No. 19-56271

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Cara O'Callaghan and Jeneé Misraje,

Plaintiffs-Appellants,

v.

Janet Napolitano, in her official capacity as President of the University of California; Teamsters Local 2010; and Xavier Becerra, in his official capacity as Attorney General of California,

Defendants-Appellees.

On Appeal from the United States District Court
for the Central District of California
No. 2:19-cv-02289
Hon. James V. Selna

EXCERPTS OF RECORD

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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

Cara O'Callaghan and Jenée Misraje,

Plaintiffs,

v.

Janet Napolitano, in her official capacity as President of the University of California; Teamsters Local 2010; and Xavier Becerra, in his official capacity as Attorney General of California

Defendants.

Case No. 2:19-cv-02289-JLS-DFM

NOTICE OF APPEAL

Plaintiffs, Cara O'Callaghan and Jenée Misraje, by and through their undersigned counsel, hereby respectfully appeal to the United States Court of Appeals for the Ninth Circuit from the Judgment granting Defendants' Motions to Dismiss the First Amended Complaint seeking Declaratory Relief, Injunctive Relief, and Damages for Deprivation of First Amendment Rights (Docket No. 71) filed and entered on October 4, 2019, which is attached hereto as Exhibit "1".

Dated: November 1, 2019

Respectfully submitted,

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EXHIBIT "1"

IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

CARA O'CALLAGHAN and JENEE MISRAJE, Plaintiffs, **v.** **JANET NAPOLITANO, in her official capacity as President of the University of California; TEAMSTERS LOCAL 2010; and XAVIER BECERRA, in his official capacity as Attorney General of California,** Defendants.	Case No. 2:19-cv-02289-JVS-DFM JUDGMENT

On September 30, 2019, having read and considered Defendants Janet Napolitano, in her official capacity as President of the University of California; Teamsters Local 2010; and Xavier Becerra, in his official capacity as Attorney General of California's motions to dismiss the First Amended Complaint Seeking Declaratory Relief, Injunctive Relief, and Damages by Plaintiffs Cara O'Callaghan and Jenee Misraje, and the papers and arguments submitted by the parties, this Court issued an order granting Defendants' motions to dismiss. The parties agree

that the order granting the motions to dismiss disposes of the case in its entirety in favor of Defendants and against Plaintiffs.

IT IS ADJUDGED that this entire action is dismissed.

Dated: October 04, 2019

The Honorable James V. Selna
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

CARA O'CALLAGHAN and JENEE MISRAJE, Plaintiffs, **v.** **JANET NAPOLITANO, in her official capacity as President of the University of California; TEAMSTERS LOCAL 2010; and XAVIER BECERRA, in his official capacity as Attorney General of California,** Defendants.	Case No. 2:19-cv-02289-JVS-DFM JUDGMENT

On September 30, 2019, having read and considered Defendants Janet Napolitano, in her official capacity as President of the University of California; Teamsters Local 2010; and Xavier Becerra, in his official capacity as Attorney General of California's motions to dismiss the First Amended Complaint Seeking Declaratory Relief, Injunctive Relief, and Damages by Plaintiffs Cara O'Callaghan and Jenee Misraje, and the papers and arguments submitted by the parties, this Court issued an order granting Defendants' motions to dismiss. The parties agree

that the order granting the motions to dismiss disposes of the case in its entirety in favor of Defendants and against Plaintiffs.

IT IS ADJUDGED that this entire action is dismissed.

Dated: October 04, 2019

The Honorable James V. Selna
United States District Judge

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 19-2289 JVS (DFMx)	Date	September 30, 2019
Title	Cara O'Callaghan, et al. v. Regents of the University of California, et al.		

Present: The Honorable	**James V. Selna, U.S. District Court Judge**	
Lisa Bredahl		Not Present
Deputy Clerk		Court Reporter
Attorneys Present for Plaintiffs:		Attorneys Present for Defendants:
Not Present		Not Present

Proceedings: **[IN CHAMBERS] Order Regarding Motions to Dismiss**

The Court, having been informed by the parties in this action that they submit on the Court's tentative ruling previously issued, hereby rules in accordance with the tentative ruling as follows:

Defendants Janet Napolitano, in her official capacity as President of the University of California ("Napolitano"), Teamsters Local 2010 (the "Union") and Xavier Becerra, in his official capacity as Attorney General of California (the "Attorney General") (together—"Defendants") moved to dismiss Plaintiffs Cara O'Callaghan's ("O'Callaghan") and Jenée Misraje's ("Misraje") (together—"Plaintiffs") First Amended Complaint (FAC). Mots., Dkt. Nos. 53-55.[1] Plaintiffs opposed. Opp'n, Dkt. Nos. 57-59. Defendants replied. Dkt. Nos. 60-62.

For the following reasons the Court **GRANTS** Defendants' motions.

I. BACKGROUND

O'Callaghan is the finance manager of the Sport Club program, employed by the University of California, Santa Barbara ("UCSB"). (FAC, Dkt. No. 52 ¶ 7.)

[1] Following motions to dismiss by Becerra, the Union, and the Regents of the University of California, Plaintiffs filed the FAC in lieu of an opposition to the motions. The FAC substituted Janet Napolitano, in her official capacity as President of the University of California system, in place of the Regents. (FAC ¶¶ 9, 44.) Defendants' earlier motions to dismiss Plaintiffs' Complaint are moot in light of the FAC. See Dkt. Nos. 43-45.

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O'Callaghan was employed by UCSB from 2000 to 2004 and has been continuously employed by UCSB since August 2009. (Id. ¶ 14.) When O'Callaghan began her employment again with UCSB in 2009, she did not join the Union, but did pay agency fees to the Union. (Id. ¶ 15.)

On May 31, 2018, O'Callaghan signed an application joining the Union and authorizing it to deduct union dues from her paycheck after a Union representative came to her workplace. (Id. ¶ 16.) The Union representative did not inform her that a decision was pending in the Supreme Court in Janus v. American Federation of State, County, & Municipal Employees, Council 31, 138 S. Ct. 2448 (2018). (Id.)

On June 27, 2018, the Supreme Court held that agency fees violated "the free speech rights of [non-union] members by compelling them to subsidize private speech on matters of substantial public concern." Id. at 2460.

On July 25, 2018, after learning of the Janus decision, O'Callaghan sent a resignation letter to the Union. (FAC, Dkt. No. 1 ¶ 17.) The same day, she also sent a letter to UCSB requesting that it stop deducting union dues from her paycheck. (Id.) The Union responded that she was free to resign her membership, but that the payroll deductions would continue until she gave notice pursuant to the terms of the Union's collective bargaining agreement with UCSB. (Id. ¶ 18.) The terms provide that she could not provide such notice until March 31, 2022. (Id. ¶ 19.)

On October 16, 2018, Liberty Justice Center sent a letter to UCSB demanding that it immediately stop deducting union dues from O'Callaghan's paycheck. (Id. ¶ 20.) On October 24, 2018, UCSB referred the Liberty Justice Center letter to the Union via e-mail. (Id. ¶ 21.) On November 9, 2018, the Union confirmed to UCSB via e-mail that it should continue to deduct union dues from O'Callaghan's paycheck. (Id. ¶ 22.) On November 29, 2018, UCSB sent a letter to Liberty Justice Center stating that it would continue to deduct union dues from O'Callaghan's paycheck. (Id. ¶ 23.) Defendants continue to deduct the dues of approximately $41.00 per month. (Id. ¶ 24.)

Misraje is an administrative assistant in the Geography Department at the University of California, Los Angeles ("UCLA"), where she has been employed since May 2015. (Id. ¶¶ 8, 25.) On July 27, 2015, Misraje signed an application joining the

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Union and authorizing it to deduct dues from her paycheck. (Id. ¶ 26.)

On August 8, 2018, Misraje sent a letter to the Union requesting to withdraw her union membership. (Id. ¶ 27.) On August 9, 2018, the Union responded to Misraje via e-mail that she would be dropped as a full member of the Union, but that she could only end the deduction of union dues from her paycheck during a particular time window. (Id. ¶ 28.)

On August 27, 2018, Misraje sent an e-mail to the Union, requesting that it immediately terminate her union membership and stop deducting union dues from her paycheck. (Id. ¶ 29.) She likewise sent an email to UCLA requesting that it stop deducting union dues from her paycheck. (Id.) UCLA responded the same day saying that it could not grant her request because all such requests must come through the Union under California law. (Id. ¶ 30.) The Union repeated its response that Misraje was no longer a Union member but could not end deduction of her union dues at that time. (Id. ¶ 31.) Misraje again made similar requests to both the Union and UCLA and received similar responses between October 11, 2018 and December 7, 2018. (Id. ¶¶ 32-3.) According to the terms of the union application that Misraje signed, notice must be sent to both the Union and UCLA at least sixty days but not more than seventy-five days before the anniversary date of the signed agreement. (Id. ¶ 40.) Napolitano continues to deduct approximately $53.00 per month of Misraje's paychecks for union dues. (Id. ¶ 41.)

Plaintiffs brought suit against Defendants under 42 U.S.C. § 1983 and 28 U.S.C. § 2201(a) seeking declaratory relief, injunctive relief, and damages for dues previously deducted from their paychecks. (Id. ¶ 6.)

The Court denied Plaintiffs' motion for a preliminary injunction (Dkt. No. 26) on June 10, 2019. Order, Dkt. No. 51.

II. LEGAL STANDARD

Under Rule 12(b)(6), a defendant may move to dismiss for failure to state a claim upon which relief can be granted. A plaintiff must state "enough facts to state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570

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(2007). A claim has "facial plausibility" if the plaintiff pleads facts that "allow[] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

In resolving a 12(b)(6) motion under Twombly, the Court must follow a two-pronged approach. First, the Court must accept all well-pleaded factual allegations as true, but "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Iqbal, 556 U.S. at 678. Nor must the Court "'accept as true a legal conclusion couched as a factual allegation.'" Id. at 678-80 (quoting Twombly, 550 U.S. at 555). Second, assuming the veracity of well-pleaded factual allegations, the Court must "determine whether they plausibly give rise to an entitlement to relief." Id. at 679. This determination is context-specific, requiring the Court to draw on its experience and common sense, but there is no plausibility "where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct." Id.

III. DISCUSSION

A. Napolitano's Motion to Dismiss

1. FRCP 12(b)(1) Subject Matter Jurisdiction

Napolitano first argues that Plaintiffs' suit arises out of a dispute with their union over issues within the exclusive jurisdiction of the California Public Employment Relations Board ("PERB") and thus must be dismissed as against her under FRCP 12(b)(1). Dkt. No. 55-1, Mot. at 2-5.

Dismissal is proper when a plaintiff fails to properly plead subject matter jurisdiction in the complaint. Fed. R. Civ. P. 12(b)(1). A "jurisdictional attack may be facial or factual." Safe Air for Everyone v. Meyer, 373 F.3d 1035, 1039 (9th Cir. 2004). If the challenge is based solely upon the allegations in the complaint (a "facial attack"), the court generally presumes the allegations in the complaint are true. Id.; Warren v. Fox Family Worldwide, Inc., 328 F.3d 1136, 1139 (9th Cir. 2003). If instead the challenge disputes the truth of the allegations that would otherwise invoke federal jurisdiction, the challenger has raised a "factual attack," and the court may review evidence beyond the

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confines of the complaint without assuming the truth of the plaintiff's allegations. Safe Air, 373 F.3d at 1039. The plaintiff bears the burden of establishing subject matter jurisdiction. Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377 (1994).

California's Higher Education Employment Relations Act ("HEERA") provides for a system of exclusive representative collective bargaining in which the majority of employees in a bargaining unit may select a union representative to negotiate and administer a single collective bargaining agreement to cover the entire unit. See Cal. Gov. Code §§ 3560 et seq. Napolitano argues that because Plaintiffs' allegations of improper dues and the scope of the Union's representation arise out of unfair practice allegations against the Union under HEERA, this Court does not have jurisdiction over the claims asserted against her. Mot. at 2. PERB is the administrative agency charged with administering the provisions of HEERA. Cal. Gov. Code § 3563. As Napolitano points out, PERB has the power to implement HEERA, and so PERB "has jurisdiction over allegations about improper or excessive fees charged by unions relating to union membership, as well as allegations regarding the scope of union representation." Id. at 4; see Cal. Gov. Code §§ 3560, 3563, 3578.

