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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

ALFRED SWEET,  
  
Plaintiff,  
  
v.  
  
CALIFORNIA ASSOCIATION OF  
PSYCHIATRIC TECHNICIANS, et al.,  
  
Defendants.

No. 2:19-cv-00349-JAM-AC

**ORDER GRANTING DEFENDANT'S  
MOTION TO DISMISS**

This case arises out of Plaintiff Alfred Sweet's attempt to end his union membership. Alfred Sweet ("Plaintiff" or "Sweet") alleges the California Association of Psychiatric Technicians ("CAPT") violated his First Amendment rights to free speech and free association by refusing to immediately accept his resignation from union membership and by continuing to deduct union dues from his paycheck (Count I). Sweet further alleges the California laws which provide designated unions like CAPT with exclusive representation of collective bargaining units, including union nonmembers, are unconstitutional abridgements of his First Amendment rights (Count II).

CAPT moves to dismiss Count II of the Complaint. Mot., ECF No. 17-1. Sweet opposes the motion. Opp'n, ECF No. 24.

1 For the reasons set forth below, this Court GRANTS defendant  
2 CAPT's motion.<sup>1</sup>

3 I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

4 Plaintiff Alfred Sweet is a psychiatric technician employed  
5 by the Atascadero State Hospital ("Atascadero"). Compl. ¶ 16.  
6 Atascadero is a public hospital run by the California Department  
7 of State Hospitals. Id. ¶ 17. CAPT is the exclusive  
8 representative available to Sweet for collective bargaining with  
9 California. Id. ¶¶ 28-30, 41, 56-58. Sweet became a member of  
10 CAPT in January 2011, upon the start of his employment with  
11 Atascadero. Id. ¶ 18. During his tenure with Atascadero, Sweet  
12 has developed and raised concerns about CAPT's management  
13 practices and representation of its members. Id. ¶¶ 19-20. On  
14 several occasions, Sweet requested to leave the Union, but the  
15 Union denied his requests. Id. ¶¶ 21-22. Most recently, after  
16 the Supreme Court's decision in Janus, Sweet submitted a letter  
17 to CAPT requesting to resign his membership and that CAPT stop  
18 deducting dues from his paycheck. Id. ¶ 23. CAPT responded that  
19 Sweet could not resign his membership except within the thirty-  
20 day window prior to the expiration of the current collective  
21 bargaining agreement, in this case June 1 to July 1, 2019. Id.  
22 ¶¶ 24-25.

23 Sweet filed the Complaint on February 27, 2019, arguing (1)  
24 CAPT violated his rights to free speech and free association by  
25 refusing to allow Sweet to immediately withdraw from the union  
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27 <sup>1</sup> This motion was determined to be suitable for decision without  
28 oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled  
for July 16, 2019.

1 and by continuing to deduct union dues (Count I); and (2)  
2 California's exclusive representation provisions for collective  
3 bargaining - namely California Government Code Sections 3515.5  
4 and 3520.5 - violate the First Amendment by forcing him to  
5 continue to associate with CAPT without his affirmative consent  
6 (Count II). Compl., ECF No. 1. Sweet seeks declaratory,  
7 injunctive, and monetary relief. Id.

8 CAPT has since accepted Sweet's resignation, effective June  
9 1, 2019, and has ceased deducting dues as of Sweet's paycheck for  
10 the June 1-15, 2019 pay period. Joint Response to Court, ECF No.  
11 31. Nevertheless, Sweet remains a publicly-employed psychiatric  
12 technician and thus CAPT continues to represent him in employment  
13 negotiations with California.

## 14 II. OPINION

15 CAPT argues Sweet's free association challenge in Count II  
16 is barred by Minnesota State Bd. for Cmty. Colleges v. Knight,  
17 465 U.S. 271 (1984) ("Knight"), and Mentele v. Inslee, 916 F.3d  
18 783 (9th Cir. 2019) ("Mentele"). Mot. at 8-11. Sweet contends  
19 that Knight and Mentele can be distinguished, and that the logic  
20 of the Supreme Court's decision in Janus v. Am. Fed'n of State,  
21 Cty., & Mun. Employees, Council 31, 138 S. Ct. 2448 (2018)  
22 ("Janus"), supports his contention that California's statutory  
23 scheme compels him to petition the government with a viewpoint  
24 that is inconsistent with his own goals and priorities. Opp'n.  
25 This Court agrees with CAPT.

