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12 **UNITED STATES DISTRICT COURT**
13 **EASTERN DISTRICT OF CALIFORNIA**

14 ALFRED SWEET, *et al.*,

15 Plaintiffs,

16 v.

17 CALIFORNIA ASSOCIATION OF
18 PSYCHIATRIC TECHNICIANS, *et al.*,

19 Defendants.

CASE NO.: 2:19-cv-00349-JAM-AC

**REPLY IN SUPPORT OF DEFENDANT
CAPT'S MOTION TO DISMISS COUNT II
OF THE COMPLAINT**

Hearing Date: July 16, 2019

Time: 1:30 p.m.

Location: Courtroom 6

Judge: The Honorable John A. Mendez

Action Filed: February 27, 2019

1 There is no legally relevant difference between: 1) the California public sector collective
 2 bargaining system applicable to Plaintiff Sweet and 2) the public sector collective bargaining
 3 systems used by the federal government and about 40 other states for millions of other public
 4 employees. Plaintiff nonetheless contends that California’s public sector collective bargaining
 5 system violates the First Amendment. As Defendant California Association of Psychiatric
 6 Technicians (“CAPT”) has already demonstrated, Plaintiff’s constitutional attack on exclusive
 7 representation collective bargaining is foreclosed by Supreme Court and Ninth Circuit precedent.

8 The Supreme Court has held that exclusive-representative collective bargaining for public
 9 employees, by itself, does not “create an unconstitutional inhibition on [the] associational
 10 freedom” of employees who disagree with the majority-chosen union representative or “restrain[]
 11 [such employees’] freedom to speak.” *Minn. St. Bd. for Community Colleges v. Knight*, 465 U.S.
 12 271, 288-90 (1984). The Ninth Circuit has held that *Knight* forecloses the claim that exclusive-
 13 representative collective bargaining, by itself, violates the First Amendment. *Mentele v. Inslee*,
 14 916 F.3d 783, 789 (9th Cir. 2019). Every other court to reach this issue has agreed. *See* CAPT
 15 Mem. (Dkt. 17-1) at 11 (citing cases); *Grossman v. Hawaii Gov’t Employees Ass’n*, 2019 WL
 16 2195206 at *1-3 (D. Haw. May 21, 2019); *Babb v. California Teachers Ass’n*, -- F.Supp.3d --,
 17 2019 WL 2022222 (C.D. Cal. May 9, 2019); *Akers v. Maryland State Educ. Ass’n*, 376 F.Supp.3d
 18 563, 573 (D. Md. 2019); *Branch v. Commonwealth Employment Relations Bd.*, 481 Mass. 810,
 19 820-23 (2019); *Crockett v. NEA-Alaska*, 367 F.Supp.3d 996, 1009 (D. Alaska 2019).¹ For the
 20 reasons explained below, and set forth in these recent decisions, Plaintiff’s claim is meritless, so
 21 the Court should dismiss Count II of the Complaint.

22 **I. *Knight* and *Mentele* Foreclose Plaintiff’s Compelled Association Theory**

23 Plaintiff’s primary contention is that this Court can disregard *Knight* because that decision
 24 is “a private forum case, not a freedom of association case.” *Opp.* at 5, 8-10. To the contrary, the
 25 impact of a union’s role as exclusive representative on non-members’ associational rights was the
 26 central focus of the First Amendment challenge in *Knight*.

27
 28 ¹ These additional cases were decided in the interim between CAPT’s motion to dismiss and Plaintiff’s opposition. All reject the same claim Plaintiff presents here.

1 In *Knight*, Minnesota officials conferred with the faculty union in its role as the elected
2 representative for the entire bargaining unit. See 465 U.S. at 276 n.3 (the union presented “an
3 official collective faculty position as formulated by the faculty’s exclusive representative”).
4 *Knight* held that whether individual bargaining unit members’ First Amendment associational
5 rights were impaired under these circumstances turned not upon the union’s mere status as
6 representative of all bargaining unit employees, but upon whether bargaining unit members were
7 required to become union members or financial supporters. See *id.* at 289-90 (finding no
8 associational impairment because instructors were not required to become union members and any
9 pressure they felt to become members was “inherent in our system of government”); *id.* at 289
10 n.11, 291 n.13 (explaining that no requirement of financial support was at issue). Because neither
11 membership nor financial support were required, the Supreme Court held that the dissenting
12 instructors in *Knight* retained the “freedom ... not to associate with whom they please, including
13 the exclusive representative.” *Id.* at 288 (emphasis added).²

