App. Nos. _____

IN THE SUPREME COURT OF THE UNITED STATES

JOSE MENDOZA, *et al*,

Petitioner,

vs.

AMALGAMATED TRANSIT UNION INTERNATIONAL ("ATU"), a nonprofit cooperative corporation; *et al*.

Respondents

APPLICATION FOR EXTENSION OF TIME TO FILE PETITION FOR WRIT OF CERTIORARI PURSUANT TO RULE 13(5)

Directed to the Honorable Elena Kagan, Circuit Justice for the United States Court of Appeals for the Ninth Circuit

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June 21, 2022

To the Honorable Elena Kagan, as Circuit Justice for the United States Court of Appeals for the Ninth Circuit:

Petitioner Jose Mendoza Jr. respectfully requests a 60-day extension of time to file his petition for writ of certiorari. The Ninth Circuit entered its opinion in this case on April 7, 2022 and that opinion is attached as Appendix A. The request, if granted, would extend the deadline to file from July 6, 2022, to September 4, 2022.[1] This Court has jurisdiction over the judgment of the United States Court of Appeals for the Ninth Circuit entered in this matter on April 7, 2022, pursuant to 28 U.S.C. § 1254(1). Petitioner is filing this Application more than ten (10) days before the date the petition is due. See S. Ct. R. 13.5. Petitioner requests this extension of time for the following reasons:

1. Petitioner's lead counsel brings this matter via his small general practice firm that has only one attorney that handles labor matters and is capable of drafting this complex petition. In the preceding months prior to filing this application Petitioner's counsel has had the

[1] https://supremecourtpress.com/supremecourtfilingdeadline/supremecourtfilingdeadline.php

following significant appeal briefing obligations that have prevented him from devoting time to this petition:

a. Negotiating a new Collective Bargaining Agreement between the Nevada Service Employees Union Staff Union and the Service Employees International Union Local 1107 (4/6/2022, 427/2022, 5/13/2022);

b. Draft Respondent's Brief on Direct Appeal before the Nevada Supreme Court in *Hinds v. Mueller*, No. 84077 (4/13/2022);

c. Appellant's Reply Brief on Direct Appeal before the Nevada Supreme Court in *Mueller v. Hinds*, No. 83412 (5/04/2022);

d. Appellant's Reply Brief in the Ninth Circuit Court of Appeals in *Coy Cook v. Las Vegas Resort Holdings, LLC*, 21-16831 (5/26/2022);

2. Petitioner's lead counsel is also his firm's only litigation and trial attorney and had the following litigation, discovery and trial obligations that have prevented him from devoting time to the petition:

a. Trial *State v. Davis*, 21CR039157 (5/05/2022 settled day before trial);

b. *Hoff v. Fox et al.*, A-19-797540-C case requires retrial due to disqualification of the short trial judge, discovery open and proceeding to trial;

c. *State v. Patterson*, 22CR000070 (5/24/2022 settled day before trial);

d. *Brown v. LVMPD et al*, 2.17-cv-02396 stay recently lifted Response to Defendants' Motion to Dismiss (6/17/2022);

e. *State v. Essex*, C320428 Sentencing – Memorandum (6/21/2022);

3. Finally, Petitioner's lead counsel also has a brief on direct appeal in *Evelynmoe v. Fox*, No. 84299 before the Nevada Supreme Court due on July 5, 2022;

4. This is a complex case that presents substantial and important questions of law, including: (1) a novel issue of federal preemption pursuant to the Labor Management Relations Act ("LMRA") Section 301; and (2) whether the judicial doctrine of claim splitting applies after consolidation of two related cases before the same district court.

5. A significant prospect exists that this Court will grant certiorari and reverse the Ninth Circuit on one or both of these issues. The panel's ruling on the first issue is in direct conflict with the precedent of this Court on the issue of LMRA Section 301 preemption. "[A]n application of state law is preempted by § 301 of the Labor Management Relations Act of 1947 only if such application requires the interpretation of a CBA." *See Lingle v. Norge Div. of Magic Chef*, 486 U.S. 399, 413 (1988). This narrow rule has been consistently been applied by this Court. *Id.*; *Livadas v. Bradshaw*, 512 U.S. 107, 123–24 (1994); *Hawaiian Airlines v. Norris*, 512 U.S. 246, 262-63, 114 S. Ct. 2239, 2249 (1994). Despite this clear rule that Section 301 of the LMRA preempts state law claims only if they require interpretation of a CBA, the Ninth Circuit has chosen to extend the rule to "contracts between labor unions, which may include union constitutions." *See* Appdx. A, at 11; *citing Garcia v. Serv. Emp. Int'l Union*, 993 F.3d 757, 762 (9th Cir. 2021). When ruling that union constitution claims were completely preempted, however, the Ninth Circuit ignored the clear language in this Court's LMRA precedent removing the term "CBA" and replacing it with "[labor contract]" for the purpose of expanding Section 301 preemption beyond CBAs: "'[I]t is the

legal character of a claim, as independent of rights under the [labor contract]. . . that decides whether a state cause of action may go forward." *See* Appdx. B, at 13 *quoting Livadas*, 512 U.S. at 123–24. As such, the lower court's decision is in direct conflict with prior binding decisions of this Court and thus subject to review under Supreme Court Rule 10(c).

6. The Ninth Circuit panel's ruling on the second issue regarding claim splitting is also an important federal issue in direct conflict with the decisions of two other United States Courts of Appeals on the same important matter subject to review under Supreme Court Rule 10(a). The Ninth Circuit panel ruled that despite the District Court's decision to consolidate the two cases and permit them to proceed through litigation until dispositive motions were due, the District Court did not lose its ability to apply the claim-splitting doctrine. *See* Appdx. A, at 12. The First and Second Circuit Courts of Appeals have decided this very same issue and concluded that because res judicata and claim splitting are judicially invented public policy doctrines, they only apply when the public policy concerns they were intended to address are at issue. *Bay State HMO Mgmt. v. Tingley Sys.*, 181 F.3d 174, 180 (1st Cir. 1999); *see also Devlin v. Transp. Communs. Int'l Union,* 175 F.3d 121, 130 (2d Cir.

1999). These Circuits have held that consolidation of two related cases renders the claim-splitting public policy concerns moot, and is, therefore, in direct conflict with the Ninth Circuit's ruling in this case. *Id.*

7. These two issues are also extremely complex and require significant time to prepare for cogent presentation to this Court. Other obligations have recently precluded counsel from being able to direct adequate time and attention to the preparation of a petition for writ of certiorari on Petitioner's behalf. Therefore, in light of counsel's current obligations and the importance of the constitutional issues that will be presented in this case, counsel submits that a sixty (60) day extension is necessary and appropriate in order to effectively prepare the petition for certiorari on Petitioner's behalf.

