IN THE SUPREME COURT OF
THE STATE OF NEVADA
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TENKASI VISWANATHAN, Appellant, vs. BOARD OF TRUSTEES OF THE CLARK COUNTY SCHOOL DISTRICT; DR. EDWARD GOLDMAN IN HIS OFFICIAL AND INDIVIDUAL CAPACITY; AND LOUIS MARKOUZIS IN HIS OFFICIAL AND INDIVIDUAL CAPACITY, Respondents.	Supreme Court No. 84448 District Court Case No. A-20-818819-C Joe Hardy, District Court Judge

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RESPONDENTS BOARD OF TRUSTEES OF THE CLARK COUNTY SCHOOL DISTRICT AND LOUIS MARKOUZIS'S APPENDIX – VOLUME I

Appeal
from Court Orders re:
Board of Trustees' Motion for Summary Judgment;
Dr. Goldman's Motion for Summary Judgment;
Louis Markouzis's Motion to Dismiss; and
Tenkasi Viswanathan's Motion under NRCP 52 and 59

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Docket 84448 Document 2022-34115

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EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

Tenkasi Viswanathan, Plaintiff, vs. 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	CASE NO: A-20-814819-C Department 15

AMENDED COMPLAINT, PURSUANT TO NRCP 15(a)(1)(A)

FOR BREACH OF CONTRACT, DECLARATORY JUDGMENT AND FOR RECOVERY OF DAMAGES

Plaintiff, TENKASI VISWANATHAN, in proper person, brings this complaint against the Clark County School District (CCSD), which is a political subdivision, pursuant to NRS 41.0305 and NRS 386.010(2). Plaintiff brings this action against CCSD, pursuant to NRS 41.031 and NRS 386.010(3). Plaintiff also brings this action against the following Defendants: 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. Plaintiff brings this action for breach of contract pursuant to NRS 11.190(1)(b). Plaintiff claims recovery for damages in an amount greater than $20,000. Plaintiff requests injunctive and other relief considered proper by the Court.

Plaintiff brings this action against the defendants for breach of contract, for breach of the covenant of good faith and fair dealing, and for breach of fiduciary duty, pursuant to NRS 41.031, NRS 41,9337, and NRS 162.130, respectively.

Plaintiff seeks declaratory judgment, pursuant to NRS 30.040 as set forth herein

Plaintiff hereby states as follows:

JURISDICTION

1. Plaintiff brings this action pursuant to NRS 11.190(1)(b) NRS 41.031, and NRS 386.010 for breach of contract, breach of the covenant of good faith and breach of fiduciary duty. Pursuant to 41.031, the Court has jurisdiction to have the liability of the Defendants determined. Plaintiff alleges that the damages to the plaintiff exceed $20,000. Plaintiff's declaratory judgment is authorized by NRS 30.040(1). These statutes confer jurisdiction on the District Court.

VENUE

2. Venue is appropriate in this judicial district: The plaintiff and the defendants lived and acted in Clark County at the time relevant to this complaint. This is a civil case involving claims for damages in excess of $20,000.

PARTIES

3. At all times relevant to the Complaint, plaintiff Viswanathan was a resident of Nevada, County of Clark, City of Las Vegas. At the time relevant to the complaint,

plaintiff Viswanathan was a mathematics teacher at Western High School of CCSD.

4. Defendant Clark County School District (CCSD) is a political subdivision of the state of Nevada, pursuant to NRS 386.010(2) and NRS 41.0305. Pursuant to NRS 386.110(1), Defendant Board of Trustees of the Clark County School District (the Defendant Board) is a body corporate. To the best of Plaintiff's knowledge, the Defendant Board is organized and existing by virtue of the laws of the State of Nevada and the County of Clark. The Defendant Board has offices in Clark County, Nevada.

5. To the best of plaintiff's knowledge, Defendant Pat Skorkowski was, at all times relevant to the Complaint, a resident of the State of Nevada, County of Clark. At all times relevant to the complaint, Defendant Pat Skorkowski was the Superintendent of CCSD.

6. To the best of plaintiff's knowledge, Defendant Dr. Edward Goldman was a resident of the State of Nevada, County of Clark at all times relevant to the complaint. Dr. Goldman was at the time an Associate Superintendent for Employee~~s~~ Management Relations.

7. To the best of plaintiff's knowledge, Defendant Dr. Jeffrey Geihs was a resident of the State of Nevada, County of Clark at all times relevant to the complaint. Dr. Geihs was

t hen Academic Manager of "Turn Around Schools". The employment duties of Dr. Geihs included supervision of Western High School, which was a turn-around school at the time relevant to the Complaint.

8. To the best of plaintiff's knowledge, Defendant Neddy Alvarez was a resident of the State of Nevada, County of Clark at all times relevant to the complaint. Neddy Alvarez was the Principal of Western High School during part of the period relevant to the complaint.

9. To the best of plaintiff's knowledge, Defendant Sonia Houghton was a resident of the State of Nevada, County of Clark at all times relevant to the complaint. Defendant Sonia Houghton was a Dean of Students at Western High School during part of the period relevant to the complaint. She was then the immediate supervisor of plaintiff Viswanathan.

10. To the best of plaintiff's knowledge, Defendant Louis Markouzis was a resident of the State of Nevada, County of Clark at all times relevant to the complaint. To the best of Plaintiff's knowledge, Louis Markouzis was a Dean of Students at a neighboring High School during part of the period relevant to the complaint.

FACTS

11. Plaintiff Viswanathan was employed as a probationary Mathematics Teacher at Western High School during the school year 2013-2014. Plaintiff is certified as a schoolteacher by the Nevada Department of Education. Plaintiff was certified to teach in three areas, namely, Mathematics, Grades 7-12, General Science, grades 7-12 and Special Education, Grades K-12. During the year 2013-2014, plaintiff was teaching only in the field of mathematics at Western High School as a regular education teacher.

12. Plaintiff had a written teaching contract with the Defendant Board for the school year 2013-2014.

13. The contract appointing the plaintiff for a year was from August 2013 to June 2014. The contract was in conformity with state laws on teacher performance and evaluations.

14. The contract required three teacher evaluations to be made through classroom observations by CCSD administrators.

15. The third and the final evaluation was made on April 1, 2014 by Defendant Markouzis.

16. As part of the evaluation process, plaintiff was given an opportunity to respond to the evaluation. Plaintiff was given a 30-day period up to and inclusive of May 1, 2014 to respond.

17. The evaluation process was not complete until plaintiff had responded to Defendant Markouzis' evaluation or until May 1, 2014, whichever was earlier.

18. Plaintiff submitted his response on May 1, 2014 as a rebuttal of Defendant Markouzis' evaluation.

19. Before plaintiff's response had been submitted and before the evaluation process was complete, the Defendant Board had made a material decision based on the half-complete evaluation of April 1 of Defendant Markouzis.

20. Plaintiff came to know for the first time on April 28, 2014 that based on the third evaluation of April 1, 2014, the Defendant Board of Education had made an official decision not to renew plaintiff's contract for the following school year 2014-2015.

21. A teacher's evaluation document is a powerful tool, which plaintiff can use to get an equivalent teaching job with other school districts.

22. Defendants acted prematurely before the evaluation process had culminated and deprived the plaintiff of his teaching job with CCSD. The abortive evaluation process also made the evaluation document unusable in getting an equivalent job with other school districts. Making the evaluation document unusable was more damaging than losing the teaching job at CCSD.

23. Plaintiff performed all his contractual duties.

24. By failing to wait for plaintiff's response authorized by the regulations and the completion of the evaluation process, and making a premature material decision based on the incomplete evaluation of April 1, 2014, defendants failed to perform the contract. Thereby the defendants breached the contract.

25. Plaintiff Viswanathan could not get an equivalent job. He and his family suffered damages as stated farther.

26. The evaluation process gave plaintiff an opportunity to respond to the evaluation of April 1, 2014. Plaintiff acted in good faith and seized the opportunity and responded to the evaluation.

27. Defendants through their premature action acted in bad faith. The defendants breached plaintiff's good faith. Thereby they breached the contract as well.

28. Pursuant to NRS 162.020(1)(b) and NRS 386.327(1)(h), the defendants are fiduciaries and had a fiduciary duty to wait for making the final decision and give plaintiff the full power of the opportunity to respond. Defendants failed to wait and their premature decision constitutes a breach of their fiduciary duty. Defendants, thereby, breached the contract as well.

29. On April 28, 2014, Plaintiff was called to a meeting to meet briefly with Principal Alvarez. At this meeting, Defendant Alvarez and Defendant Houghton were present.

30. Defendant Alvarez asked plaintiff Viswanathan to listen to what she was going to read. She then read aloud in the presence of Defendant Houghton the contents of a notice of non-renewal of plaintiff's employment with CCSD.

31. Upon Defendant Alvarez's reading aloud the notice in the presence of Defendant Houghton, plaintiff felt very humiliated and distressed. Defendant Alvarez finished reading the notice and asked plaintiff to sign on her copies of the notice. She then signed the copies herself and gave plaintiff a copy.

32. The notice mentioned above read that the decision was made by the CCSD Board of Trustees and was signed by the then Superintendent Defendant Pat Skorkowski.

33. The notice said that the non-renewal decision was made based on plaintiff's teacher evaluation of April 1, 2014. Plaintiff came to know about the non-renewal decision for the first time in this meeting of April 28, 2014.

34. The April 1 teacher evaluation of the plaintiff was made by Defendant Louis Markouzis, who observed the classroom teaching of the plaintiff on April 1, 2014.

35. Plaintiff had opportunity until May 1 to rebut Defendant Markouzis's evaluation. This opportunity was not an empty one, just of words, but an opportunity made in good faith for the evaluator to carefully consider the teacher's rebuttal and act correspondingly. The opportunity was given for thirty days until May 1, 2014. The evaluation and the opportunity mentioned herein are part of the duties arising from the contract.

36. Plaintiff Viswanathan responded and submitted his response and rebuttal on May 1, 2014. Plaintiff challenged the decision of Defendant Markouzis. The contents of Plaintiff's response are hereby incorporated herein.

37. Plaintiff Viswanathan had complied with the conditions of the contract and performed his teacher duties in compliance with the contract and the corresponding laws of Nevada.

38. Given this situation, a decision to non-renew could not be made prior to the deadline to respond. The deadline to respond to Defendant Markouzis' evaluation was May 1, 2014. Defendants breached the contract by making the non-renewal decision by April 28, 2014. Defendants had acted in bad faith.

39. Plaintiff appealed the decision to the higher authorities, which included Defendant Goldman. Defendant Goldman did not address the issue. Defendant Skorkowski and the Defendant

Board did not answer. Plaintiff Viswanathan followed the rules set forth for dispute resolution as part of an agreement between CCSD and the Clark County Education Association (CCEA). CCEA is a union of teachers and other education professionals. Plaintiff was a member of CCEA. The defendants mentioned in this paragraph acted in bad faith.

40. Defendant Alvarez breached the contract by reading aloud the notice in the presence of Defendant Houghton. As a principal, she was required to respect and value teachers and their privacy.

40.1. t h .

41. Even if the observation of Defendant Markouzis was faithful, the observation would only apply to plaintiff's performance as a teacher of mathematics. Plaintiff was certified in two other areas, namely General Science (Grades 7-12) and Special Education (Grades K-12).

42. The Defendant Board, Defendant Skorkowski, Defendant Goldman, Defendant Alvarez, Defendant Houghton, and Defendant Markouzis were (and still are) public officers as well as officers of the Defendant Board, which is a Body Corporate. Pursuant to NRS 162.020(1)(b) and NRS

386.327(1)(h), they are fiduciaries and had a fiduciary duty to consider plaintiff for other positions like those of Science and Special Education, for which plaintiff was certified. CCSD had many openings in these areas for the year 2014-2015. The defendants breached their fiduciary duty in this context by failing to consider plaintiff for a position in the areas of science and special education. On the other hand, the defendants closed the employment door for the year 2014-2015. As a result, plaintiff lost his job, which he loved and the professional opportunities, which would have arisen from a position at CCSD. Plaintiff also suffered money and other damages mentioned farther down. The defendants breached their fiduciary duty and the contract.

43. The notice of non-renewal explicitly mentioned that the non-renewal applied to one year of any appointment as a teacher in CCSD. Plaintiff has reapplied to CCSD during the school years 2017-2018 and 2018-2019.

44. Plaintiff alleges that Defendant Sonia Houghton continues to give negative letters of performance about the plaintiff to the Recruiting Committees of CCSD. She has done so in the past during the school year 2017-2018. The recruiting rules of CCSD require letters from an immediate supervisor if a candidate had worked for CCSD in prior years.

45. The notice of non-renewal arose from the teacher contract. It explicitly mentions only one year for possible rehiring. Plaintiff applied for teaching positions in Special Education during the 2017-2018 school year and 2018-2019 school year. There were many vacant positions at CCSD in the areas of Special Education, of Science and of Math. The correspondence between the Recruiting Committee and the plaintiff was going well until the Committee received a reference letter from Defendant Houghton. The day after receipt of Defendant Houghton's letter, the Recruitment Committee informed plaintiff that it was no longer considering the plaintiff for a position. Defendant Houghton breached the contract.

46. Defendant Houghton ought to have known that plaintiff's non-renewal of his employment contract was just for the year 2014-2015 and that the evaluations were only in the area of math. She had a fiduciary duty to act in good faith and support plaintiff's application for a job at CCSD as a Special Ed teacher. Her fiduciary duty would have, under the worst circumstances, called upon her at the least to be non-negative. She failed to act in good faith and breached her fiduciary duty and the contract, which only bared plaintiff for just a year.

47. Plaintiff had to find employment outside of Clark County since June 2014. Plaintiff worked in Gabbs, Nevada about 300 miles north of Las Vegas.

48. Because of the health conditions, Plaintiffs wife Uma had to stay in Las Vegas. Plaintiff drove back and forth every week between Las Vegas, and Gabbs. He also had to take a reduction in Salary, maintain two residences and long weekly drives. In addition, the couple had loss of consortium. Plaintiff continued to suffer reduction in salaries, and live with danger and extra expenses from long-distance traveling. Plaintiff's monetary loss is more than $20,000.

49. Plaintiff requests punitive damages for the sufferings the defendants caused and continue to cause.

50. The defendants acted in their official and individual capacities, completely neglecting their duties as officers of public schools. They failed to exercise due care and acted in bad faith.

51. Plaintiff requests a jury trial.

CLAIMS

Count 1: Breach of Contract

52. Plaintiff incorporates herein by reference the facts alleged in paragraphs 1-51.

53. Plaintiff had a written teaching contract with the Defendant Board for the school year 2013-2014`1. Teacher evaluations were part of the performance of the contract.

54. Plaintiff performed all his contractual duties.

55. Defendants did not wait for the third and final evaluation process to be completed and acted prematurely to non-renew his teacher contract based on the incomplete process.

56. By their premature decision and action, defendants failed to perform their duty and breached the contract.

57. The breach directly and proximately injured the plaintiff and caused plaintiff to suffer damages

58. The facts under Paragraphs 52 to 57 give rise to a cause of action for breach of contract by the defendants, pursuant to NRS 11.190(1)(b), and NRS Chapter 41.

COUNT 2: Breach of Covenant of Good Faith and Breach of Contract

59. Plaintiff incorporates herein by reference the facts alleged in paragraphs 1-51.

60. Plaintiff had a written teaching contract with the Defendant Board for the school year 2013-2014. Teacher evaluations were part of the performance of the contract.

61. Every contract in Nevada contains an implied covenant of fair dealing to act in good faith in performance and enforcement of the contract

62. Plaintiff performed all his contractual duties in good faith.

63. Defendants did not wait for the third and final evaluation process to be completed and acted prematurely to non-renew Plaintiff's teacher contract based on the incomplete process.

64. By their premature decision and unfavorable action, defendants performed in a manner unfaithful to the terms and spirit of the contract. They gave the "opportunity" apparently as a joke.

65. The unfair and unfaithful actions by the defendants were deliberate.

66. The unfair and unfaithful actions of the defendants breached the contract.

67. The contractual breach directly and proximately injured the plaintiff and caused plaintiff to suffer damages

68. The facts under paragraphs 59 through 67 give rise to a cause of action for breach of covenant of good faith and fair dealing and breach of contract, pursuant to NRS Chapter 41 and NRS 11.190(1)(b). Pursuant to NRS 41.031, the political subdivision CCSD is made a party defendant and NRS 41.0337 and NRS 11.190(1)(b) apply to the other defendants.

Count 3: Breach of Fiduciary Duty and Breach of Contract

69. Plaintiff incorporates herein by reference the facts alleged in paragraphs 1-51.

70. Plaintiff had a written teaching contract with the Defendant Board for the school year 2013-2014. Teacher evaluations were part of the performance of the contract.

71. Defendants are fiduciaries, pursuant to NRS 162.020(1)(b) and NRS 386.327(1)(h).

72. As fiduciaries, they had a duty to act with due care and utmost faith in the best interests of the contracted teacher plaintiff.

73. Exercise of due care and utmost faith required the defendants to wait for the third and final evaluation process to be completed.

74. The fiduciary defendants did not wait and instead acted prematurely to non-renew Plaintiff's teacher contract based on the incomplete process.

75. By their premature decision and unfavorable action, defendants breached their fiduciary duty and thereby the contract.

76. The breach of fiduciary duty directly and proximately injured the plaintiff and caused plaintiff to suffer losses and damages.

77. The facts under Paragraphs 69 to 76 give rise to a cause of action for breach of fiduciary duty and breach of contract.

pursuant to NRS 162.130, NRS 41.0337, and NRS 11.190(1)(b). The political subdivision CCSD is made a party defendant, pursuant to NRS 41.031.

Count 4: Breach of the Covenant of Good Faith, Breach of Fiduciary Duty and Breach of Duty

78. Plaintiff incorporates herein by reference the facts alleged in paragraphs 1-51.

79. Plaintiff had a written teaching contract with the Defendant Board for the school year 2013-2014.

80. It was possible for teachers to transfer from one school to another of the District.

81. The teacher plaintiff was a math teacher at Western High School. Plaintiff was also certified in Science as well as Special Education.

82. Teacher evaluations were part of the performance of the contract.

83. Even if we assume that plaintiff's performance was below par, it will only apply to mathematics, the subject of the observation by Defendant Markouzis.

84. CCSD had many teaching positions in science and Special Education for the school year 2014-2015. Plaintiff was certified for those positions.

85. Defendants had a fiduciary duty to consider the plaintiff for one of the positions mentioned in the previous paragraph and initiate the transfer process.

86. The defendants did not make any attempt to consider the plaintiff for a teaching position transfer mentioned in the foregoing.

87. Every contract in Nevada contains an implied covenant of fair dealing to act in good faith in performance and enforcement of the contract

88. Plaintiff performed all his contractual duties in good faith.

89. Defendants acted in bad faith, breached the covenant of good faith implied in the contract, and breached their fiduciary duty to consider and initiate plaintiff's transfer process. Defendants breached the contract.

90. The political subdivision CCSD is hereby made a party defendant to this action, pursuant to NRS 41.031. Paragraphs 78 through 89 give rise to a cause of action, for breaching the covenant of good faith, for breaching their fiduciary duty and for breaching the contract, pursuant to NRS Chapter 41, NRS 41.0337, NRS 162.130 and NRS 11.190(1)(b). Plaintiff seeks relief under the rules of law and equity.

COUNT 5: Breach by Defendant Houghton of Fiduciary Duty and Breach of Contract

91. Plaintiff incorporates by reference the facts alleged in paragraphs 1-51.

92. Plaintiff had a written contract with the Defendant Board for the school year 2013-2014. The notice of non-renewal arose from the contract and it bared plaintiff's appointment to CCSD for a year.

93. As a public officer, and as an officer of the Corporate Body of the Defendant Board, Defendant Houghton had a fiduciary duty to act with due care and utmost faith to act in the best interests of the plaintiff. In particular she had to know the spirit of the one-year non-renewal of plaintiff's contract.

94. Plaintiff alleges that when plaintiff reapplied for a teaching position in Special Education, Defendant Houghton submitted a negative letter of reference. In doing so Defendant Houghton acted in bad faith and breached her fiduciary duty. This in turn breached the spirit of non-renewal and by implication the contract.

95. Plaintiff restates herein by reference the allegations in paragraphs 43-46

96. The breach of fiduciary duty directly and proximately injured the plaintiff by removing him from being considered

for a new position with CCSD and caused plaintiff to suffer losses and damages.

97. The facts under Paragraphs 91- 96 give rise to a cause of action for breach of fiduciary duty, and breach of contract. pursuant to NRS 162.130, NRS 41.0337, and NRS 11.190(1)(b). The political subdivision CCSD is made a party defendant, pursuant to NRS 41.031.

98. Plaintiff's injuries have resulted in damages in excess of $20,000.

99. Plaintiff requests the Court for a Declaratory Judgment that the termination of the plaintiff was wrongful. A suit for declaratory judgment is authorized under 28 U.S.C.§ 2201 and Rule 57 of the Federal Rules of Civil Procedure.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the Honorable Court grant whatever relief the Court deems appropriate under the rules of law and equity. Plaintiff prays for the following:

1) Compensatory damages for the losses sustained by the plaintiff in the past, and in the present in an amount to be determined by the court, which plaintiff believes in excess of $20,000.

2) General damages for the past and present suffering; punitive and other damages in an amount to be determined by the court.

3) Injunctive relief ordering the Defendants to reinstate the plaintiff as a teacher in an appropriate area, in which plaintiff is certified; and

4) A declaratory judgment that the plaintiff was wrongly terminated and needs to be reinstated.

5) Plaintiff respectfully requests the Court to construct the meaning and role of the expression "opportunity to respond" and declare that in pretending to give the opportunity to respond, defendants acted in bad faith, and breached their fiduciary duties.

6) The Court is authorized to render the construction, pursuant to NRS 30.040(1). Plaintiff submits respectfully that rendering the construction is of public interest and is likely to impact the cause of education in our public schools.

Respectfully submitted this the 3rd day of August 2020.

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VERIFICATION
Per NRS 15.010)

Under penalties of perjury, the undersigned declares that he is the Plaintiff named in the foregoing Amended Complaint and knows the contents thereof; that the pleading is true of his own knowledge, except as to those matters stated on information and belief, and that as to such matters he believes it to be true.

DATED this 3rd day of August 2020.

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

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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 REQUESTED**

DEFENDANT LOUIS MARKOUZIS' MOTION TO DISMISS

Defendant Louis Markouzis ("Defendant" or "Markouzis"), by and through his attorneys of record, hereby moves to dismiss Plaintiff Tenkasi Viswanathan's Amended Complaint pursuant to Nev. R. Civ. P. 12(b)(5), for Plaintiff's failure to state a claim upon which relief can be granted.

This Motion is made and based on the papers and pleadings on file, the following memorandum of points and authorities, and any oral argument that may be heard at the hearing on this matter.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff's claims stem from a non-renewal of his employment contract with the Clark County School District ("CCSD") which he maintains was premature. Plaintiff contends he was a first year, probationary teacher with CCSD during the 2013-2014 school year. On April 28, 2014, he was allegedly notified that CCSD would not renew his employment contract for the following 2014-2015 school year based on an evaluation completed by Mr. Markouzis. Plaintiff maintains that he should have been granted time to respond to the evaluation before CCSD decided to non-renew his employment contract and, therefore, CCSD violated the employment contract. In effect, Plaintiff asserts the following claims: (1) breach of contract; (2) breach of the covenant of good faith and fair dealing; and (3) breach of fiduciary duty. Amended Complaint ("Compl.") ¶¶ 52-90.[1]

Preliminarily, this Court has ruled that Plaintiff's breach of fiduciary duty claim is barred under the applicable statute of limitations as against Defendant CCSD Board of Trustees and Defendant Edward Goldman. Any claim against Markouzis is similarly barred and subject to dismissal.

Plaintiff's remaining claims for breach of contract and breach of the covenant of good faith and fair dealing also fail as against Markouzis because he was not a party to Plaintiff's employment contract nor did he have any alleged involvement in the purported "breach." Plaintiff only avers that Markouzis provided Plaintiff a third evaluation on April 1, 2014 which precipitated Plaintiff's non-renewal. Markouzis' actions are confined to the evaluation, not the decision to non-renew or provide Plaintiff time to rebut the evaluation before non-renewal. Accordingly, there is no basis for Plaintiff to aver breach of contract or implied covenant claims against Markouzis.

Finally, even if Plaintiff could assert contract-based claims against Markouzis, the claims are subject to preemption based on well settled labor law. The exclusive remedy afforded to

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[1] The Court has clarified that Plaintiff's Amended Complaint is the operative complaint in this action. *See* Order Granting in Part and Denying in Part Defendant CCSD Board of Trustees' Motion to Dismiss at p. 3.

Plaintiff for taking issue with his evaluation and corresponding response were through the grievance and arbitration procedures set forth in the applicable collective bargaining agreement and not through the instant lawsuit. Consequently, Plaintiff's Amended Complaint should be dismissed in its entirety as against Markouzis.

II. STATEMENT OF RELEVANT FACTS

As alleged, Plaintiff was employed with CCSD as a teacher at Western High School during the 2013-2014 school year. Compl. at ¶ 11. Plaintiff had a written contract for said school year which identified Plaintiff's probationary status in accordance with Nevada law. *Id.* at ¶¶ 11-13; *see* NRS 391.820 (1) ("A probationary employee is employed on a contract basis for three 1-year periods and has no right to employment after any of the three probationary contract years.")[2].

Plaintiff maintains that he received evaluations during the school year, the last of which was made on April 1, 2014 by Markouzis. *Id.* at ¶¶ 14-15. Plaintiff states that he had an opportunity to submit a rebuttal to the last evaluation. *Id.* at ¶ 16. Before he submitted his response, Defendant CCSD Board of Trustees ("Board") made the decision to non-renew his contract for the subsequent school year. *Id.* at ¶¶ 19-20. The Board is the governing body of CCSD. NRS 388.126. Plaintiff acknowledges he became aware of the decision on April 28, 2014. *Id.* at ¶¶ 20; 29-33.

Plaintiff claims that the Board acted "prematurely" in making the nonrenewal decision. *Id.* at ¶ 22. He argues the decision breached his employment contract and that the Board acted in bad faith. *Id.* at ¶¶ 24; 27; 38. Plaintiff also maintains that the Board's failure to wait for Plaintiff constituted a breach of its fiduciary duty. *Id.* at ¶ 28.[3] Throughout the Amended

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[2] Chapter 391 of the Nevada Revised Statutes governs teacher discipline and dismissal, among other matters. NRS 391.810 was formerly NRS 391.3197 during the 2013-2014 school year and contained the cited language. The Court may take judicial notice of the cited statutes. *See* NRS 47.140(2) (a court may take judicial notice of "the Constitution of this State and Nevada Revised Statues.").

[3] Plaintiff's attempts to reapply for a position with CCSD during the 2017-2018 and 2018-2019 school years are not recited or addressed as they relate to actions by other named defendants, not Markouzis. *See id*. at ¶¶ 43-46.

Complaint, Markouzis is lumped in with the Board as "defendants" irrespective of his limited involvement in the mater (*i.e.* providing Plaintiff his third evaluation).

III. LEGAL STANDARD

Nevada Rule of Civil Procedure 12(b)(5) states that a complaint should be dismissed upon a defendant's motion when the plaintiff fails to state a claim upon which relief can be granted. The test for determining whether the allegations of a complaint are sufficient to assert a claim for relief is whether the allegations give fair notice of the nature and basis of a *legally sufficient* claim and the relief requested. *Breliant v. Preferred Equities Corp.,* 109 Nev. 842, 846, 858 P.2d 1258, 1260 (1993). The complaint should be dismissed when it appears to a certainty that the plaintiff could prove no set of facts that would entitle him/her to relief. *Blackjack Bonding v. City of Las Vegas Mun. Ct.,* 116 Nev. 1213, 1217, 14 P.3d 1275, 1278 (2000). The Court must construe the pleadings liberally and draw every fair inference in favor of the non-moving party. *Simpson v. Mars, Inc.*, 113 Nev. 188, 929 P.2d 966 (1997). However, the Nevada Supreme Court has not hesitated to sustain dismissal in appropriate circumstances, where a plaintiff has failed to set forth a legally cognizable claim for relief. *Ransdell v. Clark County*, 124 Nev. 847, 192 P.3d 756 (2008) (failure to allege actionable due process or equal protection claims); *Hampe v. Foote*, 118 Nev. 405, 47 P.3d 438 (2002), (dismissal upheld where allegation in malicious prosecution case insufficient to establish elements of a legally cognizable claim), *overruled in part on other grounds*: *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 181 P.3d 670 (2008); *Tahoe Village Homeowners Ass'n. v. Douglas County*, 105 Nev. 660, 799 P.2d 556 (1990) (claim against county dismissed where county was immune from action).

The purpose of the rule providing for dismissal of a complaint on the basis that it does not state a claim upon which relief can be granted is to allow a court to eliminate actions that are *fatally flawed in their legal premises and destined to fail,* and thus to spare litigants the burdens of unnecessary pretrial and trial activity. *Adv. Cardiovascular Sys. Inc. v. Scimed Life Sys., Inc.,* 988 F.2d 1157, 1160 (Fed. Cir. 1993) (discussing the purpose of Fed. R. Civ. P. 12(b)(6), the federal analogue to Nev. R. Civ. P. 12(b)(5)). Stated differently, the purpose of a motion to dismiss for failure to state a claim is to allow a defendant to test whether, as a matter of law, the

plaintiff is entitled to legal relief, even if everything alleged in the complaint is true. *Mayer v. Mylod,* 988 F.2d 65, 638 (6th Cir. 1993) (discussing the purpose of Fed. R. Civ. P. 12(b)(6)).

A court can dismiss a complaint for failure to state a claim upon which relief can be granted if the action is barred by the statute of limitations. *Shupe & Yost, Inc. v. Fallon Nat'l Bank*, 109 Nev. 99, 100, 847 P.2d 720, 720 (1993). Indeed, when the defense of the statute of limitations appears from the complaint itself, a motion to dismiss is proper. *Manville v. Manville*, 79 Nev. 487, 387 P.2d 661 (1963) (overruled on other grounds as recognized in *NC-DSH, Inc. v. Garner*. 125 Nev. 647, 651, 218 P.3d 853, 857 (2009).

IV. LEGAL ARGUMENT

Defendant seeks dismissal of Plaintiff's claims because they are either untimely under the applicable statute of limitations or fail to state viable claims against him. Moreover, even if Plaintiff could aver contract-based claims against Defendant, the claims are preempted as a matter of law.

A. Plaintiff's Breach of Fiduciary Duty Was Not Timely Filed.

In Nevada, a breach of fiduciary duty is considered fraud and, therefore, the three-year statute of limitations set forth in NRS 11.190(3)(d) applies. *Shupe v. Ham*, 98 Nev. 61, 64-65, 639 P.2d 540, 542 (1982). The claim accrues at the time the breach is discovered or should have been discovered, through the exercise of proper diligence. *In re Amerco Derivative Litig*., 127 Nev. 196, 228, 252 P.3d 681, 703 (2011); *Accord Sierra Pacific Power Co. v. Nye*, 80 Nev. 88, 389 P.2d 387 (1964) ("mere ignorance of the existence of … the facts which constitute the cause will not postpone the operation of the statute of limitations … if the facts may be ascertained by inquiry or diligence").

Here, Plaintiff acknowledged that his claim for fiduciary duty (Count 3 in the Amended Complaint) was filed well-beyond the applicable three year statute of limitations. Plaintiff recognizes that he became aware of the alleged breach as early as April 28, 2014. Compl. at ¶ 20. Plaintiff therefore had until April 28, 2017 to file his claim, and he failed to do so. Consequently, his claim is now time-barred and should be dismissed akin to the claims against the Board and Goldman. *See* Order Granting in Part and Denying in Part Defendant CCSD Board of Trustees'

Motion to Dismiss and Order Granting in Part and Denying in Part Defendant Edward Goldman's Motion to Dismiss.

It is worth mentioning that the grounds for asserting the existence of a fiduciary duty against Defendant is unclear. A breach of fiduciary duty claim has three elements: (1) the existence of a fiduciary duty; (2) breach of the duty; and (3) the breach proximately caused the damages. *Klein v. Freedom Strategic Partners, LLC*, 595 F. Supp. 2d 1152, 1162 (D. Nev. 2009). Aside from asserting the claim against Defendant in conjunction with the other "defendants," Plaintiff does not elucidate what Markouzis did to warrant a breach of fiduciary duty claim being asserted against him.[4] Therefore, even if Plaintiff's claim was deemed timely, which it is not, the existence of a fiduciary duty or a breach cannot be said to be averred.

B. <u>Plaintiff Fails to Aver Facts to Support a Claim for Breach of Contract or Breach of the Covenant of Good Faith and Fair Dealing Against Defendant.</u>

To state a claim for breach of contract, a plaintiff must assert the following: (1) the existence of a valid contract, (2) breach by the defendant, and (3) damages as a result of the breach. *Saint v. Int'l Game Tech*, 434 F. Supp. 2d 913, 919-20 (D. Nev. 2006). An implied covenant of good faith and fair dealing exists in every Nevada contract and essentially forbids arbitrary, unfair acts by one party that disadvantages the other. *Consolidated Generator v. Cummins Engine*, 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998).

In this case, Plaintiff fails to aver Markouzis did anything to commit a breach. Plaintiff generically contends that "defendants" had an obligation to examine plaintiff's rebuttal to the evaluation he received on April 1, 2014, and do so before making the non-renewal decision.[5]

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[4] Plaintiff's citation to NRS 162.020(1)(b) and NRS 386.327(1)(h) as grounds for a breach of fiduciary duty claim is perplexing. Compl. at ¶ 71. Chapter 162 of the Nevada Revised Statutes concerns rules relating to trusts, agency, negotiable instruments and banking while NRS 386.327 discusses training for professional development that Board members are required to complete. *See* NRS 162.130. A claim based on a breach of statutory duty is nevertheless subject to a three-year limitation periods. NRS 11.190(3)(a).

[5] The argument flies in the face of Nevada law which provided: "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 … whether the employee is to be reemployed for the second or third year of the probationary period or for the fourth school year as a postprobationary

Defendant disputes the contention considering NRS 391.695(4) specifically identifies the purpose of a teacher's response to an evaluation—to include in the respective teacher's personnel file.[6] Notwithstanding the statutory authority, Plaintiff does not allege the obligation was one in contract, one owed by Markouzis, or one Markouzis could even comply with. Markouzis was the evaluator, not Plaintiff's employer or the one making the non-renewal decision. Because the alleged "breach" (*i.e.* the failure to wait for his evaluation response before the Board made a non-renewal decision) is the basis for Plaintiff's breach of contract and breach implied covenant of good faith and fair dealing claims, the claims cannot stand as against Markouzis.[7]

Even if Plaintiff's claims were permitted to survive, the claims would still be preempted and subject to dismissal, as discussed below.

C. <u>Plaintiff's Contract-Based Claims Are Preempted Under Nevada Law</u>.

Pursuant to well settled labor law, 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).[8] Preemption of state law claims requiring interpretation of a

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employee." NRS 391.3197(2) (NRS 391.820 substituted in revision for 391.3197). As a matter of law, the Board had to make a decision to renew or non-renew Plaintiff before May 1, 2014 and notify Plaintiff of the same by such time, because Plaintiff was a probationary teacher.

[6] NRS 391.695(4) states, "The teacher must receive a copy of each evaluation not later than 15 days after the evaluation. A copy of the evaluation and the teacher's response must be permanently attached to the teacher's personnel file." NRS 391.695(4) was formerly NRS 391.3125(10) during the 2013-2014 school year at issue.

[7] It is unclear what Plaintiffs seek to accomplish in bringing individual and official capacity claims against Markouzis, when CCSD is a party to the case. Whatever the reason, courts have dismissed official capacity, state law claims against individuals when also asserted against the entity. *See e.g., Wormwood v. NLVPD*, 2016 WL 6915300 at *3 (D. Nev. Nov. 22, 2016) (dismissing official capacity, state law claims as duplicative when asserted against the entity).

[8] Plaintiff's employment was not governed by federal labor laws as in *Insley* but by Chapter 288 of the Nevada Revised Statutes, as CCSD is a public employer. This does not change the applicable legal principles. The Nevada Supreme Court has concluded that when the Nevada Legislature enacted NRS Chapter 288 it "intended to apply similar principles" as recognized by

collective bargaining agreement follows from one of the primary principles of labor law - the collective bargaining agreement provides the "uniform and exclusive method for orderly settlement of employee grievances." *Republic Steel Corp. v. Maddox*, 379 U.S. 650, 653 (1952).

The orderly and efficient resolution of workplace grievances is a primary goal of labor laws. Towards this goal, it is important that a collective bargaining agreement's grievance process be the exclusive manner in which to resolve grievances. As recognized by the United States Supreme Court, "[i]f 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." *Id.* Allowing an employee to sue in court over an alleged violation of a collective bargaining agreement would overwhelm the system and disrupt the goal of uniform interpretation of such agreements. While not all possible claims are preempted, the rule applies to claims "which would require the court to interpret the meaning and scope of a term" of the collective bargaining agreement. *Insley,* 102 Nev. at 517.

CCSD is required to enter collective bargaining negotiations with the exclusive bargaining agent for each bargaining unit of employees. *See* NRS 288.150 ("every local government employer shall negotiate in good faith through one or more representatives of its own choosing concerning the mandatory subjects of bargaining set forth in subsection 2 with the designated representatives of the recognized employee organization, if any, for each appropriate bargaining unit among its employees"); NRS 288.133 (defining a bargaining agent to mean "an employee organization recognized by the local government employer as the exclusive representative of all local government employees in the bargaining unit for purposes of collective bargaining"); NRS 288.060 (defining a "local government employer" to mean "any political subdivision of this State" including "school districts"). It is mandatory that those negotiations include discussions of a grievance and arbitration process. NRS 288.150(o) (identifying that a mandatory subject of

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federal labor laws. *Truckee Meadows Fire Protection District v. International Ass'n of Fire Fighters, Local 2487*, 109 Nev. 367, 374, 849 P.2d 343 (1993).

collective bargaining includes "grievance and arbitration procedures for resolution of disputes relating to interpretation or application of collective bargaining agreements").

As alleged by Plaintiff, CCSD and the union for teachers, the Clark County Education Association ("CCEA"), negotiated a "dispute resolution" process (*i.e.* a grievance process) which he pursued to appeal the evaluation and non-renewal decision. Compl. at ¶39 ("Plaintiff Viswanathan followed the rules set forth for dispute resolution as part of an agreement between CCSD and the Clark County Education Association (CCEA)"). Defendant requests judicial notice be taken of the applicable collective bargaining provisions related to Plaintiff's allegations and attached hereto as **Exhibit A**. *See, Shelstad v. TGS Aviation Services, Inc.,* 2017 WL 2870083, *3 (D. Nev. July 5, 2017) (citing *Tan v. Univ. of CA San Francisco*, 2007 WL 963222, at *2 n.1 (N.D. Cal. Mar. 29, 2007) ("Courts routinely take judicial notice of a governing collective bargaining agreement where necessary to resolve issues of preemption").[9]

In this case, Plaintiff's contract-based claims are barred by the exclusive remedy provided in the applicable collective bargaining agreement. *See* Exhibit A at p.7, Article 4-1 and 4-2. Indeed, if Plaintiff wanted to contest his evaluation or argue that the evaluation process is how he purports it to be, then the mechanism for him doing so is through the grievance and arbitration procedure set forth in the collective bargaining agreement, not through the instant litigation. Plaintiff's exclusive remedy was to follow the grievance process in the bargaining agreement through arbitration. Plaintiff contract-based claims seek to circumvent the grievance process and would require an interpretation of the agreement.[10] For these reasons, Plaintiff's contract-based claims, to the extent they are allowed to proceed, are preempted and should be dismissed. The

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[9] Article 40-1 states, "This Agreement shall become effective at the beginning of the 2013-2014 contracted school year and shall remain in effect until the beginning of the 2014-2015 contracted school year…" Exhibit A at p. 10.

[10] Article 14-2 of the agreement shows that this case would require the court to interpret the meaning and scope of a term of the collective bargaining agreement. Exhibit A at p. 8. Article 14-2 discusses the response that Plaintiff alleges he was permitted to submit to the April 1, 2014 evaluation and the alleged 30-day timeline. In the same way, Article 36-8-2 provides that the decision to non-renew a probationary teacher's contract is not subject to a hearing or arbitration, in accordance with Chapter 391 of the Nevada Revised Statutes. *Id.* at. p. 9.

Court would significantly alter a bedrock principle of labor-management relations if it were to conclude otherwise.

V. CONCLUSION

Plaintiff has failed to set forth viable causes of action against Defendant. Plaintiff's claims are either time barred based on the face of the allegations in his Amended Complaint or fail to aver proper claims against Defendant. Consequently, Plaintiff's claims must be dismissed in their entirety as against Defendant.

DATED this 9th day of November, 2020.

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 9th day of November, 2020, I served a true and correct copy of the foregoing **DEFENDANT LOUIS MARKOUZIS' MOTION TO DISMISS** by U.S. Mail, with first class postage fully prepaid, upon the following:

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Las Vegas, NV 89131
Viswanathan.Tenkasi@gmail.com
Plaintiff pro se

Stephanie A. Barker, Esq.
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Attorneys for Defendant Dr. Edward Goldman

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

EXHIBIT A

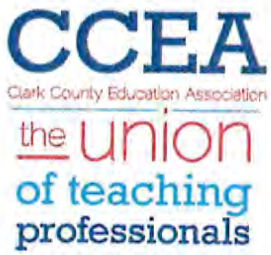
Negotiated Agreement

between the

Clark County School District

and the

Clark County Education Association



2013-2014

PREAMBLE

This Agreement is made and entered into by and between the Clark County School District in the City of Las Vegas, County of Clark, in the State of Nevada and the Clark County Education Association effective September 26, 2013.

WHEREAS, the Clark County Board of School Trustees in the City of Las Vegas, County of Clark, State of Nevada, and the Clark County Education Association, the parties of this Agreement recognize and declare that providing the highest standards of education for the children of the District is their mutual aim and that the character of such education depends predominantly upon the quality and morale of the teaching staff, and

WHEREAS, the Board of School trustees is the duly elected governing body of the District, with the powers as delegated by the laws of the State of Nevada, to formulate programs and policies for the operations of the District to be directed through their designated representative, the superintendent of schools, and

WHEREAS, the members of the teaching profession are particularly qualified to assist in the improvement of educational standards, and

WHEREAS, a free and open exchange of views is desirable and necessary by and between the parties hereto in their efforts to negotiate in good faith and with respect to wages, hours, and conditions of employment, and

WHEREAS, members of the teaching staff in the District have the right to join, or not join, any organization for their professional or economic improvements:

NOW THEREFORE IT IS AGREED:

1-14 The term "Trust," as used in this Agreement, shall mean the Teachers Health Trust as established by the Clark County Education Association.

1-15 The term "Adjusted Hire Date", as used in this Agreement, shall mean the original hire date less any breaks in service as a result of resignation or leave of absence.

1-16 The Contract Maintenance Committee shall be a committee established and staffed by the parties to meet regularly and to discuss appropriate issues. The Committee shall meet at least four times annually on a quarterly basis.

ARTICLE 2
RECOGNITION

2-1 Excluding the Superintendent and employees paid on the Unified Administrative Salary Schedule, the School Trustees recognize the Association as the exclusive representative of all licensed personnel employed or to be employed by the School District.

2-2 It is acknowledged and understood by the parties hereto that recognition was and is granted in accordance with NRS 288. Recognition is granted only so long as the Association complies with the provisions of NRS 288, and it may only be withdrawn during the term of this Agreement in accordance with NRS 288.

2-3 All rights and privileges granted to the Association under the provisions of this Agreement shall be for the exclusive use of the Association subject to the exception of NRS 288.140.

ARTICLE 3
IMPASSE PROCEEDINGS

3-1 It is understood, if the parties fail to reach agreement as a result of direct negotiations, impasse proceedings may be invoked by either party in accordance with the provisions of NRS 288.

ARTICLE 4
GRIEVANCE AND ARBITRATION PROCEDURE

4-1 A grievance is defined as any dispute which arises regarding an interpretation, application or alleged violation of any of the provisions of this Agreement. A grievance may be filed by an employee of the School District covered by this Agreement, or by the Association. The Association may also file a grievance on behalf of a class of employees of the School District covered by this Agreement. A grievance shall not include any matter or action taken by the School Trustees, or any of its agents, for which relief is granted by the statutes of Nevada. No precedent shall be set between the District and the Association as a result of a grievance filed by an individual unless the Association submits the matter to Step Three, Arbitration.

4-2 The provisions of this Article are for the purpose of setting forth the full grievance procedure including the time limits relating to these procedures which may culminate in arbitration.

4-3 STEP ONE: INFORMAL DISCUSSION/MEDIATION

(a) Both parties encourage employees covered by this Agreement to resolve their problems with their principal or supervisor whenever possible. The provisions of this Article are not intended to preclude a teacher with a potential grievance from informally discussing the problem with his/her immediate supervisor prior to filing a formal grievance although such discussions are not part of the formal grievance procedure. In addition, utilization of the Step One discussion/mediation shall not be used against the employee. Further, the employee does so without waiving the due process rights stipulated under the CBA.

(b) If a teacher requests an informal discussion or mediation with the principal of the school, or the department director if the assignment is not school-based, concerning the subject matter of a potential grievance, such informal discussions or mediation will be held within twenty (20) days after the affected teacher or the Association first knew of the act or condition upon which the potential grievance is based. If the informal discussion or mediation does not occur within the twenty (20) day time limit, a grievance may be processed to the Pre-grievance Resolution process as set forth in Article 4-4 below, or to Step Two as set forth in Article 4-5 below.

(c) It is understood and agreed that all aspects of such informal discussions, if any, which take place shall have no bearing or precedential effect on the resolution of that grievance or any similar grievance filed in accordance with this Article.

(d) If a grievance is resolved as a result of an informal discussion, the principal or the grievant may reduce that resolution to writing prior to the termination of the time limits for filing a formal grievance. The absence of such a written resolution executed by both parties shall serve as notice to the grievant involved to file a formal grievance if that teacher so desires.

(e) Such informal discussions shall not modify the time limits set forth in Step Two of the formal grievance procedure.

(f) Either party to this Agreement may request mediation. Mediation may be utilized when both parties to the dispute voluntarily agree to participate to resolve disputes. Timelines are not suspended pending mediation, except with the written agreement of both parties. It is understood that the parties to the dispute are the District and the Association.

4-4 All grievances shall be processed as follows:

Pre-grievance Resolution

(a) If the grievance is not resolved at Step One or if the grievance was not presented at Step One, the Association may submit in writing a proposal of resolution of the potential grievance to the Associate Superintendent, Human Resources Division, or the Superintendent's designee before the Association files a formal written grievance.

(b) The proposal of resolution submitted to the Associate Superintendent, Human Resources Division, or the Superintendent's designee will include the violation of policy and/or contract and the requested resolution, along with a written narrative of the issue(s) and the document(s) involved.

(c) The traditional timeline to grieve, as outlined in Article 4-5 (a) below, will be suspended during the Pre-grievance Resolution process, provided that the proposal of resolution was submitted prior to the expiration of the traditional grievance timeline. The timeline will resume if and when either party terminates the Pre-grievance Resolution process in writing.

(d) All aspects of such informal discussions, if any, which take place shall have no bearing or precedential effect on the resolution of that grievance or any other grievance filed in accordance with this Article.

(e) In the event the Pre-grievance Resolution is denied or unresolved by either party in writing, the grievant may submit the matter to Step Two of the grievance procedure in accordance with the timelines provided in Article 4-5 below.

(f) The submission of a Pre-grievance Resolution in no way guarantees that the School District will grant the requested resolution.

4-5 STEP TWO: SCHOOL DISTRICT

(a) 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. An authorized signature on a United States postal "return receipt" or dated hand delivery receipt shall serve as proof of submission.

(b) In the event a grievance is submitted to Step Two in a timely manner, the Associate Superintendent, Human Resources Division, or the Superintendent's designee shall schedule a meeting with the grievant within seven (7) days to be held no later than twenty (20) days after receipt of the grievance unless timelines have been waived in writing.

(c) In the event a grievance is not resolved at this meeting, the Associate Superintendent, Human Resources Division, or the Superintendent's designee shall, within ten (10) days after the meeting, submit a written response to the grievance, to the individual and to the Association. Any resolution of the grievance in favor of the grievant shall be in writing and copies forwarded to both the affected employee and the Association. If the Associate Superintendent, Human Resources Division, or the Superintendent's designee fails to respond within ten (10) days as referred to in this paragraph or if a mutually agreed upon time extension is not agreed upon, the grievance shall be deemed in favor of the grievant.

(d) If a grievance is either denied, or not resolved at Step Two of the grievance procedure, the grievance shall be deemed withdrawn with prejudice unless timely filed at Step Three, Expedited Arbitration, in accordance with the provisions of Step Three below.

4-6 STEP THREE: EXPEDITED ARBITRATION

(a) In the event a grievance is not resolved during the Pre-grievance Resolution process, if any, or at Step Two of the grievance procedure, only the Association, not later than twenty (20) days after the expiration of the time limit set forth in Article 4-5(c) above, may request arbitration of the unresolved grievance in accordance with the provisions set forth below. A request for

arbitration shall be made by delivering to the Associate Superintendent, Human Resources Division, or the Superintendent's designee written notice of the intent to arbitrate. A United States postal "return receipt" or dated hand delivery receipt shall serve as proof of delivery.

The Association agrees that it will not delegate to anyone the right to arbitrate. This shall not be construed to mean that the Association may not determine the identity of its representative at such arbitrations.

It is agreed that the American Arbitration Association will provide full service administered arbitration under the American Arbitration Association's Labor Arbitration Rules.

(b) The panel of arbitrators in use at the end of the current school year shall continue in effect unless the District and the Association agree to change the number of arbitrators. If they are unable to agree on a new number of arbitrators to serve on the panel, the number shall be nine (9). If the District and the Association cannot agree on the new members of the panel, then the American Arbitration Association (AAA) will be asked to submit a list of twenty-seven (27) arbitrators from which the parties shall strike alternately until the appropriate number of arbitrators has been selected for the panel. By September 30th of each year, each party may remove one (1) arbitrator from the panel. The replacement(s) shall be selected in accordance with the procedure set forth above. All arbitrators must be AAA certified arbitrators.

4-7 The arbitrator shall not have the authority to modify, amend, alter, add to, or subtract from any provision of this Agreement. An arbitrator in the absence of the express written agreement of the parties shall have no authority to rule on any dispute between the parties other than one which qualifies as a grievance as defined in 4-1.

4-8 The arbitrator's decision shall be submitted in writing within thirty (30) school days of the close of arbitration or submission of post hearing briefs, whichever comes later, to all parties and shall be final and binding on all parties to this Agreement unless the arbitrator exceeds the powers specified herein, or is guilty of procedural error prejudicing the rights of either party as defined by federal labor law decisions.

4-9 The expenses of arbitration, including the arbitrator's fee/costs and expenses, and the cost of the arbitrator's transcript, shall be borne equally by the School District and the Association. However, all other expenses incurred by either party in the preparation or presentation of its case are to be borne solely by the party incurring such expenses. It is understood and agreed that only the Association has the right to request arbitration and that the Association shall be responsible for its share of the costs as agreed above for any arbitration requested by the Association.

4-10 No reprisals of any kind will be taken by the school trustees or by any member of the administration against any employee because of filing a grievance or because they participated in an orderly manner in the grievance procedure on behalf of the grievant and/or the Association. This provision shall not be construed as an agreement by the School District to pay the grievant or the association representative or any person present on their behalf for the time spent in processing a grievance in accordance with the provisions of this Article. It may occur during or outside the school day. In the event a grievance meeting is scheduled and held during the school day, those employees covered by this Agreement who participate in such a meeting may do so without loss of pay subject to the limitations contained in Article 17-1-2.

