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capacity as President of the University  
9 of California

10 **UNITED STATES DISTRICT COURT**  
11 **NORTHERN DISTRICT OF CALIFORNIA**

13 Isaac Wolf,

14 Plaintiff,

15 v.

17 University Professional & Technical  
Employees, Communications Workers of  
18 America Local 9119; Michael V. Drake, M.D.,  
in his official capacity as President of the  
19 University of California; Joshua Golka, in his  
official capacity as Executive Director of the  
20 California Public Employment Relations  
Board; and Xavier Becerra, in his official  
21 capacity as Attorney General of California,

22 Defendants.  
23

Case No. 3:19-cv-02881-WHA

**SUPPLEMENTAL BRIEF IN SUPPORT  
OF DEFENDANT MICHAEL V. DRAKE'S  
MOTION FOR SUMMARY JUDGMENT**

1 **I. INTRODUCTION**

2 The Parties agree that the Ninth Circuit’s decision in *Belgau v. Inslee*, 2020 WL 5541390  
 3 (9th Cir. 2020) (“*Belgau*”) is controlling and that Plaintiff Isaac Wolf’s federal claims must be  
 4 dismissed. Before dismissing his First Amended Complaint (“FAC”), however, Plaintiff asks this  
 5 Court to decide whether his private contract with Defendant University Professional & Technical  
 6 Employees, Communications Workers of America Local 9119 (UPE or the “Union”) was invalid  
 7 because it was a product of mutual mistake. This Court has asked the Parties to brief the  
 8 following questions: 1) whether Plaintiff’s FAC adequately frames a state law theory of relief; and  
 9 2) if so, whether the Court should exercise supplemental jurisdiction over the alleged separate  
 10 state law claim, rather than remand it to state court.

11 Even if this contractual claim does not exceed the scope of Plaintiff’s complaint, it does  
 12 not implicate Michael V. Drake, M.D. (“Dr. Drake”), sued in his official capacity as President of  
 13 the University of California (the “University”). Accordingly, Plaintiff’s claims against Dr. Drake  
 14 must be dismissed. Additionally, the Court should decline to take jurisdiction of any state law  
 15 claims, if any, because Plaintiff’s federal claims must be dismissed.

16 **II. ARGUMENT**

17 **A. Plaintiff’s Complaint Does Not Allege Any State Law Claims, And Any State Law**  
 18 **Contract-Based Claim Would Not Implicate The University.**

19 Plaintiff’s FAC provides no indication of any claim that Plaintiff’s private agreement with  
 20 the Union was a product of mutual mistake. It raises only three federal claims, alleging violations  
 21 of the U.S. constitution. *See* ECF No. 39 (“FAC”), ¶¶25-41. Count I relates to claims under the  
 22 First and Fourteenth Amendment and seeks a declaration that “deducting union dues after a  
 23 government employee has requested that they stop is a violation of the First Amendment”; Count  
 24 II seeks a declaration that “California dues deduction statutes are unconstitutional;” and, Count III  
 25 seeks monetary damages against the Union under 42 U.S.C. § 1983. Thus, Plaintiff’s mutual  
 26 mistake theory exceeds the scope of the claim and must be dismissed for this reason alone. “It is  
 27 well-settled in the Ninth Circuit that parties generally cannot assert unpled theories for the first  
 28 time at the summary judgment stage.” *Corona v. Time Warner Cable, Inc.*, No.

1 CV135521PSGVBKX, 2014 WL 11456535, at \*3 (C.D. Cal. Oct. 16, 2014) (citing *Coleman v.*  
 2 *Quaker Oats Co.*, 232 F.3d 1271, 1294 (9th Cir. 2000); *Hernandez v. Hughes Missile Sys. Co.*,  
 3 298 F.3d 1030, 1037 n.20 (9th Cir. 2002); *McGinest v. GTE Serv. Corp.*, 360 F.3d 1103, 1139 (9th  
 4 Cir. 2004); *Pickern v. Pier 1 Imports (U.S.), Inc.*, 457 F.3d 963, 968-69 (9th Cir. 2006)).

5 Even assuming Plaintiff can set forth a mutual mistake theory seeking to void the dues  
 6 authorization form, or any other agreement between Plaintiff and the Union, this theory **would not**  
 7 **involve the University**. The University did not participate in drafting UPTE’s dues authorization  
 8 form and plays no role in the Union’s relationship with its members. See Dr. Drake’s Opposition  
 9 to Plaintiff’s Motion for Summary Judgment, ECF No. 83, p. 5:3-6; see also *Darlington Veneer*  
 10 *Co.*, 113 NLRB 1101, 1117 (1955) (“Unions are private membership organizations having their  
 11 own laws, rules, and regulations, defining the rights and obligations of its members.”); *Palmer v.*  
 12 *Regents of Univ. of California*, 107 Cal. App. 4th 899, 916 (2003) (describing fraternal  
 13 organizations and labor unions as private associations); *Int’l Ass’n of Machinists v. St.*, 367 U.S.  
 14 740, 787 (1961) (same). As such, Plaintiff’s mutual mistake theory would only concern the  
 15 Union, and the Complaint should still be dismissed as to Dr. Drake.

16 **B. The Court Should Not Take Supplemental Jurisdiction Over Plaintiff’s State Law**  
 17 **Claims**

18 Assuming *arguendo* that Plaintiff’s mutual mistake theory does not exceed the scope of his  
 19 FAC, the Court should nonetheless decline to take supplemental jurisdiction of this claim.  
 20 Plaintiff agrees that *Belgau* mandates the dismissal of all his federal claims. And, the Court  
 21 should usually decline to exercise supplemental jurisdiction when all the federal claims are  
 22 dismissed before trial. *Gini v. Las Vegas Metro. Police Dep’t*, 40 F.3d 1041, 1046 (9th Cir. 1994);  
 23 28 U.S.C. 1367(c).

24 Declining jurisdiction over Plaintiff’s single remaining state law claim would serve the  
 25 values of economy, convenience, fairness, and comity. “Now that only state law claims remain,  
 26 this case falls squarely into the category of cases where federal claims have been eliminated before  
 27 trial and the balance of factors supports state court adjudication.” *Pittman v. Cedars-Sinai Med.*  
 28 *Ctr.*, No. 214CV07857SVWFFM, 2015 WL 13604251, at \*2 (C.D. Cal. Aug. 21, 2015), *aff’d*, 696

1 F. App'x 295 (9th Cir. 2017) Here, the Court “has not made any findings of fact, does not have an  
2 unusually deep understanding of the [state law] issues raised in the case, and, though not  
3 necessarily complex, state law issues now predominate what remains of the case.” *Id.*

4 Simply put, there is no compelling reason for this Court “to break with the normal exercise  
5 of discretion and to retain the case.” *Id.* Plaintiff’s claims against Dr. Drake must be dismissed.

6  
7 DATED: September 24, 2020

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8  
9 By:           /s/ Winston K. Hu          

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