8. In accordance with Supreme Court Rule 13.5, this Application is submitted at least ten (10) days prior to the present due date. Further, the requested extension is made in good faith and not for the purposes of delay. It is respectfully submitted that counsel's duty to present all authorized claims of constitutional error with care is of equal import. Thus, it is important that counsel be granted additional time to prepare this petition.

For these reasons, Petitioner respectfully requests an extension of time to file its certiorari petition, up to and including September 5, 2022.

Respectfully submitted
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CERTIFICATE OF SERVICE

I certify that a copy of this document has been has been sent by e-mail and U.S. Mail on June 21, 2022, to:

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APPENDIX A

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOSE MENDOZA, JR., individually and as a member and representative of the Amalgamated Transit Union Local 1637, *Plaintiff-Appellant*, v. AMALGAMATED TRANSIT UNION INTERNATIONAL; JAMES LINDSAY III, individually and in his official capacity as ATU International Vice President and Trustee; LAWRENCE HANLEY, individually and in his official capacity as International Union President; ANTONETTE BRYANT, individually and in her official capacity as International Representative and Hearing Officer; TERRY RICHARDS; CAROLYN HIGGINS; KEIRA MCNETT; DANIEL SMITH; TYLER HOME, *Defendants-Appellees.*	No. 20-16079 D.C. Nos. 2:17-cv-02485-JCM-CWH 2:18-cv-00959-JCM-DJA (Consol.)

JOSE MENDOZA, JR.; ROBBIE HARRIS; ROBERT NAYLOR; MYEKO EASLEY; DENNIS HENNESSEY; GARY SANDERS; LINDA JOHNSON-SANDERS; CESAR JIMENEZ, individually and each as members and on behalf of Amalgamated Transit Union Local 1637 membership, and as majority of the Local 1637 Executive Board,
Plaintiffs-Appellants,

v.

AMALGAMATED TRANSIT UNION INTERNATIONAL; JAMES LINDSAY III, individually and as ATU International Vice President and Trustee; LAWRENCE HANLEY, individually and as ATU International Union President; ANTONETTE BRYANT, individually and as Hearing Officer; RICHIE MURPHY, individually and as International Vice President; KEIRA MCNETT, individually and as ATU Associate General Counsel; DANIEL SMITH, individually and as ATU Associate General Counsel; TYLER HOME, individually and as ATU Auditor; KEOLIS TRANSIT AMERICA INC.; KEVIN MANZANARES, individually, and as an employee of Keolis; MILLER KAPLAN & ARASE, a

No. 20-16080

D.C. No. 2:18-cv-00959-JCM-DJA

OPINION

limited liability partnership; ANN SALVADOR, individually and as an employee of MKA; ALEXANDER CHERNYAK, individually and as an employee of MKA,
Defendants-Appellees.

Appeal from the United States District Court
for the District of Nevada
James C. Mahan, District Judge, Presiding

Argued and Submitted June 11, 2021
Seattle, Washington

Filed April 7, 2022

Before: William A. Fletcher, Paul J. Watford, and Daniel P. Collins, Circuit Judges.

Opinion by Judge Collins

SUMMARY*

Labor Law

The panel affirmed the district court's dismissal of labor law claims as barred by the doctrine of claim-splitting.

These appeals arose from two overlapping suits challenging a national union's imposition of a trusteeship over one of its local unions. After discovering apparent financial malfeasance by Jose Mendoza, then president of Local 1637, the Amalgamated Transit Union ("ATU") imposed the trusteeship, thereby removing Mendoza and the other Local 1637 executive board members from office. Mendoza filed a single-plaintiff action ("*Mendoza I*") against ATU and several of its officers. Later, while that action was still pending, Mendoza filed a second, multi-plaintiff action ("*Mendoza II*") in which he and a majority of the other former executive board members of Local 1637 asserted related claims against ATU, the same ATU officers, and several other defendants.

The panel affirmed the district court's dismissal of all claims against ATU and its officers in *Mendoza II* as barred by claim-splitting. The panel held that, with respect to the claims against ATU and its officers, the additional plaintiffs in *Mendoza II* were adequately represented by Mendoza in *Mendoza I*. Because the claims against these defendants in the two cases otherwise involved the same causes of action and the same parties, the assertion of those claims in the

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

second suit (*Mendoza II*) violated the doctrine of claim-splitting.

The panel resolved remaining issues in a concurrently filed memorandum disposition.

COUNSEL

Michael J. Mcavoyamaya (argued), Las Vegas, Nevada, for Plaintiffs-Appellants.

April H. Pullium (argued) and Ramya Ravindran, Bredhoff & Kaiser PLLC, Washington, D.C., for Defendants-Appellees Amalgamated Transit Union International, James Lindsay III, Lawrence Hanley, Antonette Bryant, Terry Richards, Carolyn Higgins, Keira McNett, Daniel Smith, Tyler Home, and Richie Murphy.

Laurent R. G. Badoux (argued), Buchalter, Scottsdale, Arizona, for Defendants-Appellees Keolis Transit America Inc. and Kevin Manzanares.

Efren A. Compeán (argued) and Stephen J. Tully, Garrett & Tully PC, Pasadena, California, for Defendants-Appellees Miller Kaplan & Arase LLP, Ann Salvador, and Alexander Chernyak.

OPINION

COLLINS, Circuit Judge:

These consolidated appeals arise from two overlapping suits challenging a national union's imposition of a trusteeship over one of its local unions. After discovering apparent financial malfeasance by Jose Mendoza, then president of Local 1637, the Amalgamated Transit Union ("ATU") imposed the trusteeship, thereby removing Mendoza and the other Local 1637 executive board members from office. In September 2017, Mendoza filed a single-plaintiff action ("*Mendoza I*") against ATU and several of its officers. In May 2018, while that action was still pending, Mendoza filed a second, multi-plaintiff action ("*Mendoza II*") in which he and a majority of the other former executive board members of Local 1637 asserted related claims against ATU, the same ATU officers, and several other defendants. The district court dismissed all claims against ATU and its officers in *Mendoza II*, concluding that they were barred by the doctrine of claim-splitting. After rejecting all remaining claims in rulings on motions to dismiss or for summary judgment, the district court entered judgment in favor of Defendants. Plaintiffs timely appealed.

