

1 allegation contained therein.

2 **FIRST AFFIRMATIVE DEFENSE**

3 4. The Complaint fails to state facts sufficient to constitute any violation of the
4 Education Employment Relations Act (EERA) by Respondent.

5 **SECOND AFFIRMATIVE DEFENSE**

6 **(NO UNILATERAL CHANGE IN POLICY)**

7 5. During spring and summer 2018 Charging Party and Respondent were engaged
8 in reopener negotiations under their collective bargaining agreement (CBA) for the 3 year
9 term from 7/1/2017 to 6/30/20. The CBA provides at Article 1, Section 1.4.1 for annual
10 reopener negotiations including both Article 12 Salaries and Article 13/16 Health and
11 Welfare Benefits/Retiree Benefits. During the course of these reopener negotiations, the
12 District presented and discussed written information regarding its accounting of health and
13 welfare benefits. Charging Party also asked questions and the District responded to the
14 questions and assertions made by Charging Party about Article 13 in general and section
15 13.2 in particular. A true and correct copy of the CBA at Article 13 is attached hereto and
16 marked Exhibit A.

17 6. During this time, Charging Party made a request for information pertaining to
18 health benefits. In May, 2018, District provided responsive information, a true and correct
19 copy of which is attached hereto and marked Exhibit B. This accounting pertains to
20 Charging Party as well as to CSEA and District Management. Regarding Charging Party
21 (identified as NMFT on Exhibit B) the accounting shows the benefit cap, \$19,293,
22 participants 1,029.59, dollars \$19,863,879.87, eligible who declined coverage 100.34, dollars
23 \$1,935,859.82, total (eligible employees) 1,129.93, and total dollars \$21,799,739.49. On the
24 left hand side of the accounting are the premiums and expenses by the two bargaining
25 groups, NMFT and CSEA, as well as Management. The accounting shows that the total
26 health benefit plan charge is \$36,339,752.32. This amount exceeded the benefit unit cap
27 including NMFT eligibles who did not participate in the plan by \$506,700.56.

28 7. Charging Party contended there should be additional money in the health

1 benefit fund. Charging Party explained that it interpreted Article 13 to require the District
2 contribute \$19,293 for all District employees eligible for health benefits, whether or not the
3 employees were in the bargaining unit represented by Charging Party.

4 8. The District did not agree with Charging Party's interpretation of Article 13.
5 The District explained that it budgeted for health benefits in the District's Board adopted
6 budget. The District representatives explained that the District funded health and welfare
7 benefits were based upon prior years' participation and premiums and projected participation
8 and premiums.

9 9. Charging Party asserted that Article 13.2 required the District deposit the
10 benefit cap amount of \$19,293 for all health benefit eligible employees in the District and
11 that the deposit was not limited to only unit members represented by Charging Party.
12 District representatives stated they disagreed with that interpretation and did not budget for
13 health benefits by depositing the benefit cap amount for all eligible employees of the
14 District. District representatives also stated that the adopted budget did not include funding
15 for all health benefit eligible employees in the District.

16 10. Charging Party asked if the District included in its contribution the sum of
17 \$19,293 for all eligible employees who waived their right to receive medical benefits. The
18 District representatives explained that Exhibit B included accounting for all eligible NMFT
19 unit members, but did not include accounting for all eligible CSEA or Management
20 employees. The District representatives also explained that separate from the accounting, the
21 District adopted budget for health benefit contributions did not include contributions for any
22 eligible employees who had waived their right to receive medical benefits.

23 11. During these reopener negotiations, both Charging Party and District
24 maintained their positions regarding their respective interpretations and opinions of Article
25 13. At no time during these reopener negotiations did Charging Party contend that before
26 May 2018 the District had contributed into an employee health benefit insurance fund an
27 amount equal to \$19,293 (or any other sum for that matter) based upon all eligible
28 employees, regardless of whether they had health insurance through the District.

1 participated in the Joint Benefits Team which includes representatives from Charging Party,
2 CSEA, Management, and retirees, see Exhibit A, paragraph 13.1. As a result, Charging
3 Party knew or reasonably should have known that the District did not budget or contribute
4 for health and welfare benefits by including contributing \$19,293 per employee annually into
5 an employee health insurance fund, regardless of whether they had health insurance through
6 the District.

7 19. As a direct and proximate result, the complaint is barred by Government Code
8 Section 3541.5(a)(1).

9 **FOURTH AFFIRMATIVE DEFENSE**

10 **(NO ENFORCEMENT OF AGREEMENT – GOVERNMENT CODE SECTION**

11 **3541.5(b))**

12 20. The District incorporates by reference paragraphs 5 through 17, as though set
13 forth herein.