Napolitano further asserts that the fact that Plaintiffs' case asserts constitutional rights "does not divest [PERB] of its jurisdiction" and that PERB's jurisdiction "may be at issue even if the claims are not alleged as unfair practice charges." Mot. at 4. Napolitano suggests that, "[a]t its essence," Plaintiffs' suit sounds in alleged unfair practice charges against the Union under HEERA. Mot. at 5.

The Court agrees with Plaintiffs that PERB's jurisdiction is not implicated here because their claim is not that the Union or Napolitano are committing an unfair labor practice, but that in following California labor law, Defendants violated their First Amendment rights. Opp'n, Dkt. No. 58 at 2-3. As Plaintiffs put it, their "claim is not that the union has charged dues that would be excessive or unfair under HEERA; Plaintiffs' claim is that being charged dues at all violates the First Amendment." Id. at 3.

Accordingly, the Court declines to dismiss Plaintiffs' suit against Napolitano on the basis that it lacks subject matter jurisdiction.

2. Janus' Application to Plaintiffs

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Napolitano argues that Plaintiffs' FAC should be dismissed under FRCP 12(b)(6) because Janus does not apply to union members who authorized payroll deductions. Id. at 5.

Plaintiffs argue that the continued deduction of union dues violates their First Amendment rights in light of Janus, which held that States and public-sector unions may no longer extract agency fees from nonconsenting employees. Janus, 138 S. Ct. at 2486. Plaintiffs assert that Janus "establishes a duty not to take money without affirmative consent." Opp'n at 4. But, they argue, they did not waive their First Amendment right not to join or pay a union because Defendants did not inform them they had a right not to join. Id. Further, they argue, "at the time [they] signed their union membership applications, they did not know about their rights not to pay a union" because the Janus decision had not yet come down. Id.

The Court agrees with Napolitano that Janus "does not require state employers to cease deductions for employees who had voluntarily entered into contracts to become dues-paying union members." Mot. at 6. Janus limits its holding to situations in which employees have *not* consented to deductions:

> Neither an agency fee nor any other payment to the union may be deducted from a nonmember's wages, nor may any other attempt be made to collect such a payment, unless the employee affirmatively consents to pay. By agreeing to pay, nonmembers are waiving their First Amendment rights, and such a waiver cannot be presumed. Rather, to be effective, the waiver must be freely given and shown by "clear and compelling" evidence. Unless employees clearly and affirmatively consent before any money is taken from them, this standard cannot be met.

Id. (citations omitted) (emphasis added).

Here, Plaintiffs affirmatively agreed to the terms of union membership, including the terms regarding dues deductions. Thus, they cannot state a claim that continued deductions violate their First Amendment rights. Plaintiffs argue that their consent to dues deductions was not "voluntarily, knowingly, and intelligently" given because neither

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the Union nor Napolitano "informed them they had a right not to join the union." Opp'n at 4. But, as Napolitano points out, nothing in Janus's holding requires unions to cease deductions for individuals who have affirmatively chosen to become union members and accept the terms of a contract that may limit their ability to revoke authorized dues-deductions in exchange for union membership rights, such as voting, merely because they later decide to resign membership. Mot. at 6. See Belgau v. Inslee, No. 18-5620 RJB, 2018 WL 4931602, at *5 (W.D. Wash. Oct. 11, 2018) ("Plaintiffs' assertions that they didn't knowingly give up their First Amendment rights before Janus rings hollow. Janus says nothing about people [who] join a Union, agree to pay dues, and then later change their mind about paying union dues.")

Courts have rejected Plaintiffs' reasoning, explaining that union members voluntarily chose to pay dues in exchange for certain benefits, and "the fact that plaintiffs would not have opted to pay union membership fees if Janus had been the law at the time of their decision does not mean their decision was therefore coerced." See, e.g., Seager v. United Teachers Los Angeles, 2019 WL 3822001, at *2 (C.D. Cal. Aug. 14, 2019) (internal quotations and citations omitted).

Accordingly, the Court GRANTS Napolitano's motion to dismiss Plaintiffs' FAC as against her, with prejudice.

B. Becerra's Motion to Dismiss

1. State Action

Plaintiffs request an order enjoining Becerra from defending state laws requiring Plaintiffs to wait until a specified window of time to stop the payroll deductions (the "dues maintenance statutes"). See FAC, Prayer for Relief. In response, Becerra argues that "Plaintiffs' constitutional challenges to the dues-maintenance statutes fail as a matter of law because their claimed injuries arise not from the statues, but from their voluntary decisions to join the union and the terms of their union membership agreements." Dkt. No. 54, Mot. at 7.

The state action requirement serves to "avoid[ ] imposing on the State, its agencies or officials, responsibility for conduct for which they cannot fairly be blamed." Lugar v.

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Edmonson Oil Co., Inc., 457 U.S. 922, 936 (1982). Consistent with this approach, "constitutional standards are invoked only when it can be said that the State is responsible for the specific conduct of which the plaintiff complains." Blum v. Yaretsky, 457 U.S. 991, 1004 (1982).

Courts apply a two-part test to determine whether governmental involvement in private action had sufficient impact to make the government responsible for the alleged harm. "[T]he first question is whether the claimed deprivation has resulted from the exercise of a right or privilege having its source in state authority," and "[t]he second question is whether, under the facts of this case, respondents, who are private parties, may be appropriately characterized as 'state actors.'" Lugar, 457 U.S. at 937.

The Supreme Court has laid out four tests for determining whether a non-governmental 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." Naoko Ohno v. Yuko Yasuma, 723 F.3d 984, 995 (9th Cir. 2013) (internal quotation marks and citations omitted).

The "joint action" test, which is the one Plaintiffs argue applies here, (Dkt. No. 59, Mot. at 6) "focuses on whether state officials and private parties have acted in concert in effecting a particular deprivation of constitutional rights." Id. at 996. "Joint action exists where the government affirms, authorizes, encourages, or facilitates unconstitutional conduct through its involvement with a private party." Id.

Becerra argues that the injuries Plaintiffs allege "arise exclusively from the union's decision to continue to deduct dues from their paychecks," but that this injury "is not fairly attributable to the dues-maintenance statutes, which merely require that public employers direct requests to change payroll deductions to the union, and to rely on information provided by the union regarding whether deductions were properly canceled or changed." Mot. at 8-9. Becerra argues that Plaintiffs "voluntarily authorized the deduction of union dues from their paychecks," and that the state's "role in facilitating the deductions" does not meet the joint action test. Mot. at 11-12.

The Court disagrees. As Plaintiffs argue, "the time window limitations that the Teamsters are enforcing are asserted pursuant to state statutes that expressly grant the

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Teamsters this special privilege." Dkt. No. 59, Opp'n at 5. Here, the Union has "invoked the aid of state officials to take advantage of a state labor statutory scheme to withdraw these dues." Id. at 6. The state enforces California Government Code §§ 3513(i) and 3583, which permit the Union to set a time limitation for when notice must be given pursuant to the terms of the Union's collective bargaining agreement. The Court finds that this qualifies as "joint action," because the state is facilitating the allegedly unconstitutional conduct Plaintiffs complain of "through [the state's] involvement with a private party." Ohno, 723 F.3d at 996.

Accordingly, the Court denies Becerra's motion to dismiss based on its state action argument.

2. Exclusive Representation

Becerra argues that Plaintiffs' free association challenge is foreclosed by Minnesota State Bd. for Cmty. Colleges v. Knight, 465 U.S. 271 (1984) ("Knight") and Mentele v. Inslee, 916 F.3d 783 (9th Cir. 2019) ("Mentele"). Mot. at 14-16. Becerra also argues that Plaintiffs misapply Janus. Id. at 16.

Plaintiffs contend that Becerra's reliance on Knight and Mentele is misplaced, and that the logic of Janus supports their argument that California's statutory scheme compels them to petition the government with a viewpoint that is inconsistent with their view. Opp'n at 9-13.

The Supreme Court in Janus stated:

> We readily acknowledge, as Pickering did, that "the State has interests as an employer in regulating the speech of its employees that differ significantly from those it possesses in connection with regulation of the speech of the citizenry in general." . . . It is also not disputed that the State may require that a union serve as exclusive bargaining agent for its employees—itself a significant impingement on associational freedoms that would not be tolerated in other contexts. We simply draw the line at allowing the government to go further still and require all employees to support the union irrespective of whether they share its views.

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UNITED STATES DISTRICT COURT
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138 S. Ct. at 2477–78 (citations omitted). Janus explains that a state interest in "labor peace" does not require *both* that a union be an exclusive representative of all employees *and* the payment of agency fees by nonmembers. Id. at 2480. Rather, Janus's statement that "designation of a union as exclusive representative and the imposition of agency fees are not inextricably linked" suggests that a state interest can still justify a union acting as an exclusive representative for members and nonmembers alike. Id. See Knight, 465 U.S. at 28 ("Appellees' speech and associational rights, however, have not been infringed by Minnesota's restriction of participation in 'meet and confer' sessions to the faculty's exclusive representative. The state has in no way restrained appellees' freedom to speak on any education-related issue or their freedom to associate or not to associate with whom they please, including the exclusive representative."); Mentele, 916 F.3d at 789 ("Janus's reference to infringement caused by exclusive union representation, even in the context of its broader discussion of Abood and the Court's long history of relying on labor peace to justify certain provisions in collective bargaining agreements, is not an indication that the Court intended to revise the analytical underpinnings of Knight or otherwise reset the longstanding rules governing the permissibility of mandatory exclusive representation.").

Plaintiffs argue Mentele can be distinguished because it considered the rights of only "partial" state employees with limited representation by the union, whereas Plaintiffs are full public employees. Opp'n at 12-13. This distinction does not help their claim survive. Mentele's primary reasoning is based on Knight's analysis of full public employees; its application of Knight is not limited to "partial" state employees.

Because Supreme Court and Ninth Circuit precedent have "specifically acknowledged that exclusive representation is constitutionally permissible," the Court finds that Plaintiffs cannot state a claim that exclusive representation by the Union violates their First Amendment rights. Mentele, 916 F.3d at 791.

Accordingly, the Court grants Becerra's motion to dismiss.

C. The Union's Motion to Dismiss

1. Good Faith

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UNITED STATES DISTRICT COURT
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CIVIL MINUTES - GENERAL

Case No. CV 19-2289 JVS (DFMx) Date September 30, 2019

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The Union argues that Plaintiffs' claim for retrospective relief for fair share feels collected from O'Callaghan is barred because the Union acted in good faith reliance on state and federal precedent.

Plaintiffs argue that the Union is not entitled to a "good faith" defense to § 1983 liability. Dkt. No. 57, Opp'n at 7-17. Plaintiffs argue that the defense conflicts with the text of the statute, is incompatible with the statutory basis for qualified immunity, and is inconsistent with equitable principles that injured parties should be compensated for their losses. See id.

The Court agrees with the Union. The analysis in Hernandez v. AFSCME California, 386 F. Supp. 3d 1300, 1304 (E.D. Cal. 2019) is directly on point:

> The Ninth Circuit has held that private parties may be entitled to a good-faith defense to a claim under Section 1983 where they "did [their] best follow the law and had no reason to suspect that there would be a constitutional challenge to [their] actions." See Clement v. City of Glendale, 518 F.3d 1090, 1097 (9th Cir. 2008). In the agency fees context, not only did unions have authorization under state statute, but the practice of collecting agency fees in this manner had been upheld for decades as constitutional by the United States Supreme Court. See Abood [v. Detroit Bd. of Educ.], 431 U.S. [209,] 222-23, 97 S.Ct. 1782, 52 L.Ed.2d 261 [(1977)]; see also Locke v. Karass, 555 U.S. 207, 213, 129 S.Ct. 798, 172 L.Ed.2d 552 (2009) (describing Abood's rule, as reaffirmed in subsequent cases, as "a general First Amendment principle"). Thus, the union is entitled to the good-faith defense as a matter of law. See Lusnak v. Bank of Am., N.A., 883 F.3d 1185, 1194 n.6 (9th Cir. 2018) (observing that affirmative defenses may be raised on a motion to dismiss where they do not implicate disputed issues of fact).
>
> Faced with this good-faith defense, plaintiffs seek to avoid it by characterizing their demand for a refund as an equitable claim for restitution rather than a legal claim for damages. (See SAC ¶ 141.) They argue that defenses like qualified immunity and good faith are categorically inapplicable to claims for equitable relief. See Wood v. Strickland, 420 U.S. 308, 314 n.6, 95 S.Ct. 992, 43 L.Ed.2d 214 (1975), overruled on other grounds, Harlow v. Fitzgerald, 457 U.S. 800, 102 S. Ct. 2727, 73 L. Ed. 2d 396 (1982) ("[I]mmunity from damages does not ordinarily

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UNITED STATES DISTRICT COURT
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bar equitable relief."). Even if this distinction is well taken, plaintiffs' refund claim fails for two independent reasons.