4-11 No provision of this Article shall be construed to prevent any individual employee covered by this Agreement from discussing any problem, dispute, or even a grievance as defined herein with any supervisor outside the presence of a representative of the Association. However, such discussion shall not relieve any party from compliance with other provisions of this Article in the absence of an express written waiver of such provisions.

4-12 The parties hereby recognize the existence of policies and administrative regulations of the School District to which the employees covered by this Agreement are bound, and which are subject to change by the school trustees of the School District. The parties agree that any disputes arising under the application and/or administration of such policies or regulations relating to subject matter not covered by the provisions of this Agreement shall be processed beginning with Step Two of the grievance procedure set forth herein. If the dispute is unresolved after Step Two of the grievance procedure, the dispute may only be processed as follows:

4-12-1 The person initiating the dispute may refer the dispute to the Board of School Trustees and must also inform the immediate supervisor and the Associate Superintendent, Human Resources Division, and/or the Superintendent's designee. When a dispute is so referred, the board or a committee designated by the board shall meet to informally discuss the subject matter of the dispute with the grievant and with representatives of the Association requested to be present by the grievant.

4-12-2 The Superintendent or designee shall prepare a review of the case for the Board of School Trustees and the committee designated by the board if a committee is so designated.

4-12-3 The Board of School Trustees or a committee designated by the board shall make a decision regarding the dispute as to the applicability or administration of district policies or regulations and communicate its decision in writing within thirty (30) days after the final meeting on the dispute.

4-13 It is the intention of the parties that grievances not resolved before the summer recess be resolved as quickly as is reasonably possible. Toward this goal, the parties agree that they will make a reasonable effort to conclude pending grievances before the opening of school in August.

4-14 In the event an employee(s) covered under this Agreement exercises the right to individually process a grievance without assistance from the Association, the District shall provide the Association:

4-14-1 A written copy of the grievance, the name of the grievant(s) to include the work site and the name of the grievant's appropriate administrator.

4-14-2 An opportunity to be present and to submit the Association's position at any meeting with the grievant(s) and at any grievance hearings, suspension hearings, evidentiary hearings, arbitration hearings, or any other meetings.

4-14-3 A written copy of the resolution of the grievance or arbitration.

4-15 A fund of three thousand dollars ($3,000.00) shall be earmarked and designated for the costs of specialized arbitration proceedings. The District, in its sole discretion,

ARTICLE 13
QUALIFICATIONS FOR TEACHERS

13-1 Subsequent to the effective date of this Agreement, all personnel hired as classroom teachers, for other than occupational courses, shall be required to have at least a bachelor's degree from an accredited college or university.

13-2 Unless an appropriate waiver has been granted by the Nevada State Department of Education, teachers employed by the School District shall comply with the Nevada teacher licensing requirements for the position to which they are assigned.

13-3 Teachers who are assigned to teach academic subjects not within their major or minor field of college preparation shall be evaluated based upon their performance while teaching subject areas within their major or minor areas. However, the teacher shall be evaluated in the non-major or non-minor classes on teaching techniques exclusive of subject matter content.

13-4 It is recognized that teachers on special assignment are not administrators.

ARTICLE 14
TEACHER PERSONNEL FILES

14-1 There are two (2) personnel files maintained on each teacher: one is kept at the central office and one is kept at the school location. These files shall not include the principal's "log." This "log" shall be maintained solely for the principal's own personal use and shall not be used as a personnel file. A copy of each written report, comment, reprimand, or any other document concerning a teacher which the School District places in either of the two (2) personnel files shall be provided to that teacher. The teacher shall sign the file copy of the written report, comment, reprimand, or any other document as acknowledgment of receipt of a copy of the document. Such signature shall not be construed as agreement to the contents of the document.

14-2 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. All copies of the employee's response will be countersigned by the receiving administrator or designee, and a copy of the response shall be attached to the supervisor's document. When an employee makes a written response to any written report, comment, reprimand, or any other document, the employee's response shall be made within thirty (30) school days, except in cases where a document is the subject of a grievance or is a suspension, and shall be attached to the supervisor's document. The thirty- day (30-day) timeline to respond to documents that are the subject of a grievance and/or suspension shall begin upon the completion of the grievance and/or suspension appeal process. Upon written request of the teacher, a waiver of the time limits by the supervisor, not to exceed ten (10) days, shall not be unreasonably withheld. When a copy of the supervisor's written document is forwarded to any other location, a copy of the employee's written response shall be attached.

14-3 Written reports, written comments, written reprimands, or other documents of School District origin, in the possession of the District, or to which the District has access, which have not been called to the teacher's attention in writing shall not be used to adversely affect the continued employment, transfer, salary, or assignment to extra pay for extra duty assignments.

36-6 An employee's right to representation during the course of an interview arises if the supervising administrator takes any steps beyond merely informing the employee of a disciplinary action. In such instances, the provisions of 36-4 apply.

36-7 The employee's representative and the administrator will allow the employee to give an account of the alleged incident before any discussion by either of the named parties occur. During the investigatory interview conducted by the administrator, all persons at the conference will conduct themselves in a manner that will result in a clear and thorough statement from the teacher regarding the facts of the alleged incident. Nothing in this provision is meant to inhibit or limit the teacher's representative from fully and properly representing the teacher.

36-8 In implementing the suspension and dismissal procedures of NRS 391, the parties agree that the decision of the arbitrator shall be final and binding. The arbitrator shall be selected in accordance with the expedited arbitration procedures in Article 4 of this Agreement.

36-8-1 The teacher or the teacher's representative shall, within ten (10) days of receiving the notice of suspension or dismissal demand that the matter be submitted to final and binding arbitration. The matter shall be heard before the superintendent's designee prior to submission to final and binding arbitration. The superintendent's designee shall hear the matter within five (5) days and shall submit a written response within five (5) days after the hearing. In the event the matter is not resolved by the superintendent's designee the matter shall be submitted to final and binding arbitration.

36-8-2 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). Probationary teachers shall be entitled to a hearing and arbitration under the terms of this Article for suspensions or dismissals.

36-8-3 A teacher hired on or after December 1 of any school year shall be a probationary teacher for the remainder of that school year and for the ensuing school year.

36-8-4 In the event a teacher is suspended from employment, pending a recommendation for dismissal, the District may continue to contribute to the CCEA insurance Trust on behalf of that teacher, as stated in Article 28-3, throughout the suspension period.

36-9 Prior to initiating any of the above forms of disciplinary action, the district shall have followed a policy of progressive discipline which normally includes a verbal and written warning.

36-10 The arbitrator shall have the power to modify or deny the district's disciplinary action. Any such modification of a penalty must be within the limits set forth in the Nevada Revised Statutes.

36-11 Although certain provisions of this Article are intended to modify disciplinary hearing provisions set forth in NRS 391, those provisions of NRS 391 which do not conflict with this Article shall remain in effect including, but not limited to, the superintendent's authority under NRS 391.314-1.

36-12 Any summary of conference, oral warning, written warning, admonition, suspension, dismissal, or direction for change shall be called to the employee's attention in writing within twenty (20) working days after the observation. It is recognized that such

President of the Association or the President's designee, the Executive Director, one teacher from the Contract Maintenance Committee, and one other teacher.

39-3 One teacher mutually agreed upon by the parties will be assigned as an Empowerment liaison. The Empowerment Liaison will be part of every School Empowerment Team.

39-4 Empowerment schools must adhere to the Negotiated Agreement. A contract waiver under Article 38 must be sought and passed in order to obtain a waiver from a contract provision.

39-5 Teachers required to work over the seven-hour eleven-minute (7:11) work day as provided in Article 22-1 will be compensated at the teacher's daily rate of pay and such compensation will be PERS sensitive. Teachers required to work over the 184 day contract as provided in Article 21-2 will be compensated at their contract rate of pay for each additional day above the 184 days and said payment will be PERS sensitive.

39-6 The School Empowerment Team will determine how to spend any monies provided by the Legislature to Empowerment Schools so long as it is consistent with the Negotiated Agreement or a contract waiver is obtained through Article 38.

39-7 Evaluations of teachers assigned to Empowerment Schools shall be used in a formative manner that will reflect teachers' performance along a continuum of skill levels. If it is determined by the administrative team that a teacher is not compatible with the model established by the school, the principal may present such findings to the School Empowerment Team in a confidential forum, as prescribed in Article 39-8-1.

39-7-1 The School Empowerment Team, in conjunction with the school principal, may implement a peer review model and may remove and replace a teacher deemed to be incompatible with the model established at the school. The principal ultimately has the authority to make staffing decisions. Any teacher so removed shall fall within the involuntary transfer provisions of Article 35 if identified in time to participate in a spring or fall surplus meeting. Any teacher identified for removal either too late to secure a voluntary transfer or too late to participate in a surplus meeting shall be administratively reassigned by the Human Resources Division with vacancy options provided.

39-7-2 Any teacher at any Empowerment School may choose to transfer out of the Empowerment school at any time. Such transfer and/or administrative reassignment will occur within ten (10) work days. Any teacher opting to transfer out shall be administratively reassigned by the Human Resources Division with vacancy options provided unless it occurs during the spring and fall surplus meetings teacher may participate in the provisions of Article 35.

39-7-3 Any overpayment of additional compensation shall be reimbursed to the District by the employee pro-rata over the remaining paychecks of that school year.

39-8 The CCSD and the CCEA agree to pursue discussions regarding incentive pay for licensed personnel at the Empowerment Schools.

ARTICLE 40
TERM OF AGREEMENT

40-1 This Agreement shall become effective at the beginning of the 2013-2014 contracted school year and shall remain in effect until the beginning of the 2014-2015 contracted school year, and shall continue from year to year thereafter unless either of the parties shall give written notice to the other for school year 2014-2015 in accordance

with the provisions of NRS 288 of a desire to change, amend or modify the Agreement and until a successor agreement is reached.

40-2 This Agreement shall immediately terminate in the event recognition is withdrawn and sustained after all avenues of appeal have been exhausted in accordance with NRS 288.

ARTICLE 41
NEW ARTICLE

41-1 Upon execution of this Agreement the parties agree to form working groups, which between the date of execution of this Agreement and October 11, 2013 shall meet at least four times and discuss the following topics:

a. Grievance back-log
b. Professional Development
c. Evaluations
d. Peer Assistance and Review
e. Special Education
f. Advanced Studies Certification 18 hour programs for Class E and F
g. Deletion of Article 39 – Empowerment Schools

To the extent that any of the topics listed in this article 41-1 (a)-(g) above are mandatory subjects of bargaining under NRS 288.150, either party may by written notice sent to the other party on or before February 1,2014, reopen negotiations for the limited purpose of bargaining over one or more of those topics listed in (a)-(g) above but only those of which are mandatory subjects of bargaining under NRS 288.150. Upon reopening, the provisions of NRS 288.217 shall apply. Discussions may be extended beyond February 1, 2014 only by the mutual consent of both parties.

IN WITNESS WHEREOF, the parties have hereunto set their hands this 26th Day of September 2013.

BOARD OF SCHOOL TRUSTEES FOR THE CLARK COUNTY SCHOOL DISTRICT

CAROLYN EDWARDS
President

PAT SKORKOWSKY
Superintendent of Schools

LORRAINE ALDERMAN
Vice-President

EDWARD GOLDMAN
Chief Negotiator and Associate Superintendent,
Employee-Management Relations

FOR THE CLARK COUNTY EDUCATION ASSOCIATION

LISA MUNTEAN
Negotiations Committee Chair

VICTORIA COURTNEY
President

JOHN VELLARDITA
Executive Director

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CLERK OF THE COURT

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

DISTRICT COURT

DISTRICT OF 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 **DEFENDANT CLARK COUNTY SCHOOL DISTRICT BOARD OF TRUSTEES' ANSWER TO PLAINTIFF'S AMENDED COMPLAINT**

Defendant the Board of Trustees of the Clark County School District ("Defendant"), by and through its counsel of record, hereby answers Plaintiff's Amended Complaint ("Amended Complaint") as follows:

FOR BREACH OF CONTRACT, DECLARATORY JUDGMENT AND FOR RECOVERY OF DAMAGES

Answering the opening paragraph of the Amended Complaint, Defendant admits that the Clark County School District ("CCSD") is a political subdivision of the State of Nevada pursuant

to NRS 386.010. As to the remaining allegations of said paragraph, Defendant admits that the allegations summarize Plaintiff's contentions as asserted in the Amended Complaint, but Defendant denies any basis for the claimed recovery as more specifically set forth below in response to the subsequent and specifically enumerate paragraphs of the Amended Complaint.

JURISDICTION

1. Answering Paragraph 1 of the Amended Complaint, Plaintiff's Paragraph 1 asserts conclusions of law and a basis for jurisdiction to which neither an admission nor a denial is required. To the extent a response is required, Defendant only admits that jurisdiction is proper before this court, and denies the remaining allegations contained therein, including the alleged basis for the court's jurisdiction.

VENUE

2. Answering Paragraph 2 of the Amended Complaint, Plaintiff's Paragraph 2 asserts conclusions of law and a basis for venue to which neither an admission nor a denial is required. To the extent a response is required, Defendant only admits that venue is proper before this court, and denies the remaining allegations contained therein, including Plaintiff's claim for damages.

PARTIES

3. Answering Paragraph 3 of the Amended Complaint, Defendant admits that Plaintiff was a probationary teacher at Western High School ("Western") during the 2013-2014 school year, wherein he taught mathematics. Defendant admits that Western is part of CCSD. Defendant is without sufficient information or belief at this time to enable it to admit or deny the remaining allegations set forth in this paragraph, and therefore denies them on that basis.

4. Answering Paragraph 4 of the Amended Complaint, Defendant admits the allegations contained therein.

5. Answering Paragraph 5 of the Amended Complaint, Defendant admits that Pat Skorkowsky was a Superintendent at CCSD. Defendant is without sufficient information or belief at this time to enable it to admit or deny the remaining allegations set forth in this paragraph, and therefore denies them on that basis.

. . .

6. Answering Paragraph 6 of the Amended Complaint, Defendant admits that Dr. Edward Goldman was an Associate Superintendent at CCSD. Defendant is without sufficient information or belief at this time to enable it to admit or deny the remaining allegations set forth in this paragraph, and therefore denies them on that basis.

7. Answering Paragraph 7 of the Amended Complaint, Defendant admits that Dr. Jeffrey Geihs was an Associate Superintendent at CCSD. Defendant is without sufficient information or belief at this time to enable it to admit or deny the remaining allegations set forth in this paragraph, and therefore denies them on that basis.

8. Answering Paragraph 8 of the Amended Complaint, Defendant admits that Neddy Alvarez was a Principal at Western. Defendant is without sufficient information or belief at this time to enable it to admit or deny the remaining allegations set forth in this paragraph, and therefore denies them on that basis.

9. Answering Paragraph 9 of the Amended Complaint, Defendant admits that Sonia Houghton was an Assistant Principal at Western. Defendant is without sufficient information or belief at this time to enable it to admit or deny the remaining allegations set forth in this paragraph, and therefore denies them on that basis.

10. Answering Paragraph 10 of the Amended Complaint, Defendant admits that Louis Markouzis is a Principal at CCSD. Defendant is without sufficient information or belief at this time to enable it to admit or deny the remaining allegations set forth in this paragraph, and therefore denies them on that basis.

FACTS

11. Answering Paragraph 11 of the Amended Complaint, Defendant admits that Plaintiff was employed by CCSD as a probationary teacher at Western during the 2013-2014 school year, wherein he taught mathematics. Defendant is without sufficient information or belief at this time to enable it to admit or deny the remaining allegations set forth in this paragraph, and therefore denies them on that basis.

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12. Answering Paragraph 12 of the Amended Complaint, Defendant admits that Plaintiff had a written probationary teaching contract with CCSD for the 2013-2014 school year. Defendant denies the remaining allegations contained therein.

13. Answering Paragraph 13 of the Amended Complaint, Defendant admits that Plaintiff had a written probationary teaching contract with CCSD for the 2013-2014 school year and that said contract was in compliance with Nevada state law. Defendant denies the remaining allegations contained therein.

14. Answering Paragraph 14 of the Amended Complaint, Defendant is without sufficient information or belief at this time to enable it to admit or deny the allegations set forth in this paragraph, and therefore denies them on that basis.

15. Answering Paragraph 15 of the Amended Complaint, Defendant admits that Plaintiff received a licensed employee appraisal report by Louis Markouzis dated April 1, 2014. Defendant is without sufficient information or belief at this time to enable it to admit or deny the remaining allegations set forth in this paragraph, and therefore denies them on that basis.

16. Answering Paragraph 16 of the Amended Complaint, Defendant admits that Plaintiff had an opportunity to submit an employee response to the licensed employee appraisal report by Louis Markouzis dated April 1, 2014, and Plaintiff submitted said response on or about May 1, 2014. Defendant is without sufficient information or belief at this time to enable it to admit or deny the remaining allegations set forth in this paragraph, and therefore denies them on that basis.

17. Answering Paragraph 17 of the Amended Complaint, Defendant denies the allegations contained therein.

18. Answering Paragraph 18 of the Amended Complaint, Defendant admits that Plaintiff submitted an employee response, on or about May 1, 2014, to the licensed employee appraisal report by Louis Markouzis dated April 1, 2014. Defendant is without sufficient information or belief at this time to enable it to admit or deny the remaining allegations set forth in this paragraph, and therefore denies them on that basis.

. . .

19. Answering Paragraph 19 of the Amended Complaint, Defendant denies the allegations contained therein.

20. Answering Paragraphs 20, 21, and 25 of the Amended Complaint, Defendant is without sufficient information or belief at this time to enable it to admit or deny the allegations set forth in these paragraphs, and therefore denies them on that basis.

21. Answering Paragraphs 22, 23, 24, 27, and 28 of the Amended Complaint, Defendant denies the allegations contained therein.

22. Answering Paragraph 26 of the Amended Complaint, Defendant admits that Plaintiff had an opportunity to submit an employee response to the licensed employee appraisal report by Louis Markouzis dated April 1, 2014, and Plaintiff submitted said response on or about May 1, 2014. Defendant is without sufficient information or belief at this time to enable it to admit or deny the remaining allegations set forth in this paragraph, and therefore denies them on that basis.

23. Answering Paragraphs 29, 30, 31, 32, and 33 of the Amended Complaint, Defendant is without sufficient information or belief at this time to enable it to admit or deny the allegations set forth in these paragraphs, and therefore denies them on that basis.

24. Answering Paragraph 34 of the Amended Complaint, Defendant admits that Plaintiff received a licensed employee appraisal report by Louis Markouzis dated April 1, 2014. Defendant is without sufficient information or belief at this time to enable it to admit or deny the remaining allegations set forth in this paragraph, and therefore denies them on that basis.

25. Answering Paragraph 35 of the Amended Complaint, Defendant admits that Plaintiff had an opportunity to submit an employee response to the licensed employee appraisal report by Louis Markouzis dated April 1, 2014, and Plaintiff submitted said response on or about May 1, 2014. Defendant denies the remaining allegations contained therein.

26. Answering Paragraph 36 of the Amended Complaint, Defendant admits that Plaintiff had an opportunity to submit an employee response to the licensed employee appraisal report by Louis Markouzis dated April 1, 2014, and Plaintiff submitted said response on or about May 1, 2014. Defendant denies the remaining allegations contained therein.

27. Answering Paragraphs 37, 38, 39, 40, and 41 of the Amended Complaint, Defendant denies the allegations contained therein.

28. Answering Paragraph 42 of the Amended Complaint, Defendant admits that pursuant to NRS 386.110, it is a body corporate. Defendant denies the remaining allegations contained therein.

29. Answering Paragraphs 43, 44, 45, 46, 47, and 48 of the Amended Complaint, Defendant is without sufficient information or belief at this time to enable it to admit or deny the allegations set forth in these paragraphs, and therefore denies them on that basis.

30. Answering Paragraph 49 of the Amended Complaint, Defendant denies that Plaintiff may recover punitive damages against it.

31. Answering Paragraph 50 of the Amended Complaint, Defendant denies the allegations contained therein.

32. Answering Paragraph 51 of the Amended Complaint, no response to the allegations is required. To the extent a response is required, Defendant denies the allegations contained therein.

CLAIMS

Count 1: Breach of Contract

33. Answering Paragraph 52 of the Amended Complaint, Defendant incorporates by reference its responses to the previous allegations set forth in Paragraphs 1 through 51 as though set forth fully herein.

34. Answering Paragraph 53 of the Amended Complaint, Defendant admits that Plaintiff had a written probationary teaching contract with CCSD for the 2013-2014 school year. Defendant is without sufficient information or belief at this time to enable it to admit or deny the allegations set forth in this paragraph, and therefore denies them on that basis.

35. Answering Paragraphs 54, 55, 56, 57, and 58 of the Amended Complaint, Defendant denies the allegations contained therein.

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Count 2: Breach of Covenant of Good Faith and Breach of Contract

36. Answering Paragraph 59 of the Amended Complaint, Defendant incorporates by reference its responses to the previous allegations set forth in Paragraphs 1 through 58 as though set forth fully herein.

37. Answering Paragraph 60 of the Amended Complaint, Defendant admits that Plaintiff had a written probationary teaching contract with CCSD for the 2013-2014 school year. Defendant is without sufficient information or belief at this time to enable it to admit or deny the allegations set forth in these paragraphs, and therefore denies them on that basis.

38. Answering Paragraph 61 of the Amended Complaint, Plaintiff's Paragraph 61 asserts conclusions of law to which neither an admission nor a denial is required.

39. Answering Paragraphs 62, 63, 64, 65, 66, 67, and 68 of the Amended Complaint, Defendant denies the allegations contained therein.

Count 3: Breach of Fiduciary Duty and Breach of Contract

40. Answering Paragraph 69 of the Amended Complaint, Defendant incorporates by reference its responses to the previous allegations set forth in Paragraphs 1 through 68 as though set forth fully herein.

41. Answering Paragraph 70 of the Amended Complaint, Defendant admits that Plaintiff had a written probationary teaching contract with CCSD for the 2013-2014 school year. Defendant is without sufficient information or belief at this time to enable it to admit or deny the allegations set forth in these paragraphs, and therefore denies them on that basis.

42. Answering Paragraphs 71, 72, 73, 74, 75, 76, and 77 of the Amended Complaint, Defendant denies the allegations contained therein.

Count 4: Breach of the Covenant of Good Faith, Breach of Fiduciary Duty and Breach of Duty

43. Answering Paragraph 78 of the Amended Complaint, Defendant incorporates by reference its responses to the previous allegations set forth in Paragraphs 1 through 77 as though set forth fully herein.

. . .

44. Answering Paragraph 79 of the Amended Complaint, Defendant admits that Plaintiff had a written probationary teaching contract with CCSD for the 2013-2014 school year.

45. Answering Paragraphs 80, 82, 84 of the Amended Complaint, Defendant is without sufficient information or belief at this time to enable it to admit or deny the allegations set forth in these paragraphs, and therefore denies them on that basis.

46. Answering Paragraph 81 of the Amended Complaint, Defendant admits that Plaintiff was a probationary teacher at Western High School ("Western") during the 2013-2014 school year, wherein he taught mathematics. Defendant is without sufficient information or belief at this time to enable it to admit or deny the allegations set forth in these paragraphs, and therefore denies them on that basis.

47. Answering Paragraph 87 of the Amended Complaint, Plaintiff's Paragraph 87 asserts conclusions of law to which neither an admission nor a denial is required.

48. Answering Paragraphs 83, 85, 86, 88, 89, and 90 of the Amended Complaint, Defendant denies the allegations contained therein.

Count 5: Breach by Defendant Houghton of Fiduciary Duty and Breach of Contract

49. Answering Paragraph 91 of the Amended Complaint, Defendant incorporates by reference its responses to the previous allegations set forth in Paragraphs 1 through 90 as though set forth fully herein.

50. Answering Paragraphs 92 through 99 of the Amended Complaint, the allegations set forth a claim solely against Defendant Sonia Houghton and therefore, no response by Defendant is required and none is provided.

PRAYER FOR RELIEF

Defendant is not required to respond to Plaintiff's Prayer for Relief. However, to the extent Plaintiff's Prayer for Relief asserts any factual allegations, Defendant denies each and every allegation set forth therein.

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AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Defendant alleges that Plaintiff's Amended Complaint, and each and every allegation contained therein, fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

Defendant alleges that Plaintiff's Amended Complaint is barred, in whole or in part, by the applicable statute of limitations.

THIRD AFFIRMATIVE DEFENSE

Defendant is informed and believes and thereupon alleges that Plaintiff's claims are barred, in whole or in part, under the doctrines of waiver, estoppel, laches, ratification, and/or unclean hands.

FOURTH AFFIRMATIVE DEFENSE

Defendant is informed and believed and thereupon allege that Plaintiff's claims are barred, in whole or in part, under the statute of frauds.

FIFTH AFFIRMATIVE DEFENSE

Defendant is informed and believes and thereupon alleges that Plaintiff's claims are barred in their entirety by exclusive remedy provisions and/or long-standing labor law.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claims, and each of them, are barred as a result of the failure to satisfy conditions precedent and/or conditions subsequent.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff s claims are barred by a lack of good faith.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff s cause of action for breach of the covenant of good faith and fair dealing is barred because Plaintiff breached his reciprocal covenant of good faith and fair dealing.

NINETH AFFIRMATIVE DEFENSE

Defendant alleges that Plaintiff failed to exhaust her contractual, administrative, and/or statutory remedies.

TENTH AFFIRMATIVE DEFENSE

Defendant alleges that Plaintiff failed to comply with applicable administrative and statutory filing deadlines, including NRS 41.036.

ELEVENTH AFFIRMATIVE DEFENSE

Defendant acted in conformity with the law and with reasonableness in discharging its duties.

TWELFTH AFFIRMATIVE DEFENSE

All acts and omissions of Defendant are afforded discretionary-act immunity, and as such, Defendant is not liable in any way to Plaintiff.

THIRTEENTH AFFIRMATIVE DEFENSE

Any conduct and/or actions of Defendant were engaged in good faith, without malice, and for legitimate business reasons.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff s claims and each of them are barred, in whole or in part, by the doctrines of mistake, excuse, and/or nonperformance.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiff has received everything he was entitled to receive from the agreement governing his probationary contract of employment with the Clark County School District.

SIXTEENTH AFFIRMATIVE DEFENSE

The incidents described in Plaintiff's Amended Complaint and the resulting damage, if any, to Plaintiff, were proximately caused or contributed to by the conduct of others, not under the direction and control of this Defendant.

SEVENTEENTH AFFIRMATIVE DEFENSE

At all times material hereto, CCSD was and is a political subdivision of the State of Nevada while Defendant is its governing body; thus, Defendant is entitled to all the rights, privileges and immunities afforded thereto by virtue of said status under the Constitution and laws of Nevada.

. . .

EIGHTEENTH AFFIRMATIVE DEFENSE

Defendant alleges that that the Amended Complaint is barred, in whole or in part by the impossibility or impracticability of Defendant's alleged obligations.

NINETEENTH AFFIRMATIVE DEFENSE

Any damage suffered by Plaintiff was a direct and proximate result of his own conduct and actions.

TWENTIETH AFFIRMATIVE DEFENSE

Defendant is informed and believes and thereupon alleges that Plaintiff has failed to mitigate his alleged damages.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Defendant alleges that Defendant at all times acted in good faith, without malice and was justified with regard to any legal obligations it may have had towards Plaintiff.

TWENTY-SECOND AFFIRMATIVE DEFENSE

The acts of this Defendant were justified and privileged under the circumstances.

TWENTY-THIRD AFFIRMATIVE DEFENSE

At all times relevant hereto, Defendant conducted itself in accordance with applicable state and federal law, with Clark County School District Policies and Regulations, and with the collectively bargained agreements governing Plaintiff's employment with the Clark County School District.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

Defendant is immune from liability pursuant to Plaintiff's Amended Complaint by reason of NRS Chapter 41.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

Defendant alleges that Plaintiff has failed to set forth facts sufficient to support a claim for punitive damages, special damages, or attorney's fees.

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TWENTY-SIXTH AFFIRMATIVE DEFENSE

Defendant alleges that punitive damages constitute excessive fines prohibited by the Constitution. The relevant statute does not provide adequate standards or safeguards for its application and it is void for vagueness under the due process clause.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

Defendant incorporates all other defenses enumerated in Nevada Rule of Civil Procedure 8(c)(1) for the purpose of not waiving any such defenses.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

Because the Amended Complaint is couched in conclusory and vague terms, Defendant cannot fully anticipate all affirmative defenses that may be applicable to this case. Accordingly, Defendant hereby reserves the right to amend this answer to assert any applicable, additional, or other defenses constituting an avoidance or affirmative defense at such time as the nature of Plaintiff's claims and the facts relating to them are revealed to Defendant.

WHEREFORE, Defendant prays for the following relief:

1. Defendant be dismissed from this action and that judgment be entered in its favor;
2. Plaintiff take nothing by way of his Amended Complaint;
3. Defendant be awarded its reasonable attorney's fees and costs incurred in defense of this action; and
4. Defendant be awarded any other relief the Court deems just and proper.

DATED this 16th day of November, 2020.

CLARK COUNTY SCHOOL DISTRICT
OFFICE OF THE GENERAL COUNSEL

By: */s/ Crystal J. Herrera*
CRYSTAL J. HERRERA, ESQ.
Nevada Bar #12396
Attorneys for Clark County School District

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 16th day of November, 2020, I served a true and correct copy of the foregoing **DEFENDANT CLARK COUNTY SCHOOL DISTRICT BOARD OF TRUSTEES' ANSWER TO PLAINTIFF'S AMENDED COMPLAINT** 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

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CLARK COUNTY SCHOOL DISTRICT
OFFICE OF THE GENERAL COUNSEL
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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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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 REQUESTED**

DEFENDANT CLARK COUNTY SCHOOL DISTRICT BOARD OF TRUSTEES' MOTION FOR SUMMARY JUDGEMENT

Defendant Board of Trustees of the Clark County School District ("Defendant" or "Board"), by and through its attorneys of record, hereby moves this Court to enter summary judgment against Plaintiff's claims against Defendant, pursuant to Nevada Rule of Civil Procedure 56.

This Motion is made and based on the papers and pleadings on file, the following memorandum of points and authorities, and any oral argument that may be heard at the hearing on this matter.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This dispute arises over the Board's action not to reemploy Plaintiff after his first probationary year at the Clark County School District ("District"). The District employed Plaintiff as probationary teacher for the 2013-2014 school year. During that time, Plaintiff received three evaluations, in accordance with Nevada law, identifying performance deficiencies as well as written discipline on two occasions. Based on the documented shortcomings, the Board did not renew his probationary contract for the subsequent school year and timely notified him of the same. Plaintiff now maintains that the Board's decision was "premature," because the Board did not allow him to contest one of his evaluations as purportedly required under contract. On this basis, Plaintiff's remaining claims against the Board are breach of contract and breach of the covenant of good faith and fair dealing.

The Board is entitled to summary judgment on Plaintiff's claims because they fail as a matter of law. The Board had the right not renew Plaintiff's probationary contract based in contract and under Nevada law. Plaintiff's probationary contract expressly stated as much. Moreover, while Plaintiff had the ability to submit a written response to his evaluations, nothing in contract or Nevada law required the Board to delay its decision to renew or not renew Plaintiff's probationary contract past May 1, 2014. Finally, to the extent that Plaintiff is seeking to maintain breach of contract claims under the applicable collective bargaining agreement, his claims fail because Plaintiff either seeks to circumvent the exclusive remedy provided in the agreement or to avoid having to exhaust administrative remedies.

II. STATEMENT OF FACTS

The following facts are relevant and material facts of this case and central to the claims before this Court.

A. Plaintiff's Claims against Defendant are based on an Alleged Premature Non-Renewal of His Probationary Contract.

As alleged, Plaintiff was employed with CCSD as a teacher at Western High School during the 2013-2014 school year. Amended Complaint ("Compl.") at ¶ 11. Plaintiff had a

written contract for said school year, which identified Plaintiff's probationary status. *Id.* at ¶¶ 11-13.

Plaintiff maintains that he received evaluations during the school year, the last of which was made on April 1, 2014. *Id.* at ¶¶ 14-15. Plaintiff states that he had an opportunity to submit a rebuttal to the last evaluation. *Id.* at ¶ 16. Before he submitted his response, Defendant made the decision to non-renew his contract for the subsequent school year. *Id.* at ¶¶ 19-20.

Through his Amended Complaint, Plaintiff claims that Defendant acted "prematurely" in making the nonrenewal decision. *Id.* at ¶ 22. The decision to non-renew his contract for the subsequent school year did not provided Plaintiff 30 days to rebut his April 1, 2014 evaluation. *Id.* at ¶ 28.

B. Statement of Undisputed Facts.

1. Plaintiff was employed on a probationary basis as a teacher for the District during its 2013-2014 school year. *See* Declaration of Sonia Houghton attached hereto as Exhibit ("Exh.") A at ¶ 3; Declaration of America Lomeli attached hereto as Exh. B at ¶ 3; and Plaintiff's Responses to the Board's Requests for Admission No.1, attached hereto as Exh. D. On or about November 7, 2013, Plaintiff and the District formally entered into a written contract of employment, whereby the District agreed to employ Plaintiff as a probationary teacher for the District's 2013-2014 school year. Exh. B at ¶ 3, Exh. 1.

2. During the probationary school year, Plaintiff taught at Western High School ("Western HS") and was evaluated pursuant to the statutory procedure for probationary teachers, which mandated three evaluations during the school year. Exh. A ¶ 3; Declaration of Louis Markouzis attached hereto as Exh. C at ¶¶ 3-4; Ex. D, No. 4; *see also* NRS 391.31214(4) (2013).

3. On or about November 25, 2013, Plaintiff's teaching performance was evaluated for the first time by District employee, Sonia Houghton. Exh. A at ¶ 4, Exh. 1. Ms. Houghton was an Assistant Principal at Western HS and Plaintiff's direct supervisor. *Id.* at ¶¶ 2-3. Plaintiff's first written evaluation rated Plaintiff's overall teaching performance as satisfactory, but identified several performance standards approaching or not consistently meeting standards (*i.e.* Level 2) in the learning environment and instruction areas. *Id.* at ¶ 4, Exh. 1.

4. On or about January 30, 2014, Plaintiff's teaching performance was evaluated for the second time by Ms. Houghton. *Id.* Plaintiff's second written evaluation rated Plaintiff's overall teaching performance as not satisfactory and identified several performance standards approaching or not consistently meeting standards in the learning environment, assessment of student achievement, and instruction areas, as well as performance below standards (*i.e.* Level 1) in planning and preparation and instruction areas. *Id.*

5. On or about April 1, 2014, Plaintiff's teaching performance was evaluated for a third and final time by Louis Markouzis. Exh. C at ¶ 4, Exh. 1 Mr. Markouzis was a Dean of Students within the District at Cimarron-Memorial High School and was selected by Plaintiff to be an independent evaluator for his third evaluation. *Id.* at ¶¶ 2-3. Plaintiff's third written evaluation rated Plaintiff's overall teaching performance as not satisfactory and identified several performance standards approaching or not consistently meeting standards in each evaluated area (planning and preparation, assessment of student achievement, learning environment, instruction, and professional responsibilities). *Id.* at ¶ 4, Exh. 1.

6. In both his second and third evaluation, Plaintiff was notified that his performance needed to improve and that his contract may not be renewed the subsequent school year. Exh. A at ¶ 4, Exh. 2; Exh. C at ¶ 4, Exh. 1. The second and third evaluation each stated: "Please be advised that, pursuant to Nevada law, your contract may not be renewed for the next school year. If you receive an 'unsatisfactory' evaluation on the first or second evaluation, or both evaluations for this school year, and if you have another evaluation remaining this school year, you may request that the evaluation be conducted by another administration. You may also request, to the administrator who conducted the evaluation, reasonable assistance in correcting the deficiencies reported in the evaluation for which you request assistance, and upon such request, a reasonable effort will be made to assist you in correcting those deficiencies." *Id.* Mr. Viswanathan attested he understood each statement. *Id.*

7. Plaintiff also received two disciplinary documents. Exh. A at ¶¶ 7-8. On January 24, 2014, Plaintiff received an "Oral Warning" for failing to upload lesson plans from December 2-20, 2013 and January 6-17, 2014. *Id.* at ¶ 7, Exh. 3. Exhibit D. On March 24, 2014, Plaintiff

received a "Written Warning" for failing to enter assignment grades for his assigned students. *Id.* at ¶ 8, Exh. 4.

8. Based on observations and other evidence stated in his evaluations and related discipline, administration recommended to the Board that Plaintiff's contract not be renewed for the 2014-2015 school year. *Id.* at ¶ 9.

9. On or about April 10, 2014, the Board approved a resolution declining to offer Plaintiff a teaching contract for the 2014-2015 school year. *Id.* at ¶10.

10. On April 25, 2014, the District's Superintendent of Schools provided Plaintiff a Notice of Non-Reemployment of Probationary Employee, which stated he would not be reemployed at the end of the 2013-2014 school year and cited his second and third evaluations, as well as the disciplinary documents he received, as the reasons for the non-reemployment. Plaintiff acknowledged receipt of the letter on April 28, 2014. Exh. B at ¶ 4, Exh. 2.

11. Plaintiff remained employed until the last day of his 2013-2014 probationary contract. Exh. A at ¶ 11; Ex. D, No. 2.

12. Pursuant to the Negotiated Agreement between the District and the Clark County Education Association ("Negotiated Agreement"), the union representing the District's teachers, and the District, an employee's response to a "written report, comment, reprimand, or any other document concerning a teacher" which is placed in the teacher's personnel file must be made within 30 school days, unless the document is subject to a grievance or is a suspension. Exh. B at ¶ 5, Exh. 3 at CCSD000022; Plaintiff's Responses to the Board's Interrogatories Nos. 6-8, attached hereto as Exh. E.

13. The Negotiated Agreement defines a grievance as "any dispute which arises regarding an interpretation, application or alleged violation of any of the provisions of this Agreement. *Id.* at CCSD000008.

14. A teacher must submit their grievance in writing "not later than thirty (30) days after the grievant first knew of the act or condition upon which the grievance is based." *Id.* at CCSD000010. A grievance culminates in arbitration, which only the union may request. *Id.*

15. Plaintiff did not file a grievance until May 28, 2014. *Id.* at ¶ 6.

III. LEGAL STANDARD

This Court is empowered with the authority to grant a party's motion for summary judgment when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. *Am. Fed. Sav. Bank v. County of Washoe*, 106 Nev. 869, 871 (1990); *Butler v. Bogdanovich*, 101 Nev. 449, 705 P.2d 662 (1985); NRCP 56(a). Summary judgment is a tool that enables the courts to maximize efficiency by permitting cases in which there are no triable issues of fact to be decided without going to trial. *Sahara Gaming Corp. v Culinary Workers Union Local 226*, 115 Nev. 212, 214 (1999).

"Summary judgment is appropriate and 'shall be entered forthwith' when the pleadings and other evidence on file demonstrate that no 'genuine issue as to any material fact [remains] and that the moving party is entitled to a judgment as a matter of law.'" *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (alteration in original) (citing NRCP 56(c)). "A factual dispute is genuine when the evidence is such that a rational trier of fact could return a verdict for the nonmoving party." *Wood*, 121 Nev. at 731, 121 P.3d at 1031 (citations omitted). "General allegations supported with conclusory statements fail to create issues of fact." *Yeager v. Harrah's Club. Inc.*, 111 Nev. 830, 833, 897 P.2d 1093, 1094-95 (1995). Finally, the evidence must be viewed in a light most favorable to the nonmoving party. *Wood*, 121 Nev. at 729, 121 P.3d at 1029 (citations omitted). However, the non-moving party cannot "defeat a motion for summary judgment by relying 'on the gossamer threads of whimsy, speculation and conjecture.'" *Wood*, 121 Nev. at 731, 121 P.3d at 1030 (citing *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 713-14, 57 P.3d 82, 87 (2002)). "Generally, to defeat the motion for summary judgment, the nonmoving party must submit admissible evidence to show a genuine issue of material fact." *Clark v. JDI Loans, LLC (In re Cay Clubs)*, 319 P.3d 625, 635 (citing *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 134 (2007)).

In proceedings for summary judgment, the initial burden of establishing the nonexistence of any genuine issue of material fact is on the party moving for summary judgment. *Pacific Pools Constr. Co. v. McClain's Concrete, Inc.*, 101 Nev. 557, 706 P.2d 849 (1985). Once the movant's burden is met, the burden then shifts to the non-moving party to show through

admissible evidence that a genuine issue of material fact exists and the non-moving party "'is not entitled to build a case on the gossamer threads of whimsy, speculation and conjecture.'" *Posadas v. City of Reno*, 109 Nev. 448, 452, 851 P.2d 438, 442 (1993) (citing *Collins v. Union Fed. Savings & Loan,* 99 Nev. 284, 294, 662 P.2d 610, 618-19 (1983)).

IV. LEGAL ARGUMENT

Summary judgment is appropriate on Plaintiff's claims for breach of contract and breach of the implied covenant of good faith and fair dealing because there are no genuine issues of material fact regarding a breach.

A. Plaintiff's Breach of Contract Claim Fails as a Matter of Law.

Plaintiff asserts a breach of his employment contract based on one theory—that the Board prematurely decided not to renew his probationary employment contract before he could respond to his third performance evaluation.[1] A breach of contract cause of action has three elements: (1) the existence of a valid contract, (2) breach by the defendant of that contract, and (3) damages to the plaintiff as a result of the breach. *Saint v. Int'l Game Tech*, 434 F. Supp. 2d 913, 919-20 (D. Nev. 2006). It is fundamental to a breach of contract action that a written binding contract exist. *Id.* A breach of contract may be said to be a material failure of performance of a duty arising under or imposed by agreement. In such a case, the question to be determined is whether the actions or omissions complained of constitute a violation of duties arising by virtue of the alleged express agreement between the parties. *Bernard v. Rockhill Dev. Co.*, 103 Nev. 132, 135, 734 P.2d 1238, 1240 (1987) (quoting *Malone v. University of Kansas Medical Center*, 220 Kan. 371, 552 P.2d 885, 888 (1976)). While an employment contract

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[1] Plaintiff also cloaked a breach of fiduciary duty claim as a breach of contract claim under Count 3 of his Complaint. Compl. at ¶¶69-77. The Court previously dismissed Plaintiff's breach of fiduciary duty claims as statutorily barred. *See* Order at p. 2:11-18, filed on November 2, 2020. To the extent Plaintiff is arguing a breach of NRS 386.327(1)(h), the claim would nevertheless be barred because: (1) NRS 386.327(1)(h) was only added to the Nevada Revised Statutes in 2017 and did not exist at the time in question; and (2) the claimed "breach" would be subject to a four-year limitations period and be barred as a matter of law. *See e.g., Brescan v. University Medical Center of Southern Nevada*, 2013 WL 4504531, at *1 (D. Nev. June 18, 2013); NRS 11.190(2)(c) (setting a four year statute of limitation for "[a]n action upon contract, obligation or liability ***not founded upon an instrument in writing***") (Emphasis added).

between the Board and Plaintiff existed, the contract did not provide what Plaintiff purports, and hence, cannot establish a breach of contract claim.

1. The Board Had a Contractual and Statutory Right Not to Renew Plaintiff's Probationary Contract.

Plaintiff signed a probationary employment contract with the Board for the 2013-2014 school year entitled "Probationary Contract Between Employee and Trustees," which included the following relevant provisions:

> 8. 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.
>
> 12. The Negotiated Agreement adopted and approved between the Clark County Education Association and the Board of School Trustees of the Clark County School District and any amendments thereto are a part of this Contract and are incorporated by reference as though fully set forth.

Exh B. at ¶ 3, Exh. 1. Absent from the contract is any statement qualifying the Board's right to not renew a probationary employee, like Plaintiff, following the end of a probationary year. To the contrary, the contractual provision is clear and plainly vested the Board with a right to part ways with Plaintiff after the 2013-2014 school year. *See Smith v. Recrion Corp.*, 91 Nev. 666, 668, 541 P.2d 663, 664 (1975) (the terms of an express contract are stated in words); *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). 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). In this case, the Board had an express, contractual right not to renew Plaintiff's contract for the subsequent school year, in the same way that a probationary employee could choose not to accept reemployment with the District for the ensuing school year. NRS 391.31216(3) (2013) ("The employee must advise the board in writing within 10 days after the date of notification of his or her acceptance or rejection of reemployment for another year.

Failure to advise the board of the employee's acceptance of reemployment pursuant to this subsection constitutes rejection of the contract"). [2]

Markedly, this right is also a statutory right. Plaintiff's employment was governed by Nevada Revised Statutes Chapter 391. Chapter 391 divided teachers into two categories: "probationary" and "postprobationary." NRS 391.311(5)-(6) (2013). Pursuant to Nevada law in 2013, probationary teachers were considered "annual" contract teachers and were to be notified by the District whether they would be reemployed for the ensuing year pursuant to NRS 391.31216(2) (2013). Much like the contractual provision, NRS 391.31216(2) (2013) provided, "A probationary employee is employed on a contract basis for three 1-year periods and has no right to employment after any of the three probationary contract years." Accordingly, the Board's express and clear right is not only a creature of contract, but a statutorily created one.

2. The Board's Right of Non-Renewal Had Limited Temporal Limitations.

The right not to renew Plaintiff's employment contract was not subject to Plaintiff's claimed temporal limitation either in contract or under Nevada law. As referenced above, the contract did not qualify the right of the Board not to renew Plaintiff's employment for the subsequent school year. Exh B. at ¶ 3, Exh. 1. Meanwhile, the only temporal limitation as to when the Board 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…

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[2] Because this matter concerns actions taken during the 2013-2014 school year, this Motion will cite to the NRS Chapter 391 provisions in existence at such time. The Court may take judicial notice of the cited statutes pursuant to Nevada law. *See* NRS 47.140(2) (a court may take judicial notice of "the Constitution of this State and Nevada Revised Statues.").

NRS 391.31216 (3) (2013) (Emphasis added).[3] The outer limit set forth in Nevada statute was satisfied in this case seeing as Plaintiff was notified of the non-renewal decision on April 25, 2014 (or April 28, 2014 at the latest given his written acknowledge of receipt dated April 28, 2014). Plaintiff's purported temporal limitation is not present in contact or Nevada law.

3. Plaintiff Could Submit A Response to His Evaluation Only for Inclusion into His Personnel File.

Plaintiff's right to submit a response to an evaluation was present in Nevada law and the Negotiated Agreement. The "evaluation" of a probationary teacher was dictated by Nevada law and required that written evaluations for probationary employees be provided three times each school year and no later than December 1, February 1, and April 1. NRS 391.31214 (4) (2013). Once a teacher received a copy of the evaluation, they could submit a response to include into the teacher's personnel file. 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").

The statute did not require anything more than a teacher being permitted to respond to their evaluation and said response becoming a part of the teacher's personnel file. The response did not change the evaluation or give rise to a reconsideration of the evaluation. To argue so, would contravene the plain language of the statute, which identified the response as simply one to be included in the teacher's personnel file *as part of* the written evaluation. It is nonsensical to argue that a response could change the written evaluation or compel its reconsideration, when pursuant to the express language of the statute the response was to be attached to the evaluation in

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[3] The Nevada Supreme Court has also explained 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." *Clark County School Dist. v. Harris*, 913 P.2d 1268 (Nev.1996) (per curiam). It is undisputed that Plaintiff received the requisite evaluations and notice of non-reemployment in conformity with Nevada law.

the personnel file.[4] *See McKay v. Board of Supervisors*, 102 Nev. 644, 648, 730 P.2d 438, 441 (1986) ("Where a statute is clear on its face, a court may not go beyond the language of the statute in determining the legislature's intent"). Plaintiff cannot read into the statute a requirement that did not exist, particularly when it is at odds with the statutory directive. Plaintiff must follow the plain and ambiguous language of the statute.

Notably, a similar "response" was permitted in the Negotiated Agreement. There, the Negated Agreement identified a response could be submitted much like under NRS 391.31214 (7) (2013), but within 30 school days. Exh. B at ¶ 5, Exh. 3 at CCSD000022. Like the Nevada statute, the ability to respond did not state a response changed the evaluation or would give rise to reconsideration of the evaluation. *Kaldi v. Farmers Ins. Exch.*, 117 Nev. 273, 21 P.3d 16, 21 (2001) (a court is "not free to modify or vary the terms of an unambiguous agreement"). Plaintiff's misconstruction is unsupported by the plain language of Nevada statute and the Negotiated Agreement.

4. Plaintiff's Ability to Submit a Response to an Evaluation Does Not Affect the Board's Right to Not Renew His Probationary Contract.

Plaintiff cannot establish a breach of contract claim because the Board's decision not to reemploy was in conformity with Plaintiff's probationary contract and Nevada law. First, there was nothing in Plaintiff's probationary contract that stated a nonrenewal decision must await an employee's response to an evaluation. To the contrary, the contract provided that "[p]robationary 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." Exh. B at ¶ 3, Exh. 1. Nevada Revised Statutes replicated the contractual provision and also provided that an employee may submit a response to an evaluation which is to be included in the employees' personnel file with the evaluation. The response did not serve to invalidate the evaluation, mandate reconsideration of the evaluation, or avert a decision whether to renew or

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[4] This construction would also render the grievance and arbitration process set forth in the Negotiated Agreement nugatory. For, as further discussed below, the manner in which to contest discipline and evaluations is through the grievance and arbitration process.

not renew an employee. Such allowances would fundamentally alter and contravene the plain and unambiguous language in the contract and Nevada law. *See Ellison*, 106 Nev. at 603, 797 P.2d at 977; *McKay*, 102 Nev. at 648, 730 P.2d at 441. The response was plainly an opportunity for an employee to express their agreement or disagreement with the evaluation, create a written record of the same, and have the record attached to the evaluation for inclusion into their personnel file. Plaintiff cannot read into his contract or Nevada law terms and conditions that were not present.

Second, even assuming *arguendo* that Plaintiff's response could result in a reassessment or reconsideration of his third evaluation (violating the very language of the contract and Nevada law), there were still other grounds upon which the non-renewal decision was based upon, which Plaintiff ignores. *See* Compl. at ¶ 24. As provided in the Notice of Non-Reemployment, the administrative staff of the District felt that Plaintiff's overall unsatisfactory performance as a teacher necessitated recommending to the Board that his contract not be renewed, because of his *second* and third evaluations *and* his disciplinary history. Exh. B at ¶ 4, Exh. 2. In other words, even if the evaluation process was "flawed" such that Plaintiff should have been allowed to submit a response to his third evaluation before it could be considered for contract renewal purposes, there were still other records upon which the decision was made. Plaintiff ignores these documented performance deficiencies identified in the Notice of Non-Reemployment.

Plaintiff has no evidence from which to conclude that the Board's reasons for not reemploying him were "premature" or not in compliance with his probationary contract or Nevada law. Plaintiff had no right to reemployment for the subsequent school year and the Board's decision was proper and consistent with contractual and statutory rights. *See* NRS 391.31216(1) (2013) (because a probationary teacher had no right to employment after any of the three probationary contract years, they had no right to a hearing or arbitration to challenge the decision not to reemploy); *see also, Eureka County v. Holbo*, 101 Nev. 372, 375, 705 P.2d 640, 642 (1985) (noting that unlike post-probationary employees, probationary employees are not entitled to a hearing following non-reemployment).