14 21. The underlying dispute pertains to the alleged violation of an agreement that
15 does not also constitute an unfair practice charge under the EERA.

16 22. As a direct and proximate result, no unfair practice was committed by the
17 District.

18 **REQUEST**

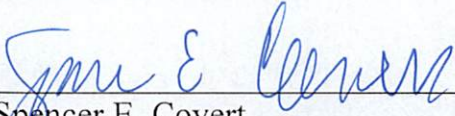
19 1. Respondent, Newport-Mesa Unified School District, respectfully requests that
20 the Complaint in the pending matter be dismissed with prejudice.

21 2. For such other and further relief that is just and proper.

22 Dated: July 29, 2019

Respectfully submitted,

23 PARKER & COVERT LLP

24 By: 
25 Spencer E. Covert
26 Attorneys for NEWPORT-MESA UNIFIED
27 SCHOOL DISTRICT
28

VERIFICATION

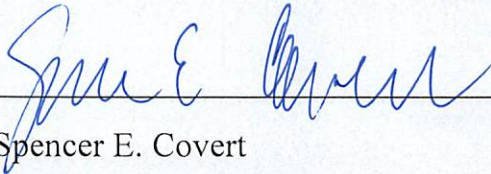
I, Spencer E. Covert, declare:

I am an attorney at law duly admitted and licensed to practice before all courts of this State and my professional office is located at 17862 East Seventeenth Street, Suite 204, East Building, Tustin, California 92780-2164.

I am the attorney of record for Newport-Mesa Unified School District in the above-entitled action.

I have read the foregoing **ANSWER TO COMPLAINT** and know the contents thereof. I am informed and believe that the same is true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this verification was executed on July 29, 2019, at Tustin, California.



Spencer E. Covert

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PROOF OF SERVICE

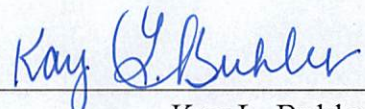
STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 years and am not a party to this action. My business address is 17862 East Seventeenth Street, Suite 204, East Building, Tustin, California 92780-2164. On **July 29, 2019**, I served the foregoing document described as **ANSWER TO COMPLAINT** on the interested parties in this action by placing true copies thereof enclosed in a sealed envelope, addressed as follows:

SEE ATTACHED SERVICE LIST

- BY U.S. MAIL:** I am “readily familiar” with the firm’s practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Tustin, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- BY FACSIMILE TRANSMISSION:** The facsimile machine I used complied with Rule 2003(3), and no error was reported by the machine. Pursuant to Rule 2008(e)(3), I caused the machine to print a record of the transmission.
- BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused the documents to be sent to the persons at the e-mail addresses listed herein. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.
- BY FEDEX:** I am familiar with the collection and processing practices of said business, and in the ordinary course of business, FedEx packages are enclosed in a sealed envelope with an airbill attached thereto, prepaid by our office, and deposited with FedEx, on the same day in our ordinary course of business.
- BY PERSONAL SERVICE:** I caused such envelope(s) to be delivered by hand to the above addressee(s).
- (State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
- (Federal) I declare that I am employed in the office of a member of the Bar of this Court, at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on July 29, 2019, at Tustin, California.



Kay L. Buhler

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SERVICE LIST

Newport-Mesa AFT, Local 1794 v. Newport-Mesa Unified School District

Case No. LA-CE-6414-E

Blaire Baily, Regional Attorney
Public Employment Relations Board
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Exhibit A

ARTICLE 13. Health and Welfare Benefits

- 13.1 A Joint Benefits Team (JBT), composed of four (4) members of the Newport-Mesa Federation of Teachers, four (4) members of California School Employees Association, and one each of the Newport-Mesa Administrators Association, confidential employees, supervisors, and District management, shall be responsible for recommending health and benefits plans and vendors, monitoring performance of the plans, and implementing periodic vendor bidding of health and welfare plans. The Joint Benefits Team also recommends the amount of the District contribution and the amount of the employee contribution to fund the benefit packages.

13.1.1 Joint Benefits Team:

The Bargaining Units shall be invited to send four (4) members each from the negotiating teams to join one (1) each of the Newport-Mesa Administrators Association, confidential employees, supervisors, and District management to discuss benefit information. References in this Article to the "Employee Benefits Committee" shall refer to the "Joint Benefits Team" in this special provision. Negotiations related to benefit plans shall occur separately with the bargaining units. This provision shall continue going forward as the status quo unless a change is negotiated by the parties.