First, plaintiffs cannot simply plead around defenses by labeling the proposed remedy as equitable rather than legal. Instead, this court must look to "the substance of the remedy sought rather than the label placed on that remedy." Depot, Inc. v. Caring for Montanans, Inc., 915 F.3d 643, 661 (9th Cir. 2019) (citations and quotations omitted). It is uncontroverted that plaintiffs' claim seeks payment out of the general assets of the union defendants. And the Supreme Court has stressed that recovering money out of a defendant's general assets, as opposed to a segregated fund, "is a legal remedy, not an equitable one." Montanile v. Bd. of Tr. of Nat. Elevator Indus. Health Benefit Plan, —— U.S. ——, 136 S. Ct. 651, 658, 193 L. Ed. 2d 556 (2016) (emphasis in original); see also Great-W. Life & Annuity Ins. Co. v. Knudson, 534 U.S. 204, 212-14, 122 S. Ct. 708, 151 L. Ed. 2d 635 (2002) (same).

Plaintiffs do not allege that the union defendants intentionally comingled agency fees with general funds to avoid claims for restitution. Further, unions dissipated any agency fees on nontraceable items. See Montanile, 136 S. Ct. at 658 (stating that expenditure on nontraceable items "destroys an equitable lien"). Plaintiffs' theory under Janus depends on the fact that the fees and dues collected were expended for expressive activities with which they disagreed. See Babb v. Cal.Teachers Ass'n, No. 2:18-cv-06793 JLS DFM, 378 F. Supp. 3d 857, 876, 2019 WL 2022222, at *8 (C.D. Cal. May 8, 2019) ("[I]t is not the case that the agency fees remain in a vault, to be returned like a seized automobile."). Accordingly, because plaintiffs' proposed remedy is legal in nature, the union defendants' good faith bars relief.

Second, the court would reach the same conclusion in a suit in equity. "The essence of equity jurisdiction" is that federal courts have the flexibility "to mould each decree to the necessities of the particular case." Hecht Co. v. Bowles, 321 U.S. 321, 329, 64 S.Ct. 587, 88 L.Ed. 754 (1944). Even in constitutional adjudication, "equitable remedies are a special blend of what is necessary, what is fair, and what is workable." Lemon v. Kurtzman, 411 U.S. 192, 200, 93 S.Ct. 1463, 36 L.Ed.2d 151 (1973) (plurality). Given these considerations, "[i]t is well

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established that reliance interests weigh heavily in the shaping of an appropriate equitable remedy." Id. at 203, 93 S.Ct. 1463.

The reliance interests here are quite compelling. The union defendants relied on Supreme Court precedent and a state statute that explicitly authorized the challenged practice. See id. at 209, 93 S. Ct. 1463 ("[S]tate officials and those with whom they deal are entitled to rely on a presumptively valid state statute, enacted in good faith and by no means plainly unlawful."). Unions throughout the country collected billions of dollars under Abood's rule. See Janus, 138 S. Ct. at 2486. Allowing the recoupment of such a large sum of money would have potentially disruptive consequences that could threaten the operations of unions and significantly deplete their treasuries. See Am. Trucking Ass'ns, Inc. v. Smith, 496 U.S. 167, 182-83, 110 S. Ct. 2323, 110 L. Ed. 2d 148 (1990) (plurality) (recognizing these as cognizable equitable interests).

Moreover, these plaintiffs presumably received some benefits from the fees they paid, through the representation provided by the unions. While the Supreme Court held in Janus that those benefits could not withstand First Amendment scrutiny, the majority did not deny the fact that nonunion members received such benefits. See 138 S. Ct. at 2466-69. It must also be observed here that "plaintiffs do not propose to give back the benefits that the union's efforts bestowed on them." Gilpin v. AFSCME, 875 F.2d 1310, 1316 (7th Cir. 1989). Consequently, granting plaintiffs a full refund would stand the equitable remedy on its head. See id. Based on these observations, it would be neither fair nor workable to entertain plaintiff' claim.

Nevertheless, plaintiffs argue that a defendant is never allowed to enrich itself by keeping property it took in violation of another's constitutional rights. See, e.g., United States v. Windsor, 570 U.S. 744, 775, 133 S. Ct. 2675, 186 L. Ed. 2d 808 (2013) (ordering the United States to refund taxes it collected in reliance on the Defense of Marriage Act); United States v. Lewis, 478 F.2d 835, 836 (5th Cir. 1973) (stating that fines collected under a statute that is subsequently determined to be unconstitutional must be repaid when suit is brought to recover them). Those cases, however, do not stand for such a sweeping proposition. Unlike in Windsor and Lewis, the union defendants are private parties who were not responsible for passing the legislation that is now unconstitutional. Instead, they relied on the type

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of statute the Supreme Court explicitly approved of in Abood.

Id. at 1304-06. This foregoing analysis applies just as forcefully to Plaintiffs' claims for refunds here, which are, in essence, identical.

Accordingly, the Court finds that the Union is entitled to the "good faith" defense, and Plaintiffs' claims against the Union are dismissed.

2. Exclusive Representation

The Court's reasoning regarding Knight and Mentele as they relate to Becerra's motion to dismiss is also applicable to the Union's motion.

IV. CONCLUSION

For the foregoing reasons, the Court **GRANTS** Defendants' motions to dismiss.

IT IS SO ORDERED.

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Initials of Preparer lmb

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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

CARA O'CALLAGHAN and JENEE MISRAJE,

Plaintiffs,

v.

REGENTS OF THE UNIVERSITY OF CALIFORNIA; TEAMSTERS LOCAL 2010; and XAVIER BECERRA, in his official capacity as Attorney General of California,

Defendants.

Case No. 2-19-CV-02289 JVS (DFM)

TEAMSTERS LOCAL 2010'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ITS MOTION FOR PARTIAL DISMISSAL OF FIRST AMENDED COMPLAINT

Hearing Date:	September 9, 2019
Hearing Time:	1:30 p.m.
Courtroom:	10A
Judge:	Hon. James V. Selna
Complaint Filed:	March 27, 2019
Trial Date:	None set

private parties would no longer be able to rely upon the Court's decisions, and would instead be required to predict the way that the Justices (including sometimes, as in *Janus,* a new Justice who has never before opined on the issue) might vote in a future case, thereby undermining the entire system of precedent that forms the basis of our legal system. *See, e.g., Payne v. Tennessee,* 501 U.S. 808, 827 (1991) (explaining that this system "promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process").

II. Controlling Court Precedent Precludes Plaintiffs' Attack on Exclusive Representation.

Counts V, VI and VII of Plaintiffs' Complaint constitute an attack on the University's recognition of Local 2010 as the exclusive collective bargaining representative, per state law, of the bargaining unit in which Plaintiffs are employed. Plaintiffs currently have pending before this Court a motion seeking, *inter alia*, preliminary relief enjoining the Union from continuing to act as Plaintiffs' exclusive bargaining representative, and the Union's opposition to that motion, already on file with this Court, largely repeated below, already explains why Plaintiffs cannot succeed on this claim.

California's Higher Education Employment Relations Act ("HEERA") provides for a democratic system of exclusive representative collective bargaining in which the majority of employees in a bargaining unit may, if they choose, select a union representative to negotiate and administer a single collective bargaining agreement to cover the entire unit. *See* Cal. Gov. Code §3560 *et seq.* In such systems, the exclusive representative, when acting in that capacity, owes a duty of fair representation to the entire bargaining unit, including to employees who have chosen not to join the union. *See, e.g.,* Cal. Gov. Code §3578 (recognized employee organization has obligation to represent all employees in bargaining unit). The same democratic system of collective bargaining has been used in the United States for decades for public and private sector

employees, including federal employees. *See Janus v. AFSCME Council* 31, 138 S.Ct. 2448, 2466 (2018).

Plaintiffs allege that the University's recognition of Local 2010 as their bargaining unit's HEERA exclusive representative violates their First Amendment rights, and here seek an injunction enjoining the Union's continued representation of that unit. That legal claim is foreclosed by *Minnesota State Board for Community Colleges v. Knight,* 465 U.S. 271 (1984). The Supreme Court held in *Knight* that an indistinguishable system of exclusive representation "in no way restrained [non-union members'] freedom to speak ... or their freedom to associate or not to associate with whom they please, including the exclusive representative." *Id.* at 288; *see also id.* at 291 (plaintiffs in *Knight* were "[u]nable to demonstrate an infringement of any First Amendment right"). Accordingly, Plaintiffs' motion for injunctive relief on this claim should be denied.

A. California's Higher Education Employment Relations Act

HEERA permits University of California and California State University employees, if they so choose, to designate an "exclusive representative" by submitting proof of majority support or by voting in a secret ballot election, and HEERA also provides a process for employees to decertify a representative that no longer enjoys majority support. Cal. Gov. Code §§3573, 3576. If the employees choose a representative, the public employer must "engage in meeting and conferring with the employee organization selected as exclusive representative … on all matters within the scope of representation." *Id.* §§3570, 3571(c).

HEERA does not require, and has never required, unit employees to become members of the organization that serves as the unit's exclusive representative, or prohibit them from joining other labor organizations. To the contrary, HEERA makes it unlawful for employers or exclusive representatives to interfere with the rights of employees to form, join, and participate in the activities of employee organizations of their own choosing. *Id.* §§3571(a), 3571.1(a). The designation of an HEERA

exclusive representative also does not preclude unit employees from speaking and petitioning about issues regarding the public universities and colleges, just like all other citizens, whether individually or through organizations of their own choosing.[3]

HEERA prohibits the exclusive representative, when acting in that capacity, from discriminating against employees who choose not to become union members by requiring such representatives to "represent all employees in the unit, fairly and impartially." *Id.* §3578. HEERA further provides that individual public employees may at any time "present grievances to [their] employer, and have those grievances adjusted, without the intervention of the exclusive representative[.]" *Id.* §3567. After the Supreme Court's decision in *Janus,* public employees represented by labor unions who choose not to be members of those unions are no longer required to provide any financial support to cover the costs of union representation. 138 S.Ct. at 2486.[4] Although non-members no longer can be required to pay "fair share fees" to the exclusive representative, the exclusive representative still represents the non-member minority and must represent non-members fairly.

The democratic, exclusive representation model of collective bargaining established by HEERA is the same model used for collective bargaining for public employees of the federal government and about 40 other States, the District of Columbia, and Puerto Rico, *see, e.g., Janus,* 138 S.Ct. at 2466; and for private-sector employees covered by the federal National Labor Relations Act and the Railway Labor

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[3] *See City of Madison, Joint Sch. Dist. No. 8 v. Wisc. Emp't Relations Comm'n,* 429 U.S. 167, 173-76 & n.10 (1976) (bargaining unit members have the same First Amendment rights as other citizens to speak in opposition to union); *Abood v. Detroit Bd. Of Educ.,* 431 U.S. 209, 230 (1977) ("The principle of exclusivity cannot constitutionally be used to muzzle a public employee who, like any other citizen, might wish to express [her] view about governmental decisions concerning labor relations."); *Lehnert v. Ferris Faculty Ass'n,* 500 U.S. 507, 521 (1991).

[4] S*ee* "California Attorney General Xavier Becerra Advisory: Affirming Labor Rights and Obligations in Public Workplaces," https://oag.ca.gov/system/files/attachments/press_releases/AG%20Becerra%20Labor%20Rights%20Advisory%20FINAL.pdf (California Attorney General's advisory that "a California public-sector employer may no longer automatically deduct a mandatory agency fee from the salary or wages of a non-member public employee who does not affirmatively choose to financially support the union").

Act, *see, e.g.,* 29 U.S.C. §159(a). Exclusive representation is the very essence of labor relations and the collective bargaining framework in this country, and it has been so since passage of the Wagner Act in 1935.

B. *Knight* Establishes the Constitutionality of Exclusive Representation-Based Collective Bargaining in Public Employment

Plaintiffs allege in Count V of their Complaint that Local 2010's designation as the exclusive representative of their bargaining unit "compels Plaintiffs to associate with the Union and, through its representation of them, it compels them to petition the government with a certain viewpoint, despite that viewpoint being in opposition to Plaintiffs' own goals and priorities for the State of California." (FAC¶ 77.)