14 This holding in *Knight* dooms Plaintiff’s compelled association theory here, as every court
15 to consider the issue has recognized. See *Bierman v. Dayton*, 900 F.3d 570, 574 (8th Cir. 2018)
16 (*Knight* “foreclosed” argument that the “‘mandatory agency relationship’ between [non-members]
17 and the exclusive representative ... violates their right to free association under the First and
18 Fourteenth Amendments”); *accord Hill v. Serv. Employees Int’l Union*, 850 F.3d 861, 864 (7th Cir.
19 2017), cert. denied, 138 S.Ct. 446 (2017); *Jarvis v. Cuomo*, 660 Fed.Appx. 72, 74 (2d Cir. 2016),
20 cert. denied, 137 S.Ct. 1204 (2017); *D’Agostino v. Baker*, 812 F.3d 240, 243 (1st Cir. 2016), cert.
21 denied, 136 S.Ct. 2473 (2016); see also *Akers*, 2019 WL 1745980, at *6 n.8 (“Following *Knight*,
22 every Circuit court to address the constitutionality of exclusive bargaining arrangements has
23 concluded that these provisions do not violate the First Amendment.”).

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27 ² Plaintiff’s contention that *Knight* did not address the dissenting instructors’ First Amendment
28 associational rights cannot be reconciled with his argument that *Knight* should be ignored because
the majority “base[d] its reasoning upon the Supreme Court’s decision in *Abood v. Detroit Board
of Education*, 431 U.S. 209 (1977).” Opp. at 6. The constitutional claim in *Abood* was a freedom
of association claim, not a “public forum” claim. See, e.g., *Abood*, 431 U.S. at 233-34.

1 In *Mentele v. Inslee*, the Ninth Circuit rejected Plaintiff’s interpretation of *Knight*, and
2 *Mentele* is binding Circuit precedent. 916 F.3d at 784. *Mentele* held that exclusive representative
3 bargaining for publicly-subsidized child care workers does not violate non-members’ associational
4 rights. *Id.* The Court explained that *Knight* “expressly concluded” that exclusive representation
5 did not violate non-members’ freedom to decline “to associate with whom they please, including
6 the exclusive representative,” and “approved the requirement that bound non-union dissenters to
7 exclusive union representation.” *Id.* at 789 (*quoting Knight*, 465 U.S. at 288) (emphasis omitted).

8 Plaintiff suggests that this Court can disregard *Mentele* because the case involved “partial”
9 state employees” rather than “full-fledged state employees” like *Sweet*. *Opp.* at 13. But *Mentele*’s
10 analysis of the impact of exclusive representation on non-members’ associational rights was
11 entirely based on *Knight*’s analysis of exclusive representation for full-fledged government
12 employees (*see* 465 U.S. at 278) and, therefore, *Mentele* contains no such limitation. 916 F.3d at
13 788–90. As the Central District of California recently explained in rejecting this very argument:

14 [Plaintiff] Few attempts to distinguish *Mentele* on the basis that it holds that *Knight*
15 “continues to apply” only to “partial” state employees, rather than full-fledged public
16 employees such as himself. ... *Mentele*’s analysis of the impact of exclusive representation
17 on non-member’s associational rights contains no such limitation, however, and was based
entirely on *Knight*’s analysis, which involved full-fledged public employees.

18 *Babb*, 2019 WL 2022222 at *18; *accord Grossman*, 2019 WL 2195206 at *3. The square holding
19 of *Mentele* is that exclusive representative bargaining, by itself, does not infringe First Amendment
20 rights and that holding controls here.

21 *Mentele* then went on to hold, in the alternative, that Washington’s exclusive-representative
22 system for partial public employees would satisfy heightened constitutional scrutiny if such
23 scrutiny applied (which it did not). *See* 916 F.3d 790-91. That alternative holding would apply to
24 full-fledged public employees as well. The Supreme Court has recognized that the State’s interest
25 in labor peace is *stronger* for full-fledged government employees. *See Harris v. Quinn*, 134 S.Ct.
26 2618, 2634-41 (2014). But it is not necessary to reach this issue because Plaintiff’s claim is barred
27 by the primary holding of *Mentele*.