B. Plaintiff's Breach of Implied Covenant Claims Cannot Withstand Summary Adjudication.

Plaintiff's claims for breach of the covenant of good faith and fair dealing fail because they are based on the same conduct establishing the claim for breach of contract as well as actions that were not arbitrary or unfair. Nevada law implies a covenant of good faith and fair dealing in every contract. *Hilton Hotels Corp. v. Butch Lewis Prods., Inc.*, 107 Nev. 226, 808 P.2d 919, 922-23 (1991). "Where the terms of a contract are literally complied with but one party to the contract deliberately countervenes the intention and spirit of the contract, that party can incur liability for breach of the implied covenant of good faith and fair dealing." *Id; see also Nelson v. Heer*, 123 Nev. 217, 226, 163 P.3d 420, 427 (2007) (arbitrary and unfair acts by one party that work to the disadvantage of the other are prohibited). However, "[i]t is well established that a claim alleging breach of the implied covenants of good faith and fair dealing cannot be based on the same conduct establishing a separately pled breach of contract claim." *Nelson*, 123 Nev. at 224, 163 P.3d at 427; *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).

In this case, Plaintiff's first claimed breach—that Defendant breached the covenant when it did not allow Plaintiff to submit his response to his third evaluation before deciding not to renew his contract (Compl. at ¶¶ 73-75)—is the same conduct establishing Plaintiff's separately pled breach of contract claim (Compl. at ¶¶ 55-56). As such, this alleged conduct cannot give rise to Plaintiff's claim for breach of the implied covenant. *Nelson*, 163 P.3d at 427.

Moreover, even if it could, as discussed above, there was no contractual or statutory duty to wait for Plaintiff to submit a response, and therefore, any failure to wait cannot constitute an arbitrary or unfair act. In *Nelson*, the Nevada Supreme Court held that a seller of residential property did not violate the plaintiff's duty of good faith and fair dealing by failing to disclose water damage of the property. *Id.* at 423-424. The Court relied on Nevada statutes that listed required disclosures, which did not include water damage. *Id.* at 425-427. Since, there was no statutory duty to disclose and the contract did not require the disclosure, the Court held that the

defendant did not act unfairly or in bad faith. *Id.* at 426-427. Like in *Nelson*, there was no statutory duty for the Board to wait for Plaintiff to respond to his third evaluation nor did his employment contract require this delay before the Board could decide whether to renew his probationary contract.

Plaintiff's second claimed breach—that Plaintiff's evaluations should only apply to mathematics (Compl. at ¶¶ 81-83) also fails because there was no contractual or statutory duty limiting Plaintiff's evaluations as claimed. Furthermore, as documented, Plaintiff's performance problems stemmed from the manner in which he taught, not the subject matter that he was teaching. Exh. A at ¶ 2, Exh. 2; Exh. C at ¶ 4, Exh. 1. Therefore, Plaintiff's claim of breach of the implied covenant cannot withstand entry of summary judgment. Plaintiff cannot establish Defendant acted in a manner unfaithful to the purpose of the contract.

C. Plaintiff's Contract-Based Claims Are Preempted under Nevada Law to the Extent Based on the Terms of the Negotiated Agreement.

To the extent Plaintiff's claims are based on the Negotiated Agreement, Plaintiff's action is barred by the contract itself, which provides for arbitration as the exclusive remedy for disputes arising out of the Negotiated Agreement. Pursuant to well-settled labor law, an employee covered by a collective bargaining agreement may not challenge his employment status through state law claims that 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).[5] Preemption of state law claims requiring interpretation of a collective bargaining agreement follows from one of the primary principles of labor law - the collective bargaining

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[5] Plaintiff's employment was not governed by federal labor laws as in *Insley* but by Chapter 288 of the Nevada Revised Statutes, as the Clark County School District is a public employer and Defendant is the School District's governing body. This does not change the applicable legal principles. The Nevada Supreme Court has concluded that when the Nevada Legislature enacted NRS Chapter 288 it "intended to apply similar principles" as recognized by federal labor laws. *Truckee Meadows Fire Protection District v. International Ass'n of Fire Fighters, Local 2487*, 109 Nev. 367, 374, 849 P.2d 343 (1993).

agreement provides the "uniform and exclusive method for orderly settlement of employee grievances." *Republic Steel Corp. v. Maddox*, 379 U.S. 650, 653 (1952).

The orderly and efficient resolution of workplace grievances is a primary goal of labor laws. Towards this goal, it is important that a collective bargaining agreement's grievance process be the exclusive manner in which to resolve grievances. As recognized by the United States Supreme Court, "[i]f 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." *Id.* Allowing an employee to sue in court over an alleged violation of a collective bargaining agreement would overwhelm the system and disrupt the goal of uniform interpretation of such agreements. While not all possible claims are preempted, the rule applies to claims "which would require the court to interpret the meaning and scope of a term" of the collective bargaining agreement. *Insley,* 102 Nev. at 517.

The District is required to enter collective bargaining negotiations with the exclusive bargaining agent for each bargaining unit of employees. *See* NRS 288.150(1) ("every local government employer shall negotiate in good faith through one or more representatives of its own choosing concerning the mandatory subjects of bargaining set forth in subsection 2 with the designated representatives of the recognized employee organization, if any, for each appropriate bargaining unit among its employees"); NRS 288.133 (defining a bargaining agent to mean "an employee organization recognized by the local government employer as the exclusive representative of all local government employees in the bargaining unit for purposes of collective bargaining"); NRS 288. (defining a "local government employer" to mean "any political subdivision of this State" including "school districts"). It is mandatory that those negotiations include discussions of a grievance and arbitration process. 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").

In this case, the District and the union for teachers, the Clark County Education Association ("CCEA"), negotiated a "dispute resolution" process (*i.e.* a grievance and arbitration process) that had to be followed if, relevantly, an employee disputed an evaluation or discipline. Plaintiff's contract-based claims are barred by this exclusive remedy to the extent premised on a challenge to the third evaluation. Article 4-1 and 4-2. As Plaintiff's probationary contract provides: The Negotiated Agreement adopted and approved between the Clark County Education Association and the Board of School Trustees of the Clark County School District and any amendments thereto are a part of this Contract and are incorporated by reference as though fully set forth. The contract, thereby, incorporates the following provisions:

> 4-1 A grievance is defined as any dispute which arises regarding an interpretation, application or alleged violation of any of the provisions of this Agreement.
>
> 4-2 The provisions of this Article are for the purpose of setting forth the full grievance procedure including the time limits relating to these procedures which may culminate in arbitration
>
> 14-1 A copy of each written report, comment, reprimand, or any other document concerning a teacher which the School District places in either of the two (2) personnel files shall be provided to that teacher.
>
> 14-2 Any written response by the employee to any written report, comment, reprimand, or other documents as provided for in Article 14-1 above shall also become a part of that employee's personnel file
>
> …
>
> When an employee makes a written response to any written report, comment, reprimand, or any other document, the employee's response shall be made within thirty (30) school days….

Exh. B at ¶ 5, Exh. 3 at CCSD000008, CCSD000022.

Here, Plaintiff's contract-based claims seek to circumvent the grievance process and would require an interpretation of the Negotiated Agreement. Indeed, Plaintiff seemingly seeks to characterize his ability to respond to his third evaluation as a right to challenge the evaluation. However, the opportunity to respond is not the equivalent to a grievance challenging the document. In truth, if Plaintiff wanted to challenge his evaluation, then the mechanism for him doing so was through the grievance and arbitration procedure set forth in the Negotiated

Agreement, not through the instant litigation. Plaintiff eventually sought to utilize this procedure, but did so belatedly and was advised of the same.[6]

Plaintiff's contract-based claims, to the extent they are based on an interpretation, application or alleged violation of the Negotiated Agreement, are preempted and fail as a matter of law. The Court would significantly alter a bedrock principle of labor-management relations if it were to conclude otherwise.

D. Plaintiff Failed to Exhaust Administrative Remedies Pursuant to NRS 288.110(2) and NRS 288.280.

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). The purpose of the EMRB is to apply its expertise to labor disputes and assist in resolving them before they reach the courts. *Rosequist* at 450-51, 655. "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]." *Id.*

NRS 288.110(2) allows the EMRB to hear and determine any complaint arising out of the interpretation of, or performance under, the provisions of NRS Chapter 288 by any local government employer, local government employee, or employee organization. While NRS 288.110(2) and NRS 288.280 provide the EMRB with discretionary authority to hear complaints, claimants have no discretion and must file complaints subject to the EMRB's authority with the EMRB in the first instance. *Rosequist*, 118 Nev. at 451, 49 P.3d at 655, *as modified by Kilgore*,

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[6] Plaintiff was informed that his May 18, 2014 "grievance" was untimely because Article 4-5(A) of the Negotiated Agreement required a grievance to be filed "not later than thirty (30) days after [he] knew of the act or condition upon which the grievance is based."

122 Nev. at 336 n. 10, 13 P.3d at 15 n. 10. The administrative remedies provided under NRS Chapter 288 must first be exhausted before a petition for judicial review may be filed with the district court. *Id.* When an employee has failed to exhaust his or her administrative remedies under Nevada's Local Government Employee-Management Relations Act (NRS 288, *et seq*.), ("EMRA"), the matter is not justiciable in the district court, as the matter is not ripe for judicial review. *Kilgore*, 122 Nev. at 336, 13 P.3d at 14-15.

In this case, 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). In *City of Mesquite*, the Nevada Supreme Court evaluated claims of breach of the collective bargaining agreement against the employer and claims of a breach of the union's duty of fair representation by refusing to advance a grievance to arbitration. *Id.* at 1247. In that instance, a police officer had filed a grievance with his union and asked it to advance the grievance to arbitration, a request that was denied. *Id.* The police officer then asked his employer to arbitrate the termination, but the request was also denied, because only the union could invoke arbitration under the collective bargaining agreement. *Id.* The police officer subsequently filed a complaint in the district court averring that the employer breached the terms of the collective bargaining agreement by terminating him and argued he had attempted to exhaust his remedies under the collective bargaining agreement but the employer and/or the union prevented him from doing so. *Id.* The employer moved to dismiss the officer's claims because they were dependent on a time-barred claim against the union. *Id.* However, the district court disagreed and determined that a six-year limitations period applied to the breach of contract action against the employer. *Id.*

A writ petition ensued and the matter went before the Nevada Supreme Court. *Id.* There, the Court analyzed the police officer's complaint as a "hybrid" action. *Id.* A hybrid action was identified as "an action which consists of two separate but 'inextricably interdependent' claims: a claim that the employer breached the collective bargaining agreement, and a claim that the union breached its duty of fair representation by failing to adequately pursue a grievance or arbitration

on the employee's behalf." *Id.* at n.2 (citing *Delcostello v. Int'l Bhd. of Teamsters*, 462 U.S. 151, 164-165, 103 S. Ct. 2281 (1983). The Court found that a private cause of action did not exist such that the officer could pursue claims for breach of duty of fair representation in the district court. *Id.* at 1248. The Court explained that the EMRB had exclusive original jurisdiction over any unfair labor practice arising under the EMRA, and an employee must exhaust the remedies provided therein before seeking relief in the district court. *Id.* Markedly, the Court explained that because the police officer did not file a timely complaint before the EMRB, "the *dependent claim for breach of contract was not properly before the district court*." *Id.* at 1250. (Emphasis added).

Similarly, in *Rowe v. Clark Cnty. School Dist*., 2017 WL 1550229 (D. Nev. April 28, 2017), a Nevada federal district court was faced with breach of contract claims filed by a terminated District employee. The employee sued the District and his union claiming, among other things, that the District breached his contract in wrongfully terminating him and that the union breached the contract for failing to properly file grievances on his behalf. *Id.* at *1. The court found because the employee's claims against the union remained pending before the EMRB, it could not exercise jurisdiction over such claims as they remained unexhausted. *Id.* at *4. In addition, the contract claim against the District also could not stand "because plaintiff's failure to exhaust this claim with the EMRB depriv[ed] th[e] court of jurisdiction." *Id.*

As found in *City of Mesquite* and *Rowe*, any attempt by Plaintiff to bring an action against the Board for breach of the Negotiated Agreement fails because there is no evidence to support Plaintiff exhausted his administrative remedies before the EMRB.[7]

. . .

. . .

. . .

. . .

. . .

[7] Plaintiff acknowledges he was a member of CCEA. Exh D, No. 2.

V. CONCLUSION

Based on the foregoing, this Court should enter summary judgment against Plaintiff and in favor of Defendant on all of Plaintiff's remaining claims against Defendant.

DATED this 14th day of June, 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 14th day of June, 2021, I served a true and correct copy of the foregoing **DEFENDANT CLARK COUNTY SCHOOL DISTRICT BOARD OF TRUSTEES' MOTION FOR SUMMARY JUDGMENT** via the EFP Program, pursuant to the Court's Electronic Filing Service Order and/or mailed 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

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North Las Vegas, NV 89031
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Arbitrator

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

EXHIBIT A

DECLARATION OF SONIA HOUGHTON

I, Sonia Houghton, hereby declare as follows:

1. I am an employee of the Clark County School District (the "District") and make this declaration in support of the Board of Trustees of the Clark County School District's motion for summary judgment in Tenkasi Viswanthan v. Board of Trustees of the Clark County School District, Case. No. A-20-814819-C. I personally know of the matters stated herein and if called to testify, could do so competently.

2. I am presently the English Language Learner Coordinator for the Clark County School District (the "District"). During the District's 2013-2014 school year, I served as an Assistant Principal at Western High School ("Western HS"). In the role of Assistant Principal, I was responsible for supervising school personnel, including providing their evaluations.

3. Tenkasi Viswanathan was a first year probationary teacher at Western HS during the 2013-2014 school year. I was his direct supervisor for the 2013-2014 school year and evaluated his work performance.

4. I observed Mr. Viswanathan teaching on several occasions, and provided him two written evaluations, which contained several directives for improvement. Attached hereto as Exhibits 1 and 2 are true and accurate copies of the two written evaluations that I provided Mr. Viswanathan.

5. The second evaluation I provided Mr. Viswanathan rated him not satisfactory and contained the following statement: "Please be advised that, pursuant to Nevada law, your contract may not be renewed for the next school year. If you receive an 'unsatisfactory' evaluation on the first or second evaluation, or both evaluations for this school year, and if you have another evaluation remaining this school year, you may request that the evaluation be conducted by another administration. You may also request, to the administrator who conducted the evaluation, reasonable assistance in correcting the deficiencies reported in the evaluation for which you request assistance, and upon such request, a reasonable effort will be made to assist you in correcting those deficiencies." Exhibit 2. Mr. Viswanathan attested he understood this statement.

6. Per Mr. Viswanathan's request, Mr. Viswanathan's third evaluation was conducted by Louis Markouzis, a school administrator at another school within the District.

7. On January 24, 2014, I provided Plaintiff an Oral Warning. Attached hereto as Exhibit 3 is a true and accurate copy of the Oral Warning that I provided Mr. Viswanathan which was signed by me and Mr. Viswanathan.

8. On March 24, 2014, I provided Plaintiff a Written Warning. Attached hereto as Exhibit 4 is a true and accurate copy of the Written Warning that I provided Mr. Viswanathan which was signed by me and Mr. Viswanathan.

9. Ultimately based on my observations and other evidence stated in his evaluations and related discipline, and in consultation with the school principal at Western HS and our school region supervisor, we recommended to the Board of Trustees for the Clark County School District that Plaintiff's contract not be renewed for the subsequent school year.

10. On or about April 10, 2014, the Board of Trustees for the Clark County School District approved a resolution declining to offer Plaintiff a teaching contract for the 2014-2015 school year.

11. Plaintiff remained employed until the last day of his 2013-2014 probationary contract.

Pursuant to NRS 53.045, I declare under penalty of perjury that the foregoing assertions are true and correct to the best of my personal knowledge.

Executed on June 14, 2021

Sonia Houghton
English Language Learner Coordinator
Clark County School District

EXHIBIT 1

[redacted] VES

Submit by Email | Print Form

2013-2014 School Year

CLARK COUNTY SCHOOL DISTRICT
LICENSED EMPLOYEE APPRAISAL REPORT

CCF-8 Electronic Version (Rev. 10/13)

Viswanathan	Tenkasi	M.	[redacted]
Employee's Last Name	Employee's First Name	Middle Name/M.I.	SSN (last 4 digits)
Western High School	451	☐ ES ☐ MS/JHS ☑ HS ☐ MS/JHS/HS ☐ SSSD	
School/Location Name	School Location Code (3-digit)		
Pre-Calculus & Math of Pers. Finance	12th grade	From 8/14/13 to 11/25/13	11/25/13
Assignment	Grade Level	Observation Dates(example: dd/mm/yy)	Conference Date

#1 ☑ #2 ☐ #3 ☐ If Probationary, Evaluation No.

Yrs. 1 Mos. ____ Length of Time in CCSD

Page 1 of 4

Report and analysis of observations, performance, and other factors which may be pertinent to performance; probationary/postprobationary status, date of last evaluation, and directions.

I certify that I have supervised and evaluated the professional performance of the above named ☑ probationary ☐ postprobationary employee, and I certify that to date this school year his/her overall performance ☑ is ☐ is not satisfactory.

LEVELS OF PERFORMANCE

Level 4	Performance exceeds standards consistently at a distinguished level.		Level 2	Performance approaches standards and/or does not consistently meet standards. *
Level 3	Performance consistently meets standards and may occasionally exceed standards in some areas.		Level 1	Performance is below standards and is not satisfactory. *

*Any area(s) marked Level 1 or 2 require documentation. Any area(s) marked Level 1, or 8 or more areas marked Level 2 results in an overall rating of "Not Satisfactory."

PROFESSIONAL DOMAINS

PLANNING AND PREPARATION	4	3	2	1
PROFESSIONAL STANDARDS				
1. Instructional planning was documented in written lesson plans and based on adopted curriculum documents and standards.		✓		
2. Content knowledge was demonstrated in planning.		✓		
3. Planning reflected knowledge of student achievement, access/equity, students' interests and backgrounds, and other site-specific demographic data.		✓		

ASSESSMENT OF STUDENT ACHIEVEMENT	4	3	2	1
PROFESSIONAL STANDARDS				
1. Student achievement, access/equity, and other site specific demographic data were analyzed.		✓		
2. Desired results for student learning/achievement were identified, measurable, and used for instructional planning to determine and monitor student progress.		✓		
3. Assessment regulations and guidelines were followed.		✓		

LEARNING ENVIRONMENT	4	3	2	1
PROFESSIONAL STANDARDS				
1. An academic focus and on-task behavior were maintained.			✓	
2. A classroom management/discipline plan was in place, communicated and maintained.			✓	
3. Respect and courtesy were modeled by the teacher in student and parent interactions.		✓		
4. The physical environment supported the teaching/learning process.		✓		

INSTRUCTION	4	3	2	1
PROFESSIONAL STANDARDS				
1. The components of an effective lesson and the basic principles of learning were used when providing instruction.			✓	
2. Varied instructional strategies, approaches, and resources, aligned with instructional objectives, engaged students in learning.		✓		

INSTRUCTION (continued)	4	3	2	1
3. Lessons had a clearly defined structure and pacing was appropriate.			✓	
4. Flexible instructional groupings were utilized.			✓	
5. Accommodations and/or modifications were used in alignment with instructional objectives to meet the needs of students.		✓		
6. Feedback to students was provided and promoted student success and achievement.		✓		

PROFESSIONAL RESPONSIBILITIES	4	3	2	1
PROFESSIONAL STANDARDS				
1. The employee participated in the school improvement process and implemented school improvement goals.		✓		
2. The employee addressed identified individual improvement goals/directions.		✓		
3. The employee participated in on-going professional development to improve content knowledge and pedagogical skills.		✓		
4. The employee participated in required job-related meetings and activities and performed assigned duties.		✓		
5. The employee maintained student records.		✓		
6. The employee provided communication to parents/guardians and students related to behavior and achievement.		✓		
7. The employee worked professionally with administration, staff, parents, and community.		✓		
8. The employee used multicultural resources, materials and activities to support multicultural literacy, awareness, and appreciation.		✓		
9. The employee complied with all school and district policies and regulations, as well as state and federal laws applicable to teachers.		✓		

A narrative, which includes a PERFORMANCE SUMMARY and IMPROVEMENT GOALS/DIRECTIONS, must be included on the following page.

*Signature of Employee	11/25/13 Date	Sonia Houghton/Assistant Principal Print/Type Name of Supervising Administrator	Signature	11/25/13 Date

*A signature on this summary does not necessarily mean the licensed employee agrees with the opinions expressed, but merely indicates the employee has read the analysis, had an opportunity for discussion with his/her immediate supervisor, and understands that he/she has the privilege of discussing it with the Human Resources Division.

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2nd Copy/Yellow: Supervising Administrator - Work Location File 3rd Copy/Pink: Employee

CCSD

12/16/13

CLARK COUNTY SCHOOL DISTRICT

CCP-8 (Rev. 11/11)

LICENSED EMPLOYEE APPRAISAL REPORT NARRATIVE

Name: Tenkasi M. Viswanathan | Social Security No. (last 4 digits): [redacted] | Date: 11/25/13 | Page No: 2

PERFORMANCE SUMMARY:

Dr. Tenkasi M. Viswanathan is a probationary teacher with the Clark County School District. This evaluation is the first of three appraisals he will receive during the current school year. He is in his first year with the Clark County School District and his first year at Western High School. Currently, Dr. Vizwanathan teaches two sections of Pre-Calculus, three sections of Math of Personal Finance, and one section of Fundamentals 600. This appraisal report represents a synthesis of classroom observations conducted on 9/17/13, 9/26/13, 9/27/13, 10/2/13, and 10/3/13 for a total of 120 minutes; post-observation conferences on 9/17/13, 9/27/13, and 10/4/13; a review of professional artifacts and other supervisory interactions on 8/22/13, 9/6/13, 9/9/13, 10/4/13, 10/15/13, and 10/16/13 in accordance with the NRS 391 and Clark County School District's Policies and Regulations. The performance standards for each of the professional domains, as outlined in the Levels of Performance Rubric, serve as the basis for this evaluation. Dr. Vizwanathan performed his duties in a satisfactory manner.

On October 4, 2013, Dr. Vizwanathan and his supervisor established Individual Professional Growth Goals for the 2013-2014 school year. Dr. Viswanathan has and will continue to make progress toward the following Individual Professional Growth Goals:

1. Deliver lessons with clearly defined structure as engineered in the lesson plan template of the Curriculum Engine. Will ensure planning and delivery of the components of an effective lesson and the basic principles of learning; will implement the workshop model that it advocates. Dr. Viswanthan developed lesson plans using the Western High School template to ensure Components of an Effective Lesson are imbedded in each lesson. He has made progress and is working towards successfully implementing the workshop model and more structured delivery of lessons.
2. Maintain an academic focus and on-task behavior. Will use posters, the Elmo, and other means to increase student engagement on curricular goals and tasks. Will aim to have students assume responsibility for meaningful productivity, and on-task behavior without the need for continuous monitoring. Dr. Viswanathan shows an improvement in classroom management and has had support from the learning strategist to discuss class performance and maintaining an academic focus and on-task behavior.
3. Utilize assessment results for instructional planning to determine and monitor student progress. Dr. Viswanathan has created assessment tools based on learning outcomes and is showing progress in leading to improved student learning.

PLANNING AND PREPARATION

Dr. Viswanathan developed written lesson plans based on the adopted Western High School STEAM College Readiness Workshop Model accepted format. Lesson plans were reviewed on Curriculum Engine on 10/15/13, 10/29/13, 10/30/13, and 11/13/13, which identified the lesson objective, warm-up, instructional procedures and activities, and assessment measures in his lesson plans. He worked with his grade level and department to address school improvement goals. Dr. Viswanathan accepted the assistance from the learning strategist on implementing power points during the lesson to guide teaching and increase effectiveness. Student achievement continued to be determined by homework, daily warm-ups, in-class assessments, and tests and quizzes. All standards were met at a satisfactory level in this domain.

ASSESSMENT OF STUDENT ACHIEVEMENT

Dr. Viswanathan worked with his grade level and department to address school improvement goals as evidenced by the weekly planning and Structured Teaching Planning Time (STPT). He used assessments aligned with the CCSS to determine and monitor student progress. Dr. Viswanathan worked with his department to develop lessons that would promote student success. He identified learning outcomes that were used for instructional planning and delivery. He assessed his students regularly by walking around and monitoring student work. He analyzed students' assessment data and used this knowledge to provide students with small group, whole group, and individualized instruction. During on observation on 9/17/13, Dr. Vizwanathan circulated the classroom to assess student work while a student volunteer showed the work on the board. All standards were met at a satisfactory level in this domain.

LEARNING ENVIRONMENT

In the Learning Environment Domain, Dr. Viswanathan consistently performed in a satisfactory manner on one standard and approached three standards. He maintained an inconsistent classroom environment that had an academic focus and engaged students. He maintained learning activities for individuals and groups, but sometimes lacked organization and management, resulting in off-task behavior. On 9/26/13, Dr. Viswanathan was solving a problem on the board. Students were not paying attention and talking at their desks. There were two students reading books and three students were working on other assignments during the lesson. During the post observation conference. Dr. Viswanathan was directed to review class expectations and procedures with students.

Signature of Employee — Date: 11/25/13

Sonia Houghton/Assistant Principal — Print/Type Name of Supervising Administrator — Signature — Date: 11/25/13

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CCSD CLARK COUNTY SCHOOL DISTRICT

CLARK COUNTY SCHOOL DISTRICT
PERSONNEL RECORD - CONTINUATION SHEET

Name: Tenkasi M. Viswanathan Social Security No. (last 4 digits): [redacted] CCF- 8 Date: 11/25/13 Page No: 3 of 4

LEARNING ENVIRONMENT *continued*

Dr. Viswanathan established a management plan, but did not consistently maintain the plan. During the goal setting conference, Dr. Viswanathan and his supervisor created a goal and action steps to improve the lack of consistency in maintaining and/or communicating the established procedures, routines, and expectations. He also met with the learning strategist to improve management plan and re-arrange the organization of the seating arrangement in his classroom. Dr. Viswanathan interacted with parents in a positive manner in attempts to assist with student behavior. He interacted with students in a friendly manner and demonstrated caring and respect. Dr. Viswanathan maintained an environment conducive to learning. He posted big posters of the day's lesson on the walls so that students could use them as a class resource as observed on 9/17/13.

INSTRUCTION

In the Instruction domain, Dr. Viswanathan met three standards and approached three standards. Dr. Viswanathan demonstrated a general understanding and knowledge of the components of an effective lesson and principles of learning. However, he used the components or principals inconsistently when providing instruction. During an observation on 9/26/13, closure was not utilized at the end of the period. One minute before the bell, students were asked to start working on a blue worksheet. As the bell rings, students dismiss themselves and leave the class. During a post observation conference, on 9/27/13, Dr. Viswanathan was directed to ensure closure at the end of each lesson, write a daily agenda on the board, and dismiss students instead of having them take off while Dr. Viswanathan is still talking. On 9/27/13, Dr. Viswanathan had a recognizable structure in lessons although not uniformly maintained. He inconsistently maintained appropriate pacing of lessons. He did not provide a closure for the lesson. Instead, Dr. Viswanathan started calling on student names and taking attendance. He was directed on 9/27/13, to take attendance at the beginning of the class as well as to include closure in daily lessons. He utilized flexible instructional groups inconsistently and with limited success in advancing the instructional objectives of the lesson. During an observation on 10/2/13, Dr. Viswanathan began the lesson with a daily warm-up. Students then transitioned into groups of four to complete assignment in the textbook. Dr. Viswanathan wanted to explain a problem and said to the class, "excuse me". He quickly started explaining the problem but did not have everyone's attention. During the post-observation conference, Dr. Viswanathan was given six written steps to improve group work which would provide opportunities for interaction and establishing achievement expectations. He was also reminded to use the Capturing Kids Heart time-out strategy and utilize wait time. Dr. Viswanathan was open to trying new strategies and sought ways to ensure successful learning for all students. During all observations, he provided feedback to individual students as well as student groups and/or the whole class.

PROFESSIONAL RESPONSIBILITIES

Dr. Viswanathan participated in the school improvement process by working collaboratively with staff to analyze data and identified school goals. He completed the following site-based professional development trainings: Reading Apprenticeship/Rituals and Routines/Datawise on 8/19/13, Workshop Model/Curriculum Engine (Driving for Results) on 8/20/13, Workshop Approach for Math on 9/19/13, Workshop Model/Teacher Invitation on 10/24/13, New Teacher Debriefing (Personal Effectiveness) on 11/4/13, and Teacher Compass and PDP on 11/13/13. Communication with students and parents were maintained through Easy Grade-pro Web, and phone calls. Dr. Viswanathan complied with all school and district policies and met all the standards in the Professional Responsibilities domain at a satisfactory level.

IMPROVEMENT GOALS/DIRECTIONS:

1. Weekly upload lesson plans on Curriculum Engine that must comply with Clark County School District Regulation 6122. Review of lesson plans will be utilized to monitor this direction.
2. Utilize the components of an effective lesson and basic principles of learning during daily instruction, including: a daily objective, a warm-up/bell-work activity, concept and skill development, guided practice, independent practice, grouping strategies, assessment measures, and specifically a closure activity. Review of lesson plans and observations will be utilized to monitor this direction.
3. Daily, implement the Workshop Model with fidelity in order to deliver classroom instruction in which students are actively engaged in their own learning and the teacher becomes a facilitator of student learning; include effective delivery of an opening lessons, implementation of a student work period, and employ an engaging closing in which students actively reflect on their learning for the day and look forward to the next step in their own learning. Review of lesson plans and observations will be utilized to monitor this direction.
4. To ensure the efficient management of the classroom, continue to seek assistance in developing, communicating and maintaining established procedures, routines, and expectations consistently.
5. On a daily basis, implement instructional strategies that pace lessons appropriately, minimize the amount of time the teacher presents to the class, and facilitate student-led work time and closure, in order to maximize students' engagement and their overall success. In order to enhance your instruction, increase student engagement and gauge student's level of academic mastery, utilize varied instructional strategies, approaches, and resources, aligned with instructional objectives.

Signature of Employee 11/25/13 Date

Sonia Houghton/Assistant Principal
Print/Type Name of Supervising Administrator

Signature 11/25/13 Date

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2nd Copy/Yellow: Supervising Administrator - Work Location File 3rd Copy/Pink: Employee

CCSD CLARK COUNTY SCHOOL DISTRICT

CLARK COUNTY SCHOOL DISTRICT

PERSONNEL RECORD - CONTINUATION SHEET

Name: Tenkasi M. Viswanathan Social Security No. (last 4 digits): [redacted] CCF- 8 Date: 11/25/13 Page No: 4 of 4

Assistance Provided:

Dr. Viswanathan was provided with the following support and assistance:

- The supervising administrator referred Dr. Viswanathan to the Peer Coaching Assistance Team. The Peer Coaching Assistance Team assisted Dr. Viswanathan in classroom management, components of an effective lesson, delivery of instruction, and teacher feedback to students. Communication and assistance from peer coaches: 9/8/13 (Professional Discussion), 10/8/13, 10/10/13, 10/15/13, 10/18/13, (Training/Supplemental Training), 10/8/13 and 10/15/13 (Classroom Observations), 10/10/13, 10/15/13, and 10/18/13 (Other Activities). Western Project Facilitator also created power points to guide teaching for Dr. Viswanathan.
- Dr. Viswanathan attended training on the Workshop Model PD by external provider coach on 10/24/13.
- Dr. Viswanathan had post-observation meetings with his supervisor, in which planning and preparation, content knowledge, student assessment, classroom management, components of an effective lesson, instructional strategies, pacing and classroom organization were discussed.

Assistance to be Provided:

- A second PCA referral will be issued to Dr. Viswanathan for assistance from the Peer Coaching Assistance Team during the second quarter. The Peer Coaching Assistance team will continue to assist Dr. Viswanathan in his classroom management, components of an effective lesson, delivery of instruction, and daily lesson planning.
- Dr. Viswanathan will meet weekly with his supervising administrator to discuss planning and preparation, student assessment, classroom management, and instruction, including: components of an effective lesson, instructional strategies, pacing, and accommodations and modifications.

☐ Check here if the following statement is applicable.

Please be advised that, pursuant to Nevada Law, your contract may not be renewed for next school year. If you receive two evaluations for this school year which designate your performance as 'unsatisfactory' and if you have another evaluation remaining this school year, you may request that the evaluation be conducted by another administrator. You may also request, to the administrator who conducted the evaluation, reasonable assistance in correcting the deficiencies reported in the evaluation for which you request assistance, and upon such request, a reasonable effort will be made to assist you in correcting those deficiencies.

I hereby attest that this has been explained, and I understand this statement. X_____
Employee Initial

TM Viswanathan 11/25/13
Signature of Employee Date

Sonia Houghton/Assistant Principal
Print/Type Name of Supervising Administrator

S Houghton 11/25/13
Signature Date

031 Distribution: Original/White: Area Associate/Division Superintendent, then Licensed Personnel Services, Human Resources Division
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EXHIBIT 2

[redacted] Vis

Submit by Email | Print Form

2013-2014 School Year

CLARK COUNTY SCHOOL DISTRICT
LICENSED EMPLOYEE APPRAISAL REPORT

CCF-8 Electronic Version (Rev. 10/13)

Viswanathan	Tenkasi	M.	[redacted]
Employee's Last Name	Employee's First Name	Middle Name/M.I.	SSN (last 4 digits)
Western High School	451	☐ ES ☐ MS/JHS ☑ HS ☐ MS/JHS/HS ☐ SSSD	#1 ☐ #2 ☑ #3 ☐ If Probationary, Evaluation No.
School/Location Name	School Location Code (3-digit)		Yrs. 1 Mos. 0 Length of Time in CCSD
Pre-Calculus & Math of Pers. Finance	12th grade	From 11/26/13 to 1/30/14	1/30/14
Assignment	Grade Level	Observation Dates(example: dd/mm/yy)	Conference Date

Page 1 of 5

Report and analysis of observations, performance, and other factors which may be pertinent to performance; probationary/postprobationary status, date of last evaluation, and directions.

I certify that I have supervised and evaluated the professional performance of the above named ☑ probationary ☐ postprobationary employee, and I certify that to date this school year his/her overall performance ☐ is ☑ is not satisfactory.

LEVELS OF PERFORMANCE

Level 4	Performance exceeds standards consistently at a distinguished level.	Level 2	Performance approaches standards and/or does not consistently meet standards. *
Level 3	Performance consistently meets standards and may occasionally exceed standards in some areas.	Level 1	Performance is below standards and is not satisfactory. *

*Any area(s) marked Level 1 or 2 require documentation. Any area(s) marked Level 1, or 8 or more areas marked Level 2 results in an overall rating of "Not Satisfactory."

PROFESSIONAL DOMAINS

PLANNING AND PREPARATION	4	3	2	1
PROFESSIONAL STANDARDS				
1. Instructional planning was documented in written lesson plans and based on adopted curriculum documents and standards.				✓
2. Content knowledge was demonstrated in planning.				✓
3. Planning reflected knowledge of student achievement, access/equity, students' interests and backgrounds, and other site-specific demographic data.				✓

ASSESSMENT OF STUDENT ACHIEVEMENT	4	3	2	1
PROFESSIONAL STANDARDS				
1. Student achievement, access/equity, and other site specific demographic data were analyzed.		✓		
2. Desired results for student learning/achievement were identified, measurable, and used for instructional planning to determine and monitor student progress.			✓	
3. Assessment regulations and guidelines were followed.		✓		

LEARNING ENVIRONMENT	4	3	2	1
PROFESSIONAL STANDARDS				
1. An academic focus and on-task behavior were maintained.			✓	
2. A classroom management/discipline plan was in place, communicated and maintained.			✓	
3. Respect and courtesy were modeled by the teacher in student and parent interactions.		✓		
4. The physical environment supported the teaching/learning process.		✓		

INSTRUCTION	4	3	2	1
PROFESSIONAL STANDARDS				
1. The components of an effective lesson and the basic principles of learning were used when providing instruction.			✓	
2. Varied instructional strategies, approaches, and resources, aligned with instructional objectives, engaged students in learning.			✓	

INSTRUCTION (continued)	4	3	2	1
3. Lessons had a clearly defined structure and pacing was appropriate.			✓	
4. Flexible instructional groupings were utilized.			✓	
5. Accommodations and/or modifications were used in alignment with instructional objectives to meet the needs of students.		✓		
6. Feedback to students was provided and promoted student success and achievement.		✓		

PROFESSIONAL RESPONSIBILITIES	4	3	2	1
PROFESSIONAL STANDARDS				
1. The employee participated in the school improvement process and implemented school improvement goals.		✓		
2. The employee addressed identified individual improvement goals/directions.		✓		
3. The employee participated in on-going professional development to improve content knowledge and pedagogical skills.		✓		
4. The employee participated in required job-related meetings and activities and performed assigned duties.		✓		
5. The employee maintained student records.		✓		
6. The employee provided communication to parents/ guardians and students related to behavior and achievement.		✓		
7. The employee worked professionally with administration, staff, parents, and community.		✓		
8. The employee used multicultural resources, materials and activities to support multicultural literacy, awareness, and appreciation.		✓		
9. The employee complied with all school and district policies and regulations, as well as state and federal laws applicable to teachers.				✓

A narrative, which includes a PERFORMANCE SUMMARY and IMPROVEMENT GOALS/DIRECTIONS, must be included on the following page.

Viswanathan 01/30/14 — *Signature of Employee, Date

Sonia Houghton/Assistant Principal — Print/Type Name of Supervising Administrator

Houghton — *Signature

1/30/14 — Date

*A signature on this summary does not necessarily mean the licensed employee agrees with the opinions expressed, but merely indicates the employee has read the analysis, had an opportunity for discussion with his/her immediate supervisor, and understands that he/she has the privilege of discussing it with the Human Resources Division.

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KC 2/26/14

CCSD

CCF-8 (Rev. 11/11)

CLARK COUNTY SCHOOL DISTRICT
LICENSED EMPLOYEE APPRAISAL REPORT NARRATIVE

Name: Tenkasi M. Viswanathan | Social Security No. (last 4 digits): [redacted] | Date: 1/30/14 | Page No: 2

PERFORMANCE SUMMARY:

Dr. Tenkasi M. Viswanathan is a probationary teacher with the Clark County School District. This evaluation is the second of three appraisals he will receive during the current school year. He is in his first year with the Clark County School District and his first year at Western High School. Currently, Dr. Vizwanathan teaches two sections of Pre-Calculus, three sections of Math of Personal Finance, and one section of Fundamentals 600. This appraisal report represents a synthesis of classroom observations conducted on 12/2/13, 12/13/13, 12/16/13, 1/7/14, and 1/9/14 for a total of 132 minutes; post-observation conferences on 12/10/13 and 1/13/14. This appraisal includes a review of professional artifacts and other supervisory interactions in accordance with the NRS 391 and Clark County School District's Policies and Regulations. The performance standards for each of the professional domains, as outlined in the Levels of Performance Rubric, serve as the basis for this evaluation. At this time, Dr. Viswanathan has not satisfactorily met the Clark County School District's Performance Rubrics during this evaluation period.

Previous Goals/Directions:

1. Weekly upload lesson plans on Curriculum Engine that must comply with Clark County School District Regulation 6122. Review of lesson plans will be utilized to monitor this direction. Dr. Viswanathan did not meet this directive on a consistent basis. Dr. Viswanathan failed to upload lesson plans for the month of December 2013 and January 6-17, 2014. Therefore, this direction will be reissued.
2. Utilize the components of an effective lesson and basic principles of learning during daily instruction, including: a daily objective, a warm-up/bell-work activity, concept and skill development, guided practice, independent practice, grouping strategies, assessment measures, and specifically a closure activity. Review of lesson plans and observations will be utilized to monitor this direction. Dr. Viswanathan did not meet this directive on a consistent basis, specifically, to include closure during lessons observed. Therefore, this directive will be reissued.
3. Daily, implement the Workshop Model with fidelity in order to deliver classroom instruction in which students are actively engaged in their own learning and the teacher becomes a facilitator of student learning; include effective delivery of an opening lessons, implementation of a student work period, and employ an engaging closing in which students actively reflect on their learning for the day and look forward to the next step in their own learning. Review of lesson plans and observations will be utilized to monitor this direction. Dr. Viswanathan failed to implement the Workshop Model during each lesson daily. Therefore, this directive will be reissued.
4. To ensure the efficient management of the classroom, continue to seek assistance in developing, communicating and maintaining established procedures, routines, and expectations consistently. Dr. Viswanathan did not meet this directive on a consistent basis. During observations on 12/13/13 and 12/16/13, Dr, Viswanathan did not address student behavior, specifically on 12/16/13, ten out of twenty-four students were off task. Therefore, this directive will be reissued.
5. On a daily basis, implement instructional strategies that pace lessons appropriately, minimize the amount of time the teacher presents to the class, and facilitate student-led work time and closure, in order to maximize students' engagement and their overall success. In order to enhance your instruction, increase student engagement and gauge student's level of academic mastery, utilize varied instructional strategies, approaches, and resources, aligned with instructional objectives. Dr. Viswanathan did not meet this directive on a consistent basis. On 12/13/13, there was no closure at the end of the period. Therefore, this directive will be reissued.

IMPROVEMENT GOALS/DIRECTIONS:

1. Weekly upload lesson plans on Curriculum Engine one full week in advance that comply with Clark County School District Regulation 6122. Review of lesson plans will be utilized to monitor this direction.
2. Analyze student data, formal or informal assessments, to develop daily instructional lessons to improve learning for all students.
3. Utilize the components of an effective lesson and basic principles of learning during daily instruction, including: a daily objective, a warm-up/bell-work activity, concept and skill development, guided practice, independent practice, grouping strategies, assessment measures, and specifically a closure activity. Review of lesson plans and observations will be utilized to monitor this direction.
4. Daily, implement the Workshop Model with fidelity in order to deliver classroom instruction in which students are actively engaged in their own learning and the teacher becomes a facilitator of student learning; include effective delivery of an opening lessons, implementation of a student work period, and employ an engaging closing in which students actively reflect on their learning for the day and look forward to the next step in their own learning. Review of lesson plans and observations will be utilized to monitor this direction.

Signature of Employee | Date 01/30/14 | Sonia Houghton/Assistant Principal Print/Type Name of Supervising Administrator | Signature | Date 1/30/14

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CCSD CLARK COUNTY SCHOOL DISTRICT

CCF-8 (Rev. 11/11)

CLARK COUNTY SCHOOL DISTRICT
PERSONNEL RECORD - CONTINUATION SHEET

Name: Tenkasi M. Viswanathan Social Security No. (last 4 digits): [redacted] CCF- 8 Date: 1/30/14 Page No: 3 of 5

IMPROVEMENT GOALS/DIRECTIONS contiued:

5. To ensure the efficient management of the classroom, continue to seek assistance in developing, communicating and maintaining established procedures, routines, and expectations consistently. This directive will be monitored by scheduled meetings with your immediate supervisor and review lesson plans on a weekly basis.
6. On a daily basis, implement instructional strategies that pace lessons appropriately, minimize the amount of time the teacher presents to the class, and facilitate student-led work time and closure, in order to maximize students' engagement and their overall success. In order to enhance your instruction, increase student engagement and gauge student's level of academic mastery, utilize varied instructional strategies, approaches, and resources, aligned with instructional objectives. Review of lesson plans and observations will be utilized to monitor this direction.

X Check here if the following statement is applicable.

Please be advised that, pursuant to Nevada law, your contract may not be renewed for the next school year. If you receive an 'unsatisfactory' evaluation on the first or second evaluation, or both evaluations for this school year, and if you have another evaluation remaining this school year, you may request that the evaluation be conducted by another administrator. You may also request, to the administrator who conducted the evaluation, reasonable assistance in correcting the deficiencies reported in the evaluation for which you request assistance, and upon such request, a reasonable effort will be made to assist you in correcting those deficiencies.

I hereby attest that this has been explained, and I understand this statement. X TMV
Employee Initial

On October 4, 2013, Dr. Vizwanathan and his supervisor established Individual Professional Growth Goals for the 2013-2014 school year. Dr. Viswanathan has and will continue to make progress toward the following Individual Professional Growth Goals:

1. Deliver lessons with clearly defined structure as engineered in the lesson plan template of the Curriculum Engine. Will ensure planning and delivery of the components of an effective lesson and the basic principles of learning; will implement the workshop model that it advocates.
2. Maintain an academic focus and on-task behavior. Will use posters, the Elmo, and other means to increase student engagement on curricular goals and tasks. Will aim to have students assume responsibility for meaningful productivity, and on-task behavior without the need for continuous monitoring.

Tm Viswanathan 01/30/14
Signature of Employee Date

Sonia Houghton/Assistant Principal
Print/Type Name of Supervising Administrator

S Hough 1/30/14
Signature Date

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CCSD CLARK COUNTY SCHOOL DISTRICT

CLARK COUNTY SCHOOL DISTRICT
PERSONNEL RECORD - CONTINUATION SHEET

Name: Tenkasi M. Viswanathan Social Security No. (last 4 digits): [redacted] CCF- 8 Date: 1/30/14 Page No: 4 of 5

PLANNING AND PREPARATION

Mr. Mason did not perform in a satisfactory manner in all standards in the domain of Planning and Preparation. There were no lesson plans posted on Curriculum Engine for the month of December 2013 as well as January 6-17, 2014 as reviewed on 1/13/14. During an observation on 12/4/13, the objective on the board was a bit confusing. Written on the board for the lesson's objective was, "Simple interest". During a post-observation conference on 12/10/13, Dr. Viswanathan was directed to create an area on the whiteboard designated for the objective, agenda and homework. Assistance was provided by the learning strategist in placing electrical tape and creating the area. During an observation on 12/16/13, it was noted that the lesson's objective was written on the designated area on whiteboard but was unclear. Written on the board was, "Warm-up, Counting Trees". Dr. Viswanthan stated he did not have a lesson plan for that day, 1/9/14. His supervisor decided to review other lesson plans to use as the example but noticed that other lesson plans were not completed. Failure to maintain lesson plans was documented on 1/24/14. Dr. Viswanathan confirmed he did not post lesson plans in Curriculum Engine for the month of December 2013 and January 6-17, 2014. Dr. Viswanathan was directed to ensure weekly upload of his completed lesson plans into Curriculum Engine utilizing the Workshop Model, one full week in advance. **(Direction #1)** Furthermore, 1/16/14 Dr. Viswanathan was directed to bring hard copies of his lesson plans for the months of December and January for the 1/21/14, scheduled meeting.

ASSESSMENT OF STUDENT ACHIEVEMENT

In the domain of Assessment of Student Achievement, Dr. Viswanathan performed in a satisfactory manner on two standards, but did not consistently meet one standard. Dr. Viswanathan inconsistently utilized the data to plan for daily instruction and delivery. He maintained assessment records, but inconsistently utilized achievement data when writing lesson plans since lesson plans were not created for the month of December and January 6-17, 2014. Dr. Viswanathan was directed to analyze student data, formal and informal assessments, to develop daily instructional lessons to improve learning for all students. **(Direction #2)** Dr. Viswanathan did not differentiate his instruction based on student data during all classroom observations. Dr. Viswanathan has the opportunity to work with his grade-level colleagues and department during Structured Teaching Planning Time (STPT). He assessed his students regularly by walking around and monitoring student work as observed during all observations. During an observation on 12/2/13, Dr. Viswanathan circulated the classroom assisting students and writing down information on his clipboard as he assesses student work.

LEARNING ENVIRONMENT

In the Learning Environment domain, Dr. Viswanathan consistently performed in a satisfactory manner on two standards and approached two standards. Dr. Visvanathan did not consistently maintain a classroom with an academic focus and on-task behavior. During observations on 12/13/13 and 12/16/13, the academic focus was not clearly stated. Additionally, students were not actively engaged in meaningful learning activities. During an observation on 12/13/13, one student had his head phones on and was listening to music while also using his cell phone to text. Dr. Viswanathan's supervisor had to confiscate the electronic devises as he was not addressed by teacher. During another observation on 12/16/13, students were talking while Dr. Viswanathan was giving whole group instruction. Noise continued to increase as the lesson continued. Ten out of twenty-four students were off-task. One student was reading a book and another student's cell phone was confiscated by Dr. Viswanathan's supervisor. At no time during instruction were the students reminded of the classroom expectations. On 12/10/13, Dr. Viswanathan was directed to repost his social contracts and organize the whiteboard so that students could understand the day's objective and agenda. **(Direction #5)** During the first quarter, Dr. Viswanathan established a management plan, but did not consistently maintain the plan throughout this evaluation period. For example on, 12/2/13, Dr. Viswanathan did not utilize the baskets that were provided to collect homework assignments. Durig a post observation conference on 1/13/14, Dr. Viswanathan was directed to organize room by setting up a table work station where he could collect and return student work. He also met with the learning strategist to improve his management plan on 12/9/13 and 12/10/13. He interacted with students in a friendly manner and demonstrated caring and respect.

INSTRUCTION

In the Instruction domain, Dr. Viswanathan met two standards and approached four standards. Dr. Viswanathan demonstrated a general understanding and knowledge of the Components of an Effective Lesson. During observations on 12/2/13, 12/16/13, 1/7/14, and 1/9/14, he used the components or principals inconsistently when providing instruction. For example on 12/2/13 and 12/13/13, there was no closure. During all observations, Dr. Viswanathan utilized whole group instruction for his mode of instructional delivery. During all observations, students were seated in groups of four or more, however, there was no evidence of specific instruction or expectations given for each group during student work time. As observed on 12/12/13, students' desks were arranged in groups, students were not engaged in learning through group participation. During the same observation on 12/12/13, the warm up activity took fourteen minutes. Four out of eighteen students did not have a warm-up completed. The students were then asked to open their textbook. Five students did not have a book when a student was prompted to read a section. A student read the question however; the class was not engaged and talking continued amongst students.

Signature of Employee — Date 01/30/14

Sonia Houghton/Assistant Principal
Print/Type Name of Supervising Administrator — Signature — Date 01/30/14

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CLARK COUNTY SCHOOL DISTRICT

PERSONNEL RECORD - CONTINUATION SHEET

Name: Tenkasi M. Viswanathan Social Security No. (last 4 digits): [redacted] CCF- 8 Date: 1/30/14 Page No: 5 of 5

INSTRUCTION continued

Dr. Viswanathan ignored the talking and continued the lesson. Students were not given specific directions to take notes or write questions down. It was unclear of what the learning objectives for the day were. Dr. Viswanathan circulated the class. There was no closure. On 12/10/13, Dr. Viswanathan was directed to read the objective and agenda to students at the beginning of each period. He was also directed to utilize wait time during instruction to ensure students are actively participating and to provide closure on a daily basis. **(Directions #3 and #6)** Engaging students in learning was discussed at a post observation conference on 12/10/13. Furthermore, Dr. Viswanathan accepted the assistance from the learning strategist on 12/9/13 to provide instructional support concerning instructional delivery. During an observation at the end of the period on 12/13/13, Dr. Viswanathan was circulating the class assisting students. There was no closure at the end of the period. He did not provide an opportunity for students to articulate both what they have learned or its significance. During all observations students were able to work with their groups to complete their work. However students were non-compliant/disengaged. During observations on 1/7/14 and 1/9/14, Dr. Viswanathan did not implement the Workshop Model to deliver classroom instruction. Students were not actively engaged in their own learning. There were no objectives on the board to assist in an effective delivery of opening lessons. During a post observation conference on 1/13/14, Dr. Viswanathan was directed to implement the Workshop Model with fidelity on a daily basis by teaching the skills and utilizing strategies during a work session and include cooperative learning; which entails academic conversations between students. **(Direction #4)** Dr. Viswanathan provided feedback to students and promoted student success while he circulated the class during all observations.