In this opinion, we address only the district court's ruling on claim-splitting, and we resolve all remaining issues in a concurrently filed memorandum disposition. As to claim-splitting, we hold that, under the unusual facts of this case, the district court correctly concluded that, with respect to the claims against ATU and its officers, the additional Plaintiffs in *Mendoza II* were adequately represented by Mendoza in *Mendoza I*. Because the claims against these Defendants in the two cases otherwise involved the same causes of action and the same parties, the assertion of those claims in the

second suit (*Mendoza II*) violated the doctrine of claim-splitting. We therefore affirm the district court.

I

A

Because the claim-splitting issue was raised in a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), we may "consider only allegations contained in the pleadings, exhibits attached to the complaint, and matters properly subject to judicial notice," as well as any "writing referenced in [the] complaint but not explicitly incorporated therein if the complaint relies on the document and its authenticity is unquestioned." *Swartz v. KPMG LLP*, 476 F.3d 756, 763 (9th Cir. 2007). Based on those materials, we take the following facts as true for purposes of reviewing the district court's ruling on the claim-splitting issue.

Local 1637, an affiliate of ATU, is a union in Las Vegas, Nevada that represents coach operators and mechanics. After receiving various complaints from Local 1637 members Terry Richards and Carolyn Higgins about alleged financial malfeasance by the Local's President, Jose Mendoza, the ATU on April 10, 2017 imposed a temporary trusteeship over Local 1637. The letter from ATU International President Lawrence Hanley that informed Local 1637 of the temporary trusteeship cited a variety of alleged "issues severely impacting the effective administration and functioning of Local 1637." Chief among these was the allegation that Mendoza had been overpaid in terms of his salary and vacation pay. The letter further stated that, by operation of the ATU's Constitution and General Laws ("CGL"), this "imposition of the trusteeship automatically suspends all officers and executive board members of the local union from office." ATU

International Vice President James Lindsay was designated as the trustee of Local 1637.

In May 2017, the ATU held a two-day evidentiary hearing to determine whether the trusteeship was justified and should be continued. The hearing was overseen by Antonette Bryant, an ATU representative, together with assistance from two members of ATU's General Counsel's Office, Keira McNett and Daniel Smith. Mendoza represented Local 1637 at the hearing. Mendoza presented an opening statement, sworn testimony, and a closing statement, and he submitted a post-hearing statement as well. Mendoza also cross-examined several witnesses called by ATU. Bryant concluded that the trusteeship was justified, and her conclusions were upheld by the ATU General Executive Board in June 2017. As a result, pursuant to the CGL, the board members were formally removed from their positions and the trusteeship remained in place until new officer elections were held in May 2018.

In her report explaining why the trusteeship was warranted, Bryant relied on the following five grounds, all of which exclusively or overwhelmingly rested upon malfeasance on the part of Mendoza.

First, Mendoza had been overpaid more than $140,000 over an approximately six-year period. Specifically, Mendoza's salary was at a rate of pay higher than the bylaws allowed, and he was paid for more vacation time than he was entitled.

Second, Local 1637 had failed for years to conduct required annual audits, despite ATU's specific reminders to Mendoza and the Local 1637 board. When an ATU auditor, Tyler Home, conducted a thorough accounting, he uncovered a pattern of improper expense reimbursements,

particularly to Mendoza. He also learned that Mendoza had been improperly receiving a $250 monthly advance on reimbursable expenses as well as reimbursement "for the cost of his home internet service," and that Mendoza and another local officer had made improper withdrawals of cash.

Third, Local 1637 persistently failed to achieve a quorum at its meetings, with the result that, as one ATU official put it, "Whatever the president [Mendoza] wants, the executive board goes along with." Members of the Local also complained that, at meetings, Mendoza referred to "female members in derogatory terms," such as "bitch," and that Mendoza showed "favoritism . . . toward particular officers and executive board members."

Fourth, Local 1637 persistently failed to process grievances in a timely manner, and in at least once instance there was evidence that Mendoza had held up a member's grievance to retaliate against that member's vocal criticism of Mendoza.

Fifth, Local 1637 failed to obey direct orders from ATU's leadership. In particular, Mendoza was repeatedly instructed that the position of secretary-treasurer was required to be a full-time position, but he ignored these directives. Mendoza also ignored a directive informing him that delegates to the ATU International Convention must be elected; instead, he proceeded to appoint those delegates himself. After further intervention by ATU forced the Local to back down, Mendoza still required the Local to cover the nonrefundable airfare and registration fee of a delegate he had wrongly appointed.

After the ATU board upheld the trusteeship, Mendoza's employer, Keolis Transit America, Inc. ("KTA"), made clear

that it expected Mendoza to return to work immediately. (Mendoza had been on a leave of absence from his position as a coach operator while serving as president of Local 1637.) However, in October 2016, before the trusteeship proceedings began, Mendoza was convicted of driving under the influence, which resulted in the suspension of his commercial driver's license. In response to KTA's threat to terminate him, Mendoza asked Local 1637 to file a grievance against KTA on his behalf. Pursuant to a subsequent settlement between KTA and Local 1637 (which Trustee Lindsay accepted on Mendoza's behalf but without his consent), Mendoza was offered an opportunity to resume work for KTA if he could recertify his license within five to seven days. After he failed to do so, he was terminated by KTA in 2017.

B

In September 2017, Mendoza filed *Mendoza I* in state court against ATU, Lindsay, Hanley, Bryant, McNett, Smith, and Home (the "ATU Defendants"), as well as Local 1637 members Higgins and Richards. In his complaint in that case, Mendoza challenged the imposition of the trusteeship and the removal of the executive board members on a variety of grounds, including breach of the ATU Constitution, fraudulent misrepresentation, and malicious prosecution. In its prayer for relief, the complaint sought, *inter alia*, an order declaring "that the process for placing the Local Union under trusteeship was invalid" and directing "that the trusteeship over Local 1637 be terminated, and that Mr. Mendoza and the rest of Local 1637's Executive Board be restored to their positions." ATU removed the action to federal court several days later, asserting, *inter alia*, that the breach-of-contract claims based on the ATU Constitution were "completely preempted" by § 301(a) of the Labor

Management Relations Act, 29 U.S.C. § 185(a), and therefore necessarily arose under federal law. *See Garcia v. Service Emps. Int'l Union*, 993 F.3d 757, 762 (9th Cir. 2021) (holding that § 301(a) "completely preempts state law claims based on contracts between labor unions, which may include union constitutions").

After discovery closed in *Mendoza I*, Mendoza filed *Mendoza II* in May 2018 in federal court, asserting similar claims against the same ATU Defendants.[1] This new suit, however, added seven of the former executive board members of Local 1637 as co-plaintiffs (the "Executive Board Plaintiffs"). The complaint also named several additional defendants—*viz*., KTA; Miller Kaplan & Arase ("MKA"), a firm that had audited Local 1637's finances; and several of KTA's and MTA's employees.