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1 **II. Janus Reaffirmed Knight**

2 Contrary to Plaintiff's contention, *Janus v. AFSCME Council 31*, 138 S.Ct. 2448 (2018),
3 does not support his argument here. Opp. at 10-12. *Janus* held only that non-member public
4 employees cannot be required to pay fees to an exclusive representative, not that exclusive
5 representation itself violates the First Amendment. *Janus* states several times that exclusive
6 representation in public employment remains constitutionally permissible. CAPT Mem. at 12; *see*
7 *Babb*, 2019 WL 2022222 at *18 ("*Janus* essentially reaffirmed *Knight*"). Plaintiff does not even
8 attempt to address the *Janus* majority's repeated statements that states may continue using
9 exclusive representation in public employment. In any event, *Mentele* already rejected Plaintiff's
10 reading of *Janus*. The Ninth Circuit held that *Janus* "expressly affirm[s] the propriety of
11 mandatory union representation." 916 F.3d at 789.³

12 **III. Plaintiff's Arguments Are Not Supported by Expressive Association Precedent**

13 Even if Plaintiff's claim were not foreclosed by on-point Supreme Court and Ninth Circuit
14 precedent, the claim would still fail because it cannot be reconciled with more general Supreme
15 Court precedents about compelled expressive association. Plaintiff does not contend that he is
16 required to join or support CAPT (or do anything else).⁴ Rather, Plaintiff claims he is compelled
17 to associate with CAPT because CAPT "speak[s] on his behalf" when engaging in collective
18 bargaining negotiations with his employer. Opp. at 16, 17. But CAPT "is speaking for the
19 bargaining unit members as a collective rather than purporting to espouse specific views for any
20 individual bargaining unit member." *Thompson v. Marietta Educ. Ass'n*, 371 F.Supp.3d 431, 441
21 (S.D. Ohio 2019). Plaintiff does not dispute that his public employer and reasonable outsiders
22 would understand that, as with any democratically chosen representative, not all bargaining unit

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24 ³ Plaintiff argues the overruling of *Abood* in *Janus* renders the *Knight* decision "inapplicable."
25 Opp. at 12. But *Janus* overruled only the portion of *Abood* permitting the imposition of fair-share
26 fees to pay for collective bargaining-related expenses. In any event, lower courts are bound to
27 follow *Knight*. *See, e.g., Agostini v. Felton*, 521 U.S. 203, 237 (1997).

28 ⁴ In each of Plaintiff's cases, the plaintiffs were required to affirmatively display, accommodate, or
publish speech with which they disagreed, unlike Plaintiff here. *Id.* at 19 (citing *Wooley v.*
Maynard, 430 U.S. 705 (1977); *Boy Scouts of America v. Dale*, 530 U.S. 640 (2000); *Miami*
Herald Publishing Co. v. Tornillo, 418 U.S. 241 (1974)).

1 members necessarily agree with CAPT or its bargaining positions. Opp. at 16-18; *see* CAPT Mem.
2 at 13-14. Thus, CAPT’s speech is not attributed the Plaintiff in the sense that would be necessary
3 for a viable compelled association claim.⁵

4 **IV. Heightened Scrutiny Does Not Apply To Plaintiff’s First Amendment Claim**

5 Plaintiff urges that there is no compelling justification for using an exclusive-representative
6 collective bargaining system with a single democratically-chosen representative for the bargaining
7 unit (although no other collective bargaining system has proven to be successful in the United
8 States). Opp. at 15-17. But *Knight* and *Mentele* hold that exclusive representation, by itself, does
9 not infringe First Amendment rights. *Mentele*, 916 F.3d at 789 (“[W]e apply *Knight*’s more
10 directly applicable precedent ... and hold that Washington’s authorization of an exclusive
11 bargaining representative does not infringe Miller’s First Amendment rights.”). When the
12 government “does not infringe any First Amendment right,” the government “need not
13 demonstrate any special justification” for its law. *Univ. of Pa. v. EEOC*, 493 U.S. 182, 201 (1990).
14 That dispositive point aside, *Mentele* held that exclusive-representative collective bargaining
15 would satisfy “exacting scrutiny” (even if such scrutiny applied, which it does not) because the
16 system serves the “compelling—and enduring—state interest of labor peace,” 916 F.3d at 790, a
17 holding that would directly control here as well.

18 **V. Conclusion**

19 For the foregoing reasons as well as the reasons set forth in CAPT’s opening memorandum,
20 Count II of Plaintiff’s Complaint should be dismissed with prejudice for failure to state a claim.
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26 ⁵ Plaintiff’s Count II alleges violations of the First Amendment protections for speech and
27 association, but Plaintiff’s opposition focuses exclusively on associational rights, so he has waived
28 any compelled speech claim. Compl. at ¶¶52-61; Opp. at 5-20. Regardless, any such claim would
be foreclosed because Plaintiff does not contend that he himself is compelled to speak. *E.g.*,
D’Agostino, 812 F.3d at 244.

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Respectfully submitted,

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