	**August 25, 2021**

A-20-814819-C Tenkasi Viswanathan, Plaintiff(s)
vs.
Board of Trustees of the Clark County School District, Defendant(s)

August 25, 2021 **9:00 AM** **All Pending Motions**

HEARD BY: Hardy, Joe **COURTROOM:** RJC Courtroom 11D

COURT CLERK: Kristin Duncan

RECORDER: Angelica Michaux

REPORTER:

PARTIES PRESENT:

Barker, Stephanie A.	Attorney
Herrera, Crystal J.	Attorney
Viswanathan, Tenkasi	Plaintiff

JOURNAL ENTRIES

- All parties present via Blue Jeans.

PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Upon Court's inquiry, Mr. Viswanathan confirmed that he wished to withdraw the instant Motion. COURT ORDERED Plaintiff's Motion for Partial Summary Judgment, was hereby WITHDRAWN.

DEFENDANT DR. EDWARD GOLDMAN'S MOTION FOR SUMMARY JUDGMENT...DEFENDANT CLARK COUNTY SCHOOL DISTRICT BOARD OF TRUSTEES' MOTION FOR SUMMARY JUDGMENT...DEFENDANT DR. EDWARD GOLDMAN'S JOINDER TO DEFENDANT CLARK COUNTY SCHOOL DISTRICT BOARD OF TRUSTEES' MOTION FOR SUMMARY JUDGMENT...PLAINTIFF'S MOTION TO STRIKE DEFENDANT CLARK COUNTY SCHOOL DISTRICT BOARD OF TRUSTEES' MOTION FOR SUMMARY JUDGMENT...PLAINTIFF'S MOTION TO STRIKE THE DECLARATION OF DEFENDANT GOLDMAN...PLAINTIFF'S MOTION

TO STRIKE DEFENDANT DR. EDWARD GOLDMAN'S MOTION FOR SUMMARY JUDGMENT AND HIS JOINDER TO THE DEFENDANT CLARK COUNTY SCHOOL DISTRICT BOARD OF TRUSTEE'S MOTION FOR SUMMARY JUDGMENT...PLAINTIFF'S MOTION TO STRIKE ALL OR PARTS OF THE DECLARATION ATTACHED AS EXHIBIT A, EXHIBIT B, AND EXHIBIT C TO DEFENDANT CLARK COUNTY SCHOOL DISTRICT BOARD OF TRUSTEES' MOTION FOR SUMMARY JUDGMENT, AND THE EXHIBITS THERETO; PLAINTIFF'S OBJECTIONS TO THE SAID SUMMARY JUDGMENT MOTION AND EXHIBITS THERETO

Ms. Herrera and Ms. Barker submitted on arguments set forth in the Motions for Summary Judgment and Joinder. The Court noted that, although the Defendants did not oppose Mr. Viswanathan request for additional time to file an Opposition to the Motions and Joinder, Mr. Viswanathan chose not to do so. Mr. Viswanathan confirmed that, rather than file an Opposition, he chose to file his various Motions to Strike. The Court noted that Plaintiff filed his Motion for Summary Judgment the same day that Defendants filed theirs. Mr. Viswanathan argued in opposition to the Motions for Summary Judgment, as well as the Joinder, stating that he was entitled to judgment as a matter of law; however, the Defendants were not entitled to summary judgment under the law. Ms. Herrera argued in opposition to the Plaintiff's various Motions to Strike, stating that there was no opposition to the Plaintiff's request for additional time. Additionally, Ms. Herrera stated that arbitration was moved to October 6, 2021, which also moved the dispositive Motion deadline to forty-five days prior to arbitration; therefore the request for additional time was moot. Ms. Barker joined Ms. Herrera's arguments. Arguments in support of the Motions to Strike by Mr. Viswanathan.