The ATU Defendants moved to dismiss the claims against them in *Mendoza II* on claim-splitting grounds.

[1] The operative complaint in *Mendoza II* added as a defendant an additional ATU vice president named Richie Murphy, and it dropped Higgins and Richards as defendants. The complaint alleges that Mendoza had previously asked Hanley in 2015 to bring certain charges against Murphy and that the actions ATU took against Mendoza in 2017 were in retaliation for his complaints about Murphy. This same contention had been raised and rejected during the trusteeship proceedings before ATU hearing officer Bryant, and it was also alluded to in the *Mendoza I* complaint even though Murphy was not named as a defendant there. Under these circumstances, the naming of Murphy as an additional ATU Defendant does not affect the application of preclusion or claim-splitting principles. *U.S. ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 249 (9th Cir. 1992). In any event, the *Mendoza II* complaint pleads no facts that would plausibly establish that Murphy played a role in the events in 2017 that led to the imposition of the trusteeship over Local 1637. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

While that motion was still pending, and without prejudice to its disposition, the district court ordered *Mendoza I* and *Mendoza II* to be otherwise consolidated.[2] On September 5, 2019, the district court dismissed Plaintiffs' *Mendoza II* claims against the ATU Defendants, holding that they were barred by the doctrine of claim-splitting. After the district court entered final judgment against Plaintiffs on all claims on May 4, 2020, Plaintiffs timely appealed.

II

Plaintiffs "generally have 'no right to maintain two separate actions involving the same subject matter at the same time in the same court and against the same defendant.'" *Adams v. California Dep't of Health Servs.*, 487 F.3d 684, 688 (9th Cir. 2007) (citation omitted). To determine when such improper claim-splitting is present, "we borrow from the test for claim preclusion." *Id*. Under the federal claim-preclusion principles that apply in these federal-question-based suits, the bar of claim-splitting is applicable if the second suit involves (1) the same causes of action as the first; and (2) the same parties or their privies. *Id*. at 689.[3] Reviewing de novo the district court's determination that both requirements are satisfied in this

[2] We reject Plaintiffs' suggestion that, by first consolidating *Mendoza I* and *Mendoza II*, the district court somehow lost the ability to apply claim-splitting principles. The district court made sufficiently clear, on the record, that its consolidation of the cases was subject to the then-pending motion to dismiss the portions of *Mendoza II* that were asserted to be impermissibly duplicative of *Mendoza I*.

[3] *Adams*'s expansive conception of the "same party" requirement was rejected by the Supreme Court in *Taylor v. Sturgell*, 553 U.S. 880, 904 (2008), but *Adams* remains good law for the particular points for which we cite it here.

case, *see*, *e.g.*, *Guild Wineries & Distilleries v. Whitehall Co.*, 853 F.2d 755, 758 (9th Cir. 1988), we affirm.

A

Whether two suits involve the same causes of action turns, at least in federal-question cases, on the application of the Restatement of Judgments' same-transaction test. *See* RESTATEMENT (SECOND) OF JUDGMENTS § 24 (1982); *Adams*, 487 F.3d at 689. That test directs us to consider four factors:

> (1) whether rights or interests established in the prior judgment would be destroyed or impaired by prosecution of the second action; (2) whether substantially the same evidence is presented in the two actions; (3) whether the two suits involve infringement of the same right; and (4) whether the two suits arise out of the same transactional nucleus of facts.

Adams, 487 F.3d at 689 (quoting *Costantini v. Trans World Airlines*, 681 F.2d 1199, 1201–02 (9th Cir. 1982)). Each of these factors confirms that *Mendoza I* and *Mendoza II* involve the same causes of action.

The "most important" factor is "whether the two suits arise out of the same transactional nucleus of facts." *Adams*, 487 F.3d at 689 (citations and internal quotation marks omitted). That is obviously true here: the gravamen of both suits is that, based on its findings concerning Mendoza's extensive malfeasance, ATU was able to place Local 1637 into receivership and to oust its then-existing board. And given that core overlap, it is equally obvious that the two suits involve "infringement of the same right"; that litigation of the suits would involve "substantially the same evidence";

and that continued litigation of a second suit could impair any "rights or interests" that might be established in a judgment in the first. *Id*. The fact that *Mendoza II* involves somewhat different legal theories and a somewhat broader range of related conduct and damages does not alter the underlying fundamental identity of the suits under the Restatement's same-transaction test. *See Kremer v. Chemical Constr. Corp.*, 456 U.S. 461, 481 n.22 (1982) ("Res judicata has recently been taken to bar claims arising from the same transaction even if brought under different statutes.") (citing RESTATEMENT (SECOND) OF JUDGMENTS § 61(1) (Tentative Draft No. 5, Mar. 10, 1978) (additional citations omitted)).

B

The more difficult question concerns whether the two cases involve the same parties or their privies. Ordinarily, a different set of parties—such as the additional Plaintiffs in *Mendoza II*—would be entitled to bring their own suit concerning the very same events that are the subject of an existing suit by a different plaintiff or plaintiffs. *See*, *e.g.*, *South Cent. Bell Tel. Co. v. Alabama*, 526 U.S. 160, 167–68 (1999) (claim preclusion could not be applied as between two suits brought by separate corporations challenging constitutionality of state tax in different tax years). But under the Supreme Court's decision in *Taylor*, a nonparty to a first action may nonetheless be subject to claim preclusion—and therefore also to the bar against claim-splitting—when, *inter alia*, that nonparty was "adequately represented by someone with the same interests who was a party" to the first suit. *Taylor*, 553 U.S. at 894 (simplified). Under the unique facts of this case, the district court correctly held that the Executive Board Plaintiffs were adequately represented by Mendoza in *Mendoza I*.

As the Supreme Court has explained, a nonparty is adequately represented in a prior suit when, "at a minimum: (1) [t]he interests of the nonparty and her representative are aligned; and (2) either the party understood herself to be acting in a representative capacity or the original court took care to protect the interests of the nonparty." *Taylor*, 553 U.S. at 900 (citations omitted). "In addition, adequate representation sometimes requires (3) notice of the original suit to the persons alleged to have been represented." *Id*. All three of these requirements are satisfied here.

