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SACRAMENTO CITY UNIFIED SCHOOL DISTRICT

IN THE MATTER OF THE GRIEVANCE ARBITRATION

BEFORE KENNETH A. PEREA, LABOR ARBITRATOR

SACRAMENTO CITY TEACHERS ASSOCIATION, CTA/NEA,

Grievant,

vs.

SACRAMENTO CITY UNIFIED SCHOOL DISTRICT,

Employer/Respondent.

AAA Case No. 01-18-0003-4761

SACRAMENTO CITY UNIFIED SCHOOL DISTRICT'S POST-HEARING BRIEF

Hearing Dates: March 7-8, 2019, and March 13, 2019

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STATEMENT OF ISSUES[1]

1. Did the Sacramento City Unified School District ("District") and the Sacramento City Teachers Association ("SCTA") lack mutual assent and/or make a mutual mistake as to the meaning of the certificated salary structure adjustment terms in the Tentative Agreement, approved by the District's Governing Board on December 7, 2017 and SCTA Membership on December 11, 2017, and therefore there is no enforceable agreement as to the certificated salary structure adjustment terms in the Tentative Agreement?

2. If there is an agreement between the parties as to the certificated salary structure adjustment terms of the Tentative Agreement, did the District breach those terms of the Tentative Agreement?

3. If the District breached, what shall the appropriate remedy be?

INTRODUCTION

With its grievance, SCTA asks the Arbitrator to enforce a fiscally unsustainable understanding of the certificated salary structure adjustment terms of the Tentative Agreement inconsistent with the District's understanding of same, including, most importantly, what the District's Governing Board ("Board") understood it was ratifying on December 7, 2017. SCTA's purported understanding ignores the absence of the District's mutual assent to that meaning, that the Board did not approve such an understanding, and that there was never any public disclosure to the District's constituents or the Sacramento County Superintendent of Schools (as required by law) of the meaning which SCTA seeks to enforce. In so doing, SCTA requests an award inconsistent with the facts and law. Further, the remedy SCTA seeks is outside the scope of the Arbitrator's authority and, therefore, unavailable.

First, the only agreement existing between the parties relative to this grievance is the Tentative Agreement approved by the governing board on December 7, 2017. It authorizes an 11% total ongoing expenditure on certificated salaries through 2018-2019 and beyond, and provides, in part, for the parties "to finalize a *mutually agreeable* adjustment to the salary schedule for 2018-2019," within 45 days of execution, keeping within the 3.5% maximum ongoing District expenditure (the "3.5% cap"),

[1] This Statement of the Issues is consistent with that presented to the Arbitrator by the Sacramento City Unified School District ("District") at the commencement of the hearing in this matter.

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implemented effective July 1, 2018. Not only was this the actual agreement reached between the parties, but it is the *only* agreement that has been disclosed at a public meeting, reviewed by the County Superintendent, and approved by the Board, absent which, any other purported contract terms are patently invalid and unenforceable as a matter of law.

Second, taking SCTA at its word that the District agreed to implement its "proposed salary structure," carte blanche—costed as a 7.3% adjustment on the salary schedule (and far beyond the 3.5% cap) assuming implementation for the full 2018-2019 fiscal year, effective July 1, 2018—any evidence of such purported agreement can only establish a clear lack of mutual assent and/or mutual mistake between the parties. Therefore, the terms under which SCTA alleges the District assented to "implement the union's proposed salary structure"—i.e., the "Framework Agreement" as supplemented modified by the final Tentative Agreement—is invalid and unenforceable.

Finally, to the extent a contract does exist, it is properly viewed as only an "agreement to later meet and negotiate an agreement," or an unenforceable "agreement to agree"—at best requiring the parties to return to the bargaining table to finalize a *mutually agreeable* adjustment to the salary schedule for 2018-2019 which ensures for operation within the 3.5% cap for 2018-2019, and going forward, and at worst rendering the contract unenforceable. If directed to return to the bargaining table, the parties will need to negotiate *how* a salary schedule like that proposed by SCTA may be adjusted so that implementation can be achieved within the approved cost parameters. For these reasons and others, the District has committed no contractual violation and SCTA's grievance should be denied in full.

STATEMENT OF FACTS

A. BARGAINING REGARDING CERTIFICATED EMPLOYEE COMPENSATION.

The District and SCTA are parties to a Collective Bargaining Agreement ("CBA"). (Joint Ex. ["JX"] 5.) On or about June 10, 2016, the District and SCTA reached an agreement to extend the then-current CBA through December 1, 2016. (SCTA Ex. ["AX"] 3 at 1-2.) The District and SCTA met to begin negotiations for a successor CBA on or about October 11, 2016 and, between October 17, 2016 and March 9, 2017, the parties met approximately fifteen more times to continue successor CBA negotiations. (AX-3 at 1-2.)

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Pursuant to one or more of these successor negotiations, in December 2016 and early January 2017, the District received from SCTA a package proposal which included a proposed adjustment to the certificated salary structure. (Reporter's Transcript Volume 3 ["RT3"][2] at 537:21—538:10, 551:12-20.) As of January 2017, the District costed out SCTA's proposed salary structure adjustment, and deemed it fiscally unaffordable. (RT3 at 537:21—538:10, 551:12-20.)

On March 13, 2017, SCTA requested an Impasse Determination and Appointment of Mediator from the California Public Employment Relations Board ("PERB"), which the District did not oppose. (AX 3 at 2.) The parties met with mediator Tom Ruiz of State Mediation and Conciliation Service in formal mediation on April 19, 2017, and on six subsequent occasions. (AX 3 at 2.) The parties did not reach any agreement and Mr. Ruiz certified the parties to fact-finding on May 18, 2017. (AX 3 at 2.)

Then, in September 2017, SCTA offered another "package proposal" to the District. (AX 2.) The package proposed, in relevant part, two separate 3.5% across-the-board salary increases, effective July 1, 2017 and July 1, 2018, respectively, and a 4% adjustment to the certificated salary schedule, effective July 1, 2016. (AX 2.) As written, on its face, SCTA's proposal contemplated a full-year implementation of the adjusted structure, with the 4% cost to remain ongoing. (AX 2.) For various reasons, this package proposal was not accepted by the District. (See AX 3.)

The fact-finding panel convened a hearing on October 2, 2017. (AX 3 at 2.) During hearing, the District and SCTA presented facts to the panel, and the parties again attempted mediation following the close of presentations.[3] (AX 3 at 2.) The parties were again unable to reach an agreement through mediation, and the panel's neutral fact-finder issued its non-binding Report and Recommendation of the Fact Finding Panel After Hearing ("Fact Finding Report") dated November 1, 2017. (AX 3.)

As to Article 12, Compensation, the neutral fact-finder recommended a certificated employee salary increase totaling a 9% ongoing cost through the end of the contract on June 30, 2019, 2.5% of which was recommended to go toward salary schedule adjustment in the 2018-2019 contract year. (AX

[2] Citations to the arbitration hearing Reporter's Transcript refer to the relevant volume through numeration at the end of each RT citation, e.g., for volume 1, "RT1."

[3] Although SCTA testified at hearing that the parties "never met with the mediator after the spring," per AX 3, the parties did, in fact, engage in mediation following the close of fact-finding presentations in or about October 2017. (See RT1 1 at 40:21—41:5; AX 3 at 2.)

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3 at 11; RT2 at 309:18—310:4; RT3 at 597:6-18.) The report further recommended the parties "endeavor to make a second 2.0% salary schedule adjustment" in the first out-year of the contract, in 2019-2020. (AX 3 at 11; RT2 at 310:5-8; RT3 at 597:19-23.) The neutral fact-finder's recommendation thus amounted to an 11% total ongoing cost as of 2019-2020, 4.5% of which was to go toward adjusting the salary schedule. (AX 3 at 11; RT2 at 309:13-19; RT3 at 597:24—598:5.)

In October 2017, prior to issuance of the Fact Finding Report, SCTA's members voted to authorize a future strike to enforce their collective bargaining demands if the parties bargained through impasse to no avail. (RT1 at 221:19—222:5.) On November 2, 2017, SCTA dissented to the Fact Finding Report and announced publicly the District's teachers' intent to strike on November 8, 2017—the following Wednesday—absent agreement on several CBA articles, including certificated employee compensation under CBA article 12. (AX 3 at 14; District Ex. ["DX"] B; RT2 at 308:23—309:5.)

In its dissent, signed by SCTA Executive Director John Borsos, SCTA noted that, despite its dissent, the Fact Finding Report "includes some recommendations that are indeed favorable to the Association—for example, recommending higher salary increases than proposed by the employer (coupled with the recognition of the need to revamp the salary schedule.)" (DX M final page.)[4] In other words, SCTA dissented to the Fact Finding Report while at the same time noting favorably the neutral's recommendation as to salaries—i.e., salary increases and schedule adjustments amounting to an 11% ongoing cost as of 2019-2020. (DX M; see RT1 at 195:2-9 [Mr. Fisher, noting "although we had dissented on the fact-finding, there was this number of 11 percent that had came out of that"].)

B. NOVEMBER 4 AND 5, 2017 NEGOTIATIONS.

With the threat of a city-wide teacher strike looming, Sacramento Mayor Darrell Steinberg facilitated a meeting at his home between the District and SCTA on Saturday, November 4, 2017 and Sunday, November 5, 2017, in an effort to avert a strike. (RT2 at 310:25—311:21.) Superintendent Aguilar attended, along with three SCTA representatives—President David Fisher, Vice President Nikki

[4] At hearing, the parties referred to the Fact Finding Report marked as AX 3 when questioning witnesses. But AX 3 fails to include all documents forming the complete Fact Finding Report, including the District's concurrence and SCTA's dissent. (See AX 3 at 14 [noting "please see attached" documents, which are not included in SCTA's exhibit].) DX M, while identical in content through page 14, also includes full and complete copies of the concurrence and dissent to the report.

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Milevsky, and Mr. Borsos. (RT1 at 44:13-18.) Although the Superintendent had not yet participated directly in person in the parties' bargaining sessions then to date, given the contentious, unyielding, course of negotiations with SCTA, the Superintendent stepped in with the goal of negotiating an agreement to avert strike. (RT2 308:10-22.)

The parties met on November 4 and 5, 2017 at the Mayor's home, the details of which remain clear in the Superintendent's mind. When engaged together in discussions on those days, the Superintendent recalls the parties sat at the Mayor's dining room table, rectangular in shape, while sitting across from one other. (RT2 at 313:3-7.) The Mayor took the head of the table. (RT2 at 313:3-7.) The parties were not together at all times on the 4th and 5th, and when caucusing separately, the Superintendent met with the Mayor in his den, located in the south part of his home, which had recently been remodeled. (RT2 at 312:4-22.)

Compensation for certificated employees was one issue which the parties discussed on November 4 and 5, 2017. (RT2 at 314:7-14.) First, on November 4, the parties had "a broad discussion about issues" with the Mayor, including "a broad discussion about salary." (RT1 at 48:10-12.) During this discussion, the Mayor raised for consideration the neutral fact finder's salary recommendation—specifically, as Mr. Borsos testified, "3.5%, 3%, 2.5% and she discusses another 2 percent in the out-year of the contract"—totaling an 11% continuing and ongoing cost by 2019-2020. (RT1 at 48:10-17 [Mr. Borsos, noting "if you added up across-the-board what she was talking about, it was 11%"].)

Superintendent Jorge Aguilar read the Fact Finding Report and was fully aware of its recommendations—including a 9% salary cost in 2018-2019 and an 11% total ongoing cost effective in 2019-2020—prior to the weekend of November 4 and 5, 2017. (RT2 at 309:13-17.) SCTA also was aware of the 11% total ongoing cost recommendation contained in the Fact Finding Report. (RT1 at 39:4-23, 194:11—195:9.) President Fisher testified at hearing, as to the neutral's 11% cost recommendation: "That was our understanding of what the Superintendent and the school board was willing to approve[.]" (RT1 at 195:2-9; see also RT1 at 235:4-14 [Ms. Milevsky, testifying her notes reflect the parties' intent to "stay within the fact-finder's report"].) The parties discussed on November 4 that they might work within the parameters of the neutral's 11% cost recommendation, as a possible means to achieve a salary agreement and avert strike. (RT1 at 49:14-18.)

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Negotiations resumed again on November 5, 2017, a meeting which was brief by all accounts—lasting between 85 minutes to 2.5 hours—given the number and import of issues to be discussed on that day. (RT1 at 161:8—162:4; RT2 at 312:1-3.) During that time window, the parties caucused apart several times, and when together discussed as many as eight or nine issues, seven of which were ultimately incorporated into a written agreement prepared by the Mayor, entitled "Framework Agreement Sac City Unified School District Sacramento City Teachers Assn 11/5/17 3:25 p.m." ("Framework Agreement"). (JX 1; RT1 at 53:8-23, 161:3-7; RT2 at 312:4-22.)

One of the multiple issues discussed on November 5, 2017 was certificated employee compensation, which was saved as the last item of the day. (RT1 at 54:6-7.) On this point, the Mayor again broached the topic of the neutral fact-finder's 11% recommendation, and asked if the parties could work within the 11% cost; both the Superintendent and SCTA responded that they could. (RT1 at 54:9-12.) The Fact Finding Report's 11% recommendation—a steady, ongoing cost as of 2019-2020—became central to the parties negotiations and subsequent Tentative Agreement. (RT1 at 54:6-12; JX 1.)

After negotiating to work within the 11% recommendation, the parties agreed to the following, which has since been implemented: (a) 2.5% increase to the District's certificated salary schedule, effective and retroactive to July 1, 2016; (b) 2.5% increase to the District's certificated salary schedule, effective and retroactive to July 1, 2017; and (c) 2.5% increase to the District's certificated salary schedule, effective July 1, 2018. (DX S at ¶ 6; JX 1.) These three 2.5% across-the-board increases totaled a 7.5% ongoing cost, going forward into the 2018-2019 contract year, and remaining the same thereafter in 2019-2020. (RT1 at 139:20—140:14.)

Separate and apart from the 7.5% "across the board" salary increases, the parties discussed a proposed adjustment to the certificated salary schedule's columns and steps in order to benefit mid-career employees in columns B and C. (RT2 at 314:23—315:7; RT1 at 59:9—60:10.) To accomplish this goal, SCTA proposed its "compression concept" of adjusting the salary schedule. (RT1 at 62:1-6.) As Mr. Borsos explained at hearing, the parties "were just talking about it in concept." (RT at 61:24—62:6.) Mr. Borsos was fully aware Superintendent Aguilar had not participated in prior bargaining sessions with SCTA. (RT1 at 18:11-21, 21:8-16.) Yet, at no time during negotiations on November 4 or 5 did Mr. Borsos provide the Superintendent or the Mayor a copy of SCTA's "proposed" salary

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structure. (RT1 61:24—62:9.) As Mr. Borsos admitted at hearing, "maybe in retrospect," it might have been a good idea to do so. (RT1 at 61:24—62:9.) Nor was a copy of any proposed salary structure incorporated into the Framework Agreement—either physically, by reference, by drawing, or otherwise. (JX 1.) In the absence of specific details from SCTA, the idea of a "proposed" salary structure accomplishing "compression" remained conceptual. (RT1 at 62:1-6; RT2 at 356:1-7.)