Definitions:

a.) "Benefits Cap" defined as the average FTE allocation required for Benefits Package coverage paid July through September at prior fiscal year Composite Rate for all coverages and costs October through June at current fiscal year Composite Rate.

b.) "Benefits Package" defined as medical, dental, vision, life, EAP (Employee Assistance Program) and administrative costs for coverage provided to employees and retirees as recommended by the Benefits Committee and adopted by NMFT.

- 13.2 Records shall be furnished to the Committee as required by benefit providers and District personnel charged with administering the health and welfare plan.

A consultant/broker or other support staff may be authorized by the Committee within the budget "cap."

A fund will be established for separate accounting of medical benefits. The District will deposit an amount annually equal to the negotiated cap for eligible full-time employees and the prorated amount for each eligible part-time employee. "All employees" is defined as all eligible employees even if he/she waives the right to receive medical benefits. Also deposited in this fund will be employee contributions toward benefits and monies returned from Section 125 plans. No expenditures involving monies within the District cap will be expended without authorization of the Committee, with the exception of ongoing monthly premiums as approved by the Committee to current vendors.

Expenditures from the fund will be limited to the following: premiums to providers, committee approved itemized costs from the District and/or any consultant hired by the Employee Benefit

Committee to administer the benefits and/or advise the Committee, and any other expenditures authorized by the Committee. All excess money at the end of the benefit year will be used to defray any future increases in benefits or additions to benefits.

13.3 District Funded Health and Welfare Benefit Cap and Employee Contributions

The District funded Health and Welfare Benefit Unit Cap (Benefit Cap) shall be a maximum of up to \$19,293.

2017-2018 Employee Over Cap Benefit Contribution (OCAP)

There will still be a residual dollar amount required to fund the total cost of 2017-2018 employee benefits beyond the 2017-2018 District funded Benefit Cap. This additional residual amount shall be paid by each employee with benefits on a tenthly basis via payroll deduction.

All NMFT bargaining unit members with benefits shall pay the applicable Employee Over Cap Benefit Contribution (OCAP) based on the following table:

2017-2018 Employee OCAP Benefit Contribution Chart (tenthly)				
	Cigna HMO	Kaiser HMO	Cigna Select HMO	Cigna OAP (PPO)
Employee	\$20	\$20	\$20	\$178
Employee + 1	\$60	\$60	\$60	\$364
Employee + Family	\$100	\$100	\$100	\$532

Full-time employees pay the total OCAP on the chart above. Full-time employees shall pay no premium deduction for the Dental (HMO) plan for themselves or eligible dependents. An additional premium charge shall be paid by those employees selecting Dental (PPO).

Part-time employees who enroll in medical benefits shall pay OCAP amount for benefits plus the appropriate part time rates based on the 2017-18 Active Employee Benefit Payroll Deduction Table, effective October 1, 2017 as calculated by Risk Management/Benefits in consultation with NMFT.

Full time employees who elect to opt-out of medical and retain Dental Plan and/or Vision Plan will pay only the \$9.27 over-cap tenthly or the prorated amount for part-time employees. The over-cap calculator and Active Employee Benefit Payroll Deduction Table are available at www.nmsd.us/benefits.

Full-time employees will pay no premium deductions for the vision plan for themselves and their eligible dependents.

The District will provide at no cost to the employee term life insurance in the amount of \$50,000 for full-time employees and \$25,000 for part-time employees.

The District will provide at no cost to the employee an Employee Assistance Program.

Scope of Benefits

A change to the scope of the Health and Welfare Benefits is subject to negotiations. The Health and Welfare benefits provided by the District to active employees and early retirees qualifying under Article 16 include medical insurance, dental, vision and life insurance, taking into consideration recommendations made by the Joint Benefits Team. As noted, changes to any of these benefit plans are subject to negotiations between the Federation and District, taking into consideration recommendations made by the Joint Benefits Team (JBT).

If the funded Health and Welfare Benefit Unit Cap is insufficient to cover the full cost of benefits as established by the JBT then plan modifications to reduce the coverage profile cost to an amount within the funded cap may be made by the JBT and adopted by NMFT. If plan modifications are not made or not adopted then effective for the first premium payment the residual dollar amount required beyond the funded cap shall be made by employee contribution paid through employee payroll deduction on a tenths basis.

13.5 Available Health Plans

The available health and welfare benefits are determined by the scope of benefits provided under section 13.3.