1

First, the Executive Board Plaintiffs' interests completely aligned with Mendoza's. *Mendoza I* expressly sought to have the trusteeship terminated and to have all prior board members—including both Mendoza *and* the Executive Board Plaintiffs—be reinstated to the board. Moreover, all of the relevant claims and injuries in *Mendoza II* arose from the trusteeship that was challenged in *Mendoza I*.[4] And, as our review of the ATU hearing officer's findings

[4] The only possible exception is Plaintiffs' defamation claim, which alleges that the ATU Defendants falsely accused them of embezzlement by circulating the campaign literature of competing candidates in a subsequent board election. But that claim also rests on the asserted falsity of the underlying allegations of wrongdoing against Mendoza, and so it provides no basis for concluding that the interests of Mendoza and the Executive Board Plaintiffs were not aligned. In any event, the defamation claim cannot salvage the claims against the ATU Defendants in *Mendoza II*, because it improperly seeks to impose liability on conduct that is mandated by federal regulations governing union elections. *See* 29 C.F.R. § 452.70 (expressly stating that "a union's contention that mailing of certain campaign literature may constitute libel for which it may be sued has been held not to justify its refusal to distribute the literature, since the union is under a statutory duty to distribute the material").

confirms, the ruling upholding the trusteeship rested dispositively, if not exclusively, on misconduct committed by Mendoza. *See supra* at 8–9. Indeed, all seven of the Executive Board Plaintiffs submitted declarations in *Mendoza I* with identical language attesting to the fact that the "trusteeship was imposed *solely* to remove Jose [Mendoza] from office" (emphasis added). Given that all of the Executive Board Plaintiffs' injuries rested on the validity of the ATU Defendants' findings concerning Mendoza's misconduct, it follows that Mendoza's interests were aligned with those of the Executive Board Plaintiffs when, in *Mendoza I*, he challenged those findings, the resulting imposition of a trusteeship, and the accompanying removal of the entire board.

Furthermore, because the trusteeship was imposed as a result of Mendoza's malfeasance, as opposed to any wholly independent conduct by other individual Plaintiffs, the Executive Board Plaintiffs' claims necessarily rise and fall with Mendoza's claims—further confirming that their interests are aligned. Indeed, on every cause of action the Executive Board Plaintiffs allege, they are joined together with Mendoza and they seek relief on identical grounds.[5]

The Executive Board Plaintiffs, even after amending their complaint to add fourteen additional causes of action, make no claims that are independent of Mendoza's, and the gravamen of their shared claims is that the trusteeship, and the concomitant removal of Plaintiffs from their positions,

[5] The sixth claim in *Mendoza II*—which alleged breach of the duty of fair representation—is the sole claim that is asserted only by Mendoza. Because that claim is asserted by the same party who is the plaintiff in *Mendoza I*, it is unquestionably barred by the claim-splitting doctrine. The claim is therefore irrelevant to the analysis with respect to the Executive Board Plaintiffs.

was based on allegations that were "unsupported by evidence or facts." Thus, the Executive Board Plaintiffs' argument is that the trusteeship was wrongly imposed because Mendoza did not commit misconduct, not that they were improperly removed for alleged misconduct of their own of which they were innocent. This is also consistent with the CGL: Section 12.6 of the ATU Constitution makes clear that, once a trusteeship is imposed, individual board members are automatically suspended, and if the trusteeship is subsequently upheld after a hearing (as occurred here), those board members are automatically removed from office. Once ATU imposed a trusteeship over Local 1637 on account of Mendoza's extensive misconduct, the other board members were automatically stripped of their responsibilities, regardless of whether they, individually, committed any misconduct. And under the applicable procedures governing review of the trusteeship, the Executive Board Plaintiffs could regain their positions *only if* the imposition of the trusteeship was itself invalidated. Accordingly, the Executive Board Plaintiffs' claims concerning their ouster rise and fall with Mendoza's. Put simply, the allegations of the operative complaint in *Mendoza II* provide no basis upon which to conclude that the Executive Board Plaintiffs' interests were *not* aligned with those of Mendoza.

2

It is also clear that, in *Mendoza I*, Mendoza understood himself to be acting in a representative capacity on behalf of the other board members and that the other board members had notice that he was doing so. The second and third elements of the adequate-representation test, *see supra* at 15, are thus also satisfied here.

In *Mendoza I*, Mendoza specifically requested that, *inter alia*, the court declare that the trusteeship and the removal of Mendoza and "the rest of Local 1637's Executive Board" was unlawful—the same core remedy those board members seek in *Mendoza II*. Before the district court in *Mendoza I*, Mendoza clarified his own view of the relationship between *Mendoza I* and the claims of the Executive Board Plaintiffs in *Mendoza II* as follows (emphases added):

> Plaintiff Mendoza brought this action individually, and *on behalf of* Local 1637, of which the *Mendoza 2* Plaintiffs are members. As such, *the Mendoza 2 Plaintiffs have an interest in this case as members of Local 1637*, and this Motion will proceed by referencing the *Mendoza 1* and *Mendoza 2* Plaintiffs collectively as "Plaintiffs."

Moreover, as noted earlier, all of the Executive Board Plaintiffs themselves submitted declarations in support of Mendoza's effort to get them restored to their positions—thereby confirming, not only that they were aware of *Mendoza I*, but that they supported Mendoza's efforts in that suit on their behalf. *See supra* at 15–16. This is the rare situation in which the litigants in the two suits, despite not sharing a formal legal relationship, cannot be characterized as "'strangers' to one another." *Richards v. Jefferson Cnty.*, 517 U.S. 793, 802 (1996) (citation omitted).

III

Accordingly, we agree with the district court that Mendoza viewed himself as acting in a representative capacity in *Mendoza I* and that he was an adequate representative of the Executive Board Plaintiffs in that suit. The district court therefore properly dismissed the

duplicative claims against the ATU Defendants in *Mendoza II*.

AFFIRMED.

APPENDIX B

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RAYMOND GARCIA, as a member, and on behalf of Clark County Public Employees Association, *Plaintiff-Appellee*, and CHERIE MANCINI; FREDERICK GUSTAFSON, *Plaintiffs*, v. SERVICE EMPLOYEES INTERNATIONAL UNION; NEVADA SERVICE EMPLOYEES UNION; MARY KAY HENRY, in her official capacity as Union President; LUISA BLUE, in her official capacity as trustee, *Defendants-Appellants*.	No. 19-16863 D.C. Nos. 2:17-cv-01340-APG-NJK 2:17-cv-02137-APG-NJK

RAYMOND GARCIA, as a member, and on behalf of Clark County Public Employees Association,
Plaintiff-Appellant,

and

CHERIE MANCINI; FREDERICK GUSTAFSON,
Plaintiffs,

v.

SERVICE EMPLOYEES INTERNATIONAL UNION; NEVADA SERVICE EMPLOYEES UNION; MARY KAY HENRY, in her official capacity as Union President; LUISA BLUE, in her official capacity as trustee,
Defendants-Appellees.

No. 19-16933

D.C. Nos.