Although no actual salary structure was presented for the Superintendent's consideration on November 5, 2017, the Superintendent explained that any adjustments to the salary structure—if they were to be agreed upon—must accomplish two objectives: first, the adjustment was to benefit "a certain segment of teachers"—namely, those mid-career employees in columns B and C of the salary structure; and second, any salary structure adjustment must be fiscally prudent and affordable. (RT2 at 314:23—316:10.) Correspondingly, in keeping with the 11% salary increase cost derived from the Fact Finding Report—which, as recommended, was a continuing and ongoing 11% cost in 2019-2020—the parties discussed (in addition to 7.5% in across-the-board salary increases) that a proposed an adjustment to the certificated salary schedule might be feasible, provided any such adjustment did not exceed a maximum 3.5% District expenditure, if implemented effective July 1, 2018, and for the full 2018-2109 school year. (RT2 at 309:9—310:24, 316:11-16, 317:4-12, 334:4-10.) Combined with the 7.5% increases, the 3.5% maximum expenditure totaled an 11% cost, mirroring the Fact Finding Report recommendation, which the Superintendent rightfully and reasonably understood as a continuing, ongoing cost in the 2019-2020 fiscal year. (RT2 at 315:8-20, 316:11-16)

This was not the first time the District had contemplated the cost of implementing an adjustment to the certificated salary structure. District Chief Human Resources Officer Cancy McArn testified the District had costed out the salary structure adjustment proposed by SCTA months prior, in January 2017. (AT 3 at 537:21—538:10, 551:12-20.) As a result of that costing exercise, the District understood the salary structure proposed by SCTA as of January 2017, without modification or cost cap, had an attendant cost above 3.5%, i.e., the cap ultimately memorialized in the Framework Agreement. (RT3 at 551:21-25.) As such, as of November 2017, the District was aware that implementation of SCTA's proposed salary structure, without cost-mitigating changes or restraints, could not be done under 3.5% cost for a full calendar year and consequently, was not affordable. (RT3 at 552:1-7.)

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With cost at the forefront of his mind, even absent specific details regarding SCTA's proposed salary structure, the Superintendent was willing to agree to a salary schedule adjustment if the language of the agreement could guarantee a maximum ongoing District expenditure, thus ensuring fiscally feasibility. (RT2 at 315:25—316:10, 379:13-17.) With this in mind, along with the Fact Finding Report's 11% recommendation, the Superintendent agreed to language in the Framework Agreement that would call for a proposed salary structure to be implemented, but tied to a maximum District expenditure to implement the same, and with the assumption further negotiations and work needed to be done by the parties to determine how to accomplish the salary structure adjustment while remaining within the 3.5% cost cap. (JX 1; RT2 at 315:25—316:10, 361:24—362:2, 362:11—363:21.)

Thus, plain language of the Framework Agreement, signed by both parties and the Mayor on November 5, 2017, calls for a "3.5% maximum District expenditure" to implement an "adjustment to the salary schedule—union's proposed structure." (JX 1.) Consistent with the Fact Finding Report, Superintendent Aguilar understood "3.5% maximum District expenditure" to mean that 3.5% would "be the total cost to the District" across the life of the current contract through July 1, 2019, and beyond, amounting to a total 11% ongoing cost continuing into 2019-2020. (RT2 at 315:8-20, 316:11-16.) Particularly so, given the "status quo" is maintained as to the terms of a CBA following its expiration, until and unless the parties reach an alternate agreement. (RT3 at 491:7-13, 598:11-24.)

Superintendent Aguilar's understanding was consistent with his recollection of the parties' discussions on November 4 and 5, 2017—namely, that there was no discussion that the 3.5% maximum expenditure would only apply in 2018-2019, and no discussion that the 3.5% would increase to a higher salary expenditure in 2019-2020 or beyond. (RT2 at 315:13-20.) Significantly, there was no outward or other express indication—on the Framework Agreement or otherwise—that the parties' 11% total ongoing cost concept, admittedly derived from the Fact Finding Report, had morphed into a hybrid of the same—i.e., a partial one-time cap and partial ongoing cost, contrary to the report's recommendation. (JX 1; RT2 at 315:13-20.)

SCTA's understanding of the same term, as the District later came to understand, diverged drastically from that of the Superintendent (and ultimately the County Superintendent and the Board). SCTA testified that they understood "3.5% maximum District expenditure" to mean there would be a

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3.5% "cap" on District expenditures effective only in the 2018-2019 school year—a cap which would be removed in 2019-2020 and thereafter, amounting to an ongoing District expenditure markedly higher than 3.5%. (RT1 at 66:1—67:3; RT3 at 539:2-11, 534:17—535:18.) Not only did SCTA not discuss a removable "cap" with Superintendent Aguilar on November 5, 2017, SCTA introduced no evidence they had ever before affirmatively raised such a concept to the District. At no time in the parties' negotiations in 2017 had SCTA ever proposed a cost cap on its proposed salary structure adjustment: (AX 1; AX 2.) The Fact Finding Report similarly lacks reference to a removable cap in its 11% cost recommendation. (AX 3 at 11.) At hearing, SCTA offered no evidence the parties had *any* discussions prior to November 5, 2017 regarding a temporary expenditure cap, nor evidence the District was on notice of the same. (RT2 at 315:13-20; see generally RT1, RT2, RT3.) Indeed, SCTA's September 15, 2017 package proposal suggested the opposite—consistent with the District's understanding of the Framework Agreement—providing, at item 13.A: "Effective July 1, 2016: Association-proposed salary schedules with minimum 4% increase." (AX-2.) The following items 13.B and 13.C, discussing salary increases in 2017-2018 and 2018-2019, do not propose the 4% should balloon in subsequent years, but provide for a steady ongoing 4% adjustment. (AX 2.)

Although SCTA's testimony at hearing suggests otherwise (inconsistent with the terms of the Framework Agreement or the surrounding events and context), the Superintendent does not recall SCTA ever informing him or the Mayor on November 5, 2017 of an intent—never before discussed—that the 3.5% cap would come off in the 2019-2020 school year. (RT1 at 142:3-11; RT2 at 315:13-20; JX 1.) While Mr. Borsos testified a maximum 3.5% expenditure to adjust the salary schedule was not mathematically achievable for the full 2018-2019 year, absent a temporary, one-time cap, Matt Phillips, the Director of Management Consulting Services for School Services of California, Inc. ("School Services") testified that, per his calculations, a compression of the salary schedule's steps and columns in the manner proposed by SCTA can be achieved while staying within the maximum District expenditure of 3.5% if implemented for the entire 2018-2019 school year, if structured with certain changes. (DX X at ¶¶ 11-12; RT1 at 182:21—183:8.)

The Superintendent testified that—consistent with the express terms in the Framework Agreement—at no point in time on November 4 or 5, 2017, did the parties discuss a "delayed

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implementation" of the "3.5% maximum District expenditure" to the salary schedule. (DX S at ¶ 10.) The face of the Framework Agreement is consistent, placing the "3.5% maximum District expenditure" in the same column as the 2.5% salary increase—also to be implemented July 1, 2018. (JX 1.)

Further, as Ms. McArn and Mr. Phillips testified, if parties to a CBA intend a mid-year implementation date, in his experience working with school districts, it is the norm for there to be an expressed identification of the delayed implementation date within the agreement. (RT3 at 603:3-7; RT3 492:8-19.) SCTA's own exhibit confirms this "norm" as SCTA's past practice with the District. (AX 21.) On June 10, 2016, the parties signed a tentative agreement regarding, in relevant part, certificated employee compensation. (AX 21.) Within the agreement, the parties bargained for two separate salary increases—one 2.5% increase effective July 1, 2015, and one 2.5% increase implemented mid-year, effective January 1, 2016. (AX 21.) Critically, it was not left to the imagination whether there was, or was not, to be a mid-year implementation of the second 2.5% increase; consistent with Mr. Phillips' experience, the parties expressly stipulated that the second increase should be "effective January 1, 2016." (AX 21.) The parties' own past practice confirms, where a mid-year implementation date is intended, it has been expressly reduced to writing. (AX 21.)

The Superintendent and the Mayor briefed District leadership by telephone, including Board President Jessie Ryan and other Board members, shortly after the Framework Agreement was signed, including as to all elements of the salary agreement. (RT2 at 319:18—320:11, 437:24—439:14, 441:2-6; see also RT2 at 320:8-11; RT3 at 494:18-22.) The Superintendent informed the leadership team that the parties had reached a salary agreement, one component of which included a maximum District expenditure of 3.5% to address the least competitive salary columns. (RT2 at 441:2-11.) Board President Ryan testified that the Superintendent explained that the 3.5% was meant to be an "ongoing" cost. (RT2 at 441:2-11.) As Ms. McArn testified, the Superintendent gave no indication on the call that the 3.5% was a "cap" that was meant to come off after the 2018-2019 contract year. (RT3 at 494:2-7.)

C. COSTING-OUT THE FRAMEWORK AGREEMENT.

Following execution of the Framework Agreement on November 5, 2017, the parties understood there were details remaining to be worked out. (RT2 315:25—316:10, 361:24—362:2, 362:11—363:21.) Superintendent Aguilar thought the title "Framework Agreement" appropriate, given the

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parties had reached an agreement sufficient to avoid strike, but some details remained as-of-yet undetermined. (RT2 at 314:4—316:10.) This was necessary, if not essential, given no specifics regarding the salary structure were set forth in the Framework Agreement itself—e.g., *how* columns and steps on the salary schedule would be rearranged to achieve a new payment structure for teachers' years of experience and education, or *how* the same would be implemented within the maximum 3.5% District expenditure, effective July 1, 2018. (See RT2 at 314:4—316:10; JX-1.)

SCTA also understood on November 5, 2017 that certain details of the parties' agreement, as to salaries, "hadn't been nailed down," including the cost of the salary structure, about which the parties "could never come up with the specific number because there were . . . variables in play" relating, in part, to application of the unlimited years of service credit for certificated employees. (RT1 at 64:10-24, 65:4-9.) Further, there were "multiple issues," including important costing issues, which needed to be worked out before a final salary structure could be agreed to, without which, as Mr. Borsos testified, the form of the structure was "open-ended." (RT1 at 64:10-24, 153:7-24, 154:12-18, 155:3-7, 155, 11-20, 156, 1-13, 266:9-25, 267:1-7; RT3 at 515:8-24, 571:12-20.) Per Mr. Fisher, SCTA understood when the Framework Agreement was signed and thereafter that elements of the salary structure agreement were still to be finalized, because they "didn't have complete information[,]" which "made it that we needed to tie up the loose ends." (RT1 at 218:16—219:3.) This is consistent with Mr. Borsos' testimony that the "purpose behind the language of the framework was enough to be able to justify not having a strike occur three days later." (RT1 at 162:2-5.)

Moreover, the parties discussed during the November 4 and 5, 2017 meeting and thereafter that application of this unlimited experience credit to the salary schedule would require work on the part of the District to determine, for each and every certificated employee, whether the employee would move to a different step and/or column on the salary schedule. (DX S ¶ 12; e.g., RT 3 at 540:13-22.) Because of these considerations, the parties discussed that any salary schedule adjustment would and could be finalized only after the unlimited experience credit and associated step and/or column moves were analyzed and applied to each certificated employee. (DX S ¶ 12; RT2 322:12—324:6.) Only after such experience credits were applied—which would and could not happen until a later date (ultimately Spring 2018)—could the District determine the financial impact of any proposed salary schedule adjustments,

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including whether said adjustments would exceed a total maximum upward cost adjustment as set forth in the Framework Agreement. (DX S ¶ 12; RT2 322:12—324:6.)

Based on these unknowns and variables to be determined, District Chief Business Officer Gerardo Castillo reached out to Mr. Phillips at School Services after the weekend of November 4 and 5, 2017, to request that he cost out the union's proposed adjustments to the certificated salary schedule, assuming no modifications or adjustments to that proposal. (RT3 at 603:24—604:23; DX X ¶ 6.) Specifically, Mr. Castillo asked Mr. Phillips to review the salary schedule to establish whether it would fit within a maximum District expenditure of 3.5% across the salary schedule if implemented for the entire 2018-2019 school year without modification. (RT3 at 609:7-10; DX X ¶ 6.) Mr. Phillips analyzed the salary schedule and determined the proposed structure could not be implemented under 3.5% for an entire fiscal year, absent certain changes to the values in the cells that would reduce the cost of the structure. (RT3 at 609:7-12; DX X ¶ 6.) Mr. Phillips communicated his determination to the District. (RT3 at 609:7-12; DX X ¶ 6.)[5]

D. POST-FRAMEWORK AGREEMENT COMMUNICATIONS AND NEGOTIATIONS PRIOR TO BOARD CONSIDERATION AND ACTION.

The day after the Framework Agreement was signed, on November 6, 2017, SCTA sent an "SCTA Messenger" newsletter to its members. (DX U.) The SCTA Messenger described the compensation agreement reached for the fiscal year 2018-2019 as follows: "Effective July 1, 2018: 2.5% across the board, plus revised salary schedule valued at an additional 3.5% . . . . Total wages are 11% over three years." The Messenger did not mention any possibility of a delayed implementation

[5] The Arbitrator expressed concern about whether and when the District had performed any costing of a proposed salary structure adjustment. (RT3 at 549:12—551:1 ["If the District had prepared this in advance somewhere, you know, certainly I would—that would be very relevant information. You can argue the District could not conceivably had agreed to such a proposal which would so dramatically blow out the budget. They would just never have done that"].) The District maintains parol evidence of events occurring before, during, and after the time of contracting is available to shed light on the parties' mutual intention as to the same. (See *Lemm v. Stillwater Land & Cattle Co.* (1933) 217 Cal. 474, 481.) That notwithstanding, Ms. McArn's testimony establishes the District had prepared calculations of a proposed salary structure adjustment months prior to November 2017, and knew SCTA's structure, at least as proposed in January 2017, was unaffordable absent mitigating adjustments. (RT3 at 537:21—538:10, 551:21-25, 552:1-7.) The District again costed SCTA's proposed salary structure (without any adjustments) in November 2017 and again confirmed that without cost-mitigating changes, it was over the agreed upon 3.5% cap and unaffordable for the District in the absence of modification or cost restraints. (RT3 552:21-24; DX X ¶ 6.)

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date, or that the 3.5% cap would be removed after 2018-2019. (DX U; RT1 at 268:18—270:7; see also DX V; RT1 at 213:22—215:14.)

On November 8, 2017, Ms. McArn met with SCTA representatives Borsos, Fisher, and Milevsky. (RT3 at 495:22—496:1.) Cindy Nguyen, District Employee Relations Officer, was also present. (RT3 at 496: 21-23.) During the meeting, SCTA representatives stressed that the Framework Agreement was just that—a framework—with details remaining to be filled in. (RT3 at 497:14-25; DX C.) Mr. Borsos expressed that the Superintendent and Mayor did not have time to "get into the weeds" (during the meeting on November 5, 2017). (RT3 at 498:17-18; DX C.) Based on the November 8, 2017 discussion, Ms. McArn did not understand there had been any final agreement reached as to the nature of the salary schedule adjustment, because "it was clear we had a lot of details to work out." (RT3 at 499:3-8, 13-17.) Ms. McArn testified that she did not recall Mr. Borsos nor any other SCTA representative stating with any certainty during the November 8, 2017 meeting that the 3.5% expenditure was a cap meant to be removed after the 2018-2019 school year. (RT3 at 499:9-12.)

By the early morning of the next day, on November 9, 2017, Ms. McArn sent the Superintendent an email summarizing the November 8, 2017 meeting in detail. (DX C; DX S ¶ 16; RT3 at 496:13-20.) Ms. McArn's summary was consistent with the Superintendent's understanding of that agreed to in the Framework Agreement—i.e., to restructure the salary schedule in a final manner not yet determined, in an amount not exceeding a maximum cost adjustment of 3.5% implemented over the full 2018-2019 year and ongoing into 2019-2020. (DX S ¶ 16; RT3 at 498:1-6, 499:3-17.)