But HEERA does not impose any personal obligation on Plaintiffs. They need not join Local 2010 or endorse its positions and, after *Janus,* they need not even provide any financial support to Local 2010. Nor are they precluded from speaking and petitioning about any issues, whether individually or through organizations of their own choosing. Plaintiffs' theory that exclusive representation collective bargaining, by itself, violates the First Amendment rights of bargaining unit workers is foreclosed by the Supreme Court's decision in *Minnesota State Bd. for Cmty. Colleges v. Knight,* 465 U.S. 27 (1984) ("*Knight*"), as every court to consider the issue has recognized.

In *Knight,* a group of Minnesota college instructors argued – like Plaintiffs here – that the exclusive representation provisions of that state's public employee labor relations act violated the First Amendment speech and associational rights of employees who did not wish to associate with the union that a majority had chosen as their bargaining unit's exclusive representative. 465 U.S. at 273, 278-79. The state law granted their bargaining unit's elected representative the exclusive right to "meet and negotiate" over employment terms. *Id.* at 274. The state law also granted the unit's representative the exclusive right to "meet and confer" with campus administrators about employment-related policy matters outside the scope of mandatory negotiations. *Id.* at 274-75. Only the designated representative had the

right to participate in the "meet and negotiate" and "meet and confer" processes, and the designated representative's views were treated as the faculty's "official collective position." *Id.* at 273, 276.

The district court rejected the *Knight* plaintiffs' constitutional challenge with respect to the meet-and-negotiate process. *See id.* at 278. On appeal, the Supreme Court summarily affirmed the lower court's rejection of the *Knight* plaintiffs' "attack on the constitutionality of exclusive representation in bargaining over terms and conditions of employment." *Id.* at 278-79; *Knight v. Minnesota Cmty. Coll. Faculty Ass'n,* 460 U.S. 1048 (1983).[5] The district court also concluded that the meet-and-confer process violated the rights of faculty members who had not joined the union that served as their exclusive representative. In a separate, full opinion, the Supreme Court reversed the district court's judgment with respect to the meet-and-confer process, holding that even with respect to matters not involving terms and conditions of employment subject to bargaining, exclusive representation does not infringe the First Amendment speech or associational rights of non-member employees. *Knight,* 465 U.S. at 278, 288.

The *Knight* Court began its analysis by recognizing that government officials have no obligation to negotiate or confer with faculty members, and that the meet-and-confer process (like the meet-and-negotiate process) was not a "forum" to which plaintiffs had any First Amendment right of access. *Id.* at 280-82. The Court explained that non-members also had no constitutional right "as members of the public, as government employees, or as instructors in an institution of higher education" to "force the government to listen to their views." *Id.* at 283. The government, therefore, was "free to consult or not to consult whomever it pleases." *Id.* at 285; *see also Smith v. Arkansas State Highway Employees,* 441 U.S. 463, 464-66 (1979) (government did not violate speech or associational rights of union supporters

[5] The *Knight* summary affirmance remains binding precedent. *Hicks v. Miranda,* 422 U.S. 332, 344-45 (1975).

by accepting grievances filed by individual employees while refusing to recognize union's grievances).

The *Knight* Court then went on to consider whether Minnesota's public employee labor relations act violated those First Amendment rights that non-members *could* properly assert – namely, the right to speak and the right to "associate or not to associate." 465 U.S. at 288. The Court concluded that Minnesota's law *"in no way* restrained appellees' freedom to speak on any education-related issue *or their freedom to associate or not to associate* with whom they please, including the exclusive representative." *Id.* (emphasis added).

Non-members' speech rights were not infringed by Minnesota's system of exclusive representation because, while the exclusive representative's status "amplifie[d] its voice in the policymaking process," that amplification did not "impact individual instructors' constitutional freedom to speak." As the Court explained, such amplification is "inherent in government's freedom to choose its advisers" and "[a] person's right to speak is not infringed when government simply ignores that person while listening to others." *Id.*

The Supreme Court found no infringement of non-members' associational rights because they were "free to form whatever advocacy groups they like" and were "not required to become members" of the organization acting as the exclusive representative. 465 U.S. at 289. The Court acknowledged that non-members may "feel some pressure to join the exclusive representative" to serve on its committees and influence its positions. *Id.* at 289-90. But the Court held that this "is no different from the pressure to join a majority party that persons in the minority always feel." *Id.* at 290. Such pressure "is inherent in our system of government; it does not create an unconstitutional inhibition on associational freedom." *Id.*

Knight thus squarely considered whether exclusive representation violates the speech or associational rights of individuals who are not members of the union that has been designated as their exclusive representative, and held that it does not do so –

thereby foreclosing the contrary claim Plaintiffs assert in Counts V, VI and VII of their Complaint. *See id.* at 288 ("[T]he First Amendment guarantees the right both to speak and to associate. *Appellees' speech and associational rights, however, have not been infringed ....")* (emphasis added); *id.* at 290 n.12 (non-members' "speech and associational freedom have been wholly unimpaired").

The Ninth Circuit recently agreed that *Knight* forecloses the claim that exclusive representative collective bargaining, by itself, violations the First Amendment. *See Mentele v. Inslee,* 916 F.3d 783, 2019 WL 924915, at *4-5 (9th Cir. 2019). Not only is *Mentele* binding precedent, but every court to consider the issue has concluded that *Knight* forecloses any claim that a democratic system of exclusive representative collective bargaining violates the First Amendment. *See Bierman v. Dayton,* 900 F.3d 570 (8th Cir. 2018) *cert. denied*, 2019 WL 2078110 (May 13, 2019); *Hill v. Serv. Employees Int'l Union,* 850 F.3d 861 (7th Cir. 2017), *cert. denied,* 138 S.Ct. 446 (2017); *Jarvis v. Cuomo,* 660 F. App'x 72 (2d Cir. 2016), *cert. denied,* 137 S.Ct. 1204 (2017); *D'Agostino v. Baker,* 812 F.3d 240 (1st Cir. 2016), *cert. denied,* 136 S.Ct. 2473 (2016); *Reisman v. Associated Faculties,* 2018 WL 6312996 (D. Me. Dec. 3, 2018) (appeal filed); *Uradnik v. Inter Faculty Organization,* 2018 WL 4654751 (D. Minn. Sept. 27, 2018), *aff'd,* No. 18-3086 (8th Cir. Dec. 3, 2018) *cert. denied* 2019 WL 1886119 (Apr. 29, 2019); *Thompson v. Marietta Educ. Ass'n*, 2019 WL 1650113 (S.D. Ohio Jan. 14, 2019); *Babb v. California Teachers Ass'n*, 2019 WL 2022222, at *18 (C.D. Cal. May 8, 2019); *Grossman v. Hawaii Government Employees*, 2019 WL 2195206, at *2-3 (D. Haw. May 21, 2019).

Because neither membership nor financial support were required, the Supreme Court held that the plaintiffs in *Knight* retained the "freedom ... not to associate with whom they please, *including the exclusive representative."* *Id.* at 288 (emphasis added). In *Mentele v. Inslee,* the Ninth Circuit adopted this interpretation of *Knight* as binding Circuit precedent. *Mentele* considered a claim that Washington's system of exclusive representation in collective bargaining for publicly subsidized child care

workers violated the associational rights of individuals who have not joined the union designated as exclusive representative. *Mentele,* 916 F.3d 783, 2019 WL 924815, at *1. Affirming the district court's holding that the system did not violate non-members' associational rights, *Mentele* explained that *Knight* "expressly concluded" that the exclusive representation system did not violate non-members' freedom to decline "'to associate with whom they please, including the exclusive representative,'" and "approved the requirement that bound non-union dissenters to exclusive union representation." *Id.* at *5 (quoting *Knight,* 465 U.S. at 288 (emphasis omitted)).

That the employees involved in *Mentele* were "partial state employees" rather than "full-fledged" public employees like Plaintiffs does not serve to remove the court's holding from application here. *Mentele's* analysis of the impact of exclusive representation on non-members' associational rights contains no such limitation. To the contrary, *Mentele* based its holding entirely on *Knight's* analysis of that question, and *Knight* involved exclusive representation for "full-fledged public employees" (specifically, community college faculty instructors), not "partial" public employees. 465 U.S. at 278. While *Mentele* went on to consider the "partial" state employment status of the plaintiffs therein in holding that Washington's system would satisfy heightened constitutional scrutiny if such scrutiny applied (which it did not), *see* 916 F.3d 783, 2019 WL 924815, at *6-7; the distinction between partial and full public employment was irrelevant to *Mentele's* holding that exclusive representation does not impinge upon non-members' associational rights. *See Babb v. California Teachers, supra* at *18.

Accordingly, under binding Supreme Court and Ninth Circuit precedent, Plaintiffs' compelled association claim fails as a matter of law.

C. *Janus* Did Not Disturb Settled Precedent that Public Employers May Use Exclusive Representative Collective Bargaining

Plaintiffs rely on the Supreme Court's recent decision in *Janus.* (FAC¶¶ 70, 73 & 74.) But *Janus* held only that public employees who are not union members cannot be required *to pay "fair share" or "agency" fees* to an exclusive representative for collective bargaining representation. *Janus* did not hold that exclusive representation itself violates the First Amendment. 138 S.Ct. at 2460.[6] As the Eighth Circuit recently explained, *Janus* "never mentioned *Knight,* and the constitutionality of exclusive representation standing alone was not at issue." *Bierman,* 900 F.3d at 574.

The majority opinion in *Janus* expressly distinguished between compelled financial support for an exclusive representative and the underlying system of exclusive representation. *Janus,* 138 S.Ct. at 2465, 2467. The majority opinion explained that while the States may no longer require public employees to pay fair-share fees to their exclusive representatives, the States can otherwise "keep their labor-relations systems exactly as they are," including by "requir[ing] that a union serve as exclusive bargaining agent for its employees." *Id.* at 2478, 2485 n.27; *see also id.* at 2466, 2485 n.27 (States may "follow[]the model of the federal government," in which "a union chosen by majority vote is designated as the exclusive representative of all the employees"); *id.* at 2471 n.7 ("[W]e are not in any way questioning the foundations of modern labor law."). *Janus* observed that exclusive representation might not be permissible in "other contexts," but recognized that in the collective bargaining context, the imposition of a duty of fair representation on the exclusive representative *avoids* any constitutional questions. *Id.* at 2469, 2478.

As such, both *Knight* and *Janus* require rejection of Plaintiffs' claim that the exclusive representation model of collective bargaining violates the First Amendment.

[6] *Knox v. SEIU Local 1000,* 567 U.S. 298 (2012) likewise involved only the collection of money from non-union members.

D. HEERA Does Not Compel Plaintiff To Speak or To Associate with Local 2010 Within the Meaning of the First Amendment

Even if Plaintiffs' First Amendment claim were not foreclosed by on-point and longstanding precedent, it still would be meritless. Plaintiffs do not allege that they are required to personally do or say anything to join or endorse Local 2010 or its speech.[7] And neither support for Local 2010 nor Local 2010's speech is attributed to Plaintiffs in the sense that matters for First Amendment purposes, because reasonable people would not believe that all bargaining unit workers necessarily *agree with* the exclusive representative or its positions.

In *Rumsfeld v. FAIR,* 547 U.S. 47 (2006), for example, law schools were required to "'associate' with military recruiters in the sense that they interact[ed] with them." *Id.* at 69. Nonetheless, there was no impingement of the law schools' First Amendment rights because the presence of military recruiters on campus would not lead reasonable people to believe the "law schools agree[d] with any speech by recruiters." *Id.* at 65; *see also Wash. State Grange v. Wash. State Republican Party,* 552 U.S. 442, 457-59 (2008) (Roberts, C.J., concurring) (explaining that certain cases involved "forced association" because outsiders would believe that parties "endorsed" or "agreed with" another party's message); *Jarvis v. Cuomo,* 2015 WL 1968224, at *6 (N.D.N.Y. Apr. 30, 2015) (explaining that "[t]he public's perception is relevant in forced association cases").

The same is true here. Under HEERA, the chosen exclusive representative serves as the representative of the bargaining unit *collectively* and *as a whole,* rather than serving as the individual representative or agent of any particular bargaining unit member. *See, e.g., Reisman,* 2018 WL 6312996, at *5 ("The Union is not ... [a non-member's] individual agent. Rather, the Union is the agent for the bargaining-unit which is a distinct entity separate from the individual employees who comprise it.").

[7] Because Plaintiffs is not required to say or do anything by virtue of Local 2010's designation as the exclusive representative of their bargaining unit, their claim does not involve the kind of compelled speech at issue in cases like *West Virginia Bd. of Educ. v. Barnette,* 319 U.S. 624 (1943).