COURT ORDERED ALL of the Plaintiff's Motions to Strike, were hereby DENIED for all of the reasons set forth in the Oppositions, FINDING the following: (1) Plaintiff's argument that Defendants' Motions for Summary Judgment were not timely filed, was moot, given the continuance of the arbitration hearing; (2) Plaintiff filed his Motion for Summary Judgment on the same day the Defendants filed theirs; therefore, the Plaintiff calculated the deadline for the Motions for Summary Judgment the same as the Defendants; therefore, it was disingenuous for the Plaintiff to withdraw his Motion for Summary Judgment, so that he could then argue that Defendants Motions were not timely filed; (3) Plaintiff has had time, opportunity, and notice, and could have responded to the Defendants' Motions, if he chose; (4) public policy favored decisions based on the substance of Motions for Summary Judgment, rather than striking a Motion for no good cause; and (5) there was an extended period of time between the Defendants filing their Motions for Summary Judgment, and the instant hearing, which provided the Plaintiff with plenty of time to respond.

COURT ORDERED that Defendant Clark County School District's Motion for Summary Judgment, Defendant Dr. Edward Goldman's Motion for Summary Judgment, and Dr. Edward Goldman's Joinder to Defendant Clark County School District's Motion for Summary Judgment, were hereby GRANTED for all of the reasons set forth in the Motions and Joinder, FINDING the following: (1) there were no genuine issues of material fact; (2) Plaintiff's claims against the Defendants were based upon an alleged premature non-renewal of the Plaintiff's probationary contract; (3) the Court incorporated the statement of undisputed facts set forth on pages three through five of CCSD's Motion for Summary Judgment in its ruling; (4) the Court incorporated the legal standards set forth

on pages six through seven of CCSD's Motion for Summary Judgment in its ruling; (5) Plaintiff's breach of contract claim failed as a matter of law; (6) the Board had a contractual and statutory right not to renew Plaintiff's probationary contract; (7) the Board's right of non-renewal had limited temporal limitations; (8) Plaintiff was permitted to submit a response to his evaluation, only for inclusion into his personnel file; however, that right did not affect the Board's right to terminate the contract; (9) Plaintiff failed to exercise the appropriate administrative remedies under NRS 288.110(2) and NRS 288.280; (10) the Court incorporated the undisputed facts set forth in Dr. Goldman's Motion for Summary Judgment, as set forth on pages four through seven in its ruling; (11) the Court incorporated the legal arguments set forth in Dr. Goldman's Motion for Summary Judgment, as set forth on pages seven through sixteen, in its ruling; (12) the Court's ruling was based upon NRCP 56, as well as the accompanying case law; (13) the breach of contract claim, as well as the breach of the covenant of good faith and fair dealing claim, against Dr. Goldman, could not stand as a matter of law; (14) as a matter of law, Dr. Goldman was not a proper party to the instant suit; (15) a claim against Dr. Goldman in his official capacity was redundant to the suit against the CCSD Board of Trustees; (16) Dr. Goldman had no authority to grant the relief being sought by the Plaintiff; (17) the negotiated agreement governing the Plaintiff's probationary teaching contract, provided the exclusive remedy for challenging the non-renewal of the contract; (18) the Court incorporated the entirety of the instant case's procedural history into its ruling; (19) although the Plaintiff was made aware of the Defendants' Motions for Summary Judgment on June 14, 2021, and the Defendants did not oppose an extension of time for the Plaintiff to file Oppositions, the Plaintiff failed to file any Oppositions; (20) Plaintiff was given the opportunity to respond to the Motions for Summary Judgment orally at the instant hearing, but took the position that opposition was not necessary, as he had filed multiple Motions to Strike; and (21) the instant Order CONSTITUTED A FINAL JUDGMENT.

Ms. Herrera to prepare the written Order regarding the Motions to Strike, as well as the Motions / Joinder for Summary Judgment, including Findings of Fact, Conclusions of Law, and forward it to Ms. Barker and Mr. Viswanathan for approval as to form and content.

DEFENDANT CLARK COUNTY SCHOOL DISTRICT BOARD OF TRUSTEES' OPPOSITION TO PLAINTIFF'S MOTION TO STRIKE THE DEFENDANT BOARD'S MOTION FOR SUMMARY JUDGMENT AND COUNTERMOTION TO EXTEND THE DISPOSITIVE MOTION DEADLINE...DEFENDANT DR. EDWARD GOLDMAN'S JOINDER IN DEFENDANT CLARK COUNTY SCHOOL DISTRICT BOARD OF TRUSTEES' OPPOSITION TO PLAINTIFF'S MOTION TO STRIKE THE DEFENDANT BOARD'S MOTION FOR SUMMARY JUDGMENT AND COUNTERMOTION TO EXTEND THE DISPOSITIVE MOTION DEADLINE

Given the proceedings in the case, COURT ORDERED the instant Motion and Joinder were hereby DENIED AS MOOT.