Also on or about November 9, 2017, Ms. McArn and Superintendent Aguilar met to discuss Superintendent Aguilar's understanding of the Framework Agreement. (RT3 at 501:2-11.) The Superintendent shared that adjustments to the certificated salary structure were to stay within the maximum District expenditure of 3.5%, and that adjustments must target the middle columns of the salary structure. (RT3 at 501:2-11.) There was no discussion that the 3.5% was intended to be a one-time cap that would lift after the 2018-2019 school year. (RT3 at 501:12-16.) Per Superintendent Aguilar's clear explanation, Ms. McArn understood the Framework Agreement to include a total 11% ongoing salary cost, continuing forward past the expiration of the present contract in 2019. (RT3 at 502:3-15; JX-1.) She further understood the 3.5% salary structure adjustment was to be implemented

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effective July 1, 2018, across the full year (RT3 at 502:16-19), and that further discussions with SCTA would be necessary to determine how to implement the salary structure adjustment within the 3.5% cap, after the District was able to cost out the impacts of other variables which would themselves increase the costs of the salary structure, including unlimited service credits (RT3 at 501:2-11).

Consistent with the parties' understanding that there were "loose ends" remaining to be tied up, Ms. McArn received an email from Mr. Borsos on November 9, 2017, confirming the parties had "identified the need to meet with [the District Chief Business Official ('CBO') Gerardo Castillo] to discuss how the union proposed salary schedules that go into effect 2018 will be implemented to fit within the 3.5% total certificated payroll cost." (JX 11 at 11; RT3 at 504:14-20.) Mr. Borsos' reference to the July 1, 2018 effective date was consistent with Ms. McArn's understanding of the same as to the salary structure adjustment, and was significant with respect to costing out the adjustment—indicating to Ms. McArn that the 3.5% expenditure would be spread across the full fiscal year from July 1, 2018 to June 30, 2019, as she had expected. (RT3 at 504:21—505:7.) Neither in this email nor in any others did Mr. Borsos reference the 3.5% expenditure as a cap that would be removed after the 2018-2019 fiscal year. (RT3 at 505:13-17.)

Mr. Borsos forwarded his November 9, 2017 email communication to Superintendent Aguilar that same day, to which the Superintendent responded stating: "Specifically, I am asking what the cost of this benefit is as well as the calculation methodology to assess its viability based on the overall budget expenditure, including the agreed upon 11% salary increase." (JX 11 at 10.) Mr. Borsos responded: "Thank you. Have a great weekend[;]" but failed to correct Superintendent Aguilar's representation of the "11% salary increase." (JX 11 at 10.)

On November 17, 2017 at 6:52 a.m., the Superintendent emailed SCTA representatives Borsos and Fisher as a part of the "Loose Ends" email chain. (JX 11; DX S ¶ 19; RT2 at 320:12-24.) The Superintendent stated his desire to ensure there was no misunderstanding between his team and SCTA team's interpretation of the proposed salary schedule. (DX S ¶ 19.) Because, from the November 5, 2017 meeting, he only recalled SCTA's description of "compressing" the salary schedule, but no specifics were agreed to regarding the same, the Superintendent asked Mr. Borsos and Mr. Fisher to send an explanation with case studies showing who and how the 3.5% adjustment would impact. (JX 11

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at 7; DX S ¶ 19; RT2 at 361:6-14.) The Superintendent's email was consistent with his understanding that the parties had agreed on November 5, 2017 to adjust the salary schedule within a defined expenditure parameter, in a manner not yet determined when the Framework Agreement was signed and to be later determined by the parties. (JX 11 at 6-7; DX S ¶ 19; RT2 at 362:11—363:21.)

On November 17, 2017 at 3:44 p.m., the Superintendent received an email communication from Mr. Borsos as a part of the "Loose Ends" email chain. (JX-11; DX S ¶ 19.) Mr. Borsos stated SCTA planned to bring proposed salary schedules to a scheduled meeting later in the month, for November 27, 2017, and at that time would walk through "how to make the dollars work" under their proposed salary schedules. (JX 11 at 4.) Mr. Borsos' email confirmed the Superintendent's understanding that the parties had reserved for future determination the specific details regarding how a salary schedule adjustment would work. (JX 11 at 4; see RT2 at 362:11-363:21.)

November 29, 2017, Superintendent Aguilar emailed SCTA representatives summarizing their meeting two days prior on November 27, 2017. (JX 12 at 1-6; RT1 at 321:3-5.) The Superintendent thanked SCTA for their "high level overview of the proposed salary schedule adjustment," but stated he would "need further clarification in order to clearly explain the compression that you described at Mayor Steinberg's home and during our meeting on Monday." (JX 12 at 8; RT2 at 322-24—323:23.) The Superintendent requested more information "about how the 3.5% maximum expenditure will be utilized," in order to provide assurances to the Board that teachers in the B and C columns would be most impacted. (JX 12 at 8; RT2 at 322-24—323:23.) The Superintendent requested from SCTA a written description he could use to brief the board prior to finalizing the parties' tentative agreement. (JX 12 at 8; RT2 at 323:24—324:6.) This request was consistent with the Superintendent's understanding any proposed salary structure adjustment would need to be costed out to ensure the structure fit within the maximum 3.5% District expenditure, and that as of that point in time, there was not a finally agreed upon salary structure adjustment which could operate within the parameters of the Framework Agreement. (RT2 at 324:2-6.) At no time during the November 27 meeting were there discussions about removing the 3.5% cost limit after 2018-2019. (RT2 at 321:23—322:1.)

On November 30, 2017, the Superintendent again met with SCTA representatives, during which they discussed the salary structure adjustment and agreed they were "going to need more information"

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before any finalized adjustment could be agreed upon and implemented. (RT1 at 203:20—204:10; RT2 at 325:2-11; see RT3 507:21—508:1 [Ms. McArn, noting no agreement to a final, mutually agreed upon salary structure adjustment prior to November 30, 2017].) Because, as Mr. Phillips testified, SCTA's proposed structure could not be implemented in full under the 3.5% cap, for a full fiscal year and ongoing, the District understood changes would need to be made to fit the structure within the 3.5% maximum expenditure. (RT3 571:12-20.)

Following their meeting, the Superintendent sent an email to SCTA representatives on November 30, 2017, confirming, at Item No. 6: "Within [45] days of the Tentative Agreement's approval, the Parties agree to finalize a *mutually agreeable adjustment* to the salary schedule for 2018-2019 that does not exceed a total District expenditure of 3.5%." (JX 12 at 2, emphasis added; RT2 at 325:2-11, 21—326:1; DX S ¶ 22.) The email also confirmed the parties' plans on next steps to discuss and prospectively agree on the final form of salary schedule adjustments within the parameters of "the 3.5% maximum expenditure." (JX 12 at 2-3; DX S ¶ 22.)

The parties initialed a hard copy of this November 30 email, which was later incorporated into the Tentative Agreement approved by the Board and SCTA. (JX 2 at DD 439.) At no time during the meeting on November 30, 2017 was there any discussion indicating the 3.5% was a temporary cap that would go away after the 2018-2019 fiscal year. (RT2 at 325:12-16.) As of November 30, 2017, in light of the agreed-to 45-day period to reach a mutually agreeable adjustment to the salary schedule after approval of the Tentative Agreement, the District's clear understanding (which it presumed was SCTA's as well) was that there would be not be a final adjusted salary schedule before the Board for approval as part of the Tentative Agreement. (DX S ¶ 22; RT3 at 511:5-11.)

On December 1, 2017, Ms. McArn and Deputy Superintendent Lisa Allen met with Mr. Borsos and Mr. Fisher. (RT3 at 511:12-15.) The purpose of the meeting was to get a better understanding of the salary structure adjustment proposals, in order to debrief the Superintendent regarding the status of the same. (RT3 at 512:9-18.) While SCTA testified that there was some discussion at this meeting as to options proposed by SCTA for implementing the proposed salary structure adjustment (see, e.g., RT1 at 62:12—65:18), at no time during the meeting was any final salary structure agreed to by the District. (RT3 at 512:9-18).

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On or about December 6, 2017, Mr. Borsos prepared and sent to Superintendent Aguilar a narrative document detailing SCTA's plans to develop a new salary structure that would "wor[k] within the 3.5% maximum allocation." (AX 10; DX S ¶ 25; RT2 at 326:17—327:19.) Superintendent Aguilar viewed the narrative as another step in working to ensure salary schedule costs stayed within the maximum District expenditure. (RT2 at 327:2-7.) The narrative, which was not before the parties when the Framework Agreement was signed, gave no indication the 3.5% was a cap that would later be removed after 2018-2019. (RT2 at 327:15-19; AX 10.)

E. THE BOARD'S AND COUNTY SUPERINTENDENT'S CONSIDERATION OF THE TENTATIVE AGREEMENT AND AB 1200 DISCLOSURE.

The parties prepared a tentative agreement dated November 29, 2017 which incorporated the Framework Agreement by reference, based upon the openly known and understood 3.5% salary schedule structure adjustment cap, to be implemented across the full year and effective July 1, 2018. (JX 2; DX S ¶ 23.) Specifically incorporated in the Tentative Agreement was the agreement between the parties as of December 4, 2017, that: "Within . . . 45 days of the tentative agreement's approval, the Parties agree to finalize a mutually agreeable adjustment to the salary schedule for 2018-2019 that does not exceed a total District expenditure of 3.5%." (JX 2 at DD 439; RT1 at 110:2-13, 145:4-17, 146:22-147:24, 204:11—205:13; DX R ¶ 7.)

At its December 7, 2017 meeting, per Agenda Item 8.4, the District's Board considered approval of the District's Tentative Agreement with SCTA, along with a required Assembly Bill ("AB") 1200 "Public Disclosure of Collective Bargaining Agreement" form ("AB 1200 Disclosure"). (JX 4; DX R ¶¶ 6-7; RT2 at 414:9-24; RT2 at 327:20—328:24; RT3 517:1-16.) The Executive Summary before the Board relating to Agenda Item 8.4 stated there would be three separate 2.5% salary increases, and, within 45 days of the Tentative Agreement the parties would agree finalize a mutually acceptable adjustment to the salary schedule not to exceed a total District expenditure of 3.5%. (JX 4; RT2 at 415:6-19.) Ms. Ryan testified that the term providing for a "mutually acceptable adjustment was very important" for the Board. (RT2 at 415:11-19.) Also important for the Board, any adjustments had to target the schedule's B and C columns, to benefit mid-career employees. (RT2 at 419:21—420:7.)

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Agenda Item 8.4 also included the AB 1200 Disclosure, which Board President Ryan, along with other board members, reviewed. (JX 4; RT2 at 327:20—328:24, 414:9-24; RT3 at 517:1-16; DX R ¶ 9.)[6]

In reviewing the Executive Summary, Tentative Agreement, and AB 1200 Disclosure, Board President Ryan, and Board Members Woo, Minnick, Vang, Pritchett, and Hansen, understood the agreement reached between the District and SCTA regarding compensation for certificated employees to include, in relevant part, the District's agreement to implement a restructuring of the certificated salary schedule commencing in the 2018-2019 school year, effective July 1, 2018. (DX R ¶ 9; DX Q.1 ¶ 9, Q.2 ¶ 9, Q.3 ¶ 9, Q.4 ¶ 9, Q.5 ¶ 9.) Board President Ryan testified that she understood the terms set forth in the Executive Summary and AB 1200 to mean there would be an 11% ongoing cost to the District, effective July 1, 2018, and continuing into 2019-2020. (RT2 at 413:24—414:4.) The Superintendent's and Ms. McArn's understanding was the same. (RT2 at 309:9—310:24, 316:11-16, 317:4-12, 334:4-10; RT3 at 521:23—522:25.) Critically, the Board never understood the 11%, including the 3.5% salary schedule adjustment therein, to be anything *other* than an ongoing expenditure. (RT2 at 413:24—414:4; DX Q.1 ¶ 9, Q.2 ¶ 9, Q.3 ¶ 9, Q.4 ¶ 9, Q.5 ¶ 9, R ¶¶ 17-18.)

The Board's understanding was consistent with the District's AB 1200 Disclosure, submitted to the County Superintendent ahead of the December 7, 2017 Board meeting. (RT2 at 416:25—417:3.) Specifically, the AB 1200 Disclosure, at section 9, disclosed an expenditure of "3.5% to adjust the salary schedule effective July 1, 2018." (JX 4.) Section 10 further stated: "The 2018-2019 salary schedule will be adjusted equivalent to 3.5%." (JX 4.) Similarly, section 11 provided: "Commencing with the 2018-19 school year, there will be a maximum District expenditure of 3.5% to adjust the salary schedule." (JX 4; DX S ¶ 30; RT2 at 416:7-20.)

The District did not submit to the County Superintendent any AB 1200 Disclosure reflecting a certificated salary schedule adjustment which would exceed a total ongoing District expenditure of 3.5% if implemented for the entirety of the 2018-2019 school year, effective July 1, 2018. (DX S ¶ 35; RT2 at 329:15-25, 523:6-17.) Similarly, the Superintendent did not certify to SCOE that, pursuant to AB 1200,

[6] In addition to Board President Ryan's live testimony and declaration, five of the other six Board members as of December 7, 2017 submitted declarations fully corroborating Ms. Ryan's testimony and understanding. (See DX Q.1—Q.5.)

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any salary structure adjustment exceeding a maximum ongoing 3.5% District expenditure across the full salary structure could be met. (DX S ¶ 32; JX 4; RT2 at 329:15-25, 375:1-15.)

In sum, the District understood the costs set forth in the Tentative Agreement and AB 1200 Disclosure to be an 11% total ongoing cost. (RT2 at 416:25—417:3.) District staff, including Ms. McArn, also presented to the Board on camera at the December 7, 2017 Board meeting, and their presentations were consistent with this understanding. (RT2 at 416:11-20.) The District staff's presentation further reiterated that the parties had agreed to finalize a mutually agreeable adjustment to the salary schedule within 45 days of the Board's approval of the Tentative Agreement. (JX 5 at 4; DX R ¶ 15; RT3 at 519:21—520:25; see also DX Q.1 ¶ 15, Q.2 ¶ 16, Q.3 ¶ 15, Q.4 ¶ 15, Q.5 ¶ 15.) Other Board members present at the December 7, 2017 meeting had the same understanding as Board President Ryan as to 11% ongoing expenditure, including the 3.5% expenditure therein. (DX Q.1 ¶ 9, Q.2 ¶ 9, Q.3 ¶ 9, Q.4 ¶ 9, Q.5 ¶ 9.)

Significantly, Sacramento County Superintendent of Schools David Gordon made public, on-camera, comments before the Board at the December 7, 2017 meeting—comments which were critical to the Board's understanding of the contract terms before them for approval on that night. (RT2 at 417:23—419:1.) Specifically, Superintendent Gordon informed the Board that, based on the County Office's review and analysis of the AB 1200 Disclosure, SCTA and the District had, in relevant part agreed to "the equivalent of a 3.5% salary increase for all, that impacts only portions of the salary schedule." (DX R ¶ 13.) Per Superintendent Gordon's testimony at hearing, these comments were based on his analysis of the District's AB 1200 Disclosure, indicating each component of the total 11% cost—including the 3.5% to adjust the salary structure—would carry forward into the 2019-2020 year and the following year—consistent with the projections which the Superintendent's AB 1200 Disclosure review requires. (RT2 at 391:17-24, 328:8-21, 384:10—385:3, 385:17—387:4.) In this sense, the County Superintendent testified, the AB 1200 "speaks for itself." (RT2 at 391:17-24.) Had the cost been anything higher than a 3.5% ongoing expenditure (e.g., a cap that would come off in 2019-2020), this information would have been included in the AB 1200 Disclosure (RT2 at 385:17—386:1), and would have impacted the County Superintendent's analysis and report to the Board (RT2 at 392:8-13, 394:20—395:5). In fact, even given this analysis of the Tentative Agreement as an 11% ongoing salary

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cost that would continue into 2019-2020, the County Superintendent gave the Board a dire warning. (DX P; DX R ¶¶ 13-14.) In the County Superintendent's view, even with this capped ongoing expenditure, the Tentative Agreement's salary package was not sustainable without adjustment, and he directed the District to provide SCOE with a budget reduction plan. (DX P; DX R ¶¶ 13-14.)