2:17-cv-01340-APG-NJK
2:17-cv-02137-APG-NJK

CHERIE MANCINI,
Plaintiff-Appellant,

and

RAYMOND GARCIA, as a member, and on behalf of Clark County Public Employees Association; FREDERICK GUSTAFSON,
Plaintiffs,

v.

SERVICE EMPLOYEES INTERNATIONAL UNION; NEVADA SERVICE EMPLOYEES UNION; MARY KAY HENRY, in her official capacity as Union President; LUISA BLUE, in her official capacity as trustee,
Defendants-Appellees.

No. 19-16934

D.C. Nos.
2:17-cv-01340-APG-NJK
2:17-cv-02137-APG-NJK

OPINION

Appeal from the United States District Court
for the District of Nevada
Andrew P. Gordon, District Judge, Presiding

Argued and Submitted October 16, 2020
San Francisco, California

Filed April 5, 2021

Before: M. Margaret McKeown and Jacqueline H. Nguyen, Circuit Judges, and Eric N. Vitaliano,* District Judge.

Opinion by Judge Nguyen

SUMMARY**

Labor Law

The panel affirmed the district court's order granting in part a union's motion to dismiss and holding that five claims brought by a union member were preempted by § 301 of the Labor Management Relations Act and were therefore "converted" into § 301 claims.

This dispute between union members and their union arose out of a trusteeship imposed on Nevada Service Employees Union (the "Local") by the Service Employees International Union (the "International"). Local member Raymond Garcia filed suit in state court against the International, International officials, and the Local's board (collectively, the "Union"), challenging the trusteeship as violating the Local's constitution, the International's constitution, and an affiliation agreement between the two organizations. The Union removed the case to federal court.

* The Honorable Eric N. Vitaliano, United States District Judge for the Eastern District of New York, sitting by designation.

** This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

The panel concluded that Garcia's claims required analysis of at least one § 301 labor contract and were therefore preempted and removable. Agreeing with other Circuits, the panel held that § 301 completely preempts state law claims based on contracts between labor unions, which may include union constitutions. The panel held that savings clauses included in the Labor Management Reporting and Disclosure Act did not repeal § 301's preemptive force. The panel held that in determining whether any state law claim is preempted and removable, the court employs a two-step analysis. First, the court determines whether the cause of action involves a right conferred by state law, as opposed to by a labor contract. If the labor contract alone creates the right, the claim is preempted and the analysis ends. Second, if the right underlying the state law claim exists independently of the labor contract, the court determines whether the right is nevertheless substantially dependent on analysis of a labor contract. Where there is substantial dependence, the state law claim is preempted by § 301.

The panel addressed the parties' remaining issues on appeal in a concurrently issued memorandum disposition.

COUNSEL

Jonathan Cohen (argued), Glenn Rothner, Eli Naduris-Weissman, and Juhyung Harold Lee, Rothner Segall & Greenstone, Pasadena, California; Evan L. James and Kevin B. Archibald, Christensen James & Martin, Las Vegas, Nevada; for Defendants-Appellants/Cross-Appellees.

Michael J. McAvoyAmaya (argued), Las Vegas, Nevada, for Plaintiffs-Appellees/Cross-Appellants.

OPINION

NGUYEN, Circuit Judge:

This dispute between union members and their union arises out of a trusteeship imposed on Nevada Service Employees Union ("the Local") by the Service Employees International Union (the "International"). Following a period of internal strife and two hearings investigating member complaints, a majority of the Local's executive board voted to request the trusteeship. Local member Raymond Garcia filed suit in state court against the International, International officials, and the Local's board (collectively, "the Union") challenging the trusteeship as violating the Local's constitution, the International's constitution, and an affiliation agreement between the two organizations. The case was removed to federal court, and the district court granted the Union's motion dismiss in part, holding that five claims were preempted by § 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185, and were therefore "converted" into § 301 claims. The consolidated plaintiffs (the "Union Members") appeal. We affirm the district court's preemption determination and its exercise of jurisdiction over the preempted claims.[1]

I. BACKGROUND

The Local is an affiliate of the International and is governed by the Local Constitution, which is generally subordinate to the International Constitution. The Local and the International are also parties to an Affiliation Agreement.

[1] Garcia's suit was consolidated with *Mancini v. SEIU*, No. 19-16934, but we deal here only with issues relevant to Garcia's claims. The parties' remaining issues on appeal are addressed in a concurrently issued memorandum disposition.

The Affiliation Agreement contains a waiver provision purporting to, in some circumstances, waive portions of the International Constitution concerning trusteeships.

After the International received numerous complaints from Local members regarding the breakdown of the Local's basic governance and democratic processes, the International ordered a hearing concerning the state of the Local. The hearing officer issued findings of fact and recommendations including a recommendation that the International place the Local into trusteeship. The Local Board met with two representatives of the International and the International's associate general counsel, and voted to request that the International place the Local into trusteeship. The International subsequently did so.

Garcia filed suit in state court against the Union. He brought seven state law claims: (1) breach of contract by the Local Board, (2) breach of contract by the International, (3) breach of the implied covenant of good faith and fair dealing by the International, (4) fraudulent misrepresentation by the International, (5) negligent misrepresentation by the International, (6) legal malpractice by the International's associate general counsel, and (7) breach of fiduciary duty by the International. After removing the case to federal court, the Union moved to dismiss Garcia's claims. The district court granted the motion in part, holding that five of the claims (Claims 2, 3, 5, 6, and 7) were preempted by § 301 of the LMRA and thus "converted" into—that is, treated as—§ 301 claims. The Union Members appeal.

II. JURISDICTION AND STANDARD OF REVIEW

We have jurisdiction under 28 U.S.C. § 1291, and we review the existence of subject matter jurisdiction de novo.

Ignacio v. Judges of U.S. Court of Appeals for Ninth Circuit, 453 F.3d 1160, 1165 (9th Cir. 2006). We review a district court's ruling on a motion to dismiss de novo. *Colony Cove Props., LLC v. City of Carson*, 640 F.3d 948, 955 (9th Cir. 2011).

III. DISCUSSION

The Union Members argue that the district court erred in exercising federal question jurisdiction over Garcia's state law claims, because § 301 of the LMRA does not preempt claims based on a union constitution. They are mistaken. Section § 301 completely preempts state law claims based on contracts between labor unions, which may include union constitutions. The district court correctly held that Garcia's claims required analysis of at least one § 301 labor contract and were therefore preempted.

A. Section 301 Completely Preempts Claims That Require Interpretation of a Union Constitution, to the Extent the Constitution is a Contract Between Unions.