PROFESSIONAL RESPONSIBILITIES

In the Professional Responsibilities domain, Dr. Viswanathan met the standards on eight indicators and approached standards on one indicator. Specifically, Dr. Viswanathan failed to implement the components of the Workshop Model into his daily lessons, as evidenced by the observations completed on 12/2/13, 12/13/13, 12/16/13, 1/7/14, and 1/9/14. During the post-observation conferences conducted on 12/10/13 and 1/13/14, Dr. Viswanathan was directed to write complete lesson plans using all the components of the Workshop Model template; which is part of the school improvement plan. **(Direction 1,2, 3, 4, 6)** Dr. Viswanathan failed to comply with school policies and regulations regarding lesson plans. He also failed to regularly upload completed lesson plans into Curriculum Engine. Dr. Viswanthan was directed to have completed lesson plans uploaded on a weekly basis. During each post-observation, Dr. Viswanathan and his supervisor sought ways to improve his instruction. Dr. Viswanathan was open to improve his instruction, but we continued to assist him in to comply with the Workshop Model for student achievement. He provided assistance on homework and opportunities for students to completed make-up work after school. Dr. Viswanathan participated in Professional Learning Community (PLC) activities with the Moapa House and his department. During the progress report time period, grades were uploaded to ParentLink and all progress reporting was completed in a timely manner. Communication with students and parents were maintained through Easy Grade-pro Web, and phone calls.

Assistance Provided:

Dr. Viswanathan was provided with the following support and assistance:

- The supervising administrator referred Dr. Viswanathan to the Peer Coaching Assistance Team for the second quarter. The Peer Coaching Assistance Team assisted Dr. Viswanathan in classroom management, components of an effective lesson, delivery of instruction, and teacher feedback to students. Communication and assistance from peer coaches: 12/1/13, 12/3/13, 12/4/13, 12/11/13, 12/12/13, and 12/13/13.
- Dr. Viswanathan had post-observation meetings with his supervisor, in which planning and preparation, content knowledge, student assessment, classroom management, components of an effective lesson, instructional strategies, pacing and classroom organization were discussed.
-

Assistance to be Provided:

- A third PCA referral will be issued to Dr. Viswanathan for assistance from the Peer Coaching Assistance Team during the third quarter. The Peer Coaching Assistance team will continue to assist Dr. Viswanathan in his classroom management, components of an effective lesson, delivery of instruction, and daily lesson planning.
- Dr. Viswanathan will meet weekly with his supervising administrator to discuss planning and preparation, student assessment, classroom management, and instruction, including: components of an effective lesson, instructional strategies, pacing, and accommodations and modifications.

Tenviswanathan 01/30/14
Signature of Employee Date

Sonia Houghton/Assistant Principal
Print/Type Name of Supervising Administrator

S Houghton 1/30/14
Signature Date

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EXHIBIT 3

[redacted] Vis

9998-500021

CLARK COUNTY SCHOOL DISTRICT

CCF-21(Rev. 7/03)

RECORD OF PERSONNEL NOTIFICATION

Date of Notification: 1/24/14

Employee: Tenkasi M. Viswanathan

Assignment: Pre-Calc/Math Pers. Finance/Math Fund

Work Location: Western HS 451/ Math Department

Soc. Security #: [redacted]

[X] Licensed [ ] Unified [ ] School Police [ ] Support Staff

Page 1 of 2

Specific Nature of Notification: **Oral Warning**

This document will serve notice that your performance is seriously below standard and must improve.

The facts upon which this document is based are as follows:

During a post-observation conference at approximately 3:30 pm, on 1/13/14, together we reviewed your lesson plans on Curriculum Engine. In review of your lesson plans dated December 2-20, 2013 and January 6-17, 2014, it was noted that there were no lesson plans uploaded in Curriculum Engine.

On 1/21/14, an investigatory conference was held. Present at the conference were you; Jahvel Manyvong, CCEA Union representative; Susie Bageant, Assistant Principal; and Sonia Houghton, Assistant Principal. During the meeting, you were notified that your performance in the domain of Professional Responsibilities was not satisfactory and your performance must improve. On January 16, 2014, you were directed to bring hard copies of your lesson plans for the months of December 2013 and January 2014 for this conference. You only provided two lesson plans, one dated 1/21/14 and another dated 11/20/13 for Personal Finance but did not have written lessons for December 2-20, 2013 and January 6-17, 2014. You stated you have notes that you used during instruction for those dates; however you needed more time to write up the lesson plans. You stated that you were unclear of the expectations for the lesson plans; however your lesson plans have been uploaded prior to December 2013. It was explained to you that in order to deliver classroom instruction Western High School has adopted the Workshop Model which was to be utilized when writing lesson plans. The Workshop Model was then further explained to you by stating that students should be actively engaged in their own learning which then leads the teacher to become a facilitator of student learning including effective delivery of an opening lesson, implementation of a student work period, and employing an engaging closing in which students actively reflect on their learning for the day and look forward to the next step in their own learning. In order to implement the Workshop Model with fidelity, weekly lesson plans should be uploaded one week in advance on Curriculum Engine. You stated that the only training for Curriculum Engine was the one at the "hotel" at the beginning of the year. Per school documentation, you have attended the Workshop Model/Curriculum training on 8/20/13 conducted by WHS learning strategists, the Workshop Approach for Math training conducted on 9/19/13 by WHS learning strategist, and the Workshop Model/Teacher Invitation conducted on 10/24/13 from our external provider. You understood that lesson plans need to be uploaded one week in advance "preferably on Friday before Monday".

Tmviswanathan 01/24/14 SHoughton 1/24/14

*Signature of Employee Date Signature of Supervising Administrator

[X] A response will be made within timelines established by the appropriate negotiated agreement.

[ ] A response was submitted on _____ Date

Tmv

Signature of Administrator Receiving CCF-9

* A signature on this summary does not necessarily mean the employee agrees with the opinions expressed, but merely indicates the employee has received this notice.

DISTRIBUTION: Original - Appropriate Region Supt., then Assoc. Supt. Human Resources Division 1st Copy - Supervising Administrator - Work Location File 2nd Copy – Employee

9998-500010

CCF-10 (Rev. 1/98)

CLARK COUNTY SCHOOL DISTRICT

PERSONNEL RECORD - CONTINUATION SHEET

Name *Tenkasi M. Viswanathan* SS# [redacted] CCF- 21 Date *1/24/14* Page No 2 of 2

Previously, on August 22, 2013, you met with me and signed the Supervisory Conference Checklist. In this document you were directed to have lesson plans "written with adequate detail, one week in advance using the WHS Workshop Model lesson plan template on the Curriculum Engine".
You are hearby directed to:

1. Ensure weekly upload of lesson plans into Curriculum Engine one full week in advance.
2. Meet with your immediate supervisor to review lesson plans on a weekly basis. Please schedule the meeting via interact at your convenience.
3. Immediately seek your supervisory if you are unclear of a directive or need assistance.

A repeat of this miconduct or failure to improve may result in an unsatisfactory appraisal report, admonition and/or suspension, or dismissal.

I continue to be available to provide supervisory direction and assistance to help you meet these expectations and fulfill your job responsibilities.

Tmviswanathan 01/24/14 — 1/24/14

SIGNATURE OF EMPLOYEE DATE SIGNATURE OF SUPERVISING ADMINISTRATOR

DISTRIBUTION: Original - Appropriate Region Supt., then Assoc. Supt. Human Resources Division 1st Copy - Supervising Administrator - Work Location File 2nd Copy – Employee

EXHIBIT 4

9998-500021

CLARK COUNTY SCHOOL DISTRICT

CCF-21(Rev. 7/03)

RECORD OF PERSONNEL NOTIFICATION

Date of Notification: *3/27/14*

Employee: *Tenkasi M. Viswanathan*

Assignment: *Pre-Calc/Math Pers. Finance/Math Fund*

Work Location: *Western HS 451/ Math Department*

Soc. Security #: [redacted]

[X] Licensed [ ] Unified [ ] School Police [ ] Support Staff

Specific Nature of Notification: **WRITTEN WARNING**

This document will serve notice that your performance is seriously below standard and must improve.

The facts upon which this document is based are as follows:

During a review of your gradebook on February 27, 2014, you failed to enter 3rd quarter assignment grades for each student. There were assignments that had blank entries in each period throughout the gradebook which does not show accurate data of student achievement. Specifically, first period only had three assignments entered for the 5 weeks into the 3rd quarter, there were 153 blank entries for student assignments for second period, 392 blank entries for third period, 64 blank entries for fourth period, 135 blank entries for sixth period, and 195 blank entries for seventh period.

On March 14, 2014, an investigatory conference was held. Present at the conference were you; Ed Alvarado, CCEA representative); Adam Maxwell, Assistant Principal; and Sonia Houghton, Assistant Principal. Despite being directed to bring written explanation of your grading procedures and grade calculations, as well as, evidence of graded assignments and scores, you did not. You stated that you forgot and remembered ten minutes before the meeting. During the meeting you were asked the following question, "If we take a look at your 3rd quarter grades as an example for 2nd period (Math of Personal Finance), you can see there are many blank entries for the student assignments. Student #1 has 8 grades entered and has an 80.9%. Student # 5 has 10 grades entered and has a 73.3%. Do you believe this is accurate data of student achievement?" You stated that this was not the final grade for you. During a post-observation conference on 2/20/14, you were directed to complete your gradebook by adding "mi" for missing assignments, "ab" for absent, and "ex" for excused. You were asked why you did not do this. You stated that you have been very busy. It was explained to you that you cannot identify learning outcomes that are measurable and specific on a weekly basis as to determine or monitor student progress as required under the grading policies. You confirmed that you understand that recording grades in Easy Grade Pro are a part of the district policies and regulations. You were reminded that record keeping in your gradebook and progress reports is of specific concern as parents are receiving inaccurate data of student achievement on a weekly basis through Parentlink. You mentioned that you enter 2 to 3 grades on a weekly basis however; grades are not accurate due to blanks shown on your gradebook. Specifically, shown from the example above.

*Signature of Employee — Date 03/27/14

Signature of Supervising Administrator — 3/27/14

☐ A response will be made within timelines established by the appropriate negotiated agreement.

☐ A response was submitted on _____ Date — Signature of Administrator Receiving CCF-9

* A signature on this summary does not necessarily mean the employee agrees with the opinions expressed, but merely indicates the employee has received this notice.

DISTRIBUTION: Original - Appropriate Region Supt., then Assoc. Supt. Human Resources Division 1st Copy - Supervising Administrator - Work Location

File 2nd Copy – Employee

9998-500010

CCF-10 (Rev.1/98)

CLARK COUNTY SCHOOL DISTRICT

PERSONNEL RECORD - CONTINUATION SHEET

Name *Tenkasi M.Viswanathan* SS# [redacted] CCF- 21 Date *3/27/14* Page No 2 of 2

You are hereby directed to:

1. Update your gradebook by the end of contracted time on the last day of the week.
2. Upload your gradebook in ParentLink on a weekly basis.
3. Include 2 to 3 grades per week for each and every student.
4. Post grades in your classroom on a weekly basis.
5. Grade and return assignments within a 3 day timeframe.
6. Grade makeup work and return to students within a 3 day timeframe.
7. Immediately seek your supervisor if you are unclear of a directive or need assistance.

A repeat of this misconduct or your failure to improve may result in further discipline and/or an unsatisfactory appraisal report. I will continue to be available to provide supervisory direction and assistance to help you to satisfactorily fulfill your job responsibilities.

Tmviswanathan 3/27/14 — 3/27/14

SIGNATURE OF EMPLOYEE DATE SIGNATURE OF SUPERVISING ADMINISTRATOR

DISTRIBUTION: Original - Appropriate Region Supt., then Assoc. Supt. Human Resources Division 1st Copy - Supervising Administrator - Work Location File 2nd Copy – Employee

EXHIBIT B

DECLARATION OF AMERICA LOMELI

I, America Lomeli, hereby declare as follows:

1. I am an employee of the Clark County School District (the "District") and make this declaration in support of the Board of Trustees of the Clark County School District's motion for summary judgment in Tenkasi Viswanthan v. Board of Trustees of the Clark County School District, Case. No. A-20-814819-C. I personally know of the matters stated herein and if called to testify, could do so competently.

2. I am presently a Personnel Analyst at the Employee-Management Relations Department within the Clark County School District (the "District"), and in such capacity I serve as custodian of records for the District's Employee-Management Relations department.

3. Attached hereto as Exhibit 1 is a true and accurate copy of Tenkasi Viswanathan's Probationary Contract with the District for the 2013-2014 school year, as contained in his personnel file.

4. Attached hereto as Exhibit 2 is a true and accurate copy of the Notice of Non-Reemployment to Plaintiff, as contained in his personnel file.

5. Attached hereto as Exhibit 3 are true and accurate copies of Articles 1, 4, 14, 36, and 40 contained in the Negotiated Agreement between the Clark County School District and the Clark County Education Association, as of the District's 2013-2014 school year.

6. Attached hereto as Exhibit 4 is a true and accurate copy of an email response to Mr. Visvanathan from the Employee-Management Relations Department concerning the grievance he submitted on March 28, 2014, as contained in the Employee-Management Relations file.

Pursuant to NRS 53.045, I declare under penalty of perjury that the foregoing assertions are true and correct to the best of my personal knowledge.

Executed on June 14, 2021

America Lomeli, Personnel Analyst
Employee-Management Relations
Clark County School District

EXHIBIT 1

CCSD
CLARK COUNTY
SCHOOL DISTRICT

PROBATIONARY CONTRACT BETWEEN EMPLOYEE AND TRUSTEES

2013 - 2014 SCHOOL YEAR

THIS CONTRACT between the Board of School Trustees of the Clark County School District, State of Nevada, the *Employer; and*

NAME TENKASI M VISWANATHAN
SOC SEC NO. (LAST FOUR DIGITS) [redacted]
SALARY $63,001 11 G P1

189 DAYS OF SERVICE REQUIRED
451 LOCATION

the Employee

WITNESSETH: That the Employee and Employer do hereby covenant, agree, and contract regarding employment for professional service with the Clark County School District in accordance with the Laws of Nevada and the rules and regulations prescribed by the State Board of Education and the State Superintendent of Public Instruction. This Contract may be abrogated only as provided by the Nevada Revised Statutes, or by mutual consent, or as provided by this Contract. This Contract is subject only to terms and conditions contained herein. The following conditions and the documents referred to therein are made a part of this Contract. The Contract contains and is the full and complete Contract of these parties.

1. An individual cannot be legally employed in the public schools of Nevada in a position requiring a license unless the individual holds a valid Nevada license of appropriate classification. Nevada Law places responsibility of proper licensing, at all times, upon the employee. A valid license is a condition precedent for obtaining and maintaining employment with the Clark County School District.
2. Salary is subject to deductions as required by the United States or State of Nevada, and where applicable for group insurance and credit union payments, and such other deductions approved by the Clark County Board of School Trustees, upon a request in writing by the employee. The employer agrees to pay the employee the salary provided in twenty-four (24) semi-monthly installments per annum.
3. The employee agrees to fully perform professional services in accordance with the terms and conditions of the Negotiated Agreement between the Clark County School District and the Clark County Education Association. The employee agrees to perform professional services in accordance with the calendar determined and adopted by the employer, which is incorporated by reference as though fully set forth. In the event that this Contract is not performed in its entirety, the salary the employee receives shall be prorated in the same proportion as the number of school days worked is to the number of actual days of service required by the adopted calendar. Deductions for absences shall be made according to the provisions of the Nevada Revised Statutes and the Negotiated Agreement.
4. The employer's obligation to pay and the employee's right to receive payment of compensation or of any installment under the terms of this Contract shall cease upon the discharge, death, or resignation of any employee or failure of the employee to perform in accordance with the terms of this Contract. Such payments shall cease from the date of suspension of any employee under the provisions of the employee's Contract, unless otherwise ordered by the Board. Payment shall be made only for services rendered.
5. Assignments involving additional pay for contract days beyond the normal contract year, extra duty, or special services may be made at any time during the life of this Contract. These assignments may be terminated at will at any time by the appointing school administrator or successor. The assignment does not establish and shall not be construed to establish any property right, nor does it establish an expectancy of continued assignment. Compensation for these services may be adjusted in proportion to the length of the assignment completed. A termination from extra duty, special services, or reduction or elimination of contract days beyond the normal contract year is not subject to the provisions of the Nevada Revised Statutes, 391.311 to 391.3197, inclusive.
6. The employee's position on the salary schedule shall be determined only once per contract year and shall be based upon the employee's status on the first day of each contract year. Any error or errors made in the compensation of the employee which occurs during the life of the Contract may be adjusted at the complete discretion of the employer.
7. A licensed employee may be suspended, dismissed, or not reemployed as provided by Chapter 391 of the Nevada Revised Statutes, as may be amended from time to time, and the Negotiated Agreement.
8. 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.
9. The services of the employee are to commence at such time and are to be performed in such school or schools and in such position or positions and at such place or places as may be designated during the term of this Contract by the Superintendent or the Superintendent's designated representative.
10. The employee reaffirms the oath to support the Constitution of the United States and the Constitution of the State of Nevada.
11. Policies and regulations of the Clark County School District, as adopted and as amended from time to time during the term of this Contract, are a part of this Contract and are incorporated by reference as though fully set forth.
12. The Negotiated Agreement adopted and approved between the Clark County Education Association and the Board of School Trustees of the Clark County School District and any amendments thereto are a part of this Contract and are incorporated by reference as though fully set forth.
13. Salaries will be paid in accordance with the Negotiated Agreement and any amendments thereto. CCSD may deduct from the wages or any other monies owed the employee the amount of any wage over-payment or any other monetary sums the employee owes the District.
14. SPECIAL NOTE – YEAR ROUND LICENSED PERSONNEL WORKING DAYS BEYOND 184: Licensed personnel assigned to year round schools may separately agree to contract days beyond the normal contract year of 184. Although PERS will be paid on such additional days and payment for those days will be spread evenly among the number of installments indicated, such an inclusion should not be construed to be a guarantee of continuation in such an assignment.
15. The School District, its officers, and employees shall be immune from any breach of this Contract caused by an incorrect date being produced, calculated, or generated by a computer or other information system that is owned or operated by the District, its officers, or employees, regardless of the cause of the error.
16. If this Contract is altered in any manner it becomes null and void.

IN WITNESS WHEREOF, the parties have subscribed their names in execution of this Contract, in the County of Clark, State of Nevada, on the date subscribed by the employee.

SIGNED Carolyn Edwards PRESIDENT — BOARD OF SCHOOL TRUSTEES

SIGNED Dean A. Wright CLERK

SIGNED X T M Viswanathan EMPLOYEE — DATE 11/07/13

GAC 4978

CCSD000001

EXHIBIT 2

CCSD
5100 WEST SAHARA AVENUE • LAS VEGAS, NEVADA 89146 • TELEPHONE (702) 799-5000
CLARK COUNTY
SCHOOL DISTRICT

BOARD OF SCHOOL TRUSTEES

Erin E. Cranor, President
Dr. Linda E. Young, Vice President
Patrice Tew, Clerk
Stavan Corbett, Member
Carolyn Edwards, Member
Chris Garvey, Member
Deanna L. Wright, Member

Pat Skorkowsky, Superintendent

April 25, 2014

Tenkasi Viswanathan
6441 Candlebrush Ln.
Las Vegas, NV 89107

NOTICE OF NON-REEMPLOYMENT OF PROBATIONARY EMPLOYEE

Dear Mr. Viswanathan:

You are hereby notified that the Clark County Board of School Trustees, at a regular meeting held on April 10, 2014, directed that you not be reemployed for the 2014-15 school year.

As you know, a probationary employee is employed on an annual basis and has no right to reemployment after a probationary contract year. Your employment with the Clark County School District shall end on the last day of this school year. The reasons for the decision of non-reemployment are as follows.

Failure to satisfy performance standards of the Clark County School District. Your attention is specifically directed to the CCF-8, Licensed Employee Appraisal Report(s), dated:

4/1/2014 1/30/2014

Your attention is also directed to any and all disciplinary documents you have received this school year, if any.

These documents and your entire personnel file are hereby incorporated by reference as though fully set forth.

No response is required.

Sincerely,

Pat Skorkowsky

Pat Skorkowsky
Superintendent of Schools

Receipt is hereby acknowledged of the foregoing one-page letter (Notice of Non-reemployment of Probationary Employee). My signature does not indicate agreement with the contents of this letter, only that I have read it and have received a copy.

Tenkasi Viswanathan

Witness

04/28/14
Date

EXHIBIT 3

Negotiated Agreement

between the

Clark County School District

and the

Clark County Education Association

CCSD
CLARK COUNTY
SCHOOL DISTRICT

CCEA
Clark County Education Association
the union
of teaching
professionals

2013-2014

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PREAMBLE

This Agreement is made and entered into by and between the Clark County School District in the City of Las Vegas, County of Clark, in the State of Nevada and the Clark County Education Association effective September 26, 2013.

WHEREAS, the Clark County Board of School Trustees in the City of Las Vegas, County of Clark, State of Nevada, and the Clark County Education Association, the parties of this Agreement recognize and declare that providing the highest standards of education for the children of the District is their mutual aim and that the character of such education depends predominantly upon the quality and morale of the teaching staff, and

WHEREAS, the Board of School trustees is the duly elected governing body of the District, with the powers as delegated by the laws of the State of Nevada, to formulate programs and policies for the operations of the District to be directed through their designated representative, the superintendent of schools, and

WHEREAS, the members of the teaching profession are particularly qualified to assist in the improvement of educational standards, and

WHEREAS, a free and open exchange of views is desirable and necessary by and between the parties hereto in their efforts to negotiate in good faith and with respect to wages, hours, and conditions of employment, and

WHEREAS, members of the teaching staff in the District have the right to join, or not join, any organization for their professional or economic improvements:

NOW THEREFORE IT IS AGREED:

ARTICLE 1
DEFINITIONS

1-1 The term "NRS 288," as used in this Agreement, shall refer to the Statutes of Nevada enacted by the 1969 Session of the Nevada Legislature and revised by subsequent sessions of the Nevada Legislature.

1-2 The term "Teachers," as used in this Agreement, shall refer to all licensed staff members eligible for membership in the Clark County Education Association.

1-3 The term "School Trustees," as used in this Agreement, shall mean the Board of School Trustees of the Clark County School District, and is the entity known as the Local Government Employer in NRS 288.060.

1-4 The term "Association," as used in this Agreement, shall mean the Clark County Education Association and is the entity known as the Employee Organization in NRS 288.040.

1-5 The term "School District," as used in this Agreement, shall mean the Clark County School District.

1-6 The term "Superintendent," as used in this Agreement, shall mean the Superintendent of Schools of the Clark County School District or his/her designated representative.

1-7 The terms "School Trustees" and "Association" shall include authorized officers, representatives, and agents. Despite references herein to "School Trustees" and "Association," as such, each reserves the right to act hereunder by committee or designated representative.

1-8 The term "School Year" shall be as defined in NRS 388.080 which states: "The public school year shall commence on the first day of July and shall end on the last day of June." The term "Contracted School Year," as used in this Agreement, shall mean the period of time of the first contracted day in the fall until the beginning of the next contracted school year.

1-9 The term "Board" means the Local Government Employee-Management Relations Board (EMRB), as provided in NRS 288.030.

1-10 The term "Agreement" refers to the name of this document, being the Professional Negotiation Agreement between the Clark County School District and the Clark County Education Association.

1-11 The term "Immediate Family" pertaining to the use of sick leave shall mean mother, father, husband, wife, son, daughter, brother, sister, mother-in-law, father-in-law, foster child, step child, step parent, or any person living in the immediate household of the employee. The term "Immediate Family" pertaining to the use of bereavement leave shall include those persons named above or any person living in the immediate household of the employee and also grandmother, grandfather, grandchild, brother-in-law, sister–in–law, son-in-law, daughter-in-law, foster parent, aunt and uncle.

1-12 The term "Personnel Officer," as used in this Agreement, refers to the Superintendent's designee.

1-13 The term "Day" shall be defined as any day in which a covered employee is required to be and is present on the job.

1-14 The term "Trust," as used in this Agreement, shall mean the Teachers Health Trust as established by the Clark County Education Association.

1-15 The term "Adjusted Hire Date", as used in this Agreement, shall mean the original hire date less any breaks in service as a result of resignation or leave of absence.

1-16 The Contract Maintenance Committee shall be a committee established and staffed by the parties to meet regularly and to discuss appropriate issues. The Committee shall meet at least four times annually on a quarterly basis.

ARTICLE 2
RECOGNITION

2-1 Excluding the Superintendent and employees paid on the Unified Administrative Salary Schedule, the School Trustees recognize the Association as the exclusive representative of all licensed personnel employed or to be employed by the School District.

2-2 It is acknowledged and understood by the parties hereto that recognition was and is granted in accordance with NRS 288. Recognition is granted only so long as the Association complies with the provisions of NRS 288, and it may only be withdrawn during the term of this Agreement in accordance with NRS 288.

2-3 All rights and privileges granted to the Association under the provisions of this Agreement shall be for the exclusive use of the Association subject to the exception of NRS 288.140.

ARTICLE 3
IMPASSE PROCEEDINGS

3-1 It is understood, if the parties fail to reach agreement as a result of direct negotiations, impasse proceedings may be invoked by either party in accordance with the provisions of NRS 288.

ARTICLE 4
GRIEVANCE AND ARBITRATION PROCEDURE

4-1 A grievance is defined as any dispute which arises regarding an interpretation, application or alleged violation of any of the provisions of this Agreement. A grievance may be filed by an employee of the School District covered by this Agreement, or by the Association. The Association may also file a grievance on behalf of a class of employees of the School District covered by this Agreement. A grievance shall not include any matter or action taken by the School Trustees, or any of its agents, for which relief is granted by the statutes of Nevada. No precedent shall be set between the District and the Association as a result of a grievance filed by an individual unless the Association submits the matter to Step Three, Arbitration.

4-2 The provisions of this Article are for the purpose of setting forth the full grievance procedure including the time limits relating to these procedures which may culminate in arbitration.

4-3 STEP ONE: INFORMAL DISCUSSION/MEDIATION

(a) Both parties encourage employees covered by this Agreement to resolve their problems with their principal or supervisor whenever possible. The provisions of this Article are not intended to preclude a teacher with a potential grievance from informally discussing the problem with his/her immediate supervisor prior to filing a formal grievance although such discussions are not part of the formal grievance procedure. In addition, utilization of the Step One discussion/mediation shall not be used against the employee. Further, the employee does so without waiving the due process rights stipulated under the CBA.

(b) If a teacher requests an informal discussion or mediation with the principal of the school, or the department director if the assignment is not school-based, concerning the subject matter of a potential grievance, such informal discussions or mediation will be held within twenty (20) days after the affected teacher or the Association first knew of the act or condition upon which the potential grievance is based. If the informal discussion or mediation does not occur within the twenty (20) day time limit, a grievance may be processed to the Pre-grievance Resolution process as set forth in Article 4-4 below, or to Step Two as set forth in Article 4-5 below.

(c) It is understood and agreed that all aspects of such informal discussions, if any, which take place shall have no bearing or precedential effect on the resolution of that grievance or any similar grievance filed in accordance with this Article.

(d) If a grievance is resolved as a result of an informal discussion, the principal or the grievant may reduce that resolution to writing prior to the termination of the time limits for filing a formal grievance. The absence of such a written resolution executed by both parties shall serve as notice to the grievant involved to file a formal grievance if that teacher so desires.

(e) Such informal discussions shall not modify the time limits set forth in Step Two of the formal grievance procedure.

(f) Either party to this Agreement may request mediation. Mediation may be utilized when both parties to the dispute voluntarily agree to participate to resolve disputes. Timelines are not suspended pending mediation, except with the written agreement of both parties. It is understood that the parties to the dispute are the District and the Association.

4-4 All grievances shall be processed as follows:

Pre-grievance Resolution

(a) If the grievance is not resolved at Step One or if the grievance was not presented at Step One, the Association may submit in writing a proposal of resolution of the potential grievance to the Associate Superintendent, Human Resources Division, or the Superintendent's designee before the Association files a formal written grievance.

(b) The proposal of resolution submitted to the Associate Superintendent, Human Resources Division, or the Superintendent's designee will include the violation of policy and/or contract and the requested resolution, along with a written narrative of the issue(s) and the document(s) involved.

(c) The traditional timeline to grieve, as outlined in Article 4-5 (a) below, will be suspended during the Pre-grievance Resolution process, provided that the proposal of resolution was submitted prior to the expiration of the traditional grievance timeline. The timeline will resume if and when either party terminates the Pre-grievance Resolution process in writing.

(d) All aspects of such informal discussions, if any, which take place shall have no bearing or precedential effect on the resolution of that grievance or any other grievance filed in accordance with this Article.

(e) In the event the Pre-grievance Resolution is denied or unresolved by either party in writing, the grievant may submit the matter to Step Two of the grievance procedure in accordance with the timelines provided in Article 4-5 below.

(f) The submission of a Pre-grievance Resolution in no way guarantees that the School District will grant the requested resolution.

4-5 STEP TWO: SCHOOL DISTRICT

(a) 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. An authorized signature on a United States postal "return receipt" or dated hand delivery receipt shall serve as proof of submission.

(b) In the event a grievance is submitted to Step Two in a timely manner, the Associate Superintendent, Human Resources Division, or the Superintendent's designee shall schedule a meeting with the grievant within seven (7) days to be held no later than twenty (20) days after receipt of the grievance unless timelines have been waived in writing.

(c) In the event a grievance is not resolved at this meeting, the Associate Superintendent, Human Resources Division, or the Superintendent's designee shall, within ten (10) days after the meeting, submit a written response to the grievance, to the individual and to the Association. Any resolution of the grievance in favor of the grievant shall be in writing and copies forwarded to both the affected employee and the Association. If the Associate Superintendent, Human Resources Division, or the Superintendent's designee fails to respond within ten (10) days as referred to in this paragraph or if a mutually agreed upon time extension is not agreed upon, the grievance shall be deemed in favor of the grievant.

(d) If a grievance is either denied, or not resolved at Step Two of the grievance procedure, the grievance shall be deemed withdrawn with prejudice unless timely filed at Step Three, Expedited Arbitration, in accordance with the provisions of Step Three below.

4-6 STEP THREE: EXPEDITED ARBITRATION

(a) In the event a grievance is not resolved during the Pre-grievance Resolution process, if any, or at Step Two of the grievance procedure, only the Association, not later than twenty (20) days after the expiration of the time limit set forth in Article 4-5(c) above, may request arbitration of the unresolved grievance in accordance with the provisions set forth below. A request for

arbitration shall be made by delivering to the Associate Superintendent, Human Resources Division, or the Superintendent's designee written notice of the intent to arbitrate. A United States postal "return receipt" or dated hand delivery receipt shall serve as proof of delivery.

The Association agrees that it will not delegate to anyone the right to arbitrate. This shall not be construed to mean that the Association may not determine the identity of its representative at such arbitrations.

It is agreed that the American Arbitration Association will provide full service administered arbitration under the American Arbitration Association's Labor Arbitration Rules.

(b) The panel of arbitrators in use at the end of the current school year shall continue in effect unless the District and the Association agree to change the number of arbitrators. If they are unable to agree on a new number of arbitrators to serve on the panel, the number shall be nine (9). If the District and the Association cannot agree on the new members of the panel, then the American Arbitration Association (AAA) will be asked to submit a list of twenty-seven (27) arbitrators from which the parties shall strike alternately until the appropriate number of arbitrators has been selected for the panel. By September 30th of each year, each party may remove one (1) arbitrator from the panel. The replacement(s) shall be selected in accordance with the procedure set forth above. All arbitrators must be AAA certified arbitrators.

4-7 The arbitrator shall not have the authority to modify, amend, alter, add to, or subtract from any provision of this Agreement. An arbitrator in the absence of the express written agreement of the parties shall have no authority to rule on any dispute between the parties other than one which qualifies as a grievance as defined in 4-1.

4-8 The arbitrator's decision shall be submitted in writing within thirty (30) school days of the close of arbitration or submission of post hearing briefs, whichever comes later, to all parties and shall be final and binding on all parties to this Agreement unless the arbitrator exceeds the powers specified herein, or is guilty of procedural error prejudicing the rights of either party as defined by federal labor law decisions.

4-9 The expenses of arbitration, including the arbitrator's fee/costs and expenses, and the cost of the arbitrator's transcript, shall be borne equally by the School District and the Association. However, all other expenses incurred by either party in the preparation or presentation of its case are to be borne solely by the party incurring such expenses. It is understood and agreed that only the Association has the right to request arbitration and that the Association shall be responsible for its share of the costs as agreed above for any arbitration requested by the Association.

4-10 No reprisals of any kind will be taken by the school trustees or by any member of the administration against any employee because of filing a grievance or because they participated in an orderly manner in the grievance procedure on behalf of the grievant and/or the Association. This provision shall not be construed as an agreement by the School District to pay the grievant or the association representative or any person present on their behalf for the time spent in processing a grievance in accordance with the provisions of this Article. It may occur during or outside the school day. In the event a grievance meeting is scheduled and held during the school day, those employees covered by this Agreement who participate in such a meeting may do so without loss of pay subject to the limitations contained in Article 17-1-2.

4-11 No provision of this Article shall be construed to prevent any individual employee covered by this Agreement from discussing any problem, dispute, or even a grievance as defined herein with any supervisor outside the presence of a representative of the Association. However, such discussion shall not relieve any party from compliance with other provisions of this Article in the absence of an express written waiver of such provisions.

4-12 The parties hereby recognize the existence of policies and administrative regulations of the School District to which the employees covered by this Agreement are bound, and which are subject to change by the school trustees of the School District. The parties agree that any disputes arising under the application and/or administration of such policies or regulations relating to subject matter not covered by the provisions of this Agreement shall be processed beginning with Step Two of the grievance procedure set forth herein. If the dispute is unresolved after Step Two of the grievance procedure, the dispute may only be processed as follows:

4-12-1 The person initiating the dispute may refer the dispute to the Board of School Trustees and must also inform the immediate supervisor and the Associate Superintendent, Human Resources Division, and/or the Superintendent's designee. When a dispute is so referred, the board or a committee designated by the board shall meet to informally discuss the subject matter of the dispute with the grievant and with representatives of the Association requested to be present by the grievant.

4-12-2 The Superintendent or designee shall prepare a review of the case for the Board of School Trustees and the committee designated by the board if a committee is so designated.

4-12-3 The Board of School Trustees or a committee designated by the board shall make a decision regarding the dispute as to the applicability or administration of district policies or regulations and communicate its decision in writing within thirty (30) days after the final meeting on the dispute.

4-13 It is the intention of the parties that grievances not resolved before the summer recess be resolved as quickly as is reasonably possible. Toward this goal, the parties agree that they will make a reasonable effort to conclude pending grievances before the opening of school in August.

4-14 In the event an employee(s) covered under this Agreement exercises the right to individually process a grievance without assistance from the Association, the District shall provide the Association:

4-14-1 A written copy of the grievance, the name of the grievant(s) to include the work site and the name of the grievant's appropriate administrator.

4-14-2 An opportunity to be present and to submit the Association's position at any meeting with the grievant(s) and at any grievance hearings, suspension hearings, evidentiary hearings, arbitration hearings, or any other meetings.

4-14-3 A written copy of the resolution of the grievance or arbitration.

4-15 A fund of three thousand dollars ($3,000.00) shall be earmarked and designated for the costs of specialized arbitration proceedings. The District, in its sole discretion,

shall have the ability to authorize disbursements from the fund which has been earmarked and designated under this provision.

4-16 A joint committee of District and Association representatives shall be formed to discuss the creation and implementation of a Grievance Review Committee.

ARTICLE 5
ASSOCIATION PRESIDENT

5-1 Upon written request from the Association's Executive Board, the District shall grant the president and vice president of the Association a two (2) year leave of absence without pay during the president's and vice president's term of office for professional and educational development, participation in community projects, visitations of schools and other Association business.

5-2 The president's and vice president's leave of absence shall commence with the beginning of the contract year and conclude at the end of the same contract year. The Association agrees to reimburse the School District on a current basis for the Public Employees Retirement System (PERS) contribution the District makes on behalf of the president and vice president.

5-3 If the president or vice president serves only one term in office (two years or less), the District agrees to return the president or vice president to the same teaching position held when the president's or vice president's leave was granted. If the program has been reassigned to a new location, then the president or vice president will return to the same location. If the president or vice president serves two or more terms in office, the District is not obligated to return the president or vice president to the same teaching position held when the leave was granted, unless the former position is vacant. The District agrees that if that position is filled, the District will return the outgoing president or vice president to as near an equivalent teaching position as the position held when the leave of absence was granted.

5-4 The president or vice president of the Association or their designee from NEA, NSEA, or CCEA staff shall be allowed to visit any school in the District upon prior notification of the principal of the particular school involved. Arrangements for the visit will be made prior to the actual visit with the principal, or in his/her absence, the acting administrator. The president, vice president, or designee shall confer with the principal or his/her designee upon arrival at the school to facilitate the purpose of the visit. Such visits are permitted for the sole purpose to view the educational program at that school or to assist a member and/or members of the staff at that school who have requested such assistance. Such visits are not to be used to campaign in any manner, either directly or indirectly, against School District representatives or the school trustees. The purpose of the visit must relate to the school being visited.

5-5 Only those vendors who are designated by the Association as Member Benefit Specialists may meet with teachers on school campuses under the following conditions:

5-5-1 Arrangements for the visit will be made prior to the actual visit with the principal or his/her designee.

5-5-2 Attendance at the meeting will be voluntary, and communications about the meeting must clearly indicate that attendance is voluntary.

ARTICLE 13
QUALIFICATIONS FOR TEACHERS

13-1 Subsequent to the effective date of this Agreement, all personnel hired as classroom teachers, for other than occupational courses, shall be required to have at least a bachelor's degree from an accredited college or university.

13-2 Unless an appropriate waiver has been granted by the Nevada State Department of Education, teachers employed by the School District shall comply with the Nevada teacher licensing requirements for the position to which they are assigned.

13-3 Teachers who are assigned to teach academic subjects not within their major or minor field of college preparation shall be evaluated based upon their performance while teaching subject areas within their major or minor areas. However, the teacher shall be evaluated in the non-major or non-minor classes on teaching techniques exclusive of subject matter content.

13-4 It is recognized that teachers on special assignment are not administrators.

ARTICLE 14
TEACHER PERSONNEL FILES

14-1 There are two (2) personnel files maintained on each teacher: one is kept at the central office and one is kept at the school location. These files shall not include the principal's "log." This "log" shall be maintained solely for the principal's own personal use and shall not be used as a personnel file. A copy of each written report, comment, reprimand, or any other document concerning a teacher which the School District places in either of the two (2) personnel files shall be provided to that teacher. The teacher shall sign the file copy of the written report, comment, reprimand, or any other document as acknowledgment of receipt of a copy of the document. Such signature shall not be construed as agreement to the contents of the document.

14-2 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. All copies of the employee's response will be countersigned by the receiving administrator or designee, and a copy of the response shall be attached to the supervisor's document. When an employee makes a written response to any written report, comment, reprimand, or any other document, the employee's response shall be made within thirty (30) school days, except in cases where a document is the subject of a grievance or is a suspension, and shall be attached to the supervisor's document. The thirty- day (30-day) timeline to respond to documents that are the subject of a grievance and/or suspension shall begin upon the completion of the grievance and/or suspension appeal process. Upon written request of the teacher, a waiver of the time limits by the supervisor, not to exceed ten (10) days, shall not be unreasonably withheld. When a copy of the supervisor's written document is forwarded to any other location, a copy of the employee's written response shall be attached.

14-3 Written reports, written comments, written reprimands, or other documents of School District origin, in the possession of the District, or to which the District has access, which have not been called to the teacher's attention in writing shall not be used to adversely affect the continued employment, transfer, salary, or assignment to extra pay for extra duty assignments.

14-3-1 Any observation, incident, or behavior that results in an unsatisfactory rating in an evaluation or a direction for change in an evaluation must be brought to the employee's attention in writing through a separate document, which shall not include the notice of investigatory meeting or notice of on-going investigation, within twenty (20) Days.

14-4 Upon request, the teacher shall be given, within a reasonable time, access to the teacher's file, excluding any pre-employment documents. Upon request, any teacher shall be furnished a reproduction of any material in the teacher's file at a cost of ten cents per page not more than one time per year unless requested by the association.

14-5 Any time after a period of three (3) years and one (1) day from issuance, any written report, comment, reprimand, or other document, excluding evaluations, placed in any teacher's file shall be removed upon written request of that teacher.

14-6 A joint committee of District and Association representatives shall be formed to discuss the creation and implementation of a pilot program for the evaluation of licensed personnel.

ARTICLE 15
MEDICAL SERVICES

15-1 The School District agrees to pay the cost of periodic x-rays or other medically accepted TB tests required for School District employment when administered by the Clark County Health Department.

15-2 The School District further agrees to provide to teachers, free of charge, routine immunizations and booster vaccinations for smallpox, influenza, and diphtheria.

ARTICLE 16
EXTENDED LEAVES OF ABSENCE

16-1 The school trustees agree that a maximum of four (4) teachers shall, upon request, be granted a leave of absence without pay for the purpose of serving in an elected or appointed office of the Association or another Association with which it is affiliated. To be eligible for leave the employee must have completed two (2) full years under contract with the School District. Such leave is granted for no less than one (1) full contractual year.

16-2 A leave of absence without pay for up to two (2) years shall be granted to any teacher who joins the Peace Corps, VISTA, or National Teacher Corps, and is a full-time participant in these programs. To be eligible for leave the teacher must have completed two (2) full years under contract with the School District. (Administrative Regulation "Peace Corps, VISTA, Teacher Corps Leave: All Employees")

16-3 A teacher may be granted a leave of absence without pay for up to two (2) years to teach in an accredited college or university. To be eligible for leave the employee must have completed two (2) full years under contract with the School District. (Administrative Regulation "Leave for Instructional or Consultant Services: All Employees").

16-4 Employees who are members of any Reserve Unit of the Armed Forces of the United States or the National Guard who are ordered to active duty, or who are drafted, or who enlist as an alternative to being drafted, shall be granted military leave of

35-8 The intent and purpose of this Article is to facilitate the transfer of teachers, where such transfers are necessary or requested. The parties agree to discourage any practice that may result in the unfair manipulation of transfer procedures.

35-9 The District's cultural diversity goals and objectives shall be considered when transfers are made.

35-10 The needs of students assigned to at-risk schools shall be considered when transfers are made. If there is a dispute, the matter will be reviewed by the Associate Superintendent, Human Resources Division, who will have three (3) days to resolve the matter. If the matter is not resolved, the dispute will be resolved through the Expedited Arbitration Procedure.

35-11 All disputes involving the interpretation and implementation of this Article shall be subject to Expedited Arbitration Procedures except as provided for in Article 35-3-4.

35-12 Teachers who will be returning from a leave of absence for the next school year, shall be eligible to participate in the selection of a school on the same basis as any other teacher with the exception that once a voluntary assignment has been secured, the teacher returning from leave will be assigned to the school for the coming school year and may not further volunteer for transfer to another location for the remainder of the school year for which the teacher has been assigned.

35-13 The parties shall establish a committee to make recommendations regarding the transfer procedures.

ARTICLE 36
DISCIPLINARY PROCEDURES

36-1 Neither the District nor the Association will discriminate against any member of the bargaining unit because of membership or non-membership in the Association or participation or non-participation in any of the Association's activities.

36-2 All written policies and regulations of the School District governing employee activities and conduct will be interpreted and applied uniformly throughout the District.

36-3 The personal life of a teacher is not an appropriate concern of the District and, therefore, shall not affect the teacher's employment status except when it has a legally relevant connection to the teacher's employment.

36-4 An employee about to undergo an investigatory interview is entitled to an association representative or another representative and reasonable notice shall be given. Reasonable notice shall mean notification the day prior to the actual meeting except when circumstances may require a prompt investigatory interview. Any and all notices of the principal's desire to hold a conference with a teacher shall include the subject of the conference. The written prior notice of investigatory meeting does not constitute the separate document required in Articles 14-3-1 and 36-12.

36-5 After reasonable notice has been given and in the interest of expediting a resolution to a disciplinary problem, the district may require an employee to choose between participating in an investigatory interview without representation, or not being interviewed.

36-6 An employee's right to representation during the course of an interview arises if the supervising administrator takes any steps beyond merely informing the employee of a disciplinary action. In such instances, the provisions of 36-4 apply.

36-7 The employee's representative and the administrator will allow the employee to give an account of the alleged incident before any discussion by either of the named parties occur. During the investigatory interview conducted by the administrator, all persons at the conference will conduct themselves in a manner that will result in a clear and thorough statement from the teacher regarding the facts of the alleged incident. Nothing in this provision is meant to inhibit or limit the teacher's representative from fully and properly representing the teacher.

36-8 In implementing the suspension and dismissal procedures of NRS 391, the parties agree that the decision of the arbitrator shall be final and binding. The arbitrator shall be selected in accordance with the expedited arbitration procedures in Article 4 of this Agreement.

36-8-1 The teacher or the teacher's representative shall, within ten (10) days of receiving the notice of suspension or dismissal demand that the matter be submitted to final and binding arbitration. The matter shall be heard before the superintendent's designee prior to submission to final and binding arbitration. The superintendent's designee shall hear the matter within five (5) days and shall submit a written response within five (5) days after the hearing. In the event the matter is not resolved by the superintendent's designee the matter shall be submitted to final and binding arbitration.

36-8-2 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). Probationary teachers shall be entitled to a hearing and arbitration under the terms of this Article for suspensions or dismissals.

36-8-3 A teacher hired on or after December 1 of any school year shall be a probationary teacher for the remainder of that school year and for the ensuing school year.

36-8-4 In the event a teacher is suspended from employment, pending a recommendation for dismissal, the District may continue to contribute to the CCEA insurance Trust on behalf of that teacher, as stated in Article 28-3, throughout the suspension period.

36-9 Prior to initiating any of the above forms of disciplinary action, the district shall have followed a policy of progressive discipline which normally includes a verbal and written warning.

36-10 The arbitrator shall have the power to modify or deny the district's disciplinary action. Any such modification of a penalty must be within the limits set forth in the Nevada Revised Statutes.

36-11 Although certain provisions of this Article are intended to modify disciplinary hearing provisions set forth in NRS 391, those provisions of NRS 391 which do not conflict with this Article shall remain in effect including, but not limited to, the superintendent's authority under NRS 391.314-1.

36-12 Any summary of conference, oral warning, written warning, admonition, suspension, dismissal, or direction for change shall be called to the employee's attention in writing within twenty (20) working days after the observation. It is recognized that such

written direction may refer to previously given verbal warning(s) in recognition of the need to preserve the progressive discipline model.

ARTICLE 37
EXTRA PAY FOR EXTRA DUTY SCHEDULE

37-1 EXTENDED DAY EXTRACURRICULAR PAY

This pay schedule for senior and junior high positions does not obligate the School District to institute the program. However, if the program exists in the school, then all identified positions for that program must be filled. If a club or activity does not exist, schools may utilize the funds from the unfilled extended day extracurricular position(s) for sponsors or clubs or activities not listed in 37-1 of comparable extended day commitments; i.e., number of students, hours, duration of activity, and performances in competition.

37-1-2 Senior High School – Extended Day Pay

Position	Index, Class A, Step 1 Base Salary	No. of Positions For Each School
Head Football (M)	.093	1
Head Basketball (M)	.093	1
Head Baseball (M)	.079	1
Head Track (M)	.084	1
Head Wrestling (M)	.084	1
Head Soccer (M)	.079	1
Head Flag Football (W)	079	1
Head Tennis (M)	.054	1
Head Golf (M)	.056	1
Head Cross Country (M)	.068	1
Head Swimming (M)	.063	1
Head Volleyball (M)	.075	1
Asst. Football (M)	.070	AAAA-6, AAA-5, AA-4, A-4
Asst. Basketball (M)	.070	2
Asst. Baseball (M)	.061	2
Asst. Track(M)	.063	AAAA-2, AAA-2, AA-1, A-1
Asst. Wrestling (M)	.063	AAAA-2, AAA-2, AA-1, A-1
Asst. Soccer (M)	.059	1
Asst. Volleyball (M)	.061	2
9th Gr. Basketball (M)	.043	1
9th Gr. Volleyball (M)	.038	1
9th Gr. Basketball (W)	.043	1
9th Gr. Volleyball (W)	.038	1
9th Gr. Soccer	038	1
Head Bowling (M & W)	.065	1
Head Basketball (W)	.093	1
Head Volleyball (W)	.075	1
Head Softball (W)	.079	1
Head Track (W)	.084	1
Head Soccer (W)	.079	1
Head Tennis (W)	.054	1
Head Golf (W)	.056	1
Head Cross Country (W)	.068	1
Head Swimming (W)	.063	1
Asst. Basketball (W)	.070	2

President of the Association or the President's designee, the Executive Director, one teacher from the Contract Maintenance Committee, and one other teacher.

39-3 One teacher mutually agreed upon by the parties will be assigned as an Empowerment liaison. The Empowerment Liaison will be part of every School Empowerment Team.

39-4 Empowerment schools must adhere to the Negotiated Agreement. A contract waiver under Article 38 must be sought and passed in order to obtain a waiver from a contract provision.

39-5 Teachers required to work over the seven-hour eleven-minute (7:11) work day as provided in Article 22-1 will be compensated at the teacher's daily rate of pay and such compensation will be PERS sensitive. Teachers required to work over the 184 day contract as provided in Article 21-2 will be compensated at their contract rate of pay for each additional day above the 184 days and said payment will be PERS sensitive.

39-6 The School Empowerment Team will determine how to spend any monies provided by the Legislature to Empowerment Schools so long as it is consistent with the Negotiated Agreement or a contract waiver is obtained through Article 38.

39-7 Evaluations of teachers assigned to Empowerment Schools shall be used in a formative manner that will reflect teachers' performance along a continuum of skill levels. If it is determined by the administrative team that a teacher is not compatible with the model established by the school, the principal may present such findings to the School Empowerment Team in a confidential forum, as prescribed in Article 39-8-1.

39-7-1 The School Empowerment Team, in conjunction with the school principal, may implement a peer review model and may remove and replace a teacher deemed to be incompatible with the model established at the school. The principal ultimately has the authority to make staffing decisions. Any teacher so removed shall fall within the involuntary transfer provisions of Article 35 if identified in time to participate in a spring or fall surplus meeting. Any teacher identified for removal either too late to secure a voluntary transfer or too late to participate in a surplus meeting shall be administratively reassigned by the Human Resources Division with vacancy options provided.

39-7-2 Any teacher at any Empowerment School may choose to transfer out of the Empowerment school at any time. Such transfer and/or administrative reassignment will occur within ten (10) work days. Any teacher opting to transfer out shall be administratively reassigned by the Human Resources Division with vacancy options provided unless it occurs during the spring and fall surplus meetings teacher may participate in the provisions of Article 35.

39-7-3 Any overpayment of additional compensation shall be reimbursed to the District by the employee pro-rata over the remaining paychecks of that school year.

39-8 The CCSD and the CCEA agree to pursue discussions regarding incentive pay for licensed personnel at the Empowerment Schools.

ARTICLE 40
TERM OF AGREEMENT

40-1 This Agreement shall become effective at the beginning of the 2013-2014 contracted school year and shall remain in effect until the beginning of the 2014-2015 contracted school year, and shall continue from year to year thereafter unless either of the parties shall give written notice to the other for school year 2014-2015 in accordance

with the provisions of NRS 288 of a desire to change, amend or modify the Agreement and until a successor agreement is reached.

40-2 This Agreement shall immediately terminate in the event recognition is withdrawn and sustained after all avenues of appeal have been exhausted in accordance with NRS 288.

ARTICLE 41
NEW ARTICLE

41-1 Upon execution of this Agreement the parties agree to form working groups, which between the date of execution of this Agreement and October 11, 2013 shall meet at least four times and discuss the following topics:

a. Grievance back-log
b. Professional Development
c. Evaluations
d. Peer Assistance and Review
e. Special Education
f. Advanced Studies Certification 18 hour programs for Class E and F
g. Deletion of Article 39 – Empowerment Schools

To the extent that any of the topics listed in this article 41-1 (a)-(g) above are mandatory subjects of bargaining under NRS 288.150, either party may by written notice sent to the other party on or before February 1,2014, reopen negotiations for the limited purpose of bargaining over one or more of those topics listed in (a)-(g) above but only those of which are mandatory subjects of bargaining under NRS 288.150. Upon reopening, the provisions of NRS 288.217 shall apply. Discussions may be extended beyond February 1, 2014 only by the mutual consent of both parties.