SCTA President Fisher and other SCTA leadership were present at the December 7, 2017 Board meeting, but did not make any statements in opposition to any portion of Agenda Item 8.4, nor did they state the District or County Superintendent's representation of the tentative agreement or AB 1200 Disclosure —including the 11% total ongoing salary cost therein—was inaccurate in any respect. (DX R ¶ 16; RT1 at 221:1-11; DX S ¶ 40.) In fact, having witnessed the Board meeting and having had access to the District's Agenda Item 8.4 materials and AB 1200 Disclosure (which expressly set forth the District's understanding of the costs attendant with the salary components of the Tentative Agreement), SCTA Membership approved the Tentative Agreement *after* the Board, on or about December 11, 2017. (RT1 at 169:3-7.) Mr. Borsos confirmed that SCTA membership was not provided the District's Agenda Item 8.4 materials or AB 1200 Disclosure for consideration when voting on the Tentative Agreement. (RT1 at 169:20—170:16.)

Based on that which was before the Board on December 7, 2017—including Agenda Item 8.4, the AB 1200 Disclosure, the Tentative Agreement, including the terms agreed to and contained in the November 30, 2017 email from the Superintendent to SCTA, and all public comments—the Board voted to approve the Tentative Agreement. (JX 4; DX R ¶ 17.) The Board did not vote to ratify or approve any salary schedule adjustment—in either the tentative agreement or the AB 1200 Disclosure—which would or could exceed an 11% total ongoing expenditure, including a 3.5% maximum ongoing expenditure to adjust the 2018-2019 salary schedule, effective July 1, 2018, if implemented across the full year. (DX R ¶ 17; DX Q.1 ¶ 17, Q.2 ¶ 17, Q.3 ¶ 17, Q.4 ¶ 17, Q.5 ¶ 17.) Further, the Board's approval contemplated that there would be a "*mutually agreeable*" adjustment to the salary schedule within 45 days—a term expressly stipulated in the tentative agreement, and one important to the Board. (RT2 at 415:3-19; DX Q.1 ¶¶ 7, 10, 15, Q.2 ¶¶ 7, 10, 15, Q.3 ¶¶ 7, 10, 15, Q.4 ¶¶ 7, 10, 15, Q.5 ¶¶ 7, 10, 15.) Had the terms of Tentative Agreement been anything exceeding an 11% ongoing cost into 2019-

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2020, Board President Ryan testified that "absolutely would have altered the outcome of the Board vote." (RT2 at 418:15—419:1; see DX Q.1 ¶ 18, Q.2 ¶ 18, Q.3 ¶ 18, Q.4 ¶ 18, Q.5 ¶ 18.)

It is these terms—and these terms alone—that were reviewed by the County Superintendent, and reviewed and approved by the Board on December 7, 2017. (See JX 4.) The Board members voted unanimously to approve the District's Tentative Agreement with SCTA and related AB 1200 Disclosure, as written, pursuant to Agenda Item 8.4. (DX R ¶ 17.) The Board did not vote to ratify or approve any salary schedule adjustment—in either the Tentative Agreement or the AB 1200 Disclosure—which would or could exceed a total 11% ongoing cost, including a 3.5% maximum expenditure to adjust the 2018-2019 salary schedule, continuing on an ongoing basis into 2019-2020. (DX R ¶ 17; see DX Q.1 ¶ 17, Q.2 ¶ 17, Q.3 ¶ 17, Q.4 ¶ 17, Q.5 ¶ 17.) As Board President Ryan testified, in her capacity as a Board member, she would not have voted to approve terms amounting to a higher expenditure, because the costs to be incurred under such an agreement were not reviewed or disclosed under the AB 1200 Disclosure process, and are not fiscally sustainable for the District. (RT2 at 418:15—419:1; DX R ¶ 18; see also DX Q.1 ¶ 18, Q.2 ¶ 18, Q.3 ¶ 18, Q.4 ¶ 18, Q.5 ¶ 18.)

Following approval of the Tentative Agreement, the District planned its budget according to the costs authorized in same, and "set aside" in its budget the funds to cover the cost of implementing 11% on the salary structure as a total, ongoing cost into 2019-2020. (RT3 at 587:10-15, 16-23.) The District did not budget for any salary cost exceeding this amount. (RT3 at 587:10-15, 16-23.)

F. NOTICE OF LACK OF THE PARTIES' MUTUAL ASSENT AND/OR MUTUAL MISTAKE.

Following the December 7, 2017 Board meeting, there were a number of "pieces" related to the salary structure that remained to be determined by the parties, including application of unlimited years of experience credits and costing related to the compression of the columns. (RT3 at 524:11-19.) As a part of this process, Ms. McArn and Ms. Nguyen worked with SCTA representatives in or around December 14, 2017, to determine a process for implementation of unlimited experience credits, which was a known precursor to finalizing a mutually agreeable salary schedule. (RT3 at 527:18—529:4; AX 12.) Specifically, because a finalized salary structure must have information in each cell, and because unlimited experience credits would move employees on the cells, a final salary schedule *could not*

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mathematically be costed out until this process had been finalized—which could not occur until at least March 2018 or later. (RT3 at 528:20—529:4, 9-15.)

Ms. McArn sent a memorandum to District Principals on December 14, 2017, informing them the District and SCTA had agreed to a "3.5% mutually acceptable adjustment to the salary schedule beginning in the 2018-2019 school year to be finalized within 45 days of the Tentative Agreement Approval," along with application of unlimited years of experience credits. (DX N; RT3 at 525:20—526:13.) Ms. McArn's memorandum to the Principals was consistent with the District's understanding of the work that still needed to be done to finalize the salary structure. (RT3 at 526:15-19.)

On May 24, 2018, Ms. McArn and Ms. Nguyen again met with SCTA representatives Borsos, Fisher and Milevsky to talk about adjustments to the salary schedule. (DX O; RT3 at 531:4-7.) The parties reiterated the need to focus on the B and C columns of the salary schedule, and discussed that, by the next meeting, the District would have costed out the salary schedule, incorporating information newly received regarding unlimited experience credits. (RT3 at 531:8-19.) At no point during the meeting did the parties discuss that the 3.5% was an expenditure "cap" that would come off in the 2019-2020 school year. (RT3 at 531:20-23.) During the meeting, SCTA discussed the possibility of a delayed implementation date, and insisted the same was a part of the parties' Framework Agreement. (DX O; RT3 at 531:24—532:7, 532:12-19.) When Ms. McArn expressed concern with SCTA's view of the delayed implementation plan, Mr. Borsos stated if there was no agreement as to that point, "then there is no agreement on the contract." (DX O at 2; RT3 at 532:12-19, 20—533:18; see RT1 at 168:17-21.) No agreements were reached regarding a mutually agreed upon, final salary structure adjustment at the May 24, 2018 meeting. (RT3 at 532:8—11.)

Following the May 24, 2018 meeting, the District agreed as a next step to cost out the proposed salary schedule SCTA had prepared. (RT3 at 534:10-24.) The District did so, and determined the cost to implement SCTA's version of the salary schedule across the full fiscal year, effective July 1, 2018, was approximately 7.09%—a cost above the agreed-upon 3.5% cap and not fiscally sustainable for the District. (RT3 at 534:17—535:1.) The District had not, and *could not*, have costed out the full salary structure until this time, because of the previously pending application of unlimited experience credits, and because the "clear direction" from the December 7, 2017 Tentative Agreement was that any final

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salary schedule be "mutually agreeable." (JX 2; RT3 at 540:13-22.) Until May 2018, the parties had not had discussions which might facilitate their mutual agreement to a final salary schedule adjustment consistent with the parties understanding of the Tentative Agreement. (RT3 at 540:13-22.)

The parties met again on June 8, 2018. (DX O; RT3 at 534:10-16.) SCTA again suggested delayed implementation as a solution to the cost problem; however, this again was problematic. (RT3 at 539:2-19.) While a delay might satisfy costs for the current year (in staying below 3.5%), expenses under SCTA's proposed schedule would skyrocket to over 7% on the salary schedule in 2019-2020 and subsequent years, contrary to the Board-approved tentative agreement providing for no greater than an 11% total ongoing expenditure. (RT3 at 539:2-19.) Taking SCTA's statements at their word, in May and June 2018, it became apparent the District and SCTA attached materially different meanings to the Framework Agreement, and/or had each been materially mistaken as to what the other understood the meaning of the Framework Agreement to be. (DX S ¶ 41.) This was especially so because SCTA expressed an absolute unwillingness to consider options for implementing the gist or elements of SCTA's proposed salary structure, i.e., less than full adoption of same, in order to maintain the costs of such implementation within the 3.5% cap approved by the District's Board. (DX D at 2; RT1 at 182:21—183:16; RT3 at 532:12—533:10; see also RT1 168:17-21.)

On August 8, 2018, Superintendent Aguilar met with the Mayor and SCTA representatives, subsequently summarized in his August 22, 2018 email. (DX J.) In his email, the Superintendent provided a proposed salary schedule, prepared with the assistance of Mr. Phillips, which would adjust the salary structure columns to target columns B and C on the structure, while operating within the 3.5% maximum ongoing cost expenditure. (DX J; RT3 at 544:9-17.) SCTA declined the District's proposal.

G. SCTA'S GRIEVANCE.

On September 12, 2018, SCTA filed a Level 1 Grievance with the District, alleging a violation of the "Contract Settlement Ratified by SCUSD school board on December 7, 2017." (JX 9.) The grievance requests, as a remedy, that the District "implement 'the union's proposed salary structure,' prospectively and retroactively (if applicable)." (JX 9.) The grievance does not account for the fact that, per the Tentative Agreement, the parties agreed to a "mutually agreeable adjustment to the salary schedule," and disregards that "the union's proposed salary structure," does not align with the 3.5%

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maximum adjustment to the salary structure for the full 2018-2019 year, as agreed to by the District. (JX 9; RT3 at 488:22—489:16.) SCTA's current proposed salary structure, including what would amount to a 7.3% expenditure across the full 2018-2019 salary schedule if implemented on July 1, 2018, is contrary to the District's interpretation of the Framework Agreement and Tentative Agreement, has not been mutually agreed upon, and more than doubles the maximum expenditure reviewed by the County Superintendent in the AB 1200 Disclosure and approved by the Board in the tentative agreement. (RT3 at 535: 8-18.) Nevertheless, SCTA's grievance contends, on its face, that the District is obligated to implement such a proposal.[7] (JX 9.)

H. DISTRICT'S IMMINENT RISK OF FISCAL INSOLVENCY.

On September 27, 2018, the Fiscal Crisis and Management Assistance Team ("FCMAT") sent a study team to conduct a fiscal health risk analysis of the District. (DX W ¶ 7.) Led by FCMAT Deputy Executive Officer Michelle Giacomini, the study team conducted an in-depth analysis of the District's fiscal health across twenty different areas of potential risk. (DX W ¶ 9.) After analyzing data across all areas of the study, including the District's CBAs, the FCMAT study team prepared a Fiscal Health Risk Analysis Report placing the District's total fiscal health risk score across all areas at 44.8%, indicating a high risk of potential insolvency by November 2019. (DX A; DX W ¶¶ 10, 15.) The FCMAT study team determined specifically, in the area of CBAs, that the District agreed to only a 3.5% expenditure to restructure the certificated salary schedule, yet the same agreement, as interpreted by SCTA, would result in an approximate 7.0% expenditure. (DX W ¶ 13, 14.)

On February 21, 2019, County Superintendent Gordon and FCMAT Chief Executive Officer Mike Fine spoke publicly at the District's Board meeting. (DX S ¶ 49.) Both Mr. Fine and County Superintendent Gordon predicted the District will fall into cash insolvency and need to seek a loan from the State of California—thus falling into state receivership—in the near future, given the District's current fiscal projections. (DX S ¶ 49.)

[7] SCTA's grievance also alleges the District has "refused to honor its agreement to implement the 'union's proposed salary structure,' and as well as refused to honor the effective date of the agreement retroactive to July 1, 2016." (JX 9.) However, Mr. Borsos testified at hearing that SCTA no longer contends its proposed salary structure should have been effective July 1, 2016. (RT1 at 123:14-18.) Therefore, this brief does not address the merits of that portion of the grievance.

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ARGUMENT

I. PAROL EVIDENCE OF EVENTS OCCURRING BEFORE, DURING, AND AFTER THE TIME OF CONTRACTING IS PROPER FOR DETERMINING INTENT.

As an initial matter, parol evidence of events and conduct occurring before, during, and after the time of contracting is properly relied upon to interpret the meaning of a contract and/or understand parties' understanding of an agreement, including with regarding to the parties' intent and mutual assent (or lack thereof) or mutual mistake, in the forming of same. Rational interpretation of contract language "requires at least a preliminary consideration of all credible evidence offered to prove the intention of the parties." (*Pacific Gas & Elec. Co. v. G. W. Thomas Drayage & Rigging Co.* (1968) 69 Cal.2d 33, 39-40; see also *Burch v. Premier Homes*, LLC (2011) 199 Cal.App.4th 730, 742.) Such evidence may include testimony related to the "circumstances surrounding the making of the agreement," so the Arbitrator can "place [him]self in the same situation in which the parties found themselves at the time of contracting." (*Id.*, quoting *Universal Sales Corp. v. California Press Mfg. Co.* (1942) 20 Cal.2d 751, 761.) In addition, the intention of the parties at the time a contract was executed can be proven by analyzing "the events ***subsequent*** to the execution of the contract, particularly the practical construction given to the contract by the parties themselves, as shedding light upon the question of their mutual intention at the time of contracting." (*Lemm v. Stillwater Land & Cattle Co.* (1933) 217 Cal. 474, 481, emphasis added.) Evidence of conversations or declarations of the parties "at the time of, before, or after execution of the contract" has also been deemed admissible to clarify the intent of the parties. (31 Cal.Jur.3d Evidence, § 361; see *Universal Sales Corp. v. Cal., etc., Mfg. Co.* (1942) 20 Cal.2d 751, 761 ["As an aid in discovering the all-important element of intent of the parties to the contract, the trial court may look to the circumstances surrounding the making of the agreement . . . , including the object, nature and subject matter of the writing . . . , and the preliminary negotiations between the parties . . . , and thus place itself in the same situation in which the parties found themselves at the time of contracting . . . . Also applicable here is the familiar rule that when a contract is ambiguous, a construction given to it by the acts and conduct of the parties with knowledge of its terms, before any controversy has arisen as to its meaning, is entitled to great weight, and will, when reasonable, be adopted and enforced by the court . . . . The reason underlying the rule is that it is the duty of the court to

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give effect to the intention of the parties where it is not wholly at variance with the correct legal interpretation of the terms of the contract, and a practical construction placed by the parties upon the instrument is the best evidence of their intention . . . ."].)

Therefore, based on this proper and well-settled law, the Arbitrator should not limit his analysis to evidence created contemporaneously with either the Framework Agreement or Tentative Agreement when attempting to determine the parties' intentions. Rather, the Arbitrator may look at all relevant evidence regarding actions that occurred before *and* after the time of contracting, in order to shed light on the meaning and intent behind the contract. (See *Lemm*, 217 Cal. at 481.)

II. THE TENTATIVE AGREEMENT'S SALARY STRUCTURE ADJUSTMENT TERMS ARE INVALID FOR LACK OF MUTUAL ASSENT BETWEEN AND/OR MUTUAL MISTAKE BY THE PARTIES.

Lack of mutual assent, or presence of mutual mistake, each taken on their own, are independently sufficient to render a contract invalid. Here, the elements of both are present—rendering the Tentative Agreement as to the salary structure adjustment terms void and invalid. The salary structure terms' patent invalidity reaches back to the Framework Agreement, and otherwise permeates the Tentative Agreement approved by the District's Board. The absence of mutual assent between and/or the existence of mutual mistake by the parties necessarily defeats SCTA's grievance.