### 26 A. Statutory Landscape

27 California law permits state employees "to select one  
28 employee organization as the exclusive representative of the

1 employees in an appropriate unit, and to permit the exclusive  
2 representative to receive financial support from those employees  
3 who receive the benefits of this representation." Cal. Gov't  
4 Code § 3512. The employees petition the state for recognition of  
5 the selected union for exclusive representative status. Cal.  
6 Gov't Code § 3520.5. Once the exclusive representative is  
7 certified by the state, "the recognized employee organization is  
8 the only organization that may represent that unit in employment  
9 relations with the state." Cal. Gov't Code § 3515.5. That  
10 representation extends to matters including wages, hours, and  
11 other conditions of employment. Cal. Gov't Code § 3516. The  
12 exclusive representative must "fairly represent each and every  
13 employee in the . . . unit." Cal. Gov't Code § 3544.9.

14 B. Knight

15 In Knight, the Supreme Court considered a Minnesota law that  
16 "provide[d] for the division of public employees into appropriate  
17 bargaining units and establishe[d] a procedure, based on majority  
18 support within a unit, for the designation of an exclusive  
19 bargaining agent for that unit." 465 U.S. at 273-75. The law  
20 "require[d] public employers to 'meet and negotiate' with  
21 exclusive representatives concerning the 'terms and conditions of  
22 employment,'" which included hours of employment, compensation,  
23 and personnel policies. Id. Accordingly, employers could  
24 "neither 'meet and negotiate' nor 'meet and confer' with any  
25 members of that bargaining unit except through their exclusive  
26 representative." Id. A group of twenty Minnesota community  
27 college faculty instructors, who were not members of the union  
28 deemed the exclusive bargaining representative for college

1 faculty, challenged the law. Id. at 275-79. The Supreme Court  
2 upheld the law, concluding that the nonmembers' "speech and  
3 associational rights . . . have not been infringed by Minnesota's  
4 restriction of participation in 'meet and confer' sessions to the  
5 faculty's exclusive representative. [Minnesota] has in no way  
6 restrained [the nonmembers'] freedom to speak on any education-  
7 related issue or their freedom to associate or not to associate  
8 with whom they please, including the exclusive representative."  
9 Id. at 288. The Court continued, the nonmembers' "associational  
10 freedom has not been impaired. [They] are free to form whatever  
11 advocacy groups they like." Id. at 289.

12 Sweet has failed to distinguish the Minnesota law and  
13 exclusive representation structure at issue in Knight from the  
14 California laws he now challenges. He argues the "central issue  
15 of the Knight decision is whether plaintiffs could compel the  
16 government to negotiate with them instead of, or in addition to,  
17 the union." Opp. at 9. This Court disagrees. The Supreme  
18 Court's opinion, and the question presented, in Knight were not  
19 confined to that one single issue. Knight, 465 U.S. at 273 ("The  
20 question presented in this case is whether this restriction on  
21 participation in the nonmandatory-subject exchange process  
22 violates the constitutional rights of professional employees  
23 within the bargaining unit who are not members of the exclusive  
24 representative and who may disagree with its views. We hold that  
25 it does not.").

26 Thus, this Court finds that Knight squarely addresses, and  
27 forecloses, the claim in Count II of the Complaint.

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1 C. Janus

2 Mr. Sweet nevertheless argues that the Supreme Court's  
3 decision in Janus "eroded the foundations of Knight" and  
4 therefore this Court should revisit the question presented in  
5 Knight. Opp. at 10-12. It is true that in Janus the Supreme  
6 Court recognized, "Designating a union as the employees'  
7 exclusive representative substantially restricts the rights of  
8 individual employees. Among other things, this designation means  
9 that individual employees may not be represented by any agent  
10 other than the designated union; nor may individual employees  
11 negotiate directly with their employer." 138 S. Ct. at 2460.  
12 But the Supreme Court went no further, and the holding in Janus  
13 is only that non-consensual agency fees charged by unions to  
14 nonmembers are constitutionally impermissible. Id. at 2486.