IN WITNESS WHEREOF, the parties have hereunto set their hands this 26th Day of September 2013.

BOARD OF SCHOOL TRUSTEES FOR THE CLARK COUNTY SCHOOL DISTRICT

CAROLYN EDWARDS
President

PAT SKORKOWSKY
Superintendent of Schools

LORRAINE ALDERMAN
Vice-President

EDWARD GOLDMAN
Chief Negotiator and Associate Superintendent,
Employee-Management Relations

FOR THE CLARK COUNTY EDUCATION ASSOCIATION

LISA MUNTEAN
Negotiations Committee Chair

VICTORIA COURTNEY
President

JOHN VELLARDITA
Executive Director

EXHIBIT 4

From: **Edward E. Goldman** Friday, August 01, 2014 4:44:12 PM
Jon M. Okazaki

Subject: Fwd: Re(3): Grievance Resolution (Revised)

To: Viswanathan.tenkasi@gmail.com

Cc: Jon M. Okazaki Jeffrey J. Geihs **Nina M. Papazis**

August 1, 2014

Dear Dr. Viswanathan:

I believe that further clarification is in order pertaining to your desire to file a grievance regarding your non-renewal and/or your evaluations.

On May 28, 2014, you submitted a grievance in regard to your non-renewal, referencing a date of April 28, 2014. You have never filed a grievance over any of your evaluations, and even if you want to say that your May 28, 2014, grievance included your evaluations, it was too late for that purpose. Pursuant to Article 4-5(A) of the Negotiated Agreement with CCEA, you are required to file a grievance "not later than thirty (30) days after [you] first knew of the act or condition upon which the grievance is based." Your evaluations were dated January 30, 2014, and April 1, 2014. May 28, 2014, was past the deadline for both. Also, please understand that even if you were to prevail on an evaluation grievance, you would still not be able to grieve your non-renewal. Pursuant to the Negotiated Agreement with CCEA, the decision to non-renew is simply not something that you can contest.

You are free to communicate your concerns to Dr. Geihs, but please understand that such would not constitute a formal grievance, nor would Dr. Geihs have the authority to overturn your non-renewal.

Sincerely,

Edward Goldman
Associate Superintendent
Employee-Management Relations
702-799-0210

C. Dr Jeffrey Geihs

EXHIBIT C

DECLARATION OF LOUIS MARKOUZIS

I, Louis Markouzis, hereby declare as follows:

1. I am an employee of the Clark County School District (the "District") and make this declaration in support of the Board of Trustees of the Clark County School District's motion for summary judgment in Tenkasi Viswanthan v. Board of Trustees of the Clark County School District, Case. No. A-20-814819-C. I personally know of the matters stated herein and if called to testify, could do so competently.

2. I am presently the Principal at Carroll M. Johnston Middle School within the Clark County School District. During the District's 2013-2014 school year, I served as Dean of Students at Cimarron-Memorial High School. In the role of Dean, I was responsible for supervising school personnel, including providing their performance evaluations.

3. Tenkasi Viswanathan was a first year probationary teacher at Western High School during the 2013-2014 school year. Mr. Viswanathan selected me that year to serve as an independent evaluator for his third performance evaluation.

4. I observed Mr. Viswanathan teaching on several occasions, and provided him his third written evaluation, which contained several directives for improvement. Attached hereto as Exhibit 1 is a true and accurate copy of the written evaluation I provided Mr. Viswanathan.

5. The evaluation I provided Mr. Viswanathan rated him not satisfactory and, among other things, contained the following statement: "Please be advised that, pursuant to Nevada law, your contract may not be renewed for the next school year. If you receive an 'unsatisfactory' evaluation on the first or second evaluation, or both evaluations for this school year, and if you have another evaluation remaining this school year, you may request that the evaluation be conducted by another administration. You may also request, to the administrator who conducted the evaluation, reasonable assistance in correcting the deficiencies reported in the evaluation for which you request assistance, and upon such request, a reasonable effort will be made to assist you in correcting those deficiencies." Exhibit 1. Mr. Viswanathan attested he understood this statement.

Pursuant to NRS 53.045, I declare under penalty of perjury that the foregoing assertions are true and correct to the best of my personal knowledge.

Executed on June 14, 2021

Louis Markouzis
Principal, Carroll M. Johnston Middle School
Clark County School District

EXHIBIT 1

CCF-8 (Rev. 1/14)

CLARK COUNTY SCHOOL DISTRICT
LICENSED EMPLOYEE APPRAISAL REPORT

Employee's Name: Tenkasi Viswanathan School/Location: Western High School/451

Social Security No. (last 4 digits): [redacted] Assignment: Pre-Calculus & Per/ Finance Years in CCSD: 1 Location: 1

Observation Dates: From: 02/01/14 to 04/01/14 Conference Date: 04/01/14 Page 1 of: 8

Report and analysis of observations, performance, and other factors which may be pertinent to performance; probationary/postprobationary status, date of last evaluation, and directions.

I certify that I have supervised and evaluated the professional performance of the above named ☑ probationary ☐ postprobationary employee, and I certify that to date this school year his/her overall performance ☐ is ☑ is not satisfactory.

LEVELS OF PERFORMANCE

Level 4	Performance exceeds standards consistently at a distinguished level.	Level 2	Performance approaches standards and/or does not consistently meet standards. *
Level 3	Performance consistently meets standards and may occasionally exceed standards in some areas.	Level 1	Performance is below standards and is not satisfactory. *

*Any area(s) marked Level 1 or 2 require documentation. Any area(s) marked Level 1, or 8 or more areas marked Level 2 results in an overall rating of "Not Satisfactory."

PROFESSIONAL DOMAINS

PLANNING AND PREPARATION	4	3	2	1
PROFESSIONAL STANDARDS				
1. Instructional planning was documented in written lesson plans and based on adopted curriculum documents and standards.			✓	
2. Content knowledge was demonstrated in planning.			✓	
3. Planning reflected knowledge of student achievement, access/equity, students' interests and backgrounds, and other site-specific demographic data.			✓	

ASSESSMENT OF STUDENT ACHIEVEMENT	4	3	2	1
PROFESSIONAL STANDARDS				
1. Student achievement, access/equity, and other site specific demographic data were analyzed.		✓		
2. Desired results for student learning/achievement were identified, measurable, and used for instructional planning to determine and monitor student progress.			✓	
3. Assessment regulations and guidelines were followed.		✓		

LEARNING ENVIRONMENT	4	3	2	1
PROFESSIONAL STANDARDS				
1. An academic focus and on-task behavior were maintained.			✓	
2. A classroom management/discipline plan was in place, communicated and maintained.			✓	
3. Respect and courtesy were modeled by the teacher in student and parent interactions.		✓		
4. The physical environment supported the teaching/learning process.		✓		

INSTRUCTION	4	3	2	1
PROFESSIONAL STANDARDS				
1. The components of an effective lesson and the basic principles of learning were used when providing instruction.			✓	
2. Varied instructional strategies, approaches, and resources, aligned with instructional objectives, engaged students in learning.			✓	

INSTRUCTION (continued)	4	3	2	1
3. Lessons had a clearly defined structure and pacing was appropriate.			✓	
4. Flexible instructional groupings were utilized.			✓	
5. Accommodations and/or modifications were used in alignment with instructional objectives to meet the needs of students.		✓		
6. Feedback to students was provided and promoted student success and achievement.		✓		

PROFESSIONAL RESPONSIBILITIES	4	3	2	1
PROFESSIONAL STANDARDS				
1. The employee participated in the school improvement process and implemented school improvement goals.		✓		
2. The employee addressed identified individual improvement goals/directions.			✓	
3. The employee participated in on-going professional development to improve content knowledge and pedagogical skills.		✓		
4. The employee participated in required job-related meetings and activities and performed assigned duties.		✓		
5. The employee maintained student records.			✓	
6. The employee provided communication to parents/ guardians and students related to behavior and achievement.			✓	
7. The employee worked professionally with administration, staff, parents, and community.		✓		
8. The employee used multicultural resources, materials and activities to support multicultural literacy, awareness, and appreciation.		✓		
9. The employee complied with all school and district policies and regulations, as well as state and federal laws applicable to teachers.			✓	

A narrative, which includes a PERFORMANCE SUMMARY and IMPROVEMENTGOALS/DIRECTIONS, must be included on the following page.

[signature] 04/01/14 Louis J. Markouzis [signature] 4/1/14

*Signature of Employee Date Print/Type Name of Supervising Administrator Signature Date

*A signature on this summary does not necessarily mean the licensed employee agrees with the opinions expressed, but merely indicates the employee has read the analysis, had an opportunity for discussion with his/her immediate supervisor, and understands that he/she has the privilege of discussing it with the Human Resources Division.

031 Distribution: Original/White: Area Associate/Division Superintendent, then Licensed Personnel Services, Human Resources Division
2nd Copy/Yellow: Supervising Administrator - Work Location File 3rd Copy/Pink: Employee

CCSD CLARK COUNTY SCHOOL DISTRICT

9998-500010

CCF-10 (Rev. 09/09)

Clark County School District

PERSONNEL RECORD — CONTINUATION SHEET

Name: Tenkasi Viswanathan

Social Security No. (last 4 digits): [redacted]

CCF- 8

Date: 04/01/14

Page No. 2 of 8

PERFORMANCE SUMMARY:

Dr. Tenkasi M. Viswanathan is a probationary teacher with the Clark County School District. This evaluation is the third of three appraisals he will receive during the current school year. He is in his first year with the Clark County School District and his first year at Western High School. Currently, Dr. Viswanathan teaches two sections of Pre-Calculus, three sections of Math of Personal Finance, and one section of Fundamentals 600. This appraisal report represents a synthesis of classroom observations conducted on 3/07/14, 3/12/14, 3/20/14, and 3/24/14 for a total of 200 minutes; post-observation conferences on 3/10/14, 3/13/14, 3/21/14, and 3/25/14. This appraisal includes a review of professional artifacts and other supervisory interactions in accordance with the NRS 391 and Clark County School District's Policies and Regulations. The performance standards for each of the professional domains, as outlined in the Levels of Performance Rubric, serve as the basis for this evaluation. At this time, Dr. Viswanathan has not satisfactorily met the Clark County School District's Performance Rubrics during this evaluation period.

Previous Goals/Directions:

1. **Weekly upload lesson plans on Curriculum Engine one full week in advance that comply with Clark County School District Regulation 6122. Review of lesson plans will be utilized to monitor this direction.** *Dr. Viswanathan has approached in his effort to provide clear lesson plans in a timely manner. Further direction is needed in order to comply with CCSD standards on the detail of lesson plan structure. Direction on lesson planning will be re-issued.*

2. **Analyze student data, formal or informal assessments, to develop daily instructional lessons to improve learning for all students.** *Dr. Viswanathan inconsistently utilizes student data in order to develop daily instructional lessons. Record keeping concerns with grade-book and progress reports are of specific concern. Further direction on the utilization of student data is needed and will be re-issued.*

3. **Utilize the components of an effective lesson and basic principles of learning during daily instruction, including: a daily objective, a warm-up/bell-work activity, concept and skill development, guided practice, independent practice, grouping strategies, assessment measures, and specifically a closure activity. Review of lesson plans and observations will be utilized to monitor this direction.** *Dr. Viswanathan inconsistently states a clear objective or provides guided practice or group strategies. Dr. Viswanathan needs to continue to work on refining his utilization of the components of an effective lesson. This direction will be re-issued.*

4. **Daily, implement the Workshop Model with fidelity in order to deliver classroom instruction in which students are actively engaged in their own learning and the teacher becomes a facilitator of student learning; include effective delivery of an opening lessons, implementation of a student work period, and employ an engaging closing in which students actively reflect on their learning for the day and look forward to the next step in their own learning. Review of lesson plans and observations will be utilized to monitor this direction.** *Dr. Viswanathan rarely or never implemented the workshop model of instruction during classroom observations. This direction will be re-issued.*

Signature of Employee | Date | Louis J. Markouzis, Print/Type Name of Supervising Administrator | Signature | Date 4/1/14

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CCSD CLARK COUNTY SCHOOL DISTRICT

9998-500010

CCF-10 (Rev. 09/09)

Clark County School District

PERSONNEL RECORD — CONTINUATION SHEET

Name: Tenkasi Viswanathan Social Security No. (last 4 digits): [redacted]

CCF- 8 Date: 04/01/14 Page No. 3 of 8

5. **To ensure the efficient management of the classroom, continue to seek assistance in developing, communicating and maintaining established procedures, routines, and expectations consistently. This directive will be monitored by scheduled meetings with your immediate supervisor and review lesson plans on a weekly basis.** *Dr. Viswanathan has not successfully implemented a behavior management plan structure. This direction will be re-issued.*

6. **On a daily basis, implement instructional strategies that pace lessons appropriately, minimize the amount of time the teacher presents to the class, and facilitate student-led work time and closure, in order to maximize students' engagement and their overall success. In order to enhance your instruction, increase student engagement and gauge student's level of academic mastery, utilize varied instructional strategies, approaches, and resources, aligned with instructional objectives. Review of lesson plans and observations will be utilized to monitor this direction.** *Dr. Viswanathan has not successfully implemented this direction and therefore, this direction will be reissued.*

PLANNING AND PREPARATION

Dr. Viswanathan approaches two standards and satisfactorily met one standard in the domain for Planning and Preparation. Dr. Viswanathan lesson plans are written in a vague format not providing clear objectives and specific detail for the lesson format. Plans did not consistently identify lesson objectives, assessment measures, grouping strategies, instructional procedures, resources, and time allocations that were age and content appropriate. During the observation dates March 7, March 20, and March 24, 2014 lesson plans posted, lacked significant detail and/or were difficult to decipher. For example the lesson plans posted on March 7, 2014 included one week of lessons under one date. So lesson plans for Friday, March 7th, 2014 included all lessons for every class or subject taught, every day of the week (week of 3/3/2014 – 3/7/2014). Transitions and student directions were not clearly indicated on the lesson plans. Lesson plans written for the week of March 17, 2014 and March 24, 2014 , lacked significant detail failing to detail clear transitions into lesson content. Lesson plans on observed dates were not measureable but only written using "I" statements for example, during the March 24, 2014 observation the objective stated on the board was; "I can represent forces and velocities by vectors and solve problems". Lesson objectives written using "I" statements are not measurable. In addition, lesson plans lacked explanation of each segment of the lesson. Dr. Viswanathan demonstrated a general understanding of pedagogical issues involved in student learning. The content knowledge is not clearly delineated on the lesson plan format. It was observed during the week of 3/24/2014 that lessons did not have content that was specific in nature. Content present on the lesson plan were in bullet point format not providing clear direction or thoughtful planning of lesson format and structure. During the post observation conferences on March 10, March 13, March 21, and March 25, 2014, Dr. Viswanathan was provided direction on providing detailed and descriptive lesson plans aligned with observable action in the classroom. Dr. Viswanathan will provide detailed and descriptive lesson plans aligned with observable action in the classroom (Directive #2).

ASSESSMENT OF STUDENT ACHIEVEMENT

In the domain of Assessment of Student Achievement, Dr. Viswanathan performed in a satisfactory manner in two standards and approached one standard. Lesson plans are written for entire class as a whole – there is no differentiation in lesson planning based on individualized student learning and achievement. Assessments of student achievement are not being utilized for instructional planning or to determine and monitor student progress. A grade book review of 2/27/14 evidenced a lack of assessment data to be used for instructional planning.

Signature of Employee / Date | Louis J. Markouzis Print/Type Name of Supervising Administrator | Signature | Date

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CCSD CLARK COUNTY SCHOOL DISTRICT

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Name: Tenkasi Viswanathan Social Security No. (last 4 digits): [redacted]

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LEARNING ENVIRONMENT

In the Learning Environment domain, Dr. Viswanathan consistently performed in a satisfactory manner on two standards and approached two standards. Dr. Viswanathan has not maintained classroom environment that had an academic focus and promoted on-task behavior. During observations on March 7, 2014 and March 12, 2014, and March 24, 2014 the academic focus was not clearly stated. Procedures and directions with an academic focus were not clearly stated by the teacher for the students. Additionally, students were not actively engaged in meaningful learning activities. During an observation on March 7, 2014, two students were eating food, two students were observed drinking juice and one student was drinking a Starbucks coffee. Dr. Viswanathan made no attempt to redirect these students. It is the policy of Western High School that no food or beverages (other than water) are permitted during instructional time. During the same observation, one student had headphones on and was listening to music the entire period. Later that same period, the same student was openly texting during instructional time. During another observation on March 12, 2014, two students were actively texting during the warm-up, two students were observed sleeping for over 20 minutes before Dr. Viswanathan addressed the one student, the other student (seated in the back left of the room) remained sleeping until waking up 40 minutes into the class. One student got up in the middle of class and proceeded to smash a bug on the wall screaming. Dr. Viswanathan did not address the behavior. Students were talking while Dr. Viswanathan was providing whole group instruction. Noise continued to increase as the lesson continued. Seventeen out of twenty students were off-task. During the post observation conferences on March 10, March 13, March 21, and March 25, 2014, Dr. Viswanathan was provided direction on maintaining a classroom environment that has an academic focus and on-task behavior during all lessons. Dr. Viswanathan will maintain a classroom environment that has an academic focus and on-task behavior during all lessons (Directive #3).

Dr. Viswanathan lacked consistency in maintaining and/or communicating the established procedures, routines and expectations to ensure the efficient management of the classroom. This included such things as transitions, student behavior, handling of materials and supplies, and performance of non- instructional duties. For example, during the March 12, 2014 observation Dr. Viswanathan attempted to manage student behavior by taking a student out in the hall to have a conversation regarding behavior. Dr. Viswanathan repeated this process for a different student later in the period. No observable change in behavior was observed. In both occasions students continued to talk. Dr. Viswanathan attempted to redirect students during the closure activity. Dr. Viswanathan directed one student to stop talking and the student yelled "No you need to tell everyone else". Dr. Viswanathan did not address the student's overt behavior. Again, during the March 24, 2014 observation, Dr. Viswanathan struggled to manage classroom procedure while passing out the iPads for a lesson on vectors. The process of passing out the iPads took over ten minutes. Students were observed talking and using the iPad in a non-instructional manner. Dr. Viswanathan attempted to provide directions to the class, however the noise level was too loud for any direction. One student yelled out, "I am so lost" while Dr. Viswanathan attempted to provide directions. Thirteen minutes after the first iPad was handed out, Dr. Viswanathan then proceeded to pass out the worksheet. Upon receiving the worksheet, three students stated "..oh there we go...that makes sense now.. here are the directions right here on the paper..". One student said "..that helps.. you should of did that ten minutes ago". The worksheet indicated the directions for the iPad assignment. During observations, Dr. Viswanathan failed to respond to off-task behaviors and did not issue consequences for students when inappropriate behavior was displayed. During the post observation conferences on March 10, March 13, March 21, and March 25, 2014, Dr. Viswanathan was provided direction in regards to maintaining a classroom management/discipline plan. Dr. Viswanathan will communicate and maintain a classroom management/discipline plan. (Directive #4)

Signature of Employee Date Louis J. Markouzis Print/Type Name of Supervising Administrator Signature Date

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CCSD CLARK COUNTY SCHOOL DISTRICT

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Clark County School District

PERSONNEL RECORD — CONTINUATION SHEET

Name: Tenkasi Viswanathan

Social Security No. (last 4 digits): [redacted]

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Date: 04/01/14

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INSTRUCTION

In the Instruction domain, Dr. Viswanathan met two standards and approached four standards. Dr. Viswanathan demonstrated general understanding and knowledge of the components of an effective lesson and basic principles of learning when designing lessons. Lessons must be broken down into segments to include a warm-up, provide background knowledge, present new content using group, guided and independent practice and closure to give students opportunities to practice and apply the information to a task or activity. During all formal observations, the components of an effective lesson were inconsistently observed and/or used incorrectly. During an observation on March 12, 2014, Dr. Viswanathan did not clearly state any objectives or introduction to the lesson. No introduction was present. Dr. Viswanathan had students start the posted warm-up immediately. Directions for the warm-up were vaguely written on the dry erase board. During the warm-up Dr. Viswanathan handed out a worksheet providing no directions. No visible transition from the warm-up to whole group instruction was ever observed. During whole group instruction Dr. Viswanathan started to give answers to the questions from the worksheet before providing students the opportunity to answer the questions themselves. During the March 24, 2014 observation of a Pre-Calculus class, the lesson did not appear to be broken down into segments. Students were provided iPads for the entire period and were answering questions on a worksheet. No visible sign of checking for understanding was present. No closure activity was present. During all formal observations, the components of an effective lesson were not consistently utilized, so therefore, Dr. Viswanathan will utilize the components of an effective lesson and the basic principles of learning when providing instruction. Review of lesson plans will be utilized to monitor this direction on a weekly basis. (Directive #5).

Dr. Viswanathan demonstrated basic understanding and knowledge of varied and effective instructional strategies and approaches but used only a few to meet instructional objectives and the needs of students. Dr. Viswanathan inconsistently varied how he delivered information to the class. Dr. Viswanathan was either observed lecturing with his back turned to the class or in front of the dry erase board, lecturing about the answers to the warm-up activity, or having students work independently using a worksheet. During observations Dr. Viswanathan had students work independently on worksheets. No observable sign of utilizing small group, think -pair-share or Western High School's Workshop Model was present. During the March 12th observation 17 of the 20 students were clearly off-task and were not completing the worksheet assignment. During an observation on March 24, 2014, students were provided iPads to help support the worksheet activity. Dr. Viswanathan did not clearly demonstrate or provide varied instructional strategies with the use of assistive technology. Without clear instructional strategies in place 9 of the 16 students were clearly off-task. During the post observation conferences on March 10, March 13, March 21, and March 25, 2014, Dr. Viswanathan was provided direction regarding the utilization of instructional strategies . Dr. Viswanathan will vary instructional strategies, approaches, resources, aligned with instructional objectives to engage students in learning (Directive #6).

Signature of Employee — Date

Louis J. Markouzis — Print/Type Name of Supervising Administrator — Signature — Date 4/1/14

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Clark County School District

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Name: Tenkasi Viswanathan Social Security No. (last 4 digits): [redacted]

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INSTRUCTION Continued...

Dr. Viswanathan inconsistently maintained appropriate pacing of lessons. Lesson pacing was sometimes too fast or too slow. During a Personal Finance class on March 12, 2014 students were handed a worksheet to complete for the 50 minute duration of class. Students appeared to be off-task during the individualized work assignment. Dr. Viswanathan was observed talking and teaching from the front of the class on the dry erase board, jumping from question to question without providing clear direction or pacing. During an observation on March 24, Dr. Viswanathan rushed students through a 10-question worksheet. Dr. Viswanathan incorporated iPads during this lesson in order to support the worksheet assignment. However, Dr. Viswanathan took thirteen (13) minutes to pass out the iPads, which caused him to rush during the next portion of the lesson. Students did not have enough time to complete the assignment. During all formal observations on March 7, March 12, March 20 and March 24, 2014, Dr. Viswanathan did not evidence a clearly defined structure and appropriate pacing for lessons. Dr. Viswanathan will present lessons that have a clearly defined structure and appropriate pacing. Review of lesson plans will be utilized to monitor this direction on a weekly basis. (Directive #7)

Dr. Viswanathan's use of flexible instructional groups was inconsistent and had limited success in advancing the instructional objectives of the lesson. Most students were seated in rows, and rarely had an opportunity to work in small groups. During 186 of the 200 minutes observed during all formal observations, independent student work and lecture format to the whole group were the primary instructional grouping. This sequence of events does not match the components of an effective lesson. Checking for understanding, such as chunking the material into teachable segments and then bringing the class back together as they worked on the handout was not observed. Reviewing the content with a partner or teacher directed question and answer was not observed. During the post observation conferences on March 10, March 13, March 21, and March 25, 2014, Dr. Viswanathan was provided direction regarding instructional grouping. Dr. Viswanathan will utilize flexible instructional grouping to students that is consistent in quality and/or timeliness. This directive will be monitored by scheduled meetings with your immediate supervisor and review lesson plans on a weekly basis. (Directive #8).

PROFESSIONAL RESPONSIBILITIES

In the Professional Responsibilities domain, Dr. Viswanathan met the standards on six indicators and did not meet standards in three indicators. Dr. Viswanathan made some progress at addressing previously identified individual improvement goals and/or directions; however, Dr. Viswanathan failed to make significant progress from his second evaluation signed on 1/30/14. As discussed above, on previous directions, Dr. Viswanathan did not meet six out of the six previously identified goals and/or directions. Therefore, all six directions were reissued. During all post-observation conferences, summary of notes were reviewed and directions were given. Dr. Viswanathan rarely or never maintained instructional records accurately or completely, and did not submit records in a timely manner. Upon observation of Dr. Viswanathan's grade book after the scheduled pre-observation conference on March 6, 2014, multiple grades from beginning of 3rd quarter were not input clearly. Over a five-week period, the grade book had many observable disparities of student records. These disparities caused multiple students in various classes to receive inaccurate grades. During observations including the March 12, 2014 observation, Dr. Viswanathan was observed taking student attendance thirty minutes into class. Dr. Viswanathan did not comply with all school and district policies and regulations, as well as state and federal laws applicable to teachers. Due to the lack of entry of grades in the grade book, progress grades issued to students during the 3rd quarter did not accurately represent the achievement of students. In addition, parentlink grades did not accurately reflect the student achievement data

Signature of Employee Date Louis J. Markouzis Print/Type Name of Supervising Administrator Signature 4/11/14 Date

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CCSD CLARK COUNTY SCHOOL DISTRICT

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Clark County School District

PERSONNEL RECORD — CONTINUATION SHEET

Name: Tenkasi Viswanathan

Social Security No. (last 4 digits): [redacted]

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PROFESSIONAL RESPONSIBILITIES Continued...

from all of Dr. Viswanathan's classes. Dr. Viswanathan's failure to update grades for five weeks failed to provide parents with an accurate picture of student progress; furthermore, his inaccurate process of updating grades violated Western High School's policy for grading in addition to district and State expectations. Dr. Viswanathan will maintain accurate instructional records complying with all school district policies and federal regulations and policies. This directive will be monitored by scheduled meetings with your immediate supervisor and review lesson plans on a weekly basis (Directive #11).

Assistance Provided:

1. Post-observation conferences with supervising administrator whereby suggestions, areas of strength and areas of improvement are reviewed with Dr. Viswanathan.

2. A peer coach has been formally assigned to Dr. Viswanathan to meet, observe and strategically plan on areas of concern and needs for improvement. Specific improvement goals have been outlined and review by Dr. Viswanathan and his supervising administrator.

3. Dr. Viswanathan observed other classrooms with his assigned peer coach and met to address identified "look-fors".

4. The peer coach has provided Dr. Viswanathan with a lesson planning template that outlines the components of an effective lesson and has provided examples of how to properly complete the lesson plan template.

Assistance to be Provided:

1. Continue to conduct post-observation conferences with the supervising administrator to review and address areas of improvement and provide support to address improvement goals and directives.

2. Continue to have the math department chair and peer coach to meet with Dr. Viswanathan to provide support and guidance.

3. Continue to provide Dr. Viswanathan with specific "look-fors" when observing other classrooms and then debrief with his supervising administrator.

4. Continue to meet with the assigned peer coach to address improvement goals and directives.

Signature of Employee	Date	Print/Type Name of Supervising Administrator	Signature	Date
Tenkasi Viswanathan	04/01/14	Louis J. Markouzis		4/1/14

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CCSD CLARK COUNTY SCHOOL DISTRICT

CCF-8 (Rev. 1/14)

CLARK COUNTY SCHOOL DISTRICT
LICENSED EMPLOYEE APPRAISAL REPORT NARRATIVE

Name: Tenkasi Viswanathan | Social Security No. (last 4 digits): [redacted] | Date: 04/01/14 | Page No: 8

PERFORMANCE SUMMARY:

IMPROVEMENT GOALS/DIRECTIONS:

1. Dr. Viswanathan will continue to develop and post lesson plans on curriculum engine one week in advance. Review of lesson plans will be utilized to monitor this direction on a weekly basis.
2. Dr. Viswanathan will provide detailed and descriptive lesson plans aligned with observable action in the classroom. Review of lesson plans will be utilized to monitor this direction on a weekly basis.
3. Dr. Viswanathan will maintain a classroom environment that has an academic focus and on-task behavior during all lessons. Review of lesson plans will be utilized to monitor this direction on a weekly basis.
4. Dr. Viswanathan will develop, communicate and maintain a classroom management/discipline plan. This directive will be monitored by scheduled meetings with your immediate supervisor and review lesson plans on a weekly basis.
5. Dr. Viswanathan will utilize the components of an effective lesson and the basic principles of learning when providing instruction. Review of lesson plans will be utilized to monitor this direction on a weekly basis.
6. Dr. Viswanathan will vary instructional strategies, approaches, resources, aligned with instructional objectives to engage students in learning. Review of lesson plans will be utilized to monitor this direction on a weekly basis.
7. Dr. Viswanathan will present lessons that have a clearly defined structure and appropriate pacing. Review of lesson plans will be utilized to monitor this direction on a weekly basis.
8. Dr. Viswanathan will utilize flexible instructional grouping to students that is consistent in quality and/or timeliness. This directive will be monitored by scheduled meetings with your immediate supervisor and review lesson plans on a weekly basis.
9. Dr. Viswanathan will provide feedback to students that promote student success and achievement. Review of lesson plans will be utilized to monitor this direction on a weekly basis.

IMPROVEMENT GOALS/DIRECTIONS:

Continued....

10. Dr. Viswanathan will address and work to improve all deficiencies noted in the evaluation for improvement goals and directions. This directive will be monitored by scheduled meetings with your immediate supervisor and review lesson plans on a weekly basis.

11. Dr. Viswanathan will maintain accurate instructional records complying with all school district policies and federal regulations and policies. This directive will be monitored by scheduled meetings with your immediate supervisor and review lesson plans on a weekly basis.

☑ **Check here if the following statement is applicable.**

Please be advised that, pursuant to Nevada law, your contract may not be renewed for the next school year. If you receive an 'unsatisfactory' evaluation on the first or second evaluation, or both evaluations for this school year, and if you have another evaluation remaining this school year, you may request that the evaluation be conducted by another administrator. You may also request, to the administrator who conducted the evaluation, reasonable assistance in correcting the deficiencies reported in the evaluation for which you request assistance, and upon such request, a reasonable effort will be made to assist you in correcting those deficiencies.

I hereby attest that this has been explained, and I understand this statement. X _____ Employee Initial

Signature of Employee | Date 04/01/14 | Print/Type Name of Supervising Administrator: Louis J. Markouzis | Signature | Date 4/1/14

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CCSD CLARK COUNTY SCHOOL DISTRICT

EXHIBIT D

Dr. Tenkasi M. Viswanathan, pro se plaintiff
Residence Inn, Room No. 830
370 Hughes Center Dr
Las Vegas, NV 89169
Phone: 252-706-0169
E-mail: Viswanathan.tenkasi@gmail.com

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

Tenkasi Viswanathan,	)	**Case No.: A-20-814819-C**
Plaintiff,	)	**Dept. No.:15**
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,	)	
	)	
and	)	
	)	
Louis Markouzis in his Official	)	
and Individual Capacity,	)	
Defendants	)	

TO:

The Clark County School District

Office of the General Counsel

5100 W Sahara Ave

Las Vegas, NV 89146

PLAINTIFF TENKASI VISWANATHAN'S RESPONSE TO THE

FIRST SET OF REQUESTS FOR ADMISSION FROM

THE CLARK COUNTY SCHOOL DISTRICT

PLAINTIFF VISWANATHN SUBMITS HEREWITH HIS RESPONSE to Defendant Board of Trustees of the Clark County School District's First Set of Requests for Admission to the Plaintiff. The Requests were served on February 12, 2021 and Plaintiff's responses are being served on March 14, 2021 within the time limits set by Rule 36.

REQUESTS: Plaintiff requests that the following be allowed:

The abbreviation CCSD refers to the Clark County School District.

The expressions Board, and Defendant Board refer to the Defendant Board of Trustees of the Clark County School District.

REQUEST FOR ADMISSION NO. 1:

Admit that you were a probationary teacher with the Clark County School District during its 2013-2014 school year.

RESPONSE TO REQUEST FOR ADMISSION NO. 1: ADMIT.

REQUEST FOR ADMISSION NO. 2:

Admit that you were a member of the Clark County Education Association during CCSD's 2013-2014 school year.

RESPONSE TO REQUEST FOR ADMISSION NO. 2: ADMIT WITH QUALIFICATION. I was a member of the Clark County Education Association during the time I was an employee of the Clark County School District. My employment with the Clark County School District ended on the last day of the school year 2013-2014 in June 2014. On or about June 6, 2014, I ceased to be a member of the Clark County Education Association.

REQUEST FOR ADMISSION NO. 3:

Admit that the document disclosed as CCSD000002-CCSD000074 in Defendant's Arbitration Conference List of Witnesses and Documents is a true and accurate copy of the Negotiated Agreement between the Clark County School District and the Clark County Education Association during CCSD's 2013-2014 school year.

RESPONSE TO REQUEST FOR ADMISSION NO. 3 ADMIT.

REQUEST FOR ADMISSION NO. 4:

Admit that the document disclosed as CCSD000001 in Defendant's Arbitration Conference List of Witnesses and Documents is the written teaching contract referenced in your Amended Complaint.

RESPONSE TO REQUEST FOR ADMISSION NO. 4: ADMIT.

REQUEST FOR ADMISSION NO. 5:

Admit that the document disclosed as CCSD000001 in Defendant's Arbitration Conference List of Witnesses and Documents is a true and accurate copy of your written teaching contract with the Clark County School District/Defendant during its 2013-2014 school year.

RESPONSE TO REQUEST FOR ADMISSION NO. 5: ADMIT with Specificity. Plaintiff admits that the Document CCSD000001 referenced in the Request No. 5 above is a contract between the Board of Trustees of the Clark County School District and Plaintiff and that the document is a true and accurate copy of the said contract.

REQUEST FOR ADMISSION NO. 6:
Admit that your written teaching contract with the Clark County School District/Defendant during its 2013-2014 school year expired at the end of that school year.

RESPONSE TO REQUEST FOR ADMISSION NO. 6: ADMIT WITH SPECIFICITY. Plaintiff Viswanathan admits that his teaching contract with the Clark County School District as an employee for the school year 2013-2014 expired at the end of the school year on or about June 6, 2014.

REQUEST FOR ADMISSION NO. 7:
Admit that you have no other written teaching contract with the Clark County School District/Defendant except the one identified

grounds, Plaintiff denies that the document disclosed as CCSD000115-CCD00063 is a true and accurate copy of Plaintiff's Grievance submitted with CCSD on May 28, 2014.

Respectfully submitted on this 14th Day of March 2021.

/s/ Tenkasi Viswanathan_____
Tenkasi Viswanathan, Pro Se Plaintiff
Residence Inn, Room 830
370 Hughes Center Dr
Las Vegas, NV 89169
Phone: (252) 706-0169
E-mail: Viswanathan.Tenkasi@gmail.com

PLAINTIFF'S CERTIFICATE OF SERVICE

I, TENKASI VISWANATHAN, the plaintiff in this action, HEREBY CERTIFY that on this 14th Day of March 2021, I served true and correct copies of the foregoing document (PLAINTIFF TENKASI VISWANATHAN'S RESPONSE TO THE FIRST SET OF REQUESTS FOR ADMISSION FROM THE CLARK COUNTY SCHOOL DISTRICT) upon the defendants mentioned herein below and upon the ARBITRATOR at the email addresses indicated, via the EJDC's Electronic Filing and Service Program.

(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

(2) Attorney James R. Olson, ESQ
Attorney Stephanie A. Barker, ESQ.
OLSON CANNON, GORMLEY & STOBERSKI
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Las Vegas, NV 89129
jolson@ocgas.com
sbarker@ocgas.com
Attorney for Defendant
Dr. Edward Goldman

(3) Attorney James A. Fontano
ARBITRATOR
5135 Camino Al Norte, Ste 273
North Las Vegas, NV 89031
jim@heatonfontano.com

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

Respectfully, this the 14th Day of March 2021.

_/s/ Tenkasi Viswanathan_____
Tenkasi M. Viswanathan, pro se
Residence Inn, Room 830

370 Hughes Center Dr
Las Vegas, NV 89169
Phone: 252-706-0169
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EXHIBIT E

Dr. Tenkasi M. Viswanathan, pro se plaintiff
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E-mail: Viswanathan.tenkasi@gmail.com

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

Tenkasi Viswanathan, Plaintiff,	)	Case No.: A-20-814819-C
Vs.	)	Dept. No.:15
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,	)	
	)	
and	)	
	)	
Louis Markouzis in his Official and Individual Capacity, Defendants	)	

TO:
The Clark County School District
Legal Department
Office of the General Counsel
5100 W Sahara Ave
Las Vegas, NV 89146

PLAINTIFF TENKASI VISWANATHAN'S RESPONSE TO THE FIRST SET OF INTERROGATORIES TO PLAINTIFF FROM THE BOARD OF TRUSTEES OF THE CLARK COUNTY SCHOOL DISTRICT

PLAINTIFF VISWANATHN SUBMITS HEREWITH HIS RESPONSE to Defendant Board of Trustees of the Clark County School District's (Defendant Board) First Set of Interrogatories to Plaintiff. The Interrogatories were served on February 12, 2021 and the plaintiff is responding on 03/24/2021. The Parties, Tenkasi Viswanathan in proper person, and the Defendant Board through its Counsel, having agreed to extend the time to respond for ten days to and inclusive of March 24, 2021, this response is timely.

PLAINTIFF'S REQUESTS: Plaintiff requests that the following be allowed:

The abbreviation CCSD refers to the Clark County School District. The expressions the Board, the Board of Trustees, and "The Defendant Board" – all –refer to the Defendant Board of Trustees of the Clark County School District. The abbreviation "Negotiated Agreement" refers to the Negotiated Agreement between Clark County Education Association and the Clark County School District.

Plaintiff requests to be excused for simple spelling mistakes and grammatical mistakes.

Plaintiff responds to the interrogatories under oath:

I, Tenkasi Viswanathan, the Plaintiff Pro Se in this action, solemnly declare and affirm under penalty of perjury under the laws of the State of Nevada that the following Responses to the

FIRST SET OF INTERROGATORIES TO PLAINTIFF FROM THE BOARD OF TRUSTEES OF THE CLARK COUNTY SCHOOL DISTRICT

are true and correct to the best of my knowledge, information, and belief.

Plaintiff reserves the right to contest the admissibility of any response or responses given hereunder, both at any hearing in this case and at the trial thereof, and nothing herein contained shall be deemed an admission that these responses or any part of these responses constitutes admissible evidence.

INTERROGATORY NO. 1:

Please state your full name and all names by which you have been known.

RESPONSE TO INTERROGATORY No. 1:

Compensatory damage is not calculated. Compensation for emotional distress, disruption in family life and consortium.

<u>INTERROGATORY NO. 6</u>:

Describe the acts or events that you claim amounted to a breach of contract as alleged in your Amended Complaint and for each act/event state: the date of the act/event, any witnesses to the act/event, and the person that engaged in the act/event.

<u>RESPONSE TO INTERROGATORY No</u>. 6: The defendants concentrate on probationary employment of teachers. There are Nevada laws on evaluations of teachers. Plaintiff Viswanathan focuses on the laws on evaluation and their compliance by the Board. The laws on Probationary Teachers and the laws on evaluations of teachers are very special for the school years 2013-14 and 2014-15. These special laws for the school year 2013-14 are found in NRS 391.31214. There is also the Negotiated Agreement Between the Clark County Education Association and the Clark County School District for the School Year 2013-14 (Negotiated Agreement) See

Articles 14.1 and 14.2 on Responses to reports etc. Evaluation. See also NRS 391.31214.7 on the Responses.

The evaluation part made by the Administrator is designated (CCF-8) and the Response Document as CCF-9. The CCF-9 becomes a permanent attachment to CCF-8.

The laws on Probationary employment and teacher evaluations are connected. While decisions of the Board can be made based upon evaluations, the evaluations have to comply with the laws before they can be applied to the employment situation. .

A breach of contract occurs when the laws are not complied with. Teachers expect administrators to act in good faith and to be fair in acting upon the evaluations in acts like responding, forwarding to the Board through proper channel. The statute, and the Negotiated Agreement (Articles 14.1 and 14.2) are clear about these.

The Response of the teacher to the Licensed Employee Appraisal Report becomes a part of the Appraisal Report. The administrator who made the report cannot forward the Appraisal Report (CCF-8) without the response (CCF-9). See Form No. CCF-8 and CCF-9. CCF-9 has an explicit statement to that effect. See also Articles 14.1 and 14.2 of the Negotiated Agreement Between

Clark County Education Association and CCSD for the School Year 2013-14.

<u>First Set of Breaches</u>: A set of breaches occurred with respect to the Licensed Employee Appraisal Report made on or about April 1, 2014. The administrator involved is Louis Markouzis. The response was not due until 30 school days after the Report of April 1, 2014. I submitted my timely Response on May 1, 2014 within 30 calendar days). See Negotiated Agreement. Yet the Notice of the Board dated April 25, 2014 says that the Board directed at its Aril 10, 2014 Meeting that I be not reemployed for the school year 2014-15. The decision not to renew my employment contract was based on the CCF-8 dated January 30, 2014 and April 1, 2014. The CCF8 and CCF-9 go together and the Board could not make its decision on a paper which did not exist then on April 10, 2014. The timely-submitted CCF-9 responding to the Appraisal Report of April 1, 2014 (CCF-8) came into existence in a timely manner on May 1, 2014. The Appraisal Report (CCF-8 standing alone) on me could not be forwarded to the CCSD Board and other officers before the time to respond and/or without my Response Please see Articles 14.1 and 14.2 of the Negotiated Agreement. The CCSD Board breached the contract on or about April 10, 2014, when it made an

important material decision based on the (incomplete) CCF-8 Licensed Employee Appraisal Report of April 1, 2014. The April 25 letter of the Board explicitly gives the reason for the decision. The CCF-8 of April 1, 2014 is explicitly given among the reasons for the material decision. Persons who breached the contract are Louis Markouzis, who made the Appraisal Report, the Principal Neddy Alvarez and others to whom the Appraisal Report was forwarded without its permanent attachment, which is my Response dated May 1, 2014, and the Board through its decision of April 10, 2014 based on the evaluation.

All other information for the response needs to be discovered and this response supplemented.

<u>Second Set of Breaches</u>: Responding to a negative Report is a natural thing to do. The statute 391.31214 explicitly mentions it. So does Article 12 of Negotiated Agreement. Persons who respond do so in good faith and there is an expectation that the report might undergo revision in favor of the responder. I certainly did so and expected a fair dealing. But the scenario described above in the First Set of breaches shows that CCSD and the officers/administrators involved breached the good faith invested in them and breached the covenant of good faith and

fair dealing. They had forwarded the CCF-8 before the deadline to respond and without the CCF-9 Response.

Third Set of Breaches: So far discovery has shown that the Appraisal Report made on or about January 30 has not been forwarded to the Board. Plaintiff did respond on or about February 24, 2014. The CCF-9 must be attached permanently to the corresponding CCF-8 to which it responds. Failure to do so is a breach of contract, as CCSD did not comply with the regulation on Appraisal Reports (CCF-8). The persons who breached are Ms. Sonia Houghton, who made the Appraisal Report and all the administrators through whom the Appraisal was forwarded through and the Board which failed to verify that the regulations are complied with. The Board breached the contract when it used CCF-8 alone without the CCF-9 attached to it. At this time, I do not know the dates on which Ms. Houghton and others forwarded the papers. I also do not yet know the names of administrators through whom the papers passed. It is reasonable to assume that the "report" passed through the then Principal Neddy Alvarez. The Discovery shows that the Board made its decision at its April 10, 2014 meeting or about that date.

The Board's notice of non-renewal of my employment dated April 25 2014 says that the Board made its decision not to

renew my employment contract based on the CCF-8 reports of January 30, 2014 and April 1, 2014. In this situation, the CCF-8 is incomplete without the corresponding CCF-9, which is a permanent attachment to the CCF-8. The Board breached the contract on or about April 10, 2014.

Fourth Set of Breaches: Responding to a negative Report is a natural thing to do and many times the report is challenged. Persons who respond do so in good faith and there is an expectation that the report might undergo revision in favor of the responder. I certainly did so and expected a fair dealing. But the scenario described in the Third Set of Breaches above shows that CCSD and the officers/administrators involved breached the good faith invested in them and breached the covenant of good faith and fair dealing. The Board breached the Covenant of good faith and fair dealing on or about April 10, 2014 at its meeting. The dates and names for others are yet to be discovered and supplemented.

It appears that there are breaches in relation to the grievance I filed on or about May 28, 2014. The facts like names and dates are yet to be discovered and supplemented.

INTERROGATORY NO. 7:

Describe your understanding of your probationary status as identified in Paragraph 11 of your Amended Complaint, including the acts or events that gave rise to your understanding and for each act/event state: the date of the act/event, any witnesses to the act/event, and the person that engaged in the act/event.

RESPONSE TO INTERROGATORY No. 7: The School Year 2013-14 is special for teachers of CCSD and in particular for Probationary Teachers. This Interrogatory No.7 is best answered by referring to NRS 391.31216 and NRS 312.31214. If CCSD is going to make a decision based on teacher evaluations, the evaluations have to comply with the laws above and the regulations in Article 14 of the Negotiated Agreement Between the Clark County Education Association and the Clark County School District.

I believe that there were other regulations, which the Board had to follow with probationary teachers, because Western High School was a "turn around" school. These facts have to be discovered.

INTERROGATORY NO. 8:

Do you contend that the document disclosed as CCSD000001 in Defendant Board of Trustees of the Clark County School District's Arbitration Conference List of Witnesses and Documents is the "written teaching contract" referenced in Paragraphs 12, 53, and 60 of

your Amended Complaint? If no, please identify the written teaching contract referenced in the aforementioned paragraphs.

RESPONSE TO INTERROGATORY No. 8: **Plaintiff objects to the interrogatory on the ground that it is two interrogatories combined as one. Subject to and without waiving the foregoing objection, plaintiff responds as follows: Yes, I contend that** the document disclosed as CCSD000001 in Defendant Board of Trustees of the Clark County School District's Arbitration Conference List of Witnesses and Documents is the only "written teaching contract" referenced in Paragraphs 12, 53, and 60 of my Amended Complaint. There are others for example, the CCF-8 Licensed Employee Appraisal Reports of January 30, 2014, and April 1, 2014 are two other such contracts. The parties to these contracts are myself (Viswanathan) and Sonia Houghton (for that of January 30) and myself and Louis Markouzis for that of April 1, 2014.

INTERROGATORY NO. 9:

Identify the state laws on teacher performance and evaluation referenced in Paragraph 13 of your Amended Complaint.

RESPONSE to INTERROGATORY No. 9: One set of laws are found in 391.31214. They apply specifically for teachers during 2013-14 School Year. I will supplement this answer after discovery. Western High School was a "Turn Around" school in 2013-14, because of its low performance as a school. There were special laws that applied to Western High School, where I was a teacher.

Plaintiff responds to the interrogatories under oath:

I, Tenkasi Viswanathan, the Plaintiff Pro Se in this action, solemnly declare and affirm under penalty of perjury under the laws of the State of Nevada that the following Responses to the FIRST SET OF INTERROGATORIES TO PLAINTIFF FROM THE BOARD OF TRUSTEES OF THE CLARK COUNTY SCHOOL DISTRICT are true and correct to the best of my knowledge, information, and belief.

Respectfully submitted on this 24th Day of March 2021.

/s/ Tenkasi Viswanathan_____
Tenkasi Viswanathan, Pro Se Plaintiff
5850 Sky Pointe DR, Apt #1067
Las Vegas, NV 89130
Phone: (252) 706-0169
E-mail: Viswanathan.Tenkasi@gmail.com

PLAINTIFF'S CERTIFICATE OF SERVICE

I, TENKASI VISWANATHAN, the plaintiff in this action, HEREBY CERTIFY that on this 24th Day of March 2021, I served true and correct copies of the foregoing document (Plaintiff's Responses to the

FIRST SET OF INTERROGATORIES TO PLAINTIFF FROM THE BOARD OF TRUSTEES OF THE CLARK COUNTY SCHOOL DISTRICT)

upon the defendants mentioned herein below and upon the ARBITRATOR at the email addresses indicated, via the EJDC's Electronic Filing and Service Program.

(1) Attorney Crystal J. Herrera, ESQ
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Attorney for Defendants
Clark County School District
CCSD Board of Trustees
Louis Markouzis

(2) Attorney James R. Olson, ESQ
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Attorney for Defendant
Dr. Edward Goldman

(3) Attorney James A. Fontano
ARBITRATOR
5135 Camino Al Norte, Ste 273
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jim@heatonfontano.com

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

Respectfully, this the 24th Day of March 2021.

_/s/ Tenkasi Viswanathan_____
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EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

Tenkasi Viswanathan, Plaintiff,	)	Case No.: A-20-814819-C
vs.	)	Dept. No.:15
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	)	HEARING NOT REQUESTED

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

Comes now, Plaintiff Tenkasi Viswanathan, pursuant to NRCP Rule 12(f)and the Authorities cited herein, and humbly moves the Court for an Order striking Defendant Clark County School District (CCSD) Board of Trustees' (the Defendant Board) Motion for Summary Judgment against the Plaintiff (The Defendant

Board's MSJD) that was electronically filed and served on 06/14/2021 (Monday) at 5:25 PM.

The Hearing in this action for hearing the Defendant Board's MSJD as well as other related motions and joinder is set for July 26, 2021.

Plaintiff shows below that the last date for filing the dispositive summary judgment motion was 06/11/2021 (Friday). The Defendant Board's MSJD was late by three (3) days. Plaintiff has not, as of the date of this motion to strike, responded to The Defendant Board's MSJD. Pursuant to NRCP, 12(f)(2), Plaintiff is humbly requesting the Court for an ORDER striking The Defendant Board's MSJD and granting any other relief that to the Court seems just and proper.

Plaintiff's Present Motion to Strike is made in good faith. Plaintiff has researched diligently the rules on filing a MSJD and the computation of time involved.

Should the Court deny Plaintiff's Present Motion to Strike The Defendant Board's MSJD, plaintiff requests the Court to grant plaintiff adequate time as in NRCP, Rule 12(a)(3)(A): "[I]f the court denies the motion or postpones its disposition until trial, the responsive pleading must be served within 14 days after notice of the court's action".

The Defendant Board has not as of the date of filing of this Present Motion to Strike provided an explanation for its failure to timely file its Motion for Summary Judgment.

BACKGROUND TO THE PRESENT MOTION

This action is pending in the Court-Annexed Arbitration Program. The Arbitration Hearing is set for July 28, 2014, pursuant to the Order of the Arbitrator, the Hon James A. Fontano, filed and served on 05/19/2021. Rule 4(E) of the ARBITRATION RULES controls the filing dates of dispositive motions. Plaintiff shows in his MEMORANDUM OF POINTS AND AUTHORITIES and the computation of time that follow that the last day for filing a dispositive motion in this action was 06/11/2021, a Friday. A motion filed on Monday, 06/14/2021 was late by three days. Plaintiff requests the Court to strike the Defendant Board's MSJD.

MEMORANDUM OF POINTS AND AUTHORITIES

(1) For an action pending in the Arbitration Proceedings, Rule 4(E) of the ARBITRATION RULES prescribes the filing date for dispositive motions.