PLAINTIFF'S MOTION REQUESTING ORDER FOR A SEVEN-DAY EXTENSION OF TIME TO SERVE AND FILE HIS OPPOSITION TO "DEFENDANT DR. EDWARD GOLDMAN'S MOTION

FOR SUMMARY JUDGMENT", "DEFENDANT DR. EDWARD GOLDMAN'S MOTION FOR SUMMARY JUDGMENT" AND DR. EDWARD GOLDMAN'S JOINDER TO DEFENDANT CLARK COUNTY SCHOOL DISTRICT BOARD OF TRUSTEES' MOTION FOR SUMMARY JUDGMENT; PLAINTIFF'S FIRST REQUEST FOR EXTENSION

Given that Defendants agreed to the Plaintiff's request for an extension of time to file an Opposition, COURT ORDERED the instant Motion was hereby GRANTED.

DISTRICT COURT
CLARK COUNTY, NEVADA

Employment Contract **COURT MINUTES** **January 05, 2022**

A-20-814819-C Tenkasi Viswanathan, Plaintiff(s)
vs.
Board of Trustees of the Clark County School District, Defendant(s)

January 05, 2022 **3:00 AM** **Motion to Amend**

HEARD BY: Hardy, Joe **COURTROOM:** Chambers

COURT CLERK: Kristin Duncan

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- COURT ORDERED, Plaintiff s Motion Under NRCP Rules 52 and 59 is DENIED WITHOUT PREJUDICE for the reasons set forth in Defendant s opposition. Defendant s counsel is to prepare the written order and include therein Defendant s arguments modified to be the Court s conclusions; submit the order to Plaintiff s counsel for review and approval; and then submit the order to Department 15 s chambers within 10 days of this minute order pursuant to EDCR 7.21.

CLERK'S NOTE: Minute order electronically served by Courtroom Clerk, Kristin Duncan, on all parties registered for Odyssey File & Serve. (KD 1/10/22)

EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE

NOTICE OF DEFICIENCY

ON APPEAL TO NEVADA SUPREME COURT

TENKASI VISWANATHAN
8220 HOLLISTER AVE.
LAS VEGAS, NV 89131

DATE: March 28, 2022
CASE: A-20-814819-C

RE CASE: TENKASI VISWANATHAN vs. CLARK COUNTY SCHOOL DISTRICT; BOARD OF TRUSTEES OF THE CLARK COUNTY SCHOOL DISTRICT; DR. EDWARD GOLDMAN in his Official and Individual Capacity; DR. JEFFREY GEIHS in his Official and Individual Capacity; NEDDY ALVAREZ in her Official and Individual Capacity; SONIA HOUGHTON in her Official and Individual Capacity; LOUIS MARKOUZIS in his Official and Individual Capacity

NOTICE OF APPEAL FILED: March 24, 2022 (1)

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

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

☒ $250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
- If the $250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.

☐ $24 – District Court Filing Fee (Make Check Payable to the District Court)**

☒ $500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
- NRAP 7: Bond For Costs On Appeal in Civil Cases
- *Previously paid Bonds are not transferable between appeals without an order of the District Court.*

