No. 23-___

IN THE

Supreme Court of the United States

TOREY JARRETT, *Petitioner*,
v.
SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 503, *et al*., *Respondents*.

MARGO CASH SCHIEWE, *Petitioner*,
v.
SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 503, *et al., Respondents*.

SHARRIE YATES, *Petitioner*,
v.
WASHINGTON FEDERATION OF STATE EMPLOYEES, AFSCME COUNCIL 28, *et al., Respondents*.

MARIA QUEZAMBRA, *Petitioner*,
v.
UNITED DOMESTIC WORKERS OF AMERICA, AFSCME LOCAL 3930, *et al., Respondents*.

THEODORE MENDOZA, *Petitioner*,
v.
AFSCME LOCAL 3299, *et al*., *Respondents*.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

JOINT PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

In the cases below, public sector unions directed government employers to deduct union dues from Petitioners' wages, even though they were non-union public employees who had not affirmatively consented to the deductions. Petitioners' employers continued the unauthorized deductions even after Petitioners objected.

For nearly a half century, this Court has implicitly found unions to be state actors under these circumstances, potentially liable for constitutional violations when directing the government to divert non-consenting employees' wages for union dues. Despite these decisions, and in conflict with the Seventh Circuit, the Ninth Circuit has since *Janus v. Am. Fed. of State, Cnty., & Mun. Emps., Council 31*, 138 S. Ct. 2448 (2018), consistently held that a union cannot be liable for constitutional violations under 42 U.S.C. § 1983 because a union is not a "state actor" so long as it claims to have a public employee's affirmative consent.

The questions presented are:

1. Is a state-designated exclusive representative a state actor under 42 U.S.C. § 1983 when it directs a public employer to deduct dues from non-union employees who have not affirmatively consented?

2. Are public employees' due process rights violated when the public employer diverts employees' wages to a union with no pre-deprivation procedural safeguards?

PARTIES TO THE PROCEEDINGS AND RULE 29.6 STATEMENT

Petitioners Torey Jarrett, Margo Cash Schiewe, Sharrie Yates, Maria Quezambra, and Theodore Mendoza were each Plaintiff-Appellants in the court below.

Respondents Service Employees International Union, Local 503; the Oregon Department of Administrative Services; Marion County; Berri Leslie, in her official capacity as Interim Director of the Oregon Department of Administrative Services; Washington Federation of State Employees, AFSCME Council 28, AFL-CIO; Jay Robert Inslee, in his official capacity as Governor of the State of Washington; Sue Birch, in her official capacity as the Director of the Washington State Healthcare Authority; United Domestic Workers of America, AFSCME Local 3930; Orange County; Malia Cohen, in her official capacity as State Controller of the State of California; Rob Bonta, in his official capacity as the Attorney General of California; AFSCME Local 3299; and Michael V. Drake, M.D., in his official capacity as President of the University of California, were Defendant-Appellees in the court below.

Because Petitioners are not corporations, a corporate disclosure statement is not required under Supreme Court Rule 29.6.

STATEMENT OF RELATED PROCEEDINGS

This petition arises from and is directly related to the following proceedings:[1]

1. *Jarrett v. Service Employees International Union Local 503*, 2023 WL 4399242 (unpublished), U.S. Court of Appeals for the Ninth Circuit. Judgment entered July 7, 2023.

Jarrett v. Marion County, 2021 WL 233116, U.S. Dist. Ct. Or., No. 6:20-cv-01049-MK. Judgment entered January 22, 2021.

Jarrett v. Marion County, 2021 WL 65493, U.S. Dist. Ct. Or., No. 6:20-cv-01049-MK. Findings and recommendation entered January 6, 2021.

2. *Schiewe v. Service Employees International Union Local 503*, 2023 WL 4417279, (unpublished), U.S. Court of Appeals for the Ninth Circuit. Judgment entered July 10, 2023.

Schiewe v. Service Employees International Union Local 503, 2020 WL 5790389, U.S. Dist. Ct. Or., No 3:20-cv-00519-JR. Judgment entered July 23, 2020.

Schiewe v. Service Employees International Union Local 503, 2020 WL 4251801, U.S. Dist. Ct. D. Ore., No 3:20-cv-00519-JR. Findings and recommendations entered July 23, 2020.

3. *Yates v. Washington Federation of State Employees, AFSCME Council 28, AFL-CIO*, 2023 WL 4417276

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[1] The judgments to be reviewed are combined in a single petition for a writ of certiorari pursuant to Supreme Court Rule 12.4 because they are from the same court and involve closely related questions.

(unpublished), U.S. Court of Appeals for the Ninth Circuit. Judgment entered July 10, 2023.

Yates v. Washington Federation of State Employees, 2020 WL 5607631, U.S. Dist. Ct. W.D. Wash., No. 3:20-cv-05082-BJR. Judgment entered September 16, 2020.

Yates v. Washington Federation of State Employees, 466 F.Supp.3d 1197, U.S. Dist. Ct. W.D. Wash., No. 3:20-cv-05082-RBL. Judgment entered June 12, 2020

4. *Quezambra v. United Domestic Workers of America, AFSCME Local 3930*, 2023 WL 4398498 (unpublished), U.S. Court of Appeals for the Ninth Circuit. Judgment entered July 7, 2023.

Quezambra v. United Domestic Workers of America AFSCME Local 3930, 445 F.Supp.3d 695 U.S. Dist. Ct. C.D. Cal., No. 8:19-cv-00927-JLS-JEM. Judgment entered June 3, 2020.

5. *Marsh v. AFSCME Local 3299*, 2023 WL 4363121 (unpublished), U.S. Court of Appeals for the Ninth Circuit. Judgment entered July 6, 2023.

Marsh v. AFSCME Local 3299, 2021 WL 164443, U.S. Dist. Ct. E.D. Cal., No. 2:19-cv-02382-JAM-DB. Judgment entered January 19, 2021.

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This petition arises from five cases below. Pet.App. 1a, 4a, 7a, 10a, 13a. In each case, the Ninth Circuit affirmed the district courts' dismissals of Petitioners' complaints by unpublished memorandum opinion, as reported at *Jarrett v. Service Employees International Union Local 503*, 2023 WL 4399242 (9th Cir. 2023), reproduced at Pet.App. 1a; *Schiewe v. Service Employees International Union Local 503*, 2023 WL 4417279 (9th Cir. 2023), reproduced at Pet.App. 4a; *Yates v. Washington Federation of State Employees, AFSCME Council 28, AFL-CIO*, 2023 WL 4417276 (9th Cir. 2023), reproduced at Pet.App. 7a; *Quezambra v. United Domestic Workers of America, AFSCME Local 3930*, 2023 WL 4398498 (9th Cir. 2023), reproduced at Pet.App. 10a; *Marsh v. AFSCME Local 3299*, 2023 WL 4363121 (9th Cir. 2023), reproduced at Pet.App. 13a.

JURISDICTION

The Ninth Circuit issued its memorandum decisions July 6, 2023; July 7, 2023; and July 10, 2023. Pet.App. 1a, 4a, 7a, 10a, 13a. This Court has jurisdiction under 28 U.S.C. § 1254.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Free Speech Clause of the First Amendment to the United States Constitution states in pertinent part: "Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." It is reproduced below at Appendix N, Pet.App. 113a.

The Due Process Clause of the Fourteenth Amendment to the United States Constitution states in pertinent part: "nor shall any State deprive any person of life, liberty or property, without due process of law. . ." U.S. Const. Amend. XIV §1 is reproduced below at Appendix O, Pet.App. 114a.

Oregon Revised Statute § 243.806 is reproduced below at Appendix P, Pet.App. 115a.

Revised Code of Washington § 41.80.100 is reproduced below at Appendix Q, Pet.App. 118a.

California Government Code § 1153 is reproduced below at Appendix R, Pet.App. 120a.

California Government Code § 1157.3 is reproduced below at Appendix S, Pet.App. 123a.

California Government Code § 1157.12 is reproduced below at Appendix T, Pet.App. 124a.

California Welfare & Institutions Code § 12301.6 is reproduced below at Appendix U, Pet.App. 125a.

STATEMENT OF THE CASE

In the five cases consolidated here, government employers and unions violated *Janus* by deducting full union dues from the wages of non-union public employees without their affirmative consent and forwarding the money to a union to be spent on its political speech. The employers made the unauthorized deductions pursuant to Oregon, Washington, and California statutes, as applicable to each Petitioner,[1] which grant unions exclusive control over funding their

[1] A collective bargaining agreement between the union and a public employer in one of the California cases also required the dues deductions. Pet.App. 82a; *see infra* at 7-8.

own political speech from the paychecks of union and non-union employees in bargaining units they exclusively represent. Pet.App. 115a, 118a, 120a, 123a, 124a.

By statute, these unions are empowered to certify to employers which employees' wages the government must seize and forward to the unions. The unions need not provide evidence that employees have affirmatively consented to the deductions, and employers cannot inquire into whether such consent exists. The government employers must rely exclusively on the list provided by the unions, even over an employee's objection, and must deduct union dues from employees' wages based on union instructions *even when no affirmative consent exists*, which is exactly what happened to Petitioners. Thus, even where the statute requires employee authorization, each statute establishes a policy requiring government employers to deduct union dues from non-union public employees' wages without their authorization *so long as a union instructs the government employer to make the unauthorized deductions*.

These procedures are intolerable to the First and Fourteenth Amendments, and the Ninth Circuit's failure to apply constitutional scrutiny to them stands in direct conflict with this Court's decisions.

A. Factual Background

Oregon Petitioners Torey Jarrett and Margo Cash Schiewe

Oregon Revised Statute § 243.806(7) grants unions exclusive control over government dues deductions from the wages of Oregon's public employees by empowering unions to "provide to each public employer a list identifying the public employees" who

have purportedly authorized the deductions, and requiring government employers to "rely on the list" – and only the list – provided by the unions.[2]

Oregon government employers deducted union dues from the wages of non-union Petitioners Torey Jarrett and Margo Cash Schiewe pursuant to this statute even though their state-appointed exclusive representative, Service Employees International Union, Local 503 ("SEIU 503"), instructed their employers to make the deductions *without their affirmative consent*. Neither Petitioner *ever* joined the union or authorized dues deductions throughout their employment. Ms. Jarrett specifically refused to sign the membership agreement presented by union representatives at the front door of her home. Pet.App. 17a. Similarly, Ms. Cash Schiewe strongly disagreed with SEIU 503's political speech and refused to join the union from the first day of her employment. Pet.App. 32a. Despite this, as directed by SEIU 503 and Or. Rev. Stat. § 243.806,

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[2] Or. Rev. Stat. § 243.806 also incentivizes government employers to "look the other way" regarding whether employees consented to the deductions by (i) granting immunity to public employers that make unauthorized deductions in reliance on the union's list, *id*. at § 806(8)(a), (ii) requiring unions to defend and indemnify employers for unauthorized deductions made in reliance on the union's list, *id*. at § 806(8)(b), and (iii) making employers liable to the unions if they *fail* to make deductions pursuant to the unions' lists, *id*. at § 806(9). Pet. App. 115a – 117a. The statute also detaches the payment of union dues from union membership, thus requiring all "authorizations" to require the payment of nonmember fees after an employee resigns membership. *id*. at § 806(4)(b). Pet.App. 115a. Finally, the statute deprives objecting employees of a court forum in which to vindicate their rights and limits their possible damages to only "actual damages in an amount not to exceed the amount of the unauthorized deductions." *id*. at § 806(10). Pet. App. 117a.

their government employers deducted full union dues from the nonmembers' wages as forced-fee payers prior to *Janus* and continued to do so *after Janus* despite their lack of affirmative consent. Pet.App. 17a, 33a.

After *Janus*, Petitioners learned of their constitutional rights and objected to SEIU 503's unauthorized imposition of dues deductions. In response, the union produced forged membership cards which contained limited opt-out windows and continued to instruct Ms. Jarrett's and Ms. Cash Schiewe's employers to deduct union dues from their wages. Petitioners' employers continued to make the *unauthorized* deductions over their objections pursuant to Or. Rev. Stat. § 243.806(7) ("A public employer shall rely on the list to make the authorized deductions and to remit payment to the labor organization."). Pet.App. 116a. SEIU 503 continued to instruct Ms. Jarrett's employer to make the deductions for three more months until Ms. Jarrett retained an attorney who demanded the union stop the deductions. SEIU 503 continued to instruct Ms. Cash Schiewe's employer to make the deductions for nine more months until Ms. Cash Schiewe retained counsel and filed a lawsuit. SEIU 503 never offered to refund the money deducted from their paychecks without their affirmative consent. Pet.App. 18a, 34a.

Washington Petitioner Sharrie Yates

Washington Revised Code § 41.80.100 grants unions exclusive control over government deduction of union dues from the wages of Washington's public employees by empowering unions to provide "certified" lists of employee names who have supposedly authorized such deductions, *id*. at § 100(1), and requiring government employers to "rely on information provided by the exclusive bargaining representative regarding the

authorization and revocation of deductions," *id*. at § 100(2)(g). Pet.App. 119a. The statute requires the employers to make the deductions upon mere "notice" from unions without any evidence of actual employee consent. *Id*. at § 100(2)(c). Pet.App. 118a.

Sharrie Yates' government employer deducted union dues from her wages pursuant to this statute even though her state-designated exclusive representative, Washington Federation of State Employees, AFSCME Council 28 ("WFSE"), instructed her employer to make the deductions *without her affirmative consent*. Pet.App. 60a. Ms. Yates initially became a union member upon first being hired by signing a membership card which contained no restriction on when she could resign her membership and stop dues deductions. However, she resigned her union membership and objected to further dues deductions upon learning of her rights after this Court's *Janus* decision. This made her a nonmember. In response, WFSE produced a forged version of a more recent membership card which contained a limited opt-out window and continued to instruct Ms. Yates' employer to deduct dues from her wages for nine more months. Her government employer continued to make the *unauthorized* deductions pursuant to the procedure established in Wash. Rev. Code § 41.80.100(2)(g) ("The employer shall rely on information provided by the exclusive bargaining representative regarding the authorization and revocation of deductions."). Pet.App. 119a. WFSE waited to instruct Ms. Yates's employer to stop the deductions until immediately before she filed her lawsuit. WFSE never offered to refund the money deducted from her paycheck without her affirmative consent. Pet.App. 60a.

California Petitioners Maria Quezambra and Theodore Mendoza

Petitioner Maria Quezambra is a partial-public employee working as an in-home health care provider in Orange County who provides care for her disabled daughter. Pet.App. 81a. Ms. Quezambra's wages are funded by her daughter's Medicaid benefits. Orange County agreed in Art. 2, Sect. 2 of its Memorandum of Understanding ("MOU") with Ms. Quezambra's state-designated exclusive representative, United Domestic Workers, AFSCME Local 3930 ("AFSCME 3930"), to deduct all dues and fees as "required by the Union" – which is the procedure mandated by California Government Code § 1157.12(a) ("Public employers. . .shall [r]ely on a certification from any employee organization requesting a deduction. . .").[3] Pet.App. 124a.

California's state controller deducted union dues from Ms. Quezambra's wages pursuant to this statutory scheme even though Ms. Quezambra *never* joined the union or authorized dues deductions throughout her time as a provider. Despite this lack of affirmative consent to membership and dues deductions and as directed by AFSCME 3930, the state controller deducted full union dues from her wages as a forced fee payer prior to *Janus* and continued to do so *after Janus* pursuant only to the MOU and California law. Pet.App. 84a.

After *Janus*, Ms. Quezambra learned of her constitutional rights and objected to AFSCME 3930's imposition of dues deductions. AFSCME 3930 maintained Ms.

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[3] Cal. Welf. & Inst. Code § 12301.6(i)(2), requires the state controller to "make any deductions from the wages of" partial-public in-home supportive services providers "that are agreed to by [the] public authority in collective bargaining with the designated representative" of the providers. Pet.App. 125a.

Quezambra's union membership and continued to instruct Orange County to deduct union dues from her wages after her objection.[4] After two months of Ms. Quezambra's attempts to resolve the matter with AFSCME 3930, the union eventually instructed the state controller to stop the deductions, and *then* produced a forged membership card to justify the past unauthorized deductions. Ms. Quezambra filed her lawsuit after another month of failed settlement negotiations. Pet. App. 83a – 84a.

Similarly, Petitioner Theodore Mendoza fell victim to Cal. Gov't Code § 1157.12's delegation of exclusive control over government deductions from his paycheck to his state-appointed exclusive representative, AFSCME Local 3299, which instructed his employer to deduct union dues from his wages *without his affirmative consent*.[5] Pet. App. 110a. Mr. Mendoza initially joined the union when he began his government employment in 2001, when he signed a union membership card that did not restrict when he could resign membership and stop deductions. He did so because a union representative told him he had to join. However, Mr. Mendoza resigned his union membership and objected to dues deductions after learning of his *Janus* rights. Similar to the other Petitioners, the union then produced a forged membership card which contained a limited opt-out window and continued to instruct his employer

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[4] The statute prohibits government employers from honoring the wishes of individual employees who object to dues deductions, and requires unions to indemnify government employers against liability incurred for unauthorized deductions in reliance on unions' certifications. Cal. Gov't Code § 1157.12(a)-(b). Pet.App. 124a.

[5] Petitioner Mendoza is the only Appellant in *Marsh v. AFSCME, Loc. 3299*, 2023 WL 4363121 (9th Cir.), to appeal the Ninth Circuit's decision. Pet.App. 110a.

to deduct union dues from his wages as a nonmember until that window arrived four months later. Mr. Mendoza's employer continued the unauthorized nonmember deductions pursuant to Cal. Gov't Code § 1157.12(a)-(b). Pet. App. 124a. While AFSCME 3299 did offer a partial refund to Mr. Mendoza after he filed this lawsuit, he rejected the proposed settlement.

B. Proceedings below

Each Petitioner filed suit seeking damages for violation of his or her First Amendment free speech rights this Court recognized in *Janus*. Petitioners, except Ms. Quezambra, also brought a Fourteenth Amendment procedural due process claim challenging the lack of "procedural safeguards" in the statutes which empowered their respective unions to exclusively control their government employers' deduction of union dues from their paychecks without clear and compelling evidence of affirmative consent. Ms. Cash Schiewe also sought to enjoin her employer's ongoing deduction of union dues from her wages, while the remaining Petitioners sought injunctive relief to prevent future unauthorized dues deductions.[6]

In each case, the Ninth Circuit issued a summary unpublished memorandum opinion in which it affirmed lower courts granting Defendants'-Respondents' motions to dismiss based on Fed. R. Civ. Proc. 12(b)(1) and (b)(6). Pet.App. 1a, 4a, 7a, 10a, 13a. The Ninth Circuit condoned the unions' conduct, as well as the governments' statutory procedures, as involving no constitutional violation. The Ninth Circuit declined to apply *any* constitutional scrutiny at all to these actions because it held that the unions were not "state actors." It

[6] Petitioners also brought various state law claims.

further held that the government employers – acting pursuant to statutes – complied with due process when taking employees' lawfully earned wages with neither their affirmative consent nor any pre-deprivation process to challenge the unauthorized deductions.[7]

Specifically, in each case, the Ninth Circuit cited either *Belgau v. Inslee*, 975 F.3d 940, 946-49 (9th Cir. 2020), *cert. denied*, 141 S.Ct. 2795 (2021), or *Wright v. Serv. Emps. Int'l Union Loc. 503*, 48 F.4th 1112, 1121-25 (9th Cir. 2022), *cert. denied*, 143 S.Ct. 749 (2023), or both, for the proposition that a union is "not a state actor when it notifie[s] the State to deduct dues, even if there was a forgery in the union membership process." *Quezambra*, 2023 WL 4398498, at *1, Pet.App. 11a. *See also Jarrett*, 2023 WL 4399242, at *1 ("The district court properly dismissed the civil rights claims alleged against the union because the union was not a state actor."), Pet. App. 3a; *Cash Schiewe*, 2023 WL 4417279, at *1 ("The union was not a state actor when it provided the dues authorization to the state employer, even if the authorization was fraudulent."), Pet.App. 6a; *Yates*, 2023 WL 4417276, at *1 ("The union was not a state actor when it certified that the employee had entered into a private agreement to pay dues, even if the authorization

[7] The Ninth Circuit dismissed Petitioner Cash Schiewe's prospective claim for injunctive relief against her employer for mootness because her employer stopped its deductions pursuant to the union's instructions immediately after Ms. Cash Schiewe filed her lawsuit. *Schiewe*, 2023 WL 4417279. Pet. App. 5a. The Petitioners' remaining claims for injunctive relief against the employers were dismissed for lack of standing since their employers stopped their deductions pursuant to the unions' instructions before Petitioners filed suit. The Ninth Circuit also declined to exercise supplemental jurisdiction over their state law claims. Petitioners do not appeal these rulings.

was fraudulent."), Pet.App. 9a; and *Marsh*, 2021 WL 164443, at *1 ("The union was not a state actor when it certified to the state employers that plaintiffs had agreed to pay dues."), Pet.App. 15a.

REASONS FOR GRANTING THE PETITION

The Court should grant the petition for the following reasons:

First, the decisions below conflict with this Court's decisions. The Ninth Circuit ignores this Court's long history of applying constitutional scrutiny to unions under 42 U.S.C. § 1983 when they direct government employers to make deductions from non-union employees' wages to fund their political speech without employees' affirmative consent. The Ninth Circuit's decision to eschew such scrutiny because unions are not "state actors" conflicts with this precedent and allows unions to control government payroll deduction systems with no constitutional accountability to employees.

Second, the Ninth Circuit's holding regarding "state action" conflicts with Seventh Circuit precedent, consistent with this Court's decisions in *Janus* and its predecessors, that unions using state statutory authority to control government payroll deductions are state actors when doing so. *Janus v. AFSCME Council 31,* 942 F.3d 352, 361 (7th Cir. 2019) ("*Janus II*").

Third, the Ninth Circuit's decisions conflict with this Court's decisions regarding the process due to public employees when taking their property, *Sniadach v. Fam. Fin. Corp. of Bay View*, 395 U.S. 337 (1969), causing irreparable harm. *Elrod v. Burns*, 427 U.S. 347, 373 (1976); *see also Chicago Teachers Union, Loc. No. 1 v. Hudson*, 475 U.S. 292, 309 (1986). The Ninth Circuit condoned the governments' deprivation of Petitioners' liberty and property interests using

statutory procedures bereft of the safeguards that this Court has long held to be constitutionally required in Petitioners' circumstances.

Finally, the matters presented in this petition are exceptionally important, and these cases are the ideal vehicle through which to address the questions presented.

I. The decisions below conflict with this Court's well-established precedent requiring application of constitutional scrutiny to unions that instruct government employers to deduct union dues from the wages of non-union employees who have not affirmatively authorized the deductions.

This Court has a long history of applying constitutional scrutiny to exclusive representatives when they use a statutory procedure to instruct government employers to deduct union dues from the wages of non-consenting public employees to fund their political speech. *Janus*, 138 S.Ct. at 2448; *Harris v. Quinn*, 573 U.S. 616 (2014); *Knox v. SEIU, Loc. 1000*, 567 U.S. 298 (2012); *Hudson*, 475 U.S. at 305-07; *Ellis v. Bhd. of Ry., Airline & S.S. Clerks, Freight Handlers, Exp. & Station Emps.*, 466 U.S. 435 (1984) (state action in the private sector); *Abood v. Detroit Bd. of Educ.*, 431 U.S. 209 (1977).

This scrutiny makes sense, given it was necessary to address a pattern of "practical problems and abuse," *Janus*, 138 S.Ct. at 2460, perpetrated by unions that this Court spent four decades policing piecemeal. *See, e.g., Harris*, 573 U.S. at 645 (prohibiting a union from charging agency fees to partial-public employees); *Knox*, 567 U.S. at 312 (prohibiting a union from charging a special political assessment to objecting nonmembers and requiring them to opt out of its

payment); *Hudson*, 475 U.S. at 309 (prohibiting a union from enforcing an inadequate procedure to handle nonmember objections to calculation of agency fee); *Ellis*, 466 U.S. at 444, 457 (prohibiting a union from exacting an involuntary loan from nonmembers and charging for nonchargeable expenses); *Abood*, 431 U.S. at 235-36 (prohibiting a union from requiring nonmembers to pay a full dues-equivalent charge funding political expression).

Janus represents what was supposed to be the last straw: this Court's attempt to finally end the abuse perpetrated by unions under an *Abood* regime that unions manipulated and benefited from for decades. *Janus*, 138 S.Ct. at 2460. To that end, this Court went well beyond simply prohibiting agency fees; it established a "clear and compelling" affirmative consent standard to be applied prospectively before agency fees or "*any* other payment" to unions may be "deducted from a nonmember's wages. . ." as well as "*any other attempt* . . . to collect such a payment." *Janus*, 138 S.Ct. at 2486 (emphasis added).

While states and unions generally rescinded agency fee schemes after *Janus*, they raised new schemes that nonetheless compel nonmembers to pay union dues without their affirmative consent.[8] However, a

[8] *See*, *e.g.*, *Kurk v. Los Rios Classified Emps. Ass'n*, 2022 WL 3645061 (9th Cir. Aug. 24, 2022) (using state statutes and CBAs to restrict an employee's right to resign union membership in perpetuity); *Wright*, 48 F.4th 1112 (9th Cir. 2022) (forging a nonmember employee's signature on a union membership card after she objects to a government employer's unauthorized deduction of union dues from her wages); *Belgau*, 975 F.3d 940 (9th Cir. 2020) (charging full dues to nonmembers, who have resigned union membership, using state statutes that do not require "clear and compelling evidence" of a waiver).

common thread exists at the core of each new statutory framework: the wholesale delegation of a government employer's payroll dues deduction system exclusively to the unions. These laws prevent an employee from even seeing her paycheck until after the union has dipped into the money at its own discretion. In practice, this extends a union's exclusive representation, already "a significant impingement on associational freedoms that would not be tolerated in other contexts," *Janus* 138 S.Ct. at 2478, to the paychecks of the entire bargaining unit – members *and* nonmembers – because employers must rely exclusively on a union's certification when determining who has and has not affirmatively authorized the deductions.[9] There is nothing an objecting nonmember employee can do to stop the employer's deductions other than seek injunctive relief from a court.[10]

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[9] Petitioners do not challenge the constitutionality of exclusive representation; nor do Petitioners argue here that states *cannot* delegate control of government employers' dues deductions to unions. Petitioners only argue that unions are "state actors" potentially liable under 42 U.S.C. § 1983 to the extent they control government payroll deductions to fund their political speech from employees' wages. If successful before this Court, Petitioners would still have to show Respondents did not acquire authorization to the deductions. (Or, if the burden of proving a waiver is put on Respondents, Respondents would need to show they had authorization.)

[10] The Oregon statute deprives employees of access to courts entirely by requiring objecting employees to go to the State's employment relations board. Or. Rev. Stat. § 243.806(10). Pet. App. 117a.