> **RULE 4(E): During the pendency of arbitration proceedings conducted pursuant to these rules, no motion may be filed in the district court by any party, except motions that are dispositive of the action, or any portion thereof, motions to amend, consolidate, withdraw, intervene, or motions made pursuant to Rule 3(C), requesting a settlement conference,**

mediation proceeding or other appropriate settlement technique. Any of the foregoing motions must be filed no later than 45 days prior to the arbitration hearing or said motion may be foreclosed by the judge and/or sanctions may be imposed. A copy of all motions and orders resulting therefrom shall be served upon the arbitrator.

(2) The Arbitration Hearing in this action is set for July 28, 2021 by Order of the Arbitrator filed and served on 05/19/2021.

(3) The calculation of time, while the action is pending in the Arbitration Proceedings, is per Rule 4(D) of the Arbitration Rules.

Rule 4(D): The calculation of time and the requirements of service of pleadings and documents under these rules are the same as under the Nevada Rules of Civil Procedure (NRCP).

(4) Rule 6, NRCP is on "Computing and Extending Time; Time for Motion Papers". Rule 6(a) is on Computing Time.

Rule 6(a): Computing Time. The following rules apply in computing any time period specified in these rules, in any local rule or court order, or in any statute that does not specify a method of computing time.

(1) Period Stated in Days or a Longer Unit. When the period is stated in days or a longer unit of time:

(A) exclude the day of the event that triggers the period;

(B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and

(C) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

Argument: The Arbitration Hearing Date of July 28, 2021 triggered the period for filing the dispositive Summary Judgment Motion. To find the "last day" of the period, one must exclude July 28, 2021, and count backwards, counting July 27th 2021, as the First Day of the period. One counts everyday including Saturdays, Sundays, and legal holidays. At this point, the Count gives June 13, 2021 as the "last day" of the 45-Day period. The "last day" is included. But June 13 happens to be a Sunday. So, the" last day" is not that Sunday (June 13th) , and the counting continues in order to find the "last day" of the period in question. Rule 6(a) tells at this point that "the period continues to run until the end of the "next day" that is not a Saturday, Sunday, or legal holiday. How does one find the "next day"?

(5) Rule 6(a) (5) defines the "next day":

Rule 6(a) (5) "Next Day" Defined. The "next day" is

determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

Argument: Since the counting was going backwards until this stage, one must continue counting backwards. One moves from Sunday, June 13th to Friday June 11th . The "last day" of the filing period for Summary Judgment Motion was Friday, June 11th, 2021, which is no a legal holiday.

(6) When does time for filing ends on the "last day"? Rule 6(a)(5)(A) answers the question for electronic filing:

Rule 6(a)(5): "Last Day" Defined. Unless a different time is set by a statute, local rule, or court order, the last day ends:

(A) for electronic filing under the NEFCR, at 11:59 p.m. in the court's local time; . . .

Argument: Summary Judgement motions in the present situation should have been electronically filed by 11:59 p.m. on 06/11/2021 to be timely.

The Defendant Board filed its Motion for Summary Judgment electronically on 06/14/2021 at 5:25 PM. The filing was late by 3 days. As of the date of filing of the Present Motion of the Plaintiff to Strike the Defendant Board's Summary Judgment Motion, the Record does not show any explanation by the Defendant Board for its late filing.

MEMORANDUM OF AUTHORITIES

The authority to strike late motions and late filings is widely applied in cases in several jurisdictions. Plaintiff presents the following cases as authorities.

(1) S S Carpets v. Valley Bank of Nevada, 94 Nev. 165 (Nev. 1978); 576 P.2d 750.

> Per Curiam: Appellant failed to file its statement of lien within the ten-day time period specified by NRS 108.239(2) (Eight days late) Therefore, on motion of respondents, the district court entered a judgment striking the statement, from which this appeal is taken. Affirmed.

(2) A California Appellate Court has suggested striking a late-filed motion in place of denying it (cited herein below as Hewlett-Packard, 2015).

> Hewlett-Packard Co. v. Oracle Corp., 239 Cal.App.4th 1174, 191 Cal. Rptr. 3d 807 (Cal. Ct. App. 2015).
>
> Suggesting trial court should frame its order declining to hear a *late*-filed *motion* under section 425.16 as a denial of leave to file the *motion* or an order *striking* the *motion* as untimely and unsupported by sufficient cause to permit *late* filing, neither of which would be immediately appealable. (Underlining Plaintiff's)

(3) Clipse v. Commercial Driver Servs., Inc., 189 Wash. App. 776 (Wash. Ct. App. 2015); 358 P.3d 464.

> Thus, the trial court did not abuse its discretion by striking Clipse's late motion for fees and costs.

(4) Deer v. Eg&G Technical Servs., Inc. 364 P.3d 252 (Haw. Ct. App. 2015); 136 Hawaii, 5442015 WL 8190946.

"*Motion* For An Order *Striking Late* Medical Report Submissions By [Deer]" (*Motion* to Strike). The Court granted the Motion to Strike on the basis of the papers being late.

(5) The strong language used by the New York Court in the following triggers the "suggestion to strike" made in Hewlett-Packard, 2015 (#2 in the list herein). The fact that the Defendant did not address why the Summary Judgment Motion was late provoked the strong language of the Court and many citations by the Court.

Cullity v. Posner, 143 A.D.3d 513, 513–514, 38 N.Y.S.3d 796 ;

> The (Summary Judgment) motion should have been denied as untimely. The motion court's rules required dispositive motions to be filed within 60 days of the filing of a note of issue. Defendant filed the motion papers nine days after the time to do so had expired, rendering the motion untimely (see CPLR 3212[a] ; Brill v. City of New York, 2 N.Y.3d 648, 781 N.Y.S.2d 261, 814 N.E.2d 431 [2004] ; *Connolly v. 129 E. 69th St. Corp*., 127 A.D.3d 617, 618, 7 N.Y.S.3d 889 [1st Dept.2015]). Defendants' failure to address the missed filing deadline or offer, let alone show, good cause for the delay in filing, is fatal to their motion (see Rahman v. Domber, 45 A.D.3d 497, 497, 846 N.Y.S.2d 167 [1st Dept.2007]).

(6) Finally, in the following, the Court did not accept a late filing that was untimely by a day. Even one day of untimeliness was not acceptable to the court.

Connolly v. 129 E. 69th St. Corp., 127 A.D.3d 617, 618 (N.Y. App. Div. 2015); 7 N.Y.S.3d 889 [1st Dept.2015]).

> [M]otions for summary judgment were to be "filed" within 60 days of the filing of the note of issue (List of issues of genuine dispute). Since plaintiffs filed the note of issue on July 10,

> 2013, the motions for summary judgment were due by September 9, 2013. While 129 East 69th Street Corporation (129 East) made (served) a motion for summary judgment on September 4, 2013, it did not file the motion until September 10, 2013, one day after the 60-day time period expired. Therefore, the motion was untimely (*see Corchado v City of New York*, 64 AD3d 429 [1st Dept 2009]). (Emphasis plaintiff's).

WHEWREFORE, based on the foregoing grounds, and the Memorandum of POINTS and Authorities, plaintiff humbly requests the Court for an ORDER granting Plaintiff's Motion to Strike the Clark County School District Board of Trustees' Motion for Summary Judgment and any other relief that the Court finds just and proper.

Should the Court deny Plaintiff's Present Motion to Strike The Defendant Board's MSJD, plaintiff requests the Court to grant plaintiff adequate time as in NRCP, Rule 12(a)(3)(A): "[I]f the court denies the motion or postpones its disposition until trial, the responsive pleading must be served within 14 days after notice of the court's action".

Plaintiff request the Court for any relief that to the Court seems just and proper.

Respectfully submitted on this 21st Day of June 2021.

/s/ Tenkasi Viswanathan_____
Tenkasi Viswanathan, Pro Se Plaintiff
8220 Hollister Ave

Las Vegas, NV 89131
Phone: (252) 706-0169
E-mail: Viswanathan.Tenkasi@gmail.com

PLAINTIFF'S CERTIFICATE OF SERVICE

I, TENKASI VISWANATHAN, the plaintiff in this action, HEREBY CERTIFY that on this 21st Day of June 2021, I served true and correct copies of the foregoing document (PLAINTIFF'S MOTION TO STRIKE DEFENDANT CLARK COUNTY SCHOOL DISTRICT BOARD OF TRUSTEES' MOTION FOR SUMMARY JUDGMENT upon the defendants mentioned herein below and upon the Hon. Arbitrator at the email addresses indicated, via the EJDC's Electronic Filing Program.

(1) Attorney Crystal J. Herrera, ESQ
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Louis Markouzis

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Attorney for Defendant
Dr. Edward Goldman

(3) Hon. James A. Fontano
Arbitrator, Eighth Judicial District Court
Heaton Fontano Ltd.
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jim@heatonfontano.com

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

Respectfully, this the 21st Day of June 2021.

_/s/ Tenkasi Viswanathan_____
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EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

Tenkasi Viswanathan, Plaintiff, vs. 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, Nerdy 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	Case No.: A-20-814819-C Dept. No.:15 HEARING DATE: July 26, 2021 TIME: 9:00 AM DISTRICT JUDGE

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

COMES NOW, PLAINTIFF TENKASI VISWANATHAN, AND MOVES THE COURT FOR AN ORDER TO STRIKE ALL OR PARTS OF THE DECLARATIONS ATTACHED AS EXHIBIT A, EXHIBIT B, AND EXHIBIT C TO DEFENDANT

CLARK COUNTY SCHOOL DISTRICT (CCSD) BOARD OF TRUSTEES' (THE DEFENDANT BOARD) MOTION FOR SUMMARY JUDGMENT (MSJD), AND THE EXHIBITS THERETO. Plaintiff hereby files and serves his OBJECTIONS TO THE SAID SUMMARY JUDGMENT MOTION AND EXHIBITS THERETO. Should the Court deny the Motion, Plaintiff requests the Court to give him adequate time to respond to the Summary Judgment Motion, pursuant to Rule 12.

In support of his motion, plaintiff provides the following as grounds therefor: :

Plaintiff shows that the Declaration in EXHIBIT A by Sonia Houghton (Houghton) and the Declaration in EXHIBIT C by Louis Markouzis (Markouzis) do not meet the three threshold requirements of an affidavit for NRCP, Rule 56 Summary Judgment Motion. In the Declaration in EXHIBIT B by America Lomeli, Plaintiff shows that one paragraph meets the criteria to be stricken.

I. PLAINTIFF'S AMENDED COMPLAINT

Plaintiff had a written contract as a teacher with CCSD for the 2013-2014 School Year. Plaintiff was a first-year math teacher. Plaintiff's Amended Complaint speaks extensively of teacher evaluations (See, for example, Paragraphs ¶ 13 to ¶ 21). In ¶ 16 through ¶ 19, the Complaint states relevant facts about

responding to the evaluations and about a Response submitted on May 1, 2014 to Plaintiff's last evaluation of April 1, 2014.

Plaintiff's contract includes compliance with state statutes by both parties, for example with NRS Ch 391. The compliance involves much knowledge of evaluations.

The primary purpose of an evaluation is to provide a format for constructive assistance. "Evaluations are for constructive assistance to teachers" (NRS 391.31214.3, penultimate sentence.)

II. THE 2013-2014 SCHOOL YEAR IS A TRANSITIONAL YEAR FOR TEACHER EVALUATIONS

REQUEST FOR JUDICIAL NOTICE, PURSUANT TO NRS 47.150.2

There was an additional element for the School Year 2013-2014, when Plaintiff was employed by CCSD. It was a year of transition for teacher evaluations. NRS 391.465 sets the goals and NRS 391.3125 sets forth the new format to evolve. NRS 391.31214 is the transitional statute for CCSD and other 16 Nevada school districts. The transition elements mentioned above are no longer current law. Plaintiff has attached the 2013 Revised Version of NRS 391 as Exhibit (a) NRS Ch 391. Given to him by the Nevada Legislative Research Council. Exhibit C for NRS 391.31214, Exhibit L for NRS 391.3125, and Exhibit M for NRS 391.465 are attached to Plaintiff's Declaration. Plaintiff requests the Court to take judicial notice of the above

statutes, pursuant to NRS 47.150.2. The dates of passages of the statutes are given in Exhibit (a) NRS Ch. 391. This is the last Exhibit to Plaintiff's Declaration.

Plaintiff's Claims 1 and 2 are the remaining claims of the Plaintiff. They involve evaluations and their operational elements in compliance with Plaintiff's contract, the Nevada statutes and the articles agreed upon in the "Negotiated Agreement between Clark County Education Association and the Clark County School District.

From the foregoing, it is seen that an evaluator must demonstrate that she or he has personal knowledge of the evaluation elements in the context and that he or she is competent to testify as stated in the Memorandum of Points and Authorities mentioned below. The Declaration of Sonia Houghton is silent about her personal knowledge and competence as described.

III. MEMORANDUM OF POINTS AND AUTHORITIES REQUIREMENTS ON RULE 56 DECLARATIONS

(a) In order to be considered by the Court on a motion for summary judgment, a declaration must satisfy three threshold requirements (NRCP, Rule 56(c)(4): (1) It "must be made on personal knowledge"; (2) it must "set out facts that would be admissible in evidence"; and (3) it

must " show that the affiant or declarant is competent to testify on the matters stated."

(b) Keys Country Resort, 272 So. 3d at 504. "When a supporting affidavit does not comply with these requirements, it is legally insufficient to support the entry of summary judgment in favor of the moving party." Enter. Leasing Co. v. Demartino, 15 So. 3d 711, 714 (Fla. 2d DCA 2009).

IV. PRELIMINARY BACKGROUND FACTS

The following are matters for consideration:

(1) Plaintiff Viswanathan had a written Probationary Contract with the Defendant Board for the school year 2013-2014. (Defendant Board's MSJD:P.3.12-13 citing Declaration of America Lomeli, The Defendant Board's Exhibit B, ¶ 3. Plaintiff's present Declaration, Paragraph 6)

(2) The "Negotiated Agreement between the Clark County Education Association (CCEA) and Clark County School District" (Negotiated Agreement) is part of the Plaintiff's Contract. Through its Response to Plaintiff's Request for Admission (RFA) No.10, the

Defendant Board admitted to the incorporation of the "Negotiated Agreement" into the written Contract, which is in Plaintiff's Exhibit A. (See RFA No. 10, Exhibit E to Plaintiff's Declaration. Admissions are established). .

(3) Plaintiff received a "Notice of Nonreemployment of Probationary Employee" on or about April 28, 2014. (Plaintiff's Present Declaration, Paragraph 12)

(4) The notice informed that failure to meet the performance standards of CCSD was the reason for the nonreemployemnt, and directed the attention of the plaintiff to the "Licensed Employee Appraisal Reports) of 1/30/2014 and 4/1/2014. These are evaluation documents for the plaintiff (For example Plaintiff's Declaration, Exhibits A-2 and B-2, Present Declaration, Paragraphs 15-18).

(5) Articles 14-1, 14-2, and 14-3 of the "Negotiated Agreement" deal with how written instruments like evaluations (appraisal reports) move from its source to other locations and onto the personnel file. Through its Response (Exhibit E, attached to Plaintiff's Present Declaration) to Plaintiff's Requests for Admission No. 11, 12, and 13, the Board has established the following:

A response to an evaluation must be submitted to the supervisor within 30 days of the date of the evaluation. The supervisor or his/her designee will endorse receipt of the response and provide a copy to the responding teacher. Thereafter the Response becomes permanently attached to the evaluation. Whenever the evaluation is forwarded to a different location, the permanent attachment goes with the evaluation (Plaintiff's Declaration, Exhibit E, Response to RFA-s 11, 12, and 13 by the Defendant Board).

(6) Plaintiff had responded to the evaluation of 1/30/2014 on February 21, 2014, within the 30-day time period for responding.(Present Declaration, Paragraph 18, Exhibit B-3, CCSD000172-CCSD000173). Plaintiff submitted his Response to his super visor Houghton.

(7) Per the preceding Paragraph (5), the response should be part of the evaluation instrument. But the Attachment Houghton refers to as the second evaluation is dated 1/30/2014 and covers Bates No. CCSD000100-CCSD000104 with five pages.

(8) Plaintiff has attached to his Declaration a copy of his Response as Exhibit B-3 (CCSD000172-CCSD000173, the Appraisal Report of Houghton as Exhibit B-2 (CCSD000100-CCSD000104)and Exhibit B-1 putting together Exhibit B-3 as an attachment to Exhibit B-2.

The evaluation with the Response has seven pages, while the "2nd evaluation" in Exhibit 2 to the Declaration of Houghton has only 5 pages. They are not identical.

V. THE DECLARATION OF SONIA HOUGHTON IN EXHIBIT A OF THE DEFENDANT BOARD'S MOTION FOR SUMMARY JUDGMENT

(a) Houghton's Declaration does not even mention if she was and is licensed to observe teachers. The Declaration only presents factual conclusions.

(b) According to ¶ 4 of the Declaration in Exhibit A of Houghton, Exhibit 2 is a true and accurate copy of Plaintiff Viswanathan's "second evaluation", which Houghton provided Mr. Viswanathan. The "first evaluation" was made on 11/25/2013 while the "second evaluation" was made on 1/30/2014. The Declaration of Houghton groups two evaluations together in the following statement: "Attached hereto as Exhibits 1 and 2 are true and accurate copies of the two written evaluations I provided Mr. Viswanathan." Houghton has grouped two evaluations together as "two written evaluations", and not taken the trouble of identifying, which is which, for example by date. This lack of specificity raises the question if she did it purposefully to drive to a factual conclusion.

(c) Plaintiff has shown on P. 7.12-23 that the evaluation by Sonia Houghton dated 1/30/2014 and attached to her Declaration (Exhibit A of the Defendant Board's MSJD) lacked the "permanent attachment" to it. The "permanent attachment" is the Response dated about February 21, 2014.

(d) In Paragraph 6 of her declaration, Houghton says that the third evaluation was conducted by Louis Markouzis, a school administrator at another school within the District. But in Paragraph 8 she jumps to a written warning given on March 24, 2014 and in Exhibit 4 she deals with "an investigatory conference" on March 14, 2014. There is no explanation as to how Houghton took over from Louis Markouzis, who was the official "evaluator" during that period.

(e) Paragraph 9 of Houghton's Declaration uses the word "we" without explaining who the "we" are. The Declaration does not give the connection between the evaluation and a recommendation.

(f) In Paragraph 10, Houghton's Declaration does not explain how she got access to the "resolution" of the Board of Trustees.

(g) The Declaration does not give any clue to her personal knowledge and competency regarding the evaluation process and the compliance provisions of NRS 391.31214 and if her evaluations complied with the Board policy on teacher

evaluations and the statutory provisions required in evaluating probationary teachers.

The Declaration does not meet the requirements on affidavits/declarations required by NRCP, Rule 56.

VI. MEMORANDUM OF POINTS AND AUTHORITIES

PERSONAL KNOWLEDGE

(i) Parties must demonstrate that their summary judgment affidavits are made on personal knowledge. *Sperle v. Michigan Dep't of Corrections*, 297 F.3d 483, 495 (6th Cir. 2002); *Smartt v. Clifton*, No. C-3-96-389, 1997 WL 1774874, at *11 (S.D. Ohio 1997).

(ii) In order for inferences, thoughts, and opinions to be properly included in a Rule 56 affidavit, they must be premised on firsthand observations or personal experience and established by specific facts. *Buchanan v. City of Bolivar*, 99 F.3d 1352, 1355 n.2 (6th Cir. 1996); *Harrah's Entertainment, Inc. v. Ace American Ins.Co.*, 100 Fed. Appx. 387, 394 (6th Cir. 2004) (a court should strike affidavits that do nothing more than reach legal conclusions); *Drake v. Minnesota Min. & Mfg. Co.*, 134 F.3d 878, 887 (7th Cir. 1998)("[a]lthough 'personal knowledge' may include

inferences and opinions, those inferences must be substantiated by specific facts").

VII. COMPETENCY TO TESTIFY

In *Rodriguez v. Avatar Property & Casualty Insurance Co.*, 290 So. 3d 560 (Fla. Dist. Ct. App. 2020), the case involved knowledge of plumbing and contracting. The District Court of Appeals of Florida said that the affidavit lacks sufficient information to allow us to conclude that she possesses the competency to testify to the matters set forth . . .. We therefore conclude that Avatar's affidavit was insufficient as a basis for summary judgment. The affidavit includes matters upon which the affiant has failed to demonstrate a personal knowledge or competency, and it contains unsupported opinions and conclusions of fact and law. Rather than an affidavit based on personal knowledge, competency, and admissible facts, the affidavit here simply restates, almost verbatim, the motions for summary judgment.

In the present case, what is required is competence about evaluating probationary Teachers. All the Declaration does is to provide factual conclusions.

Plaintiff objects to the Declaration of Sonia Houghton and requests the Court to grant Plaintiff's Motion and enter an ORDER striking the Declaration of Sonia Houghton.

VIII. DECLARATION OF AMERICA LOMELI

Exhibit B to the Defendant Board's MSJD is a Declaration by America Lomeli (Lomeli). She is a Personnel-Analyst in the Employee-Management Relations Department. She serves as a custodian of records for the Employee-Management Relations Department.

In Paragraph 6 of the Declaration, Lomeli declares under penalty of perjury as follows:

> **"Attached hereto as Exhibit 4 is a true and accurate copy of an email response to Mr. Visvanathan from the Employee-Management Relations Department concerning the grievance he submitted on March 28, 2014 as contained in the Employment-Management Relations."**

The email correspondence that is attached as Exhibit 4 to Lomeli's Declaration speaks of a grievance that was submitted on May 28, 2014. Since March 28, 2014, and May 28, 2014 are distinct dates, and the declaration of Lomeli is made under penalty of perjury, Exhibit 4 referred to in the foregoing, of America Lomeli must be stricken from the Record.

Given the discrepancy, Plaintiff requests the Court to grant Plaintiff's Motion to Strike and enter an ORDER striking Exhibit 4 to the Declaration of America Lomeli, which declaration is attached as Exhibit B accompanying the Clark County School District Board of Trustees' Motion For Summary Judgment.

IX. DECLARATION OF LOUIS MARKOUZIS ATTACHED AS EXHIBIT 4 TO THE DEFENDANT BOARD'S MSJD

The Declaration of Louis Markouzis, which is Exhibit C to the Defendant BOARD'S Motion for Summary Judgment presents an insufficiency on a Motion for Summary Judgment similar to that of the Declaration of Sonia Houghton.

Plaintiff incorporates herein by reference the contents of the following four Sections in the foregoing as if those contents were fully set forth herein:

(A) Plaintiff's Amended Complaint

(B) The 2013-2014 School Year was a Transitional Year for Teacher Evaluations; Request For Judicial Notice, Pursuant To NRS 47.150.2

(C) Memorandum Of Points and Authorities Requirements On Rule 56 Declarations

(D) Preliminary Background Facts, Paragraphs 1-5;

- **Plaintiff had responded to the evaluation of 4/1/2014 on May 1, 2014, within the 30-day time period for responding.(Present Declaration, Paragraph 16, Exhibit A-3, CCS000113-CCSD000117). Plaintiff submitted his Response to the Principal Neddy Alvarez' Office.**

  Per Paragraph (5) of the Section above on "Preliminary Background Facts", the response should be part of the evaluation instrument. But the Attachment Markouzis refers to as the "third written evaluation" (Exhibit C, Paragraph 4, Declaration of Markouzis) is dated 4/1/2014 and covers Bates No. CCSD000118-CCSD000125 with eight pages.

  Plaintiff has attached to his Present Declaration a copy of his Response to "Markouzis' third written evaluation" as Exhibit A-3 (CCSD000113-CCSD000117, the Appraisal Report of Markouzis as Exhibit A-2 (CCSD000118-CCSD000125). Exhibit A-1 puts together Exhibit A-3 as an attachment to Exhibit A-2. The evaluation with the Response has thirteen (13) pages, while the "3rd written evaluation" in Exhibit 1 to the Declaration of Markouzis has only 8 pages. They are not identical.

X. THE DECLARATION OF LOUIS IN EXHIBIT C TO THE DEFENDANT BOARD'S MOTION FOR SUMMARY JUDGMENT

Markouzis' Declaration does not even mention if he was and is licensed to observe teachers. The Declaration only presents factual conclusions.

Plaintiff has shown on P. 14, 15-24 that the evaluation by Markouzis dated 4/1/2014 and attached to his Declaration (Exhibit C of the Defendant Board's MSJD) lacked the "permanent attachment" to it. The "permanent attachment" is the Response dated May 1, 2014.

The Declaration of Markouzis does not give any clue to his personal knowledge and competency regarding the evaluation process and the compliance provisions of NRS 391.31214 and if his evaluations complied with the Board policy on teacher evaluations and the statutory provisions required in evaluating probationary teachers.

The Declaration does not meet the requirements on affidavits/declarations required by NRCP, Rule 56.

Based on the foregoing, plaintiff objects to the Declaration of Louis Markouzis, attached as Exhibit C to the Defendant Board's MSJD. Plaintiff requests the Court to grant his motion to strike and enter an ORDER striking the Declaration of Louis Markouzis, which is Exhibit C to the Defendant CCSD Board of Trustees' Motion for Summary Judgment.

Wherefore, based on the foregoing, Plaintiff respectfully requests the Court to grant this 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 strike the exhibits thereto. Plaintiff requests the Court to sustain Plaintiff's objections to the said summary judgment motion and exhibits thereto.

Respectfully submitted on this 6th Day of June 2021.

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

PLAINTIFF'S CERTIFICATE OF SERVICE

I, TENKASI VISWANATHAN, the plaintiff in this action, HEREBY CERTIFY that on this 6th Day of June 2021, I served true and correct copies of the foregoing document.

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

upon the defendants mentioned herein below and the Hon. Arbitrator at the email addresses indicated, via the EJDC's Electronic Filing and Service Program.

(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

(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
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Attorney for Defendant
Dr. Edward Goldman

(3) Hon. James A. Fontano
Arbitrator, Eighth Judicial District Court
Heaton Fontano Ltd.
5135 Camino al Norte, Suite 273
North Las Vegas, NV 89031
jim@heatonfontano.com

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

Respectfully, this the 28th Day of June 2021.

_/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

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Steven D. Grierson
CLERK OF THE COURT

CLARK COUNTY SCHOOL DISTRICT
OFFICE OF THE GENERAL COUNSEL
CRYSTAL J. HERRERA, ESQ.
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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: July 28, 2021** **Hearing Time: 9:00 a.m.**

DEFENDANT CLARK COUNTY SCHOOL DISTRICT BOARD OF TRUSTEES' OPPOSITION TO PLAINTIFF'S MOTION TO STRIKE THE DECLARATIONS IN SUPPORT OF DEFENDANT BOARD'S MOTION FOR SUMMARY JUDGMENT

Defendant Board of Trustees of the Clark County School District ("Defendant" or "Board"), by and through its attorneys of record, hereby submits the following Opposition 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.

This Opposition is made and based on the papers and pleadings on file, the following memorandum of points and authorities, and any oral argument that may be heard at the hearing on this matter.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff is seeking to strike all or portions of the declarations attached to Defendant's Motion for Summary Judgment. In doing so, Plaintiff argues that the declarants lack competency or personal knowledge about the circumstances they describe. However, Plaintiff makes these representations without any factual or legal support for the same. Even a fleeting review of the declarations show that the declarants are speaking on matters they were involved in and/or actions they took concerning the subject of this litigation. Plaintiff's attempt to strike the declarations in support of Defendant's Motion is unsupported and should be denied.

II. LEGAL ARGUMENT

In considering evidence at the summary judgment stage, the Court may consider depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials. NRCP 56(c). Affidavits or declarations must be based on personal knowledge, a competent declarant or affiant, and present admissible facts. NRCP 56(c)(4). As discussed below, Plaintiff improperly takes issue with the declarations attached to Defendant's Motion for Summary Judgment on the basis that the declarants were not competent, lacked personal knowledge, or made a typographical error. Plaintiff's arguments are nonsensical and seemingly a deflection to avoid a decision on Defendant's Motion.

A. Sonia Houghton's Declaration Can Be Considered by the Court.

Plaintiff seeks to strike the Declaration of Sonia Houghton, attached as Exhibit A to Defendant's Motion for Summary Judgment, on several grounds: (1) she did not state if she was licensed to observe teachers; (2) she grouped two evaluations without dating them; (3) she did not attach Plaintiff's responses to his evaluations in her declaration; (4) she failed to explain why she provided Plaintiff a written warning; (5) she does not identify who "we" is in the declaration;

(6) she does not explain how she knows a resolution went to the Board; (7) her declaration does not identify her personal knowledge and competency regarding compliance with the evaluation process or explain if her processes complied with them. Motion at pp.8-9. Plaintiff characterizes Houghton's Declaration as one of factual conclusions. *Id.* at 11:22-23.

Plaintiff's Motion should be denied for several reasons. Preliminarily, Plaintiff offers no support for how his Motion is procedurally appropriate. He requests Houghton's Declaration be stricken, but fails to identify why a motion to strike is permissible.

Additionally, Plaintiff's Motion fails to shows Houghton's Declaration does not comply with NRCP 56(c)(4). The Rule provides that "[a]n affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated." Plaintiff argues that Houghton did not show she had personal knowledge or competency to make certain representations in her Declaration. However, Houghton's competency is not at issue. Her competency is presumed under Nevada law and there is no fact or law presented by Plaintiff to the contrary. NRS 50.015 ("Every person is competent to be a witness except as otherwise provided in this title"). In fact, Plaintiff's only argument towards competency appears to be that Houghton did not state she was licensed to observe teachers in her Declaration. It is entirely unclear how Plaintiff came up with such a requirement when none exists. Plaintiff's attempt to create a requirement to argue Houghton is not competent to testify about matters she was involved in and actions she took that are the subject of the instant litigation are unpersuasive.

Houghton's Declaration is similarly based on her personal knowledge. Plaintiff largely attacks Houghton's personal knowledge because her Declaration does not answer questions Plaintiff has. Indeed, Plaintiff takes issue with Houghton's Declaration grouping two evaluations without dating them (even though the dates are present in the evaluations themselves), not attaching Plaintiff's responses to his evaluations, not explaining why Houghton and not someone else issued him a written warning, and failing to explain who "we" is paragraph 9 of the Declaration (despite the school principal and school region supervisor having been identified in the paragraph). Plaintiff had an opportunity to conduct discovery and ask Defendant and

relevant witnesses questions concerning his evaluation, discipline, and the evaluation or disciplinary process. The motion for summary judgment stage is not the time to ask questions and demand answers. Even if it was, Houghton presented a very straightforward Declaration with facts and documents that Plaintiff does not contest and on matters she has personal knowledge on. Houghton was Plaintiff's supervisor, observed Plaintiff's performance deficiencies, issued Plaintiff evaluations and discipline, recommended his non-renewal, and ultimately knew that the Board approved the non-renewal recommendation. Plaintiff's procedural endeavor to ignore undisputed facts is a wasteful expenditure of time and resources.

B. Exhibit 4 To America Lomeli's Declaration Is Appropriately Before The Court.

Plaintiff also seeks to strike Exhibit 4 to the Declaration of America Lomeli, attached as Exhibit B to Defendant's Motion for Summary Judgment, because the Declaration contained a typographical error. More specifically, Lomeli's Declaration inadvertently identified the grievance date in Exhibit 4 as March 28, 2014 instead of May 28, 2014—an error that can be remedied. Plaintiff offers no support for why a typographical error should result in the exclusion of the document, particularly when the document is self-authenticated[1], authenticated by Defendant Goldman[2], and Plaintiff does not otherwise question the email's authenticity. *See* NRS 52.055 ("Appearance, contents, substance, internal patterns or other distinctive characteristics are sufficient for authentication when taken in conjunction with circumstances"). Plaintiff himself has attested to having submitted a grievance on the matter on May 28, 2014, not March 28, 2014. *See* Plaintiff's Affidavit in Support of Motion for Partial Summary Judgment at ¶29 ("On May 28, 2014, I sent my grievance in the prescribed form by Certified Mail, Return

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[1] Exhibit 4 is an email that contains sufficiently distinctive characteristics for the Court to consider it under NRS 52.055. First, there is no real dispute that the names of the individuals on the email concern those Plaintiff's identifies in his operative complaint. Second, the email discusses the incident at issue that is central to this case—Plaintiff grieving the matter at issue to Defendant Goldman and the corresponding response.

[2] *See* Exhibit 3 at ¶ 13, Exhibit G, attached to Defendant Goldman's Motion for Summary Judgment (containing the same document at issue).

Receipt Requested to Dr. Goldman, Associate Superintendent for Employee Relations, complaining about the premature decision and requesting correcting revaluation."). Plaintiff's request to strike Exhibit 4 to Lomeli's Declaration should be denied.

C. The Court Can Consider Louis Markouzis' Declaration.

Plaintiff seeks to strike the Declaration of Louis Markouzis, attached as Exhibit C to Defendant's Motion for Summary Judgment, on some grounds similar as Houghton's Declaration: (1) Markouzis did not state if he was licensed to observe teachers; (2) he did not attach Plaintiff's response to his evaluation in the declaration; (3) his declaration does not identify his personal knowledge and competency regarding compliance with the evaluation process or explain if his processes complied with them. Motion at p 15.

Once again, Plaintiff offers no support for how his Motion is procedurally appropriate. He requests Markouzis' Declaration be stricken, but fails to identify why a motion to strike is permissible.

Furthermore, Plaintiff's Motion fails to shows Markouzis' Declaration does not comply with NRCP 56(c)(4). Markouzis' competency is not at issue. His competency is presumed and there is no fact or law to support otherwise. *See* NRS 50.015. Plaintiff's only argument against competency appears to be, like with Houghton, that Markouzis did not state he was licensed to observe teachers in his Declaration. Plaintiff has made up licensure requirement that does not cut-against Markouzis' competency or the undisputed facts provided in his Declaration.

Markouzis' Declaration is also based on his personal knowledge. Indeed, a cursory review of Markouzis' Declaration shows that he is speaking about himself and actions he took—all plainly within his knowledge. The fact that Plaintiff may have questions about the evaluation process does not negate or undermine Markouzis' personal knowledge or the admissibility of the facts presented. Accordingly, Plaintiff's request to strike Markouzis' Declaration should be denied.

. . .

. . .

. . .

III. CONCLUSION

Based on the foregoing, this Court should deny Plaintiff's Motion to Strike any portion of the Declarations attached to Defendant's Motion for Summary Judgment.

DATED this 21st day of July, 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 21st day of July, 2021, I served a true and correct copy of the foregoing **DEFENDANT CLARK COUNTY SCHOOL DISTRICT BOARD OF TRUSTEES' OPPOSITION TO PLAINTIFF'S MOTION TO STRIKE THE DECLARATIONS IN SUPPORT OF DEFENDANT BOARD'S MOTION FOR SUMMARY JUDGMENT** via the EFP Program, pursuant to the Court's Electronic Filing Service Order and/or mailed upon the following:

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

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CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

TENKASI VISWANATHAN, Plaintiff,	)	CASE NO. A-20-814819-C
vs.	)	DEPT. NO. XV
BOARD OF TRUSTEES OF THE CLARK COUNTY SCHOOL DISTRICT, ET AL., Defendants.	)	**Transcript of Proceedings**

BEFORE THE HONORABLE JOE HARDY, DISTRICT COURT JUDGE

ALL PENDING MOTIONS

WEDNESDAY, AUGUST 25, 2021

APPEARANCES (ALL VIA VIDEO CONFERENCE):

For Mr. Viswanathan: PRO SE

For the Trustees: CRYSTAL HERRERA, ESQ.

For Dr. Goldman: STEPHANIE A. BARKER, ESQ.

RECORDED BY: MATT YARBROUGH, DISTRICT COURT
TRANSCRIBED BY: KRISTEN LUNKWITZ

Proceedings recorded by audio-visual recording; transcript produced by transcription service.

WEDNESDAY, AUGUST 25, 2021 AT 9:11 A.M.

THE CLERK: A814819, *Tenkasi Viswanathan versus Board of Trustees of the Clark County School District.*

MR. VISWANATHAN: Good morning, Your Honor. I'm not going to be able to hear anything.

THE COURT: I have no --

THE CLERK: He said he couldn't hear anything.

THE COURT: Can you hear me?

MR. VISWANATHAN: I can hear you.

THE COURT: Okay. So, we're starting now with your case. But let's get appearances from the other people on this case.

MS. HERRERA: Good morning, Your Honor. Crystal Herrera on behalf of the defendant --

MR. VISWANATHAN: Hello?

THE COURT: Okay.

MS. HERRERA: -- the Board of Trustees --

THE COURT: Sorry. Mr. Viswanathan, can you hear me?

MR. VISWANATHAN: I can hear you, Judge. But I don't see my picture on the -- in the room.

THE COURT: Well, I can hear you just fine. But what I need for you to do is, we need to take turns. And, so, your appearance is noted. You're here. You're checked

in. But what I need you to do right now is take your turn and be silent while I hear from the other people on the line. Okay?

MR. VISWANATHAN: Yes. Thank you very much.

THE COURT: Okay.

MS. HERRERA: Good morning, Your Honor.

THE COURT: Go ahead.

MS. HERRERA: Crystal Herrera on behalf of the defendant, the Board of Trustees for the Clark County School District.

THE COURT: Good morning.

MS. BARKER: And Stephanie Barker on behalf of defendant Goldman.

THE COURT: Good morning. Okay. Anyone --

MR. VISWANATHAN: [Indiscernible].

THE COURT: Mr. --

MR. GASPAR: I'm sorry to interrupt. But this is Dirk Gaspar again, joining.

THE COURT: Okay. Bear with me. Mr. Viswanathan, can you hear me?

MR. VISWANATHAN: Yes, sir. I can hear you.

THE COURT: Okay. So, I -- this is the last time, hopefully, I need to say this. But please be silent while we wait to hear from the other people. Okay?

MR. VISWANATHAN: Yes, sir. Thank you.

THE COURT: Thank you.

So, I missed -- I got Ms. Herrera and Ms. Barker. And I think I missed another attorney, though.

THE CLERK: That was Mr. Gaspar logging on.

THE COURT: Again? Okay. Okay. So, we're on the *Viswanathan* case right now. So, if you're not on the *Viswanathan* case, please go ahead and mute yourselves.

Okay. And bear with me because I need to re-log in to my computer, so hold on one moment.

Okay. So, I have a large binder, if you will, of what I believe are the pending Motions and accompanying Oppositions and Replies, 29 or so different filings. But it seems -- and, you know, here's the landscape as I see it right now. But welcome arguments and input from everyone here in a moment.

But we have Plaintiff's Motion for Partial Summary Judgment, which he is -- seems to have withdrawn. We have Plaintiff's First Amended Motion for Partial Summary Judgment, withdrawing the original filing. So, I think that Plaintiff's Motion for Summary Judgment is withdrawn, at least that's my understanding. We have Clark County School Board's Motion for Summary Judgment, Dr. Goldman's Motion for Summary Judgment, and his Joinder.

Then we have -- I don't even know how many, but a bunch of Motions to Strike filed by plaintiff and

accompanying briefing on those. We have, notwithstanding plaintiff strenuously objecting to the Motion for Summary Judgments filed by defendants in terms of their timeliness, then we have plaintiff asking for additional time to file his Opposition. Defendants not opposing that request for additional time. And, then, as far as I can tell, we never got an Opposition filed by plaintiff.

And, again, there's an awful lot filed. So, if I missed anything, let me know.

But, so, Mr. Viswanathan, can you hear me still?

MR. VISWANATHAN: Yes. I can hear you. Can you hear me, too?

THE COURT: So, I -- yes. I can still.

MR. VISWANATHAN: Good. Thank you.

THE COURT: So, have you withdrawn your Motion for Summary Judgment?

MR. VISWANATHAN: Yes, sir. The Motion for Partial Summary Judgment, I have withdrawn.

THE COURT: Okay. So, Plaintiff's Motion for Partial Summary Judgment denied without prejudice as being -- having been withdrawn by plaintiff.

Okay. So, let's start, then, hearing from, I believe, Ms. Herrera on the Trustees' Motion for Summary Judgment. And I really, first up, want to know, did I miss an Opposition filed by plaintiff? Or --

MS. HERRERA: No, Your Honor. Not one that I've seen.

THE COURT: Okay. Do you have anything you want to add to your Motion, or any background, or context you want to add?

MS. HERRERA: Your Honor, unless you have any questions, I think the Motion for Summary Judgment, you know, lays out the argument sufficiently, both, you know, based on the breach of contract grounds and the basis for which Mr. Viswanathan has plead his claims against the Board of Trustees.

THE COURT: I don't have any questions. Thank you very much.

And, Ms. Barker, you filed a Motion for Summary Judgment on behalf of Dr. Goldman. Correct? Ms. Barker, are you still there?

MS. BARKER: Yes. Do you hear me?

THE COURT: Yes.

MS. BARKER: Or, no?

THE COURT: I can now. Yes.

MS. BARKER: Okay. Yes, Your Honor. We did file a Motion for Summary Judgment. And, no, we've not seen an Opposition to the substance of the Motion.

THE COURT: Okay. Thank you. Okay.

Ms. Viswanathan, are --

MR. VISWANATHAN: Yes, sir.

THE COURT: Are the attorneys correct, you -- despite them not opposing your request for additional time, you never filed an Opposition?

MR. VISWANATHAN: I did not file an Opposition because I filed the Motion to Strike [indiscernible] the Motions. I wanted to take care of the special conditions before I argue based on merit.

THE COURT: Well, I guess you certainly did take that position. So, since we're hearing from anyone, I suppose, do you have anything you want to add to your Motions to Strike?

MR. VISWANATHAN: It's just to the first two Motions, I filed the Motions to Strike the summary judgment motion without the [indiscernible], the noncompliance with the rules of [indiscernible]. And Nevada application rules. So, that is on the first one.

And, then, the time was ticking, so I filed two other Motions requesting striking the [indiscernible] because they are the threshold of the Motion.

THE COURT: So, --

MR. VISWANATHAN: So, I thought if I take care of that one, then I can --

THE COURT: So, let me --

MR. VISWANATHAN: -- argue based on the merit.

THE COURT: Let me ask you this. Didn’t you file your Motion for Summary Judgment on the same day they filed their Motions?

MR. VISWANATHAN: This correct, sir. And that is why I withdrew. Because I thought it would be hard if I did not try it and, then, ask the Court to strike them down.

THE COURT: Okay. Do you have anything else you want to add in support of your Motions to Strike?

MR. VISWANATHAN: Well, the argument is in the Motion. And it is very, very serious. And because the [indiscernible] Motions, that they are entitled to judgment from other methods of law. But, then, the first law is meeting of the claim. And [indiscernible] are very serious. And, so, I thought that they -- because they did not read the first condition of the law, they are not entitled to summary judgment. And I wanted to wait until I file my Motion -- my Opposition with the merit.

THE COURT: Okay. Thank you.

I don’t have any preference whether Ms. Barker or Ms. Herrera wants to respond first.

MS. HERRERA: Your Honor, I can go ahead and respond.

THE COURT: Sure.

MS. HERRERA: So, we obviously filed --

THE COURT: Sure.

MS. HERRERA: -- an Opposition. And this is Ms. Herrera, for the record.

So, we obviously filed an Opposition to the Motion to Strike. You know, the arguments stand based on what we have written there. Obviously, Mr. Viswanathan calculated the dispositive motion deadline at that time in the same way that defendants did. There is no prejudice to the plaintiff, you know, based on when these Motions were filed, as the Court is obviously aware.

But, notwithstanding all of that, since the time of the Motion to Strike and the Oppositions that were filed, the arbitration hearing date has been kicked out. So, it's currently scheduled for October 6 of 2021. Based on the Nevada Arbitration Rules, any dispositive motion deadline would be due 45 days, you know, from the date of the arbitration hearing. So, really, this argument is just entirely moot at this point.

THE COURT: Thank you.

Ms. Barker, anything you'd like to add?

MS. BARKER: No, Your Honor. I don't have anything to add except to join the comments made by Ms. Herrera.

THE COURT: Thank you.

Mr. Viswanathan, those are your Motions to Strike,

do you have any rebuttal?

MR. VISWANATHAN: Just that what matters is the date of filing and the applicable law at the time of the filing. So, based on that, [indiscernible] the arbitration hearing has been moved to a later date. The Court cannot -- it prospectively applies. It only applies prospectively from what I understand.

And, also, it is a shocking that [indiscernible]. that is the [indiscernible] to exception for what we call capable of repetition. But [indiscernible]. It comes under the [indiscernible] because there's only one month -- there was only one month when the date of the hearing was moved. And, therefore, the [indiscernible] for that kind of Motion is not available because of a short period. And, so, I must argue under the exception rule. So, that is number one, the capable of repetition. But all right.

And they also said they are [indiscernible] that they are late. You know, they keep on saying that they are bring them timely, timely, even for the first time. [Indiscernible] they do for the 13th of June time. So, they keep saying that.

And, then, -- excuse me. I'm holding the phone and I'm [indiscernible]. I'm not able to talk and look at the papers.

So, the [indiscernible] at this time. And, then,

from there, a lot of pages which are not [indiscernible] because it all happened later. So, I [indiscernible] on the Motion because it's [indiscernible] and things happened later.

THE COURT: Thank you very much.

MR. VISWANATHAN: All good, sir. Thank you.

THE COURT: Thank you.

So, the Court is going to, let's see, deny Plaintiff's Motions to Strike for the following reasons. And let's do this. Ms. Herrera, you'll take the lead in drafting the Order on this. Submit it to Ms. Barker for review and approval. And, then, submit to Mr. Viswanathan for review and approval.

But the reasons the Court denies the Motions to Strike are all the reasons set forth in the Oppositions. I won't read through them on the record. But put the reasons in the Order. Those include, but are not limited to, the argument -- the primary argument from plaintiff is that the Motions are untimely. That argument is mooted with the continuation if the arbitration. So, that's one reason to deny it as moot -- or the argument as far as timeliness as no longer applies.

Additionally, plaintiff himself filed his Motion for Summary Judgment on the same date that defendants filed their Motions for Summary Judgment. In other words,

plaintiff himself calculated the deadline for summary judgment the same as defendants did. It's disingenuous for plaintiff to then withdraw his Motion and attempt to argue that defendants' Motions are untimely when he filed his Motion on the same date defendants did.

Additionally, there's no harm or prejudice, particularly with the continuance of the arbitration. But, also, with the continuance multiple times of this hearing. Defendant [sic] has had full, fair notice and an opportunity to be heard and to respond to Defendants' Motions for Summary Judgment.

Additionally, public policy favors a decision on the substance of the Motions for Summary Judgment, rather than simply striking them for no good cause. No good cause has not been shown to strike the Motions for Summary Judgment.

The record will reflect the extended time frame or time period between when the Motions for Summary Judgment were filed in this hearing. Therefore, plaintiff has had plenty of opportunity to oppose the Motions for Summary Judgment on their substance. And, for all those reasons, as well as the reasons in defendants' briefs, the Court denies the Motions to Strike.

The Court also grants -- sorry. I have to -- the Court grants -- let's see. The Court grants Defendant

Clark County School District Board of Trustee's Motion for Summary Judgment in its entirety for all the reasons set forth in the Motion for Summary Judgment. There are no genuine issues of material fact. Plaintiff's claims against defendant are based on alleged premature, nonrenewal of his probationary contract. That's a basis for his claims. The Court incorporates the statement of undisputed facts set forth on pages 3, 4, 5 of Defendant Clark County Board of Trustees' Motion for Summary Judgment. The Court incorporates the legal standards set forth on pages 6 and 7, as well as the legal argument as follows.

Plaintiff's breach of contract claim fails as a matter of law. The Board had a contractual and statutory right not to renew plaintiff's probationary contract. Board's right of nonrenewal had limited temporal limitations. Plaintiff could submit a response to his evaluation only for inclusion into his personnel file. Plaintiff's ability to submit a response to an evaluation does not affect the Board's right to not renew his probationary contract.

Plaintiff's breach of implied covenant claims cannot withstand summary adjudication either. His contract-based claims are also preempted under Nevada law, to the extent they're based on terms of a negotiated

agreement. Additionally, plaintiff failed to exhaust administrative remedies pursuant to NRS 288.110, subsection 2, and NRS 288.280.

The Court also grants, for those same reasons, defendant Dr. Goldman's Joinder to the Motion for Summary Judgment. The Court also grants Dr. Goldman's own Motion for Summary Judgment for all the reasons contained in the Motion and the Reply. The undisputed facts are set forth on pages 4, 5, 6, and 7. The Court incorporates the legal arguments as well, NRCP 56 and the accompanying case law, the breach of contract elements, and the good faith and fair dealing covenant elements.

The Court concludes as a matter of law, under all of that, Dr. Goldman is not a proper party to this suit. Plaintiff makes no allegations against Dr. Goldman in support of an individual capacity claim. Claim against Dr. Goldman in his official capacity is redundant to the suit against the Clark County School District Board of Trustees. Dr. Goldman has discretionary immunity for any alleged tortious breach of the covenant of good faith and fair dealing. Dr. Goldman, additionally, has no authority to grant the relief sought by plaintiff.

Also, the negotiated agreement governing plaintiff's probationary teaching contract provides an exclusive remedy for challenging the nonrenewal of the

contract. And, for all of those reasons, as well as the other reasons set forth in Dr. Goldman's brief, the Court grants summary judgment in his favor and against plaintiff.

So, additionally, as far as both Motions for Summary Judgment, the Court incorporates the entire procedural history in this case. Most tellingly is plaintiff, despite having the Motions for Summary Judgment since June 14th, has never -- over two months later, has never filed any Opposition to the pending Motions for Summary Judgment. That's also despite his request for additional time to file Oppositions, which, notably, both defendants did not oppose that request for additional time. And, so, plaintiff even had additional time through, I believe he asked for through July 5th, or whatever the date is in his Motion for Extension of Time to Oppose. That time expired over a month ago and plaintiff still did not file an Opposition.

Plaintiff has also additionally been provided an opportunity to verbally respond to the Motions for Summary Judgment here this morning. And plaintiff has taken the position that -- apparently, he took the position, at least, that he did not need to oppose the Motions for Summary Judgment based on his faulty belief that the Motions to Strike would be granted. Motions to Strike were denied for the reasons stated. And, so, again, going back,

plaintiff has had full, fair, every opportunity to oppose the Motions for Summary Judgment, still did not, never did that.

But, notwithstanding that, under NRCP 56 and the applicable case law, the Court does need to consider the substance of the Motions for Summary Judgment because, notwithstanding the lack of an Opposition, a moving party for summary judgment still have the burden of proof of demonstrating that no genuine issues of material fact exist, as well as that they are entitled to relief as a matter of law. The moving parties have demonstrated both of that in their respective Motions for Summary Judgment. And, for all those reasons, the Court grants the Motions for Summary Judgment, as well as the Joinder.

With all of that, let me first ask Ms. Herrera, and then Ms. Barker, and then Mr. Viswanathan. But, first, Ms. Herrera, are those final Judgments?

MS. HERRERA: Yes, Your Honor.

THE COURT: Thank you.

Ms. Barker, do you concur?

MS. BARKER: Your Honor, thank you.

THE COURT: Thank you.

Mr. Viswanathan, do you concur or disagree?

MR. VISWANATHAN: Your Honor, you use the wrong [indiscernible] for the first time. You don’t use the

[indiscernible] so I cannot argue that because as I mentioned from the inception that you -- that it never came up until now. So, I am not sure why that [indiscernible]. It is not opposed the Motions for Extension [indiscernible]. But also you did not a [indiscernible] a Declaration. There is a Motion -- there are two Motions to Strike the Declaration. And that was [indiscernible] Motion. I did not file an Application because you were striking. I can't use it. And I wanted to wait because the whole Motion is without merit so it is very [indiscernible]. Because they knew that the approaching plaintiff cannot argue against the mediator. It takes a lot of riches. But none of you mention [indiscernible] 218.220. That is properly [indiscernible], sir. That is the Employment Relations Management Book. It is very clear that that is not applicable at all. And the Attorney General has ruled upon those things.