13.5.1 Active Members – Premium Payment

The scope of benefits and premium payments are provided in accordance with Section 13.3.

Dual Employee Benefit Coverage

Dual Benefit Coverage. Married couples/domestic partners who are both employees of the district have enrollment options during the annual open enrollment period. Options include:

- A. Both employees enroll as independent subscribers for benefits, with one employee covering dependents (if any). Each employee is responsible for individual OCAP contributions, or
- B. Only one employee enrolls as the subscriber for benefits, and the other employee and/or dependents are enrolled as dependents. Only the subscriber will pay the OCAP, or
- C. One employee enrolls as a 2-party or family in medical, dental and vision with spouse/partner and eligible dependents and pays full OCAP but no payroll premium deduction for Dental PPO. The other employee declines medical and enrolls in dental and vision with eligible dependents, pays the reduced OCAP, but no payroll premium deduction for Dental PPO. There is no coordination of benefits with Dental PPO. There is coordination of benefits with VSP.

13.5.2 Employees eligible for health and welfare benefits who are in paid status through the last day of their regular K-12 student school year shall have the health and welfare benefits

under this article effective through the last day of September of the succeeding school year. Employees eligible for the health and welfare benefits who terminate their employment prior to the close of the school year shall have their benefits continue through the last day of the month in which their termination occurs. Life insurance benefits shall terminate at the same time as other group health benefits following an employee's termination.

13.5.3 Employees who were employed after the first day of the school year shall have all benefits of this article commence on the first day of the month following their first day of employment.

13.5.4 Early Retirees – Premium Payments for Retirees meeting the eligibility requirements of Article 16 are designated as “early retirees.”

Early retirees shall have the same “scope of benefits” as actives, except the District will provide at no cost to retirees, term life insurance in the amount of \$10,000 until they reach age 65.

If both spouses are eligible retirees in the District, they shall also be eligible for dual Benefit Coverage as provided to actives.

Early retirees who have retired on or before June 30, 2011 will pay no over-the-cap employee contributions until they reach age 65.

For early retirees who retire on or after July 1, 2011, early retirees will be subject to and will pay the same over-the-cap employee contributions as actives under Article 13.3. (Note: as a result Article 16 at section 16.2.1.1 regarding “no premium cost” shall apply only to those retirees who retired on or before June 30, 2011. Early retirees retiring on or after July 1, 2011 will be subject to and will pay the same over-the-cap employee contributions as actives under Article 13.3).

A. An additional premium charge will be paid by early retirees selecting Cigna Dental (PPO).

13.5.5 Retirees no longer eligible for District insurance under Article 16 may purchase medical and dental insurance under the District group plan. Cost of the insurance is the sole responsibility of the retiree.

13.6 Any unit member employed after April 1, 1977, who works less than full-time for fifty percent (50%) or more of a full-time contract, shall receive a prorated fringe benefit contribution from the district in proportion to the number of hours per week or days per month of scheduled duty worked.

13.7 Unit members hired prior to April 1, 1977, who work less than full-time but fifty percent (50%) or more of a full-time contract and who, on April 27, 1977, received full paid benefits from the District, shall not have their benefits diminished because of the provisions in 13.2 above.

- 13.8 Unit members who work less than fifty percent (50%) of a full-time contract shall not receive any health and welfare benefits with the exception of 15.3.1.
- 13.9 Employees who work fifty percent (50%) or more may purchase medical benefits as calculated by Risk Management/Benefits.
- 13.10 Following the death of a bargaining unit employee, the health and dental insurance program in effect for eligible bargaining unit employees will be provided to the surviving covered dependent(s) for a period of one (1) year following the death of the employee, to an extent equal to the fullest manner authorized by the insurance provider. Any pro-rata contribution for health and dental benefits in effect at the time of death of the employee shall become the responsibility of the dependent(s) for continued coverage.
- 13.11 Unit members who are on a Board approved unpaid leave of absence shall have the option to continue to participate in the District health and welfare benefit program for a maximum of three (3) years at no cost to the District. Participation in such a benefit program shall be subject to any limitations imposed by the health benefits carrier and reasonable requirements established by the District regarding timely premium payments.
- 13.12 Unit members may participate in tax sheltered annuity programs of their choice, at no cost to the District. Companies involved in tax sheltered annuity programs for employees must appear on the Board approved list in advance. The District shall provide payroll deductions for this purpose.