Instead of applying constitutional scrutiny to these unauthorized government paycheck deductions dictated by unions, as this Court has done for decades, the Ninth Circuit shields these new compelled-dues schemes from constitutional scrutiny *entirely* by concluding that the unions are not "state actors" when they "certif[y] to the employer the amount" to be "automatically deducted from a nonmember's wages. . ." *Janus,* 138 S.Ct. at 2486.[11] This has led the Ninth Circuit to characterize union-directed government dues deductions in a number of ways which conflict with this Court's decisions.

First, this Court explicitly stated that "having [union] dues and fees deducted directly from employees' wages" is a "special privilege[]" granted to unions by state law. *Id*. at 2467. Thus, the Ninth Circuit's continued insistence that those deductions do *not* constitute a "right or privilege created by the State" explicitly conflicts with this Court's clear statement to the contrary. *Belgau*, 975 F.3d at 946; *see also Wright*, 48 F.4th at 1122-23. Similarly, the Ninth Circuit's holding that the deductions are merely "ministerial" or "administrative,"[12] also conflicts with this Court's

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[11] The question of state action in the context of a government employer's deduction of union dues from its employee's wages is also relevant in another case this Court is currently considering for review: *State v. Alaska State Emps. Ass'n/Am. Fed'n of State, Cnty. & Mun. Emps. Loc. 52, AFL-CIO*, 529 P.3d 547 (Alaska 2023). *See* Case No. 23-179. In that case, the question arises whether a *government* deducting money from its employees' wages on a union's behalf is a "state actor." Here, Petitioners argue that *unions* are "state actors" when they jointly participate with a government employer's union dues deductions.

[12] *See Belgau*, 975 F.3d at 948 ("At best, Washington's role in the allegedly unconstitutional conduct was ministerial processing of payroll deductions pursuant to Employees' authorizations.");

observation in *Janus* that government deduction of union dues directly from employees' paychecks is part of a package of privileges and benefits granted by law to unions that give them "tremendous[. . .]power" which "greatly outweighs" any extra burden placed on unions (as state actors) that requires them to protect nonmembers' rights. *Janus*, 138 S.Ct. at 2467. *See also infra* at 19-20.

Second, the Ninth Circuit failed to acknowledge that the statutory procedures in the cases below are identical in substance to Illinois' procedure in *Janus*. They all empower unions to "certif[y] to the employer the amount" to be "automatically deducted from a nonmember's wages. . ." *Id*. at 2486. This was state action in *Janus*, *see infra* at 19-20; it should be state action here. "No form of employee consent [was] required" by the Illinois statute in *Janus*. *Id*. The same is true here *in practice* since the Oregon, Washington, and California statutes privilege the union's statutory right to control the deductions over a nonmember employee's constitutional right to authorize those deductions. *See supra* at 3-8. Here the government employers deducted union dues from Petitioners' wages *without* affirmative consent and even over Petitioners' objections, pursuant to statutory provisions requiring the employers to rely exclusively on the unions' certifications. *Id*. Thus, in practice, here, as in *Janus*, "[n]o form of employee consent was

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Wright, 48 F.4th at 1123 ("providing a machinery for implementing the private agreement by performing an administrative task does not render the State and [union] joint actors." (cleaned up.)).

required" before employers deducted dues from Petitioners' wages. 138 S.Ct. at 2486.[13]

Third, the Ninth Circuit's decision to decline constitutional scrutiny of the dues deduction procedures here creates two additional related conflicts. The statutes require government employers to privilege a union's *statutory* right to direct a state's deduction of union dues over an individual employee's *constitutional* right to authorize such deductions. Thus, the latter right becomes a mere pretext at least to the extent that (i) the statute presumes nonmember employees have waived their right as nonmembers to pay nothing to a union, which conflicts with *Janus'* affirmative consent standard, 138 S.Ct. at 2486 ("By agreeing to pay, nonmembers are waiving their First Amendment rights, and such a waiver cannot be presumed."), and (ii) unions are able to, at the least, extract involuntary loans from nonmembers to spend on political speech until individual employees can navigate the extensive procedures necessary to be reimbursed in the form of money damages, which conflicts with *Knox*, 567 U.S. at 317 (". . .the First Amendment does not permit a union to extract a loan from unwilling nonmembers even if the money is later paid back in full.").[14]

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[13] From *Janus* all the way back to *Abood*, this Court held compelling non-consenting employees to fund a union's express political activity, even temporarily, violated the Constitution. While *Janus* extended the rule that union political activity included bargaining over wages, hours, and working conditions, unions have *never* been able to compel funding for its partisan political activity under this Court's precedent. Yet each union below *did* compel full dues, including funding union partisan political activity, and so far, has gotten away with it.

[14] Employees are the only parties in this state-compelled union-employee relationship whose constitutional rights are at stake. *See Davenport v. Washington Educ. Ass'n*, 551 U.S. 177, 185 (2007)

Finally, the Ninth Circuit's position that unions are not state actors when they direct government employers to seize employees' money conflicts with the principle that "something more" than the "participation" of a private party "with state officials in the seizure of disputed property. . ." is *not* necessary to be a "state actor." *Lugar v. Edmondson Oil Co., Inc*., 457 U.S. 922, 941-42 (1982). The Oregon, Washington, and California statutes here privilege a union's right to direct government payroll deductions over an employee's right to affirmatively authorize such deductions, creating "a system whereby state officials will attach property on the *ex parte* application of one party to a private dispute." *Id.* at 942. A union is a state actor to the extent it participates in this procedure, as the union was in *Janus* when it "certified to the employer the amount of the fee" to be "automatically deducted from a nonmember's wages." *Janus*, 138 S.Ct. 2486. *See also infra* at 19-20.

The government deductions of money from Petitioners' wages in the instant cases are no longer explicitly labeled "agency fees," but they are nonetheless equally compelled because they are without affirmative consent. The substance of the deductions matters more than the label on the deductions. The compelled union payments in Petitioners' cases are the closest thing to the *Janus* fact pattern this Court will see in a post-*Janus* world where explicit agency fees are prohibited. In other words, if *Janus'* affirmative consent standard

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(unions have no constitutional entitlement to employees' wages). The legislatures' privileging of unions' statutory rights over employees' constitutional rights, therefore, conflicts with the principle that the risk of paying too much or too little should be borne by "the side whose constitutional rights are not a stake." *Knox*, 567 U.S. at 321.

does not apply here, it applies *nowhere*. The deductions here are the exact type of deductions that courts should subject to constitutional scrutiny under prospective application of *Janus*' affirmative consent standard.

The Ninth Circuit's decisions below eschew such constitutional scrutiny and conflict with this well-established precedent.

II. The decisions below conflict with Seventh Circuit precedent that is consistent with this Court's decisions in *Janus* and its predecessors.

The Seventh Circuit acknowledged the obvious in *Janus* on remand when it expressly held AFSCME Council 31 to be a state actor because it "made use of state procedures with the overt, significant assistance of state officials" to obtain portions of employee wages. *Janus II,* 942 F.3d at 361. Under Illinois law, the union was a "joint participant with the state in the agency-fee arrangement" by certifying to the employer which employees' wages should be seized (and how much) and receiving the money to spend on political speech. *Id*.; 5 Ill. Comp. Stat. Ann. § 315/6(e). The Seventh Circuit's analysis did no more than spell out what this Court already implied by applying constitutional scrutiny to the union's joint participation in the "arrangement" with the state before it remanded the case. *Janus*, 138 S.Ct. at 2486 ("Under Illinois law, if a public-sector collective-bargaining agreement includes an agency-fee provision *and the union certifies to the employer the amount of the fee*, that amount is automatically deducted from a nonmember's wages. No form of employee consent is required. This procedure violates the First Amendment and cannot continue." (Emphasis added.)).

Since there was no union conduct in the "arrangement" between the union and the government *other* than the union's certification, *Janus II*, 942 F.3d at 361, and there were no other defendants in the case (Mark Janus' claims against the State had already been dismissed), the Seventh Circuit would have had to dismiss Mark Janus' claim against the union if the union were *not* a state actor by virtue of this certification. Had it ruled this way, the Seventh Circuit would have effectively "underruled" this Court's *Janus* decision, forcing Mark Janus to appeal the Seventh Circuit's decision on remand back to this Court to request that this Court *explicitly* hold what has been implicitly obvious for decades: a union is a "state actor" potentially liable under 42 U.S.C. § 1983 when it "certifies to the employer the amount of the fee" to be deducted from employees' wages. *Janus*, 138 S.Ct. at 2486.[15] If, alternatively, the Ninth Circuit's state action analysis is correct, this Court would have to hold that the union in *Janus* was not a state actor, undermining any rationale for this Court's application of constitutional scrutiny to union conduct from *Abood* through *Janus*.

The Ninth Circuit's conclusion that unions are not state actors potentially liable under 42 U.S.C. § 1983 to the extent they control government payroll deductions to fund their political speech from employees' wages conflicts with the Seventh Circuit's correct holding to the contrary.

[15] This is the exact holding Petitioners seek from this Court.

III. The decisions below conflict with this Court's well-established precedent requiring government employers to provide procedural protections before an employee is deprived of liberty or property interests.

It is well-enshrined in this Court's precedent that in the circumstances presented here, the government must provide minimal procedural protections before an employee is deprived of liberty or property interests. *Hudson*, 475 U.S. at 309 (such procedures must "minimize the risk" that a non-union employee's wages "might be used for impermissible purposes," even on a temporary basis). The Ninth Circuit's failure to subject the statutory systems at issue here to at least minimal constitutional procedural requirements conflicts with this precedent.[16]

The statutes at issue confer on unions total and exclusive control of government procedures for authorizing and rescinding government dues deductions from every employee in the bargaining unit beginning the moment they are hired. This effectively makes unions exclusive representatives for employees over the matter of union dues authorization, giving a union the right to speak to the government on behalf of employees regarding dues authorization and depriving employees of

[16] In *Hudson*, this Court acknowledged that non-union employees must be afforded procedural safeguards before their money is taken and forwarded to unions, whether under the First Amendment or procedural due process principles. 475 U.S. at 303 n.12. Here, the Ninth Circuit's holding that nonmembers are entitled to *no* procedural protections conflicts with this precedent. Petitioners possess procedural rights, whether this Court applies them through the First Amendment or the due process clause, or both.

a meaningful right to object. It is indisputable that these statutory procedures provided Petitioners with *zero* protections against the possibility they could be compelled to support political speech they find objectionable. This is true not only because unions are obviously unfit to provide such protections, *see Gibson v. Berryhill*, 411 U.S. 564, 579 (1973) (disqualifying bias is most plainly evident when the decision-maker has a "substantial pecuniary interest" in the result), but because the neutrality requirement itself is intended to prevent the very action for which the unions are responsible. *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980) ("[N]eutrality in adjudicative proceedings safeguards the two central concerns of procedural due process, the prevention of unjustified or mistaken deprivations and the promotion of participation and dialogue by affected individuals in the decisionmaking process.").

Petitioners of course possess a property interest in their wages, but here the government's obligation to provide sufficient due process takes on added significance because public employees must be protected from the irreparable harm caused by the compelled union speech this Court found so objectionable under the First Amendment in *Janus*. *See Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940) ("The fundamental concept of liberty embodied in [the Fourteenth Amendment] embraces the liberties guaranteed by the First Amendment."); *Elrod*, 427 U.S. at 373 ("The loss of First Amendment freedoms for even minimal periods of time unquestionably constitutes irreparable injury."). Thus, there can be no doubt that the necessary process in the instant cases is *something*, rather than the *nothing* provided by the state statutes. *Janus*, 138 S.Ct. at 2486 (employers cannot even "*attempt*. . .to collect such a payment" without clear

and compelling evidence of a waiver of First Amendment rights) (emphasis added)).[17]

Whatever the specific contours of the process due to public employees, this process is at a minimum due *before* the government deducts money from their wages to fund a union's political speech. *Hudson*, 475 U.S. at 305-07.

The Ninth Circuit's decisions below dismissing Petitioners' due process claims conflict with this Court's cases affording public employees procedural protections intended to safeguard their First Amendment rights.

IV. The questions presented are exceptionally important to the protection of public employees' First Amendment rights, and these consolidated cases provide an excellent opportunity to address them.

The decisions below demonstrate how the "practical problems and abuse" perpetrated by unions under the *Abood* regime continue under the new *Janus* regime, and why this Court's intervention is sorely needed now to prevent unions from receiving another "considerable windfall" of compelled political contributions from non-union public employees in violation of the First Amendment. *Janus*, 138 S.Ct. at 2460 and 2486.

The issues presented in this petition are exceptionally important for at least three reasons. First, the Ninth Circuit fails to recognize the incredible constitutional gravity of the matters presented in this petition.

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[17] Beyond simply lacking the necessary safeguards, however, these statutes actually *increase* the likelihood of constitutional violations by protecting government employers and unions in the event an employee *is* compelled to fund a union's political speech. *See supra* at 4 n.2.

"If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943). It is a "bedrock principle that, except perhaps in the rarest of circumstances, no person in this country may be compelled to subsidize speech by a third party that he or she does not wish to support." *Harris v. Quinn*, 573 U.S. 616, 656 (2014). Citing Thomas Jefferson, this Court stated in *Janus* that "to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhors is sinful and tyrannical." 138 S.Ct. at 2464. Compelling public employees to fund a union's political expression against their will implicates these serious concerns.

Yet, the Ninth Circuit deems government deduction of money from its employees' wages to fund a union's political speech to be a mere "ministerial" or "administrative" matter, even when it knows the unauthorized deductions are compelled. *See supra* at 13 n.8. But it is no small matter to unions who "face substantial difficulties in collecting funds for political speech without using payroll deductions," *Ysursa v. Pocatello Educ. Ass'n*, 555 U.S. 353, 359 (2009), and it is certainly no small matter to the individual employees – the only parties in this state-compelled relationship whose constitutional rights are at stake – who are being "compelled to subsidize speech by a third party that [they] [do] not wish to support. *Harris*, 573 U.S. at 656. Thus, the questions presented in this petition concern vital fundamental constitutional rights that the Ninth Circuit trivializes.

Second, without this Court's intervention, *Janus*' full holding will continue to be a dead letter. No court in this country has ever applied the consent standard this Court carefully articulated in *Janus*, despite the fact that government employers have continued to deduct union dues from thousands of non-union employees' wages.[18] This Court should grant review in these cases to ensure *Janus* is applied prospectively to protect public employees facing new post-*Janus* compelled-speech schemes.

Third, the matters in this petition are important because the Ninth Circuit's decisions incentivize unions to engage in fraud as a means of escaping constitutional scrutiny, and encourage government employers to turn a blind eye to a union's constitutional infractions. *See supra* at 13 n.8. *Claims* of authorization for nonmember union payments should not be an affirmative defense to state action and, thus, constitutional scrutiny. Otherwise, AFSCME Council 31 could have defrauded its way out this Court's constitutional scrutiny in *Janus* by manufacturing a forged membership card. Precedent which incentivizes this kind of gamesmanship should be reversed when fundamental constitutional rights are at stake, as they are here.

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[18] The ways unions continue to charge full dues to nonmembers are myriad. *See*, *e.g.*, *Kurk,* 2022 WL 3645061 (9th Cir. 2022) (charging full dues to objecting employees who *should* be nonmembers but who are prevented from resigning union membership via state statutes and CBAs); *Wright*, 48 F.4th 1112 (9th Cir. 2022) (charging full dues to nonmembers via forged membership cards); *Belgau*, 975 F.3d 940 (9th Cir. 2020) (charging full dues to nonmembers, who have resigned union membership, based on agreements that fall short of constituting "clear and compelling evidence" of a waiver of the right against compelled deductions as nonmembers).

Finally, these cases are an ideal vehicle through which to address these matters because they present this Court with a clean opportunity to give *Janus* the prospective application this Court intended. Ruling in Petitioners' favor requires no expansion of law. This Court need only explicitly state what has clearly been the law for over four decades: the Constitution must be brought to bear when unions use state statutes and government payroll systems to compel public employees to fund their political speech. Such a clear holding is an affirmation – not an expansion – of existing state action principles.

Similarly, granting certiorari to vindicate non-union public employees' procedural rights requires no expansion of law. This Court has protected non-union public employees' procedural rights in the context presented here going back decades. *See Knox*, 567 U.S. 321-22; *Hudson*, 475 U.S. at 309. State legislatures violate the law when they put nonmembers' right to affirmatively authorize dues deductions exclusively in union hands with no procedural safeguards – whether under the First Amendment or the Fourteenth Amendment's procedural due process clause

Lastly, the question of state action was raised at every stage in the cases below, fully briefed by the parties, and decided by the Ninth Circuit using Civ. R. 12(b)(1) and (b)(6) standards that require this Court to presume the truth of Petitioners' allegations. This is also true of the question regarding Petitioners' procedural rights. Petitioners only appeal these two matters. Petitioners do not seek review of the Ninth Circuit's rulings related to standing or mootness. *See supra* at 13 n.8. Thus, Petitioners present this Court with facts and claims that fit squarely into the precedent this Court established in *Janus* and its predecessors.

CONCLUSION

For the foregoing reasons, the Court should grant the petition for certiorari.

Respectfully submitted,

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October 4, 2023

APPENDIX

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 21-35133
D.C. No. 6:20-cv-01049-MK

TOREY JARRETT,

Plaintiff-Appellant,

v.

SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 503, a labor organization; MARION COUNTY,

Defendants-Appellees.

Appeal from the United States District Court
for the District of Oregon
Ann L. Aiken, District Judge, Presiding

MEMORANDUM[*]

Submitted July 5, 2023[**]
Filed July 7, 2023

Before: WALLACE, O'SCANNLAIN, and SILVERMAN, Circuit Judges.

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[*] This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

[**] The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Torey Jarrett appeals from the district court's dismissal of her 42 U.S.C. § 1983 action alleging that the unauthorized deduction of union dues from her pay violated her First and Fourteenth Amendment rights under *Janus v. Am. Fed'n of State, Cnty., and Mun. Emps., Council 31*, ___U.S.___, 138 S. Ct. 2448 (2018). We have jurisdiction pursuant to 28 U.S.C. § 1291 and review de novo. *Wright v. SEIU Loc. 503*, 48 F.4th 1112, 1118 n.3 (9th Cir. 2022), *cert. denied*,143 S. Ct. 749 (2023). We may affirm on any ground supported by the record. *Ochoa v. Pub. Consulting Grp., Inc.*, 48 F.4th 1102, 1106 (9th Cir. 2022), *cert. denied*, 143 S. Ct. 783 (2023). We affirm.[1]

Jarrett lacked standing to seek First Amendment prospective relief to stop possible future unauthorized deductions. At most, she suffered one past allegedly unauthorized deduction that stopped as soon as she informed the union that her signature had been forged and before she filed her action. Allegations of past injury, without "continuing adverse effects," and only the potential for future unauthorized dues deductions are too speculative to establish standing for a First Amendment claim for prospective relief. *Wright*, 48 F.4th at 1120 (internal quotation marks omitted).

The district court properly dismissed the Fourteenth Amendment Due Process claim alleged against Marion County. Jarrett did not allege that the county intentionally withheld unauthorized dues. *See Ochoa*, 48 F.4th at 1110-11 (holding that the plaintiff failed to state a due process claim absent facts showing that the government intended to withhold unauthorized dues

[1] This appeal has been held in abeyance since February 10, 2022, pending issuance of the mandate in No. 20-36076, *Zielinski v. SEIU, Local 503*, or further order of this court. The stay is lifted.

and thus deprive the plaintiff of a property or liberty interest). Nor did she allege that a policy or custom of the county caused her unauthorized deduction. *See Castro v. Cnty. of Los Angeles*, 833 F.3d 1060, 1073-76 (9th Cir. 2016) (en banc) (discussing requirements to establish municipal liability). Rather, she alleged that fraud in the union caused her injury. Moreover, *Janus* did not impose an affirmative duty on the government to confirm that the agreement between the union and employee is genuine. *Wright*, 48 F.4th at 1125.

The district court properly dismissed the civil rights claims alleged against the union because the union was not a state actor. *Id.* at 1121-25.

AFFIRMED.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 20-35882
D.C. No. 3:20-cv-00519-JR

MARGO CASH SCHIEWE, an individual,

Plaintiff-Appellant,

v.

SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 503, a labor organization; DEPARTMENT OF ADMINISTRATIVE SERVICES; BERRI LESLIE, in her official capacity as Interim Director of the Oregon Department of Administrative Services,

Defendants-Appellees.

Appeal from the United States District Court
for the District of Oregon
Karin J. Immergut, District Judge, Presiding

MEMORANDUM[*]

Submitted July 6, 2023[**]
Filed July 10, 2023

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[*] This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

[**] The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Before: WALLACE, O'SCANNLAIN, and SILVERMAN, Circuit Judges.

Margo Cash Schiewe appeals from the district court's dismissal of her 42 U.S.C. § 1983 action alleging that the unauthorized deduction of union dues from her pay violated her First and Fourteenth Amendment rights under *Janus v. Am. Fed'n of State, Cnty., and Mun. Emps., Council 31*, ___U.S.___, 138 S. Ct. 2448 (2018). We have jurisdiction pursuant to 28 U.S.C. § 1291 and review de novo. *Wright v. SEIU Loc. 503*, 48 F.4th 1112, 1118 n.3 (9th Cir. 2022), *cert. denied*, 143 S. Ct. 749 (2023). We may affirm on any ground supported by the record. *Ochoa v. Pub. Consulting Grp., Inc.*, 48 F.4th 1102, 1106 (9th Cir. 2022), cert. denied, 143 S. Ct. 783 (2023). We affirm.[1]

The district court properly dismissed the First Amendment claims for prospective relief as moot. The deduction of union dues ended shortly after the complaint was filed. Schiewe is no longer a member of the union and has not shown that it is likely that potential future unauthorized dues deductions will occur. *See Wright*, 48 F.4th at 1120 (allegations of past injury alone with only the potential of future unauthorized dues deductions are too speculative to establish a live controversy for a First Amendment claim for prospective relief); *Bain v. Cal. Teachers Ass'n*, 891 F.3d 1206, 1211-14 (9th Cir. 2018) (holding that plaintiffs' claims for First Amendment prospective relief were moot when they resigned their memberships, dues deductions had ceased during the litigation, and they presented no reasonable likelihood that they would rejoin the union in the future).

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[1] This appeal has been held in abeyance since February 10, 2022, pending issuance of the mandate in No. 20-36076, *Zielinski v. SEIU, Local 503*, or further order of this court. The stay is lifted.

The district court properly dismissed the Fourteenth Amendment procedural due process claims alleged against the state. Schiewe did not allege that the state intentionally withheld unauthorized dues. *See Ochoa*, 48 F.4th at 1110-11 (holding that the plaintiff failed to state a due process claim absent facts showing that the government intended to withhold unauthorized dues and thus deprive the plaintiff of a liberty interest). *Janus* did not impose an affirmative duty on the government to ensure that the membership agreement between the employee and union is genuine. *Wright*, 48 F.4th at 1125.

The district court properly dismissed the civil right claims alleged against the union. The union was not a state actor when it provided the dues authorization to the state employer, even if the authorization was fraudulent. *Id.* at 1120-25. Nor did the district court err in dismissing the section 1983 claims against the state agency and its director, as neither are "persons" subject to an action under section 1983. *See Will v. Mich. Dep't of State Police*, 491 U.S. 58, 70-71 (1989).

AFFIRMED.

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 20-35879
D.C. No. 3:20-cv-05082-BJR

SHARRIE YATES,
Plaintiff-Appellant,

v.

WASHINGTON FEDERATION OF STATE EMPLOYEES, AFSCME COUNCIL 28, AFL-CIO, a labor organization; JAY ROBERT INSLEE, in his Official Capacity as Governor of the State of Washington; SUE BIRCH, in her Official Capacity as Director of the Washington State Healthcare Authority,
Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Washington
Barbara Jacobs Rothstein, District Judge, Presiding

MEMORANDUM[*]

Submitted July 6, 2023[**]
Filed July 10, 2023

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[*] This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

[**] The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Before: WALLACE, O'SCANNLAIN, and SILVERMAN, Circuit Judges.

Sharrie Yates appeals from the district court's judgment dismissing her 42 U.S.C. § 1983 action alleging First and Fourteenth Amendment claims arising from the alleged unauthorized deduction of union membership dues. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo. *Harris v. Cnty. of Orange*, 682 F.3d 1126, 1131 (9th Cir. 2012) (judgment on the pleadings under Fed. R. Civ. P. 12(c)); *Wright v. SEIU Loc. 503*, 48 F.4th 1112, 1118 n.3 (9th Cir. 2022), *cert. denied,* 143 S. Ct. 749 (2023) (dismissal under Fed. R. Civ. P. 12(b)(1) and 12(b)(6)). We may affirm on any ground supported by the record. *Ochoa v. Pub. Consulting Grp., Inc.*, 48 F.4th 1102, 1110 (9th Cir. 2022), *cert. denied*, 143 S. Ct. 783 (2023). We affirm.[1]

The district court properly dismissed the First Amendment claims for prospective relief for a lack of standing. Allegations of past injury alone with only the potential for future unauthorized dues deductions are too speculative to establish standing for a First Amendment claim for prospective relief. *Wright*, 48 F.4th at 1120.

The Fourteenth Amendment Due Process claim alleged against the State defendants fails because Yates did not allege that they intended to withhold unauthorized dues. *Ochoa*, 48 F.4th at 1110-11. The Supreme Court did not impose an affirmative duty on the government to ensure that the membership

[1] This appeal has been held in abeyance since February 10, 2022, pending issuance of the mandate in No. 20-36076, *Zielinski v. SEIU, Local 503*, or further order of this court. The stay is lifted.

agreement between the employee and union is genuine. *Wright*, 48 F.4th at 1125.

The district court properly dismissed the civil rights claims alleged against the union. The union was not a state actor when it certified that the employee had entered into a private agreement to pay dues, even if the authorization was fraudulent. *Id.* at 1121-25; *Belgau v. Inslee*, 975 F.3d 940, 946-49 (9th Cir. 2020), *cert. denied*, 141 S. Ct. 2795 (2021).

Nor did the district court err in dismissing the section 1983 claims against the state officials, as neither are "persons" subject to suit under section 1983. *See Will v. Mich. Dep't of State Police*, 491 U.S. 58, 70–71 (1989).

The district court had the discretion to decline to exercise supplemental jurisdiction over the state law claims because Yates failed to state a federal claim. *Ove v. Gwinn*, 264 F.3d 817, 826 (9th Cir. 2001).

AFFIRMED.

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 20-55643
D.C. No. 8:19-cv-00927-JLS-JEM

MARIA QUEZAMBRA,

Plaintiff-Appellant,

v.

UNITED DOMESTIC WORKERS OF AMERICA, AFSCME LOCAL 3930, a labor organization; ORANGE COUNTY, a political subdivision of the State of California; MALIA COHEN, in her official capacity as State Controller of the State of California; ROB BONTA, in his official capacity as Attorney General of California,

Defendants-Appellees.