☐ Case Appeal Statement
- NRAP 3 (a)(1), Form 2

☐ Order

☐ Notice of Entry of Order

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

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

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

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

Certification of Copy

State of Nevada
County of Clark } **SS:**

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

PLAINTIFF'S NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER GRANTING DEFENDANT CLARK COUNTY SCHOOL DISTRICT BOARD OF TRUSTEES' MOTION FOR SUMMARY JUDGMENT, GRANTING DEFENDANT DR. EDWARD GOLDMAN'S JOINDER TO DEFENDANT CLARK COUNTY SCHOOL DISTRICT BOARD OF TRUSTEES' MOTION FOR SUMMARY JUDGMENT, GRANTING PLAINTIFF'S MOTION TO EXTEND THE TIME TO OPPOSE CLARK COUNTY SCHOOL DISTRICT BOARD OF TRUSTEES' MOTION FOR SUMMARY JUDGMENT, DENYING PLAINTIFF'S MOTION TO STRIKE DEFENDANT CLARK COUNTY SCHOOL DISTRICT BOARD OF TRUSTEES' MOTION FOR SUMMARY JUDGMENT, DENYING PLAINTIFF'S OBJECTIONS TO AND MOTION TO STRIKE PARTS OR ALL OF THE DECLARATIONS IN SUPPORT OF DEFENDANT CLARK COUNTY SCHOOL DISTRICT BOARD OF TRUSTEES' MOTION FOR SUMMARY JUDGMENT, DENYING AS MOOT DEFENDANT CLARK COUNTY SCHOOL DISTRICT BOARD OF TRUSTEES' COUNTERMOTION TO EXTEND THE DISPOSITIVE MOTION DEADLINE, AND GRANTING PLAINTIFF'S REQUEST TO WITHDRAW PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT; NOTICE OF ENTRY OF ORDER; ORDER GRANTING DEFENDANT DR. EDWARD GOLDMAN'S MOTION FOR SUMMARY JUDGMENT, GRANTING PLAINTIFF'S MOTION TO EXTEND THE TIME TO OPPOSE DEFENDANT GOLDMAN'S MOTION FOR SUMMARY JUDGMENT, DENYING PLAINTIFF'S MOTION TO STRIKE DEFENDANT GOLDMAN'S MOTION FOR SUMMARY JUDGMENT, DENYING PLAINTIFF'S OBJECTIONS TO, AND MOTION TO STRIKE DEFENDANT GOLDMAN'S DECLARATION IN SUPPORT OF DEFENDANT GOLDMAN'S MOTION FOR SUMMARY JUDGMENT, AND DENYING AS MOOT DEFENDANT GOLDMAN'S JOINDER IN DEFENDANT CLARK COUNTY SCHOOL DISTRICT BOARD OF TRUSTEES' COUNTERMOTION TO EXTEND THE DISPOSITIVE MOTION DEADLINE; NOTICE OF ENTRY OF ORDER GRANTING DEFENDANT DR. EDWARD GOLDMAN'S MOTION FOR SUMMARY JUDGMENT, GRANTING PLAINTIFF'S MOTION TO EXTEND THE TIME TO OPPOSE DEFENDANT GOLDMAN'S MOTION FOR SUMMARY JUDGMENT, DENYING PLAINTIFF'S MOTION TO STRIKE DEFENDANT GOLDMAN'S MOTION FOR SUMMARY JUDGMENT, DENYING PLAINTIFF'S OBJECTIONS TO, AND MOTION TO STRIKE DEFENDANT GOLDMAN'S DECLARATION IN SUPPORT OF DEFENDANT GOLDMAN'S MOTION FOR SUMMARY JUDGMENT; ORDER GRANTING DEFENDANT LOUIS MARKOUZIS' MOTION TO DISMISS AND DENYING PLAINTIFF'S COUNTER-MOTION; NOTICE OF ENTRY OF ORDER GRANTING DEFENDANT LOUIS MARKOUZIS' MOTION TO DISMISS AND DENYING PLAINTIFF'S COUNTER-MOTION; ORDER DENYING PLAINTIFF'S MOTION UNDER NRCP RULES 52 AND 59; NOTICE OF ENTRY OF ORDER DENYING PLAINTIFF'S MOTION UNDER NRCP RULES 52 AND 59; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

TENKASI VISWANATHAN,

Plaintiff(s),

vs.

CLARK COUNTY SCHOOL DISTRICT; BOARD OF TRUSTEES OF THE CLARK COUNTY SCHOOL DISTRICT; DR. EDWARD GOLDMAN in his Official and Individual Capacity; DR. JEFFREY GEIHS in his Official and Individual Capacity; NEDDY ALVAREZ in her Official and Individual Capacity; SONYA HOUGHTON in her Official and Individual Capacity; LOUIS MARKOUZIS in his Official and Individual Capacity,

Defendant(s),

Case No: A-20-814819-C

Dept No: XV

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto Set my hand and Affixed the seal of the Court at my office, Las Vegas, Nevada This 28 day of March 2022.

Steven D. Grierson, Clerk of the Court

Heather Ungermann, Deputy Clerk