A. The Parties Did Not Achieve Mutual Assent as to the Tentative Agreement's Salary Structure Adjustment Terms.

Consent is an element essential to the formation of any contract. (*Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 811, citing Civ. Code, § 1550, 1 Witkin, Summary of Cal. Law (9th ed. 1987) Contracts, § 6, p. 44.) Consent must be mutual, and mutuality will not be found unless all parties have "agree[d] upon the *same thing in the same sense*." (*Weddington Productions, Inc.*, 60 Cal.App.4th at 811, emphasis added, citing Civ. Code, §§ 1550, 1565, 1580.) If there is no evidence establishing a manifestation of assent to the "same thing" by both parties as to all material terms, then there is no mutual assent to contract and no contract formation. (*Id.*) Where there is not mutual assent as to even some material terms of an agreement, it may be determined that no contract was formed. (*Id.*)

Compensation for certificated employees was a critical and material term of the Tentative Agreement, the parameters for which were first set forth in the Framework Agreement. (JX 2; RT2 at

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314:7-14.) The District understood its agreement with SCTA as to the Tentative Agreement's salary structure adjustment terms to mean it agreed to implement a restructuring of the certificated salary schedule for the entire 2018-2019 school year, effective July 1, 2018, not to exceed a maximum ongoing cost adjustment of 3.5% resulting from such restructuring, if implemented for the entire year. (DX S ¶ 18; RT2 314:23—315:20, 315:25—316:10, 317:4-12, 334:4-12, 375:1-9; RT3 at 522:6-17, 523:1-14; DX r ¶¶ 15, 17; DX Q.1 ¶¶ 15, 17, Q.2 ¶¶ 15, 17, Q.3 ¶¶ 15, 17, Q.4 ¶¶ 15, 17, Q.5 ¶¶ 15, 17.) This understanding was directly supported by the plain language of the Framework Agreement, the Superintendent's understanding as communicated to the District's leadership team on the afternoon of November 5, 2017, subsequent communications between the parties between November 6 and December 6, 2017, the District's AB 1200 Disclosure, the District's public presentation to the Board on December 7, 2017 and Agenda Item 8.4, the Board's action to approve the Tentative Agreement, and subsequent actions by the parties. (JX 4; JX 5; JX 11; JX 12; RT2 329:15-25, 331:23—332:8; DX R ¶¶ 17-18; DX Q.1 ¶¶ 17-18, Q.2 ¶¶ 17-18, Q.3 ¶¶ 17-18, Q.4 ¶¶ 17-18, Q.5 ¶¶ 17-18.) That understanding was that any mutually agreed upon salary structure adjustment—to be determined within 45 days of the Board's action on December 7—would not and could not exceed a 3.5% maximum cost adjustment to the full 2018-2019 salary structure, if implemented effective July 1, 2018, and that said 3.5% cap would constitute an ongoing cost limitation unless or until further or different terms were reached in subsequent negotiations. (JX 1; JX 11, JX 12; DX S ¶¶ 16-22; RT2 at 3621—363:21; RT3 at 508:22-1, 509:13-23, 511:5-11, 540:13-22.)

Yet, through SCTA's grievance and other communications, it is more than apparent the parties lacked mutual assent as to the salary structure adjustment terms of the Tentative Agreement because—taking SCTA at its word—the parties did not, and cannot, have agreed "upon the same thing in the same sense" as to salary structure adjustment terms. (See *Weddington Productions, Inc.*, 60 Cal.App.4th at 811, citations omitted.) Specifically, the evidence establishes a lack of mutual assent in two material areas: (1) the meaning and form of the "proposed structure" first referenced in the Framework Agreement; and (2) the meaning of the term "3.5% maximum District expenditure"—including whether the same was meant to constitute a continuing, ongoing expense beyond the current contract term (as the District understood), or, as SCTA alleges, meant to function as a "cap" to be removed in 2019-2020,

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more than doubling the District's salary expenditure in the first contractual out-year. (RT 1 at 66:1—67:3; RT3 at 539:2-11, 534:17—535:18.) If the evidence establishes nothing else, it establishes clearly the lack of shared understanding as to these two material terms central to the Framework Agreement.

1. The Tentative Agreement is Ambiguous as to the Meaning or Form of the Salary Structure, and the Parties Lacked Mutual Assent Regarding Same.

Fundamental contract law principles dictate "mutual assent is determined under an objective standard applied to the outward manifestations or expressions of the parties, i.e., the reasonable meaning of their words and acts, and *not their unexpressed intentions or understandings*." (*Esparza v. Sand & Sea, Inc.* (2016) 2 Cal.App.5th 781, 788, emphasis added.) This principle is directly applicable here.

The Tentative Agreement provides for an "adjustment to the salary schedule – union's proposed structure." (JX 1.) Yet the meaning of this language was left ambiguous. First, the Framework Agreement does not—either directly or indirectly—incorporate a copy of the "union's proposed structure." (JX 1; RT1 at 142:8-12.) On this point, as stated at hearing, "the agreement speaks for itself." (RT1 at 142:8-12.) On the face of the agreement, the meaning and form of the "proposed structure"—to the extent a specific structure was intended—is entirely undefined. (JX 1.)

This is a puzzling omission, particularly given SCTA's testimony that—in their own minds—they knew exactly the form of the "proposed structure" they intended. (RT1 at 58:8—59:8.) Mr. Borsos testified he brought a "massive" binder to the November 5, 2017 meeting containing material from the parties' prior negotiations. (RT1 at 52:13-25.) Given Mr. Borsos' testimony that their "proposed" salary structure originated from one or more of SCTA's prior proposals, SCTA presumably had access to a copy of their "proposed" salary structure, which could have been incorporated into the Framework Agreement let alone ultimately the Tentative Agreement, either physically, by reference, by drawing, or otherwise. (RT1 at 58:8-24.) SCTA failed to do so. (JX 1.)

SCTA understood Superintendent Aguilar had not been involved in prior bargaining sessions; yet they failed to provide him with a copy of any actual salary structure during the course of the meeting on November 5, 2017. (RT1 at 18:11-21, 21:8-16, 61:24—62:9; RT2 at 315:21-24.) Mr. Borsos admitted "maybe in retrospect," it might have been a good idea to do so. (RT1 at 61:24—62:9.) Rather, Mr. Borsos testified he used his hands, to show Superintendent Aguilar SCTA's compression concept,

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stating, "we're going this way and this way [to adjust the salary structure]," to make clear to the Superintendent "that the only way we were agreeing to work within the 11 percent was to get our salary schedule." (RT1 at 58:14-24.) SCTA's failure to provide the District's only negotiator with a copy of their "proposed" salary structure, and failure to ensure the same be incorporated into the agreement, led to contractual ambiguity and ultimately, a failure of mutual assent. The Superintendent *cannot* have assented to contractual terms—i.e., a specific "proposed" salary structure— which he had not seen before and were not expressly before him at the time of bargaining.

Superintendent Aguilar's testimony confirms the same. The parties discussed compression of the salary structure on November 5, 2017 on only a conceptual level: "[A]t that time it came to my mind [a]s sort of an accordion, but there were no specific or detailed conversations about it." (RT2 at 356:1-7.) This aligns with Superintendent Aguilar's later, November 29, 2017 email to SCTA, referencing the "high level overview of the proposed salary schedule adjustment," and requesting clarification to more clearly understand the compression concept. (JX 12 at 8; RT2 at 322-24—323:23.) Critically, Mr. Borsos was unable to testify affirmatively that Superintendent Aguilar was either presented with or understood the components of the union's proposed salary structure—only that the Superintendent understood the "concern" that a salary schedule adjustment target the middle columns of the structure for mid-career teachers. (RT1 at 59:9—60:19.)

Indeed, SCTA did not provide, at any point, an actual, final form of the complete salary structure it alleges was agreed to, including actual dollar amounts it wished employees in each row and column to be paid. By SCTA's testimony, the structure it "proposed" relates primarily to the "compression" of the structure's columns and steps (i.e., an adjusted 6 columns and 20 steps), enabling employees to get to the "top" of the salary schedule in quicker fashion. (RT1 at 23:22—24:9.) In other words, they proposed a shell of a salary structure with no monetary details filled in.

But steps and columns alone, without more, do not form a complete salary structure. A complete salary structure must include dollar values placed in each of its cells, equating to a specified cost for an employer. SCTA's own exhibit demonstrates how the same salary structure shell—incorporating the compression concept—can have differing dollar values attached, according to the numbers input in to

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each cell. (AX 2) Each of these structures in Association Exhibit 2 amounts to a different cost for the District—not because the rows and columns differ, but because the numbers within do. (AX 2.)

This further demonstrates there cannot have been a specific salary structure agreed to on November 5, 2017, because even if there was mutual understanding as to the compression concept—wo which there was not—there was no agreement as to the contents of the actual cells in the salary structure to keep within the maximum affordable District expenditure—i.e., a complete salary structure.

As both the District and SCTA testified, there were "multiple issues," including important costing issues, which needed to be worked out before a final salary structure could be agreed to, without which, as Mr. Borsos testified, the form of the structure was "open-ended." (RT1 at 153:7-24, 154:12-18, 155:3-7, 155, 11-20, 156, 1-13, 266:9-25, 267:1-7; RT3 at 515:8-24.) Chief among these issues was the application of unlimited experience credits for Teachers, which Ms. McArn testified could not logistically be determined until March 31, 2018 or later. (RT1 at 155:11-20, 156:1-9, 218:10-3.) Ms. Milevsky similarly testified that "basically the individual cells"—i.e., the meat of the salary structure—had not yet been worked out as of the date of the Framework Agreement, and could not be determined "without looking through personnel files and stuff like that." (RT1 at 266:20-25, 267:1-7.) This is precisely why the Tentative Agreement acted on by the Board on December 7, 2017 included a provision stipulating that, within 45 days, "the Parties agree to finalize a *mutually agreeable adjustment to the salary schedule* for 2018-2019 that does not exceed a total District expenditure of 3.5%." (JX 2 at 38, emphasis added; RT2 at 325:212—326:16.)

Thus, while the parties may have generally discussed the concept of salary structure compression on November 5, 2017, to the extent a specific proposed salary structure existed at that time, the specifics of the same existed only in the minds of the SCTA representatives, and *could not* have been available to Superintendent Aguilar, or otherwise incorporated into the Framework Agreement. Rather, the Tentative Agreement's express agreement that a mutually agreed upon salary structure adjustment within the 3.5% cost expenditure cap still needed to be determined expressly supported the District's understanding that there was no final agreed upon salary structure adjustment as of the Superintendent Aguilar's November 30 email, the December 4 initialing of said email's terms by the Superintendent and SCTA President Fisher for purposes of incorporating the terms into the Tentative Agreement, or when

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the Tentative Agreement was before the District's Board on December 7, 2017. (JX 2 at DD 439; DX R ¶¶ 10-11, 15; DX Q.1 ¶¶ 10-11, 15, Q.2 ¶¶ 10-11, 15, Q.3 ¶¶ 10-11, 15, Q.4 ¶¶ 10-11, 15, Q.5 ¶¶ 10-11, 15; RT2 362:11—363:21. 414"9-24, 415:3-19; RT3 at 511:5-11.)[8]

Contract law principles make clear the unexpressed intentions or understandings of one party are insufficient to establish objective manifestation and, by extension, mutual assent to contract. (*Esparza,* 2 Cal.App.5th at 788.) That which existed only in the minds of SCTA representatives is insufficient to establish assent to material contract terms. (*Id.*) The parties cannot have consented to any specific salary structure, either on November 5, 2017 or thereafter through December 7, 2017—as evidenced by the Board's approval of a Tentative Agreement stipulating the parties would *later* meet and negotiate a *mutually agreeable* salary schedule adjustment. (JX 2.) If SCTA believes a specific salary structure was agreed to within the Tentative Agreement, this leads inevitably to the conclusion that mutual assent as to this fundamental element was lacking. If so, the Tentative Agreement's salary structure adjustment terms must be rendered void and invalid.

2. The Parties Attached Materially Different Meanings to the Term "Maximum 3.5% District Expenditure," Demonstrating a Lack of Mutual Assent.

There is no manifestation of mutual assent to an exchange if the parties attach materially different meanings to their manifestations and neither party knows or has reason to know the meaning attached by the other. (*Merced County Sheriff's Employees Assn. v. County of Merced* (1987) 188 Cal.App.3d 662, 670; Restatement of Contracts Second, §§ 20, 21.) It is apparent that, while the Tentative Agreement's plain language (in the Framework Agreement) unquestionably calls for a "3.5% maximum District expenditure," the parties each attached materially different meanings to their manifestations of that term, including implementation of the same. Taking SCTA at its word, neither party appears to have known the meaning attached by the other, confirming a lack of mutual assent.

Of utmost importance to Superintendent Aguilar in negotiating the initial Framework Agreement and thereafter leading up to the Board's consideration of the full Tentative Agreement, was ensuring any

[8] As discussed more fully below, the Framework Agreement alone is not the appropriate point of reference, but rather the Tentative Agreement and all of its terms acted upon by the Board and SCTA membership in December 2017. That is the only set of terms and agreement which was properly before the Board for ratification pursuant to Education Code section 17604 and Board Policy. (See JX 4.)

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agreement made would be financially feasible for the District. (RT2 at 313:8-13, 314:23—315:10, 315:25—316:10, 379:13-17.) Even absent specific details regarding SCTA's proposed salary structure, the Superintendent was willing to agree to a salary schedule adjustment if the language of the agreement could provide a guarantee of a maximum ongoing District expenditure. (RT2 at 315:25—316:10.) Put simply, the Superintendent needed assurances any agreement he made with SCTA would not, in the Arbitrator's words, "dramatically blow out the budget." (RT3 at 549:12-22.)

This was consistent with the District's due diligence in costing out the union's prior proposed salary structure in or around January 2017, because District understood that, as the union's proposed structure existed at that time, an adjustment to the salary schedule could not have been implemented for 3.5% or less for a full fiscal year. (RT3 at 537:21—538:10, 551:21-25, 552:1-7.) With this understanding, the Superintendent agreed to language appearing in the Framework Agreement and that at issue in this grievance, providing for SCTA's "proposed salary structure," but with major, material qualifier which had not previously been proposed—any adjustment must fit within a "3.5% maximum District expenditure." (JX 1; RT2 at 315:25—316:10.) SCTA, too, understood this maximum expenditure language served as a qualifier to any proposed salary structure. (RT1 at 257:6-19.)

Specifically, the Superintendent understood this language to mean that the District agreed to implement a restructuring of the certificated salary schedule columns and/or steps, commencing in the 2018-2019 school year, effective July 1, 2018, not to exceed a maximum District expenditure of 3.5% to adjust the certificated salary schedule for the entirety of the school year. (DX S ¶ 6.d.; RT2 at 314:23—315:20, 315:25—316:10, 317:4-12.) Central to the Superintendent's understanding was that any restructuring to the salary schedule *could not and would not* result in a total, ongoing upward cost adjustment on the entire 2018-2019 salary schedule in any amount greater than 3.5%, consistent with the 11% total ongoing cost recommendation in the Fact Finding Report. (DX S ¶ 9; AX 3; RT2 at 310:5-15, 315:8-11, 315:25—316:10, 316:15-16, 317:4-12, 334:4-10, 336:7-13.) This language was critical, given SCTA's prior proposed structure could not have been implemented for under 3.5%, absent changes impacting the overall cost of the structure. (RT3 at 551:21-25, 552:1-7.)

The Superintendent did not understand the 3.5% maximum expenditure to be a removable "cap" that would be lifted after the 2018-2019 fiscal year, but rather an ongoing expense moving forward.