Appeal from the United States District Court
for the Central District of California
Josephine L. Staton, District Judge, Presiding

MEMORANDUM[*]

Submitted July 5, 2023[**]
Filed July 7, 2023

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[*] This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

[**] The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Before: WALLACE, O'SCANNLAIN, and SILVERMAN, Circuit Judges

Maria Quezambra appeals from the district court's dismissal of her 42 U.S.C. § 1983 action alleging that the unauthorized deduction of union dues from her state pay violated her First and Fourteenth Amendment rights under *Janus v. Am. Fed'n of State, Cnty. and Mun. Emps., Council 31*, ___U.S.___, 138 S. Ct. 2448 (2018). We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo. *Wright v. SEIU Loc. 503*, 48 F.4th 1112, 1118 n.3 (9th Cir. 2022), *cert. denied*, 143 S. Ct. 749 (2023). We may affirm on any ground supported by the record. *Ochoa v. Pub. Consulting Grp., Inc.*, 48 F.4th 1102, 1106 (9th Cir. 2022), *cert. denied*, 143 S. Ct. 783 (2023). We affirm.[1]

Quezambra lacked standing to raise First Amendment claims for prospective relief to prevent future unauthorized deductions of union dues. Allegations of past injury alone, without continuing adverse effects, will not support standing. *Wright*, 48 F.4th at 1120.

The district court properly dismissed the civil rights claims alleged against the union. The union was not a state actor when it notified the state to deduct dues, even if there was forgery in the union membership process. *Id.* at 1121; *Belgau v. Inslee*, 975 F.3d 940, 946-49 (9th Cir. 2020), *cert. denied*, 141 S. Ct. 2795 (2021).

The state officials, who were sued in their official capacity, are not persons for purposes of § 1983. *See Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 (1989). Therefore, Quezambra cannot state civil rights damage claims against the state officials. *Id.*

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[1] This appeal has been held in abeyance since February 10, 2022, pending issuance of the mandate in No. 20-36076, *Zielinski v. SEIU, Local 503*, or further order of this court. The stay is lifted.

To the extent she raised such a claim, Quezambra failed to state a Fourteenth Amendment procedural due process claim against the state officials and county because she did not allege that they intended to withhold unauthorized dues. *Ochoa*, 48 F.4th at 1110-11. An official's negligent act that causes "unintended loss of or injury to life, liberty, or property" does not state a due process claim. *Id*. at 1110 (internal quotation marks omitted). Thus, the government's "reliance on the union's representations in the mistaken belief that they were accurate does not rise to the level of a Due Process Clause violation." *Id*. at 1111. Moreover, Quezambra failed to allege facts to establish that a county policy or custom caused constitutional injuries. *See Castro v. Cnty. of Los Angeles*, 833 F.3d 1060, 1073-76 (9th Cir. 2016) (en banc) (discussing requirements to establish municipal liability under *Monell v. Dep't. of Soc. Servs.*, 436 U.S. 658 (1978)). In any event, "Janus imposes no affirmative duty on government entities to ensure that membership agreements and dues deductions are genuine." *Wright*, 48 F.4th at 1125.

AFFIRMED.

APPENDIX E

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 21-15309
D.C. No. 2:19-cv-02382-JAM-DB

TERRANCE MARSH; SANDI EDDE; THEODORE MENDOZA; REBECCA VAN ANTWERP; LINDSAY MACOMBER; KAREN JORDAN; STACEY DAVIDSON; BARBARA GROSSE; TAMELA DIOSO; KISKA CARTER,

Plaintiffs-Appellants,

v.

AFSCME LOCAL 3299; MICHAEL V. DRAKE, M.D., in his official capacity as President of the University of California; ROB BONTA, in his official capacity as Attorney General of California,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of California
John A. Mendez, District Judge, Presiding

MEMORANDUM[*]

Submitted July 5, 2023[**]
Filed July 6, 2023

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[*] This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

[**] The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Before: WALLACE, O'SCANNLAIN, and SILVERMAN, Circuit Judges.

Plaintiffs Terrance Marsh, Sandi Edde, Theodore Mendoza, Rebecca Van Antwerp, Lindsay Macomber, Karen Jordan, Stacey Davidson, Barbara Grosse, Tamela Dioso, and Kiska Carter appeal from the district court's dismissal of their 42 U.S.C. § 1983 action alleging that the deduction of union membership dues from their pay violated their First and Fourteenth Amendment rights under *Janus v. American Federation of State, County, and Municipal Employees, Council 31*, ___U.S.___, 138 S. Ct. 2448 (2018). We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo. *Wright v. SEIU Local 503*, 48 F.4th 1112, 1118 n.3 (9th Cir. 2022), *cert. denied*, 143 S. Ct. 749 (2023). We may affirm on any ground supported by the record. *Ochoa v. Public Consulting Group, Inc.*, 48 F.4th 1102, 1106 (9th Cir. 2022), *cert. denied*, 143 S. Ct. 783 (2023). We affirm.[1]

The district court properly dismissed as moot the First and Fourteenth Amendment claims seeking prospective relief. Plaintiffs resigned from the union and were no longer paying dues. Plaintiffs merely speculated that the union might forge membership agreements in the future. Allegations of past injury, alone, with only the potential for future unauthorized dues deductions are too speculative to support a claim for prospective relief. *Wright*, 48 F.4th at 1118-20; *see Bain v. Cal. Teachers Ass'n*, 891 F.3d 1206, 1214 (9th Cir. 2018) (holding that a teacher's claim was moot

[1] This appeal has been held in abeyance since February 10, 2022, pending issuance of the mandates in Nos. 20-56045, *Savas v. CSLEA* and 20-36076, *Zielinski v. SEIU, Local 503*, or further order of this court. The stay is lifted.

where she had cancelled her union membership and merely speculated that she might be subject to union dues in the future).

The district court did not abuse its discretion by striking the class allegations made for the first time in the second amended complaint. Plaintiffs did not seek leave of the court. Nor did the prior dismissal order allow plaintiffs to add class claims to the second amended complaint. Moreover, plaintiffs could not revive their already-moot claims by amending to add new claims. *See Bain,* 891 F.3d at 1213-14, 1216-18 (holding that the plaintiffs could not revive their moot claims by adding a new plea for restitution or by seeking to add an organizational plaintiff). In any event, *Janus* did not give plaintiffs a First Amendment right to disregard the terms of their private agreements to join the union and pay dues. *Belgau v. Inslee*, 975 F.3d 940, 944, 950-51 (9th Cir. 2020), *cert. denied*, 141 S. Ct. 2795 (2021). Nor did it require that the government independently verify a union's certification of membership and dues deductions. *Wright*, 48 F.4th at 1125.

The district court properly dismissed for failure to state a claim the civil rights claims seeking retrospective relief from the union. The union was not a state actor when it certified to the state employers that plaintiffs had agreed to pay dues. *Id.* at 1121-25; *Belgau*, 975 F.3d at 946-49.

AFFIRMED.

APPENDIX F

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

Case No. 6:20-cv-01049-MK

TOREY JARRETT, an individual,

Plaintiff,

v.

MARION COUNTY, a political subdivision of the State of Oregon; SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 503, a labor organization; and MARION COUNTY EMPLOYEES ASSOCIATION LOCAL 294, a labor organization,

Defendants.

FINDINGS AND RECOMMENDATION

KASUBHAI, United States Magistrate Judge:

Defendants Service Employees International Union Local 503 ("SEIU 503"), Marion County ("Marion County"), and Marion County Employees Association Local 294 (collectively "Defendants") move to dismiss Plaintiff Torey Jarrett's ("Plaintiff") complaint pursuant to Fed. R. Civ. P. 12(b)(1) and Fed. R. Civ. P. 12(b)(6). *See* Def.'s Mot. Dismiss, ECF No. 13. For the reasons set forth below, Defendants' motion to dismiss should be GRANTED.

BACKGROUND

At all relevant times, Plaintiff was employed by Marion County as a care coordinator and, by extension, was in a bargaining unit represented by SEIU 503. *See* Comp. ¶¶ 8, 9, ECF No. 1. Under Oregon law, union membership is voluntary. *Dale v. Kulongoski*, 321 Or. 108, 113-14, 894 P.3d 462 (1995). Pursuant to the Oregon Public Employees Collective Bargaining Act ("CBA"), unions and public employers are prohibited from coercing a public employee to become a union member. *See, e.g.,* Or. Rev. Stat. ("ORS") §§ 243.662, 243.672. Public employees, however, may voluntarily authorize dues deductions for their unions. ORS § 243.806(1).[1] Where such authorization exists, the union can request the state deduct union dues directly from the public employee's pay. ORS § 243.806(2). The applicable collective bargaining agreement requires Marion County to deduct payments for SEIU 503 and its affiliates from the wages of public employees. Comp. ¶ 9.

Since 2017, Plaintiff has not actively elected to be a union member. *Id.* at ¶¶ 1, 32. In March 2018, SEIU 503 representatives came to Plaintiff's home and brought literature for her to review. *Id.* at ¶¶ 12, 13. In March 2020, Plaintiff sent a letter to SEIU 503, objecting to union membership and payment of union dues and fees. *Id.* at ¶ 17. SEIU 503 responded, indicating that while Plaintiff could resign union membership, SEIU could still receive union dues until January 2021, pursuant to a membership card

[1] This statute became effective January 1, 2020. The parties agree that the statutory scheme previously in place, ORS §§ 243.776 and 292.055(3), provided analogous procedures and protections. *See, e.g.,* Def.'s Reply to Mot. Dismiss at 3, ECF No. 27; Comp. at 3. ECF No. 1.

Plaintiff allegedly signed. *Id.* at ¶ 18. Plaintiff alleges she did not sign any membership card and sought counsel to notify SEIU 503 of the alleged forgery. *Id.* at ¶¶ 20, 21. In response to Plaintiff's allegations, "the SEIU 503 membership department notified Plaintiff's employing agency to terminate further union dues deductions from her pay," such that "[n]o union dues have been deducted from Plaintiff's pay since June 9, 2020." *See* Johnson Decl. ¶ 9, ECF No. 13.

On June 30, 2020, Plaintiff filed a complaint in this Court alleging the following claims: (1) deprivation of First Amendment rights in violation of 42 U.S.C. § 1983 against all Defendants; (2) deprivation of Fourteenth Amendment rights in violation of 42 U.S.C. § 1983 against all Defendants; (3) common law fraud against SEIU 503; and (4) violation of ORS § 652.615 against Marion County.[2] *Id*. ¶¶ 34-59. Plaintiff seeks the following forms of relief: (1) declaratory judgement enjoining Defendants from "maintaining and enforcing any of the policies, provisions, or actions declared unconstitutional or illegal including the deduction of union dues or fees from Plaintiff's wages"; (2) attorney fees; and (3) nominal, compensatory, actual, and punitive damages. *Id.* at 10-11.

STANDARD OF REVIEW

Where the court lacks subject matter jurisdiction, the action must be dismissed. Fed. R. Civ. P. 12(b)(1). The party who seeks to invoke the subject matter

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[2] ORS § 652.615 ("Remedy for violation of ORS 652.610 states "[t]here is hereby created a private cause of action for a violation of ORS 652.610 (Itemized statement of amounts and purposes of deductions) (3) for actual damages or $200, whichever is greater. In any such action the court may award to the prevailing party, in addition to costs and disbursements, reasonable attorney fees."

jurisdiction of the court bears the burden of establishing that such jurisdiction exists. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). The court may hear evidence regarding subject matter jurisdiction and resolve factual disputes where necessary. *Kingman Reef Atoll Invs., LLC v. United States*, 541 F.3d 1189, 1195 (9th Cir. 2008).

Similarly, where the plaintiff "fails to state a claim upon which relief can be granted," the action must be dismissed. Fed. R. Civ. P. 12(b)(6). To survive a motion to dismiss, the complaint must allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). For purposes of a motion to dismiss, the complaint is liberally construed in favor of the plaintiff and its allegations are taken as true. *Rosen v. Walters*, 719 F.2d 1422, 1424 (9th Cir. 1983). Bare assertions, however, that amount to nothing more than a "formulaic recitation of the elements" of a claim "are conclusory and not entitled to be assumed true." *Ashcroft v. Iqbal*, 556 U.S. 662, 681 (2009). Rather, to state a plausible claim for relief, the complaint "must contain sufficient allegations of underlying facts" to support its legal conclusions. *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011).

DISCUSSION

Defendants assert dismissal is warranted in regard to Plaintiff's 42 U.S.C. § 1983 claims because "a private party's conduct that is illegal under state law, and that takes place without the knowledge of state officials, is not 'state action.'" *See* Def.'s Mot. Dismiss at 2, ECF No. 13. Defendants further contend that any request for prospective relief "does not present a live case or controversy because plaintiff's dues deductions have terminated." *Id*. at 4. Finally, Defendants argue that federal jurisdiction is lacking, and the Court should

decline to exercise supplemental jurisdiction over Plaintiff's remaining state law claims, which are "foreclosed by ORS 243.806(10)(a)." *Id*.[3]

I. Failure to State a Claim

To state a claim under 42 U.S.C. § 1983, Plaintiff must show that Defendants deprived her of a right secured by the Constitution and acted "under color of state law." *Naffe v. Frey,* 789 F.3d 1030, 1036 (9th Cir. 2015) (citation omitted). Plaintiff argues Defendants are state actors because SEIU 503 uses state authority to direct Marion County's deduction of money from public employees' wages. *See* Comp. at ¶¶ 34-43, ECF No. 1; *see also* Pl.'s Resp. to Def.'s Mot. Dismiss at 6-16, ECF No. 26. Plaintiff's argument, however, is foreclosed by the Ninth Circuit's recent decision in *Belgau v. Inslee*, No. 19-35137, 2020 WL 5541390 (9th Cir. Sept. 16, 2020).

In *Belgau*, the plaintiffs worked as public-sector employees who allegedly signed union membership agreements authorizing Washington State to deduct dues from their wages and pay them to the Washington Federation of State Employees, AFSCME Council 28 ("WFSE"). *Belgau,* 2020 WL 5541390, at *2. After the Supreme Court held in *Janus v. Am. Fed'n of State, Cty., & Mun. Employees, Council 31*, 138 S. Ct. 2448 (2018), that compelling nonmembers to subsidize union speech violated the First Amendment, the plaintiffs notified WFSE that they no longer wanted to be union

[3] ORS 243.806(10)(a) states "If a dispute arises between the public employee and the labor organization regarding the existence, validity or revocation of an authorization for the deductions and payment described under subsections (1) and (2) of this section, the dispute shall be resolved through an unfair labor practice proceeding under ORS 243.672 (Unfair labor practices)."

members or pay dues. *Id.* at *3. WFSE thereafter terminated the plaintiffs' union memberships but nevertheless continued to deduct union dues from their pay until an irrevocable one-year term expired. *Id.* The plaintiffs brought a putative class action against Washington Governor Jay Inslee, several state agency directors, and WFSE, alleging that the dues deductions violated their First Amendment rights and unjustly enriched WFSE. *Id.* The plaintiffs sought injunctive relief against Washington for the continued deduction of union dues and compensatory and other relief against WFSE. *Id.*

The Ninth Circuit held the plaintiffs' 42 U.S.C. § 1983 claims against the union failed for lack of state action. *Id.* at *3–6. The court set out a two-part analysis to determine whether WFSE's conduct was fairly attributable to the state, asking: (1) "whether the claimed constitutional deprivation resulted from the exercise of some right or privilege created by the State or by a rule of conduct imposed by the state or by a person for whom the State is responsible"; and (2) "whether the party charged with the deprivation could be described in all fairness as a state actor." *Id.* at *4 (citation and quotations omitted).

Plaintiff argues this case differs from *Belgau* because "Plaintiff's harm did not originate with a so-called 'private agreement.'" *See Belgau,* 975 F.3d at 940; *see also* Pl.'s Resp. to Def.'s Mot. Dismiss at 7, ECF No. 26. Plaintiff continues that because "Plaintiff did not see, review or sign a membership card before she was illegally forced to pay union dues. . . the harm began and ended with SEIU's unbridled authority." *Id.* The Court notes, however, that the harm alleged by Plaintiff is centered around the forgery of Plaintiff's signature on a membership card which authorized

Defendants to continue collecting dues, and the harm ended after Defendants were notified about alleged forgery. *See, e.g.,* Comp. ¶¶ 17, 22. Thus, as in *Belgau*, the source of the alleged constitutional harm is not a State statute or policy but the particular private agreement between SEIU 503 and Plaintiff. SEIU 503's "private misuse of a state statute does not describe conduct that can be attributed to the State[.]" *Lugar v. Edmondson Oil Co.,* 457 U.S. 922, 941 (1982); *see also* ORS § 292.055 (repealed Jan. 1, 2020) (permitting union dues deductions only when authorized by the state employee). Plaintiff's 42 U.S.C. § 1983 claims fail the first prong of the state action test.

Nor can Plaintiff prevail at the second step—"whether the party charged with the deprivation could be described in all fairness as a state actor." *Belgau,* 975 F.3d at 947. As a private party, SEIU 503 is generally not bound by the First Amendment. *See United Steelworkers of Am., AFL-CIO-CLC v. Sadlowski,* 457 U.S. 102, 102 S. Ct. 2339, 72 L. Ed. 2d 707 (1982) (unless [the labor union] has acted "in concert" with the state "in effecting a particular deprivation of constitutional right"). A joint action between a state and a private party may be found in two scenarios: the government either (1) "affirms, authorizes, encourages, or facilitates unconstitutional conduct through its involvement with a private party," or (2) "otherwise has so far insinuated itself into a position of interdependence with the non-governmental party," that it is "recognized as a joint participant in the challenged activity." *Naoko Ohno v. Yuko Yasuma,* 723 F.3d 984, 993 (9th Cir. 2013). Although Marion County was required to enforce the membership agreement by state law, Plaintiff alleges no facts that indicate Marion County shaped the terms of the membership agreement. Marion County "cannot be said to provide 'significant assistance' to the under-

lying acts that Plaintiff contends constituted the core violation of its First Amendment rights" if the "law requires" Marion County to enforce the decisions of others "without inquiry into the merits" of the agreement. *Ohno*, 723 F.3d at 996–97. Marion County's "mandatory indifference to the underlying merits" of the authorization "refutes any characterization" of SEIU 503 as a joint actor with Marion County. *Id.* at 997. Neither scenario exists here.

II. Subject Matter Jurisdiction

Defendants move to dismiss Plaintiff's claims for declaratory and injunctive relief as moot. *See* Def.'s Mot. Dismiss at 25–27, ECF No. 13. Federal courts are courts of limited jurisdiction, such that, in order to proceed in this forum, Plaintiff's claims must present an active case or controversy. *Lujan v. Defenders of Wildlife,* 504 U.S. at 560–61 (1992) (citations and internal quotations omitted). To meet this requirement, "throughout the litigation, the plaintiff must have suffered, or be threatened with, an actual injury traceable to the defendant and likely to be redressed by a favorable judicial decision." *Spencer v. Kemna*, 523 U.S. 1, 7 (1998) (citation and quotations omitted); *see also Summers v. Earth Island Inst.*, 555 U.S. 488, 493 (2009) (in order to be redressable, the injury in fact must be both "actual and imminent") (citation omitted). An "action is mooted when the issues presented are no longer live and the parties lack a legally cognizable interest for which the courts can grant a remedy." *Alaska Ctr. for Env't v. U.S. Forest Serv.,* 189 F.3d 851, 854 (9th Cir. 1999). In particular, claims for equitable relief are moot "if subsequent events made it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur." *Rosebrock v. Mathis,* 745 F.3d 963, 971 (9th Cir. 2014) (citation and

internal quotations omitted); *see also Alaska Ctr. for Env't*, 189 F.3d at 854-55 (narrow "capable of repetition yet evading review" exception applies only if, amongst other criteria, "there is a reasonable expectation that the plaintiffs will be subjected to [the challenged conduct] again").

Here, Plaintiff's claims do not present an active case or controversy. It is undisputed that union dues are no longer being deducted from Plaintiff's wages. *See* Johnson Decl. at ¶¶ 9–11, ECF No. 13; *see also* Comp. at ¶¶ 22–23, ECF No. 1. While Defendants have voluntarily ceased the challenged activity, Plaintiff's claims are not moot if there is "a 'reasonable expectation" or a 'demonstrated probability' that the same controversy will recur involving the same complaining party." *Murphy v. Hunt,* 455 U.S. 478, 482 (1982) (emphasis added). Plaintiff, however, cannot make this showing.

The complaint does not allege any facts suggesting the unlawful deduction of dues will occur again or that the State itself was involved in any wrongdoing. *See* Comp. at ¶¶ 11–28, ECF No. 1. Plaintiff concedes "it may be correct that 'there is no plausible claim that Oregon or the County condones the forgery.'" *See* Pl.'s Resp. to Def.'s Mot. Dismiss at 5, ECF No. 26. Plaintiff's contention is that the possibility exists for Defendants to obtain union dues without her consent because the underlying statutory scheme does not require Marion County to independently verify her authorization. *Id.* at 27–31. The Court notes, however, that there "already exists a statutory scheme to ensure that union dues do not get deducted from a public employee's wages absent his or her authorization, with procedures for the public employee to recoup those

wages should unauthorized deductions occur."[4] *See Schiewe v. Serv. Employees Int'l Union Local 503,* No. 3:20-CV-00519-JR, 2020 WL 4251801, at *3 (D. Or. July 23, 2020), *adopted*, WL 5790389 (D. Or. Sept. 28, 2020).

Plaintiff's expectation of repeated unlawful dues deductions is neither reasonable nor probable given Defendants' representations. *See* Johnson Dec. ¶ 10, ECF No. 13 ("[i]n light of Plaintiff's claim that unauthorized deductions were made from her pay, the SEIU 503 membership department has been instructed to flag Plaintiff's name in its databases so that any future membership application in Plaintiff's name will be brought to the attention of SEIU's legal department for review"); *see also Pub. Util. Comm'n of Cal. v. Fed. Energy Regulatory Comm'n*, 100 F.3d 1451, 1460 (9th Cir. 1996) ("[w]hen resolution of a controversy depends on facts that are unique or unlikely to be repeated, the action is not capable of repetition and hence is moot") (citation omitted). As such, "no union dues could be deducted from [Plaintiff]'s pay in the future unless she

[4] Plaintiff argues that these statutes themselves are unconstitutional. Pl.'s Resp. to Def.'s Mot. Dismiss at 3–4, ECF No. 26. Yet the deduction of dues pursuant to a valid authorization agreement does not infringe on a public employee's First Amendment rights. *See Fisk v. Inslee*, 759 Fed. Appx. 632, 633 (9th Cir. 2019) ("[t]he First Amendment does not preclude the enforcement of 'legal obligations' that are bargained-for and 'self-imposed' under state contract law") (citing *Cohen v. Cowles Media*, 501 U.S. 663, 668–71 (1991)). Furthermore, forging an employee's membership agreement or otherwise authorizing the unauthorized payment of union dues violates ORS § 243.806 and other provisions of Oregon law. As such, the allegedly wrongful conduct at issue in this case is neither permitted nor caused by the State's statutory scheme surrounding unions. *See, e.g., Yates v. Wash. Fed'n of State Empls.*, 2020 WL 3118496, *1–4 (W.D. Wash. June 12, 2020).

voluntarily authorizes the deductions." *See* Johnson Dec. at ¶ 9, ECF No. 13.

Under analogous circumstances, courts within the Ninth Circuit have repeatedly found that subject matter jurisdiction is lacking once the plaintiff is no longer a union member and dues are no longer being deducted. *See, e.g., Stroeder v. Serv. Emps. Int'l Union,* 2019 WL 6719481, *3 (D. Or. Dec. 6, 2019); *Seager v. United Teachers L.A.,* 2019 WL 3822001, *2 (C.D. Cal. Aug. 14, 2019); *see also Babb v. Cal. Teachers Ass'n*, 378 F.Supp.3d 857, 886 (C.D. Cal. 2019) (dismissing the plaintiff's claim as moot because he "would have to rejoin his union for his claim to be live, which, given his representations in this lawsuit, seems a remote possibility"); *Yates,* 2020 WL 3118496 at *5 (dismissing the plaintiff's claim for lack of standing where she "presents no evidence to contradict [the union]'s showing that its procedures make unauthorized withdrawals [of dues] very unlikely . . . The fact that [she] encountered an isolated instance of misconduct or error in the past does not mean she is at heightened risk of another similar experience"); *Ochoa*, 2019 WL 4918748 at *3 (the fact "that [the plaintiff] is 'forced to exercise heightened vigilance' because 'SEIU 775 has dealt with [her] deceptively in the past' and she 'knows that the State Defendants will not, apparently, question any union representation from the union' [was] not a sufficient ongoing injury to establish a case and controversy"). Accordingly, Defendants' motion should be granted.

III. Supplemental Jurisdiction

Because Plaintiff's federal claims fail at the pleadings level, the Court must determine whether it should exercise supplemental jurisdiction over the common law fraud claim against Defendants despite

the lack of complete diversity between the parties. A district court may decline to exercise supplemental jurisdiction over state-law claims if it "has dismissed all claims over which it has original jurisdiction." *Ove v. Gwinn,* 264 F.3d 817, 826 (9th Cir. 2001) (citing 28 U.S.C. § 1367(c)(3)). When a court dismisses all federal law claims before trial, "the balance of the factors to be considered under the pendent jurisdiction doctrine—judicial economy, convenience, fairness, and comity—will point toward declining to exercise jurisdiction over the remaining state-law claims." *Carnegie-Mellon Univ. v. Cohill,* 484 U.S. 343, 350 n. 7 (1988); *accord Acri v. Varian Assocs., Inc.,* 114 F.3d 999, 1001 (9th Cir. 1997) (en banc); *see also Crane v. Allen,* No. 3:09-cv-1303-HZ, 2012 WL 602432, at *10 (D. Or. Feb. 22, 2012) ("Having resolved all claims over which it had original jurisdiction, this court declines to exercise supplemental jurisdiction over Plaintiffs' remaining state law claims.").

This case has not proceeded beyond the pleadings stage and few judicial resources have been used. Dismissal also promotes comity by allowing the Oregon courts to interpret matters of state law. As such, the balance of factors favors declining supplemental jurisdiction. *See Carnegie-Mellon Univ.,* 484 U.S. at 350 ("When the federal-law claims have dropped out of the lawsuit in its early stages and only state-law claims remain, the federal court should decline the exercise of jurisdiction."). Plaintiff's remaining state law claims should be dismissed without prejudice.

RECOMMENDATION

For the reasons stated herein, Defendants' Motion to Dismiss (ECF No. 13) should be granted and this case should be dismissed with leave to refile in state court, and judgment should be entered accordingly. This recommendation is not an order that is immediately

appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, should not be filed until entry of the district court's judgment or appealable order. The parties shall have fourteen (14) days from the date of service of a copy of this recommendation within which to file specific written objections with the court. Thereafter, the parties shall have fourteen (14) days within which to file a response to the objections. Failure to timely file objections to any factual determination of the Magistrate Judge will be considered as a waiver of a party's right to de novo consideration of the factual issues and will constitute a waiver of a party's right to appellate review of the findings of fact in an order or judgment entered pursuant to this recommendation.