Indeed, when negotiating or enforcing a collective bargaining agreement, the exclusive representative must often weigh the competing interests of different employees in the bargaining unit and determine what is best for the unit as a whole.

Because different viewpoints exist within every democratic system and because exclusive representatives represent the bargaining unit as a whole, public employers in systems of exclusive representation-based collective bargaining like that established by the HEERA reasonably understand that not all unit employees necessarily agree with the union that a majority has designated as the exclusive representative. *See Knight,* 465 U.S. at 276 ("The State Board considers the views expressed ... to be the faculty's official collective position. It recognizes, however, that not every instructor agrees with the official faculty view...."). Moreover, just as reasonable people understand that the views of a parent-teacher association, alumni association, elected congressional representative, or bar association are not necessarily shared by every parent, alumnus, constituent, or attorney, reasonable people understand that individuals in the bargaining unit represented by Local 2010 do not necessarily agree with every position taken by Local 2010. *See, e.g., Lathrop v. Donohue,* 367 U.S. 820, 859 (1961) (Harlan, J., concurring) ("[E]veryone understands or should understand that the views expressed are those of the State Bar as an entity separate and distinct from each individual.").

For these reasons, Local 2010's views are not attributed or imputed to individual bargaining unit employees in a First Amendment sense. *D'Agostino,* 812 F.3d at 244 (Souter, J., sitting by designation) ("[W]hen an exclusive bargaining agent is selected by majority choice, it is readily understood that employees in the minority, union or not, will probably disagree with some positions taken by the agent answerable to the majority."); *Jarvis,* 2015 WL 1968224, at *6 ("[The Union's] representation of Plaintiffs would not be likely to create the perception that Plaintiffs endorse [the Union's] expressive activities.... A reasonable person would not perceive that the activities of [the Union], as a majority-elected representative, ... are identical with the

views of the providers it represents."). Because such attribution is a necessary element of plaintiff's compelled speech and association claim, Plaintiffs' claims regarding "compelled association" fail for this separate reason as well.

CONCLUSION

For the foregoing reasons, Teamsters Local 210 respectfully requests the Court to grant this Motion to dismiss, without leave to amend, that portion of Count I of the First Amended Complaint seeking a refund of agency fees paid by Plaintiff O'Callaghan prior to the Supreme Court's decision in *Janus*, and Counts V, VI and VII of the First Amended Complaint which seek to overturn the exclusive representation foundation of California's public-sector labor relations statutes.

Dated: June 26, 2019

BEESON, TAYER & BODINE, APC

By: */s/ Andrew H. Baker*
ANDREW H. BAKER
Attorneys for Teamsters Local 2010

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	SACV 19-02289JVS(DFMx)	Date	June 10, 2019
Title	Cara O'Callaghan, et al. v. Regents of the University of California, et al.		

Present: The Honorable	**James V. Selna, U.S. District Court Judge**	
Lisa Bredahl		Not Present
Deputy Clerk		Court Reporter
Attorneys Present for Plaintiffs:		Attorneys Present for Defendants:
Not Present		Not Present

Proceedings: [IN CHAMBERS] Order Regarding Motion for Preliminary Injunction

The Court, having been informed by the parties in this action that they submit on the Court's tentative ruling previously issued, hereby rules in accordance with the tentative ruling as follows:

Plaintiffs Cara O'Callaghan ("O'Callaghan") and Jenée Misraje ("Misraje") (together—"Plaintiffs") filed a motion for a preliminary injunction against Defendants the Regents of the University of California (the "Regents"), Teamsters Local 2010 (the "Union") and Xavier Becerra, in his official capacity as Attorney General of California (the "Attorney General") (together—"Defendants"). (Mot., Dkt. No. 26-1.) The Regents, the Union, and the Attorney General each filed oppositions. (Opp'ns, Dkt. Nos. 34, 38, 41.) Plaintiffs replied. (Reply, Dkt. No. 46.)

For the following reasons the Court **denies** the motion for a preliminary injunction.

I. BACKGROUND

O'Callaghan is the finance manager of the Sport Club program, employed by the University of California, Santa Barbara ("UCSB"). (Complaint, Dkt. No. 1 ¶ 7.) O'Callaghan was employed by UCSB from 2000 to 2004 and has been continuously employed by UCSB since August 2009. (Id. ¶ 14.) When O'Callaghan began her employment again with UCSB in 2009, she did not join the Union, but did pay agency fees to the Union. (Id. ¶ 15.)

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On May 31, 2018, O'Callaghan signed an application joining the Union and authorizing it to deduct union dues from her paycheck after a Union representative came to her workplace. (Id. ¶ 16.) The Union representative did not inform her that a decision was pending in the Supreme Court in Janus v. Am. Fed'n of State, Cty., & Mun. Employees, Council 31, 138 S. Ct. 2448 (2018). (Id.)

On June 27, 2018, the Supreme Court held that agency fees violated "the free speech rights of [non-union] members by compelling them to subsidize private speech on matters of substantial public concern." Id. at 2460.

On July 25, 2018, after learning of the Janus decision, O'Callaghan sent a resignation letter to the Union. (Complaint, Dkt. No. 1 ¶ 17.) The same day, she also sent a letter to UCSB requesting that it stop deducting union dues from her paycheck. (Id.) The Union responded that she was free to resign her membership, but that the payroll deductions would continue until she gave notice pursuant to the terms of the Union's collective bargaining agreement with UCSB. (Id. ¶ 18.) The terms provide that she could not provide such notice until March 31, 2022. (Id. ¶ 19.)

On October 16, 2018, Liberty Justice Center sent a letter to UCSB demanding that it immediately stop deducting union dues from O'Callaghan's paycheck. (Id. ¶ 20.) On October 24, 2018, UCSB referred the Liberty Justice Center letter to the Union via e-mail. (Id. ¶ 21.) On November 9, 2018, the Union confirmed to UCSB via e-mail that it should continue to deduct union dues from O'Callaghan's paycheck. (Id. ¶ 22.) On November 29, 2018, UCSB sent a letter to Liberty Justice Center stating that it would continue to deduct union dues from O'Callaghan's paycheck. (Id. ¶ 23.) The Regents continue to deduct the dues of approximately $41.00 per month. (Id. ¶ 24.)

Misraje is an administrative assistant in the Geography Department at the University of California, Los Angeles ("UCLA"), where she has been employed since May 2015. (Id. ¶¶ 8, 25.) On July 27, 2015, Misraje signed an application joining the Union and authorizing it to deduct dues from her paycheck. (Id. ¶ 26.)

On August 8, 2018, Misraje sent a letter to the Union requesting to withdraw her union membership. (Id. ¶ 27.) On August 9, 2018, the Union responded to Misraje via e-mail that she would be dropped as a full member of the Union, but that she could only

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end the deduction of union dues from her paycheck during a particular time window. (Id. ¶ 28.)

On August 27, 2018, Misraje sent an e-mail to the Union, requesting that it immediately terminate her union membership and stop deducting union dues from her paycheck. (Id. ¶ 29.) She likewise sent an email to UCLA requesting that it stop deducting union dues from her paycheck. (Id.) UCLA responded the same day saying that it could not grant her request because all such requests must come through the Union under California law. (Id. ¶ 30.) The Union repeated its response that Misraje was no longer a Union member but could not end deduction of her union dues at that time. (Id. ¶ 31.) Misraje again made similar requests to both the Union and UCLA and received similar responses between October 11, 2018 and December 7, 2018. (Id. ¶¶ 32-3.) According to the terms of the union application that Misraje signed, notice must be sent to both the Union and UCLA at least sixty days but not more than seventy-five days before the anniversary date of the signed agreement. (Id. ¶ 40.) The Regents continue to deduct approximately $53.00 per month of Misraje's paychecks for union dues. (Id. ¶ 41.)

Plaintiffs brought suit against Defendants under 42 U.S.C. § 1983 and 28 U.S.C. § 2201(a) seeking declaratory relief, injunctive relief, and damages for dues previously deducted from their paychecks. (Id. ¶ 6.)

Plaintiffs seek a preliminary injunction that would enjoin: (1) the Union to end their membership, to stop directing the Regents to deduct union dues from Plaintiffs' paychecks, and to stop accepting the dues; (2) the Regents from deducting union dues from Plaintiffs paychecks; (3) the Attorney General from enforcing Cal. Gov't Code §§ 1157.12, 3513(I), 3515, 3515.5, 3583, and all other provisions of California law that require Plaintiffs to wait until a specified window of time to stop the deduction of union dues from their paychecks without their affirmative consent; (4) the Union from acting as Plaintiffs' exclusive representative in bargaining negotiations with their employer, the University of California ("UC") system; (5) the Regents from recognizing the Union as the exclusive representative of Plaintiffs for collective bargaining purposes; and (6) the Attorney General from enforcing Cal. Gov't Code §§ 3570, 3571.1(e), 3574, 3578, and all other provisions of California law that provide for exclusive representation of employees who do not affirmatively consent to union membership. (Not., Dkt. No. 26 at 2.)

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II. LEGAL STANDARD

On an application for a preliminary injunction, the plaintiff has the burden to establish that (1) she is likely to succeed on the merits, (2) she is likely to suffer irreparable harm if the preliminary relief is not granted, (3) the balance of equities favors the plaintiff, and (4) the injunction is in the public interest. Winter v. Natural Res. Def. Council, Inc., 555 U.S. 5, 20 (2008).

In the Ninth Circuit, the Winter factors may be evaluated on a sliding scale: "serious questions going to the merits, and a balance of hardships that tips sharply toward the plaintiff can support issuance of a preliminary injunction, so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest." Alliance for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1134–35 (9th Cir. 2011). Moreover, in the Ninth Circuit Plaintiff may meet this burden if he "demonstrates either a combination of probable success on the merits and the possibility of irreparable injury or that serious questions are raised and the balance of hardships tips sharply in his favor." Johnson v. California State Bd. of Accountancy, 72 F.3d 1427, 1429 (9th Cir. 1995) (internal quotations and citation omitted) (emphasis in original). "To reach this sliding scale analysis, however, a moving party must, at an 'irreducible minimum,' demonstrate some chance of success on the merits." Global Horizons, Inc. v. U.S. Dep't of Labor, 510 F.3d 1054, 1058 (9th Cir. 2007) (citing Arcamuzi v. Cont'l Air Lines, Inc., 819 F.2d 935, 937 (9th Cir. 1987)).

III. DISCUSSION

A. Likelihood of Success on the Merits

1. Dues Deductions

Plaintiffs argue that they are likely to succeed on the merits of their claim that continued deduction of union dues violates their First Amendment rights in light of the Supreme Court's decision in Janus, which held that States and public-sector unions may no longer extract agency fees from nonconsenting employees. Janus, 138 S. Ct. at 2486. But Janus limits its holding to situations in which employees have *not* consented to deductions:

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> Neither an agency fee nor any other payment to the union may be deducted from a nonmember's wages, nor may any other attempt be made to collect such a payment, unless the employee affirmatively consents to pay. By agreeing to pay, nonmembers are waiving their First Amendment rights, and such a waiver cannot be presumed. Rather, to be effective, the waiver must be freely given and shown by "clear and compelling" evidence. Unless employees clearly and affirmatively consent before any money is taken from them, this standard cannot be met.

Id. (citations omitted) (emphasis added). Since Plaintiffs affirmatively agreed to the terms of union membership, including the terms regarding dues deductions, they have not met their burden of demonstrating a likelihood of success in proving that the continued deductions violate their First Amendment rights. Plaintiffs argue that their consent to dues deductions was not "freely given" "[b]ecause the right not to pay fees or dues to a union had not been announced by the Supreme Court," "they were not given the option to pay nothing to the union," and they thus "could not have known that they were waiving that constitutional right." (Mot., Dkt. No. 26-1 at 1; Reply, Dkt. No. 46 at 3.) But, as the Union points out, nothing in Janus's holding requires unions to cease deductions for individuals who have affirmatively chosen to become union members and accept the terms of a contract that may limit their ability to revoke authorized dues-deductions in exchange for union membership rights, such as voting, merely because they later decide to resign membership. (Opp'n, Dkt. No. 34 at 9.) See Belgau v. Inslee, No. 18-5620 RJB, 2018 WL 4931602, at *5 (W.D. Wash. Oct. 11, 2018) ("Plaintiffs' assertions that they didn't knowingly give up their First Amendment rights before Janus rings hollow. Janus says nothing about people [who] join a Union, agree to pay dues, and then later change their mind about paying union dues."). Thus, Plaintiffs are unlikely to succeed on the merits of this claim.[1]

As for Plaintiffs' request injunctive relief for the Union to end their membership, that request is moot since the Union has already ended the membership of both Plaintiffs. (Rabinowitz Decl., Dkt No. 34-1 ¶¶ 11-12.)