Exhibit B

NMFT

2017-18 Estimated Benefit Unit Cap						
Benefit Unit Cap	Total Medical Plan Participants		Total Eligible Declines		Total	
	Participants	Dollars	Eligibles	Dollars	Total	Dollars
\$ 19,293	1,029.59	\$ 19,863,879.87	100.34	\$ 1,935,869.62	1,129.93	\$ 21,799,739.49

**2017-18
Estimated Actual
Expense By
Bargaining Group**

NMFT Premium	\$ 20,366,080.32
NMFT OCAP	\$ (959,144.80)
Admin Adjustment:	
Benefits Staff	\$ 183,195.19
AON	\$ 68,921.92
Total NMFT Account Charge	\$ 19,868,082.54
CSEA Premium	\$ 15,085,992.83
CSEA OCAP	\$ (762,396.75)
Admin Adjustment:	
Benefits Staff	\$ 121,008.81
AON	\$ 45,971.79
Total NMFT Account Charge	\$ 14,500,576.68
Mgmt Premium	\$ 2,262,898.92
Mgmt OCAP	\$ (127,218.35)
Admin Adjustment:	
Benefits Staff	\$ 31,095.76
AON	\$ 13,559.77
Total NMFT Account Charge	\$ 2,180,336.10
Total Plan Charge	\$ 36,339,975.32
Weighted Participant Count	\$ 1,857.32
Total Cost	\$ 36,339,975.32
Per Participant Cost	\$ 19,565.81
Benefit Unit Cap	\$ 19,293.00
Benefit Unit Cap vs Est Actual Variance Fav/(Unfav)	\$ (272.81)
Total Variance Fav/(Unfav)	\$ (506,700.56)

Exhibit C

Newport-Mesa Unified School District and
Newport-Mesa Federation of Teachers
August 6, 2018

The District and NMFT have engaged in reopener negotiations for 2018-19. These re-opener negotiations pertain to Article 3 – Days and Hours of Employment, Article 8 – Class Size, Article 12 – Salaries, Article 13 - Health and Welfare Benefits and Article 16 – Retirement Benefits.

These negotiations included discussions, exploration of interests, and options. Having thoroughly discussed these articles, it has been mutually agreed to maintain the current contract language with the exception of Article 13.3, thereby resulting in the conclusion of reopener negotiation for 2018-19.

ARTICLE 3 – Days and Hours of Employment
Maintain contract language.

ARTICLE 8 – Class Size
Maintain contract language.

ARTICLE 12 – Salaries
Maintain contract language, including 2.5% increase agreed upon in 2017-18 for 2018-19.

ARTICLE 13 – Health and Welfare Benefits

13.3 District Funded Health and Welfare Benefit Cap and Employee Contributions

The District funded Health and Welfare Benefit Unit Cap (Benefit Cap) shall be a maximum of up to \$19,293. For the 2018-19 year, the District will cover the District's premium costs in excess of the District and OCAP contributions. The District and the Federation recognize there is a difference in the interpretation of Article 13. As a result, both parties agree to retain their respective rights and interpretations of Article 13 during fiscal year 2018-19.

ARTICLE 16 – Retirement Benefits
Maintain contract language.

As a result reopener negotiations for 2019-20 will begin in February 2019, pursuant to the agreement Article 1.4.1.

The District and NMFT negotiation teams have fully negotiated the terms of the Tentative Agreement and have agreed to conduct the NMFT ratification vote on the options contained herein subject to the final approval of the Board of Education.



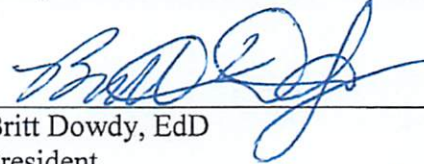
Leona Olson
Chief Negotiator
Newport-Mesa Unified School District



Nicholas Dix
Chief Negotiator
Newport-Mesa Federation of Teachers



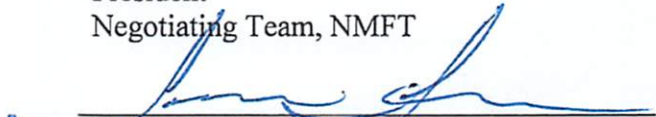
Kurt Suhr, EdD
Negotiating Team, NMUSD



Britt Dowdy, EdD
President
Negotiating Team, NMFT



Kirk Bauermeister, EdD
Negotiating Team, NMUSD



Tamara Fairbanks
Negotiating Team, NMFT



Mike Sciacca, EdD
Negotiating Team, NMUSD



Jaymi Ropp
Negotiating Team, NMFT



Megan Brown, EdD
Negotiating Team, NMUSD



Spencer Covert
Negotiating Team, NMUSD

Date

August 6, 2018