DATED this 6th day of January 2021.

s/ Mustafa T. Kasubhai
MUSTAFA T. KASUBHAI (He / Him)
United States Magistrate Judge

APPENDIX G

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

Case No. 6:20 cv 01049-MK

TOREY JARRETT, an individual,

Plaintiff,

v.

MARION COUNTY, a political subdivision of the State of Oregon; SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 503, a labor organization; and MARION COUNTY EMPLOYEES ASSOCIATION LOCAL 294, a labor organization,

Defendants.

ORDER

Magistrate Judge Mustafa Kasubhai filed Findings and Recommendation ("F&R") (doc. 30) on January 6, 2021. The matter is now before me. *See* 28 U.S.C. § 636(b); Fed. R. Civ. P. 72. No objections have been timely filed. Although this relieves me of my obligation to perform a *de novo* review, I retain the obligation to "make an informed, final determination." *Britt v. Simi Valley Unified Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983), *overruled on other grounds*, *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121–22 (9th Cir. 2003) (en banc). The Magistrates Act does not specify a standard of review in cases where no objections are filed. *Ray v. Astrue*, 2012 WL 1598239, *1 (D. Or. May 7, 2012). Following the recommendation of the Rules

Advisory Committee, I review the F&R for "clear error on the face of the record[.]" Fed. R. Civ. P. 72 advisory committee's note (1983) (citing *Campbell v. United States District Court*, 501 F.2d 196, 206 (9th Cir. 1974)); *see also United States v. Vonn*, 535 U.S. 55, 64 n.6 (2002) (stating that, "[i]n the absence of a clear legislative mandate, the Advisory Committee Notes provide a reliable source of insight into the meaning of" a federal rule). Having reviewed the file of this case, I find no clear error.

THEREFORE, IT IS HEREBY ORDERED that I ADOPT Judge Mustafa Kasubhai's F&R (doc. 30).

Dated this 22nd day of January, 2021.

/s/Ann Aiken
Ann Aiken
United States District Judge

APPENDIX H

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

Case No. 3:20-cv-00519-JR

MARGO CASH SCHIEWE, an individual,

Plaintiff,

v.

SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 503, a labor organization; OREGON DEPARTMENT OF ADMINISTRATIVE SERVICES; and KATY COBA, in her official capacity as Director of the Oregon Department of Administrative Services,

Defendants.

FINDINGS AND RECOMMENDATION

RUSSO, Magistrate Judge:

Defendant Service Employees International Union Local 503 ("SEIU 503") moves to dismiss plaintiff Margo Cash Schiewe's complaint pursuant to Fed. R. Civ. P. 12(b)(1) and Fed. R. Civ. P. 12(b)(6). Defendants Oregon Department of Administrative Services ("DAS") and Katy Coba (collectively the "State") separately seek dismissal under Fed. R. Civ. P. 12(b)(1). For the reasons set forth below, defendants' motions should be granted.

BACKGROUND

At all relevant times, plaintiff was employed by the Oregon Department of Consumer and Business Services and, by extension, was in a bargaining unit

represented by SEIU 503. Compl. ¶¶ 8, 10 (doc. 1). Under Oregon law, union membership is voluntary. *Dale v. Kulongoski*, 321 Or. 108, 113-14, 894 P.2d 462 (1995). Additionally, pursuant to the Oregon Public Employees Collective Bargaining Act, it is a prohibited practice for a union or public employer to coerce a public employee to become a union member. *See*, *e.g.*, Or. Rev. Stat. §§ 243.662, 243.672. However, public employees may voluntarily authorize dues deductions for their unions. Or. Rev. Stat. § 243.806(1).[1] Where such authorization exists, the union can request that the state deduct union dues directly from the public employee's pay. Or. Rev. Stat. § 243.806(2).

SEIU 503 and the State have a collective bargaining agreement, which includes provisions governing the deduction of union dues from bargaining unit employees who authorize such deductions. Compl. ¶ 10 (doc. 1). Specifically, consistent with Oregon law, this collective bargaining agreement allows the public employer to make only those union dues deductions that are voluntarily requested by an employee pursuant to a "dues deduction authorization." Johnson Decl. Ex. 7, at 17-18 (doc. 16); Pye Decl. ¶¶ 3-4 (doc. 20).

Since 2011, plaintiff has elected not to be a union member. Compl. ¶ 11 (doc. 1); Johnson Decl. ¶ 3 (doc. 16). Following the Supreme Court's June 2018 decision in *Janus v. AFSCME*, *Council 31*, 138 S.Ct. 2448 (2018), which terminated mandatory fair-share fee deductions, plaintiff "called SEIU 503 to ask about the status of her union membership and fee payments,

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[1] This statute became effective January 1, 2020; the parties agree that the statutory scheme previously in place provided analogous procedures and protections. *See*, *e.g.*, Pl.'s Resp. to SEIU 503's Mot. Dismiss 2 n.2 (doc. 28); SEIU 503's Reply to Mot. Dismiss 3-4 (doc. 34).

specifically if she was still entitled to reimbursement checks." Compl. ¶ 12 (doc. 1). Plaintiff was informed that "she was now required to be a member of the union." *Id.* Subsequently, plaintiff contacted SEIU 503 again and "was told the same thing: she was no longer entitled to be a union non-member." *Id.*

At various unspecified dates, plaintiff "received emails from SEIU 503 telling her that she needed to 'join or confirm' her union membership in order to vote on the union contract"; these emails included "a link to 'confirm' her status." *Id.* at ¶ 13. Although plaintiff "may have visited SEIU 503's website," she "does not recall at any time entering her name for purposes of an electronic signature to join the union." *Id.*

On August 25, 2019, union dues began being withdrawn from plaintiff's paychecks. *Id.* at ¶ 14. On November 5, 2019, plaintiff "objected to her union membership . . . by writing SEIU 503." *Id.* at ¶ 16; Johnson Decl. Ex. 2 (doc. 16). SEIU 503 notified plaintiff "that they had a membership form signed by her, under the terms of which she would be forced to continue paying union dues until August 2020," and forwarded "a copy of the purported 'membership application,'" which included proof of plaintiff's name, address, and electronic signature, but otherwise lacked "sufficient information to authenticate [it]." Compl. ¶¶ 16-18 (doc. 1). "Plaintiff did not sign this agreement, and informed SEIU of this fact." *Id.* at ¶ 19. Plaintiff ultimately obtained counsel, who "sent SEIU 503 a letter requesting an explanation and asking for a refund for the money wrongfully taken," at which point SEIU 503 confirmed that plaintiff "rescinded her resignation of membership." *Id.* at ¶¶ 19-25; Johnson Decl. Exs. 3-5 (doc. 16).

On March 30, 2020, plaintiff filed a complaint in this Court alleging the following claims: (1) deprivation of First Amendment rights in violation of 42 U.S.C. § 1983 against all defendants; (2) deprivation of Fourteenth Amendment rights in violation of 42 U.S.C. § 1983 against all defendants; (3) common law fraud against SEIU 503; and (4) violation of Or. Rev. Stat. § 652.615 against the State. Compl. ¶¶ 31-60 (doc. 1). Plaintiff seeks to enjoin defendants from "maintaining and enforcing any of the policies, provisions, or actions declared unconstitutional or illegal including the deduction of union dues or fees from Plaintiff's wages without her consent," as well as nominal, compensatory, actual, and punitive damages. *Id.* at p. 11.

In response to plaintiff's allegations, "the SEIU 503 membership department notified Plaintiff's employing agency to terminate further union dues deductions from her pay," such that "[n]o union dues have been deducted from Plaintiff's pay since March 2020." Johnson Decl. ¶¶ 9-10 (doc. 16); *see also* Pye Decl. ¶ 5 (doc. 20) (DAS representing that "Union related dues will not be deducted again from Ms. Cash Schiewe's paychecks in connection with her [state employment] unless she rejoins [SEIU 503] and [SEIU 503] instructs DAS to begin withholding dues from her paycheck").

On May 29 and June 12, 2020, SEIU 503 and the State, respectively, filed the present motions to dismiss.

STANDARD OF REVIEW

Where the court lacks subject matter jurisdiction, the action must be dismissed. Fed. R. Civ. P. 12(b)(1). The party who seeks to invoke the subject matter jurisdiction of the court bears the burden of establishing that such jurisdiction exists. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). The court may hear

evidence regarding subject matter jurisdiction and resolve factual disputes where necessary. *Kingman Reef Atoll Invs., LLC v. United States*, 541 F.3d 1189, 1195 (9th Cir. 2008).

Similarly, where the plaintiff "fails to state a claim upon which relief can be granted," the action must be dismissed. Fed. R. Civ. P. 12(b)(6). To survive a motion to dismiss, the complaint must allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). For purposes of a motion to dismiss, the complaint is liberally construed in favor of the plaintiff and its allegations are taken as true. *Rosen v. Walters*, 719 F.2d 1422, 1424 (9th Cir. 1983). Bare assertions, however, that amount to nothing more than a "formulaic recitation of the elements" of a claim "are conclusory and not entitled to be assumed true." *Ashcroft v. Iqbal*, 556 U.S. 662, 681 (2009). Rather, to state a plausible claim for relief, the complaint "must contain sufficient allegations of underlying facts" to support its legal conclusions. *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011).

DISCUSSION

SEIU 503 asserts dismissal is warranted in regard to plaintiff's 42 U.S.C. § 1983 claims because "a private party's conduct that is illegal under state law, and that takes place without the knowledge of state officials, is not 'state action.'" SEIU 503's Mot. Dismiss 2 (doc. 15). SEIU 503 also contends that any request for prospective relief "does not present a live case or controversy because Plaintiff's dues deductions have terminated." *Id.* Essentially, SEIU 503 maintains federal jurisdiction is lacking, such that the Court should decline to exercise supplemental jurisdiction over plaintiff's remaining state law claims, which, in any event, are

"foreclosed by ORS 243.806(10)(a)." *Id.* at 2-3. The State joins in SEIU 503's motion and additionally argues that plaintiff's federal claims "are moot." State's Mot. Dismiss 2 (doc. 19).[2]

I. Subject Matter Jurisdiction

Federal courts are courts of limited jurisdiction, such that, in order to proceed in this forum, the plaintiff's claims must present an active case or controversy. *Lujan*, 504 U.S. at 560-61 (citations and internal quotations omitted). To meet this requirement, "throughout the litigation, the plaintiff must have suffered, or be threatened with, an actual injury traceable to the defendant and likely to be redressed by a favorable judicial decision." *Spencer v. Kemna*, 523 U.S. 1, 7 (1998) (citation and internal quotations omitted); *see also Summers v. Earth Island Inst.*, 555 U.S. 488, 493 (2009) (in order to be redressable, the injury in fact must be both "actual and imminent") (citation omitted).

An "action is mooted when the issues presented are no longer live and therefore the parties lack a legally cognizable interest for which the courts can grant a remedy." *Alaska Ctr. for Env't v. U.S. Forest Serv.*, 189

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[2] The State also contends that the Eleventh Amendment bars any claims, including those under Oregon law, except for prospective relief. State's Mot. Dismiss 5, 8-9 (doc. 19) (citing *Edelman v. Jordan*, 415 U.S. 651, 677 (1974); *Pennhurst St. Sch. & Hosp. v. Halderman*, 465 U.S. 89, 106-07, 121 (1984)). The Court agrees. *See Ochoa v. Serv. Empls. Int'l Union Local 775*, 2019 WL 4918748, *3 (E.D. Wash. Oct. 4, 2019) ("the Eleventh Amendment bars Plaintiff's suit for damages and violations of state law in federal court"); *see also Rodriguez v. Tilton*, 2015 WL 3507126, *2 (E.D. Cal. June 3, 2015) ("[a] federal court is not empowered to issue retrospective declaratory relief with respect to allegedly unconstitutional conduct that has ended") (citing *Nat'l Audubon Soc'y, Inc. v. Davis*, 307 F.3d 835, 847-48 (9th Cir. 2002)).

F.3d 851, 854 (9th Cir. 1999). In particular, claims for equitable relief are moot "if subsequent events made it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur." *Rosebrock v. Mathis*, 745 F.3d 963, 971 (9th Cir. 2014) (citation and internal quotations omitted); *see also Alaska Ctr. for Env't*, 189 F.3d at 854-55 (narrow "capable of repetition yet evading review" exception applies only if, amongst other criteria, "there is a reasonable expectation that the plaintiffs will be subjected to [the challenged conduct] again").

Thus, while the fact that the defendant voluntarily ceased the challenged conduct is relevant, to avoid dismissal the plaintiff must nonetheless show "there exists some cognizable danger of recurrent violation, something more than the mere possibility which serves to keep the case alive." *United States v. W.T. Grant Co.*, 345 U.S. 629, 633 (1953); *see also Freedom From Religion Found., Inc. v. City of Green Bay*, 581 F.Supp.2d 1019, 1026 (E.D. Wis. 2008) ("[i]f the plaintiff's only claims seek to require governmental officials to cease allegedly wrongful conduct, and those officials offer to cease that conduct, then the claims should be dismissed as moot, absent some evidence that the offer is disingenuous") (citations omitted).

Here, plaintiff's claims do not present an active case or controversy, in that her purported injury is not redressable by this Court. It is undisputed that union dues are no longer being deducted from plaintiff's wages. Johnson Decl. ¶¶ 9-10 (doc. 16); Pye Decl. ¶¶ 4-5 (doc. 20); *see generally* Pl.'s Resp. to SEIU 503's Mot. Dismiss (doc. 28); Pl.'s Resp. to State's Mot. Dismiss (doc. 32). Because the challenged activity has stopped, plaintiff's invocation of subject matter jurisdiction hinges on the likelihood that she will be injured

again in an identical manner. *See City of L.A. v. Lyons*, 461 U.S. 95, 108 (1983) (assessing the "odds" that plaintiff would again be subject to precisely the same wrongful conduct – i.e., an illegal chokehold following a routine traffic stop – in evaluating subject matter jurisdiction).

The complaint does not allege any facts suggesting the unlawful deduction of dues will occur again or that the State itself was involved in any wrongdoing. Compl. ¶¶ 11-27 (doc. 1). Indeed, plaintiff's main contention is that the possibility exists for defendants to obtain union dues without her consent because the underlying statutory scheme does not require the State to independently verify her authorization. *See*, *e.g.*, *Id.* at ¶¶ 24, 41; Pl.'s Resp. to SEIU 503's Mot. Dismiss (doc. 28); Pl.'s Resp. to State's Mot. Dismiss 3, 5-12 (doc. 32).[3] The Court notes, however, that there

[3] Plaintiff also asserts that the "jurisdictional issues is inextricable from the merits of the case" because her "standing to bring this claim involves the question of whether she may again be subjected to unauthorized dues deductions." Pl.'s Resp. to State's Mot. Dismiss 7-8 (doc. 32). As discussed herein, the fact that plaintiff disputes consenting to union membership (to the extent that she does not recall signing the authorization form) is not suggestive of a merits/jurisdictional overlap; both her complaint and briefs make clear that her claims stem from the purported forgery of her signature on SEIU 503's membership application. *See*, *e.g.*, Compl. ¶¶ 16-23, 30, 42, 45-46, 51, 57 (doc. 1). The fact that she "fears" the recurrence of this fraud, which, in turn, would "force" her into the union, is insufficient to avoid dismissal, especially in light of defendants' repeated contention that her federal claims are premised on private action. *See Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004) ("jurisdictional dismissals are warranted where the alleged claim under the constitution or federal statutes clearly appears to be immaterial and made solely for the purpose of obtaining

already exists a statutory scheme to ensure that union dues do not get deducted from a public employee's wages absent his or her authorization, with procedures for the public employee to recoup those wages should unauthorized deductions occur.[4] *See*, *e.g.*, Or. Rev. Stat. § 243.806(10).

In any event, plaintiff's expectation of repeated dues deductions is simply not reasonable, as it would necessitate a second "forged membership agreement" given plaintiff's unequivocal intent not to be a union member. Compl. ¶ 30 (doc. 1); *see also Pub. Util. Comm'n of Cal. v. Fed. Energy Regulatory Comm'n*, 100 F.3d 1451, 1460 (9th Cir. 1996) ("[w]hen resolution of a controversy depends on facts that are unique or unlikely to be repeated, the action is not capable of repetition and hence is moot") (citation omitted); *W. Expl., LLC v. U.S. Dep't of Interior*, 250 F.Supp.3d 718, 734 (D. Nev. 2017)

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federal jurisdiction or where such claim is wholly insubstantial and frivolous") (citation and internal quotations omitted).

[4] Plaintiff intimates that these statutes themselves are unconstitutional. Pl.'s Resp. to SEIU 503's Mot. Dismiss 13-14 (doc. 28); Pl.'s Resp. to State's Mot. Dismiss 3-5 (doc. 32). Yet the deduction of dues pursuant to a valid authorization agreement does not infringe on a public employee's First Amendment rights, even if the employee subsequently changes his or her mind regarding union membership. *See Fisk v. Inslee*, 759 Fed.Appx. 632, 633 (9th Cir. 2019) ("[t]he First Amendment does not preclude the enforcement of 'legal obligations' that are bargained-for and 'self-imposed' under state contract law") (citing *Cohen v. Cowles Media*, 501 U.S. 663, 668-71 (1991)). Furthermore, forging an employee's membership agreement or otherwise authorizing the unauthorized payment of union dues violates Or. Rev. Stat. § 243.806 and other provisions of Oregon law. As such, the allegedly wrongful conduct at issue in this case is neither permitted nor caused by the State's statutory scheme surrounding unions. *See*, *e.g.*, *Yates v. Wash. Fed'n of State Empls.*, 2020 WL 3118496, *1-4 (W.D. Wash. June 12, 2020).

("alleged potential harm in the future is not actual or imminent").

Defendants represent that no union dues will be deducted from plaintiff's wages in the future unless and until she joins SEIU 503, and SEIU 503 notifies DAS that authorization exists. Johnson Decl. ¶¶ 9-10 (doc. 16); Pye Decl. ¶¶ 4-5 (doc. 20). Plaintiff does not attempt to refute this evidence or argue that union dues will be deducted in contravention of state law absent further fraud. *See generally* Pl.'s Resp. to SEIU 503's Mot. Dismiss (doc. 28); Pl.'s Resp. to State's Mot. Dismiss (doc. 32); *see also Safe Air for Everyone*, 373 F.3d at 1039 (where a factual attack is made, "the party opposing the motion must furnish affidavits or other evidence necessary to satisfy its burden of establishing subject matter jurisdiction") (citation and internal quotations omitted); *Ochoa*, 2019 WL 4918748 at *3-4 (the plaintiff failed to demonstrate "that there is a substantial likelihood of a similar, future deprivation [where] there is no evidence that a forged authorization will occur again").

Moreover, to ensure that this precise circumstance will not be repeated absent plaintiff's express and knowing authorization, SEIU 503's "membership department has been instructed to flag Plaintiff's name in its databases so that any future membership application in Plaintiff's name will be brought to the attention of SEIU 503's legal department for review before any action is taken to process the new membership application." Johnson Decl. ¶¶ 9-10 (doc. 16).[5] As

[5] Plaintiff objects to this portion of defendants' evidence on the basis that "it asserts facts far outside the pleadings, and is inadmissible hearsay since it is being offered for the truth of the matter asserted." Pl.'s Resp. to State's Mot. Dismiss 7 n.4 (doc. 32). Yet the Court can consider evidence outside the pleadings "[i]n

a result, "no union dues could be deducted from Plaintiff's pay in the future unless she voluntarily authorizes the deductions in a new membership application." *Id*.; Pye Decl. ¶¶ 4-5 (doc. 20).

Under analogous circumstances, courts within the Ninth Circuit have repeatedly found that subject matter jurisdiction is lacking once the plaintiff is no longer a union member and dues are no longer being deducted. *See*, *e.g.*, *Stroeder v. Serv. Emps. Int'l Union*, 2019 WL 6719481, *3 (D. Or. Dec. 6, 2019); *Seager v. United Teachers L.A.*, 2019 WL 3822001, *2 (C.D. Cal. Aug. 14, 2019); *see also Babb v. Cal. Teachers Ass'n*, 378 F.Supp.3d 857, 886 (C.D. Cal. 2019) (dismissing the plaintiff's claim as moot because he "would have to rejoin his union for his claim to be live, which, given his representations in this lawsuit, seems a remote possibility"); *Yates*, 2020 WL 3118496 at *5 (dismissing the plaintiff's claim for lack of standing where she "presents no evidence to contradict [the union]'s showing that its procedures make unauthorized withdrawals [of dues] very unlikely . . . The fact that [she] encountered an isolated instance of misconduct or error in the past does not mean she is at heightened risk of another similar experience"); *Ochoa*, 2019 WL 4918748 at *3 (the fact "that [the plaintiff] is 'forced to exercise heightened vigilance' because 'SEIU 775 has dealt with [her] deceptively in the past' and she 'knows that the State Defendants will not, apparently, question any union representation from the union' [was] not

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resolving a factual attack on jurisdiction . . . without converting the motion to dismiss into a motion for summary judgment." *Safe Air for Everyone*, 373 F.3d at 1039. Additionally, there are no hearsay concerns where, as here, the affiant is "testifying from personal knowledge." *Calmat Co. v. U.S. Dep't of Labor*, 364 F.3d 1117, 1124 (9th Cir. 2004); Johnson Decl. ¶¶ 1-2 (doc. 16).

a sufficient ongoing injury to establish a case and controversy"). Defendants' motions should be granted in this regard.

II. Failure to State a Claim

Even assuming jurisdiction exists, plaintiff's claims fail at the pleadings level. Critically, a number of recent court decisions considering whether a union is acting under color of state law in this context have held that no claim exists pursuant to 42 U.S.C. §1983. *See*, *e.g.*, *Belgau v. Inslee*, 359 F.Supp.3d 1000, 1012-15 (W.D. Wash. 2019); *Oliver v. SEIU Local 668*, 415 F.Supp.3d 602, 608-12 (E.D. Pa. 2019); *Quirarte v. United Domestic Workers*, 2020 WL 619574, *5-6 (S.D. Cal. Feb. 10, 2020); *Molina v. Penn. Soc. Serv. Union*, 2020 WL 2306650, *9-10 (M.D. Pa. May 8, 2020); *Quezambra v. United Domestic Workers of Am. AFSCME Local 3930*, 2020 WL 2988303, *4-6 (C.D. Cal. June 3, 2020); *Yates*, 2020 WL 3118496 at *2-4.

These courts have reasoned that the Constitution does not bar a state's deduction of union fees from a valid dues agreement. *Belgau*, 359 F.Supp.3d at 1012-15; *Yates*, 2020 WL 3118496 at *2-4. Where, as here, the dispute surrounds whether the agreement the plaintiff signed is valid, the allegedly wrongful conduct stems from the union's authorization of dues, an exclusively private act. *Id.* In other words, the state's statutory obligation to deduct dues based on union authorization (even if fraudulently obtained) does not transform the private conduct of the union into state action under any conceivable test. *Id.*

Plaintiff has not presented any compelling reason why the Court should ignore this growing case law and instead rule in her favor. Pl.'s Resp. to SEIU 503's Mot. Dismiss 6-13 (doc. 28). In fact, the very arguments that

plaintiff relies on in support of the existence of state action were expressly rejected in the aforementioned decisions. *See Belgau*, 359 F.Supp.3d at 1012-15 (finding no state action under the public function test, the joint action test, the state compulsion test, or the governmental nexus test where the plaintiffs' claims emanated from "whether the [union membership] agreements they signed are valid"); *see also Yates*, 2020 WL 3118496 at *2-4 (finding that virtually identical claims "fail as a matter of law" under the "two-prong test [used] to determine whether private action can be fairly attributed to the state") (citing *Lugar v. Edmondson Oil Co.*, 457 U.S. 922 (1982)). Notably, plaintiff does not identify a single decision holding that a union's conduct violated the First or Fourteenth Amendment under similar circumstances.

In sum, because there is no meaningful factual distinction between *Belgau*, *Yates*, and the present case, the Court adopts their reasoning as its own and finds that the requisite state action is absent for the purposes of plaintiff's 42 U.S.C. 1983 claims.

III. Supplemental Jurisdiction

Because plaintiff's federal claims fail at the pleadings level, the question becomes whether plaintiff's state law claims should proceed in this forum given the lack of complete diversity. "A court may decline to exercise supplemental jurisdiction over state-law claims once it has dismissed all the claims over which it has original jurisdiction." *Ove v. Gwinn*, 264 F.3d 817, 826 (9th Cir. 2001) (citing 28 U.S.C. § 1367(c)(3)). When determining whether to decline supplemental jurisdiction, the factors to be considered are "judicial economy, convenience, fairness, and comity." *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 (1988).

This case has not proceeded beyond the pleadings stage and few judicial resources have been used, especially if the remaining claims are dismissed. Dismissal also promotes comity by allowing the Oregon courts to interpret matters of state law. As such, the balance of factors favors declining supplemental jurisdiction. *See id.* ("when the federal-law claims have dropped out of the lawsuit in its early stages and only state-law claims remain, the federal court should decline the exercise of jurisdiction"). Plaintiff's remaining claims should therefore be dismissed without prejudice.

RECOMMENDATION

For the reasons stated herein, defendants' Motions to Dismiss (docs. 15, 19) should be granted and this case should be dismissed with leave to refile in state court, and judgment should be entered accordingly. Plaintiff's request for oral argument is denied as unnecessary.

This recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, should not be filed until entry of the district court's judgment or appealable order. The parties shall have fourteen (14) days from the date of service of a copy of this recommendation within which to file specific written objections with the court. Thereafter, the parties shall have fourteen (14) days within which to file a response to the objections. Failure to timely file objections to any factual determination of the Magistrate Judge will be considered as a waiver of a party's right to de novo consideration of the factual issues and will constitute a waiver of a party's right to appellate review of the findings of fact in an order or judgment entered pursuant to this recommendation.

DATED this 23rd day of July, 2020.

/s/ Jolie A. Russo
Jolie A. Russo
United States Magistrate Judge

APPENDIX I

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

Case No. 3:20-cv-00519-JR

MARGO CASH SCHIEWE,

Plaintiff,

v.

SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 503, a labor organization, OREGON DEPARTMENT OF ADMINISTRATIVE SERVICES, KATY COBA, in her official capacity as Director of the Oregon Department of Administrative Services,

Defendants.

OPINION AND ORDER

IMMERGUT, District Judge.

Before the Court is Defendant Service Employees International Union Local 503's Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(1) and Fed. R. Civ. P. 12(b)(6), ECF 15, and Defendants Oregon Department of Administrative Services and Katy Coba's Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(1), ECF 19. On July 23, 2020, Magistrate Judge Jolie A. Russo issued her Findings and Recommendation ("F&R"), in which she recommended that Defendants' motions should be granted and this case should be dismissed with leave to refile in state court. ECF 38. Plaintiff filed objections to the F&R, to which Defendants responded. ECF 40; ECF 42; ECF 43. After de novo

review of the F&R, objections, and responses, this Court adopts the F&R as explained in the following supplemental analysis.