[1] Because Plaintiffs' request for injunctive relief against the Attorney General and the Regents involves enjoining them from enforcing California law that allows these continued deductions that they consented to via their application for union membership, Plaintiffs' likelihood of success for such relief is likewise minimal.

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2. Exclusive Representation

California's Higher Education Employment Relations Act ("HEERA") provides for a system of exclusive representative collective bargaining in which the majority of employees in a bargaining unit may select a union representative to negotiate and administer a single collective bargaining agreement to cover the entire unit. See Cal. Gov't. Code §§ 3560 et seq.

Plaintiffs argue that "it is a violation of the First Amendment to force citizens to associate with organization or causes with which they do not wish to associate" and that California law allowing the Union to act as the exclusive representative of Plaintiffs "abridges their rights of speech and association." (Mot., Dkt. No. 26-1 at 1.) They suggest that Janus recognized that a union's exclusive representation restricts First Amendment rights and that the "First Amendment should not countenance such a restriction." (Mot., Dkt. No. 26-1 at 9.) See Janus, 138 S. Ct. at 2460 ("Designating a union as the employees' exclusive representative substantially restricts the rights of individual employees. Among other things, this designation means that individual employees may not be represented by any agent other than the designated union; nor may individual employees negotiate directly with their employer.").

The Court disagrees. The Supreme Court in Janus stated:

> We readily acknowledge, as Pickering did, that "the State has interests as an employer in regulating the speech of its employees that differ significantly from those it possesses in connection with regulation of the speech of the citizenry in general." . . . It is also not disputed that the State may require that a union serve as exclusive bargaining agent for its employees—itself a significant impingement on associational freedoms that would not be tolerated in other contexts. We simply draw the line at allowing the government to go further still and require all employees to support the union irrespective of whether they share its views.

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138 S. Ct. at 2477–78 (2018) (citations omitted). Janus makes clear that the a state interest in "labor peace" does not require *both* that a union be an exclusive representative of all employees *and* the payment of agency fees by nonmembers. Id. at 2480. Rather, Janus's statement that "designation of a union as exclusive representative and the imposition of agency fees are not inextricably linked" suggests that a state interest can still justify a union acting as an exclusive representative for members and nonmembers alike. Id. See Minnesota State Bd. for Cmty. Colleges v. Knight, 465 U.S. 271, 288, 104 S. Ct. 1058, 1068 (1984) ("Appellees' speech and associational rights, however, have not been infringed by Minnesota's restriction of participation in 'meet and confer' sessions to the faculty's exclusive representative. The state has in no way restrained appellees' freedom to speak on any education-related issue or their freedom to associate or not to associate with whom they please, including the exclusive representative."); Mentele v. Inslee, 916 F.3d 783, 789 (9th Cir. 2019) ("Janus's reference to infringement caused by exclusive union representation, even in the context of its broader discussion of Abood and the Court's long history of relying on labor peace to justify certain provisions in collective bargaining agreements, is not an indication that the Court intended to revise the analytical underpinnings of Knight or otherwise reset the longstanding rules governing the permissibility of mandatory exclusive representation."). Because both Supreme Court and Ninth Circuit precedent have "specifically acknowledged that exclusive representation is constitutionally permissible," the Court finds that Plaintiffs are unlikely to succeed on their claim and do not pose serious questions going to the merits of their claim that exclusive representation by the Union violates their First Amendment rights. Mentele, 916 F.3d at 791. Because the Court finds that Plaintiffs cannot show that serious questions are raised as to the merits, the Court need not decide whether the balance of hardships tips in their favor. See Johnson, 72 F.3d at 1429.

B. Irreparable Harm

Plaintiffs argue that they will be irreparably harmed in the absence of a preliminary injunction because union dues are being "deducted from their paychecks against their will to go towards union advocacy they do not support" and "the Union is "misrepresent[ing] their views in its negotiations with [the Regents]." (Mot., Dkt. No. 26-1 at 3.)

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The Court disagrees. Even if Plaintiffs were to prevail on the merits, they would be able to recover the money for their dues deductions. As the Union points out, "the Union's escrow of all fees that have been deducted, or will be deducted through the date when Plaintiffs' payroll-deduction authorizations will terminate, from Plaintiffs' paychecks since their resignation from Union membership eliminates any conceivable First Amendment harm that could be irreparable" because "there is no immediate risk that any of Plaintiffs' money will be used to subsidize the Union's speech." (Opp'n, Dkt. No. 34; Naterman Decl., Dk. No. 34-3 ¶¶ 3-4.) See Belgau, No. 18-5620 RJB, 2018 WL 4931602, at *6 ("Plaintiffs have failed to show that they will suffer irreparable harm in the absence of preliminary relief [because] the Union states that it has, and will continue, to escrow all dues in an interest bearing account until this litigation is resolved and will not use the dues for any Union activity."). Accordingly, the Court finds that the Plaintiffs have not shown that they will be irreparably harmed absent a preliminary injunction.

C. Balance of Equities and Public Interest

Plaintiffs also fail to show that the balance of equities or the public interest favors a preliminary injunction because the Union's escrow of Plaintiffs' dues preserves the status quo while the litigation proceeds and the public interest favors enforcement of private contracts. See id. (quoting Steele v. Drummond, 275 U.S. 199, 205 (1927) ("[I]t is a matter of great public concern that freedom of contract be not lightly interfered with."). Because the Plaintiffs have not met their burden of showing that the Winter factors weigh in their favor, the Court **denies** the motion for a preliminary injunction.

IV. CONCLUSION

For the foregoing reasons, the Court **denies** Plaintiffs' motion for a preliminary injunction. Because the Court determines that Plaintiffs' request fails on the merits, it does not address the Attorney General's arguments regarding state action nor the Regents' arguments regarding the Eleventh Amendment.

IT IS SO ORDERED.

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Initials of Preparer **lmb**

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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

CARA O'CALLAGHAN and JENEE MISRAJE,

Plaintiffs,

v.

REGENTS OF THE UNIVERSITY OF CALIFORNIA; TEAMSTERS LOCAL 2010; and XAVIER BECERRA, in his official capacity as Attorney General of California,

Defendants.

Case No. 19-CV-02289 JVS(DFM)

TEAMSTERS LOCAL 2010'S OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION

Hearing Date:	June 10, 2019
Hearing Time:	1:30 p.m.
Courtroom:	10A
Judge:	Hon. James V. Selna
Complaint Filed:	March 27, 2019
Trial Date:	None set

II. Plaintiffs Have Not Established Grounds for an Injunction Halting Enforcement of their Voluntary Payroll-Deduction Authorizations.

A. Plaintiffs Have No Likelihood of Success on the Merits of this Claim.

Plaintiffs cannot establish that there are serious questions going to the merits of their claim, let alone can they establish a likelihood of success on the merits. Because Plaintiffs signed a voluntary dues-deduction authorization agreement under which fees are to be deducted from their wages until March 31, 2022 (O'Callaghan) and July 27, 2019 (Misraje), Plaintiffs are contractually obligated to abide by the terms of that agreement. *See supra* pp. 2-4. Plaintiffs make much of the Supreme Court's decision in *Janus,* but nothing in *Janus* alters the well-established principle that the First Amendment does not grant individuals a right to renege on binding contractual obligations.

1. Plaintiffs are bound by the terms of the payroll-deduction authorization agreements they voluntarily executed.

A dues-deduction authorization agreement is "a contract ... authorizing the employer to withhold dues from the employee's wages, but reserving to the employee the power of revocation at specified periods." *N.L.R.B. v. Atlanta Printing Specialties & Paper Prod Union 527, AFL-CIO,* 523 F.2d 783, 785 (5th Cir. 1975); *see also Graphic Communications Dist. Council 2 (Data Documents),* 278 NLRB 365, 367 (1986). These are common arrangements by which an employee who chooses to become a union member elects to pay dues in installments through payroll deduction – often a more advantageous and convenient payment method than paying in a lump sum by cash or check and, in exchange for that benefit, agrees to limit the times at which the authorization can be revoked. As courts have recognized, "[d]ues-checkoff authorizations are *optional payroll deduction contracts* between employers and individual employees, similar to health insurance premium payroll deductions or retirement savings arrangements." *E.g., Machinists District 10 v. Allen,* 904 F.3d 490, 506 (7th Cir. 2018) (emphasis added). Dues-deduction authorizations are *not* an "obligation to pay dues as a condition of employment." *Id.* at 495; *see also id.* at 506

("Checkoff authorizations irrevocable for one year after [their effective] date do not amount to compulsory unionism as to employees who wish to withdraw from membership prior to that time.") (alteration in original); *Fisk v. Inslee,* No. C16-5889, 2017 WL 4619223, at *4 (W.D. Wash. Oct. 16, 2017) (signed membership card containing dues authorization agreement was "a valid contract").

Such dues-deduction authorization agreements create binding financial obligations that survive an employee's resignation from the union. *See, e.g., Steelworkers Local 4671 (National Oil Well, Inc.),* 302 NLRB 367, 368 (1991) (dues were still owed under checkoff authorization after employee's resignation of membership because, under the express terms of the checkoff authorization the employee signed, he "clearly authorized the continuation of his dues deduction even in the absence of union membership"); *N.L.R.B. v. U.S. Postal Serv.,* 833 F.2d 1195, 1196 (6th Cir. 1987) (dues authorization not revocable despite resignation from membership).

In the very context at issue here – a dues deduction authorization agreement with an irrevocability period signed by a union member who resigned from union membership before that period expired – the Ninth Circuit explained that such a "dues-checkoff authorization is a contract," and "[a] party's duty to perform even a wholly executory contract is not excused merely because he decides that he no longer wants the consideration for which he has bargained. …[T]he clear 'legal import' of the authorization's language ... b[i]nd[s] the employee to abstain from revoking the authorization," even after he resigns union membership. *N.L.R.B.* v. *U.S. Postal Serv.,* 827 F.2d 548, 554 (9th Cir. 1987); *see also Fisk,* 2017 WL 4619223, at *5 ("[A] worker can refuse to associate with or join a union. That is her prerogative. But, once she joins voluntarily, in writing, she has the obligation to perform the terms of her agreement."). These cases reflect the general principle that an individual has the right to resign from a voluntary association "as he sees fit subject of course to any financial obligations due

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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

CARA O'CALLAGHAN and JENEE MISRAJE, Plaintiffs, v. REGENTS OF THE UNIVERSITY OF CALIFORNIA; TEAMSTERS LOCAL 2010; and XAVIER BECERRA, in his official capacity as Attorney General of California, Defendants.	Case No. 19-CV-02289 JVS(DFM) DECLARATION OF JASON RABINOWITZ IN SUPPORT OF TEAMSTERS LOCAL 2010'S OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION Hearing Date: June 10, 2019 Hearing Time: 1:30 p.m. Courtroom: 10A Judge: Hon. James V. Selna Complaint Filed: March 27, 2019 Trial Date: None set

I, Jason Rabinowitz, hereby declare as follows:

1. I am the Secretary-Treasurer and Principal Office of Teamsters Local (hereinafter "Local 2010"). I have served in this role since 2014.

2. Local 2010 represents seven bargaining units of employees employed by the University of California and the California State University system, including the Classified and Allied Services Unit of the University of California in which the Plaintiffs in this case are employed. Local 2010 represents approximately 13,691 employees located throughout California.

3. As the Principal Officer of Local 2010, my job duties require me to be familiar with the Local 2010 Collective Bargaining Agreements with employers, and

the administration of the processes by which employees may agree to become Local Union members and to have their Union dues deducted from their paychecks.

4. Local 2010 is supported by employees who voluntarily become Union members and who agree to pay Union dues. No employees are required to become Union members as a condition of employment.

5. For at least as long as I have been the Principal Officer of Local 2010, when an employee desires to become a member of Local 2010, that employee is given the opportunity to sign a membership agreement that includes a payroll-deduction authorization, by which the member may agree to pay his or her Union dues or fees through payroll deduction. The payroll-deduction authorization is voluntary and commits the member to have his or her dues remitted to the Union by the employer for a set period of time, even if the member resigns from Union membership in the interim.