State law claims that are completely preempted are removable to federal court under the complete preemption corollary to the well-pleaded complaint rule. *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392–93 (1987). This doctrine allows state law claims to be removed to federal court, even where a federal question does not appear on the face of the complaint, because "[o]nce an area of state law has been completely pre-empted, any claim purportedly based on that pre-empted state law is considered, from its inception, a federal claim, and therefore arises under federal law." *Id.* at 392; *see* 28 U.S.C. § 1331. Section 301 is one of just three federal statutes that the Supreme Court has held to "so preempt their respective fields as to authorize removal of

actions seeking relief exclusively under state law. . . ."[2] *In re Miles*, 430 F.3d 1083, 1088 (9th Cir. 2005). State law claims that fall within the area of § 301 are considered federal law claims and are preempted and removable. *Avco Corp. v. Aero Lodge No. 735, Int'l Ass'n of Machinists & Aerospace Workers*, 390 U.S. 557, 560–61 (1968); *Franchise Tax Bd. of State of Cal. v. Constr. Laborers Vacation Tr. for S. California*, 463 U.S. 1, 23–24 (1983).

Section 301(a) of the LMRA provides:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or *between any such labor organizations*, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

29 U.S.C. § 185(a) (emphasis added). "[U]nion constitutions are an important form of contract between

[2] The Union Members rely extensively on *Int'l Ass'n of Machinists v. Gonzales*, 356 U.S. 617 (1958), arguing that it creates an exception to § 301 preemption for suits filed by union members against unions in state court, particularly when the suit alleges violation of a union constitution. This argument is unavailing because *Gonzales* concerns the scope of preemption under the National Labor Relations Act ("NLRA"), not under § 301. *Farmer v. United Bhd. of Carpenters & Joiners of Am., Local 25*, 430 U.S. 290, 301 n.10 (1977) (explaining that *Gonzales* "established another exception to the general rule of [NLRA] preemption for state-law actions alleging expulsion from union membership in violation of the applicable union constitution and bylaws and seeking restoration to membership and damages").

labor organizations," *Wooddell v. Int'l Bhd. of Elec. Workers*, *Local 71*, 502 U.S. 93, 101 (1991), and therefore "a union constitution is a 'contract' within the plain meaning of § 301(a)," *United Ass'n of Journeymen & Apprentices v. Local 334*, 452 U.S. 615, 622 (1981).

We have previously held that a union member may bring suit directly under § 301 for violation of a union constitution. *Kinney v. Int'l Bhd. of Elec. Workers*, 669 F.2d 1222, 1229 (9th Cir. 1981) (citing *Stelling v. Int'l Bhd. of Elec. Workers Local Union No. 1547*, 587 F.2d 1379, 1382–83 (9th Cir. 1978)). *Kinney* and *Stelling* did not decide whether state law claims based on a union constitution are subject to § 301 preemption and removable. They are. As the text of the statute and Supreme Court authority make clear, § 301 preempts state law claims based on a union constitution to the extent the constitution is a contract between labor unions. Every court of appeals to have addressed the question agrees. *See Kitzmann v. Local 619-M Graphic Commc'ns Conference of Int'l Bhd. of Teamsters*, 415 F. App'x 714, 719 (6th Cir. 2011) (holding that state law claims based on an international constitution, district-level constitution, and affiliation agreement are preempted as those documents are labor contracts under § 301); *Wall v. Constr. & Gen. Laborers' Union, Local 230*, 224 F.3d 168, 178 (2d Cir. 2000) (finding that "for preemption purposes, the term 'labor contract' includes union constitutions" and holding claims preempted by § 301); *DeSantiago v. Laborers Int'l Union of N. Am., Local No. 1140*, 914 F.2d 125, 128 (8th Cir. 1990) (holding that because union members had "alleged claims against the Local based upon the local and international constitutions, . . those claims were preempted by section 301(a)"); *Pruitt v. Carpenters' Local Union No. 225 of United Bhd. of Carpenters & Joiners*, 893 F.2d 1216, 1219

(11th Cir. 1990) (finding that § 301 completely preempted state law claim alleging violation of union constitution).

The Union Members argue that even if § 301 once preempted state law claims alleging breach of a union constitution, Congress repealed § 301's preemptive force by including in the Labor Management Reporting and Disclosure Act ("LMRDA"), 29 U.S.C. § 401 *et seq.*, six savings clauses that operate to preserve state claims and remedies brought by union members against their unions to enforce union constitutions. But three of the clauses cited by the Union Members are entirely inapplicable,[3] and none reinvigorate state rights or remedies preempted by other federal statutes.[4] The latter point is key. The LMRDA

[3] Section 524 "saves only state criminal laws and thus cannot directly save" Garcia's state law claims. *Bloom v. Gen. Truck Drivers, Office, Food & Warehouse Union, Local 952*, 783 F.2d 1356, 1360 (9th Cir. 1986). Section 483 applies only to state law challenges to union elections and only saves claims regarding pre-election conduct, which are not at issue here. And § 501 is not a savings clause; it provides a private right of action.

[4] Section 413 preserves state law causes of action by union members seeking to vindicate the basic rights provided in the LMRDA's Bill of Rights or broader rights provided by states, which Garcia is not seeking here. *See, e.g.*, *Int'l Bhd. of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers & Helpers, AFL-CIO v. Hardeman*, 401 U.S. 233, 244 n.11 (1971). Section 523 specifically preserves state law remedies for breach of fiduciary duty and related issues—i.e., issues concerning the "responsibilities" of the union and its officers. *See Brown v. Hotel & Rest. Employees & Bartenders Int'l Union Local 54*, 468 U.S. 491, 506 (1984) (finding that § 523 "indicates that Congress necessarily intended to preserve some room for state action concerning *the responsibilities and qualifications of union officials*") (emphasis added); *Hotel Employees & Rest. Employees Int'l Union v. Nevada Gaming Comm'n*, 984 F.2d 1507, 1514 (9th Cir. 1993) (observing that "[t]he LMRDA . . . imposes qualification requirements on union officials and

contains no words repealing § 301 or its preemptive effect. "The cardinal rule is that repeals by implication are not favored." *Posadas v. Nat'l City Bank of N.Y.*, 296 U.S. 497, 503 (1936). And although "[w]here there are two acts upon the same subject, effect should be given to both if possible," *id.*, none of the LMRDA's savings clauses concern the subject of uniform interpretation of labor contracts. Even if there is topical overlap between the statutes, "[i]t is not sufficient . . . to establish, that subsequent laws cover some or even all of the cases provided for by the prior act; for they may be merely affirmative, or cumulative or auxiliary." *Id.* at 504 (quotation omitted). That is the case with the LMRA and the LMRDA: "Congress was aware that the rights conferred by the [LMRDA] overlapped those available under state law and other federal legislation, and expressly provided that these rights were to be cumulative[,]" *Grand Lodge of Int'l Ass'n of Machinists v. King*, 335 F.2d 340, 347 (9th Cir. 1964), with the new protections contained in the LMRDA overlapping and supplementing existing state and federal protections, *Brock v. Writers Guild of Am., W., Inc.*, 762 F.2d 1349, 1358 n.8 (9th Cir. 1985). The LMRDA savings clauses do not operate to repeal § 301's preemptive effect.