STANDARDS

Under the Federal Magistrates Act ("Act"), as amended, the court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). If a party files objections to a magistrate judge's F&R, "the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.*; *see also* Fed. R. Civ. P. 72(b)(3). However, the court is not required to review, de novo or under any other standard, the factual or legal conclusions of the F&R to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149–50 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc). Nevertheless, the Act "does not preclude further review by the district judge, sua sponte," whether de novo or under another standard. *Thomas*, 474 U.S. at 154.

DISCUSSION

This Court adopts the F&R's summary of the allegations in the Complaint. ECF 38 at 2– 4. The F&R found that Plaintiff failed to state a claim under 42 U.S.C. § 1983 against Service Employees International Union Local 503 ("SEIU 503") because it was not acting under the color of state law in authorizing union dues deductions from Plaintiff's paycheck. *Id.* at 10–12. The F&R also concluded that the court lacked subject matter jurisdiction over Plaintiff's claims for equitable relief against SEIU 503, the Oregon Department of Administrative Services and Katy Coba

(collectively, "the State"). *Id.* at 6–10. Finally, the F&R recommended that Plaintiff's remaining state law claims against Defendants should be dismissed because this Court should decline to exercise supplemental jurisdiction over them. *Id.* at 12. Plaintiff objects to the F&R as it relates to the first two recommendations. ECF 40 at 9–25.

While awaiting this Court's review, the Ninth Circuit decided *Belgau v. Inslee*, No. 19 35137, 2020 WL 5541390 (9th Cir. Sept. 16, 2020), a case with immediate bearing on the present dispute. This Court will supplement Judge Russo's analysis with the benefit of the Ninth Circuit's recent decision.

A. Failure to State a Claim

To prevail on a claim under 42 U.S.C. § 1983, Plaintiff must show that SEIU 503 deprived her of a right secured by the Constitution and acted "under color of state law." *Collins v. Womancare*, 878 F.2d 1145, 1147 (9th Cir. 1989). Judge Russo recommended dismissing Plaintiff's 42 U.S.C. § 1983 claims against SEIU 503 because the union was not acting under color of state law when it authorized dues deductions from Plaintiff's paycheck. ECF 38 at 10-12. In her objections, Plaintiff argues SEIU 503 is a state actor because the union uses state authority to direct the State's deduction of money from public employees' wages. ECF 40 at 10-16.

The Ninth Circuit's decision in *Belgau* settles the argument. In that case, the plaintiffs were public employees who signed membership agreements authorizing Washington State to deduct union dues from their paychecks and transmit them to the Washington Federation of State Employees, AFSCME Council 28 ("WFSE"). *Belgau*, 2020 WL 5541390, at *2. The plain-

tiffs had the option of declining union membership and paying fair-share representation or agency fees. *Id.* After the Supreme Court's decision in *Janus v. American Federation of State, County, and Municipal Employees, Council 31*, 138 S. Ct. 2448 (2018), which held that compelling nonmembers to subsidize union speech is offensive to the First Amendment, the plaintiffs notified WFSE that they no longer wanted to be union members or pay dues. *Id.* at *3. Per this request, WFSE terminated the plaintiffs' union memberships. *Id*. However, pursuant to the terms of their revised membership agreements, Washington continued to deduct union dues from the plaintiffs' wages until an irrevocable one-year term expired. *Id.*

The plaintiffs brought a putative class action against Washington's Governor Jay Inslee, and state agency directors and secretaries, as well as WFSE, alleging that the dues deductions during the irrevocable one-year term violated their First Amendment rights and unjustly enriched WFSE. *Id.* Employees sought injunctive relief against Washington from the continued payroll deduction of union dues, and compensatory damages and other relief against WFSE for union dues paid thus far. *Id.*

The Ninth Circuit held that the employees' constitutional claims against the union, brought under 42 U.S.C. § 1983, failed for lack of state action. *Id.* at *3–6. The panel explained that neither Washington's role in the alleged unconstitutional conduct nor its relationship with WFSE justified characterizing WFSE as a state actor. The court employed a two-prong inquiry to analyze the state action question, asking: (1) whether the claimed constitutional deprivation resulted from the exercise of some right or privilege created by the state or by a rule of conduct imposed by the state or by

a person for whom the state is responsible, and (2) whether the party charged with the deprivation could be described in all fairness as a state actor. *Id.* at *4; *see also Naoko Ohno v. Yuko Yasuma*, 723 F.3d 984, 994 (9th Cir. 2013).

This Court will address each factor set forth in *Belgau* as it applies to this case.

1. The First Prong of the State Action Test

Assessing the first prong of the state action test in *Belgau*, the Ninth Circuit sharpened the inquiry to the crux of the plaintiffs' constitutional harm. The court explained:

> It is important to unpack the essence of [the plaintiffs'] constitutional challenge: they do not generally contest the state's authority to deduct dues according to a private agreement. Rather, the claimed constitutional harm is that the agreements were signed without a constitutional waiver of rights. Thus, the "source of the alleged constitutional harm" is not a state statute or policy but the particular private agreement between the union and [the plaintiffs].

Belgau, 2020 WL 5541390, at *4. This reasoning applies with equal force to Plaintiff's claims before this Court. Plaintiff alleges her signature on a union membership application was forged *by the union*, resulting in unlawful dues deduction from her wages without her consent. ECF 1 at ¶¶ 16–23, 30, 42, 45–53. Plaintiff does not generally challenge the state's authority to deduct dues according to a private agreement. Rather, the constitutional harm alleged is the forgery *by the union* and consequent faulty authorization of union dues withdrawals, "an exclusively private act." ECF 38

at 11. Therefore, as in *Belgau*, "the 'source of the alleged constitutional harm' is not a state statute or policy but the particular private agreement between the union and [Plaintiff]." *Belgau*, 2020 WL 5541390, at *4 (quoting *Ohno*, 723 F.3d at 994). Plaintiff's 42 U.S.C. § 1983 claims against SEIU 503 fail the first prong of the state action test.

2. The Second Prong of the State Action Test

The Ninth Circuit in *Belgau* also held that the plaintiffs' claims failed the second prong of the state action analysis—"whether the party charged with the deprivation could be described in all fairness as a state actor." *Id.* (internal quotation marks omitted). The court rejected theories of state action under the joint action test.[1] *Id.* at *4–6. The court's reasoning on this prong also applies with equal force to the facts in the present dispute.

A private party is generally not bound by the First Amendment, *see United Steelworkers of Am. v. Sadlowski*, 457 U.S. 102, 121 n.16 (1982), unless it has acted "in concert" with the state "in effecting a particular deprivation of constitutional right," *Tsao v. Desert Palace, Inc*., 698 F.3d 1128, 1140 (9th Cir. 2012) (citations omitted). Joint action exists where the government either "(1) affirms, authorizes, encourages, or facilitates unconstitutional conduct through its involvement with a private party, or (2) otherwise has so far insinuated itself into a position of interdependence with the non-governmental party, that it is recognized as a joint participant in the challenged activity." *Belgau*, 2020 WL 5541390, at *4 (quoting

[1] The Ninth Circuit also rejected a state action theory under the public function, the state compulsion, and the governmental nexus tests. *Belgau*, 2020 WL 5541390, at *4 n.2.

Ohno, 723 F.3d at 996) (internal quotation marks omitted). Neither scenario applies to Plaintiff's claims.

Plaintiff does not allege that the State played any role in the forgery or fraudulent reporting of her union membership. To be characterized as a joint actor, the State must have provided "significant assistance" to the private party. *Id.* A private party cannot be treated like a state actor where the government's involvement was only to provide "mere approval or acquiescence," "subtle encouragement," or "permission of a private choice." *See Am. Mfrs. Mut. Ins. Co. v. Sullivan,* 526 U.S. 40, 54 (1999). Here, the decision to deduct dues from Plaintiff's payroll was made exclusively by a private party, "without standards established by the State." *Belgau*, 2020 WL 5541390, *4 (quoting *Sullivan*, 526 U.S. at 52–54) (internal quotation marks omitted). Therefore, when the union membership agreement was formed (either by the union's forgery or otherwise), it was not because of any state action. *See id.*

Moreover, the State did not shape the terms of the membership agreement or the circumstances by which the agreement was executed. The State did not provide significant assistance to the underlying acts that Plaintiff contends constituted the core violation of her constitutional right—the union's forgery and authorization of dues. *See id.* at *5 ("The state cannot be said to provide significant assistance to the underlying acts that [plaintiffs contend] constituted the core violation of its First Amendment rights if the law requires [the State] to enforce the decisions of others without inquiry into the merits of the agreement.") (internal quotation marks and citation omitted). Indeed, the law requires the State to enforce the dues deduction arrangement without an inquiry into the merits of the agreement. *See* O.R.S. § 243.806. Plaintiff appears to concede this

point readily. *See* ECF 40 at 13 ("Oregon's statutory dues deduction system requires that the State comply with union instructions, asking no questions about the instructions' legality under other arguably applicable laws."). The State's "'mandatory indifference to the underlying merits' of the authorization 'refutes any characterization' of [SEIU 503] as a joint actor with [the State]." *Belgau*, 2020 WL 5541390, at *5 (quoting *Ohno*, 723 F.3d at 997).

Additionally, providing the mere apparatus to implement a private agreement by performing an administrative task does not render the State and SEIU 503 joint actors. *Id.* "The state must have 'so significantly encourage[d] the private activity as to make the State responsible for' the allegedly unconstitutional conduct." *Id.* (quoting *Sullivan*, 526 U.S. at 53). Here, as in *Belgau*, the State's role in the allegedly unconstitutional conduct was "[a]t best . . . ministerial processing of payroll deductions." *Id*. Much more is required to be considered joint actors.

Furthermore, the State was not in a position of "interdependence" with SEIU 503. *See Ohno*, 723 F.3d at 996. Interdependence exists when the "government in any meaningful way accepts benefits derived from the allegedly unconstitutional actions." *Id.* at 997. There must be a "symbiotic relationship" of mutual benefit and a "substantial degree of cooperative action." *Belgau*, 2020 WL 5541390, at *5 (quoting *Sawyer v. Johansen*, 103 F.3d 140, 140 (9th Cir. 1996) (internal quotation marks omitted). A merely contractual relationship between the State and a private party does not support joint action. *Id.*

Plaintiff does not allege that the State received any benefits as a passthrough for dues collection. As in *Belgau*, "the state remitted the total amount to [SEIU

503] and kept nothing for itself." *Id.*; *see also* ECF 40 at 24 ("Plaintiff's wages withheld have already remitted to the union."). This dues deduction scheme does not place the State in a position of interdependence with SEIU 503—the relationship is merely contractual.

Plaintiff's theory that the union dues were unlawfully taken from her as a result of SEIU 503's forgery does not undercut the clear mandate from *Belgau*. As in *Belgau*, the dispute still surrounds the validity of the membership agreement, a private contractual matter. As in *Belgau*, at bottom, the State's role in this alleged harm was to enforce a private agreement. Because private dues agreements do not trigger state action and independent constitutional scrutiny, this Court dismisses Plaintiff's 42 U.S.C. § 1983 claims against SEIU 503.

B. Subject Matter Jurisdiction

In the F&R, Judge Russo also found the court did not have subject matter jurisdiction over Plaintiff's claims for equitable relief against Defendants, finding in part that Plaintiff's claims were moot. ECF 38 at 6-10. Plaintiff objects to this finding, reiterating many of the same arguments raised before Judge Russo, *see* ECF 28 at 31-36; ECF 32 at 9-16; ECF 40 at 16-25. When Plaintiff filed the Complaint, the State was still allegedly deducting union dues from her paycheck, however, the deductions stopped soon thereafter. ECF 40 at 7-8. A live dispute "must be extant at all stages of review, not merely at the time the complaint is filed." *Preiser v. Newkirk*, 422 U.S. 395, 401 (1975) (citations omitted). Thus, any prospective injunction against Defendants would not provide relief for Plaintiff's claim of unlawful dues deductions. *See Ruiz v. City of Santa Maria*, 160 F.3d 543, 549 (9th Cir. 1998) ("Claims for injunctive relief become moot when the

challenged activity ceases" and "the alleged violations could not reasonably be expected to recur." (citation omitted)).

In *Belgau*, the union deductions in question had ceased by the time the case came before the Ninth Circuit because the one-year payment commitment periods had expired. 2020 WL 5541390, at *6. Nevertheless, the Ninth Circuit held that the plaintiffs' claim against Washington State defendants for an injunction prohibiting the continued deduction of dues was not moot, as it fell within the "capable of repetition yet evading review" mootness exception. *Id.* Although *Belgau* remains quite factually similar to the present dispute, this holding on mootness does not constrain the Court's determination here.

The Ninth Circuit cabined its mootness analysis to the class action context, where "the pace of litigation and the inherently transitory nature of the claims at issue conspire to make [the mootness] requirement difficult to fulfill." *United States v. Sanchez-Gomez*, 138 S. Ct. 1532, 1539 (2018). The court declared "[s]uch an inherently transitory, pre-certification class-action claim falls within the capable of repetition yet evading review mootness exception if (1) the duration of the challenged action is too short to allow full litigation before it ceases, and (2) there is a reasonable expectation that the named plaintiffs could themselves suffer repeated harm or it is certain that *other persons similarly situated will have the same complaint*." *Belgau*, 2020 WL 5541390, at *6 (internal quotation marks and citations omitted) (emphasis added). The Ninth Circuit held that because the Washington State defendants continued to deduct union dues until the one-year terms expired from other public employees who objected to union membership, other persons

similarly situated could be subjected to the same conduct. *Id.*

By contrast, in the present dispute, Plaintiff brings claims as an individual. Here, "the capable of repetition yet evading review" mootness exception only applies where: (1) the challenged action is in its duration too short to be fully litigated prior to cessation or expiration, and (2) there is a reasonable expectation that *the same complaining party* will be subject to the same action again. *Fed. Election Comm'n v. Wis. Right to Life, Inc.*, 551 U.S. 449, 462 (2007) (emphasis added). Judge Russo found that there was no reasonable likelihood Plaintiff would be injured again in an identical manner, and that an alleged expectation of repeated unauthorized dues deductions was simply not reasonable. ECF 38 at 7–9. This Court agrees with Judge Russo's analysis, ECF 38 at 6–10, and adopts this portion of the F&R in full. This Court does not have subject matter jurisdiction over Plaintiff's claims for equitable relief.

C. Supplemental Jurisdiction

Judge Russo recommended this Court decline to exercise supplemental jurisdiction over Plaintiff's remaining state law claims after dismissing Plaintiff's federal claims. ECF 38 at 12. This Court agrees with Judge Russo's analysis and adopts this portion of the F&R, ECF 38 at 12, in full.

CONCLUSION

The F&R, ECF 38, is adopted as supplemented in this Opinion & Order. Defendants' motions to dismiss, ECF 15; ECF 19, are GRANTED, and this case is DISMISSED with leave to refile in state court.

IT IS SO ORDERED.

DATED this 28th day of September, 2020.

/s/ Karin J. Immergut
Karin J. Immergut
United States District Judge

APPENDIX J

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT TACOMA

Case No. 3:20–cv–05082–RBL

SHARRIE YATES,

Plaintiff,

v.

WASHINGTON FEDERATION OF STATE EMPLOYEES, AMERICAN FEDERATION OF STATES, COUNTY AND MUNICIPAL EMPLOYEES, COUNCIL 28 AFL-CIO, a labor organization; et al.,

Defendants.

HONORABLE RONALD B. LEIGHTON

ORDER ON DEFENDANT WFSE'S MOTION TO DISMISS

INTRODUCTION

THIS MATTER is before the Court on Defendant Washington Federation of State Employees' (WFSE) Motion to Dismiss. Dkt. # 17. Plaintiff Sharrie Yates, a state employee, sued WFSE for forging her electronic signature on a form authorizing Yates's employer to withdraw union dues from her paychecks. Yates also asserts claims against Governor Jay Inslee and Healthcare Authority Director Sue Birch in their official capacities (collectively the "State") under the theory that Defendants' system for authorizing dues

withdrawals is constitutionally deficient. WFSE now moves to dismiss Yates's § 1983 claims on the merits and for failure to allege state action by the union, a private entity. WFSE further argues that Yates lacks standing to obtain prospective relief and that the Court should decline to exercise supplemental jurisdiction over her remaining state law claims. For the following reasons, the Court GRANTS WFSE's Motion in part and DENIES it in part.

BACKGROUND

On June 27, 2018, the Supreme Court held that public sector employers could not withhold wages to pay union dues without the employee's consent. *Janus v. AFSCME Council 31*, 138 S.Ct. 2448 (2018). The State of Washington responded by protecting the right of employees to abstain from union activities. RCW 41.80.050. Consistent with this right, public sector employers can deduct union dues from an employee's wages only "[u]pon authorization of [the] employee," RCW 41.80.100(1), a rule implemented by Section 40 of the CBA between WFSE and the State. Complaint, Dkt. # 1, at 8. It is an unfair labor practice for an employer or union to restrain or coerce employees in the exercise of their right to decline participation in a union. RCW 41.80.110. The Public Employee Relations Commission is empowered to address and remedy unfair labor practices. RCW 41.56.160.

WFSE is the largest exclusive bargaining representative for state employees in Washington. Yates, an employee at the Washington State Healthcare Authority (HCA), previously paid dues to WFSE. However, on October 11, 2018, Yates provided the HCA's payroll department with her written resignation from union membership and objection to union dues. The payroll department informed Yates that she could not halt her

payment of dues because she had electronically signed an authorization form on June 21, 2018. This authorization committed Yates to paying union dues to WFSE for the year and could only be nullified during a 10-day window at the end of the yearly period.

Yates alleges that she never signed this authorization form or visited WFSE's website on June 21, 2018. Complaint, Dkt. # 1, at 4. Yates informed WFSE of this but received no substantive response. *Id*. at 5. WFSE eventually allowed Yates to withdraw from the union in June 2019 but did not refund the dues that had been withdrawn from her paychecks since October 2018. *Id*.

On January 30, 2020, Yates filed this lawsuit, which focuses on WFSE allegedly forging Yates's signature on its authorization form. Yates alleges four claims against Defendants—two federal law claims under 42 U.S.C. § 1983 and two state law claims. Yates's first § 1983 claim alleges that Defendants, "acting in concert and under color of law," violated her First and Fourteenth Amendment rights by withdrawing union dues from her paychecks based on a forged signature. Complaint at 6. Yates alleges that WFSE purposely forged her signature and that the State relied on that forgery and failed to verify it. *Id*. Yates also claims that "Defendants collectively set up and operated a system designed to avoid accountability which permitted and encouraged the violation of the constitutional rights of state employees." *Id*.

Yates's second § 1983 claim alleges First and Fourteenth Amendment violations based on the lack of "necessary procedural safeguards" in the new union dues collection scheme. *Id*. at 7. Basically, Yates alleges that the lack of such safeguards means RCW 41.80.100 and Article 40 of the CBA allowed the State to rely on a forged signature to collect Yates's union dues,

facilitating a violation of her rights. *Id*. Finally, Yates also alleges two state law claims: one for willful withholding of wages under RCW 49.52.050 and one for outrage. *Id*. at 8.

Yates requests that the Court reimburse her union dues with interest, award damages for her emotional distress, and grant punitive and statutory damages. *Id*. at 10-11. Yates also asks for a declaratory judgment that the scheme whereby the State relies on union representations for withdrawing union dues is unconstitutional and an injunction preventing Defendants from utilizing the scheme in the future. *Id*. at 11.

DISCUSSION

WFSE first argues that Yates's § 1983 claims must be dismissed on several bases, but the Court need only address the argument that the claims fail to allege state action by WFSE. Second, WFSE contends that Yates's requested prospective relief fails to present a live case or controversy. Finally, if the Court dismisses Yates's § 1983 claims, WFSE argues that the Court should decline to exercise supplemental jurisdiction over Yates's remaining state law claims.

1. Legal Standards

WFSE asserts its Motion under Rule 12(b)(1) and 12(b)(6). "A complaint must be dismissed under Fed. R. Civ. P. 12(b)(1) if the action: (1) does not arise under the Constitution, laws, or treaties of the United States, or does not fall within one of the other enumerated categories of Article III, Section 2, of the Constitution; (2) is not a case or controversy within the meaning of the Constitution; or (3) is not one described by any jurisdictional statute." *United Transp. Union v. Burlington N. Santa Fe R. Co.*, No. C06-5441 RBL, 2007 WL 26761, at *2 (W.D. Wash. Jan. 2, 2007), *aff'd*, 528 F.3d 674 (9th

Cir. 2008). The plaintiff bears the burden of proving the existence of subject matter jurisdiction. *Stock West, Inc. v. Confederated Tribes*, 873 F.2d 1221, 1225 (9th Cir. 1989).

In a "factual attack" on jurisdiction, which is what WFSE asserts here, the court is not restricted to the allegations in the complaint and may consider evidence outside it. *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). Further, "[n]o presumptive truthfulness attaches to plaintiff's allegations, and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims." *Thornhill Pub. Co. v. Gen. Tel. & Elecs. Corp.*, 594 F.2d 730, 733 (9th Cir. 1979).

Dismissal under Fed. R. Civ. P. 12(b)(6) may be based on either the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). A plaintiff's complaint must allege facts to state a claim for relief that is plausible on its face. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A claim has "facial plausibility" when the party seeking relief "pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id*. Although the court must accept as true the Complaint's well-pled facts, conclusory allegations of law and unwarranted inferences will not defeat an otherwise proper 12(b)(6) motion to dismiss. *Vazquez v. Los Angeles Cty.*, 487 F.3d 1246, 1249 (9th Cir. 2007); *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). On a 12(b)(6) motion, "a district court should grant leave to amend even if no request to amend the pleading was made, unless it determines that the pleading could not possibly be cured by the

allegation of other facts." *Cook*, *Perkiss & Liehe v. N. Cal. Collection Serv.*, 911 F.2d 242, 247 (9th Cir. 1990).

2. State Action under § 1983

"To establish that a defendant is liable for a claim under 42 U.S.C. § 1983 a plaintiff must show '(1) that the conduct complained of was committed by a person acting under color of state law; and (2) that the conduct deprived the plaintiff of a constitutional right.'" *Peschel v. City of Missoula*, 686 F. Supp. 2d 1092, 1099 (D. Mont. 2009) (internal quotation omitted) (quoting *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988)). However, "[m]ost rights secured by the Constitution are protected only against infringement by governments." *Ohno v. Yasuma*, 723 F.3d 984, 993 (9th Cir. 2013) (quoting *Lugar v. Edmonson Oil Co.*, 457 U.S. 922, 936-37 (1982)). Therefore, to state a § 1983 claim against a private entity like WFSE, the plaintiff must establish that it engaged in "state action" for which the government can fairly be blamed.[1] *Id*. at 994.

"State action may be found if, though only if, there is such a close nexus between the State and the challenged action that seemingly private behavior may be fairly treated as that of the State itself." *Villegas v. Gilroy Garlic Festival Ass'n*, 541 F.3d 950, 955 (9th Cir. 2008) (quoting *Brentwood Acad. v. Tennessee Secondary Sch. Athletic Ass'n*, 531 U.S. 288, 295 (2001) (internal quotation omitted)). Determining whether such a

[1] While § 1983 only creates liability for "persons," the Supreme Court has held that the statute covers "legal as well as natural persons." *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658, 683, 690 (1978) (analyzing § 1 of the Civil Rights Act of 1871, 17 Stat. 13, the precursor of § 1983).

nexus exists is a malleable inquiry with no single decisive condition. *Brentwood*, 531 U.S. at 295-96.

In *Lugar*, the Supreme Court devised a two-prong test to determine whether private action can be fairly attributed to the state. "The first prong asks whether the claimed constitutional deprivation resulted from 'the exercise of some right or privilege created by the State or by a rule of conduct imposed by the state or by a person for whom the State is responsible.'" *Ohno*, 723 F.3d at 994 (quoting *Lugar*, 457 U.S. at 939). "The second prong determines whether the party charged with the deprivation could be described in all fairness as a state actor." *Id*. (quoting *Lugar*, 457 U.S. at 939). "Both elements under *Lugar* must be met for there to be state action." *Collins v. Womancare*, 878 F.2d 1145, 1151 (9th Cir. 1989).

The parties mainly dispute whether the alleged actions of WFSE were undertaken consistent with state law or in violation of it and whether that distinction is decisive for the state action test. *Lugar* itself is an excellent guide on this topic. Lugar, a truck stop operator, had been in debt to the defendant, an oil company. *Lugar*, 457 U.S. at 924. To secure Lugar's property, the oil company utilized a prejudgment attachment procedure that only required an allegation that the debtor "was disposing of or might dispose of [the creditor's] property." *Id*. The clerk issued a writ of attachment and the sheriff executed it. *Id*. at 924-25.

Lugar asserted two § 1983 claims for due process violations, but there was "considerable confusion throughout the litigation on the question whether Lugar's ultimate claim of unconstitutional deprivation was directed at the Virginia statute itself or only at its erroneous application to him." *Id*. at 940. One of the claims alleged that the oil company violated the Due

Process Clause by depriving Lugar of his property through "unlawful" acts. *Id*. This could not support a § 1983 claim because "invoke[ing] [a] statute without the grounds to do so could in no way be attributed to a state rule or a state decision." *Id*.; *see also Collins*, 878 F.2d at 1153 ("[Plaintiffs'] challenge to the citizen's arrests based on a delegation by statute argument fails because their claim depends upon the violation of California's citizen's arrest statute.").

However, the Court concluded that the second due process claim challenged the state statute as procedurally defective and did not rely on the oil company's misconduct. *Lugar*, 457 U.S. at 941. As Lugar's counsel explained it, "[t]he claim is that the action as taken, even if it were just line by line in accordance with Virginia law—whether or not they did it right, the claim is that it was in violation of Lugar's constitutional rights." *Id*. at 941 n.22; *see also*, *e.g.*, *Georgia v. McCollum*, 505 U.S. 42, 51, 55 (1992) (criminal defendant who used peremptory challenges in racially discriminatory way exercised a right "established by a provision of state law" but violated "the constitutional mandate of race neutrality"). The Court thus held that both prongs of the state action test were satisfied because "the procedural scheme created by the statute obviously is the product of state action" and "a private party's joint participation with state officials in the seizure of disputed property is sufficient to characterize that party as a 'state actor' for purposes of the Fourteenth Amendment." *Id*. at 941-42.

Like *Lugar*, Yates alleges two § 1983 Fourteenth Amendment Due Process claims (with a First Amendment twist) that are unclear and inconsistent about the source of the constitutional deprivation. However, unlike *Lugar*, no reading of Yates's Complaint supports a

claim in which WFSE complied with state law. The very heart of Yates's lawsuit is that WFSE allegedly *forged* her signature—an act that Yates admits would be illegal. Opposition, Dkt. # 25, at 7.