6. The authorization for a member to have dues remitted to the Union for a set period of time, even if the member resigns from Union membership in the interim, is important for Local 2010 because it allows the Union to budget and plan effectively. Specifically, it allows the Union to more effectively plan and make advance financial commitments, such as renting offices, hiring staff, and entering into contracts with other vendors. This commitment also makes administering dues deductions easier for the Union and the employers that deduct Union dues than that task would be if members could authorize and de-authorize deductions at will. Such commitments also reflect that Union members have voting rights – in connection with officer elections, contract-ratification referenda and other matters – that empower them to influence Union events for multiple years. Requiring such commitments helps to prevent employees from revoking dues authorization shortly after voting or after a contract is ratified. The dues-deduction authorization agreement also helps to prevent employees from signing up as Union members solely to obtain a particular benefit – such as to obtain a discount through one of the Union's member-only benefits programs – and

then immediately cancelling their dues deductions. Such behavior would be unfair to other members and would make it more difficult for the Union to offer member-only benefits.

8. On May 31, 2018, Cara Callaghan ("Callaghan") signed a membership agreement that included a voluntary dues-deduction authorization. A copy of this agreement is attached as Exhibit 1 to the declaration of Nicole Cornejo. On or around June 29, 2018, O'Callaghan notified Local 2010 that she had resigned from Union membership and was requesting the termination of her dues-deduction authorization. The Union accepted O'Callaghan's resignation from Local 2010, and the Union is treating June 29, 2018 as the effective date of her resignation.

9. By letter dated July 24, 2018, I notified O'Callaghan that her request to resign her Union membership had been processed, and also reminded her that her obligation to continue paying fees to the Union survived the termination of her membership, per the payroll-deduction authorization she had signed on May 31, 3018, a copy of which I attached to the letter. A true and correct copy of my July 24, 2018, letter and its attachment is attached as Exhibit 1 to this declaration.

10. O'Callaghan's May 31, 2018, payroll-deduction authorization provides that it will remain in place until the expiration of the existing collective bargaining agreement. The Local 2010 collective bargaining agreement in place with the University of California as of May 31, 2018, runs for a term of April 19, 2017, through March 31, 2022.

11. On July 27, 2015, Jenee Misraje ("Misraje") signed a membership agreement that included a voluntary dues-deduction authorization. A copy of this agreement is attached as Exhibit 2 to the declaration of Nicole Cornejo. On or around August 8, 2018, Misraje notified Local 2010 that she had resigned from Union membership and was requesting the termination of her dues-deduction authorization. The Union accepted Misraje's resignation from Local 2010, and the Union is treating August 8, 2018 as the effective date of her resignation.

12. By email dated August 9, 2018, Local 2010 Campus Representative Samuel Carlin advised Misraje that her request to resign Union membership had been processed, but reminded her that her agreement to pay Union fees continued (see Declaration of John Varga, Exhibit 1). By letter dated December 7, 2018, I notified Misraje that her request to resign her Union membership had been processed, and also reminded her that her obligation to continue paying fees to the Union survived the termination of her membership, per the payroll-deduction authorization she had signed on July 27, 2015, a copy of which I attached to the letter. A true and correct copy of my December 7, 2018, letter and its attachment is attached as Exhibit 2 to this declaration.

13. Misraje's July 27, 2017, payroll-deduction authorization provides that it will remain in place until the expiration of the existing collective bargaining agreement or for one year, whichever is shorter, and will automatically renew for the duration of successor collective bargaining agreements or one-year terms, whichever is shorter. The Local 2010 collective bargaining agreement in place with the University of California as of July 27, 2017, as noted above, runs for a term of April 19, 2017, through March 31, 2022; so Misraje's payroll-deduction authorization currently runs for one-year terms, with the current one-year term expiring July 27, 2019.

I declare under penalty of perjury that the forgoing is true and correct. Executed this 16th day of May, 2019 at Oakland, California.

JASON RABINOWITZ

EXHIBIT 1

to

RABINOWITZ DECLARATION

TEAMSTERS LOCAL 2010

An Affiliate of the International Brotherhood of Teamsters

Jason Rabinowitz
Secretary Treasurer and Principal Officer

July 24, 2018

Cara M O'Callaghan
5145 San Lazaro
Santa Barbara, CA93111

Sent via USPS Certified/RR Requested 9590940239978079580696

Subject: Membership Opt Out Request

Dear Cara M O'Callaghan:

We have received and processed your request to change your membership status with Teamsters Local 2010. While we hope all members will stand together in our Union so we will have the power we need to win fair pay and rights at work, you are free to resign membership at any time. According to our records, you signed a Membership Application and payroll deduction authorization form on 5/31/2018. A copy of the Application is attached for your reference. Pursuant to the terms of the Membership Application that you signed, payroll deductions continue until revoked in accordance with the requirements of the Application. Therefore, payroll deductions will continue as an active fee payer. You may seek revocation in the future pursuant to the requirements described in the membership application and deduction authorization form.

Our ability to fight for better wages and fair working conditions depends on the strength of the Union's membership. We ask you to consider standing with your co-workers in the Union at this critical time.

Our pay, benefits and rights as public workers are under attack. A **well-funded campaign seeks to weaken our Unions so they can lower our pay and benefits. Over 10,000 of your colleagues – the vast majority of Teamsters Local 2010 members – have committed to stand together as Teamsters.** When we all commit to stand together in our Union, we show each other and the University that we will not be divided, and we have the power we need to protect our jobs, pay and benefits.

The Union is simply all of us standing together to win fair wages and a better workplace. **That's how Teamsters Local 2010 members have won strong contracts with guaranteed raises each year.**

But a powerful Union, like any effective organization, needs resources to function. **As an organization of working people, our Union doesn't receive funding from outside sources like corporations or billionaires. So, part of standing together is that we all contribute our fair**

NORTHERN CALIFORNIA
400 Roland Way, Suite 2010
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(510) 845-2221 | (510) 845-7444 Fax

Our Work Makes California Work!

www.teamsters2010.org

SOUTHERN CALIFORNIA
9900 Flower Street
Bellflower, CA 90706
(562) 376-4710 | (562) 376-4709 Fax

share to make the Union run. Since the Union represents everyone in the bargaining unit, and since everyone benefits from the raises and rights we win together, that's how we protect and expand our rights at work.

We urge you to stand with your colleagues by completing and returning the Member Power Form today in the enclosed postage-paid envelope. The amount that you currently contribute will not change. But you will receive important rights of membership, such as the right to vote on our contract and participate in Union elections. You will also receive exclusive Teamster Privilege benefits, such as Teamster Scholarships for your children, $5000 in Union-paid life insurance, member discounts, and more.

Most importantly, you will be continuing to stand with your colleagues to protect our jobs, pay and benefits. Mail in your form today! If you have any questions, please visit teamsters2010.org, call the Union at (213) 407-2331or email to takel@teamsters2010.org. **When we stand together as Teamsters, we win together!**

If you have any questions regarding the contents of this letter or wish to discuss, please do not hesitate to contact me.

Sincerely,

JASON RABINOWITZ
Secretary-Treasurer / Principal Officer

JR/RN

cc: Tanya Akel, Union Representative

Member Power
Teamster Power

Stand Together
Win Together

YES! I want to become a member of Teamsters Local 2010 and continue to stand with my coworkers to win fair wages, benefits, and working conditions for all!

1 I recognize the need for a strong union and believe everyone represented by our union should pay their fair share to support our union's activities. Therefore, I voluntarily authorize my employer to deduct from my earnings and transfer to Teamsters Local 2010 an amount equal to the regular monthly dues uniformly applicable to members of Local 2010, and I agree that this authorization shall remain in effect for the duration of the existing collective bargaining agreement, if any, and yearly thereafter until a new CBA is ratified, unless I give written notice via U.S. mail to both the employer and Local 2010 during the 30 days prior to the expiration of the CBA or, if none, the end of the yearly period. My check-off authorization will renew automatically, regardless of my membership status, unless revoked during the window period described. **My signature below strengthens our Union to win fair wages and benefits!**

Last Name	First Name	M.I.	Payroll Title	Hire Date
O Callaghan	Cara		AA III	07/09
Home Mailing Address	**City**	**State**	**Zip**	
5145 San Lazaro	Goleta	CA	93111	
Home Phone		**Mobile Phone**	**Personal Email**	
		805-259-6314		
Employer	**Address**	**City**	**State & Zip**	**BARGAINING UNIT** ____
UCSB, Rec Center		MC 3025		CAMPUS X MED CTR ☐
Work Phone	**Work Email**		**Department**	**Employee I.D. #**
805-893-2373			Recreation	875 557 651

☐ It's okay to use my name & likeness for Teamster Publications ☐ I would like to receive text messages from the Union (SMS)

As a member in good standing, I proudly pledge to faithfully uphold the Constitution and bylaws of the International Brotherhood of Teamsters and Local 2010. I will faithfully perform any duties entrusted to me to the best of my ability. I will conduct myself at all times in a manner as not to bring reproach upon my Union. I am proud to join with my Union Sisters and Brothers to accept my responsibilities during any authorized strike or lockout. **As a member in good standing I shall be entitled to all of the rights and privileges of membership!**

Cara O'Callaghan — Signature

5/31/18 — Date

2 TEAMSTERS LIFE WITH DUES
$5,000 life insurance benefit
free to Teamster members

Member's Social Security # (Last 4 Only)	Member's Birthday
XXX - XX - 4590	7/22/71
Beneficiary #1	**Date of Birth**
Zaiden Hugler	02/05/04
Beneficiary #2	**Date of Birth**
Beneficiary #3	**Date of Birth**

3 I want to hold politicians accountable to working families. I authorize my employer to withhold the amount below each week to forward to Teamsters Local 2010 as a contribution to D.R.I.V.E. (Democratic Republican Independent Voter Education).

☐ $2.00 ☐ $3.00 ☐ $5.00 ☐ Other amount $_____

First Name Last Name Signature Date

This authorization is made voluntarily based on my specific understanding that: 1) I am not required to sign this form or make voluntary contributions to DRIVE as a condition of my employment or membership in the union; 2) I may refuse to contribute without reprisal; 3) Under law, only union members and union staff who are U.S. Citizens or lawful permanent residents are eligible to contribute to DRIVE. 4) DRIVE uses the money it receives for political purposes – including making contributions to and expenditures on behalf of candidates for federal, state, and local offices – and addressing political issues of importance to working families. This authorization shall remain in effect until revoked by me in writing via U.S. mail to Teamsters Local 2010. Contributions or gifts to DRIVE are not tax deductible as charitable contributions.

SENDER: *COMPLETE THIS SECTION*

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Cara M O'Callaghan

5145 San Lazaro

Santa Barbara CA 93111

9590 9402 3997 8079 5806 96

2. Article Number *(Transfer from service label)*

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X ☐ Agent ☐ Addressee

B. Received by *(Printed Name)* | C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over $500)
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

PS Form 3811 July 2015 PSN 7530-02-000-9053 Domestic Return Receipt

EXHIBIT 2

to

RABINOWITZ DECLARATION

TEAMSTERS LOCAL 2010

An Affiliate of the International Brotherhood of Teamsters

Jason Rabinowitz
Secretary Treasurer and Principal Officer

December 7, 2018

Jenee-Angelique Misraje
802 22Nd St Apt A
Santa Monica, CA 90403

Sent via USPS Certified/RR Requested 70131090000016054700

Subject: Membership Opt Out Request

Dear Jenee-Angelique Misraje:

We have received and processed your request to change your membership status with Teamsters Local 2010. While we hope all members will stand together in our Union so we will have the power we need to win fair pay and rights at work, you are free to resign membership at any time. According to our records, you signed a Membership Application and payroll deduction authorization form on 07/27/15. A copy of the Application is attached for your reference. Pursuant to the terms of the Membership Application that you signed, payroll deductions continue until revoked in accordance with the requirements of the Application. Therefore, payroll deductions will continue as an active fee payer. You may seek revocation in the future pursuant to the requirements described in the membership application and deduction authorization form.

Our ability to fight for better wages and fair working conditions depends on the strength of the Union's membership. We ask you to consider standing with your co-workers in the Union at this critical time.

Our pay, benefits and rights as public workers are under attack. A **well-funded campaign seeks to weaken our Unions so they can lower our pay and benefits. Over 10,000 of your colleagues – the vast majority of Teamsters Local 2010 members – have committed to stand together as Teamsters.** When we all commit to stand together in our Union, we show each other and the University that we will not be divided, and we have the power we need to protect our jobs, pay and benefits.