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(RT2 at 317:4-12.) Nor would such understanding be consistent with the Parties' prior bargaining history or negotiations. Not only did SCTA not discuss the idea of a "cap" with Superintendent Aguilar on November 5, 2017, to the District's recollection it had *never* before raised such a concept to the District during the course of negotiations since 2016 and 2017, including at least one prior package in September 2017, which, on its face, proposes a salary schedule adjustment, but *without* a cap, and was meant to be implemented for the full fiscal year. (AX 1; AX 2.) And there was no outward indication—on the Framework Agreement or the final terms of the Tentative Agreement, or otherwise—that the parties' 11% total ongoing cost concept, derived from the Fact Finding Report, had been altered or changed to be anything but a continuing cost past 2018-2019. (JX 1; RT2 at 315:13-20.)

Superintendent Aguilar further understood that the proposed salary schedule would be implemented, at the 3.5% maximum expenditure, effective July 1, 2018 and for the entirety of the 2018-2019 school year. (DX S ¶ 10 RT2 361:24—362:2, 375:10-15.) As to this too, there were no discussions indicating otherwise. (RT2 at 315:17-20.) Not one SCTA representative was able testify how, on the face of the Tentative Agreement's salary structure adjustments terms, one would know the salary structure was meant to be implemented on any date other than July 1, 2018. (RT 1 at 140:17—141:16, 256:18—257:5.) As the Arbitrator noted at hearing, this is a problematic ambiguity. (RT1 at 256:5-15.) Even more so, given the parties *had implemented* a mid-year salary increase before in 2015-2016, and expressly provided for a mid-year implementation in the contractual language. (AX 21.)

Yet, in addition to its understanding regarding delayed implementation, SCTA purportedly understood the term "3.5% maximum District expenditure" to mean there would be 3.5% "cap" on District expenditures—to be removed in the first contractual out-year in 2019-2020, and thereafter, amounting to a cost millions of dollars higher than that which the District agreed to. (RT1 at 66:1—67:3; RT3 at 539:2-11, 534:17—535:18.) SCTA purports this understanding implausibly, in the face of evidence that it failed to mention the existence of such a cap *even once* in months of subsequent meetings and emails with District representatives, from November 2017 through August 2018. (AX 10; DX U; JX 11; JX 12; RT1 at 268:18—220:7; RT2 at 327:15-19; RT3 at 499:9-12, 501:12-16, 505:13-17.) Moreover, this understanding is contrary to the principle that a CBA's terms remain the status quo beyond its expiration, absent an express agreement to the contrary. (JX 1; RT3 at 491:7-13, 598:11-24.)

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The Fact Finding Report upon which the parties' deal was based (see RT1 at 48:10-17, 49:14-15, 54:6-12, 195:2-9, 235:4-14) similarly lacks reference to any expenditure cap, providing instead for a clear ongoing cost of 11% in 2019-2020 (AX 3 at 11). The importance of this point of reference in relation to the understanding of an 11% ongoing costs cannot be overstated, i.e., it directly corresponds with the District's understanding and interpretation of the 3.5% cost cap, and ties back to the Fact Finding Report issued just days before the weekend of November 4 and 5, 2017. (RT2 at 309:9—310:24, 316:11-16, 334:4-10.) These facts, along with an absence of any discussion on November 5, 2017 regarding the concept of the 3.5% as a "cap" to be removed in the first out-year, demonstrate the Superintendent had no reason to know the meaning SCTA purportedly attached to the term "maximum 3.5% District expenditure." (RT2 at 315:17-20.)

The Superintendent's communications to Ms. McArn and the Board regarding his understanding of the salary structure adjustment framework negotiated with SCTA is consistent with this understanding. (RT2 at 319:18—320:11, 437:24—439:14, 441:2-11; RT3 at 496:13-20, 498:1-6, 499:3-17.) Also corresponding, Superintendent Aguilar and the District's then CBO certified the District required AB 1200 Disclosure for submission to the County Superintendent for Mr. Gordon's legally obligated review, in which the District indisputably delineated the costs of the salary components of the Tentative Agreement to amount to an 11% total *ongoing* cost, including a maximum 3.5% adjustment to the 2018-2019 salary structure, specifically stating: "The 2018-2019 salary structure will be adjusted equivalent to 3.5%." (DX S ¶ 46; RT2 at 383:21—384:18, 388:10-13, 391:10-24.) County Superintendent Gordon's December 7, 2017 letter to the District, and his testimony at hearing, wholly confirm his understanding that the 11% total costs for the Tentative Agreement's certificated salary components amounts to an 11% cost in 2018-2019, and were expected to be the same costs in future years and for purposes of his AB 1200 costs projections. (RT2 at 391:10-24; 392:14-18, 393:5-15, 394:25—395:5; DX P.) With this express understanding in mind, the Tentative Agreement, accompanied by the District's AB 1200 Disclosure on which the County Superintendent provided the District legally required direction, was approved by the Board at its December 7, 2017 meeting. (DX R ¶¶ 9-10; RT2 at 417:17-19, 418:15—419:1.) Critically, had the cost to the District been anything but that which was delineated in the District's AB 1200 Disclosure—a maximum 11% ongoing

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expenditure—the County Superintendent's recommendations to the District would have been different, and it "absolutely would have altered the outcome of the Board vote." (RT2 at 418:15—419.1; see also DX R ¶ 18; DX Q.1 ¶ 18, Q.2 ¶ 18, Q.3 ¶ 18, Q.4 ¶ 18, Q.5 ¶ 18.)

Only once the District was fully able to cost the salary structure out after unlimited service credits were applied, in May and June 2018, did the District clearly realize there was a misunderstanding between the parties as to what had been agreed to, including SCTA's insistence that an unaffordable salary structure—valued at over 7.0% in 2019-2020—must be implemented in 2018-2019 by delayed implementation. (RT3 at 531:24—532:7, 532:20—533:12.) SCTA was informed of the cost impact to the District in the contractual out-years, but was apparently impervious to the same. (RT3 at 531:24—532:7, 532:20—533:12.)

Despite SCTA's position, to this day, neither the Board nor the County Superintendent have approved any expenditure amounting to greater than a maximum 3.5% adjustment on the salary structure if implemented for the entirety of 2018-2019, calculated as an ongoing 3.5% cost into 2019-2020 and beyond. SCTA's contrary interpretation, if taken as true, leads inescapably to the conclusion there was a lack of mutual assent regarding adjustments to the salary schedule under the Tentative Agreement, including whether, and how, a 3.5% "cap" was meant to apply.

"The failure to reach an [objective] meeting of the minds on all material points prevents the formation of the contract[.]" (*Bustamante v. Intuit, Inc.* (2006) 141 Cal.App.4th 199, 215.) Taking SCTA at its word—that it believes the District agreed to implement a salary structure that would cost 3.5% in 2018-2019, but more than double in cost the next year, and/or agreed to a mid-year implementation of the same—it is evident there was no objective meeting of the minds, and no mutual assent as to the material salary structure adjustment terms of the Tentative Agreement. As such, starting with the salary structure adjustment terms' first articulation in the Framework Agreement in November 2017, through the parties' ratification of the Tentative Agreement in December 2017, to now, there has lacked mutual assent between the parties, making such terms, void, invalid and unenforceable.

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B. The Parties Were Mutually Mistaken Regarding the Material Terms of the Framework Agreement.

Consent to a contract is not free when obtained by mistake. (Civ. Code, § 1567.) A mistake of fact will be found where there is "an unconscious ignorance or forgetfulness of a fact past or present, material to the contract; or, [b]elief in the present existence of a thing material to the contract, which does not exist, or in the past existence of such a thing, which has not existed." (*Id.*, § 1577.) Where both parties are mistaken about a term material, and at least one party would not have entered into the contract if it had known about the mistake, such contract may be declared invalid. "Generally a mistake of fact occurs when a person understands the facts to be other than they are . . . . When both parties understand the facts other than they are, the mistake necessarily is mutual and thus becomes a basis for rescission." (*Crocker-Anglo Nat'l Bank v. Kuchman* (1964) 224 Cal.App.2d 490, 496.)

Such mistake is grounds to invalidate a contract, even under imperfect circumstances. "Ordinary negligence does not bar a claim for mutual mistake, because [t]here is an element of carelessness in nearly every case of mistake . . . . Only gross negligence or preposterous or irrational conduct will [bar] mutual mistake." (*Thrifty Payless, Inc. v. The Americana at Brand, LLC* (2013) 218 Cal.App.4th 1230, 1243.) In determining whether a mutual mistake has occurred, a court may consider parol evidence. (*Chastain v. Belmont* (1954) 43 Cal.2d 45, 51.) Such evidence is admissible to show mutual mistake even if the contracting parties intended the writing to be a complete statement of their agreement. (See Code Civ. Proc., § 1856, subd. (e).) Indeed, extrinsic evidence is necessary when examining mutual mistake "because the court must divine the true intentions of the contracting parties and determine whether the written agreement accurately represents those intentions." (*Hess v. Ford Motor Co.* (2002) 27 Cal.4th 516, 525.)

Here, per the facts and evidence discussed above, at Part I.A., there is no question the parties were mutually mistaken as to the material terms of the Framework Agreement, as they related to salary schedule adjustment. Both parties have demonstrated a (purportedly) unconscious ignorance of multiple facts material to the contract, and neither party would have entered into the contract had facts been the way the other side purports them to be. The first mistake occurred as to a salary structure that was "proposed" but not referenced or incorporated in the Framework Agreement, about which the parties

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have different understandings. (See Part I.A.) The second mistake occurred as to the term "maximum 3.5% District expenditure," including the parties' diverging understandings of the same. (See Part I.B.) Each party was critically, and materially, mistaken as to the meaning and import of these terms—mistakes which may be valued at millions of dollars.

Parol evidence after the time of contracting confirms the presence of mutual mistake. Throughout discussions in November 2017, leading to Board approval of the tentative agreement on December 7, 2017, these mutual mistakes, to the extent they existed, did not become apparent. Although the parties communicated regarding the salary structure adjustment terms of first the Framework Agreement and then the Tentative Agreement, at no time was a removable "cap" discussed by the parties, and, per their communications, both the District and SCTA seemed to understand there was "work to be done" on the salary structure, owing to unlimited experience credits and other variables yet to be determined. (See JX 2 at 38.)

To the extent each party understood the facts to be other than they were, this lends to mutual, material mistake as to the fundamental terms of the Tentative Agreement's salary structure adjustment terms. As Board President Ryan testified, the Board *would not* have approved the contract had they been aware of SCTA's alternate interpretation of the same and, by extension, aware of the mutual mistake. (RT2 at 418:15—419:1.) Moreover, County Superintendent's AB 1200 analysis and direction to the District regarding the fiscal feasibility of implementing the Tentative Agreement would have been different were SCTA's purported present understanding of the salary structure adjustment terms actually before him in December 2017—another factor which would have materially impacted the Board's actions on December 7. (RT2 at 392:8-13, 394:20—395:5, 418:15—419:1.) These facts, alone, require invalidation of the Tentative Agreement's salary structure adjustment terms on the basis of mutual mistake. (See *Kuchman* 224 Cal.App.2d at 496.)

III. IF A VALID CONTRACT EXISTS, THE TENTATIVE AGREEMENT, QUALIFIED BY THE DISTRICT'S AB 1200 DISCLOSURE, REPRESENTS THE ONLY VALID AND ENFORCEABLE CONTRACT APPROVED BY THE BOARD.

Education Code section 17604 provides that contracts with school districts are not valid until and unless they are approved or ratified by a school district's governing board. The requirements of section 17604 and the District's obligation to comply with same are inflexible, and serve as a precursor to

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contractual validity, as memorialized in District Board Policy ("BP") 3312. (DX S ¶ 44.) The mandate of Education Code section 17604 is foundational to this arbitration, because the *only* contract that can—or does—exist is the Tentative Agreement approved by the Board on December 7, 2017, the terms and meaning of which are set forth in the District's Board Agenda Item 8.4., as qualified by the contents of the District's AB 1200 Disclosure to the County Superintendent. (JX 4; DX H.)

The Tentative Agreement includes both the Framework Agreement *and* the parties November 30, 2017 email, providing for a "mutually agreeable adjustment to the salary schedule" within 45 days of finalizing the tentative agreement—both of which now equally form a part of the CBA. (JX 2 at DD 435, 439; RT3 at 508:22—509:1.) As discussed below, there can be only one proper interpretation of the parties' contract, to the extent it constitutes a valid contract. That is, a contract for an 11% total ongoing salary cost, including a 3.5% adjustment to the full 2018-2019 certificated salary structure, if implemented across the entire year, effective July 1, 2018, with the form of the salary structure to be finalized in a "mutually agreeable" manner following approval of the tentative agreement. These terms—and these terms alone—as to salary schedule adjustment, represent the only contract terms which were reviewed or approved by the Board, and the only terms which are valid and enforceable.

A. Per Education Code Section 17604 and AB 1200, Assuming Arguendo a Valid Contract was Formed Between the Parties, the Tentative Agreement Cannot Vary from that Which Was Approved By the Board—a Contract for an 11% Total, Ongoing, Salary Cost, the Details of Which Were to be Later Finalized.

"A public school district is a public entity with limited powers. A board of school trustees is an administrative agency created by statute and invested only with the powers expressly conferred by the Legislature and cannot exceed the powers granted to [it]." (*Patterson v. Bd. of Trustees* (1958) 157 Cal.App.2d 811, 188.) "Where the statute prescribes the only mode by which the power to contract shall be exercised, the *mode* is the *measure* of the power." (*El Camino Community College Dist. v. Super. Ct.* (1985) 173 Cal.App.3d 606, 612-13, citing *Uhlmann v. Alhambra, etc. School Dist.* (1963) 221 Cal.App.2d 228, 234, emphasis in original.)

Consistent with this limitation on powers is the requirement that the district's governing board must approve a contract in order to bind a district, as recognized in *Santa Monica Unified School District v. Persh* (1970) 5 Cal.App.3d 945, 952. In *Persh*, the court held there was no enforceable

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contract against a school district requiring it to purchase property for a particular price where the district's board had not ratified or approved the last offer of a contract for the purchase of the same. (*Id.*) To be effective, contracts purportedly executed on behalf of a school district must be formally approved or ratified by the district's governing board as specified in section 17604. (See *id.* at 953.) And while Education Code section 35035 provides that *the superintendent* may "[e]nter into contracts for and on behalf of the district," that section also expressly stipulates that such power must be exercised pursuant to Section 17604. (Ed. Code, § 35035, subd. (h).)

Absent compliance with Education Code section 17604, any purported contract with the District is void and unenforceable, because notice to and approval of the Tentative Agreement by the Board in order to bind the District is required by the same. Under Education Code section 17604 and *Persh*, the Tentative Agreement's salary structure adjustment terms—as purportedly interpreted by SCTA—is no agreement at all, because as to restructuring of the certificated salary schedule, the Board approved *only* the maximum 3.5% expenditure set forth in the AB 1200 Disclosure. (DX S at ¶¶ 30, 34; DX R ¶ 8, 13, 17; DX Q.1 ¶¶ 8, 13, 17, Q.2 ¶¶ 8, 13, 17, Q.3 ¶¶ 8, 13, 17, Q.4 ¶¶ 8, 13, 17, Q.5 ¶¶ 8, 13 17; RT2 at 391:17-24.) SCTA offers no evidence the Board approved or ratified any salary schedule adjustment expenditure *greater* than a total 11% ongoing expense effective July 1, 2018—including a 3.5% ongoing expense to adjust the salary schedule—nor could they. Even assuming *arguendo* that SCTA's interpretation is correct, the AB 1200 Disclosure and Board agenda would necessarily have had to include all terms material to SCTA's proposed salary structure currently calculated at 7.3%—and they plainly did not. (JX 4; RT2 at 385:4—386:1, 386:11—387:16; DX S ¶ 30; DX R ¶ 8; DX Q.1 ¶ 8, Q.2 ¶ 8, Q.3 ¶ 8, Q.4 ¶ 8, Q.5 ¶ 8.)