"[P]rocedural due process rules are shaped by the risk of error inherent in the truth-finding process," but due process claims can vary. *Carey v. Piphus*, 435 U.S. 247, 259 (1978) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 344 (1976)). As *Lugar* demonstrates, claims can be premised on a defendant's exploitation of an undemanding procedure or their intentional misuse of that procedure. The former is compatible with state action under § 1983 while the latter is not. Here, Yates's challenge to RCW 41.80.100 based on WFSE's alleged forgery cannot logically support the former type of claim; the statute's defect would have to come from enabling its own subversion, not from facilitating mistakes. Yates's claims therefore cannot survive if WFSE's actions were "line by line in accordance with [Washington] law," which means she cannot satisfy prong-one of the state action test. *Lugar*, 457 U.S. at 941 n.22.

Yates insists that, while WFSE's forgery may have violated other laws, the union nonetheless complied with RCW 41.80.100's procedural requirements for authorizing dues collection by presenting a signature to the State. But for Yates to be correct, the statute would have to permit unions to forge employees' signatures. It clearly does not. RCW 41.80.100 requires unions to present the "authorization of an employee" to the State, with the word "of" indicating "origin or derivation." MERIAM-WEBSTER, https://www.merriam-webster.com/dictionary/of (last visited June 8, 2020). Insofar as RCW 41.80.100 creates a "right or privilege" of unions to initiate dues collections, that right only

extends to authentic signatures derived from employees themselves. *Lugar*, 457 U.S. at 939. Indeed, RCW 41.80.110(2) makes it an unfair labor practice to coerce employees into abdicating their right to abstain from union activities. If WFSE forged Yates's signature, it acted "contrary to the relevant policy articulated by the State." *Collins*, 878 F.2d at 1152 (quoting *Lugar*, 457 U.S. at 940).

Yates also argues that WFSE's forgery was state action because the State impermissibly encouraged it "by allowing a system in which the Union provides all information regarding a public-employees [sic] authorization to deduct dues." Opposition, Dkt. # 25. It is true that joint action with government parties can transform wrongful private action into state action. *See Collins*, 878 F.2d at 1154; *Howerton v. Gabica*, 708 F.2d 380, 384 (9th Cir. 1983). But Yates does not allege that the State knowingly participated in WFSE's misconduct. *See*, *e.g.*, *Dennis v. Sparks*, 449 U.S. 24, 27 (1980) (state action where private parties conspired with judge); *Howerton*, 708 F.2d at 384 (state action where police facilitated illegal eviction); *Harris v. City of Roseburg*, 664 F.2d 1121, 1127 (9th Cir. 1981) (state action where sheriff assisted in repossession). Instead, she claims that the State passed a statute with insufficient safeguards against its own violation and unknowingly accepted an allegedly forged signature. This is not the kind of government "aid" that courts have required to constitute state action by private parties. Yates's § 1983 claims against WFSE fail as a matter of law.

3. Standing to Seek Prospective Relief

"[A] plaintiff must demonstrate standing for each claim he seeks to press and for each form of relief that is sought." *Davis v. Fed. Election Comm'n*, 554 U.S. 724, 734 (2008) (internal quotation omitted). "Standing re-

quires proof (1) that the plaintiff suffered an injury in fact that is 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical;' (2) of a causal connection between that injury and the complained-of conduct; and (3) that a favorable decision will likely redress the alleged injury." *Rynearson v. Ferguson*, 355 F. Supp. 3d 964, 968 (W.D. Wash. 2019) (quoting *Alaska Right to Life Political Action Comm. v. Feldman*, 504 F.3d 840, 848 (9th Cir. 2007)).

"A plaintiff may challenge the prospective operation of a statute that presents a realistic and impending threat of direct injury." *Davis*, 554 U.S. at 734 (citing *Babbitt v. Farm Workers*, 442 U.S. 289, 298 (1979)). "Past wrongs, though insufficient by themselves to grant standing, are 'evidence bearing on whether there is a real and immediate threat of repeated injury.'" *Davidson v. Kimberly-Clark Corp.*, 889 F.3d 956, 967 (9th Cir. 2018) (quoting *City of Los Angeles v. Lyons*, 461 U.S. 95, 102 (1983)). To determine if the potential repeated injury is similar to the past one, courts "must be careful not to employ too narrow or technical an approach. Rather, [courts] must examine the questions realistically[,] . . . reject the temptation to parse too finely, and consider instead the context of the inquiry." *Id*. (quoting *Armstrong v. Davis*, 275 F.3d 849, 867 (9th Cir. 2001)).

WFSE argues that any future harm to Yates is too speculative to support prospective injunctive relief because Yates does not allege a union policy of forging signatures and, to date, she is the only member who has accused WFSE of forgery. Kunze Dec., Dkt. # 14 at 4. WFSE also points out that it has a detailed protocol for electronically enrolling union members, with an online form that must be fully completed, a confirmation email, and a week-long period during which

incoming members can inform the union of any error. *Id*. at 2-4 & Exs. 7-9. WFSE has even created a special alert that notifies the union if anyone tries to re-enroll Yates in the future. *Id*. at 4. Finally, WFSE asserts that Yates cannot seek to enjoin Article 40 of the CBA because its current form went into effect after Yates's deductions were terminated in June 2019. *Id*. at 2 & Ex. 6.

Yates responds that WFSE's alleged abuse of the union dues collection system, which relies solely on the union's representations, stands to harm her by undermining her trust in the union itself. *See Davidson*, 889 F.3d at 969-70 (holding that a consumer who purchased a misleadingly labeled product in the past has standing because she will be unable to trust the product's labeling in the future). Essentially, Yates contends that the ongoing lack of State verification and involvement in the system creates a likelihood of repeated abuse.

The Court agrees with WFSE that Yates lacks standing to seek prospective relief enjoining the operation of RCW 41.80.100 and CBA Article 40. Yates presents no evidence to contradict WFSE's showing that its procedures make unauthorized withdrawals very unlikely, especially in Yates's case. The fact that Yates encountered an isolated instance of misconduct or error in the past does not mean she is at heightened risk of another similar experience.

Yates's comparison to *Davidson* is unpersuasive. The plaintiff in *Davidson* did not allege that a single product was falsely labeled but that an entire *line* of products was. 889 F.3d at 962. This supported the court's conclusion that the plaintiff could no longer trust the product's advertising in general. *Id*. at 969-70. Here, in contrast, Yates has not alleged a systemic

problem with WFSE's procedures that would undermine the union's trustworthiness. Instead, her claim relies on the lack of independent verification by the State, which does not itself indicate pervasive misconduct by WFSE. Yates's request for prospective relief against WFSE is accordingly dismissed.

4. State Law Claims

Under 28 U.S.C. § 1367(a), a district court with original jurisdiction over at least one claim in a dispute has "supplemental jurisdiction over all other claims that are so related [that they] form part of the same case or controversy under Article III." However, a court may decline to exercise supplemental jurisdiction if it "has dismissed all claims over which it has original jurisdiction." § 1367(c)(3). WFSE argues that the Court should dismiss Yates's two state law claims against it because her § 1983 claims against the union are untenable.

But while Yates's § 1983 claims against WFSE have been dismissed for failure to allege state action, her § 1983 claims against the State remain and provide the Court with original jurisdiction.[2] Yates's state law claims against WFSE for outrage and violation of RCW

[2] Although Yates's § 1983 claims are against all Defendants collectively, her allegations against each are specific. For example, her First Amendment claim alleges, "The State and the HCA relies on WFSE to identify individuals who are members of the union, and by failing to independently verify employees' wishes, the State and HCA fail to adequately protect the First and Fourteenth Amendment rights of their employees." Complaint, Dkt. # 1, at 6. Although the Court anticipates the State will raise many of the same substantive arguments as WFSE against Yates's § 1983 claims, these defendant-specific bases of liability prevent the Court from addressing her claims as they relate to the State.

49.52.050 arising from the alleged forgery are closely related to her claims against the State. Because federal law claims still remain in the case, the Court will not dismiss Yates's state law claims.

CONCLUSION

WFSE's Motion to Dismiss is GRANTED in part and DENIED in part. Yates's § 1983 claims against WFSE are DISMISSED without leave to amend. Yates's request for prospective injunctive relief is DISMISSED.

IT IS SO ORDERED.

Dated this 12th day of June, 2020.

/s/ Ronald. B. Leighton
Ronald B. Leighton
United States District Judge

APPENDIX K

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CASE NO. 3:20-cv-05082-BJR

SHARRIE YATES,

Plaintiff,

v.

WASHINGTON FEDERATION OF STATE EMPLOYEES, AMERICAN FEDERATION OF STATES, COUNTY AND MUNICIPAL EMPLOYEES, COUNCIL 28 AFL-CIO, a labor organization, JAY INSLEE, in his official capacity as Governor of the State of Washington; and SUE BIRCH, in her official capacity as Director of the Washington State Healthcare Authority,

Defendants.

ORDER GRANTING STATE DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS UNDER FED. R. CIV. P. 12(c)

I. INTRODUCTION

Before the Court is the second dispositive motion filed in this case. The Judge presiding over this case before it was transferred to the undersigned previously granted Defendant Washington Federation of State Employees' ("WFSE") Motion to Dismiss Plaintiff's claims under 42 U.S.0 § 1983 ("Section 1983"). *See* Order on Def. WFSE's Mot. to Dismiss, Dkt. No. 29 ("MTD Order"). Governor Jay Inslee and Director Sue

Birch (the "State Defendants") now seek dismissal of the same claims. State Defs.'s Mot. for J. on the Pleadings, Dkt. No. 31 ("State Defs.' Mot."). Having reviewed the Motion, the opposition thereto, the record of the case, and the relevant legal authorities, the Court will grant the State Defendants' Motion. The reasoning for the Court's decision follows.

II. BACKGROUND

The previous order in this case laid out the relevant facts. *See* MTD Order at 2-4. In brief, Plaintiff is employed as a Medical Assist Specialist 3 with the Washington State Healthcare Authority. When she was first hired in 2004, she became a dues-paying union member of WFSE. Compl., Dkt. No. 1 ¶¶ 11-12. On October 11, 2018, Plaintiff purported to resign from WFSE and object to all further membership dues deductions from her paycheck. *Id* ¶ 14. She claims that, at that time, she learned that WFSE had forged her signature on a June 21, 2018 dues deduction authorization, which prevented her from deauthorizing paycheck deductions until a 10-day revocation period at the end of a yearly period. *Id.* ¶ 15. Plaintiff alleges that WFSE did not permit her to withdraw from union membership until June 2019 and, while dues deductions ceased, she claims WFSE did not refunded any of the dues taken either before or after she purported to resign. Compl. ¶¶ 27-28.

On January 30, 2020, Plaintiff filed suit in this Court. *See* Compl., Dkt. No. 1. She advances causes of action under Section 1983 for violations of the First Amendment and the Due Process Clause of the Fourteenth Amendment. *Id* ¶¶ 30-45. She seeks declaratory relief, damages, prospective injunctive relief, and costs and attorney's fees. *Id.* ¶¶ 59-67. Plaintiff also pleads state law claims for willful

withholding of wages and outrage. *Id.* ¶¶ 46-58. Her case was originally assigned to Judge Ronald B. Leighton.

On June 12, 2020, Judge Leighton granted a motion to dismiss brought by WFSE alone. *See* MTD Order, Dkt. No. 29. Judge Leighton found that Plaintiff's claims against WFSE failed because Plaintiff could not show state action under Section 1983, *id.* at 5-9, nor standing to assert prospective claims for relief, *id.* at 9-11. He declined, however, to forgo supplemental jurisdiction over Plaintiff's state law claims as the State Defendants had not moved to dismiss. *Id* at 12. These Defendants then moved for judgment on the pleadings pursuant to Federal Rule of Civil Procedure ("FRCP") 12(c). State Defs.' Mot., Dkt. No. 31. After briefing on the Motion was completed, this case was reassigned to the undersigned upon Judge Leighton' s retirement.

III. LEGAL STANDARD

The Court evaluates a motion for judgment on the pleadings pursuant to FRCP 12(c) under the same standard as a motion to dismiss for failure to state a claim under FRCP 12(b)(6). *See VHT, Inc. v. Zillow Grp., Inc.*, No. 15-cv-1096, 2020 WL 2307492, at *6 (W.D. Wash. May 8, 2020) (citing *Chavez v. United States*, 683 F.3d 1102, 1108 (9th Cir. 2012)). Under this standard, the Court must "determine whether the facts alleged in the complaint, taken as true, entitle the plaintiff to a legal remedy." *Id.* (quoting *Chavez*, 683 F.3d at 1108). Additionally, a district court may dismiss *sua sponte* any claims on which it finds the claimant "cannot possibly win relief." *Omar v. Sea-Land Serv., Inc.*, 813 F.2d 986, 991 (9th Cir. 1987). Judge Leighton laid out the applicable standard in

greater depth in his previous order. *See* MTD Order at 4-5.

IV. DISCUSSION

The undersigned recently granted summary judgment in favor of State and union defendants in a case materially indistinguishable from the one at hand, except for Plaintiff's allegation of forgery. *See Wagner v. Univ. of Washington*, No. 20-cv-00091, 2020 WL 5500371 (W.D. Wash. Sept. 11, 2020). More broadly, Plaintiff's case is one among an avalanche of cases filed by former public sector union members who, after the Supreme Court's decision in *Janus v. AFSCME, Council 31*, 138 S. Ct. 2448 (2018), sought to recover the union dues they paid pursuant to their union membership agreements by claiming First Amendment and Due Process violations. *See Wagner*, 2020 WL 5500371, at *4 n.2 (listing cases). Every district court to review such claims has dismissed the plaintiffs' case on largely the same grounds as the Court finds below.

A. Standing

Plaintiff seeks prospective declaratory and injunctive relief condemning the State's current dues deduction scheme, which is established by a combination of statute, RCW § 41.80.100, and the Collective Bargaining Agreement between the State—as employer—and WFSE—as representative of the public sector employees. *See* Compl. ¶ 65. The State Defendants move for dismissal of Plaintiff's prospective claims arguing she lacks standing for such claims as she is no longer having dues deducted from her wages and is, therefore, no longer threatened by her alleged harm of further unlawful deductions. State Defs.' Mot. at 4-7.

Under the Article III standing requirement of the U.S. Constitution, Plaintiff only has standing to

challenge the prospective operation of a statute where she can show "a realistic and impending threat of direct injury." MTD Order at 10 (quoting *Davis v. Fed. Election Comm'n*, 554 U.S. 724, 734 (2008)). Thus, in order to establish that she has sufficient standing to seek prospective relief, she "must show that [s]he has suffered or is threatened with a concrete and particularized legal harm . . . coupled with a sufficient likelihood that [s]he will again be wronged in a similar way." *Canatella v. State of California*, 304 F.3d 843, 852 (9th Cir. 2002).

As Judge Leighton established in his previous order, Plaintiff fails to show that similar injury is imminent because the prospect of future forgery by WFSE, and the State's reliance on such a forgery, is too speculative to support prospective relief. *Id.* at 10. Plaintiff has already ceased having dues deducted from her wages and the Court credits WFSE's representations that it has a detailed protocol for electronically enrolling union members and that its has created a specific alert if anyone attempts to reenroll Plaintiff. *Id.* It is, therefore, unlikely that the State would again deduct membership dues from Plaintiff's wages without authentic confirmation from Plaintiff. As such, the Court will dismiss Plaintiff's prospective relief claims against the State Defendants because she cannot show the likelihood of similar injury in the future. *See Marsh v. AFSCME Local 3299*, No. 19-cv-02382, 2020 WL 4339880, at *4-*5 (E.D. Cal. July 28, 2020) (concluding that, notwithstanding an allegation of forgery, the plaintiffs lacked standing to assert claims for prospective relief because they could not show more than a speculative allegation of future injury based on the possibility of misconduct).

B. Section 1983 Claims

Plaintiff's remaining Section 1983 claims are dismissible on the same grounds as found by every single district court that has confronted claims materially indistinguishable to those of Plaintiff. *See Wagner*, 2020 WL 5500371, at *4 n.2 (listing cases). In order to state a claim for relief under Section 1983, Plaintiff must show that she was deprived of a right secured by the Constitution or laws of the United States. *Id.* at *3 (citing *Heineke v. Santa Clara Univ.*, 965 F.3d 1009, 1012 (9th Cir. 2020)). She cannot do so.

Plaintiff claims that *Janus* established a First Amendment right to be free of union dues deductions. *See* Compl. ¶ 31. *Janus*, however, spoke only to the deduction of state compelled fees from nonconsenting, *non-union members*, not *union members* like Plaintiff. Nothing in *Janus* altered a union member's contractual obligation to pay the union dues they agreed to pay pursuant to their membership because "the First Amendment does not confer . . . a constitutional right to disregard promises that would otherwise be enforced under state law." *Cohen v. Cowles Media Co.*, 501 U.S. 663, 672 (1991). Thus, Plaintiff's Section 1983 claims based on the First Amendment fail because she was not deprived of a right secured by the First Amendment as *Janus* did not obviate her contractual commitment pursuant to her original membership agreement. *See Wagner*, 2020 WL 5500371, at *3-*4.

Plaintiff's Due Process claims fail on the same grounds. In order to establish violation of the Fourteenth Amendment's Due Process Clause, Plaintiff must show she was deprived of a constitutionally protected liberty or property interest and that such deprivation occurred without proper procedural safeguards. *Id.* at *5 (citing *Fed Home Loan Mortg. Corp. v.*

SFR Investments Pool I, LLC, 893 F.3d 1136, 1147 (9th Cir. 2018)). Again, Plaintiff fails to establish a deprivation of a right secured by the Fourteenth Amendment because *Janus* established only protected liberty or property interests for *non-union members*, not *union members* like Plaintiff. *See Wagner*, 2020 WL 5500371, at *4-5. The Court will, therefore, dismiss Plaintiff's Section 1983 claims based on the First Amendment and the Due Process Clause of the Fourteenth Amendment.

C. State Law Claims

Based on the foregoing, the Court declines supplemental jurisdiction over Plaintiff's state law claims. *See* 28 U.S.C. § 1367(a) (a court may decline to exercise supplemental jurisdiction if it "has dismissed all claims over which it has original jurisdiction"); *see also* MTD Order at 12. Plaintiff pleads (1) a claim for willful withholding of wagers pursuant to RCW 49.52.050 against both WFSE and the State Defendants, Compl. ¶¶ 46-51, and {2) outrage against only WFSE, *id.* ¶ 52-58. Both claims are premised on Plaintiff's allegation of forgery, which, as the Court noted in its previous order, would also fall under a state law cause of action for unfair labor practices under the jurisdiction of the Washington Public Employee Relations Commission. *See* MTD Order at 2 (citing RCW § 41.35.160). As such, the Court finds it appropriate to decline supplemental jurisdiction over the remaining claims.

V. CONCLUSION

For the foregoing reasons, the Court hereby GRANTS the State Defendants' Motion for Judgment on the Pleadings and DISMISSES Plaintiff's Section 1983 claims against the State Defendants. The Court declines to exercise supplemental jurisdiction over the

remaining state law claims, and orders that this case be DISMISSED.

DATED this 16th day of September, 2020.

/s/ Barbara J. Rothstein
BARBARA J. ROTHSTEIN
UNITED STATES DISTRICT JUDGE

APPENDIX L

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.	8:19-cv-00927-JLS-JEM
Date:	June 03, 2020
Title:	Maria Quezambra v. United Domestic Workers of America AFSCME Local 3930 et al.
Present:	Honorable JOSEPHINE L. STATON, UNITED STATES DISTRICT JUDGE

Terry Guerrero
Deputy Clerk

N/A
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFF:

Not Present

ATTORNEYS PRESENT FOR DEFENDANT:

Not Present

PROCEEDINGS: (IN CHAMBERS) ORDER GRANTING DEFENDANTS' MOTIONS TO DISMISS (Docs. 30, 31, and 36)

Before the Court are three Motions to Dismiss: one filed by Defendant United Domestic Workers of America, AFSCME Local 3930 (Union MTD, Doc. 30), one filed by Defendants Xavier Becerra and Betty Yee[1] (Officials

[1] Quezambra has sued Becerra and Yee in their official capacities, as California State Attorney General and California State Controller respectively. (Comp. ¶¶ 15-16, Doc. 1.)

MTD, Doc. 31), and one filed by Defendant Orange County[2] (County MTD, Doc. 36). Plaintiff Maria Quezambra opposed each Motion. (Union MTD Opp., Doc. 46; Officials MTD Opp., Doc. 47; County MTD Opp., Doc. 52.) Defendants replied. (Union MTD Reply, Doc. 55; Officials MTD Reply, Doc. 54; County MTD Reply, Doc. 56.) Having taken the matter under submission and reviewed all papers on file,[3] for the following reasons, the Court GRANTS Defendants' Motions, dismisses Quezambra's federal claims, and declines to exercise supplemental jurisdiction over her remaining state-law claims.

I. BACKGROUND[4]

In 2012, Quezambra became an In-Home Supportive Services ("IHSS") provider to care for her disabled daughter. (Compl. ¶ 17, Doc. 1.) Quezambra receives state-provided income for these services and is represented exclusively for collective bargaining purposes by Defendant United Domestic Workers of America, AFSCME Local 3930 (the "Union"). (*Id*. ¶¶ 18-21.) Under California Welfare & Institutions Code Section 12301.6 and the Memorandum of Understanding ("MOU") between UDWA and Defendant Orange County, Defendant Yee is authorized to collect dues on behalf of UDWA. (*Id*. ¶¶ 22-23.) California Welfare & Institutions Code Section 12301.6(i)(2) directs the

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[2] Becerra also joins in the UDWA MTD. (Officials MTD at 2 n.2.)

[3] The Court has reviewed all supplementary authority filed by the Parties since the Court took this matter under submission. (Docs. 59-66.)

[4] For the purposes of Defendants' Motions to Dismiss pursuant to Rule 12(b)(6), the Court deems true the well-pleaded allegations of the Complaint.

state controller to "make any deductions from the wages of [IHSS] personnel . . . that are agreed to by [the public authority/employer (Orange County)] in collective bargaining with the designated representative of [IHSS] personnel . . . and transfer the deducted funds as directed in that agreement." In this instance, the MOU operates as the collective bargaining agreement. The iteration of the MOU that was effective until June 30, 2016 states Orange County would "advise the State Controller, as the payroll agent for its IHSS Individual Providers, to deduct all authorized membership dues, fees and/or assessments as required by the Union, or as voluntarily requested by the providers." (2012 MOU Art. 2, Section 2(a), Maldonado Decl. Ex. B, Doc. 30-4.)[5] The MOU was revised, with the operative version taking effect July 1, 2016, stating that the "Union will advise California Department of Social Services (CDSS) or the designated payroll agent for Providers in the bargaining unit covered by this agreement, to deduct all authorized dues, assessments and/or fees required by the Union. All such dues deductions shall be made in compliance with all applicable laws." (2016 MOU, Maldonado Decl. Ex A, Doc. 30-3.)

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[5] Quezambra argues that, in deciding the instant Motions, the Court should decline to consider, and strike from the record, the declarations and related documents submitted by Defendants. (Union MTD Opp. at 21-22.) Insofar as the Court references the Maldonado Declaration and attached documents, her objections are OVERRULED. Regardless, the Court does not substantively rely on that information and provides it primarily for background purposes. Additionally, the iterations of the MOU are appropriate subjects of judicial notice as "a court may take judicial notice of material which is included in, referenced in, or relied upon by the complaint." *Better Homes Realty, Inc. v. Watmore*, Case No.: 3:16-cv-01607-BEN-MDD, 2017 WL 1400065, at *2 (C.D. Cal. April 18, 2017).

Pursuant to the MOU, beginning in 2013, Defendant "Yee deducted money from Ms. Quezambra's [IHSS] wages and remitted it to the Union."[6] (Compl. ¶ 30.) Quezambra states that she "never chose to financially support or join the Union," she "does not believe that the Union adequately advocates for her interests," and "she does not support the political, ideological, and social causes for which the Union advocates." (*Id*. ¶ 31.) She was never solicited to join the Union and never signed a document indicating that she sought to become a union member or pay dues. (*Id*. ¶ 32.)

Quezambra assumed that Union membership was mandatory because the dues deductions began in 2013 without her input. (*Id*.) In February 2019, Quezambra discovered that she was required neither to be a member of the Union nor make financial contributions to it. (*Id*. ¶ 33.) On February 8, 2019, she sent the Union a certified letter "object[ing] to union membership and the payment of any union dues." (*Id*. ¶ 34.) Then, on March 21, 2019, Quezambra requested that the Union provide her a copy of her signed membership card. (*Id*. ¶ 39.)

On March 22, 2019, Mat Kostrinsky, a Union official notified Quezambra that a review of her file revealed she "did not properly authorize the dues deductions." (*Id*. ¶ 41.) Accordingly, the Union would not deduct Union dues from Quezambra's future wages and had "taken steps to discontinue the dues previously

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[6] Matthew Maldonado, Union Director of Organizing and Field Services, states that from March 2013 to July 2014, it collected fair-share agency fees from Quezambra. (Maldonado Decl. ¶ 8, Doc. 30-2.) However, according to Union records, she became a Union member in September 2014 upon the Union's receipt of a signed membership card, and at that point, the Union began deducting dues from her paychecks. (*Id*. ¶ 9.)

deducted retroactive to December 2015 . . . consistent with the three-year statute of limitation applicable to claims for dues refunds." (*Id*.)

Quezambra also alleges that she twice requested that no Union representative come to her home. (Compl. ¶¶ 35, 40.) Nevertheless, "[o]n March 29, 2019 . . . the Union sent a representative to Ms. Quezambra's home scaring her disabled daughter and causing anxiety, fear, apprehension, distress, and unhappiness in both Ms. Quezambra and her daughter." (*Id*. ¶ 43.)

On May 16, 2019, Quezambra filed this action, asserting five claims. She brings three claims pursuant to 42 U.S.C. § 1983, for violations of the First Amendment arising out of: (1) "Defendants' dues extraction scheme [which lacked] the necessary procedural safeguards;" (2) the deduction of "union dues/fees from Ms. Quezambra's wages pursuant to California State and Welfare and Institutions Code Section 12301.6[(i)](2);" and (3) "the deduction of union/dues fees from Plaintiff's wages pursuant" to the terms of "Article 2 Section 2 and other provisions of the MOU." (*Id*. ¶¶ 58-73.) Finally, she asserts California common law claims for (4) trespass and (5) the intentional infliction of emotional distress.[7] (*Id*. ¶¶ 74-81.)