And, then, you are saying that they're [indiscernible]. They have the right to rule -- right to rule dismiss and the right to not [indiscernible] probationary teachers. But the Supreme Court of Nevada has ruled that that is not the case because you have to [indiscernible] of particular rules. And the right only exists if I claim my due process rights, property rights, liberty rights. And I don't never claim. So, that -- that

statement that they're taking to [indiscernible] their claims, they don't. Probation [indiscernible] is not applicable, according to the Supreme Court rules.

And, then, the negotiated argument. You mentioned that you said that I did not file [indiscernible]. But, then, in their own Motion, at the very end, they say that eventually plaintiff [indiscernible] the negotiated agreement. But then it was too late, they say. But it is too late right now. The duty has to be said. They don't have the right to [indiscernible]. And the Court did not touch near that.

So, every one of those statements are totally baseless what they say. But I do not argue because I wanted to wait until you ruled upon these things. But the rules are 14 days after you decide to [indiscernible] the Motion. And you did not give me that opportunity, also.

So, there has been a lot of claims because really because I'm pro se and it can be done. That is not the case. Every one of their Motions is baseless. Every one of the arguments is baseless. And they can be -- [indiscernible].

Now, Goldman is slightly different because --

THE COURT: So, Mr. Viswanathan, can you hear me?

MR. VISWANATHAN: Yes, sir.

THE COURT: Can you hear me?

MR. VISWANATHAN: I can hear you very well, sir.

THE COURT: Can you hear me?

MR. VISWANATHAN: Your Honor, I can hear you.

THE COURT: Can you hear me, sir?

MR. VISWANATHAN: I can hear you. Are you not hearing me?

THE COURT: Okay. So, stop talking for a moment, please. Okay?

MR. VISWANATHAN: Yes, sir.

THE COURT: Thank you.

So, I asked a simple yes or no question. But, despite your argument, you have not answered. I've already made my ruling. Notwithstanding my ruling, I do consider your arguments that you're raising just now verbally in opposition, which, by the way, is improper. But, notwithstanding that, I do consider your arguments. My ruling still stands.

Yes, you are a self-represented litigant. And -- but you still need to comply with the rules. You have failed to comply with the rules. You took a risky position of assuming that the Court would grant the Motions to Strike. The Court denied those. And, so, you're faced with the consequence.

I would point out, when I do incorporate the entire procedural history -- and, by the way, Ms. Herrera,

Ms. Barker, put the -- the relevant history in your Orders. One of the, among many other key facts on the procedural history, is, in addition to the ones I've already talked about, but one of the other ones is that plaintiff Viswanathan filed the Motion for Additional Time to Oppose the Motions for Summary Judgment after, I believe, -- let me double check.

So, plaintiff filed the Motions to Strike, or, at last the first Motion to Strike, on June 21st. On June 28th, so, after he filed the Motion to Strike, he filed the motion requesting a seven-day extension of time to file and serve his Opposition.

And, notwithstanding that -- and, again, like I said earlier, defendants filing Notices of Nonopposition, plaintiff still did not file an Opposition, despite asking for more time to do that. So, it's disingenuous, again, of plaintiff to come in and say: Well, I was waiting for a ruling on the Motions to Strike. When, after he filed the Motions to Strike, he filed the request for more time to oppose the Motions for Summary Judgment.

Prepare detailed Orders in the Motions granting the respective summary judgments and Joinder. Include the Findings of Facts and Conclusions of Law. Obviously, it's required under NRCP 56. Once you have those, submit them to Mr. Viswanathan for review and approval. Give him, you

know, two or three business days to review and respond. If you can't come to an agreement on the language, after you give him additional -- that time, go ahead and submit them directly to the Court. Thank you, all.

MS. BARKER: Thank you, Your Honor.

THE COURT: And they are final Judgments, too.

MS. HERRERA: Thank you, Your Honor.

MR. VISWANATHAN: Your Honor, you did not -- I'm sorry. Your Honor, you did not rule upon the Motions -- the Motion to Strike the Declaration.

THE COURT: I denied your Motions to Strike. All of your Motions, --

MR. VISWANATHAN: And there is a Motion to Strike --

THE COURT: To be clear, your Motions to Strike the Declarations, your Motions to Strike the Motions for Summary Judgment, all denied for the reasons in the Oppositions and the reasons I've stated on the record as well.

MR. VISWANATHAN: All right. Thank you.

PROCEEDING CONCLUDED AT 9:45 A.M.

* * * * *

CERTIFICATION

I certify that the foregoing is a correct transcript from the audio-visual recording of the proceedings in the above-entitled matter.

AFFIRMATION

I affirm that this transcript does not contain the social security or tax identification number of any person or entity.

KRISTEN LUNKWITZ
INDEPENDENT TRANSCRIBER

IN THE SUPREME COURT OF
THE STATE OF NEVADA
****

TENKASI VISWANATHAN, Appellant, vs. BOARD OF TRUSTEES OF THE CLARK COUNTY SCHOOL DISTRICT; DR. EDWARD GOLDMAN IN HIS OFFICIAL AND INDIVIDUAL CAPACITY; AND LOUIS MARKOUZIS IN HIS OFFICIAL AND INDIVIDUAL CAPACITY, Respondents.	Supreme Court No. 84448 District Court Case No. A-20-814819-C Joe Hardy, District Court Judge

RESPONDENTS BOARD OF TRUSTEES OF THE CLARK COUNTY SCHOOL DISTRICT AND LOUIS MARKOUZIS'S APPENDIX – VOLUME II

Appeal
from Court Orders re:
Board of Trustees' Motion for Summary Judgment;
Dr. Goldman's Motion for Summary Judgment;
Louis Markouzis's Motion to Dismiss; and
Tenkasi Viswanathan's Motion under NRCP 52 and 59

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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. <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 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. <u>Plaintiff's Motion To Extend the Time to Oppose Defendant CCSD BOT's Motion For Summary Judgment</u>.

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. <u>Plaintiff's Motion To Strike Defendant CCSD BOT's Motion For Summary Judgment</u>.

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. <u>CCSD BOT's Motion For Summary Judgment</u>

A. <u>Standard for Summary Judgment</u>.

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. <u>Breach of Contract</u>.

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. <u>Breach of the Implied Covenant of Good Faith and Fair Dealing</u>.

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

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. <u>Plaintiff's Motion for Partial Summary Judgment</u>.

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
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[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

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[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

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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

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

Electronically Filed
11/17/2021 11:07 PM
Steven D. Grierson
CLERK OF THE COURT

MAMJ
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8220 Hollister Ave
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Phone: 252-706-0169
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EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

Tenkasi Viswanathan, Plaintiff,	Case No.: A-20-814819-C Dept. No.:15
vs.	
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	HEARING REQUESTED

PLAINTIFF'S MOTION UNDER NRCP RULES 52 and 59

Now comes Plaintiff Viswanathan before the Court and respectfully moves the Court, pursuant to NRCP Rule 52(b)and Rule 59(e), to amend and alter the Court's findings and make additional findings and alter or amend the judgment accordingly. Pursuant to Rule 59, Plaintiff moves the Court to vacate the

Order (Docket #132), grant the plaintiff leave to file his opposition in the attached EXHIBIT AAA to Defendant CCSD BOT's Motion for Summary Judgment and a new hearing. The judgment was entered on October 20, 2021 (Docket #132) Granting among other issues Defendant Clark County School District (CCSD) Board of Trustees' (BOT's) Motion for Summary Judgment; Granting Defendant Dr Edward Goldman's Joinder to Defendant CCSD Board of Trustee's Motion for Summary Judgment; Denying Plaintiff's Motion to Strike Defendant CCSD BOT's Motion for Summary Judgment; and Denying Plaintiff's Objections to and Motion to Strike Parts or all of the Declarations in Support of Defendant CCSD BOT's Motion for Summary Judgment. The written Notice of Entry of Judgment was given on the same day of October 20, 2021.

Plaintiff is concurrently filing herewith "Plaintiff's Declaration Dated November 15, 2021 in support of this motion under NRCP Rules 52 and 59". Plaintiff incorporates herein by reference the contents of the referenced Declaration.

Plaintiff moves the Court to grant leave for Plaintiff to refile his Motion for Partial Judgment, which the Court allowed him to withdraw without prejudice. The following are some of the grounds for Plaintiff's request:

- Newly discovered material in Exhibits AA and BB, which are Gmails from Attorney Stephanie Barker.

- **The mootness question caught plaintiff by surprise and off guard. The sudden introduction during the hearing of "Mootness" allegedly causing Plaintiff's Motion to Strike Defendant CCSD BOT's Motion for Summary judgment to be "MOOT" took plaintiff by surprise and the Court's remarks and the conduct of the hearing deprived plaintiff of a fair hearing.**
- **The Court abused its discretion, because deciding the case on its merits cannot be one-sided. The Court embraced defendant BOT's legal and factual assertions in totality and let BOT to write judgment. There was no independent check. The Court rubber-stamped BOT's MSJD as the Court's Order.**
- **As Plaintiff stated in his oral argument, all of the issues raised in Defendant CCSD BOT's Motion for Summary judgment (MSJD or BOT's MSJD), and all issues argued by Defendant BOT are clearly erroneous. Defendant BOT has thrown in names of some statutes which are irrelevant for BOT's MSJD and are in violation of NRCP Rule 11. The Declarations in BOT'S MSJD are made in bad faith as shown farther below (rule 56(h)). Defendant BOT has used throwing in such names as a strategy; it will be exceedingly difficult for a pro-se litigant to counter the strategy without hard research.**

- **Misconduct by the CCSD BOT, which threw in names of some statutes which are totally out of place (for example, Employee Management Relations Board, Order Pp.14-16, ¶38-48; BOT's MSJD , Pp 17-19 requiring exhaustion of NRS 288.110 and NRS 288.280). NRS 288 is not applicable to the employment of teachers and especially probationary teachers. It is meant for police officers, firefighters, and classified employees. Throwing in such irrelevant statutes is misconduct of an officer of the Court because it has no basis in law and is a strategy which will be difficult, if not impossible, for a pro-se litigant to research and overcome. It violates Rule 11, but how will a pro-se litigant know?**
- **It seems the Court got angry with the Plaintiff for disrupting the court proceedings unknowingly. The attached Exhibit CC tendered Plaintiff's apologies to the Honorable Judge Joe Hardy. But it seems that the damage had already been done.**

Based on these, Plaintiff requests the Court to amend and alter findings of fact and conclusions of law or make new findings and conclusions and direct the entry of a new judgment.

Pursuant to NRS 150.47(2), Plaintiff requests the Court to take judicial notice of the following statutes and case law provided herewith as Exhibit DD (NRS 391.31214 (2013)), Exhibit FF

(NRS, Chapter 391 Revised (2013)) and Exhibit GG (Case Law: Valdez-Jimenez v. Eighth Judicial Dist. Court" 460 P.3d 976 (Nev. 20)). **This action is about the events that took place during the school year 2013-2014. That year was a year of watershed, leading to fundamental changes in teacher performance evaluations. In general, while the bar on teacher performance standards were raised, the legislature also provided a lot of assistance for teachers to meet the new standards. The new legal document for teacher evaluation for the transition period (School Years 2013-2015) was set out in NRS 391.31214 (2013). It is also part of the entire revised statute of NRS Chapter 391 provided to me by the Research Division of Nevada's Legislative Counsel Bureau. A copy of the complete revised version of the 2013 Chapter 391 is attached herewith as Exhibit FF. The copy was provided to me** by ENGLISA PARKER, LIBRARY TECHNICIAN, Research Division, Legislative Counsel Bureau, 401 South Carson Street, Carson City, NV 89701-4747; 775-684-6827 | Fax: 775-684--6400 | leg.state.nv.us/Division/Research/Library. **Exhibit GG attached to this Declaration is about a 2020 case law concerning the exemptions to the Doctrine of Mootness containing the Ruling of the Supreme Court of Nevada under the caption** "Valdez-Jimenez v. Eighth Judicial Dist. Court" 460 P.3d 976 (Nev. 20). **Exhibit GG is a true and accurate copy of the mentioned case law obtained from Casetext.com.**

Plaintiff requests the Court to take Judicial Notice of the "Negotiated Agreement" between CCSD and the Clark County Education Association. It is pursuant to the statute NRS 288, which is about government Employee-Management Relations Board and about Arbitration Proceedings in that context. The "Negotiated Agreement" pursuant to that Chapter between the CCSD and the Clark County Education Association is attached as Exhibit EE to this Declaration.

Here are the salient features of this motion:

(1) Plaintiff provides new evidence that Plaintiff's Motion to Strike Defendants' Motion for Summary Judgment qualifies for "exemption from mootness under Valdez-Jimenez v. Eighth Judicial Dist. Court, 460 P.3d 976 (Nev. 2020).

(2) Plaintiff provides an argument that Defendant BOT's Failure to attach the entire Evaluations (Licensed Employee's Appraisal Reports) of the plaintiff including the attachments legally required as "permanent attachments" renders the "evaluation documents" to be excluded from the Court's Consideration. NRS § 391.31214 (2013) attached as Exhibit DD to Plaintiff's Declaration: Paragraph (7) states:

> A copy of the evaluation and the teacher s response must be permanently attached to the teacher s personnel file.

The "Negotiated Agreement" (Exhibit EE, Article 14-2, P.21) is also specific that the Evaluation and the Response are attached to each other:

> 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. All copies of the employee's response will be countersigned by the receiving administrator or designee, and <u>a copy of the response shall be attached to the supervisor's document.</u> (Emphasis is Plaintiff's)

Without the evaluation documents, the Declarations of Sonia Houghton (EXHIBIT A to BOT'S MSJD) and of Louis Markouzis (EXHIBIT C to BOT'S MSJD) are insufficient under NRCP Rule 56(e) and lose their role in BOT's motion for Summary Judgment. The Declarations are made in bad faith as they do not contain Plaintiff's Responses to the 'evaluations," which are legally required as "permanent attachments" to the evaluations. Plaintiff requests the Court to sanction the Defendant BOT for not complying with the law even though it dedicated more than two pages in its MSJD (PP 10-11) arguing that Plaintiff's only right was to have his Response attached permanently to the evaluations. In BOT's MSJD, on Pp. 10-11, Lines 18-20, Line 1, Defendant BOT wrote:

> "It is nonsensical to argue that a response could change the written evaluation or compel its reconsideration, when pursuant to the express language of the statute the response was to be attached to the evaluation in the personnel file."

However, BOT submitted in the Declaration of Sonia Houghton Exhibit 2, which has the evaluation, but not the legally-required attachment. Similarly, BOT failed to attach Viswanathan's Responses to the evaluation document attached as Exhibit 1 to the Declaration of Louis Markouzis. See legal authorities: *Daugherty v. Wabash Life Ins. Co.*, 87 Nev. 32, 38, 482 P.2d 814, 818 (Nev. 1971) (When written documents are relied on, they must be exhibited in full.) In *Daugherty*, a motion for summary judgment was filed and ultimately granted. 87 Nev. at 36, 482 P.2d at 817. The motion was supported by an affidavit which referenced a specific insurance policy that was at issue in the case. *Id* at 38, 482 P.2d at 818. However, because the moving party did not attach a copy of the insurance policy to the affidavit, this court held that the affidavit was insufficient under NRCP 56(e). Havas v. Hughes Estate, Summa Corp., 98 Nev. 172 (Nev. 1982). ([A] district court's reliance upon an affidavit which does not comply with the rule (56e) may constitute reversible error.) State of Washington v. Maricopa County, 143 F.2d 871 (9th Cir.

1944) (Fed.R.Civ.P. 56(e)). (One of the supporting affidavits contained statements made on information and belief. These statements should have been disregarded. Each of the supporting affidavits contained statements of legal conclusions. These, too, should have been disregarded. Numerous papers were referred to in each of the supporting affidavits. No sworn or certified copy of any such paper was attached to or served with either affidavit. Hence all references to such papers should have been disregarded. We conclude that the motion for a summary judgment was not well founded and should have been denied.)

If references to the (incomplete) evaluations are to be disregarded, then Defendant BOT cannot argue against Plaintiff's Claims 1 and 2 in Plaintiff's Amended Complaint.

Similarly, ¶9 in the Declaration of Sonia Houghton in Exhibit A to BOT'S MSJD references a recommendation to BOT, recommending that Plaintiff Viswanathan's contract be not renewed for the subsequent school year. But the recommendation was not attached to the Declaration. Under the authorities quoted above, the recommendation is to be disregarded as evidence.

(3) The foregoing document removes from the Court's consideration all but one issues involving the evaluations

of the plaintiff, which is what the case is about. The one remaining issue concerns probationary teachers.

The Order of the Court (Docket #132) dealing with plaintiff's employment contract focuses on a single statement of the contract (P.3, lines 11-13):

> "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."

This is one statement from the contract, which includes statements that the contract has to comply with state laws. These laws include evaluations and assistance to teachers in a constructive way. NRS 391.31214 (Exhibit DD)states what the purpose of an evaluation is. Courts have held that it is not for the purpose of building documentation to have the probationary teacher's contract non-renewed. NRS 391.31214, Paragraph 3, penultimate sentence:

> The primary purpose of an evaluation is to provide a format for constructive assistance.

It is well settled that consideration of the non-renewal of the contract of a probationary teacher involves a whole gamut of issues involving the contract, the evaluations, and the constructive assistance given to the teacher in performing the contract.

> "School boards must follow statutory procedures if not renewing a probationary teacher's contract (McCrackin v. Elko County School Dist., 103 Nev. 655, 747 P.2d

1373 (1987)). "The right statute" is only one sentence in two statutes each of which runs 3 (three) pages (NRS 391.31216 and NRS 391.31214, Exhibit D and Exhibit C to Plaintiff's Declaration). And the opening paragraph of Plaintiff's Contract in Exhibit A says that the Defendant Board and Plaintiff covenant and contract "in accordance with the Laws of Nevada and the rules, and regulations prescribed by the State Board of Education and the State Superintendent of Public Instruction."

"The primary purpose of an evaluation is "to provide a format for constructive assistance" (NRS 391.31214(3), Exhibit C) to the teacher and not for building paperwork for refusing to reemploy (McCrackin, 1987).

The Supreme Court of Nevada, speaking of the procedures established for annual probationary employees, has identified the following statutes as procedural statutes: NRS 391.311 et seq., 391.3125 (In 2013, 391.31214) and 391.3197. (Clark County School Dist. v. Harris, 112 Nev. 285, 913 P.2d 1268 (1996), p.80, Exhibit (a)). "The right not to nonrenew plaintiff's probationary contract" is just one sentence (NRS 391.3197(1)) among the procedural statutes for probationary teachers.

The Attorney General of Nevada has held what statutes control the nonreemployment of <u>probationary teachers</u>. They are NRS 391.311 et seq.(P.65, Exhibit FF)

> **Statutes provide the exclusive procedure to review the refusal to reemploy a probationary teacher. The local government employee-management relations board was without jurisdiction to review the refusal of the school board under NRS 391.3197 to reemploy a probationary teacher because, in the absence of a collective bargaining agreement relating to dismissal or refusal to reemploy, the Professional Practices Act (see NRS 391.311 et seq.) provided the exclusive review procedure. AGO 108 (12-29-1972)**

(4) Plaintiff has verified pleading in Plaintiff's Amended Complaint (Docket # 2). The verified pleading raised issues of material fact that "were not concluded either by admissions made under the provisions of NRCP 36", or by the Declarations of Sonia Houghton and/or Louis Markouzis "filed in ostensible support of the Motion for Summary Judgment". The evaluations attached as Exhibits to the Declarations did not comply with the legal terms of what "evaluation documents" are, since they did not have Plaintiff's Responses as attachments. Legal Authorities: *Daugherty v. Wabash Life Ins. Co.*, 87 Nev. 32 (Nev. 1971). Since issues of material fact are left open, the issues are for the jury to decide. Summary Judgment is improper.

(5) Plaintiff's Count 1 and Count 2 Claims are about his evaluations. The law in NRS Chapter 613 is about employment practices. NRS 613.075(b)(2.) makes it mandatory for an

employer to allow an employee to respond to his/her evaluation:

NRS 613.075(b)(2.) An employer or labor organization shall allow an employee or person referred to submit a reasonable written explanation in direct response to any written entry in the records of employment regarding the employee or person. Any such written explanation must be reasonable in length, in a format prescribed by the employer and maintained by the employer or labor organization in the records of employment.

NRS 613.075(b)(6) deals with actions subsequent to the above as follows:

> The employee or person referred shall, if the employee or person contends that any information contained in the records is inaccurate or incomplete, notify his or her employer or the labor organization in writing of that contention. If the employer or labor organization finds that the contention of that employee or person is correct, it shall change the information accordingly.

In the case of teachers, the evaluation and the Response are to be bundled together. NRS 391.31214, Paragraph 7 and "Negotiated Agreement", Article 14-2 cited above. The failure of BOT to bundle the evaluation documents preserves intact both the claims of the Verified complaint.

(6) Plaintiff incorporates herein by reference the contents of "Plaintiff's Response in Opposition to BOT's

Motion for Summary Judgment attached herewith as Exhibit AAA and the contents of Plaintiff's Declaration in Support of the same attached as Exhibit BBB. Should the Court consider other issues from BOT's MSJD, Plaintiff requests the Court to consider the corresponding response from Exhibits AAA and BBB.

THE COURT ERRED IN NOT CONSIDERING AND APPLYING THE EXCEPTIONS TO THE MOOTNESS DOCTRINE UNDER Valdez-Jimenez v. Eighth Judicial Dist. Court, 460 P.3d 976 (Nev. 2020)

(1) To begin with, the Court erred in the following "Conclusion of Law" stated in the COURT's ORDER of October 20, 2021(Pp. 8-9:¶7, ORDER, Docket No. 132)

> 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.

The error arises, because the Court is not aware of the background which led to all the three parties filing motions for Summary Judgment. The Court is also not aware of the Court-induced actions which were strategically manipulated by the Defendants to obtain the so-called "mootness" of Plaintiff's

Motion To Strike (ORDER, Conclusion of Law, P.9, ¶10; P.17, ¶58).

On , May 25, 2021, Attorney-Officer of the Court Stephanie Barker, Counsel for Defendant Dr. Edward Goldman wrote as follows by Gmail calculating the date of filing of Motions for Summary Judgment as Monday, June 14, 2021:

> Ms. Herrera and Mr. Viswanathan: Our new Arbitration date is July 28. Pursuant to Arbitration Rule 4(E), motions for summary judgment are due 45 days before that date which is Monday, June 14.

Plaintiff is concurrently filing herewith "Plaintiff's Declaration Dated November 15, 2021" concerning the authenticity of Attorney Barker's Gmail, which is attached as Exhibit AA to "Plaintiff's Declaration Dated November 15, 2021". The Gmail is at the bottom of the page, which is a thread of two Gmails. Plaintiff, a lay person, did not have any reason to suspect that an officer of the Court would err in such an important and fundamental issue as computation of time. Plaintiff followed the attorney's guidance and filed his motion for partial summary judgment on the same date of June 14, 2021 as the others. Soon after, plaintiff found by accident that the date of June 14, 2021 was wrong, if computed by the Rules (NRCP, Rule 6). Then Plaintiff moved to withdraw his motion for Partial Summary

Judgment before moving to strike Defendants' Motions for Summary Judgment.

The mistake of the Attorney-Officer of the Court in such a fundamental issue of time computation is as serious as that of a Math Teacher who teaches that adding the fractions 1/2 and 1/3 will give 2/5 and the rule is to add the numerators and to add the denominators. Thus, (1/2 + 1/3) = [(1 + 1)/(2 + 3)] = 2/5 (The correct answer is 5/6). Neither the Court nor a Jury will put up with such a blatant mistake of a math teacher. The Court is being partial to the Officers of the Court.

Plaintiff requests the Court to take into account the serious error in the computation of time by an Attorney-Officer of the Court. Attorney-Officer Herrera also did not correct the error.

The Court's position that Plaintiff was disingenuous in withdrawing his Motion for Partial Judgment is in error. The Court let itself be influenced by the position it took in this situation and ruled against the plaintiff on all significant motions concerning Summary Judgment.

(20) The Court will be astounded as to how the Attorney-Officers of the Court manipulated the Court's scheduling of the hearings to render "moot" Plaintiff's Motion to Strike.

The Arbitration Hearing was originally scheduled for July 28, 2021. The hearing to hear all three dispositive Motions for

Summary Judgment was scheduled by the Court for July 26, 2021. Plaintiff's Motion to Strike the Defendants' MSJD-s was scheduled for July 28, 2021, the same date as the date of the Arbitration Hearing. As "Plaintiff's Declaration Dated November 15, 2021" affirms, Plaintiff talked to the Clerk's Office to have his July 28- Motion Hearing moved to July 26, 2021. A Deputy Clerk informed that it could not be done and that only motions scheduled for July 26 will be heard on July 26, 2021 and that the Motion scheduled for July 28, 2021 would not be heard on July 26, 2021. Plaintiff thought that in order to avoid any prejudice to the Plaintiff, the Motion to Strike had to be heard at the same time as the Motions for Summary Judgment and so it was important to move the July 26 hearing and/or the July 28 hearing and bundle the two hearings together. Since the law favors less burden on the courts, it would be more natural to have the Arbitration Hearing take place before the hearing on the Summary Judgment Motions. It was imperative that the July 26 and July 28 Hearings take place at the same time. In view of the remarks of the Clerk's Office, Plaintiff thought that that it would be prejudicial to him to have the July 26 hearing take place without the hearing of July 28. Consolidation of the two motion hearings was the only way and the Defendants were categorical that they would agree to scheduling the consolidation for July 28, 2021 only. This would mean moving

down the July 28 Arbitration Hearing of the Plaintiff and create the so-called "mootness". Plaintiff has attached to Plaintiff's Declaration Dated November 15, 2021 a Gmail of Attorney-Officer of the Court Stephanie Barker dated July 12, 2021 stating as follows:

Good morning Mr. Viswanathan: We are willing to consolidate hearing on all pending motions to Wednesday July 28, 2021, which is the date calendared for your first filed Motion to Strike.

Plaintiff has attached this Gmail of Attorney Barker as Exhibit BB to Plaintiff's Declaration of November 15, 2021 and has affirmed its authenticity. As stated in Plaintiff's Declaration Dated November 15, 2021, Plaintiff did not want to move the Arbitration Hearing Date of July 28, 2021 to a later date, but the hearing of July 26, 2021 stood in the way. Defendants wanted to move the Date of July 26, 2021 to July 28, 2021 so that the Arbitration Hearing would have to be moved to a later date. The manner in which the "mootness' has been rendered shows that the Defendants and their attorney-Officers of the Court are capable of repeating the act of moving a hearing date or a discovery cut-off date so that "mootness" can be crated for a court proceeding.

(3) Under the standard of Valdez-Jimenez v. Eighth Judicial Dist. Court, 460 P.3d 976 (Nev. 2020), Plaintiff's Motion to Strike both Defendants' MSJD qualifies for "exceptions to the mootness doctrine". The doctrine goes under the name, "Capable of repetition, yet evading review" exception. Plaintiff has attached a copy of this recent authority (2020). The Supreme Court of Nevada said:

> The party seeking to overcome mootness must prove "that (1) the duration of the challenged action is relatively short, (2) there is a likelihood that a similar issue will arise in the future, and (3) the matter is important." *Bisch v. Las Vegas Metro. Police Dep't*, 129 Nev. 328, 334-35, 302 P.3d 1108, 1113 (2013).

The action under consideration is one of moving forward an event and extending the time for taking actions. Examples are moving a hearing date forward, moving discovery cutoff dates forward, moving forward dates in motions in limine, moving trial dates forward, etc. In the present case, the action is moving the arbitration hearing forward, which would automatically extend the time for filing dispositive motions. The original date for Arbitration Hearing was July 28, 2021 and was moved to August 25, 2021 and later to October 6, 2021. Thus, the duration of the challenged action is less than a month. There is

always a likelihood that a similar issue will arise in the future. Litigants constantly seek extension of time for taking actions, which involve filing papers, this last one being possible only if the background events are moved forward. Here the timely filing of a dispositive motion required moving forward the date for the Arbitration Hearing. The Supreme Court has made it clear that the party repeating the action (of moving forward an event) need not be a party in the case. It can be anyone. Finally, the matter is important, because litigants constantly seek time extensions for discovery periods, periods for filing important papers etc. All three criteria are easily satisfied in the present case.

Plaintiff humbly points out the following statements by the Supreme Court of Nevada:

As to the second requirement—"a likelihood that a similar issue will arise in the future"—we take this opportunity to clarify that this does not necessitate the similar issue to recur with respect to petitioners personally. . . . And our jurisprudence has implicitly rejected "the same complaining party" requirement, instead focusing on whether the issues

raised by the party are likely to recur under similar circumstances. (Citing a number of cases in support). . . . To reiterate, the second factor of the mootness exception requires that the question presented is likely to arise in the future with respect to the complaining party or individuals who are similarly situated to the complainant.

Finally, it is not surprising that Defendants are capable of repetition of the act; they have filed papers which are waiting for moving forward or resetting the discovery cutoff date. Discovery cutoff date in this action was May 24. On June 9, 2021, Defendant CCSD BOT served papers (Bate Numbers CCSD000277-CCSD000307), which it would need in trial. The papers need not be filed and were not filed. Plaintiff served and filed Objections under "PLAINTIFF'S OBJECTIONS UNDER RULE 16.1(a)(3)(B)(ii) TO The Documents With Bate Numbers CCSD000277-CCSD000307 That were Served on 06-09-21" (Docket No. [99] Plaintiff Objecting to Untimely Papers under Rule 16.1). Given the objections, the only way for to be able to use the papers during trial is to reopen discovery and have the discovery cutoff date reset and

have it moved forward. This example also shows how important it is for Court litigants to move certain dates forward.

WHEREFORE, based on the foregoing, Plaintiff respectfully requests the Court to vacate the Judgment entered on October 20, 2021 (Docket #132); apply the exemption standard of mootness doctrine, and grant Plaintiff's Motion to Strike BOT's Motion for Summary Judgment. In the alternative, plaintiff requests the Court to vacate the judgment and permit plaintiff to respond in opposition to BOT's MSJD. Given the foregoing argument, Plaintiff requests the Court to permit plaintiff to refile his Motion for Partial Summary Judgment, or remand the case to Arbitration Proceedings for a decision based on the merits.

Respectfully submitted on this 17th Day of November 2021.

/s/ Tenkasi Viswanathan

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

PLAINTIFF'S CERTIFICATE OF SERVICE

I, TENKASI VISWANATHAN, the plaintiff in this action, HEREBY CERTIFY that on this 17th Day of November 2021, I served true and correct copies of the foregoing Document

PLAINTIFF'S MOTION UNDER NRCP RULES 52 and 59

upon the defendants mentioned hereinbelow:

The documents were served electronically through the EFP vendor 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
CCSD Board of Trustees

(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 17th Day of November 2021. .

/s/ Tenkasi Viswanathan
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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**

DEFENDANT CLARK COUNTY SCHOOL DISTRICT BOARD OF TRUSTEES' OPPOSITION TO PLAINTIFF'S MOTION UNDER NRCP RULES 52 AND 59

Defendant Board of Trustees of the Clark County School District ("Defendant" or "CCSD BOT"), by and through its attorneys of record, hereby submits the following Opposition to Plaintiff's Motion Under NRCP Rules 52 and 59 to amend and alter the Court's findings of fact and conclusions of law and make additional findings.

. . .

. . .

This Opposition is made and based on the papers and pleadings on file, the following memorandum of points and authorities, the attached Declaration, and any oral argument that may be heard at the hearing on this matter.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff's Motion to Alter or Amend the Judgment under NRCP 52 and NRCP 59 ("instant Motion") is misguided and should be denied. Plaintiff effectively seeks to amend the Order granting CCSD BOT's Motion for Summary Judgment on the basis that Plaintiff would like another opportunity to oppose the CCSD BOT's Motion and re-file his previously withdrawn Motion for Partial Summary Judgment. Plaintiff does not identify any newly discovered facts or errors in the law that would warrant altering or amending the Order, let alone granting him more time to oppose a decided motion. The Nevada Rules of Civil Procedure do not operate in the manner desired by Plaintiff. His blanket request for relief is not supported under NRCP 52 or 59. Accordingly, the Court should deny the instant Motion.

II. BACKGROUND AND PROCEDURAL HISTORY

CCSD BOT and Defendant Edward Goldman filed multiple briefs related to dispositive motions between June 14, 2021 and July 6, 2021. Plaintiff's instant Motion only seeks to alter and amend the Order related to CCSD BOT's Motion and related briefs (hereinafter "Order") entered on October 20, 2021 (Doc ID #133). For brevity, CCSD BOT only outlines its own motions and the related orders that are contested by Plaintiff as follows:

1. The Arbitration in this matter was scheduled for July 28, 2021. (Doc ID # 82, Declaration of Stephanie Barker ⁋⁋4-8, attached hereto as Exhibit A).

2. On May 25, 2021, counsel for Defendant Goldman sent Plaintiff and counsel for CCSD BOT an email to seek extension of the discovery deadlines without moving the NAR 4(e) deadlines for dispositive motions. (Exhibit A, ⁋10). That deadline fell on a Sunday, and counsel for Defendant Goldman calculated the deadline to fall on the first judicial date (Monday) following the weekend, relying on NRC 6(a)(1)(C). *Id.*

. . .

3. On June 14, 2021, Defendant Clark County School Board of Trustees (CCSD BOT) filed its Motion for Summary Judgment. (Doc ID #87).

4. Plaintiff filed his own dispositive motion on June 14, 2021 entitled Plaintiff's Motion for Partial Summary Judgment. (Doc ID #88).

5. Defendant Goldman filed a Joinder to CCSD BOT's Motion for Summary Judgment on June 15, 2021. (Doc ID #93).

6. On June 20, 2021, Plaintiff then filed a "First Amended Partial Summary Judgment Motion" wherein he withdrew his Motion for Partial Summary Judgment. (Doc ID #95).

7. On June 21, 2021, Plaintiff filed a Motion to Strike the CCSD BOT's Motion for Summary Judgment under NRCP 12(f) (hereinafter "Motion to Strike the CCSD BOT's Motion for Summary Judgment"). (Doc ID #96). 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).

8. On June 25, 2021, CCSD BOT filed its Opposition to Plaintiff's Motion to Strike and a Countermotion to Extend the Dispositive Motion Deadline. (Doc ID #101). CCSD BOT also filed an Opposition to Plaintiff's Motion for Partial Summary Judgment, despite being withdrawn, out of an abundance of caution. (Doc ID #100).

9. On June 28, 2021, Plaintiff filed a Motion for a Seven-Day Extension of Time to File an Opposition to CCSD BOT's Motion for Summary Judgment. CCSD BOT filed a notice of non-opposition to Plaintiff's Motion for Extension on July 12, 2021. (Doc ID #102).

10. 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 (hereinafter "Motion to Strike Declarations"). (Doc ID # 109).

11. As each of the foregoing motions were filed, the Clerk of the Court issued Clerk's Notice of Hearing, resulting in the motions being calendared for hearing on multiple dates: July 26, July 28 and August 9, 2021. (Exhibit A, ¶¶11-12).

12. Due to the scheduling of the hearings, on July 7, 2021, Defendants Goldman and CCSD BOT submitted to the Arbitrator a joint motion to extend the arbitration hearing date to allow time for possible resolution of dispositive issues in advance of the arbitration. (Exhibit A, ⁋13).

13. On July 9, 2021, Plaintiff sent counsel for Defendants Goldman and CCSD BOT an email requesting consolidation of the pending hearings, acknowledging that if the pending motions were to "dispose of the case," there would be no need for an Arbitration hearing, and that a continuance of the hearings date would likely result in a continuance of the Arbitration hearing to the "end of August or the beginning of September." (Exhibit A, ⁋14).

14. On July 9, 2021, Plaintiff filed an Opposition to CCSD BOT's Countermotion to Extend the Dispositive Motion Deadline. (Doc ID #115).

15. On July 12, 2021, counsel for Defendant Goldman suggested consolidating the hearings on the dispositive motions to July 28, 2021. Plaintiff responded stating that he "had thought that it would be more natural to calendar them for August 9 or later," but agreed to the proposed July 28, 2021 date. (Exhibit A, ⁋15).

16. On July 13, 2021, the parties filed a Stipulation and Order to consolidate the hearings on the above Motions to July 28, 2021. (Doc ID #120; Exhibit A, ⁋⁋16-17).

17. That same day, the Arbitrator issued an Order continuing the Arbitration Hearing to August 27, 2021. (Doc ID #121; Exhibit A, ⁋17).

18. On July 20, 2021, Plaintiff filed a Reply to CCSD BOT's Opposition to the Motion to Strike Motion for Summary Judgment. (Doc ID #123).

19. On July 21, 2021, CCSD BOT filed its Opposition to Plaintiff's Motion to Strike Declarations. (Doc ID # 125).

20. Thereafter, on July 26, 2021, the Court rescheduled the hearings on the above Motions for August 18, 2021. (*See* Stipulation and Order to Continue August 18, 2021 Hearing, Doc ID #127). On August 5, 2021, the parties filed a Stipulation and Order to continue the consolidated hearings to August 25, 2021. *Id.*

. . .

21. The Court heard oral arguments on the pending motions on August 25, 2021. Despite not having filed a written opposition, the Court entertained Plaintiff's oral arguments opposing CCSD BOT's Motion for Summary Judgment. *See* Notice of Entry of Order (Doc ID #133).

22. The Order granting CCSD BOT's Motion for Summary Judgment was entered on October 20, 2021 (hereinafter "Order"). (Doc ID #133). More specifically, the Order effectuated the following:

1. Granting CCSD BOT's Motion for Summary Judgment;
2. Granting Defendant Goldman's Joinder to CCSD BOT's Motion for Summary Judgment;
3. Granting Plaintiff's Motion to Extend the time to Oppose CCSD BOT's Motion for Summary Judgment;
4. Denying Plaintiff's Motion to Strike CCSD BOT's Motion for Summary Judgment;
5. Denying Plaintiff's Objections to and Motion to Strike Parts or all of the Declarations in Support of CCSD BOT's Motion for Summary Judgment;
6. Denying as Moot CCSD BOT's Motion to Extend the Dispositive Motion Deadline; and
7. Granting Plaintiff's Request to Withdraw Plaintiff's Motion for Partial Summary Judgment.

23. On November 17, 2021, Plaintiff filed the instant Motion under NRCP Rules 52 and 59 to amend and alter the Court's findings and make additional findings. (Doc Id # 137). Plaintiff also filed a Declaration in support of the instant Motion. (Doc ID # 138). [1]

Plaintiff's instant Motion is titled as a request for relief from the Orders granting CCSD BOT's Motion for Summary Judgment under NRCP 52 and NRCP 59, but is in fact a request to

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[1] On November 19, 2021, Plaintiff filed a Notice of Appeal of the final Orders granting CCSD BOT's Motion for Summary Judgment, granting Defendant Goldman's Motion for Summary Judgment, and the January 27, 2021 Order granting Defendant Markouzis' Motion to Dismiss. (Doc ID # 140).

re-file his Motion for Partial Summary Judgment and a dilatory Opposition to the already adjudicated CCSD BOT's Motion for Summary Judgment. *See* Plaintiff's Motion, Doc ID # 137 at 2:1-2, 18-21. Indeed, Plaintiff had 72 days to file an opposition to CCSD BOT's Motion for Summary Judgment. Instead, Plaintiff filed and then withdrew a Motion for Partial Summary Judgment, filed Motions to Strike, sought an extension to oppose the CCSD BOT's Motion for Summary Judgment and then elected not to file an opposition.

III. LEGAL ARGUMENT

A. Legal Standard.

Plaintiff fails to satisfy the standards for relief under NRCP 52 and 59, and his requested relief in the form of vacating the Order is improper. 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); Szczeraski *v. Richard*, 89 Nev. 581, 582, 517 P.2d 791, 791 (1973).

NRCP 59 provides that "A motion to alter or amend a judgment must be filed no later than 28 days after service of written notice of entry of judgment." NRCP 59(e). "It must also satisfy NRCP 7(b) and be 'in writing, ... state with particularity [its] grounds [and] set forth the relief or order sought.'" *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)). "Among the 'basic grounds' for a Rule 59(e) motion are 'correct[ing] manifest errors of law or fact,' [address] '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, 582, 245 P.3d 1190, 1193 (2010). 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).

Plaintiff's instant Motion does not include any facts or law that were incorrectly applied in the Order, or that were recently discovered and unavailable at the time the motions were filed and oral arguments were heard. In truth, Plaintiff's instant Motion is a request to vacate the Order to

provide Plaintiff time to refile his Motion for Partial Summary Judgment and to file a written opposition to CCSD BOT's Motion for Summary Judgment. *See* Plaintiff's instant Motion, Doc ID # 137 at p. 2:1-2;18-19. NRCP 52 and NRCP 59 do not allow for the relief that Plaintiff seeks, specifically, re-litigating an adjudicated CCSD BOT's Motion for Summary Judgment without showing any erroneous findings of fact or law.

B. Plaintiff's Motion does not Support Altering, Amending, or Vacating the Order Granting CCSD BOT's Motion for Summary Judgment.

Plaintiff's arguments supporting the instant Motion are riddled with unwarranted accusations and erroneous interpretations of fact and law that do not support altering or amending the Order granting the CCSD BOT's Motion for Summary Judgment. Plaintiff identifies the following grounds for seeking amendment and/or to vacate the Order: (1) newly discovered evidence in the form of emails with opposing counsel; (2) an exception to the doctrine of "mootness;" (3) the Court deciding the case on the merits based on the CCSD BOT's Motion for Summary Judgment; and (4) dilatory arguments that the issues raised in the CCSD BOT's Motion for Summary Judgment are erroneous. Contrary to Plaintiff's representations, Plaintiff has not identified newly discovered evidence or explained any errors that would warrant amending or altering the Order in this case.[2]

1. Plaintiff's Arguments Concerning "Mootness" Are Inapposite.

Plaintiff seemingly attempts to argue that there is new evidence that supports an exception to this Court deeming his Motion to Strike the CCSD BOT Motion for Judgment as Untimely moot. Plaintiff has attempted to blame defense counsel for his miscalculation of the dispositive motion deadline and gone so far as to insinuate that attempts to extend the arbitration hearing were improper and should provide him additional time to oppose the CCSD BOT's

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[2] Plaintiff does not appear to contend that there was a change in controlling law or manifest injustice that supports amending the Order. Even if Plaintiff was contending manifest injustice because he did not file a written opposition to the CCSD BOT's Motion for Summary Judgment, as provided above, that was a deliberate choice by Plaintiff. He had ample time to file a written opposition and even asked for a 7 day extension to file one which was unopposed by defense counsel. Notwithstanding, Plaintiff has the opportunity to argue in opposition at the hearing on the matter.

Motion for Summary Judgment and to re-file his Motion for Partial Summary Judgment. In other words, because Plaintiff did not foresee his Motion to Strike on untimeliness grounds being rendered moot due to the continuance of the arbitration which Plaintiff knew and agreed to, he wants a do-over, or for the Court to reconsider his Motion to Strike. Plaintiff's contention fails on multiple grounds.

First, Plaintiff misapplies the exceptions to the "mootness" doctrine. In *Valdez-Jimenez v. Eighth Jud. Dist. Ct.*, 136 Nev. 155, 158 (2020), the Nevada Supreme Court addressed the mootness doctrine and identified that courts have a duty "to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles of law which cannot affect the matter in issue before it." The Court explained that even if a case is moot it could "consider it if it involves a matter of widespread importance that is capable of repetition, yet evading review." *Id*. at 158. "The party seeking to overcome mootness must prove 'that (1) the duration of the challenged action is relatively short, (2) there is a likelihood that a similar issue will arise in the future, and (3) the matter is important.'" *Id*. *Valdez-Jimenez* did not concern a per se exemption standard, but rather an evaluation of justiciability where the Court could apply its jurisdiction to adjudicate matters where a controversy no longer exists due to mootness of an issue. *See Personhood Nevada v. Bristol*, 126 Nev. 599, 602 (2010). Notably, *Valdez-Jimenez*, concerned the issue of excessive bail and the pre-trial detention process, which although a moot issue for the petitioners by the time it was heard by the Court, was of such importance and easily repeated that the Court reasoned it should address it anyway. *Valdez-Jimenez v. Eighth Jud. Dist. Ct.*, 136 Nev at 159.

The circumstances in this case are not like those in *Valdez-Jimenez.* The matter that was "mooted" in this matter was Plaintiff's Motion to Strike CCSD BOT's Motion for Summary Judgment. It was mooted because of the continuance of the arbitration hearing date agreed to by the parties and in accordance with Nevada Arbitration Rule 4(E). The procedural argument is not of the type of matters that the Nevada Supreme Court contemplated for exemption from the mootness doctrine. Plaintiff's argument that CCSD BOT filed its Motion for Summary Judgment

late and on the same day as Plaintiff's Motion is not comparable to the constitutional rights that were are issue in *Valdez-Jimenez*.

The same applies to Plaintiff's claim that the issue of litigants moving hearings to moot arguments is such an issue of importance that it will likely be repeated. To begin, a ruling regarding potential rescheduling of motions is too vague and speculative and would lead to an improper opinion. *See Personhood Nevada v. Bristol*, 126 Nev. 599, 603 (2010). It is also not a "legal issue or public policy questions of widespread importance" that would warrant an exception to the mootness doctrine. *Id*. at 604. Rescheduling hearings to accommodate additional filings and conflicts in scheduling is so common that a ruling prohibiting the same due to a pending question of timeliness would potentially prejudice countless litigants.

Second, CCSD BOT vehemently opposes Plaintiff's argument that rescheduling the hearings in this matter was intended to moot Plaintiff's Motion to Strike the CCSD BOT's Motion for Summary Judgment. As shown above, Plaintiff was an <u>*active*</u> participate in the rescheduling of the hearing and acknowledged that a decision on the pending motions could do away with the need for an arbitration. The intention behind rescheduling the hearings was to allow the Court to consider and rule on dispositive motions prior to engaging in the expense of an Arbitration hearing. *See* Declaration of Stephanie Barker, Exhibit A, ⁋18. This is not an issue of denying Plaintiff due process or improperly applying law to prohibit Plaintiff for adequately presenting his case. Indeed, CCSD BOT did not oppose Plaintiff's Motion to Extend Time to file an opposition to its Motion for Summary Judgment. *Supra* Sec. II, ⁋9 (Doc ID #102). It is appalling that Plaintiff now faults Defendants and their counsel for his own actions and attempts to blatantly misrepresent discussions on the rescheduling of hearings, particularly when Plaintiff had an overwhelmingly lengthy period to oppose CCSD BOT's Motion for Summary Judgment <u>*and*</u> was aware the CCSD BOT sought an extension of time (*i.e.* 1 judicial day) to file said Motion should the Court find the parties filed their motions for summary judgment 1 judicial day late.

Importantly, Plaintiff never raised this issue in the filings related to the Motions for Summary Judgment or at the related hearing. The emails attached to Plaintiff's instant Motion

are not "newly discovery or previously unavailable evidence" that would warrant altering or amending the Order denying Plaintiff's Motion to Strike. *See AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 582, 245 P.3d 1190, 1193 (2010). Plaintiff possessed these emails since May 2021.

Third, the Conclusions of Law in the Order demonstrate that the Court considered the points set forth in Plaintiff's Motion to Strike the Motion for Summary Judgment. Although Plaintiff's argument against the Motion for Summary Judgment regarding timeliness was made moot, Plaintiff was not denied due process and had a fair opportunity to submit an opposition to the Motion (even on other basis). In addition to finding Plaintiff's arguments about timeliness moot as a result of moving the Arbitration hearing, the Court concluded that Plaintiff's Motions to Strike CCSD BOT's Motion for Summary Judgment under NRCP 12(f) were procedurally improper as NRCP 12 does not govern responses to motions brought pursuant to NRCP 56. *See* Notice of Entry of Order, Doc ID #133 at p. 9, ⁋ 8. The Court also found that even if the Motions for Summary Judgment were filed late, Plaintiff was not prejudiced by the one less judicial day as the hearings on the Motions were not conducted until ten weeks after the Motions were filed. *See Id*. at p. 9, ⁋ 9. Plaintiff was given full and fair notice of CCSD BOT's Motion Summary Judgment and fair opportunity to oppose it. *Id*. at p. 9, ⁋ 11. Accordingly, Plaintiff's arguments cannot be deemed to be a "manifest error of law or fact" or "newly discovered or previously unavailable evidence" warranting amendment.

2. CCSD BOT's Declarations in Support of its Motion for Summary Judgment Were Proper and Appropriately Considered.

Plaintiff appears to argue that the Court erred in considering the Declarations that were attached to CCSD BOT's Motion for Summary Judgment because they did not include his written responses to evaluations. *See* Plaintiff's instant Motion at 6:14-21. In doing so, Plaintiff cites to the 2013 version of NRS 391.31214(7) which states: "The teacher must receive a copy of each evaluation not later than 15 days after the evaluation. A copy of the evaluation and the teacher's response must be permanently attached to the teacher's personnel file." Plaintiff maintains that because his written responses to the 2013-2014 performance evaluations were not

included as an exhibit to Ms. Houghton or Mr. Markouzis' Declarations, the Declarations should be disregarded. Plaintiff's argument falls flat.

First, Plaintiff did not oppose CCSD BOT's Motion for Summary Judgment and the Court already decided the issue. "If the opposing party fails to serve and file an opposition, the district court has the discretion to construe that failure as an admission that the motion is meritorious and a consent to granting the motion…A party opposing summary judgment must set forth specific facts by affidavit of other proper evidence indicating there is a genuine issue of material fact." *King v. Cartlidge*, 121 Nev. 926, 928 (2005); *see also* NRCP 56(e). Plaintiff had ample opportunity to challenge the sufficiency of the evidence and undisputed facts included in those Declarations that supported the CCSD BOT's Motion for Summary Judgment, but failed to do so. Further, Plaintiff raised these arguments challenging the evaluations and his responses in his Motion to Strike Declarations filed on July 6, 2021. *See* Plaintiff's Motion to Strike Declarations, Doc ID #109 at 9:1-5. This issue was already decided by the Court, which denied Plaintiff's Motion to Strike Declarations and found that the Declarations complied with NRCP 56(c)(4). *See* Order granting CCSD BOT's Motion for Summary Judgment, Doc ID #133, at 17:4-5. Plaintiff should not get another chance to re-litigate these issues just because he chose not to oppose them adequately the first time around or did not like the Court's ruling.

Second, Plaintiff's interpretation of NRS 391 is incorrect. On its face, the statute as it existed in 2013 set forth requirements for making a teacher's response to an evaluation of their job performance *a permanent part of their job file*. However, this statute does not apply to the standards for evaluating declarations submitted in support of motions for summary judgment. The statute does not mandate that failure to attach the entirety of a teacher's personnel file to a motion for summary judgment will cause a deficiency. Moreover, Ms. Houghton was not referencing Plaintiff's responses to his evaluations, so attachment of those documents to her Declaration was not necessary or required under either *Daugherty v. Wabash Life Ins. Co.,* 87 Nev. 32, 38, 482 P.2d 814, 818 (1971) or NRCP 56. *See* Exhibit A to CCSD BOT's Motion for Summary Judgment. Plaintiff requests that the Court apply sanctions for including his responses as an exhibit to the Declaration of Sonia Houghton and Louis Markouzis. However, Plaintiff

does not cite to any case law or rule that would indicate that such sanctions are appropriate or warranted especially when those documents are not the subject of the declarations.