In addition, Government Code section 3547.5[9] requires that the District Superintendent and CBO certify to the Sacramento County Office of Education that the District is able to meet the obligations

[9] AB 1200, enacted in 1991, added section 3547.5 to the Government Code, and defines a system of fiscal accountability for school districts and county offices of education. The law requires districts to perform multiyear financial projections, identify sources of funding for substantial cost increases, such as employee raises, and make public the cost implications of such increases before approving employee contracts. (Gov. Code, § 3547.5.) The District is required to demonstrate fiscal sustainability and the ability to meet costs not only for the current fiscal year, but for the two subsequent years as well. (*Id.*, § 3547.5, subd. (a).) Further, under AB 1200, members of the public are afforded the right to review

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imposed under a collective bargaining agreement—itself a precursor the Board's approval of the tentative agreement. (RT2 at 385:4—386:1, 386:11—387:16.) The certification necessarily enables the County Superintendent to assess whether the District has accurately certified that it will meet the costs of the agreement—for the current and two succeeding fiscal years. (RT2 at 384:14—385:3, 385:17—387:4.) Under AB 1200, the Board cannot approve a CBA unless it has disclosed its terms and costs at a public meeting, and the County Superintendent has reviewed the same. (Gov. Code, § 3547.5, subd. (a), (c).) These AB 1200 disclosure requirements are absolute, and were put in place by the legislature to protect school districts and the public. To require implementation of contract terms which vary from that which have been certified from the AB 1200 disclosure process would directly contravene California law. (See *id.*)

These well-settled principles establishing Education Code section 17604 and AB 1200 as precursors to contractual validity are critical in this arbitration, without which no contract can be valid except that which was reviewed and approved by the Board at its December 7, 2017 meeting, and publicly disclosed and reviewed by the County Superintendent pursuant to the AB 1200 Disclosure. (JX 4.) The Tentative Agreement, Agenda Item 8.4's Executive Summary, PowerPoint presentation, and accompanying documents such as the AB 1200 Disclosure, forms the basis for that which was before the Board at its December 7, 2017 meeting. (JX 4.) These documents provide, in relevant part, for an 11% ongoing total expenditure on the salary schedule effective July 1, 2018, consistent with the Fact Finding Report, along with an agreement for the parties to finalize a "mutually acceptable" adjustment to the salary schedule within 45 days of the tentative agreement. (JX 4; DX R ¶ 6; RT2 at 309:9—310:24, 316:11-16, 317:3-12, 334:3-10, 413:24—414:4, 414:9-24, 415:3-19; RT3 at 521:23—422:25; see also DX Q.1 ¶¶ 7, 15, Q.2 ¶¶ 7, 15, Q.3 ¶¶ 7, 15, Q.4 ¶¶ 7, 15, Q.5 ¶¶ 7, 15.)

Board President Ryan testified she has *always* understood these terms to mean there would be an 11%, ongoing cost to the District, effective July 1, 2018, and continuing into 2019-2020, including the 3.5% ongoing cost to adjust the salary structure. (RT2 at 413:24—414:4.) This understanding is

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proposed contract terms and to weigh in at the contract ratification stage. (*Id.*) Before a school district may enter into an agreement with a union, "the major provisions of the agreement," including the costs that would be incurred by the district, must "be disclosed at a public meeting." (*Id.*, § 3547.5, subd. (a).)

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consistent with the District's AB 1200 Disclosure submitted to the County Superintendent, disclosing 3.5% expenditure to adjust the salary schedule effective July 1, 2018 and ongoing. (RT2 at 416:25—417:3.) Unsurprisingly, Superintendent Aguilar, the individual who certified the District's AB 1200 Disclosure along with the District's CBO, had and has the same understanding. (RT2 at 316:11-16, 317:4-12, 334:4-10, 361:24—362:2.) And other Board members present at the December 7, 2017 meeting had the same understanding as Board President Ryan as to 11% ongoing expenditure, including the 3.5% expenditure therein. (DX Q.1 ¶ 9, Q.2 ¶9, Q.3 ¶ 9, Q.4 ¶ 9, and Q.5 ¶ 9.)

County Superintendent Gordon's presentation at the December 7, 2017 Board meeting confirmed this exact same meaning of the Tentative Agreement's salary structure adjustment costs. (RT2 at 417:23—419:1.) Per Superintendent Gordon, each component of the total 11% cost—including the 3.5% to adjust the salary structure—is meant to carry forward into the 2019-2020 year, and does not increase. (RT2 at 391:17-24.) Had the cost been anything higher than a 3.5% ongoing expenditure (e.g., a cap that would come off in 2019-2020), this would have impacted the County Superintendent's analysis and report to the Board, and, by extension, the Board's approval. (RT2 at 392:8-13, 394:20—395:5, 418:15—419:1.) SCTA President Fisher and other SCTA leadership were present at the December 7, 2017 Board meeting, but did not make any statements in opposition to any portion of Agenda Item 8.4., including the contents of the District's AB 1200 Disclosure or its delineation of the Tentative Agreement's salary structure adjustment costs in 2018-2019, or subsequent years. (DX R ¶ 16; RT1 at 221:1-11; DX S ¶ 40.)

Based on that which was before the Board on December 7, 2017, the Board voted to approve the Tentative Agreement, per Agenda Item 8.4, including: (1) an 11% total ongoing expenditure on the salary schedule, effective July 1, 2018 and continuing into 2019-2020, and (2) an agreement for both parties to finalize a "mutually agreeable" adjustment to the salary schedule, within the 3.5% expenditure limit, within 45 days of executing the tentative agreement. (JX 4; DX R ¶¶ 7, 8 17; RT2 at 327:20—329:25, 330:1—331:8, 415:6-19, 416:25—417:19, 417:20-23, 418:15—419:1; RT3 at 521:1—522:12, 522:13-25, 524:3-6; DX Q.1 ¶¶ 7, 8, 17, Q.2 ¶¶ 7, 8, 17, Q.3 ¶¶ 7, 8, 17, Q.4 ¶¶ 7, 8, 17, Q.5 ¶¶ 7, 8, 17.) Notably, the "mutually agreeable" language was of critical importance to the Board. (RT2 at 415:3-19.)

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Had the terms of Tentative Agreement been anything other than those set forth above, that "absolutely would have altered the outcome of the Board vote." (RT2 at 418:15—419:1.)

It is these terms—and these terms alone—that were reviewed by the County Superintendent pursuant to AB 1200, and reviewed and approved by the Board on December 7, 2017. (JX 4; RT2 at 391:10-24.) Despite any contrary interpretation by SCTA, the only contract terms which can—or does—exist is that which the Board actually understood and approved. Any alternate terms cannot be valid or enforceable under Education Code section 17604 and AB 1200, because such terms and costs were not properly reviewed or approved.

On these indisputable facts, the Tentative Agreement's salary structure adjustment terms, as interpreted by SCTA, are per se invalid under Education Code section 17604 and unenforceable against the District as a matter of law. (See *Persh*, 5 Cal.App.3d at 952-53; see also *Poway Royal Mobilehome Owners Assn. v. City of Poway* (2007) Cal.App.4th 1460, 1473 ["A contract entered into by a local government without legal authority is 'wholly void,' ultra vires, and unenforceable"].) As stated in *City of Pasadena v. Estrin* (1931) 212 Cal. 231, 234, the municipality context, but directly applicable here where the District is bound by statute to certain modes of entering into binding contracts:

> It is too well settled to require an extended citation of authority that when, by charter or statute, the mode and manner in which contracts of a municipal corporation may be entered into is provided for and, as here, any other method is expressly or impliedly prohibited, no contract will be binding on the municipality unless made in the manner specified and no implied liability can arise from the benefits received thereunder; nor can the same be the subject of ratification or an estoppel in pais. [Citation.] The mode specified constitutes the measure of the power and persons dealing with a municipal corporation are chargeable with knowledge of the limitation of the authority of its officers and agents. [Citation.]

All told, these facts and applicable law under Education Code section 17604 establish the salary structure adjustment terms in the Tentative Agreement, as purportedly now understood by SCTA, were not ever approved by the Board, or by the County Superintendent under the AB 1200 process, and the only valid contract terms are those within the Tentative Agreement, as approved and understood by the Board. On this ground too, the grievance must fail.[10]

[10] Note, the *Persh* court also held that, "the principle of estoppel is not applicable to a municipal agency which has not acted in compliance with a statute which is the measure of its power," even where the plaintiff would suffer a hardship as a result. (*Persh*, 5 Cal.App.3d at 953.)

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B. It is a Contractual Impossibility to Enforce a Contract Inconsistent with Education Code Section 17604.

SCTA asks the Arbitrator to enforce terms of a contract that were not approved by the Board, and neither reviewed nor effectively approved by the County Superintendent pursuant to the AB 1200 process. In doing so, SCTA requests an award that is contrary to the District's legal obligations, and thus, a contractual impossibility.

To the extent a valid contract does exist as to the terms SCTA purports—the District maintains it does not—the District's performance of such contract would be inconsistent with the law, and thus, non-performance is excused. (See Civ. Code, § 1511.) Under Civil Code section 1511, no liability exists for breach of a contract whose performance has been made impossible by operation of law. (*Baird v. Wendt Enterprises, Inc.*, (1967) 248 Cal.App.2d 52, 56; see generally 1 Witkin, Summary of California Law, "Contracts," § 607 at 517 (8th ed. 1973).) Courts have consistently held, pursuant to Civil Code section 1511, that "a party is not required to violate the law to avoid liability for breach of contract." (*Bright v. Bechtel Petroleum, Inc.* (9th Cir. 1986) 780 F.2d 766, 772 [interpreting California law].) Moreover, government statutes and regulations cannot be varied or evaded by contract. (*Alpha Beta Food Markets, Inc. v. Retail Clerks Union Local* 770 (1956) 45 Cal.2d 764, 771.)

This legal authority is directly applicable here. Based on the discussion above, in Part III.A., to the extent SCTA claims a valid contract exists as to the terms it alleges, the District is prohibited from performing terms inconsistent with those approved by the Board under Education Code section 17604, AB 1200, and BP 3312, and by extension, such non-performance is excused under Civil Code section 1511 and applicable case law. (See *Baird,* 48 Cal.App.2d at 56; *Bright,* 780 F.2d at 772.) In other words, the District *cannot* legally pay money on a CBA where the terms of which have not been publicly disclosed under AB 1200 or approved by the Board. The District cannot be required to violate Education Code section 17604, AB 1200 or BP 3312, to avoid liability for breach of contract in this grievance arbitration. (See *Baird,* 48 Cal.App.2d at 56; *Bright,* 780 F.2d at 772.) Thus, its performance of any alleged contract terms not reviewed or approved by the Board or County Superintendent must be excused as a contractual impossibility.

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C. Assuming *Arguendo* a Valid Contract Exists, it is Properly Classified as Either an Agreement to Agree, or an Agreement to Negotiate an Agreement.

Assuming *arguendo* that a valid contract exists between the parties as to the Tentative Agreement's salary structure adjustment terms, such a contract must properly be viewed as either an "agreement to negotiate an agreement," or an unenforceable "agreement to agree," given no specifics regarding the form of the proposed new salary structure were included in the Framework Agreement or Tentative Agreement, and the parties expressly agreed to later meet, within 45 days of signing the Tentative Agreement, "to finalize a mutually agreeable adjustment to the salary schedule for 2018-2019 that does not exceed a total District expenditure of 3.5%." (JX 2.)

As a general proposition, "agreements to agree" are disfavored and largely unenforceable in California. (*Autry v. Republic Productions, Inc.* (1947) 30 Cal.2d 144, 151; *Beck v. American Health Group Internat., Inc.* (1989) 211 Cal.App.3d 1555, 1563.) Courts have reasoned: "Where any of the essential elements of a promise are reserved for the future agreement of both parties, no legal obligation arises until such future agreement is made. (*City of Los Angeles v. Super. Ct.* (1959) 51 Cal.2d 423, 433; *Copeland v. Baskin Robbins U.S.A.* (2002) 96 Cal.App.4th 1251, 1253.)

The Tentative Agreement's terms and available parol evidence confirm that essential elements of the proposed new salary re-structure were reserved for further agreement by the parties, i.e., that "[w]ithin forty-five (45) days of the Tentative Agreement's approval, the Parties agree to finalize a mutually acceptable adjustment to the salary schedule that does not exceed a total District expenditure of 3.5%, effective July 1, 2018"—as they logically, *must* have been, given no salary structure was incorporated in the Framework Agreement. (JX 2; JX 4; RT1 at 142:8-12.) Thus, if the Tentative Agreement's salary schedule adjustment terms (those in the Framework Agreement supplemented by the Item No. 6 in the November 30, 2017 email) (JX 2 at DD 435, 439) constitute an "agreement to agree" as to a new salary structure, that portion of the Tentative Agreement should be rendered unenforceable given essential terms of the agreement are wholly absent and were reserved for future determination of the parties under the full tentative agreement, including the November 30, 2017 email initialed by the parties. (JX 2 at DD 435, 439.)

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By contrast, however, California courts have carved out a critical distinction between unenforceable "agreements to agree," and an "agreement to negotiate an agreement," which is generally enforceable, and "can be formed and breached just like any other contract." (*Copeland,* 96 Cal.App.4th at 1253 ["[a] contract to negotiate the terms of an agreement is not, in form or substance, an 'agreement to agree'"].) Under an agreement to negotiate an agreement, "a party will be liable only if a failure to reach ultimate agreement resulted from a breach of that party's obligation to negotiate or to negotiate in good faith." (*Id.*) Such an obligation arises after an agreement to negotiate an agreement has been formed. (*Id.*)

Here, any "agreement to agree" as to the Tentative Agreement's salary structure adjustment terms is unenforceable, and no obligations can arise regarding the same. To the extent said terms in the Tentative Agreement represents an "agreement to negotiate an agreement," the Arbitrator may find the same enforceable and SCTA may be held to account for any failure to negotiate toward that future agreement in good faith. (See JX 2 at DD 435, 439.) The parties' communications evidencing a mutual agreement to later meet and hammer out further contractual details, after the Framework Agreement was signed—of which there are many—and then as of December 4 as memorialized in Superintendent's November 30 email, initialed by the parties and made part of the Tentative Agreement, clearly evidence that the full terms of the agreement are not contained within the four corners of the contract, and could only be determined upon further discussion between parties, and further costing out of the proposed salary structure after all variables were factored in. (JX 2 at DD 435, 439; RT2 at 362:11—362:11, 415:3-19; see also DX S ¶¶ 8, 22.) That which was before the Board on December 7, 2017 further solidifies this fact, Agenda Item 8.4 and the PowerPoint presentation to the Board each emphasized the 45-day time period in which the parties anticipated further discussions to finalize a mutually agreed upon salary structure adjustment within the 3.5% cost cap. (JX 4; JX 5; RT2 at 362:11—363:11, 416:11-20.) In fact, preceding December 7, Superintendent Aguilar explicitly explained to SCTA of the intent and plan for returning to the Board with a finally agreed-upon salary structure adjustment within the 3.5% cost parameter at a later date after December 7, 2017. (RT2 at 362:11—363:11.)

If, indeed, an "agreement to negotiate an agreement" was formed, there is no contract violation nor merit to SCTA's grievance exists. Instead, the Arbitrator should order the parties to return to the

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bargaining table to continue negotiating in good faith, to arrive upon a "mutually agreeable adjustment to the salary schedule" that "does not exceed a total District expenditure of 3.5%," as expressly contracted-for and agreed-to within the four corners of the tentative agreement. (JX 2 at DD 439.)

IV. THERE LACKS AUTHORITY FOR THE ARBITRATOR TO AWARD SCTA'S REQUESTED REMEDY BECAUSE SAID REQUEST IS INCONSISTENT WITH LAW, INCONSISTENT WITH THE TENTATIVE AGREEMENT, AND/OR NOT EXPRESSLY APPROVED BY THE BOARD.