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expressly disclaims any intent to preempt state regulation of union officials") (citing 29 U.S.C. § 523(a)). The clause allows Garcia to bring a state law breach of fiduciary duty claim, which he did, but as explained below, his claim requires interpretation of a § 301 labor contract, triggering § 301 preemption. Finally, § 466 provides that the LMRDA's "rights and remedies" concerning trusteeships "*shall be in addition to* any and all other rights and remedies at law or in equity." 29 U.S.C. § 466 (emphasis added).

B. Garcia's Claims Were Preempted and Removable.

All that remains is to determine whether Garcia's claims were preempted. We hold that the district court was correct: Garcia's five claims were preempted by § 301 and the district court had subject matter jurisdiction over those claims.[5]

To determine whether any state law claim is preempted and removable, "we need only inquire whether [the] claim arose under section 301. . . ." *Newberry v. Pac. Racing Ass'n*, 854 F.2d 1142, 1146 (9th Cir. 1988). We employ a two-step analysis: First, we determine whether the cause of action involves a right conferred by state law, as opposed to by a labor contract. *Kobold v. Good Samaritan Reg'l Med. Ctr.*, 832 F.3d 1024, 1032 (9th Cir. 2016). If the labor contract alone creates the right, the claim is preempted and the analysis ends. *Id.* *See also Livadas v. Bradshaw*, 512 U.S. 107, 123–24 (1994) ("[I]t is the legal character of a claim, as independent of rights under the [labor contract] . . . that decides whether a state cause of action may go forward.") (internal citation omitted).

Second, if the right underlying the state law claim "exists independently" of the labor contract, we determine whether the right is "'nevertheless substantially dependent on analysis'" of a labor contract. *Kobold*, 832 F.3d at 1032 (quoting *Burnside v. Kiewit Pac. Corp.*, 491 F.3d 1053, 1059 (9th Cir. 2007)). Said differently, "in order for complete preemption to apply, the need to interpret the [labor contract] must inhere in the nature of the plaintiff's claim." *Valles v. Ivy Hill Corp.*, 410 F.3d 1071, 1076 (9th Cir. 2005)

[5] The district court also had supplemental jurisdiction over the non-preempted pendant state law claims under 28 U.S.C. § 1367.

(quotation omitted). "[T]he term 'interpret' is defined narrowly—it means something more than 'consider,' 'refer to,' or 'apply.'" *Balcorta v. Twentieth Century-Fox Film Corp.*, 208 F.3d 1102, 1108 (9th Cir. 2000). While this may be a "hazy" line, "the totality of the policies underlying § 301," including "securing the uniform interpretation of labor contracts . . . guides our understanding of what constitutes 'interpretation.'" *Id.* at 1108–09 (citation omitted). There is not substantial dependence "when the meaning of contract terms is not the subject of dispute," *Livadas*, 512 U.S. at 124, and "the bare fact that a [labor contract] will be consulted in the course of state-law litigation plainly does not require the claim to be extinguished." *Id.* If there is not substantial dependence, "the claim can proceed under state law." *Kobold*, 832 F.3d at 1033. But "[w]here there is such substantial dependence, the state law claim is preempted by § 301," *id.*, and "that claim must either be treated as a § 301 claim, or dismissed as pre-empted by federal labor-contract law," *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 220 (1985) (citing *Avco*, 390 U.S. at 557).

Garcia's claims are based chiefly on two contracts between labor organizations: the International Constitution and the Affiliation Agreement between the Local and International. *See Lathers Local 42-L v. United Bhd. of Carpenters & Joiners of Am.*, 73 F.3d 958, 961 (9th Cir. 1996) ("An agreement of affiliation between unions is a contract between labor organizations."). Interpretation of the Affiliation Agreement's waiver provision is central to all of Garcia's claims, because Garcia alleges that the Affiliation Agreement operates to (1) preserve those portions of the Local Constitution that require the Local Board to hold a special election and bar it from voting for a trusteeship, and (2) waive those portions of the International

Constitution that would allow the International to impose a trusteeship.

Garcia's breach of contract claim against the International alleges that the International breached the Affiliation Agreement's waiver provision and violated the Local's right to be free from trusteeship pursuant to the terms of the Affiliation Agreement. His breach of implied covenant of good faith and fair dealing claim alleges that the International made misrepresentations about the content of the Affiliation Agreement and the International Constitution that caused the Local Board to vote in favor of the trusteeship, breaching the covenant—a guarantee that "'derives from the contract [and] is defined by the contractual obligation of good faith,' and therefore [is] preempted to the same extent the breach of contract claim is." *Audette v. Int'l Longshoremen's & Warehousemen's Union*, 195 F.3d 1107, 1112 (9th Cir. 1999) (quoting *Allis-Chalmers*, 471 U.S. at 218) (first insertion in original). Under the first step of the two-step analysis, these claims seek to vindicate rights created solely by § 301 labor contracts and are thus preempted. *Kobold*, 832 F.3d at 1032.

Garcia's negligent misrepresentation and legal malpractice claims allege that International officials misled the Local Board regarding its rights under the Affiliation Agreement and the Local Constitution. Under the second step of the analysis, these claims are substantively, if not entirely, dependent on the interpretation of a § 301 labor contract and thus preempted. *Id.* The fact that the legal malpractice claim includes a variety of non-contract-related legal malpractice allegations, does not save the claim from preemption, although those aspects of the claim are not subsumed by § 301. *Curtis v. Irwin Indus., Inc.*, 913 F.3d 1146, 1153 (9th Cir. 2019) ("[C]laims are only preempted to

the extent there is an active dispute over the meaning of the contract terms.") (quotation omitted).

Finally, Garcia's breach of fiduciary duty claim alleges that the International had a duty to members of the Local, which it breached by making the above-mentioned misrepresentations to the Local Board. Determining the nature of the relationship between the International and Local requires interpreting the Affiliation Agreement and the International and Local Constitutions, and determining whether there was misrepresentation of contract-based rights requires the same core interpretation of § 301 labor contracts as the other claims. This claim is thus also preempted.

* * *

The district court correctly determined that five of Garcia's claims required interpretation of a § 301 labor contract, treated those claims as § 301 claims, and exercised jurisdiction over those claims.

AFFIRMED.