15 In fact, Janus raises the exclusive bargaining unit issue  
16 and, in the very next sentence, severs that issue from its  
17 holding. Id. at 2478 ("It is also not disputed that the State  
18 may require that a union serve as exclusive bargaining agent for  
19 its employees—itsself a significant impingement on associational  
20 freedoms that would not be tolerated in other contexts. We  
21 simply draw the line at allowing the government to go further  
22 still and require all employees to support the union irrespective  
23 of whether they share its views."). Indeed, the overwhelming  
24 focus of Janus is on freedom of speech, not association, and,  
25 accordingly, Knight is never mentioned in Janus. And Janus even  
26 seems to explicitly accept the constitutionality of exclusive  
27 bargaining units, so long as they abide by their duty to  
28 represent all employees fairly. Id. at 2469. The reasoning of

1 Janus therefore does not require the significant finding that  
2 Knight has been overruled *sub silentio*.

3 Thus, this Court is not convinced it can, or should,  
4 disregard the holding of Knight in light of Janus.

5 D. Mentele

6 Consistent with this Court's preceding analysis, Mentele, a  
7 post-Janus, binding Ninth Circuit case, reaffirmed Knight and  
8 thus precludes Sweet's free association claim. In Mentele, two  
9 Washington state childcare providers challenged, on free  
10 association grounds, the state's authorization of a specific  
11 union to act as the exclusive bargaining representative for all  
12 of Washington's publicly subsidized childcare providers,  
13 including union nonmembers. Mentele, 916 F.3d 784-85; Wash. Rev.  
14 Code § 41.56.080 (certified unions are "required to represent[ ]  
15 all the public employees within the unit without regard to  
16 membership."). The Ninth Circuit analyzed both Knight and Janus,  
17 found Knight's precedent more directly applicable, and held that  
18 Washington's authorization of the exclusive bargaining  
19 representative did not infringe the union nonmembers' First  
20 Amendment rights. Id. at 786-89.

21 Sweet argues Mentele can be distinguished because it  
22 considered the rights of only "partial" state employees with  
23 limited representation by the union, whereas Sweet is a full  
24 public employee and CAPT claims full representation of him.  
25 Opp'n at 13-14. This is a distinction without a difference.  
26 Mentele's primary reasoning is grounded in Knight's analysis of  
27 full public employees, and Mentele's application of Knight is  
28 therefore not limited to "partial" state employees.

1 Thus, this Court follows the Ninth Circuit's post-Janus  
2 reasoning in Mentele and finds that Sweet's free association  
3 claim fails.

4 E. Conclusion

5 This Court finds that Knight and Mentele foreclose Sweet's  
6 First Amendment associational challenge to the provisions of  
7 California law, including California Government Code Sections  
8 3515.5 and 3520.5, that provide for designated unions' exclusive  
9 representation of public employees. Bound by Supreme Court and  
10 Ninth Circuit precedent, this Court declines to address the  
11 parties' remaining arguments regarding whether California's  
12 statutory scheme impairs Sweet's First Amendment rights and, if  
13 so, whether such an impairment is nevertheless permissible. Mot.  
14 at 12-15; Opp'n at 15-20. This Court also rejects the free  
15 speech claim presented in Count II because Sweet's opposition  
16 brief, which focuses exclusively on associational rights, seems  
17 to concede any compelled speech claim, and because this argument  
18 fails as a matter of law. See Knight, 465 U.S. at 288.

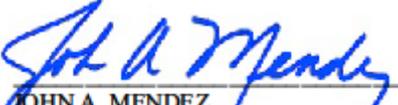
19 Therefore, Count II of the Complaint is dismissed for  
20 failure to state a claim.

21 III. ORDER

22 For the reasons set forth above, this Court GRANTS defendant  
23 CAPT's Motion to Dismiss. ECF No. 17. Amendment being futile,  
24 Count II of the Complaint is hereby DISMISSED WITH PREJUDICE.

25 IT IS SO ORDERED.

26 Dated: August 27, 2019

27   
28 JOHN A. MENDEZ,  
UNITED STATES DISTRICT JUDGE