SCTA, requests that the Arbitrator enforce the parties' Tentative Agreement approved by the Board on December 7, 2017 and incorporated into the CBA by, in part, requiring the District to "implement the union's proposed salary structure." (JX 9; RT1 at 4-12.) Yet, the parties' Tentative Agreement and associated CBA—representing the *only* valid, approved, contract between the parties—does not include the "union's proposed salary structure," nor any specific details regarding the same. (JX 2; JX 8.) SCTA thus asks the Arbitrator to reform the contract to alter its terms in a manner inconsistent with those approved by the Board, inconsistent with the parties' grievance procedures, and inconsistent with the law. SCTA's requested remedy is beyond the scope of the Arbitrator's authority.

A. An Arbitrator Lacks Authority to Enforce Contractual Provisions Not Expressly Within the Contract as Approved by the Board.

Code of Civil Procedure section 1286.2 sets forth grounds for vacating an arbitrator's award. Pursuant to subdivision (d), a court *shall vacate* the award if the arbitrator exceeded his or her powers in making the award and "the award cannot be corrected without affecting the merits of the decision upon the controversy submitted." (Code Civ. Proc., § 1286.2, subd. (d); Further, "[a]rbitrators may exceed their powers by issuing an award that violates a party's unwaivable statutory rights or that contravenes an explicit legislative expression of public policy." (*Richey v. AutoNation, Inc*. (2015) 60 Cal.4th 909, 916.) "[T]here may be exceptional circumstances justifying judicial review of an arbitrator's decision, including cases in which granting finality to an award would be inconsistent with a party's statutory rights." (*Bd. of Ed. v. Round Valley Teachers Assn.* (1996) 13 Cal.4th 269, 276, citing *Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 32.) "[J]udicial review may be warranted when a party claims that an arbitrator has enforced an entire contract or transaction that is illegal." (*Richey*, 60 Cal.4th at 917.)

As discussed above, at Part III.A., the governing board of a school district must approve a contract in order to bind a district. Per Education Code section 17604, this requirement is immutable.

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Under this authority, a school district may not be bound by any contract terms not expressly approved by the Board. (*Persh,* 5 Cal.App.3d at 952.) Here, the lack of Board approval as to *any* contract terms other than those expressly within the Tentative Agreement and understood by the Board is paramount. "An arbitrator cannot order a remedy in a public employee contract dispute if it compels payment of funds not expressly approved" by the public entity's governing body. (*Cal. Dept. of Human Resources v. Service Employees Internat. Union, Local 1000* (2012) 209 Cal.App.4th 1420, 1434.) Moreover, an arbitration award will violate public policy where it mandates a fiscal result that was not explicitly approved by a public entity's governing body. (*Id.*)

For example, where a memorandum of understanding ("MOU") with a union was silent or ambiguous as to salary ranges, and the governing body did not "explicitly approve" ranges above those set forth in the MOU, it was improper for an arbitrator to order the public entity to implement any salary increases not expressly approved by the governing body. (*Cal. Dept. of Human Resources,* 209 Cal.App.4th at 1434.) Critically, the court noted, "[t]he delegation of authority to interpret the MOUs [does] not vest the arbitrator with the power to authorize expenditures above those authorized by the [governing body]." (*Id.* at 1435.) Similarly here, the Arbitrator lacks authority to issue an arbitration award ordering implementation of salary increases not expressly approved by the District's Board.

A similar situation arose in *Department of Personnel Administration v. California Correctional Peace Officers Association* (2007) 152 Cal.App.4th 1193 ("*CCPOA*"), a related case dealing specifically with approval of a collective bargaining contract with an employee union. There, the parties' contract dispute involved elimination of a 10,000 hour cap on earned sick-leave credits. (*Id.* at 1197-98.) The union alleged the cap had been removed per the parties' agreement, although the same was not expressly reduced to writing. (*Id.*) There, where the arbitrator ordered the omitted terms should be effectively written in to the contract, the Third District Court of Appeal overturned an arbitrator's reformation of the written collective bargaining agreement as improper. (*Id.* at 1203.)

During the arbitration proceedings in *CCPOA,* the union introduced evidence of prior bargaining proposals showing discussion and likely agreement regarding elimination of the cap. (*Id.* at 1197-98.) The arbitrator ruled that the weight of the evidence showed the parties mutually agreed, off the record but at the bargaining table, to remove the 10,000–hour cap, finding the parties' agreement was

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imperfectly reduced to writing. (*Id.* at 1199.) Accordingly, the arbitrator modified the MOU to conform to what she believed was the parties' intent which, she determined, through parol evidence, was not reflected in the agreement. (*Id.*) The employer filed a petition in the superior court to vacate the arbitration award, in relevant part, because the arbitrator's decision violated public policy in that it enforced a version of the CBA that was never submitted to the governing body for approval, as required by law. (*Id.*)

In affirming the superior court's decision to vacate the arbitrator's award, the Court of Appeal noted: "[B]y reforming the written MOU in a manner that changed the provisions approved by the [governing body], the arbitrator violated the Dills Act and the important public policy of legislative oversight of employee contracts." (*Id.* at 1203.) *CCPOA* upheld the trial court's authority to vacate the award as exceeding the arbitrator's powers and against public policy because, without legislative approval, the modified collective bargaining agreement violated applicable Government Code provisions and "the important public policy of legislative oversight of employee contracts." (*Id.*)

In another case containing similarities to *CCPOA*, the dispute before arbitrator focused on whether the employer agreed in a CBA to retroactively confer "safety member" status to certain employees, thus increasing their pension benefits. (*Cal. Statewide Law Enforcement Assn. v. Dep't. of Personnel Admin.* (2011) 192 Cal.App.4th 1, 16.) The arbitrator determined it did, based on extrinsic evidence not within the parties' agreement. In its decision, the Court of Appeal found:

> [N]othing in [statute or legislative history] indicates the Legislature approved conferring the safety member retirement status retroactively to cover prior miscellaneous member retirement service credit. Such approval is necessary under [statute]. Consequently, *to the extent that the arbitrator's award mandates that the agreement be enforced without unequivocal legislative approval, it violates public policy.*

(*Id.*, emphasis added.) The court further explained, analogous to the instant arbitration:

> Simply stated, it is not sufficient that the Legislature was aware DPA could agree . . . to make the safety member retirement credit retroactive. The Legislature had to (1) be informed explicitly that DPA and CSLEA did enter into such an agreement, (2) be provided with a fiscal analysis of the cost of retroactive application of the agreement, and (3) with said knowledge, vote to approve or disapprove the agreement and expenditure . . . . Because [materials] provided to the Legislature . . . did not state that the reclassification would be applied retroactively and did not contain a fiscal analysis of the cost of the retroactive application of safety member status for all employees in Unit 7.10 we must vacate that portion of the arbitration award as violating the public policy embodied in the Dills Act.

(*Id.* at 19.)

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Here, *CCPOA* and *California Statewide Law Enforcement Association* are on point. Pursuant to the Tentative Agreement, qualified and understood in context with the District's AB 1200 Disclosure, the Board has *never* approved or ratified any salary expenditure greater than a total 11% ongoing expense into 2019-2020—including a 3.5% ongoing expense to adjust the salary schedule. The District cannot be required to expend funds which the Board did not expressly approve. For reasons stated herein and above, at Part III.A., it would be wholly improper, contrary to law and contract, and a violation of public policy for the arbitrator to add terms to the parties' Tentative Agreement in a manner inconsistent with that which was expressly reviewed, understood, and approved by the Board, and expressly reviewed and publicly disclosed pursuant to AB 1200. The law clearly establishes that such an award would fall squarely outside the arbitrator's scope of authority. This is particularly so, in light of the inflexible mandate of Education Code section 17604. (See *United Teachers of Los Angeles v. Los Angeles Unified School Dist.* (2012) 54 Cal.4th 504, 520, citing *Round Valley*, 13 Cal.4th at 287–88 ["If the matter proceeds to arbitration and results in an award that conflicts with the Education Code, the award must be vacated"].) Not only would such an award be a violation of the CBA by which the District and SCTA are bound, but would run afoul of the critical public policy of fiscal oversight embodied by the Educational Employment Relations Act, AB 1200, and Education Code section 17604, governing approval of contracts by public agencies.

B. The Arbitrator's Authority Derives From, and Is Limited by, the Parties' Agreement to Arbitrate, Set Forth Within the CBA, under Which the Arbitrator Lacks Authority to Alter the Terms of the Tentative Agreement.

Notwithstanding the rules set forth above governing the scope of an arbitrator's authority, the powers of arbitrators derive from, and are further limited by, the agreement to arbitrate, and an arbitrator is bound to give force and effect to those terms. (*Jordan v. Dept. of Motor Vehicles* (2002) 100 Cal.App.4th 431, 444, citing *Moncharsh*, 3 Cal.4th at 8; see also *Delta Lines, Inc. v. Internat. Brotherhood of Teamsters, Local 468* (1977) 66 Cal.App.3d 960, 966 [noting arbitrator derives power *solely* from the arbitration agreement and cannot exceed those derived powers].) The CBA contains clear language defining the scope of the arbitrator's authority. First, the decision at arbitration shall be limited to hearing a *grievance,* as defined by the CBA—i.e., the alleged "violation, misinterpretation or

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misapplication of a specific term of this Agreement." (JX 8 at 38 [art. 4.1.1].)[11] Second, the CBA further provides that an arbitrator "shall not render any award which conflicts with, or alters this Agreement." (JX 8 at 38 [art. 4.5.8].) Thus, the Arbitrator's authority is limited and circumscribed by the CBA. (See *Jordan*, 100 Cal.App.4th at 44.)

SCTA contends the District has "violated the Tentative Agreement" because it "refused to honor its agreement to implement the 'union's proposed salary structure.'" (JX 9; RT1 at 9:4-12.) The Arbitrator's authority is limited in deciding this grievance under the terms of the parties' grievance procedures, in several areas. First, to the extent the Tentative Agreement's salary structure terms are invalid for lack of mutual assent and/or mutual mistake, as discussed above at Part I., said terms were invalid at their inception, never became a valid part of the Tentative Agreement, and the Arbitrator lacks authority to rule on a "violation, misinterpretation, or misapplication" of the same. (JX 8 at 38 [arts. 4.11, 4.1.2.3, 4.5.8].) Further, any such award would be an improper attempt to alter or change the agreement to incorporate an invalid contract. (JX 8 at 38 [Art. 4.1.2, 4.1.2.3].)

Second, while the Tentative Agreement includes terms for the "adjustment to the salary structure – union's proposed structure," with a "3.5% maximum District expenditure" in one part, it also includes the parties' November 30, 2017 email exchange and agreement to the terms within same, which provide for "a *mutually agreeable adjustment to the salary* schedule for 2018-2019 that does not exceed a total District expenditure of 3.5%." (JX 2 at DD 439, emphasis added.) Both of these provisions equally form a part of the Tentative Agreement, with the latter as a matter of chronology inescapably modifying and/or clarifying the earlier terms. Accordingly, any decision of the Arbitrator which examines *solely* the Framework Agreement, rather than the entirety of the Tentative Agreement, is improper—it is the Tentative Agreement, in full, which forms a part of the CBA and on which action was taken by the District's Board on December 7, 2017 pursuant to Education Code section 17604, AB 1200, and BP 3312. The Arbitrator is therefore restrained from resolving this grievance in the absence of full consideration of the Tentative Agreement as a whole as approved by the Board.

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[11] See RT3 at 553:5-14 [testimony authenticating the parties' CBA grievance procedures].)

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Finally, SCTA's grievance implicitly asks the Arbitrator to alter the tentative agreement to incorporate salary structure terms neither incorporated into the Tentative Agreement, nor reviewed or approved by the Board, and to which the parties did not mutually agree, as is expressly required by the tentative agreement. (JX 2 at DD 439.) Because the salary terms SCTA alleges as true were not presented for public comment, or reviewed or approved by the Board, nor expressly included in the Tentative Agreement, they do not form a valid part of the CBA. (See JX 3; JX 4; JX 8.) To the extent SCTA requests an award addressing an alleged violation of contract terms not approved by the Board and not within the Tentative Agreement, as incorporated into the CBA, this does not constitute a violation, misapplication, or misinterpretation of the terms of the CBA, and the Arbitrator is without authority to rule. Moreover, the language of the CBA is clear on this point—the Arbitrator "shall not render any award which alters or changes this Agreement." (JX 8 at 46 [art. 4.5.8].) Any award contrary to this provision would be a direct violation of the District's and SCTA's agreed-upon and contracted-for limitation of an arbitrator's authority.

V. RESOLUTION OF SCTA'S GRIEVANCE REGARDING ATHLETIC DIRECTOR STIPENDS IS OUTSIDE THE SCOPE OF THE GRIEVANCE, OUTSIDE THE SCOPE OF THIS ARBITRATION, AND MUST PROPERLY BE BIFURCATED.

The parties' grievance procedures provide, at article 4.5.7: "Neither the District nor the grievant shall be permitted to assert any grounds or evidence before the arbitrator which was not previously disclosed to the other party." (JX 8 at 38.) Nowhere on the face of the grievance is it apparent that, by its grievance, SCTA also wishes the arbitrator to consider any issue relating to Athletic Director stipends. (JX 9.) The grievance states simply and only, as to the "specific details of the grievance": "The District, through its agents, Superintendent Jorge Aguilar, has refused to honor its agreement to implement the 'union's proposed salary structure,' and as well as refused to honor the effective date of the agreement retroactive to July 1, 2016." (JX 9.) Thus, the District was not on clear notice of this ancillary issue SCTA wishes to grieve. Similarly, in its pre-hearing brief, SCTA failed to make any mention of an issue relating to Athletic Director stipends, although it easily could have done so. SCTA thus failed to disclose this issue to the District in any fashion ahead of hearing, as required under article 4.5.7.

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Further, SCTA's limited testimony on this issue at hearing provided insufficient detail for the District to fully understand the grievance, prepare its case, and put on evidence in its defense. (RT1 at 103:20—104:7, 121:24—123:13; RT3 at 574:4—575:22.) As such, the District renews its request made at hearing that the separate issue regarding Athletic Director stipends be bifurcated from this grievance. (See RT2 at 284:4-21; 289:1-11.)

CONCLUSION

For the foregoing reasons, the District respectfully requests this grievance be denied in full and/or that the Arbitrator issue an award as follows:

1. Denying SCTA's grievance on the basis that the parties lacked mutual assent and/or committed a mutual mistake as to the meaning of the Tentative Agreement's salary structure terms, thus invalidating said terms and making them void and unenforceable; or

2. Denying SCTA's grievance to the extent SCTA asserts that the Tentative Agreement includes agreement to adoption of a proposed salary structure for which the 3.5% cost cap is removed as of the 2019-2020 school year, and ruling that any agreed upon salary structure adjustment under the Tentative Agreement is bound to an ongoing 3.5% cost cap (maximum District expenditure per year) consistent with the Board's action on December 7, 2017, Education Code section 17604, AB 1200 and BP 3312; or

3. Denying SCTA's grievance on the basis that the salary structure adjustment terms of the Tentative Agreement constitute a mere agreement to agree or an agreement to negotiate an agreement and, therefore: (a) there is no valid agreement to any salary structure adjustment terms in the Tentative Agreement and any such terms are therefore void and unenforceable; or (b) pursuant to the Tentative Agreement, the parties must continue to meet and confer to negotiate regarding a mutually agreeable salary structure adjustment constrained by an ongoing 3.5% cap (maximum District expenditure per year); and

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4. Confirming that any grievance by SCTA with regard to Athletic Director stipends is bifurcated from SCTA's salary structure grievance and, therefore, not addressed in the Arbitrator's Award.

Dated: April 2, 2019

Respectfully submitted,

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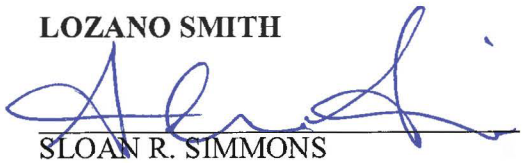

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