II. LEGAL STANDARD

"Federal Rule of Civil Procedure 12(b)(6) allows a court to dismiss a complaint for 'failure to state a claim upon which relief can be granted.' Dismissal of a complaint can be based on either a lack of a cognizable legal theory or the absence of sufficient facts alleged

[7] Quezambra brings her Section 1983 claims against all Defendants but brings her common law tort claims against only the Union.

under a cognizable legal theory." *Alfred v. Walt Disney Co.*, 388 F. Supp. 3d 1174, 1180 (C.D. Cal. 2019) (citation omitted) (quoting Fed R. Civ. P. 12(b)(6)). In deciding a motion to dismiss under Rule 12(b)(6), courts must accept as true all "well-pleaded factual allegations" in a complaint. *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). Courts must also draw all reasonable inferences in the light most favorable to the non-moving party. *See Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998 (9th Cir. 2010). Yet, "courts 'are not bound to accept as true a legal conclusion couched as a factual allegation.'" *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Papasan v. Allain*, 478 U.S. 265, 286 (1986)).

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 556). A plaintiff must not merely allege conduct that is conceivable. When "a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief." *Iqbal*, 556 U.S. at 678 (internal quotation marks omitted).

Finally, the Court may not dismiss a complaint without leave to amend unless "it is absolutely clear that the deficiencies of the complaint could not be cured by amendment." *Karim-Panahi v. Los Angeles Police Dep't*, 839 F.2d 621, 623 (9th Cir. 1988) (internal quotation marks omitted).

III. DISCUSSION[8]

Each of Quezambra's three Section 1983 claims is premised on the assertion that the deduction of dues from her wages and remission of those dues to the Union, pursuant to the terms of the MOU and California Welfare & Institutions Code § 12301.6(i)(2), violated her First Amendment rights. Specifically, she claims Defendants violated her rights "(a) not to associate with a mandatory representative; (b) not to support, financially or otherwise, petitioning and speech; and (c) against compelled speech." (Compl.. ¶ 59.)

However, as explained below, Quezambra's Section 1983 claims fail as a matter of law.

A. The Post-*Janus* Landscape and Quezambra's Claims

In *Janus v. AFSCME, Council 31*, 138 S. Ct. 2448 (2018), the Supreme Court overruled *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977) and its progeny, holding that no form of payment to a union, including both union dues and fair-share agency fees, can be deducted or attempted to be collected from an employee without the employee's affirmative consent. *Janus*, 138 S. Ct. at 2486. In the wake of *Janus*, lawsuits have been filed throughout the country by both non-members and members of various unions

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[8] Becerra and Yee filed a request for judicial notice. (State Defendants' RJN, Doc. 31-1.) As the Court finds neither of the documents referenced in the RJN necessary to resolve this Motion, the RJN is DENIED. *Neylon v. Cty. of Inyo*, No. 1:16- CV-0712 AWI JLT, 2016 WL 6834097, at *4 (E.D. Cal. Nov. 21, 2016) (citing *Adriana Intern. Corp. v. Thoeren*, 913 F.2d 1406, 1410 n. 2 (9th Cir. 1990)) ("if an exhibit is irrelevant or unnecessary to deciding the matters at issue, a request for judicial notice may be denied").

challenging the constitutionality of wage deductions for union dues and compulsory agency fees. In those cases, plaintiffs have often complained of being forced to subsidize union activities via the payment of compulsory non-member agency fees, or, alternatively, have asserted that, although they agreed to membership in the union, they would not have done so had they known that agency fees were illegal. *See, e.g., Babb v. California Teachers Ass'n*, 378 F. Supp. 3d 857 (C.D. Cal. 2019) (discussing five cases with slightly varying fact patterns). This Court has addressed the legal questions raised in such lawsuits on numerous occasions. *See, e.g., id.*; *Seager v. United Teachers Los Angeles*, No. 2:19-cv-00469-JLS-DFM, 2019 WL 3822001, at *2 (C.D. Cal. Aug. 14, 2019); *Few v. United Teachers Los Angeles*, No. 2:18-cv-09531-JLS-DFM, 2020 WL 633598, at *1 (C.D. Cal. Feb. 10, 2020).

Quezambra's theory of this case is, in brief, that she "was a union nonmember forced by the State and Orange County to support the Union, a clear constitutional violation." (County MTD Opp. at 6.) As she puts it, her First Amendment rights were violated, under color of state law, when the State deducted dues from her wages based on a membership card forged by the Union. (Union MTD Opp. at 17.) And this deduction was a product of the system created by California Welfare & Institutions Code Section 12301.6(i)(2) and the MOU, which lacked requisite procedural safeguards to ensure that such unconsented-to deductions did not occur. (*Id.*) Quezambra alleges that the Union was incentivized to "actively conceal[the forgery] from the State and others." (Compl. ¶ 56.)

However, Quezambra cannot maintain the instant lawsuit based on this theory because (1) the Union cannot be fairly characterized as a state actor, and

(2) the California State Officials and Orange County are not responsible for the specific conduct of which Quezambra complains.

B. The Union Conduct Does Not Constitute State Action

"To state a claim under [42 U.S.C.] § 1983, a plaintiff must [(1)] allege the violation of a right secured by the Constitution and laws of the United States, and [(2)] must show that the alleged deprivation was committed by a person acting under color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988). "Dismissal of a § 1983 claim following a Rule 12(b)(6) motion is proper if the complaint is devoid of factual allegations that give rise to a plausible inference of either element." *Naffe v. Frey*, 789 F.3d 1030, 1036 (9th Cir. 2015). The Court addresses the second prong first, analyzing the alleged acts of each Defendant. Because the requisite state action is absent, the Court does not reach the question of whether a constitutional violation occurred.

"'[M]ost rights secured by the Constitution are protected only against infringement by governments,' so that 'the conduct allegedly causing the deprivation of a federal right [must] be fairly attributable to the State.'" *Naoko Ohno v. Yuko Yasuma*, 723 F.3d 984, 993 (9th Cir. 2013) (quoting *Lugar*, 457 U.S. at 936–37) (alterations in original). For that reason "constitutional standards are invoked only when it can be said that the State is *responsible* for the specific conduct of which the plaintiff complains." *Id*. (quoting *Blum v. Yaretsky*, 457 U.S. 991, 1004 (1982)) (emphasis in original).

Although Section 1983 makes liable only those who act "under color of" state law, a private entity may bear liability for a constitutional deprivation under the

Section where a plaintiff demonstrates that "'the conduct allegedly causing the deprivation of a federal right [was] fairly attributable to the State.'" *Tsao v. Desert Palace, Inc.*, 698 F.3d 1128, 1139 (9th Cir. 2012) (quoting *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 937 (1982)) (alteration in original). There is a general rule that unions are not state actors and that rule "is not discarded merely because of the existence of a [collective bargaining agreement] negotiated with a government entity." *Smith v. Teamsters Local 2010*, 2019 WL 6647935, at *5 (C.D. Cal. Dec. 3, 2019) (citing *Bain*, 2016 WL 6804921, at *7). "The Supreme Court has articulated four tests for determining whether a [nongovernmental person's] actions amount to state action: (1) the public function test; (2) the joint action test; (3) the state compulsion test; and (4) the governmental nexus test."[9] *Naoko*, 723 F.3d at 995 (quoting *Tsao v. Desert Palace, Inc.*, 698 F.3d 1128, 1140 (9th Cir.2012)) (internal quotations omitted). Contrary to Quezambra's assertions, (*see* Officials MTD Opp. at 9-17), the Union satisfies none of these tests.

First, "[u]nder the public function test, when private individuals or groups are endowed by the State with powers or functions governmental in nature, they become agencies or instrumentalities of the State and subject to its constitutional limitations." *Kirtley v. Rainey*, 326 F.3d 1088, 1093 (9th Cir. 2003). "The public function test is satisfied only on a showing that the function at issue is 'both traditionally and exclusively governmental.'" *Id*. (quoting *Lee v. Katz*, 276 F.3d 550,

[9] The Ninth Circuit has recognized that the public function and joint action tests "largely subsume the state compulsion and governmental nexus tests." *Naoko*, 723 F.3d at 996 n.13. Nevertheless, for purposes of clarity and thoroughness, the Court addresses all four tests.

555 (9th Cir. 2002)). And the Supreme Court "has stressed that 'very few' functions fall into that category."

Manhattan Cmty. Access Corp. v. Halleck, 139 S. Ct. 1921, 1929 (2019). Quezambra's argument that the Union fulfills a public function is founded on the assertion that "it cannot be overstated that paying public employees their lawfully-owed wages is quintessentially an exclusive and traditional public forum.'" (Officials MTD Opp. at 14.) However, the Union does not pay public employees, the government does – the Union merely reports to the government a list of individuals who it represents as having authorized the deduction of dues. Quezambra fails to explain, and the Court is unable to discern, how that membership reporting qualifies as a function "both traditionally and exclusively governmental."

Second, the joint action test is satisfied when "the state has so far insinuated itself into a position of interdependence with the private entity that it must be recognized as a joint participant in the challenged activity." *Florer v. Congregation Pidyon Shevuyim, N.A.*, 639 F.3d 916, 926 (9th Cir. 2011). "This occurs when the state knowingly accepts the benefits derived from unconstitutional behavior." *Id*. Quezambra argues that "the Union works in concert with the State Controller and other governmental entities like the California Department of Social Services, California counties, and public authorities established by counties, to accomplish the deduction of union dues from IHSS provider's wages." (Officials MTD Opp. at 9-13.) In a similar challenge to California Welfare & Institutions Code Section 12301.6(i)(2), a district court rejected this exact argument, explaining that state officials' ministerial role in deducting dues from the wages of reported union members did not constitute

the sort of "significant assistance," or actions taken in concert and effecting a constitutional deprivation, required to meet the joint action test. *Quirarte v. United Domestic Workers AFSCME Local 3930*, No. 19-CV-1287-CAB-KSC, 2020 WL 619574, at *4 (S.D. Cal. Feb. 10, 2020). And as explained in greater depth below, state law *mandates* that the County occupy a similarly ministerial role – the County *must* accept the Union's certifications regarding which employees have authorized dues deductions. This "mandatory indifference," exhibited as "mere approval [of] or acquiescence" to the Union-supplied membership list is insufficient to render the Union a state actor under the joint action test.[10] *See Belgau*, 359 F.Supp.3d at 1014.

Third, "[s]tate action may be found under the state compulsion test where the state has 'exercised coercive power or has provided such significant encouragement, either overt or covert, that the [private actor's] choice must in law be deemed to be that of the State.'" *Johnson v. Knowles*, 113 F.3d 1114, 1119 (9th Cir. 1997) (quoting *Blum*, 457 U.S. at 1004). Quezambra contends that "[b]y allowing unions to dictate the terms and

[10] A case cited by Quezambra, *Tsao v. Desert Palace, Inc.*, 698 F.3d 1128, 1140 (9th Cir. 2012), is indicative of the kind of interdependence that meets the joint action test. In *Tsao*, members of the casino's private security force were provided with police-operated training, then given the typically governmental authority to issue citations to appear in court for the crime of misdemeanor trespassing. *Tsao v. Desert Palace, Inc.*, 698 F.3d 1128, 1140 (9th Cir. 2012). That arrangement allowed the private party to take on the role of law enforcement, and the Ninth Circuit noted that the private actor "invoked the authority of the state" when engaging in the conduct at issue. Here, the issue is whether the private agreement between the Union and Quezambra was based on a forgery. It implicates no joint action or interdependence with the state.

conditions under which the deduction of money from an employee's paycheck is valid, the State Defendants and the Union display a symbiotic relationship of mutual overt encouragement." (Officials MTD Opp. at 14.) Again, the *Quirarte* court rejected a nearly identical argument regarding Section 12301.6(i)(2) and found the state compulsion test not met, clarifying that even if the Union can dictate deductions made, that Court was "not convinced that the State Controller's deduction of membership dues, or allowing the Union [to so dictate], on its own leads to a finding of significant encouragement, overt or covert, by the State." *Quirarte*, 2020 WL 619574, at *5. This Court is equally unconvinced; there are no allegations here suggesting that there has been such a coercive exercise of state power or the provision of significant encouragement that unilateral Union actions in reporting its membership roll or forging signatures may be deemed that of the state. *See Johnson*, 113 F.3d at 1119-20 (quoting *Jackson v. Metro. Edison Co.*, 419 U.S. 345, 357 (1974)) (explaining that a private party's simple exercise of choice or autonomy authorized under state law "does not make its action in doing so 'state action' for purposes of the Fourteenth Amendment").

Fourth, "[u]nder the governmental nexus test, a private party acts under color of state law if 'there is a sufficiently close nexus between the State and the challenged action of the regulated entity so that the action of the latter may be fairly treated as that of the State itself." *Naoko*, 723 F.3d at 996 n.13. The Ninth Circuit and the parties each recognize that the governmental nexus test is the most vague of the four tests and its answer tends to track those of the other three tests. *See Kirtley v. Rainey*, 326 F.3d 1088, 1094 (9th Cir. 2003); Officials MTD at 13-15; Officials MTD Opp. at 16-17. For the reasons already discussed

above, there is no sufficiently close nexus in this instance. *Cf. Bain*, 2016 WL 6804921, at *7 ("The government's ministerial obligation to deduct dues for members and agency fees for nonmembers under a collective bargaining agreement does not transform decisions about membership [] into state actions.")

Accordingly, the Complaint is devoid of factual allegations that give rise to an inference of state action carried out by the Union, and Quezambra has failed to state a Section 1983 claim against the Union.

C. The State Officials and County are Not Subject to Section 1983 Liability

1. The State Officials

Quezambra claims that, in violation of the First Amendment, she was compelled to support Union speech when Controller Yee deducted dues from her wages. (*See* Union MTD Opp. at 17-20.) As noted above, in an analogous challenge to California Welfare & Institutions Code Section 12301.6(i)(2), another district court recently concluded that "[t]he fact that the State performs a ministerial function of collecting Plaintiffs' dues deductions does not mean that Plaintiffs' alleged harm is the result of state action." *Quirarte*, 2020 WL 619574, at *3 (quoting *Smith v. Teamsters Local 2010*, 2019 WL 6647935, at *5 (C.D. Cal. Dec. 3, 2019)). This Court agrees with that assessment. "Automatic payroll deductions are the sort of ministerial act that do not convert the Union Defendants' membership dues and expenditures decisions into state action." *Id*. (quoting *Bain v. California Teachers Ass'n*, 2016 WL 6804921, at *8 (C.D. Cal. May 2, 2016)). Rather, a finding of state action is warranted where "private parties make use of state procedures with the *overt, significant assistance* of state officials." *Tulsa*

Prof'l Collection Servs., Inc. v. Pope, 485 U.S. 478, 486 (1988) (emphasis added). "The 'statutory scheme' if anything, merely authorizes Controller Yee to legally perform this ministerial function." *Id*. Accordingly, state officials' mere deduction of dues from the wages of individuals identified and reported to the state as voluntary Union members cannot be characterized as state action causing a constitutional deprivation.

2. The County

While local governing bodies are subject to suit under Section 1983 where "the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers." *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658, 690 (1978), here the complained of delegation of authority by the County does not so qualify. California Government Code Section 1157.12 provides that public employers, such as the County, shall:

> (a) Rely on a certification from any employee organization requesting a deduction or reduction that they have and will maintain an authorization, signed by the individual from whose salary or wages the deduction or reduction is to be made. An employee organization that certifies that it has and will maintain individual employee authorizations shall not be required to provide a copy of an individual authorization to the public employer unless a dispute arises about the existence or terms of the authorization. The employee organization shall indemnify the public employer for any claims made

> by the employee for deductions made in reliance on that certification.
>
> (b) Direct employee requests to cancel or change deductions for employee organizations to the employee organization, rather than to the public employer.[11] The public employer shall rely on information provided by the employee organization regarding whether deductions for an employee organization were properly canceled or changed, and the employee organization shall indemnify the public employer for any claims made by the employee for deductions made in reliance on that information. Deductions may be revoked only pursuant to the terms of the employee's written authorization.

Cal. Gov't Code § 1157.12(a)-(b). Thus, state law mandates that (1) the Union exclusively process all employee requests to alter their union dues deduction from their wages; (2) the County accept Union certifications regarding which employees have authorized dues deductions; (3) the County not require a copy of an employee's dues authorization unless a dispute arises over that authorization. Therefore, the terms of the MOU do not evince any discretionary delegation of authority by the County to the Union – instead, "it

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[11] California Government Code Section 1153(h) additionally states that (1) "[e]mployee requests to cancel or change deductions for employee organizations shall be directed to the employee organization, rather than to the Controller," (2) "[t]he employee organization shall be responsible for processing these requests," and (3) "[t]he Controller shall rely on information provided by the employee organization regarding whether deductions for an employee organization were properly canceled or changed."

appears that the [County was] simply complying with state law." *Aliser v. SEIU California*, 419 F. Supp. 3d 1161, 1165 (N.D. Cal. 2019). And "[w]hen a municipality exercises no discretion and merely complies with a mandatory state law, the constitutional violation was not caused by an official policy of the municipality." *Id*. (citing *Vives v. City of New York*, 524 F.3d 346, 353 (2d Cir. 2008); *Evers v. County of Custer*, 745 F.2d 1196, 1203 (9th Cir. 1984); *Sandoval v. County of Sonoma*, 912 F.3d 509, 517 (9th Cir. 2018)). As the court explained in *Aliser*, "the general decision to contract with [the Union] . . . did not 'cause' the specific allegedly unconstitutional" compelled speech "that forms the basis of the claim." *Aliser*, 419 F. Supp. 3d at 1165 (quoting *Villegas v. Gilroy Garlic Festival Association*, 541 F.3d 950, 957 (9th Cir. 2008) for that proposition that "there must be a direct causal link between a municipal policy or custom and the alleged constitutional deprivation").

Accordingly, for the purposes of Quezambra's Section 1983 claims, her avowed constitutional deprivation can only fairly be said to have resulted from the forgery of her membership dues authorization, and the subsequent use of the forgery by the Union. "At its core, then, the source of the alleged constitutional harm is [the forgery], not the procedure for [dues] collection that the State [and County] agreed to follow." *Belgau*, 359 F. Supp. 3d at 1013. Therefore, Quezambra has failed to plead facts connecting the claimed constitutional deprivation to anything that could be fairly characterized as state action. For that reason, her Section 1983 claim fails at the outset.

IV. CONCLUSION

For the foregoing reasons, Defendants' Motions are GRANTED. Because Quezambra's Section 1983 claims

fail as a matter of law and not due to insufficient factual allegations, the Court dismisses those claims with prejudice. Further, the Court declines to exercise supplemental jurisdiction over the state law claims and dismisses those claims without prejudice to refiling in the appropriate state court. *Lacey v. Maricopa County*, 649 F.3d 1118, 1137 (9th Cir. 2011) (citation omitted) ("[T]he district court retains discretion whether to exercise supplemental jurisdiction over state law claims even after all federal claims [have been] dismissed."); *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 (1988) (citations omitted) ("[W]hen the federal-law claims have dropped out of the lawsuit in its early stages and only state-law claims remain, the federal court should decline the exercise of jurisdiction by dismissing the case without prejudice.").

Defendants shall submit a proposed judgment consistent with this Order, within fourteen (14) days of the date of this Order.

Initials of Preparer: tg

APPENDIX M

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

No. 2:19-cv-02382-JAM-DB

TERRANCE MARSH, *et al.*,

Plaintiffs,

v.

AFSCME LOCAL 3299, a labor organization, *et al*.,

Defendants.

ORDER GRANTING DEFENDANTS' MOTIONS TO DISMISS WITH PREJUDICE

This matter is before the Court on AFSCME Local 3299's Motion to Dismiss, UC President Michael V. Drake's Motion to Dismiss, and Attorney General Xavier Becerra's Motion to Dismiss. Mot. to Dismiss by AFSCME Local 3299 ("Union Mot."), ECF No. 54; Mot. to Dismiss by Michael V. Drake ("Drake Mot."), ECF No. 55; Mot. to Dismiss by Xavier Becerra ("Becerra Mot."), ECF No. 56. Defendants seek to dismiss Plaintiffs' Corrected Second Amended Complaint ("SAC") under Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. *See* SAC, ECF No. 53. Plaintiffs opposed these motions. Opp'n by Kiska Carter et al. to Drake and Becerra Mots. ("Opp'n to State"), ECF No. 57; Opp'n by Kiska Carter et al. to Union Mot. ("Opp'n to Union"), ECF. No. 58. Each Defendant then filed a reply. Reply by AFSCME Local 3299 ("Union Reply"), ECF No. 59; Reply by Michael V. Drake ("Drake Reply"), ECF No. 60; Reply by Xavier Becerra

("Becerra Reply"), ECF No. 61. For the reasons set forth below, the Court GRANTS Defendants' motions to dismiss.[1]

I. BACKGROUND

Ten University of California employees ("Plaintiffs") filed this lawsuit against Attorney General Xavier Becerra ("Becerra"), University of California President Michael V. Drake[2] ("Drake"), and AFSCME Local 3299 ("the Union") under Section 1983 of the Civil Rights Act, asserting Defendants' payroll deduction scheme violates their First and Fourteenth Amendment rights. SAC ¶¶ 1-3. The factual allegations, which have been set forth extensively in the complaint, the parties' briefings, and the Court's prior orders, will not be repeated here.

The present Motions are the second set of motions to dismiss before the Court. On July 27, 2020, this Court granted the first set of motions to dismiss. *See* Order Granting MTD FAC ("Order"), ECF No. 46. The Court attached a chart to that Order summarizing which of Plaintiffs' numerous claims were dismissed with prejudice and which Plaintiffs were given leave to amend. *Id.* at 24.

On September 14, 2020, Plaintiffs filed a corrected SAC, which is now the operative complaint. *See* SAC. Plaintiffs re-pled only two of the three claims considered by this Court in its prior Order: the first count for

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[1] These motions were determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled for October 13, 2020.

[2] Michael V. Drake was appointed President of the University of California in August 2020, and has been substituted for former President of the University of California, Janet Napolitano, pursuant to Fed. R. Civ. P. 25(d).

violation of Plaintiffs' Fourteenth Amendment procedural due process rights (the "Procedural Due Process claim") and the second count for violation of Plaintiffs' First Amendment rights (the "Compelled Speech claim"). SAC TT 167-186. As to the first count, Plaintiffs seek prospective injunctive and declaratory relief and retrospective monetary damages. SAC at 26-27. As to the second count, Plaintiffs seek only prospective injunctive relief. SAC at 27. Additionally, Plaintiffs added a new section of class allegations. SAC ¶¶ 159-66.

II. OPINION

A. *12(b)(1) Motions*

1. *Legal Standard*

A Rule 12(b)(1) motion to dismiss tests whether a complaint alleges grounds for federal subject-matter jurisdiction. See Fed. R. Civ. P. 12(b)(1). At the pleading stage, courts take all the allegations in the complaint as true, then ask whether plaintiffs adequately alleged subject-matter jurisdiction. *Chandler v. State Farm Mut. Auto. Ins. Co.*, 598 F.3d 1115, 1121-22 (9th Cir. 2010).

If a plaintiff's claims are moot, then the court lacks subject-matter jurisdiction, and the case must be dismissed. U.S. CONST., art. III; *Preiser v. Newkirk*, 422 U.S. 395, 401 (1975). To pose a "live case or controversy," claims must be "definite and concrete"; they must "touch[] the legal relations of parties having adverse legal interests." *DeFunis v. Odegaard*, 416 U.S. 312, 317 (1974). If a case does not present questions "affect[ing] the rights of litigants in the case before [the court]," it is not a case the court can decide. See *Preiser*, 422 U.S. at 401.

2. *Analysis*

Defendants first move to dismiss the two remaining counts for lack of jurisdiction, contending Plaintiffs lack standing and their claims are moot. See Union Mot. at 3-4, 5-6; Drake Mot. at 3-10; Becerra Mot. At 5-11. As explained below, the Court agrees with Defendants that the prospective relief portions of Plaintiffs' two claims are moot and therefore must be dismissed.

a. *Compelled Speech Claim*

As to their compelled speech claim, Plaintiffs seek only prospective injunctive relief. SAC at 27. Specifically, four Plaintiffs – Marsh, Edde, Mendoza, and Davidson – request prospective injunctive relief against the Union and Drake. SAC at 27(vi-vii). All Plaintiffs seek prospective injunctive relief against Becerra. SAC at 27(viii).

(i) *The Union*

The Union argues that Plaintiffs' compelled speech claim should be dismissed because the only four Plaintiffs bringing this claim against the Union – Marsh, Edde, Mendoza, and Davidson – still do not have a live claim for prospective relief, which is the only form of relief sought for this claim. Union Mot. at 34; Union Reply at 1. In its prior Order, the Court explained that these four Plaintiffs' request for prospective relief on their compelled speech claim was moot because their payroll deductions had already terminated. Order at 15-16, 22. Further, the Court found that the "capable of repetition yet evading review" exception to mootness did not apply because Plaintiffs had not sufficiently alleged they would be subject to deductions in the future. *Id.* at 16 (citing *Few v. United Teachers Los Angeles*, No. 2:18-cv-09531-JLS-

DFM, 2020 WL 633598, at *4-6 (C.D. Cal. Feb. 10, 2020)). Accordingly, the Court concluded it could not "grant these plaintiffs prospective relief for fees they are no longer paying." *Id.* (citing *Babb v. Cal. Teachers Assocs.*, 378 F.Supp.3d 857, 870-871 (C.D. Cal. 2019)).

The Union contends the SAC does nothing to cure the mootness defect identified by the Court in its prior Order. Union Mot. at 3; Union Reply at 1. The Court agrees. First, the SAC clearly indicates these four Plaintiffs are no longer subject to payroll deductions. SAC TT 49(Marsh), 59-60(Edde), 77-78(Mendoza), 87(Davidson). Second, the SAC still does not allege these Plaintiffs are likely to be subject to deductions again in the future. The Court therefore has no reason to deviate from its prior analysis and once again finds these claims are moot.

In opposition, Plaintiffs appear to concede their named plaintiffs' claims are moot, but attempt to avoid dismissal on mootness grounds by adding new class allegations. See SAC ¶¶159-166. Specifically, Plaintiffs contend they are seeking prospective relief on behalf of the class they propose to represent and consequently this Court may retain jurisdiction over the class action even if the named plaintiffs' claims "appear moot or will become moot." Opp'n to Union at 5.

This attempt to avoid dismissal on mootness grounds fails because the Court did not grant Plaintiffs leave to add class allegations. *See Jameson Beach Prop. Owners Ass'n v. U.S.*, 2014 WL 4925253, at *3-4 (E.D. Cal. Sept. 29, 2014). As another Eastern District court explains: "whether a district court will accept new claims and/or parties in an amended complaint after a motion to dismiss will depend on whether the plaintiff was granted leave to amend with or without limitation. Courts look to the specific language of the prior

order to determine whether or not leave to amend was granted without limitation. When the language of an order clearly states that a plaintiff may only amend to address certain deficiencies identified in the order, courts have held that a plaintiff is barred from adding new claims or parties." *Id.* (citations and internal quotation marks omitted).