Third, the Declarations were not factually insufficient simply because Plaintiff's written response to evaluations were not included.

> When affidavits are offered in support of a motion for summary judgment, they must present admissible evidence, and must not only be made on the personal knowledge of the affiant, but must show that the affiant possesses the knowledge asserted. When written documents are relied on, they must be exhibited in full. The statement of the substance of written instruments or of affiant's interpretation of them or of mere conclusions of law or restatements of allegations of the pleadings are not sufficient.

Daugherty v. Wabash Life Ins. Co., 87 Nev. 32, 38, 482 P.2d 814, 818 (1971). In *Daugherty*, the Nevada Supreme Court found there were several disputed facts that were improperly adjudicated by the lower court without sufficient supporting evidence. *Id*. The Nevada Supreme Court found that the affidavit submitted in support of the motion for summary judgment contained inadmissible conclusions for which no foundation could be laid, and those recitals could not constitute such facts that would be admissible in evidence. *Id.* However, in this matter, Ms. Houghton and Mr. Markouzis' Declarations were based on facts and actions that they themselves performed and witnessed, specifically, their evaluations of Plaintiff and Ms. Houghton's recommendation to not renew his contract. Therefore, there was no need to attach the entirety of Plaintiff's personnel file to their Declarations. Ms. Houghton and Mr. Markouzis' personal attestation that they personally performed the evaluations of Plaintiff and Ms. Houghton made the recommendation not to renew Plaintiff's contract is sufficient to show there was no question of fact regarding these actions. In fact, Plaintiff does not dispute that these actions occurred. He only argues that the exhibits did not include his written responses.

It is worth noting that even if Plaintiff's alleged responses had been included as exhibits to the Declarations submitted in support of the Motion for Summary Judgment, they would not have changed the undisputed facts that were determined by the Court in granting summary judgment. Plaintiff spends about four pages arguing his position that his prior performance evaluations were insufficient under NRS 391 as it existed in 2013, that his responses to the

evaluations should have been "bundled together," and the failure to do so means that his claims are still intact. *See* Plaintiff's instant Motion, Doc ID #137 at 9:23-13:26. This issue was briefed by CCSD BOT in its unopposed Motion for Summary Judgment. *See* Motion for Summary Judgment, Doc ID #87. It was found that the Plaintiff's ability to submit a response to the evaluations did not change the evaluations, and that CCSD complied with the written terms of the contract in deciding not to renew Plaintiff's contract. *See* Order granting CCSD BOT's Motion for Summary Judgment, Doc ID # 133 at 15:13-26.

Again, the arguments against the sufficiency of the Declarations attached to the CCSD BOT's Motion for Summary Judgment should have been included in an opposition to the Motion. Despite receiving an extension, Plaintiff failed to timely file any written opposition. Plaintiff also included a similar argument in his Motion to Strike Declarations, which was denied. Plaintiff's arguments should not be considered, and Plaintiff's Motion to Amend or Alter requesting the Court to vacate the Order and re-litigate the Motion for Summary Judgment should be denied.

3. Plaintiff's Additional Arguments Do Not Support Altering or Amending the Order.

Plaintiff peppers others issues throughout the instant Motion that similarly fail to support alteration or amendment of the Order granting CCSD BOT's Motion for Summary Judgment.

For one, Plaintiff contends the Court abused its discretion by deciding the case on the merits and argues that the decision was one-sided. Plaintiff states that the Court "rubber-stamped" CCSD BOT's Motion for Summary Judgment and let CCSD BOT write the Order granting the Motion for Summary Judgment. *See* Plaintiff's instant Motion, Doc ID #137, at 3:8-13. Plaintiff ignores that the Court has discretion to determine a failure to oppose summary judgment is in fact an admission that the motion is meritorious. *King v. Cartlidge*, 121 Neg. 926, 928 (2005). Further, "[i]t is common practice for Clark County district courts to direct the prevailing party to draft the court's order. *See King v. St. Clair*, 134 Nev. 137, 142 (2018); EDCR 1.90(a)(5) ("[A] judge or other judicial officer shall order the prevailing party to prepare a written judgment and findings of fact and conclusions of law.")." Notwithstanding, Plaintiff had adequate time to submit an opposition to the Motion for Summary Judgment and argue the

matter orally before the Court. While Plaintiff did not submit a written opposition to the Motion, he did file Motions to Strike, which included some of the same arguments put forth in the instant Motion. *Supra* Sec. III(B)(1) at 8:7-22. After considering the arguments in the respective filings and hearing oral argument, the Court granted CCSD BOT's Motion for Summary Judgment. There was no error in the Court considering the arguments in the Motion for Summary Judgment and requesting that the prevailing party prepare the Order regarding the same.

Plaintiff also appears to argue that his Amended Complaint was sufficient to raise issues of material fact. *See* Plaintiff's instant Motion, Doc ID #137 at 12:14-20. As explained above, Plaintiff did not file a written opposition or submit admissible evidence sufficient to raise an issue of material fact, and it would be improper to simply rely on the allegations contained in the Amended Complaint as "fact" without additional citations or support in the record. *See* NRCP 56(c).

In addition, Plaintiff improperly claims that CCSD BOT referred to statutes that were irrelevant to the Motion for Summary Judgment in violation of NRCP 11. *See* Plaintiff's instant Motion, Doc ID #137 at 3:14-4:13. Curiously, Plaintiff does not specifically explain what CCSD BOT is supposed to have violated or how. Plaintiff only generally contends that citation to NRS 288 was improper because it is inapplicable to employment of probationary teachers.[3] It is unclear what Plaintiff is basing this argument on as he does not cite any portion of NRS 288 that he disputes does not apply to him or how he reached such a legal (and erroneous) conclusion. Markedly, NRS 288 is specifically quoted in the Negotiated Agreement between the Clark County Education Association and Clark County School District, which attached to Plaintiff's Declaration in support of the Motion to Alter or Amend as Exhibit EE. *See* Doc ID #138, at p. 29, 30. As such, any argument by Plaintiff that CCSD BOT has somehow violated Rule 11 for citing to and evaluating NRS 288 is erroneous, ultimately, and must be disregarded.

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[3] To the extent that Plaintiff is arguing that citation to this statute was a violation because he is a pro se party and it would be difficult for him to research statutes cited by an opposing party, the argument is futile. Plaintiff must comply with the Rules of Civil Procedure and substantive law, and his status as a pro se party does not relieve him of those requirements. *Bonnell v. Lawrence*, 128 Nev. 394, 404 (2012); *Vanisi v. State*, 117 Nev. 330, 340 (2001).

What is more, Plaintiff appears to imply that his conduct on the day of the hearing of the Motion for Summary Judgment somehow negatively impacted the Court's decisions in this matter. *See* Plaintiff's instant Motion, Doc ID #137 at 4:14-18. Plaintiff claims that "the Court got angry with the Plaintiff for disrupting the court proceedings unknowingly." Plaintiff's instant Motion, Doc ID #137 at 4:14-15. Plaintiff also claims that he interrupted the Court several times over the phone as he was unfamiliar with how to appear via telephone. *See* Plaintiff's Declaration, Doc ID #138 at 6:15-7:6. Plaintiff's disruptions on the day of the hearing did not have any bearing on the merits of the case that were decided on the date of the hearings, and any argument based on this implication is both unfounded and unpersuasive.

Finally, in the instant Motion Plaintiff incorporates by reference his Response in Opposition to BOT's Motion for Summary Judgment and supporting Declaration and states they are attached as Exhibits AAA and BBB, respectively. *See* Plaintiff's instant Motion, Doc ID #137 at 13:27-14:3. These exhibits were not attached the filed copy of the instant Motion (Doc ID #137), nor were they attached to Plaintiff's related Declaration (Doc ID #138). Therefore, CCSD BOT cannot address these documents or any arguments made therein.

IV. CONCLUSION

Based on the foregoing, this Court should deny Plaintiff's Motion under NRCP Rules 52 and 59.

DATED this 1st day of December 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 1st day of December, 2021, I served a true and correct copy of the foregoing **DEFENDANT CLARK COUNTY SCHOOL DISTRICT BOARD OF TRUSTEES' OPPOSITION TO PLAINTIFF'S MOTION UNDER NRCP RULES 52 AND 59** via the EFP Program, pursuant to the Court's Electronic Filing Service Order and/or mailed upon the following:

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

EXHIBIT A

DECLARATION OF STEPHANIE A. BARKER, ESQ.
RE: *VISWANATHAN v. BOARD OF TRUSTEES, et al.*
EJDC CASE NO. A-20-814819-C

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

STEPHANIE A. BARKER being duly sworn, declares and states:

1. Declarant is an attorney duly licensed and admitted to practice law in the State of Nevada employed Of-Counsel with the law firm of OLSON CANNON GORMLEY & STOBERSKI. Declarant represents Defendant Dr. Edward Goldman (Goldman) in the above-referenced matter and in this capacity, Declarant has personal knowledge of the facts and circumstances set forth herein.

2. Declarant is over 18 years old and is competent to provide this Declaration.

3. This Declaration is intended to provide context to email communication between Declarant, Plaintiff Tenkasi Viswanathan in pro per, and counsel for Defendant Board of Trustees (BOT), as attached to and cited in support of Plaintiff's NRCP 52 & 59 Motion filed November. 17, 2021 (Doc ID# 137).

Email Dated May 25, 2021: Calculation of Motion for Summary Judgment Due Date

(Plaintiff's Exhibit AA)

4. This matter was assigned to the court mandated Arbitration program (Doc. ID# 71) and first set for arbitration hearing on June 30, 2021, with a discovery cut-off date of May 24, 2021. (Doc ID#'s 73, and 74.)

5. On May 12, 2021, the Arbitrator held a telephone conference concerning discovery disputes. The disputes involved depositions not yet taken and the scope of noticed Subpoena's Duces Tecum. On that date, only twelve days remained in the discovery period. During the conference, the Arbitrator was advised of defense counsel Herrera's conflict with the June 30, 2021, arbitration hearing date.

6. Thereafter, the parties exchanged email communication proposing new arbitration hearing dates in July and August. Therein, defense counsel expressed their perception that

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Las Vegas, Nevada 89129
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extension of the arbitration hearing date would also allow for an extension of the discovery timeline, thereby enabling the parties to complete discovery consistent with the Arbitrator's May 12, 2021, rulings on the discovery disputes. Plaintiff responded: "That is good news! Thanks." *See* Exhibit 1 – Email exchange May 12, and May 13, 2021.

7. On May 14, 2021, Declarant again communicated with Plaintiff advising that by continuing the Arbitration hearing the parties would also extend the due date for Motions for Summary Judgment. *See* Exhibit 2 – Email exchange May 12, and May 14, 2021.

8. On May 19, 2021, Declarant sent correspondence to the Arbitrator, copying Plaintiff and counsel for the BOT, advising the Arbitrator of unsuccessful meet and confer efforts between Declarant and Plaintiff concerning record subpoenas, requesting a short telephonic hearing, and requesting continuance of the Arbitration hearing date and associated discovery and motion timelines. The Arbitrator advised that prior to receiving Declarant's email, he had signed (but not yet filed) two Orders – one ruling on the discovery motions, and a second continuing the arbitration hearing to July 28, 2021. *See* Exhibit 3 – Email exchange May 19, 2021. The Order continuing the arbitration hearing did not amend the May 24, 2021, discovery deadline. (Doc ID# 82.)

9. Consequently, on May 25, 2021, Ms. Herrera's office reached out to the Arbitrator inquiring about extension of the discovery deadline. The Arbitrator requested proposed dates for the extension as well as confirmation that all parties were in agreement. *See* Exhibit 4 – Email exchange May 25, 2021.

10. Declarant then sent the May 25, 2021, email at issue in Plaintiff's pending NRCP 52 and 59 Motion. The purpose of the email, as can be seen in context not provided by Plaintiff, was to seek extension of the discovery deadlines without needing to move the Arbitration Rule 4(E) deadline for motions for summary judgment. That calendar deadline fell on a Sunday. In reliance on NRCP 6(a)(1)(C) Declarant calculated the deadline to fall on the first judicial date (Monday) following the weekend. Declarant did not take NRCP 6(a)(5) into consideration and count backward from the weekend to calculate the due date on the judicial day preceding the weekend (Friday). *See* Exhibit 5 – Email exchange May 25, and May 27, 2021. The difference

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in the calculation was a single judicial day and all parties ultimately acted in good faith reliance on the NRCP 6(a)(1)(C) Monday due date, all filing Motions for Summary Judgment on that date.

Email Dated May 25, 2021: Consolidation of Motion Hearings

(Plaintiff's Exhibit BB)

11. Subsequent to June 14, 2021 (the date Plaintiff and Defendants filed their Motions for Summary Judgment), between June 21 and July 6, 2021, Plaintiff commenced filing separate and multiple motions related thereto, including:

- Plaintiff's Motion to Strike the CCSD BOT Motion for Summary Judgment (Doc ID #96)
- Plaintiff's Motion to Strike Defendant Goldman's Motion for Summary Judgment (Doc ID #97)
- Plaintiff's Motion for Order Extending Time to file and serve opposition to both Defendants' Motions for Summary Judgment (Doc ID #102)
- Plaintiff's Motion to Strike Declarations in support of Defendant BOT's Motion for Summary Judgment (Doc ID #109)
- Plaintiff's Motion to Strike Dr. Edward Goldman's Declaration in support of Defendant Goldman's Motion for Summary Judgment (Doc ID #111).

12. As each of the foregoing motions were filed, the Clerk of the Court issued a Clerk's Notice of Hearing, resulting in the motions being calendared for hearing on multiple dates: July 26, July 28, and August 9, 2021.

13. Because the hearing dates did not allow for resolution of all related summary judgment issues prior to the scheduled July 28, 2021 arbitration hearing date, on July 7, 2021, Defendants submitted to the Arbitrator a joint motion to extend the arbitration hearing date to allow time for possible resolution of dispositive issues in advance of the arbitration. *See* Exhibit 6 – Defendants' Joint Motion to Extend the Arbitration Hearing, submitted July 7, 2021.

14. Two days thereafter, on Friday, July 9, 2021, *Plaintiff* sent email correspondence to defense counsel requesting consolidation of the pending hearings. Plaintiff acknowledges therein that if the court hearings on the pending motions were to "dispose of the case," there

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would be no need for an arbitration hearing. Plaintiff further acknowledges that consolidation of the motion hearings is likely to result in a continuance of the arbitration hearing date to the "end of August or the beginning of September." *See* Exhibit 7 – Email exchange July 9, 2021.

15. On Monday, July 12, 2021, Declarant responded to Plaintiff's request for consolidation, proposing consolidation to Wednesday, July 28, 2021. *See* Exhibit 8 – Email exchange July 12, 2021. The date was proposed, in part, due to Declarant's previously scheduled summer travel calendar. On July 13, 2021, Plaintiff responded stating that he "had thought that it would be more natural to calendar them for August 9 or later," but did agree to the July 28, 2021, proposed date. *See* Exhibit 9 – Email exchange July 13, 2021.

16. Also on July 13, 2021, a telephonic conference was held between the parties and the Arbitrator concerning the requested continuance of the arbitration hearing, as well as the proposed consolidation of hearings on the pending motions.

17. Subsequently that same day, July 13, 2021, the parties' Stipulation and Order to consolidate the hearings to July 28, 2021, was submitted to the Court (Doc ID# 120), and the Arbitrator issued a Notice of Change of Arbitration Hearing moving the arbitration hearing date to August 27, 2021 (Doc ID# 121).

18. The goal of consolidation of the hearings, from Declarant's perspective, was to allow the court to consider and rule on dispositive issues prior to engaging in the expense of an arbitration hearing. If dispositive motions were granted, in whole or in part, the issues to be considered at the arbitration hearing could have been narrowed or eliminated in their entirety.

19. This Declaration is made on personal knowledge and recollection refreshed by the written email record of communication between the parties and the Arbitrator, as well as review of the Court Docket as referenced herein. This Declaration is made subject to penalties of perjury, and in good faith.

DATED this 10 day of December, 2021.

STEPHANIE A. BARKER

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

EXHIBIT 1

Stephanie Barker

From: Tenkasi Viswanathan <viswanathan.tenkasi@gmail.com>
Sent: Thursday, May 13, 2021 12:27 PM
To: Crystal Herrera [Office of the General Counsel]
Cc: Stephanie Barker; Elsa Pena [Office of the General Counsel]
Subject: Re: Viswanathan v. CCSD

That is good news! Thanks.

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

On Thu, May 13, 2021 at 11:09 AM Crystal Herrera [Office of the General Counsel] <herrec4@nv.ccsd.net> wrote:

Mr. Viswanathan-

If the arbitration hearing is moved, the parties have the ability to extend the discovery deadline as well.

Crystal Herrera

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

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On Wed, May 12, 2021 at 8:11 PM Tenkasi Viswanathan <viswanathan.tenkasi@gmail.com> wrote:

Greetings, Attorney Herrera and Attorney Barker.

As to the dates of the Arbitration Hearing, I can' t go beyond July 30, 2021. The week of July 26-July 30 seems best.

One more item: Attorney Barker said that moving the date will help all parties to conclude discovery.. I don't see that. Could you, please explain?

Thank you.

Sincerely,
Viso

Stephanie Barker

From: Crystal Herrera [Office of the General Counsel] <herrec4@nv.ccsd.net>
Sent: Thursday, May 13, 2021 11:09 AM
To: Tenkasi Viswanathan
Cc: Stephanie Barker; Elsa Pena [Office of the General Counsel]
Subject: Re: Viswanathan v. CCSD

Mr. Viswanathan-

If the arbitration hearing is moved, the parties have the ability to extend the discovery deadline as well.

Crystal Herrera

Assistant General Counsel
Office of the General Counsel
Clark County School District
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Greetings, Attorney Herrera and Attorney Barker.

As to the dates of the Arbitration Hearing, I can' t go beyond July 30, 2021. The week of July 26-July 30 seems best.

One more item: Attorney Barker said that moving the date will help all parties to conclude discovery.. I don't see that. Could you, please explain?

Thank you.

Sincerely,
Viso
Tenlkasi Viswanathan
5850 SkyPointe Dr
Apt 1067
Las Vegas, NV 89130
T: (252) 706-0169
E: Viswanathan.Tenkasi@gmail.com

On Wed, May 12, 2021 at 2:16 PM Stephanie Barker <sbarker@ocgas.com> wrote:

Ms. Herrera and Mr. Viswanathan:

I have no objection to continuing the hearing to July or August as it appears that moving the date will help all parties conclude discovery in order to facilitate filing Motions for Summary Judgment prior to the arbitration hearing in accordance with Arb Rule 4(E).

I will be out of town periodically in July but am currently open the weeks of:

July 26-30,

August 2-6,

August 9-12 (not available Friday Aug. 13),

August 16-20, and

August 23-27.

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

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any way from its use. If you have received this communication in error, please immediately notify the sender at 702-384-4012, or by electronic email.

From: Crystal Herrera [Office of the General Counsel] <herrec4@nv.ccsd.net>
Sent: Wednesday, May 12, 2021 2:08 PM
To: Tenkasi Viswanathan <viswanathan.tenkasi@gmail.com>; Stephanie Barker <sbarker@ocgas.com>
Cc: Elsa Pena [Office of the General Counsel] <penaec@nv.ccsd.net>
Subject: Viswanathan v. CCSD

Mr. Viswanathan and Ms. Barker-

As mentioned in today's call, I have a scheduling conflict on June 30, 2021. If you are amenable to moving the arbitration date to a later date, please let me know and provide your availability in the months of July and August. This way I can propose alternative dates to the arbitrator.

Thank you,

Crystal Herrera

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

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EXHIBIT 2

Stephanie Barker

From: Stephanie Barker
Sent: Friday, May 14, 2021 10:12 AM
To: Tenkasi Viswanathan
Cc: Crystal Herrera [Office of the General Counsel]; Elsa Pena [Office of the General Counsel]
Subject: RE: Viswanathan v. CCSD

My apologies for the late response. I was tied up in a deposition all day yesterday.

In response to your question Mr. Viswanathan, as Ms. Herrera noted yesterday, by continuing the Arbitration hearing it will extend the discovery cut-off and the due date for Motions for Summary Judgment. As you noted in your correspondence to the arbitrator last week, it would be preferable to complete discovery before having to file the Motions for Summary Judgment. Because there are depositions you wish to take, and this office is attempting to subpoena your employment records, a short continuance of the arbitration date should facilitate completion of this discovery process before we need to file summary judgment motions.

Does that answer your question?

Stephanie A. Barker, Esq.
Olson Cannon Gormley & Stoberski
9950 West Cheyenne Avenue
Las Vegas, Nevada 89129
PH: 702-384-4012
sbarker@ocgas.com

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From: Tenkasi Viswanathan <viswanathan.tenkasi@gmail.com>
Sent: Wednesday, May 12, 2021 8:11 PM
To: Stephanie Barker <sbarker@ocgas.com>
Cc: Crystal Herrera [Office of the General Counsel] <herrec4@nv.ccsd.net>; Elsa Pena [Office of the General Counsel] <penaec@nv.ccsd.net>
Subject: Re: Viswanathan v. CCSD

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Thank you.

Sincerely,
Viso
Tenlkasi Viswanathan
5850 SkyPointe Dr
Apt 1067
Las Vegas, NV 89130
T: (252) 706-0169
E: Viswanathan.Tenkasi@gmail.com

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Ms. Herrera and Mr. Viswanathan:

I have no objection to continuing the hearing to July or August as it appears that moving the date will help all parties conclude discovery in order to facilitate filing Motions for Summary Judgment prior to the arbitration hearing in accordance with Arb Rule 4(E).

I will be out of town periodically in July but am currently open the weeks of:

July 26-30,

August 2-6,

August 9-12 (not available Friday Aug. 13),

August 16-20, and

August 23-27.

Thank you.

Stephanie A. Barker, Esq.

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sbarker@ocgas.com

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From: Crystal Herrera [Office of the General Counsel] <herrec4@nv.ccsd.net>
Sent: Wednesday, May 12, 2021 2:08 PM
To: Tenkasi Viswanathan <viswanathan.tenkasi@gmail.com>; Stephanie Barker <sbarker@ocgas.com>
Cc: Elsa Pena [Office of the General Counsel] <penaec@nv.ccsd.net>
Subject: Viswanathan v. CCSD

Mr. Viswanathan and Ms. Barker-

As mentioned in today's call, I have a scheduling conflict on June 30, 2021. If you are amenable to moving the arbitration date to a later date, please let me know and provide your availability in the months of July and August. This way I can propose alternative dates to the arbitrator.

Thank you,

Crystal Herrera

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

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EXHIBIT 3

Stephanie Barker

From: Jim Fontano <jim@heatonfontano.com>
Sent: Wednesday, May 19, 2021 4:21 PM
To: Stephanie Barker
Cc: Tenkasi Viswanathan; Crystal Herrera [Office of the General Counsel]
Subject: RE: Viswanathan v. Board of CCSD, et al.

Ms. Barker,

Thank you for your email. Prior to receiving the email, I had signed and submitted two orders—one continuing the arbitration hearing, and the second denying Plaintiff's motion. However, they had not been submitted to Odyssey for service. They have now been served and you should have received them.

Thank you,

James A. Fontano

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5135 Camino al Norte, Ste 273 | N Las Vegas, NV 89031
O: 702-329-9901 | F: 702-763-7385 | C: 702-672-8057

From: Stephanie Barker <sbarker@ocgas.com>
Sent: Wednesday, May 19, 2021 2:26 PM
To: Jim Fontano <jim@heatonfontano.com>
Cc: Tenkasi Viswanathan <viswanathan.tenkasi@gmail.com>; Crystal Herrera [Office of the General Counsel] <herrec4@nv.ccsd.net>
Subject: RE: Viswanathan v. Board of CCSD, et al.

Good Afternoon Mr. Fontano:

Mr. Viswanathan and I have had a phone conversation and discussed his objection to the scope of Defendant Goldman's proposed Subpoenas Duces Tecum to Mr. Viswanathan's employers between 2003 and the current date. Mr. Viswanathan has agreed to four of the nine proposed Subpoenas, and in our conversation he suggested we serve the first four and then discuss the others if they appear necessary after receipt of response to the first four. For the reasons set forth in Defendant Goldman's Opposition and in consideration of our arbitration timeline, I have not conceded to do that. We have been unable to come to resolution and request a short telephonic hearing with you in this regard.

For your convenience I have attached Mr. Viswanathan's Motion for Protective Order, Defendant Goldman's Opposition, and Mr. Viswanathan's Reply.

The parties also request that the Arbitration hearing (and associated discovery and motion timelines) be moved to a date/time during the week of July 26 -30, if that is available for you. Please let us know if you need something formal from all of us in this regard.

Thank you for your time and consideration.

Stephanie A. Barker, Esq.
Olson Cannon Gormley & Stoberski

Stephanie Barker

From: Stephanie Barker
Sent: Wednesday, May 19, 2021 2:26 PM
To: Jim Fontano
Cc: Tenkasi Viswanathan; Crystal Herrera [Office of the General Counsel]
Subject: RE: Viswanathan v. Board of CCSD, et al.
Attachments: Plaintiffs-Motion-Protective-Order.pdf; Goldman's Opp to Plfs' Mot Prot Order.pdf; Plainitff's Reply-Re-Mot for Protective-Order-.pdf

Good Afternoon Mr. Fontano:

Mr. Viswanathan and I have had a phone conversation and discussed his objection to the scope of Defendant Goldman's proposed Subpoenas Duces Tecum to Mr. Viswanathan's employers between 2003 and the current date. Mr. Viswanathan has agreed to four of the nine proposed Subpoenas, and in our conversation he suggested we serve the first four and then discuss the others if they appear necessary after receipt of response to the first four. For the reasons set forth in Defendant Goldman's Opposition and in consideration of our arbitration timeline, I have not conceded to do that. We have been unable to come to resolution and request a short telephonic hearing with you in this regard.

For your convenience I have attached Mr. Viswanathan's Motion for Protective Order, Defendant Goldman's Opposition, and Mr. Viswanathan's Reply.

The parties also request that the Arbitration hearing (and associated discovery and motion timelines) be moved to a date/time during the week of July 26 -30, if that is available for you. Please let us know if you need something formal from all of us in this regard.

Thank you for your time and consideration.

Stephanie A. Barker, Esq.
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PH: 702-384-4012
sbarker@ocgas.com

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From: Crystal Herrera [Office of the General Counsel] <herrec4@nv.ccsd.net>
Sent: Thursday, May 13, 2021 11:18 AM
To: Jim Fontano <jim@heatonfontano.com>

Cc: Tenkasi Viswanathan <viswanathan.tenkasi@gmail.com>; Stephanie Barker <sbarker@ocgas.com>; Elsa Pena [Office of the General Counsel] <penaec@nv.ccsd.net>; Nan Langenderfer <nlangenderfer@ocgas.com>
Subject: Viswanathan v. Board of CCSD, et al.

Mr. Fontano-

The parties in this case are amenable to extending the arbitration in this matter to the week of July 26th, due to the scheduling conflict I referenced yesterday.

Please let me know if you require anything further to reschedule the arbitration.

Thank you,

Crystal Herrera

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

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EXHIBIT 4

Stephanie Barker

From: Jim Fontano <jim@heatonfontano.com>
Sent: Tuesday, May 25, 2021 11:02 AM
To: Stephanie Barker; Elsa Pena [Office of the General Counsel]
Cc: viswanathan.tenkasi@gmail.com; Nan Langenderfer; Crystal Herrera [Office of the General Counsel]
Subject: RE: Viswanathan v. CCSD, et al.; Case No. A-20-814819-C

Please provide me with proposed dates for the extension and confirmation from all parties that you are in agreement.

James A. Fontano

HEATON | FONTANO
5135 Camino al Norte, Ste 273 | N Las Vegas, NV 89031
O: 702-329-9901 | F: 702-763-7385 | C: 702-672-8057

From: Stephanie Barker <sbarker@ocgas.com>
Sent: Tuesday, May 25, 2021 10:53 AM
To: Elsa Pena [Office of the General Counsel] <penaec@nv.ccsd.net>; Jim Fontano <jim@heatonfontano.com>
Cc: viswanathan.tenkasi@gmail.com; Nan Langenderfer <nlangenderfer@ocgas.com>; Crystal Herrera [Office of the General Counsel] <herrec4@nv.ccsd.net>
Subject: RE: Viswanathan v. CCSD, et al.; Case No. A-20-814819-C

Defendant Goldman is in agreeemnt

Stephanie A. Barker, Esq.
Olson Cannon Gormley & Stoberski
9950 West Cheyenne Avenue
Las Vegas, Nevada 89129
PH: 702-384-4012
sbarker@ocgas.com

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From: Elsa Pena [Office of the General Counsel] <penaec@nv.ccsd.net>
Sent: Tuesday, May 25, 2021 10:36 AM
To: Jim Fontano <jim@heatonfontano.com>
Cc: viswanathan.tenkasi@gmail.com; Stephanie Barker <sbarker@ocgas.com>; Nan Langenderfer <nlangenderfer@ocgas.com>; Crystal Herrera [Office of the General Counsel] <herrec4@nv.ccsd.net>
Subject: Re: Viswanathan v. CCSD, et al.; Case No. A-20-814819-C

Thank you for your response. I believe the parties are all in agreement.

Sincerely,

Elsa C. Peña
Legal Assistant II
Office of the General Counsel
Clark County School District
5100 West Sahara Avenue, 3rd Floor
Las Vegas, NV 89146
Phone: (702) 799-5373
Fax: (702) 799-5505
Email: penaec@nv.ccsd.net

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On Tue, May 25, 2021 at 9:57 AM Jim Fontano <jim@heatonfontano.com> wrote:

Hello Elsa,

Thank you for your email. The parties did not request any extension for discovery. I am happy to extend the time to complete discovery if the parties are in agreement. If the parties are unable to reach an agreement, then any of the parties may submit a motion requesting an extension.

James A. Fontano

HEATON | FONTANO

5135 Camino al Norte, Ste 273 | N Las Vegas, NV 89031
O: 702-329-9901 | F: 702-763-7385 | C: 702-672-8057

From: Elsa Pena [Office of the General Counsel] <penaec@nv.ccsd.net>
Sent: Tuesday, May 25, 2021 9:32 AM
To: Jim Fontano <jim@heatonfontano.com>
Cc: viswanathan.tenkasi@gmail.com; sbarker@ocgas.com; nlangenderfer@ocgas.com; Crystal Herrera [Office of the General Counsel] <herrec4@nv.ccsd.net>
Subject: Viswanathan v. CCSD, et al.; Case No. A-20-814819-C

Good morning,

In light of the recently rescheduled Arbitration Hearing in this matter, would you please advise the parties whether you will be resetting the discovery deadlines which you previously implemented or whether you need the parties to prepare and submit a stipulation for your review and approval? Thank you.

Sincerely,

Elsa C. Peña

Legal Assistant II

Office of the General Counsel

Clark County School District

5100 West Sahara Avenue, 3rd Floor

Las Vegas, NV 89146

Phone: (702) 799-5373

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Email: penaec@nv.ccsd.net

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EXHIBIT 5

Stephanie Barker

From: Tenkasi Viswanathan <viswanathan.tenkasi@gmail.com>
Sent: Thursday, May 27, 2021 5:41 AM
To: Stephanie Barker
Cc: Crystal Herrera [Office of the General Counsel]; CCSD Case:Asst. Gl. Counsel: Crystal Herrera (5258), Elsa Pena (5373),
Subject: Re: Re:Discovery Cut-off Date: Viswanathan v. CCSD, et al.; Case No. A-20-814819-C

Greetings, Attorney Barker. That is correct. I do not agree to an extension of the original Discovery cut-off date, which was Monday, May 24, 2021.

Thank you for your clarifications. with warm regards,

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

On Wed, May 26, 2021 at 4:56 PM Stephanie Barker <sbarker@ocgas.com> wrote:

Good afternoon Mr. Viswanathan:

In response to your below email regarding extension of the discovery cut-off day, be advised that the original discovery cut-off date was Monday, May 24. That means that unless the parties agree to a new discovery cut-off, the parties may not conduct further discovery. It has ended for all parties, including you.

If that is truly your intent, please advise.

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

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From: Tenkasi Viswanathan <viswanathan.tenkasi@gmail.com>
Sent: Wednesday, May 26, 2021 4:05 AM
To: Stephanie Barker <sbarker@ocgas.com>
Cc: Crystal Herrera [Office of the General Counsel] <herrec4@nv.ccsd.net>; CCSD Case:Asst. Gl. Counsel: Crystal Herrera (5258), Elsa Pena (5373), <penaec@nv.ccsd.net>
Subject: Re:Discovery Cut-off Date: Viswanathan v. CCSD, et al.; Case No. A-20-814819-C

Greetings. I am not in favor of extending the discovery cut-off day. I called Attorney Herrera yesterday, but we missed each other.

I did not get much from Discovery. Attorney Herrera answered mostly with boiler-plate objections. I had tried to resolve the issues by e-mail and telephone calls. The latest answers on "Admissions" should not be acceptable. Rule 36 does not permit a simple "DENY" The objections tend to be pedantic, displaying expertise in law. But they are not aimed at finding facts.

Most of my remaining time is going to be taken for compelling acceptable answers. New discovery will be burdensome and unproductive and prejudicial to my position in the case.

I hope you understand. Thank you. With warm regards,

Sincerely,

Viso

Tenkasi Viswanathan

On Tue, May 25, 2021 at 11:21 AM Stephanie Barker <sbarker@ocgas.com> wrote:

Ms. Herrera and Mr. Viswanathan:

Our new Arbitration date is July 28. Pursuant to Arbitration Rule 4(E), motions for summary judgment are due 45 days before that date which is Monday, June 14.

I, therefore, propose a discovery cut-off date of Wednesday June 9. That will allow a few days before the motions are due.

Please let me know your thoughts.

Stephanie A. Barker, Esq.

Olson Cannon Gormley & Stoberski

9950 West Cheyenne Avenue

Las Vegas, Nevada 89129

PH: 702-384-4012

sbarker@ocgas.com

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From: Jim Fontano <jim@heatonfontano.com>
Sent: Tuesday, May 25, 2021 11:02 AM
To: Stephanie Barker <sbarker@ocgas.com>; Elsa Pena [Office of the General Counsel] <penaec@nv.ccsd.net>
Cc: viswanathan.tenkasi@gmail.com; Nan Langenderfer <nlangenderfer@ocgas.com>; Crystal Herrera [Office of the General Counsel] <herrec4@nv.ccsd.net>
Subject: RE: Viswanathan v. CCSD, et al.; Case No. A-20-814819-C

Please provide me with proposed dates for the extension and confirmation from all parties that you are in agreement.

James A. Fontano

HEATON | FONTANO

5135 Camino al Norte, Ste 273 | N Las Vegas, NV 89031
O: 702-329-9901 | F: 702-763-7385 | C: 702-672-8057

From: Stephanie Barker <sbarker@ocgas.com>
Sent: Tuesday, May 25, 2021 10:53 AM
To: Elsa Pena [Office of the General Counsel] <penaec@nv.ccsd.net>; Jim Fontano <jim@heatonfontano.com>
Cc: viswanathan.tenkasi@gmail.com; Nan Langenderfer <nlangenderfer@ocgas.com>; Crystal Herrera [Office of the General Counsel] <herrec4@nv.ccsd.net>
Subject: RE: Viswanathan v. CCSD, et al.; Case No. A-20-814819-C

Defendant Goldman is in agreeemnt

Stephanie A. Barker, Esq.

Olson Cannon Gormley & Stoberski

9950 West Cheyenne Avenue

Las Vegas, Nevada 89129

PH: 702-384-4012

sbarker@ocgas.com

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From: Elsa Pena [Office of the General Counsel] <penaec@nv.ccsd.net>
Sent: Tuesday, May 25, 2021 10:36 AM
To: Jim Fontano <jim@heatonfontano.com>
Cc: viswanathan.tenkasi@gmail.com; Stephanie Barker <sbarker@ocgas.com>; Nan Langenderfer <nlangenderfer@ocgas.com>; Crystal Herrera [Office of the General Counsel] <herrec4@nv.ccsd.net>
Subject: Re: Viswanathan v. CCSD, et al.; Case No. A-20-814819-C

Thank you for your response. I believe the parties are all in agreement.

Sincerely,

Elsa C. Peña

Legal Assistant II

Office of the General Counsel

Clark County School District

5100 West Sahara Avenue, 3rd Floor

Las Vegas, NV 89146

Phone: (702) 799-5373

Fax: (702) 799-5505

Email: penaec@nv.ccsd.net

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On Tue, May 25, 2021 at 9:57 AM Jim Fontano <jim@heatonfontano.com> wrote:

Hello Elsa,

Thank you for your email. The parties did not request any extension for discovery. I am happy to extend the time to complete discovery if the parties are in agreement. If the parties are unable to reach an agreement, then any of the parties may submit a motion requesting an extension.

James A. Fontano

HEATON | FONTANO

5135 Camino al Norte, Ste 273 | N Las Vegas, NV 89031
O: 702-329-9901 | F: 702-763-7385 | C: 702-672-8057

From: Elsa Pena [Office of the General Counsel] <penaec@nv.ccsd.net>
Sent: Tuesday, May 25, 2021 9:32 AM
To: Jim Fontano <jim@heatonfontano.com>
Cc: viswanathan.tenkasi@gmail.com; sbarker@ocgas.com; nlangenderfer@ocgas.com; Crystal Herrera [Office of the General Counsel] <herrec4@nv.ccsd.net>
Subject: Viswanathan v. CCSD, et al.; Case No. A-20-814819-C

Good morning,

In light of the recently rescheduled Arbitration Hearing in this matter, would you please advise the parties whether you will be resetting the discovery deadlines which you previously implemented or whether you need the parties to prepare and submit a stipulation for your review and approval? Thank you.

Sincerely,

Elsa C. Peña

Legal Assistant II

Office of the General Counsel

Clark County School District

5100 West Sahara Avenue, 3rd Floor

Las Vegas, NV 89146

Phone: (702) 799-5373

Fax: (702) 799-5505

Email: penaec@nv.ccsd.net

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EXHIBIT 6

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

DEFENDANTS' JOINT MOTION TO EXTEND THE ARBTIRATION HEARING

Defendants Board of Trustees of the Clark County School District ("Board") and Dr. Edward Goldman ("Dr. Goldman; collectively, "Defendants") by and through their respective attorneys of record, hereby file the following Joint Motion to Extend the Arbitration Hearing, currently scheduled for July 28, 2021 at 9:30 a.m.

This Motion is made and based on the papers and pleadings on file, the following memorandum of points and authorities, and any oral argument that may be heard at the hearing on this matter.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The arbitrator in this case was appointed on January 7, 2021. The arbitration hearing is scheduled for July 28, 2021 at 9:30 a.m. Before proceeding with arbitration, Defendants and Plaintiff all filed motions for summary judgment on Monday, June 14, 2021. The District Court scheduled these motions for hearing two days before the arbitration hearing, on July 26, 2021 at 9:00 a.m.

On June 21, 2021, Plaintiff also filed two motions to strike Defendants' motions for summary judgment, which were scheduled for hearing on July 28, 2021 at 9:00 a.m.—the same day as the arbitration hearing.

On July 6, 2021, Plaintiff filed additional motions to strike. This time they concerned striking the declarations in support of Defendants' motions for summary judgment. At least one of those motions has been scheduled for hearing on August 9, 2021 at 9:00 a.m.

Because the District Court will be considering the parties' dispositive motions and/or related motions two days before, on the same day and time, or after the arbitration hearing, Defendants respectfully request that the arbitration hearing be continued four (4) weeks. The extension of time will provide the District Court time to hear and decide the pending motions and file a corresponding written order.

II. LEGAL ARGUMENT

This dispute is proceeding before the court mandated arbitration program and governed by the Nevada Arbitration Rules ("NAR"). NAR 12(B) provides in relevant part:

> The arbitration hearing date may be advanced or continued by the arbitrator for good cause upon written request from either party. The arbitrator may not grant a request for a continuance of the hearing beyond a period of 9 months from the date of the arbitrator's appointment without written permission from the commissioner
>
> ...
>
> All arbitration hearings must take place within one year of the date on which the arbitrator is appointed.

Here, Defendants request that the arbitration hearing date be extended four (4) weeks to allow for dispositive motions to be heard and decided by the District Court before proceeding

with arbitration. *See* NAC 4(E) (dispositive motions are to be filed with the district court). This requested extension is made within the nine (9) months permitted for the Arbitrator to continue the hearing without Commissioner approval – the nine-month deadline falling on October 7, 2021. Moreover, the circumstances supporting the extension are for good cause. The parties filed motions for summary judgment seeking judgment be entered in their favor on Plaintiff's claims. However, these motions are scheduled to be heard two days before the arbitration hearing while related motions are scheduled to be heard on the day of the arbitration or thereafter.

More specifically, Defendants individually filed motions for summary judgment on June 14, 2021, arguing that Plaintiff's breach of contract claims failed against Defendants because Plaintiff cannot establish in contract or law that Defendants committed a breach.[1] Defendants further argued that Plaintiff's contract claims are preempted under Nevada law to the extent they are based on the terms and conditions set forth in the collective bargaining agreement that governed Plaintiff's employment. Moreover, Plaintiff's characterization of his claims as breaching the collective bargaining agreement support that Plaintiff failed to exhaust his administrative remedies with the Government Employment-Management Relations Board before proceeding with contract-based claims before the District Court.

On June 14, 2021, Plaintiff also filed a motion for partial summary judgment. There, Plaintiff argued that judgment should be entered in his favor and against the Board. While Plaintiff subsequently filed a motion to amend his motion for partial summary judgment and/or withdraw it, Plaintiff's dispositive motion remains on calendar for hearing on July 26, 2021 in conjunction with Defendants' dispositive motions.

What is more, Plaintiff filed motions to strike Defendants' respective motions for summary judgment and his motions are scheduled to be heard on the same date and time as the arbitration hearing or after. Two of Plaintiff's motions to strike are scheduled for hearing on July 28, 2021 at 9:00 a.m., and the arbitration hearing is scheduled for July 28, 2021 at 9:30 a.m. The Court scheduled another motion to strike for hearing today for August 9, 2021 at 9:00 a.m.

---

[1] Dr. Goldman also joined in the Board's motion for summary judgment on June 15, 2021.

Defendants request the continuation of the arbitration hearing based on the dispositive motion and related hearings. As explained above, the parties' dispositive and related motions are currently scheduled near or at the time of the arbitration hearing. The intent of filing dispositive motions is to dispose of claims in advance of arbitration or trial. This case is no different. The arguments raised in the respective filings raise legal issues that may terminate the case in advance of proceeding with arbitration or trial. However, the District Court needs the ability to hear the arguments raised in the respective motions and time for entry of a formal written order.

The Court's ruling on the pending motions may resolve, in whole or in part, the issues to be considered at the time of the arbitration hearing. In the interest of litigation efficiencies, neither the parties nor the Arbitrator should be burdened with preparing for an arbitration hearing that may be limited by the Court's ruling on the pending motions. The current calendaring does not permit for that adjustment. Certainly, if Plaintiff's claims are not disposed of in their entirety, then the arbitration proceeding can go forward on the extended date, in accordance with the Court's order, without prejudice to Plaintiff's ability to present his case consistent with that order. Accordingly, the circumstances in the instant matter warrant granting the instant request.

III. CONCLUSION

Based on the foregoing, this Court should extend the arbitration hearing date four (4) weeks to allow for dispositive and related motions to be heard and decided by the District Court.

DATED this 7th day of July, 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

DATED this 7th day of July, 2021.

OLSON CANNON GORMELY & STOBERSKI

By: *\/s/ Stephanie A. Barker*
James R. Olson (#116)
Stephanie A. Barker (#3176)
9950 W. Cheyenne Ave.
Las Vegas, Nevada 89129
Attorney for Defendant, Dr. Edward Goldman

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 7th day of July, 2021, I served a true and correct copy of the foregoing **DEFENDANTS' JOINT MOTION TO EXTEND THE ARBTIRATION HEARING** via the EFP Program, pursuant to the Court's Electronic Filing Service Order and/or mailed upon the following:

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

James A. Fontano
5135 Camino Al Norte, Ste. 273
North Las Vegas, NV 89031
jim@heatonfontano.com
Arbitrator

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

EXHIBIT 7

Stephanie Barker

From: Tenkasi Viswanathan <viswanathan.tenkasi@gmail.com>
Sent: Friday, July 9, 2021 1:37 PM
To: Stephanie Barker; Crystal Herrera [Office of the General Counsel]
Subject: A-20-814819-C: Consolidation of Hearings + Extending Arbitration Hearing

TO:
Attorney Stephanie Barker, ESQ
Law Offices of
OLSON CANNON, GORMLEY & STOBERSKI
9950 West Cheyenne Ave
Las Vegas, NV 89129

And

Attorney Crystal Herrera, ESQ
Office of the General Counsel
Clark County School District
5100 W Sahara Ave.
Las Vegas, NV 89146

July 9, 2021

Greetings, Attorney Barker and Attorney Herrera:

Sub: A-20-814819-C and your recent joint motion to the Hon. Arbitrator, Requesting Extension of the Arbitration Hearing

I am writing to request you to consolidate the different hearings calendared to hear the corresponding motions. I have produced a list below.

In the past we have stipulated and submitted the STIPULATION AND ORDER. I would like to request that we do the same. The Motions are:
(1) CCSD BOT's Motion for Summary Judgment (MSJD) (July 26)(2) Dr. Edward Goldman's Motion for Summary Judgment (MSJD) and Joindedr (July 26)
(3) Plaintiff's Motion for Partial Summary Judgment (July 26)
(4) Plaintiff's Motion To Strike Defendant BOT's MSJD, Defendant Goldman's MSJD, and his Joinder (July 28)
(5) Plaintiff's Motion to Strike All or Parts of Declarations Attached as Exhibit A, Exhibit B, and Exhibit C to Defendant BOT's MSJD and the Exhibits Thereto (August 9)
(6) Plaintiff's Motion Requesting ORDER for a Seven-Day Extension of Time to Serve and File His Opposition to the Defendants' MSJD-s and Defendant Goldman's Joinder (August 9, 2021)

The Consolidation is likely to push the Hearing to the Middle of August and we are likely to dispose of the case. In that case there will be no need for an Arbitration Hearing. I assume that this is your intention in moving the Arbitrator.

Once we have a court date for the Consolidated Hearing, we could Stipulate and submit a STIPULATION and ORDER to the Arbitrator. We can have a date for the hearing through a telephone conference with the Arbitrator towards the end of August or the beginning of September just before Labor Day or after.

It will be awkward to appear for the different hearings and request continuance. I am afraid that the Honorable Judge may get angry.

I hope to hear from you soon. I appreciate your thoughtful Response.

With warm regards,

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

EXHIBIT 8

Stephanie Barker

From: Stephanie Barker
Sent: Monday, July 12, 2021 11:29 AM
To: Tenkasi Viswanathan; Crystal Herrera [Office of the General Counsel]
Subject: RE: A-20-814819-C: Consolidation of Hearings + Extending Arbitration Hearing

Good morning Mr. Viswanathan:

We are willing to consolidate hearing on all pending motions to **Wednesday July 28, 2021**, which is the date calendared for your first filed Motion to Strike.

- In my view, your Motion to Strike Declarations, numbered (5) below, is in the nature of opposition to the Motions for Summary Judgment and therefore appropriately heard on the same day as the hearing on the motions for summary judgment.

- Your motion for extension of time, numbered (6) below requested until July 5 to file your opposition, a date that has already passed.

- Your motions filed over the weekend similarly all stem from and relate to Defendants' Motion for Summary Judgment.

If you are agreeable to a **July 28**, consolidated date, I will prepare a stipulation to move all pending motions to be heard on that date, submit it to you and Ms. Herrera for approval and authorization for electronic signature, and then submit it to the court.

We can discuss the arbitration date with Mr. Fontano tomorrow.

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

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From: Tenkasi Viswanathan <viswanathan.tenkasi@gmail.com>
Sent: Friday, July 9, 2021 1:37 PM
To: Stephanie Barker <sbarker@ocgas.com>; Crystal Herrera [Office of the General Counsel] <herrec4@nv.ccsd.net>
Subject: A-20-814819-C: Consolidation of Hearings + Extending Arbitration Hearing

TO:
Attorney Stephanie Barker, ESQ
Law Offices of
OLSON CANNON, GORMLEY & STOBERSKI
9950 West Cheyenne Ave
Las Vegas, NV 89129

And

Attorney Crystal Herrera, ESQ
Office of the General Counsel
Clark County School District
5100 W Sahara Ave.
Las Vegas, NV 89146

July 9, 2021

Greetings, Attorney Barker and Attorney Herrera:

Sub: A-20-814819-C and your recent joint motion to the Hon. Arbitrator, Requesting Extension of the Arbitration Hearing

I am writing to request you to consolidate the different hearings calendared to hear the corresponding motions. I have produced a list below.

In the past we have stipulated and submitted the STIPULATION AND ORDER. I would like to request that we do the same. The Motions are:
(1) CCSD BOT's Motion for Summary Judgment (MSJD) (July 26)(2) Dr. Edward Goldman's Motion for Summary Judgment (MSJD) and Joindedr (July 26)
(3) Plaintiff's Motion for Partial Summary Judgment (July 26)
(4) Plaintiff's Motion To Strike Defendant BOT's MSJD, Defendant Goldman's MSJD, and his Joinder (July 28)
(5) Plaintiff's Motion to Strike All or Parts of Declarations Attached as Exhibit A, Exhibit B, and Exhibit C to Defendant BOT's MSJD and the Exhibits Thereto (August 9)
(6) Plaintiff's Motion Requesting ORDER for a Seven-Day Extension of Time to Serve and File His Opposition to the Defendants' MSJD-s and Defendant Goldman's Joinder (August 9, 2021)

The Consolidation is likely to push the Hearing to the Middle of August and we are likely to dispose of the case. In that case there will be no need for an Arbitration Hearing. I assume that this is your intention in moving the Arbitrator.

Once we have a court date for the Consolidated Hearing, we could Stipulate and submit a STIPULATION and ORDER to the Arbitrator. We can have a date for the hearing through a telephone conference with the Arbitrator towards the end of August or the beginning of September just before Labor Day or after.

It will be awkward to appear for the different hearings and request continuance. I am afraid that the Honorable Judge may get angry.

I hope to hear from you soon. I appreciate your thoughtful Response.

With warm regards,

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

EXHIBIT 9

Stephanie Barker

From:	Tenkasi Viswanathan <viswanathan.tenkasi@gmail.com>
Sent:	Tuesday, July 13, 2021 5:43 AM
To:	Stephanie Barker
Cc:	Crystal Herrera [Office of the General Counsel]
Subject:	Re: A-20-814819-C: Your Email on Consolidation of Hearings + Extending Arbitration Hearing

TO:
Attorney Stephanie Barker, ESQ
Law Offices of
OLSON CANNON, GORMLEY & STOBERSKI
9950 West Cheyenne Ave
Las Vegas, NV 89129

July 13, 2021

Greetings, Attorney Barker:

Sub: A-20-814819-C : Your Email on Consolidation and Extension of the Arbitration Hearing

Thank you, Attorney Barker. Your proposal consolidating all the pending motions (there are at least seven and two joinders; and your countermotions) for hearing on July 28, 2021 is certainly an option. Is it easy to calendar that? I had thought that it would be more natural to calendar them for August 9 or later. These are practical matters out of my reach.

Yes, I agree to the date of July 28, 2021. Thank you for agreeing to prepare the STIPULATION and ORDER. I look forward to the papers.

With warm regards,

Yours sincerely,

Viso

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

Cc: Attorney Crystal Herrera, ESQ
Office of the General Counsel
Clark County School District
5100 W Sahara Ave.
Las Vegas, NV 89146

The Motions are:

Electronically Filed
02/23/2022 7:12 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: 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*
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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:

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