Here, the Court's prior Order clearly grants leave to amend *with* limitation. See Order. In fact, the Court attached a Chart to its prior Order for this precise reason: to specify which deficiencies with which claims Plaintiffs could amend and which they could not. *Id*. at 24. Significantly, nowhere in the Order did the Court grant Plaintiffs leave to add class allegations. Nor did Plaintiffs seek leave to do so. Plaintiffs are therefore barred from adding these new class allegations to avoid dismissal on mootness grounds. *Jameson Beach*, 2014 WL 4925253 at *4. Accordingly, the Court strikes Plaintiffs' class allegations.

The Court briefly notes an additional reason why Plaintiffs' attempt to avoid mootness by adding class allegations fails: Plaintiffs have not brought forward, nor has the Court been able to find on its own, any authority supporting the proposition that a court may retain jurisdiction over a class action when the class allegations are added *after* all named plaintiffs' claims have become moot and indeed have been dismissed by the court as moot. See Opp'n to Union at 5-6. Rather, the Court agrees with the Union that "once the named plaintiff's own claim for prospective relief has become moot, a federal court lacks jurisdiction to consider prospective relief and, therefore, no live claim exists to which newly added class allegations could `relate back.'" Union Reply at 1.

Because the class allegations are stricken and the four individual Plaintiff claims remain moot, the Court again finds it does not have subject matter jurisdiction. Further, the Court finds that dismissal with prejudice is now appropriate. *See Deveraturda v. Globe Aviation Sec. Servs.*, 454 F.3d 1043, 1046 (9th Cir. 2006) (explaining "a district court does not err in denying leave to amend where the amendment would be futile"). Plaintiffs have had ample opportunity to amend. See FAC, ECF No. 15; SAC, ECF No. 47; Corrected SAC. Plaintiffs also had the opportunity in their opposition brief to set forth additional facts to convince the Court the mootness of the individual plaintiffs' claims could be cured by amendment. They failed to do so.

Accordingly, the Court DISMISSES the compelled speech claim as to the Union with prejudice.

(ii) *Drake*

The same four plaintiffs – Marsh, Edde, Mendoza, and Davidson – also request prospective injunctive relief on their compelled speech claim against Drake. SAC at 27(vi). For the same reasons discussed in detail above, the Court finds these plaintiffs' claims as to this Defendant to be moot.

Dismissal with prejudice is also appropriate because Plaintiffs have had ample opportunity to amend, vet have failed to set forth facts demonstrating that the mootness problem identified by the Court in its prior Order could be cured by further amendment. Thus, the Court finds amendment would be futile. See *Deveraturda*, 454 F.3d at 1046.

Accordingly, the Court DISMISSES the compelled speech claim as to Drake with prejudice.

(iii) *Becerra*

As to their compelled speech claim against Becerra, Plaintiffs ask the Court to enjoin Becerra from enforcing California Government Code §§ 1157.12, 1157.3. SAC at 27(viii). Becerra, like the Union and Drake, argues Plaintiffs may not seek prospective relief on this claim because Plaintiffs' deductions have ceased and therefore it is moot. Becerra Mot. at 9. Referring to the part of the Court's prior Order explaining why the cessation of the deductions renders Plaintiffs' claims for prospective relief moot, Becerra points out: "Plaintiffs have made no revisions in the SAC that cure these deficiencies, or in any way compel the Court to change its earlier judgment . . . in fact the SAC only *compounds* the deficiencies now that *all ten* Plaintiffs admit their dues deductions have ceased." *Id.* at 1. The Court agrees.

The Court previously dismissed as moot Marsh, Edde, Davidson, and Mendoza's compelled speech claim against Becerra because their deductions had ceased. Order at 15-16. However, the Court found that the remaining six plaintiffs' – Van Antwerp, Macomber, Jordan, Grosse, Dioso, and Carter – request for prospective relief on their compelled speech claim against Becerra was not moot because they "continue to pay non-member fees as a result of Defendants' alleged compelled speech and due process violations." Order at 16. Now, however, the SAC admits the deductions have stopped for these six plaintiffs. SAC ¶¶ 100 (Dioso), 112 (Macomber), 128 (Jordan), 137 (Van Antwerp), 148 (Grosse), 158 (Carter). Thus, their prospective relief claims, like Marsh, Edde, Davidson and Mendoza's, are moot.

Plaintiffs advance two arguments in opposition. Opp'n to State at 12-13. First, they again argue that

the "capable of repetition yet evading review" exception to mootness applies. *Id.* For the same reason the Court rejected this argument before, *see* Order at 16, it again rejects this argument: there are no allegations in the operative complaint which establish a likelihood that the deductions are likely to reoccur. Because Plaintiffs have not established the deductions are capable of repetition, this exception to mootness cannot apply. *Few*, 2020 WL 633598, at *5. Second, Plaintiffs again point to their new class allegations as a way for this Court to retain jurisdiction "even if the named Plaintiffs' claims are moot or will become moot." Opp'n to State at 12. But, for the reasons set forth above, the class allegations are stricken, and therefore cannot revive the individuals' moot claims.

Because the individual plaintiffs' claims are moot, the Court lacks jurisdiction and must dismiss the compelled speech claim as to Becerra. Dismissal with prejudice is appropriate because Plaintiffs have had ample opportunity to amend yet have failed to cure the mootness defect with the individual plaintiffs' claims. Therefore, the Court finds that further amendment would be futile. See *Deveraturda*, 454 F.3d at 1046.

Accordingly, the compelled speech claim as to Becerra is DISMISSED with prejudice.

b. *Procedural Due Process Claim*

The Court next turns to the procedural due process claim for which Plaintiffs seek both prospective injunctive and declaratory relief and retrospective money damages. SAC at 26-27. With respect to the prospective relief portion of this claim, Defendants again argue for dismissal on jurisdictional grounds. See Union Mot. at 5-6; Drake Mot. at 3-4; Becerra Mot. at 9-11.

In its prior Order, this Court found the prospective relief portion of Marsh, Edde, Davidson, and Mendoza's due process claim was moot for the same reason as their compelled speech claim: these Plaintiffs were no longer subject to deductions. Order at 15-16. However, the Court did not find the remaining six Plaintiffs' request for prospective relief on their due process claim to be moot because the then-operative complaint indicated they were still subject to deductions. *Id.* at 16. Now, however, the operative complaint indicates deductions have ceased for all Plaintiffs. SAC ¶¶ 49, 59-60, 77-78, 87, 100, 112, 128,.137, 148, 158. Thus, all ten Plaintiffs' claims for prospective relief are moot. For the reasons discussed above, Plaintiffs' arguments in opposition about the "capable of repetition yet evading review" exception applying and the new class allegations reviving the individuals' moot claims fail.

The Court therefore DISMISSES the prospective relief portion of Plaintiffs' procedural due process claim and finds that dismissal with prejudice is appropriate because further amendment would be futile in light of Plaintiffs' opportunity to correct the mootness deficiency identified in the prior Order and subsequent failure to do so. See *Deveraturda*, 454 F.3d at 1046.

B. *12(b)(6) Motions*

The Court now turns to Plaintiffs only remaining claim for retrospective money damages against the Union under Plaintiffs' procedural due process cause of action. SAC at 26 (iv v). The Union contends that Plaintiffs have failed to state a claim for which relief can be granted. Fed. R. Civ. Proc. 12(b)(6).

1. *Legal Standard*

A Rule 12(b)(6) motion attacks the complaint as not alleging sufficient facts to state a claim for relief. See

Fed. R. Civ. P. 12(b)(6). "To survive a motion to dismiss [under 12(b)(6)], a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009) (internal quotation marks and citation omitted). Dismissal is proper where there is no cognizable legal theory or insufficient facts supporting a claim entitling the plaintiff to relief. *Hinds Invs., L.P. v. Angiolo*, 654 F.3d 846, 850 (9th Cir. 2011). Constitutional claims-both facial and as-applied challenges-are subject to dismissal under Rule 12(b)(6) if the alleged facts fail to state a claim. *See O'Brien v. Welty*, 818 F.3d 920, 929-32 (9th Cir. 2016).

The "standard [procedural due process] analysis . . . proceeds in two steps." *Swarthout v. Cooke*, 526 U.S. 216, 219 (2011). A court must "first ask whether there exists a liberty or property interest of which a person has been deprived." *Id.* If so, the court then asks "whether the procedures [protecting that right] were constitutionally deficient." *Id.* (citing *Kentucky Dept. of Corrections v. Thompson*, 490 U.S. 454, 460 (1989).

2. *Analysis*

The Union advances various arguments as to why the retrospective monetary relief portion of Plaintiffs' procedural due process claim should be dismissed under Rule 12(b)(6). Union Mot. at 6-15. The Court focuses on the line of argument squarely addressed in its prior Order, namely that Plaintiffs fail to state a procedural due process claim because they have not sufficiently alleged a deprivation of a protected liberty or property interest. Union Mot. at 6-12; Union Reply at 3-4. In its prior Order, the Court found the FAC did not contain factual allegations demonstrating Plaintiffs had been deprived of a protected property interest. Order at 21. Additionally, with respect to Plaintiffs'

liberty interest theory, the Court found: (1) only Mendoza adequately alleged the deprivation of a liberty interest comparable to the one *Janus* recognized, (2) even Mendoza failed to allege what procedures were constitutionally required or how Defendants fell short of these requirements. Order at 21-22. For these reasons, the Court concluded the FAC failed to state a procedural due process claim and dismissed this claim without prejudice. *Id.*

Plaintiffs have not cured the problems identified by the Court in its prior Order. Specifically, Plaintiffs still have not clearly identified a protected property or liberty interest of which they have been deprived, as they must under *Swarthout.* 526 U.S. at 219. In the SAC, Plaintiffs (except Mendoza who is discussed separately below), admit they signed Union membership forms and thereby authorized the deductions now challenged; however, they allege they only signed because Union representatives either told them directly or led them to believe membership was mandatory or because they signed the membership card under pressured circumstances. SAC ¶¶30, 51, 62, 80, 89, 103, 114-15, 139, 134, 142, 152. These allegations about the circumstances of the signing, however, do not change the fact Plaintiffs signed the membership card, joining the Union and thereby authorizing the deductions. The legal consequence of this action, as the Union argues and as other courts have consistently found, is that Plaintiffs were not deprived of a protected liberty or property interest when the government made deductions *authorized* by plaintiffs themselves. Union Reply at 3; *see e.g. Smith v. Superior Court*, 2018 WL 6072806 at *1 (N.D. Cal Nov. 16, 2018) (rejecting attempt by plaintiff-union-member "to wriggle out of his contractual duties" and explaining that "*Janus* actually acknowledges in its concluding paragraph

that employees can waive their First Amendment rights by affirmatively consenting to pay union dues"); *Wagner v. Univ. of Wash.*, 2020 WL 5520947, at *5 (W.D. Wash. Sept. 11, 2020) ("The answer, as . . . every Court examining the question has concluded, is that [plaintiff] did not suffer the deprivation of a liberty or property interest as she voluntarily assented to Union membership and deduction of Union dues"). Rather, the deductions these nine Plaintiffs now challenge "flow from the express terms of contracts Plaintiffs entered into." Order at 21. Further, *Janus* does not provide a basis for invalidating Plaintiffs' contracts because *Janus* discussed the rights of public employees who *never* signed union membership agreements, unlike these plaintiffs who did, by their own admissions in the SAC, sign membership cards. *Id.*

Because the nine Plaintiffs signed and thereby authorized the deductions, they still have not shown they suffered a deprivation of a protected liberty or property interest in the first instance. The due process analysis ends there for all Plaintiffs, except Mendoza. *Swarthout.* 526 U.S. at 219.

Turning to Mendoza, Plaintiffs argue that Mendoza's procedural due process claim survives because his signature on the 2017 form was forged and therefore his deductions were not authorized. SAC ¶¶ 75-76. Plaintiffs characterize the forgery as the "result of faulty state-authorized procedures" and a "foreseeable and preventable consequence of providing the Union unchecked authority to direct deductions." Opp'n to Union at 13. By contrast, the Union characterizes the alleged forgery as the result of a "random and unpredictable private act" that "does not violate procedural due process as long as the State provides adequate post-deprivation remedies." Union Mot. at

11. The Union further argues that the state procedures are not "faulty" because it was not the state procedures that caused the allegedly unauthorized deductions, but rather the alleged forgery of Mendoza's authorization in violation of those procedures. Union Reply at 4.

Taking the allegations of the forgery as true and drawing all inferences in Plaintiffs' favor, the Court is unable to infer that the forgery was anything more than a random and unauthorized private act. The only question that remains therefore is whether the state provides adequate post-deprivation remedies. *Hudson v. Palmer*, 468 U.S. 517, 533 (1984) (holding no procedural due violation for unauthorized deprivation of property where state law provided adequate post-deprivation remedies for the loss). Plaintiffs contend California does not provide adequate remedies, *see* Opp'n to Union at 13, while the Union argues it does both through the administrative procedures of the California Public Employment Relations Board ("PERB") and through state tort law remedies for forgery and fraud, *see* Union Mot. at 12. Plaintiffs do not explain why state tort law claims to remedy fraud and forgery are inadequate, and the Court on its own can find no reason why these state tort remedies would not adequately compensate Mendoza for his property loss. *Hudson*, 468 U.S. at 535 (affirming the lower courts' finding that state common-law remedies would provide adequate compensation for property loss resulting from the unauthorized deprivation of plaintiff's property).

Because the Court finds that: (1) the allegations in the SAC do not infer that the forgery of Mendoza's signature was anything more than a random and unauthorized act; and (2) California provides Mendoza with adequate post-deprivation remedies for this random, unauthorized act, the Court finds Mendoza

has not stated a claim for violation of procedural due process. *Hudson*, 468 U.S. at 533. Unlike the other nine Plaintiffs, Mendoza does sufficiently allege a deprivation, but he nevertheless fails to show this deprivation constitutes a due process violation because there are adequate state law remedies available to him.

In sum, the Court finds all Plaintiffs have failed to state a due process claim for damages. Given the ample opportunity Plaintiffs have had to correct the issues identified by the Court in its prior Order and their subsequent failure to do so, the Court finds amendment would be futile. See *Deveraturda*, 454 F.3d at 1046. The Court therefore DISMISSES this claim with prejudice.

III. ORDER

For the reasons set forth above, the Court GRANTS Defendants' motions to dismiss. Plaintiffs' request for prospective relief on their compelled speech and due process claims are dismissed because once again the Court finds these claims are moot. Plaintiffs' request for retrospective monetary relief on their due process claim against the Union is also dismissed because the Court again finds the Plaintiffs have failed to state a claim. Finally, the Court finds further amendment of Plaintiffs' claims is futile and DISMISSES these claims WITH PREJUDICE.

IT IS SO ORDERED.

Dated: January 19, 2021

/s/ John A. Mendez
John A. Mendez
UNITED STATES DISTRICT JUDGE

APPENDIX N

United States Constitution Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

APPENDIX O

United States Constitution Amendment XIV § 1

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX P

Oregon Revised Statute § 243.806

(1) A public employee may enter into an agreement with a labor organization that is the exclusive representative to provide authorization for a public employer to make a deduction from the salary or wages of the public employee, in the manner described in subsection (4) of this section, to pay dues, fees and any other assessments or authorized deductions to the labor organization or its affiliated organizations or entities.

(2) A public employer shall deduct the dues, fees and any other deduction authorized by a public employee under this section and remit payment to the designated organization or entity.

(3)(a) In addition to making the deductions and payments to a labor organization or entity described in subsection (1) of this section, a public employer shall make deductions for and payments to a noncertified, yet bona fide, labor organization, if so requested and authorized by a public employee, in the manner described in subsection (4) of this section.

(b) The deductions and payments made in accordance with this subsection shall not be deemed an unfair labor practice under ORS 243.672.

(4)(a) A public employee may provide authorization for the deductions described in this section by telephonic communication or in writing, including by an electronic record or electronic signature, as those terms are defined in ORS 84.004.

(b) A public employee's authorization is independent of the employee's membership status in the labor organization to which payment is remitted and

irrespective of whether a collective bargaining agreement authorizes the deduction.

(5) Notwithstanding subsections (1) to (4) of this section, a collective bargaining agreement between a labor organization and a public employer may authorize a public employer to make a deduction from the salary or wages of a public employee who is a member of the labor organization to pay dues, fees or other assessments to the labor organization or its affiliated organizations or entities.

(6) A public employee's authorization for a public employer to make a deduction under subsections (1) to (4) of this section shall remain in effect until the public employee revokes the authorization in the manner provided by the terms of the agreement. If the terms of the agreement do not specify the manner in which a public employee may revoke the authorized deduction, a public employee may revoke authorization for the deduction by delivering an original signed, written statement of revocation to the headquarters of the labor organization.

(7) A labor organization shall provide to each public employer a list identifying the public employees who have provided authorization for a public employer to make deductions from the public employee's salary or wages to pay dues, fees and any other assessments or authorized deductions to the labor organization. A public employer shall rely on the list to make the authorized deductions and to remit payment to the labor organization.

(8)(a) Notwithstanding subsection (10) of this section, a public employer that makes deductions and payments in reliance on the list described in subsection (7) of this section is not liable to a public employee for

actual damages resulting from an unauthorized deduction.

(b) A labor organization that receives payment from a public employer shall defend and indemnify the public employer for the amount of any unauthorized deduction resulting from the public employer's reliance on the list.

(9) If a labor organization provides a public employer with the list described in subsection (7) of this section and the employer fails to make an authorized deduction and remit payment to the labor organization, the public employer is liable to the labor organization, without recourse against the employee who authorized the deduction, for the full amount that the employer failed to deduct and remit to the labor organization.

(10)(a) If a dispute arises between the public employee and the labor organization regarding the existence, validity or revocation of an authorization for the deductions and payment described under subsections (1) and (2) of this section, the dispute shall be resolved through an unfair labor practice proceeding under ORS 243.672.

(b) A public employer that makes unauthorized deductions or a labor organization that receives payment in violation of the requirements of this section is liable to the public employee for actual damages in an amount not to exceed the amount of the unauthorized deductions.

APPENDIX Q

Revised Code of Washington § 41.80.100

(1) Upon authorization of an employee within the bargaining unit and after the certification or recognition of the bargaining unit's exclusive bargaining representative, the employer must deduct from the payments to the employee the monthly amount of dues as certified by the secretary of the exclusive bargaining representative and must transmit the same to the treasurer of the exclusive bargaining representative.

(2)(a) If the employer and the exclusive bargaining representative of a bargaining unit enter into a collective bargaining agreement that includes requirements for deductions of other payments, the employer must make such deductions upon authorization of the employee.

(b) An employee's written, electronic, or recorded voice authorization to have the employer deduct membership dues from the employee's salary must be made by the employee to the exclusive bargaining representative. If the employer receives a request for authorization of deductions, the employer shall as soon as practicable forward the request to the exclusive bargaining representative.

(c) Upon receiving notice of the employee's authorization, the employer shall deduct from the employee's salary membership dues and remit the amounts to the exclusive bargaining representative.

(d) The employee's authorization remains in effect until expressly revoked by the employee in accordance with the terms and conditions of the authorization.

(e) An employee's request to revoke authorization for payroll deductions must be in writing and submitted

by the employee to the exclusive bargaining representative in accordance with the terms and conditions of the authorization.

(f) After the employer receives confirmation from the exclusive bargaining representative that the employee has revoked authorization for deductions, the employer shall end the deduction no later than the second payroll after receipt of the confirmation.

(g) The employer shall rely on information provided by the exclusive bargaining representative regarding the authorization and revocation of deductions.

APPENDIX R

California Government Code § 1153

The Controller shall provide for the administration of payroll deductions as set forth in Sections 1151, 1151.5, and 1152, salary reductions pursuant to Section 12420.2, and may establish, by rule or regulation, procedures for that purpose.

In administering these programs the Controller shall:

(a) Make, cancel, or change a deduction or reduction at the request of the person or organization authorized to receive the deduction or reduction. All requests shall be made on forms approved by the Controller.

(b) Obtain a certification from any state agency, employee organization, or business entity requesting a deduction or reduction that they have and will maintain an authorization, signed by the individual from whose salary or wages the deduction or reduction is to be made. An employee organization that certifies that it has and will maintain individual employee authorizations shall not be required to provide a copy of an individual authorization to the Controller unless a dispute arises about the existence or terms of the authorization.

(c) Provide for an agreement from individuals, organizations, and business entities receiving services to relieve the state, its officers and employees, of any liability that may result from making, canceling, or changing requested deductions or reductions. However, no financial institution receiving a payroll service pursuant to this section shall be required to reimburse the state for any error in the payroll service received by that financial institution after 90 days from the

month in which the payroll service was deducted from an individual's paycheck.

(d) Determine the cost of performing the requested service and collect that cost from the organization, entity, or individual requesting or authorizing the service. Services requested which are incidental, but not necessary, to making the deduction may be performed at the Controller's discretion with any additional cost to be paid by the requester. At least 30 days prior to implementation of any adjustment of employee costs pursuant to Section 12420.2, the Controller shall notify in writing any affected employee organization.

(e) Prior to making a deduction for an employee organization or a bona fide association, determine that the organization or association has been recognized, certified, or registered by the appropriate authority.

(f) Decline to make a deduction for any individual, organization, or entity if the Controller determines that it is not administratively feasible or practical to make the deduction or if the Controller determines that the individual, organization, or entity requesting or receiving the deduction has failed to comply with any statute, rule, regulation, or procedure for the administration of deductions.

(g) After receiving notification from an employee organization that it possesses a written authorization for deduction, commence the first deduction in the next pay period after the Controller receives the notification. The employee organization shall indemnify the Controller for any claims made by the employee for deductions made in reliance on that notification.

(h) Make, cancel, or change a deduction or reduction not later than the month subsequent to the month in which the request is received, except that a deduction

for an employee organization may be revoked only pursuant to the terms of the employee's written authorization. Employee requests to cancel or change deductions for employee organizations shall be directed to the employee organization, rather than to the Controller. The employee organization shall be responsible for processing these requests. The Controller shall rely on information provided by the employee organization regarding whether deductions for an employee organization were properly canceled or changed, and the employee organization shall indemnify the Controller for any claims made by the employee for deductions made in reliance on that information. Except as provided in subdivision (c), all cancellations or changes shall be effective when made by the Controller.

(i) At the request of a state agency, transfer employee deduction authorization for a state-sponsored benefit program from one provider to another if the benefit and the employee contribution remain substantially the same. Notice of the transfer shall be given by the Controller to all affected employees.

APPENDIX S

California Government Code § 1157.3

(a) Employees, including retired employees, of a public employer in addition to any other purposes authorized in this article, may also authorize deductions to be made from their salaries, wages, or retirement allowances for the payment of dues in, or for any other service, program, or committee provided or sponsored by, any employee organization or bona fide association whose membership is comprised, in whole or in part, of employees of the public employer and employees of such organization and which has as one of its objectives improvements in the terms or conditions of employment for the advancement of the welfare of the employees.

(b) The public employer shall honor employee authorizations for the deductions described in subdivision (a). The revocability of an authorization shall be determined by the terms of the authorization.

APPENDIX T

California Government Code § 1157.12

Public employers other than the state that provide for the administration of payroll deductions authorized by employees for employee organizations as set forth in Sections 1152 and 1157.3 or pursuant to other public employee labor relations statutes, shall:

(a) Rely on a certification from any employee organization requesting a deduction or reduction that they have and will maintain an authorization, signed by the individual from whose salary or wages the deduction or reduction is to be made. An employee organization that certifies that it has and will maintain individual employee authorizations shall not be required to provide a copy of an individual authorization to the public employer unless a dispute arises about the existence or terms of the authorization. The employee organization shall indemnify the public employer for any claims made by the employee for deductions made in reliance on that certification.

(b) Direct employee requests to cancel or change deductions for employee organizations to the employee organization, rather than to the public employer. The public employer shall rely on information provided by the employee organization regarding whether deductions for an employee organization were properly canceled or changed, and the employee organization shall indemnify the public employer for any claims made by the employee for deductions made in reliance on that information. Deductions may be revoked only pursuant to the terms of the employee's written authorization.

APPENDIX U

California Welfare & Institutions Code § 12301.6

The Controller shall provide for the administration of payroll deductions as set forth in Sections 1151, 1151.5, and 1152, salary reductions pursuant to Section 12420.2, and may establish, by rule or regulation, procedures for that purpose.

In administering these programs the Controller shall:

(a) Make, cancel, or change a deduction or reduction at the request of the person or organization authorized to receive the deduction or reduction. All requests shall be made on forms approved by the Controller.

(b) Obtain a certification from any state agency, employee organization, or business entity requesting a deduction or reduction that they have and will maintain an authorization, signed by the individual from whose salary or wages the deduction or reduction is to be made. An employee organization that certifies that it has and will maintain individual employee authorizations shall not be required to provide a copy of an individual authorization to the Controller unless a dispute arises about the existence or terms of the authorization.

(c) Provide for an agreement from individuals, organizations, and business entities receiving services to relieve the state, its officers and employees, of any liability that may result from making, canceling, or changing requested deductions or reductions. However, no financial institution receiving a payroll service pursuant to this section shall be required to reimburse the state for any error in the payroll service received by that financial institution after 90 days from the

month in which the payroll service was deducted from an individual's paycheck.

(d) Determine the cost of performing the requested service and collect that cost from the organization, entity, or individual requesting or authorizing the service. Services requested which are incidental, but not necessary, to making the deduction may be performed at the Controller's discretion with any additional cost to be paid by the requester. At least 30 days prior to implementation of any adjustment of employee costs pursuant to Section 12420.2, the Controller shall notify in writing any affected employee organization.

(e) Prior to making a deduction for an employee organization or a bona fide association, determine that the organization or association has been recognized, certified, or registered by the appropriate authority.

(f) Decline to make a deduction for any individual, organization, or entity if the Controller determines that it is not administratively feasible or practical to make the deduction or if the Controller determines that the individual, organization, or entity requesting or receiving the deduction has failed to comply with any statute, rule, regulation, or procedure for the administration of deductions.

(g) After receiving notification from an employee organization that it possesses a written authorization for deduction, commence the first deduction in the next pay period after the Controller receives the notification. The employee organization shall indemnify the Controller for any claims made by the employee for deductions made in reliance on that notification.

(h) Make, cancel, or change a deduction or reduction not later than the month subsequent to the month in which the request is received, except that a deduction

for an employee organization may be revoked only pursuant to the terms of the employee's written authorization. Employee requests to cancel or change deductions for employee organizations shall be directed to the employee organization, rather than to the Controller. The employee organization shall be responsible for processing these requests. The Controller shall rely on information provided by the employee organization regarding whether deductions for an employee organization were properly canceled or changed, and the employee organization shall indemnify the Controller for any claims made by the employee for deductions made in reliance on that information. Except as provided in subdivision (c), all cancellations or changes shall be effective when made by the Controller.

(i) At the request of a state agency, transfer employee deduction authorization for a state-sponsored benefit program from one provider to another if the benefit and the employee contribution remain substantially the same. Notice of the transfer shall be given by the Controller to all affected employees.