The Union is simply all of us standing together to win fair wages and a better workplace. **That's how Teamsters Local 2010 members have won strong contracts with guaranteed raises each year.**

But a powerful Union, like any effective organization, needs resources to function. **As an organization of working people, our Union doesn't receive funding from outside sources like corporations or billionaires. So, part of standing together is that we all contribute our fair**

NORTHERN CALIFORNIA
400 Roland Way, Suite 2010
Oakland, CA 94621
(510) 845-2221 | (510) 845-7141 Fax

Our Work Makes California Work!

www.teamsters2010.org

SOUTHERN CALIFORNIA
9900 Flower Street
Bellflower, CA 90706
(562) 370-4710 | (562) 370-4709 Fax

share to make the Union run. Since the Union represents everyone in the bargaining unit, and since everyone benefits from the raises and rights we win together, that's how we protect and expand our rights at work.

We urge you to stand with your colleagues by completing and returning the Member Power Form today in the enclosed postage-paid envelope. The amount that you currently contribute will not change. But you will receive important rights of membership, such as the right to vote on our contract and participate in Union elections. You will also receive exclusive Teamster Privilege benefits, such as Teamster Scholarships for your children, $5000 in Union-paid life insurance, member discounts, and more.

Most importantly, you will be continuing to stand with your colleagues to protect our jobs, pay and benefits. Mail in your form today! If you have any questions, please visit teamsters2010.org, call the Union at (626) 703-8229 or email to scarlin@teamsters2010.org. **When we stand together as Teamsters, we win together!**

If you have any questions regarding the contents of this letter or wish to discuss, please do not hesitate to contact me.

Sincerely,

JASON RABINOWITZ
Secretary-Treasurer / Principal Officer

JR/RN

cc: Sam Carlin, Union Representative

Collected By (Union Rep / Member): Jen

2010030341

Teamsters Local 2010 Membership Application

400 Roland Way, Suite 2010
Oakland, CA 94621
(510) 845-2221 | (510) 845-7444 fax
www.teamsters2010.org

ELIGIBILITY FOR TEAMSTERS LOCAL 2010

Any non-supervisory career, casual or probationary employee whose payroll title is in UC's clerical and allied services unit, including: Administrative Assistants; __Assistants; Administrative Services (at LBNL); Bibliographers; Cashiers; Child Care Assistants; Clerks, Coders, Collections Representatives; Key Entry Operators; Library Assistants; Program Assistants; Public Safety Dispatchers; Secretaries; Survey Workers; Word Processing Specialists, and others. (Contact Teamsters Local 2010 if you're unsure whether you're eligible.)

MEMBER INFORMATION

Last Name: Misraje | First Name: Jenée | M.I.:

Home / Mailing Address – Number & Street, Apt., P.O. Box, etc.: 802 22nd St. Apt A

City: Santa Monica | State: CA | Zip: 90403

Home Phone Number: | Mobile Phone Number: 323 793.0600 | Work Phone Number:

Work Email Address: jenee@geog.ucla.edu

Campus/Medical Center: North Campus | Loc: Bunche | Employee ID#: 80353845

Work Address – Number & Street: BOX 951524
1255 Bunche Hall

City: Los Angeles | State: CA | Zip: 90095-1524

Please print legibly

PAYROLL DEDUCTION AUTHORIZATION

Payroll Title (not working title):

Hire Date: 15 May 15

Personal Email Address: jmisraje@gmail.com

Member's Birthdate: 09,07,67

Teamsters Life with Dues Beneficiary Information ($5,000 member)

Name (Last, First Middle Initial)	Date of Birth
Misraje, Jack	03,05,68
Misraje, Arden	05,16,99
	/ /

Interested In:

Being a Steward		Being a ROC		D.R.I.V.E.	
Yes	No	Yes	No	Yes	No
☐	☐	☐	☐	☐	☐

Notes:

I authorize the Regents of the University of California to withhold monthly or cease withholding from my earnings as an employee, membership dues, initiation fees and general assessments as indicated above. I understand and agree to the arrangement whereby one total monthly deduction will be made by the University based upon the current rate of dues, initiation fees, and general assessments. I also understand that changes in the rate of dues, initiation fees and general assessments may be made after notice to that effect is given to the university by the organization to which such authorized deductions are assigned and I hereby expressly agree that pursuant to such notice the university may withhold from my earnings amounts either greater than or less than those shown above without obligation to inform me before doing so or to seek additional authorization from me for such withholdings. The University will remit the amount deducted to the official designated by the organization. This authorization shall remain in effect until revoked by me---allowing up to 30 days' time to change the payroll records in order to make effective this assignment or revocation thereof---or until another employee organization becomes my exclusive representative. It is understood that this authorization shall become void in the event the employee organization's eligibility for payroll deduction terminates for any reason. Upon termination of my employment with the University, this authorization will no longer be in effect. This authorization does not include dues, initiation fees and general assessments to cover any time prior to the payroll period in which the initial deduction is made. Payroll deductions, including those legally required and those authorized by an employee are assigned priorities. In the event there are insufficient earnings to cover all required and authorized deductions, it is understood that deductions will be taken in the order assigned by the University and no adjustment will made in a subsequent pay period or membership dues, initiation fees and general assessments.

I, the undersigned, voluntarily submit this Application for Membership in the above Local Union, affiliated with the International Brotherhood of Teamsters, so that I may fully participate in the activities of the Union, hereby revoking any contrary designations. I understand that by becoming and remaining a member of the Union, I will be entitled to attend membership meetings, participate in the development of contract proposals for collective bargaining, vote to ratify or reject collective bargaining agreements, run for Union office or support candidates of my choice, receive Union publications and take advantage of programs available only to Union members. I understand that only as a member of the Union will I be able to determine the course the Union takes to represent me in negotiations to improve my wages, fringe benefits and working conditions. And, I understand that the Union's strength and ability to represent my interests depends upon my exercising my right, as guaranteed by federal law, to join the Union and engage in collective activities with my fellow workers. If admitted to membership, I agree to abide by the Constitution of the International as well as the Local Union Bylaws which are not in conflict with International laws and thereupon accept and assume the following oath of obligation: I pledge my honor to faithfully observe the Constitution and laws of the International Brotherhood of Teamsters. I pledge that I will comply with all the rules and regulations for the government of the International Union and this Local Union. I will faithfully perform all the duties assigned to me to the best of my ability and skill. I will conduct myself at all times in a manner, as not to bring reproach upon my Union. I shall take an affirmative part in the business and activities of the Union and accept and discharge my responsibilities during any authorized strike or lockout. I will never discriminate against a fellow worker on account of race, color, creed, sex, age, national origin, sexual orientation or physical handicap. I will at all times bear true and faithful allegiance to the International Brotherhood of Teamsters and this Local Union.

I understand that under the current law, I may elect "nonmember" status, and can satisfy any contractual obligation necessary to retain my employment by paying an amount equal to the uniform dues and initiation fee required of members of the Union. I also understand that if I elect not to become a member or remain a member, I may object to paying the pro-rata portion of regular Union dues or fees that are not germane to collective bargaining, contract administration and grievance adjustment, and I can request the Local Union to provide me with information concerning its most recent allocation of expenditures devoted to activities that are both germane and non-germane to its performance as the collective bargaining representative sufficient to enable me to decide whether or not to become an objector. I understand that nonmembers who choose to object to paying the pro-rata portion of regular Union dues or fees that are not germane to collective bargaining will be entitled to a reduction in fees based on the aforementioned allocation of expenditures, and will have the right to challenge the correctness of the allocation. The procedures for filing such challenges will be provided by my Local Union, upon request. I have read and understand the options available to me and submit this application to be admitted as a member of the Local Union.

I understand that contributions, gifts or dues paid to Teamsters Local 2010 are not tax deductible as charitable contributions, however I also understand that they may be deductible as ordinary and necessary business expense.

CHECKOFF AUTHORIZATION AND ASSIGNMENT FOR PAYROLL DEDUCTION

I, Jenée Misraje hereby authorize my employer to deduct from my wages each and every month an amount equal to the monthly dues and/or initiation fees, and uniform assessments of Local Union 2010, and direct such amounts so deducted to be turned over each month to the Secretary-Treasurer of such Local Union for and on my behalf. This authorization is voluntary and is not conditioned on my present or future membership in the Union. This authorization and assignment shall be irrevocable for the term of the applicable collective agreement between the Union and the employer or for one year, whichever is the lesser, and shall automatically renew itself for successive yearly or applicable collective agreement periods thereafter, whichever is lesser, unless I give written notice to the employer and the union at least sixty (60) days, but not more than seventy-five (75) days before any periodic renewal date of this authorization and assignment of my desire to revoke the same. In the event that I become unemployed in the jurisdiction of the union Local 2010 has my permission to place me on automatic withdrawal.

ease sign and date, and then return completed form to TEAMSTER LOCAL 2010.
o not submit directly to campus payroll or labor relations →

SIGNATURE: [signature] | DATE: 07/27/15

MONTHLY DEDUCTION		
	ENROLL	CURRENT AMOUNT
CURRENT HOURLY RATE	x	1.44% PER MONTH
TOTALS		1.44% PER MONTH
ORGANIZATION NAME:	TEAMSTERS LOCAL 2010	

FOR UNIVERSITY USE ONLY

Tran Code	Employee ID	Date	Element No.	Bal CD	Amount
1 2	4 12	13 18	19 22	23 23	30
X1		MO DY YR	6	G	
X1			6	G	

SENDER: *COMPLETE THIS SECTION*

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Jenee-Angelique Misraje
802 22nd St. Apt A.
Santa Monica, CA. 90403

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X ☐ Agent ☐ Addressee

B. Received by *(Printed Name)* C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☒ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number *(Transfer from service label)* 7013 1090 0000 1605 4700

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

ACCO,NORTHERN,(DFMx),APPEAL,CLOSED,DISCOVERY,MANADR,RELATED-G

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA (Western Division - Los Angeles)
CIVIL DOCKET FOR CASE #: 2:19-cv-02289-JVS-DFM

Cara OCallaghan v. Regents of the University of California
Assigned to: Judge James V. Selna
Referred to: Magistrate Judge Douglas F. McCormick
Demand: $10,000
Related Case: 8:13-cv-00676-JLS-CW
Case in other court: 9th CCA, 1956271
Cause: 42:1983 Civil Rights Act

Date Filed: 03/27/2019
Date Terminated: 09/30/2019
Jury Demand: None
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff

Cara OCallaghan

represented by **Mark W Bucher**
Law Office of Mark W Bucher
18001 Irvine Boulevard Suite 108
Tustin, CA 92780
714-313-3706
Fax: 714-573-2297
Email: mark@calpolicycenter.org
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Brian K Kelsey
Liberty Justice Center
190 South LaSalle Street Suite 1500
Chicago, IL 60603
571-310-3750
Fax: 312-263-7702
Email: bkelsey@libertyjusticecenter.org
PRO HAC VICE
ATTORNEY TO BE NOTICED

Reilly W Stephens
Liberty Justice Center
190 South LaSalle Street Suite 1500
Chicago, IL 60603
312-263-7668
Fax: 312-263-7702
Email: rstephens@libertyjusticecenter.org
PRO HAC VICE
ATTORNEY TO BE NOTICED

Plaintiff

Jenee Misraje

represented by **Mark W Bucher**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Brian K Kelsey
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

Reilly W Stephens
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED

V.

Defendant

Regents of The University of California
TERMINATED: 06/14/2019

represented by **Gilbert J Tsai**
Hanson Bridgett LLP
425 Market Street 26th Floor
San Francisco, CA 94105
415-777-3200
Fax: 415-541-9366
Email: gtsai@hansonbridgett.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Charles F Robinson
University of California
Office of the President
1111 Franklin Street 8th Floor
Oakland, CA 94607-5200
510-987-9800
Fax: 510-987-9757
Email: charles.robinson@ucop.edu
TERMINATED: 05/21/2019

Dorothy Sheng-Ing Liu
Hanson Bridgett LLP
425 Market Street 26th Floor
San Francisco, CA 94105
415-777-3200
Fax: 415-541-9366
Email: dliu@hansonbridgett.com
ATTORNEY TO BE NOTICED

Margaret L Wu
University of California
Office of General Counsel
1111 Franklin Street, 8th Floor
Oakland, CA 94607
510-987-9800
Fax: 510-987-9757
Email: margaret.wu@ucop.edu
TERMINATED: 05/21/2019

Winston K Hu

Hanson Bridgett LLP
425 Market Street 25th Floor
San Francisco, CA 94105
415-777-3200
Fax: 415-541-9366
Email: whu@hansonbridgett.com
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Rhonda Stewart Goldstein
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Office of the General Counsel
1111 Franklin Street 8th Floor
Oakland, CA 94607
510-987-9800
Fax: 510-987-9757
Email: Rhonda.Goldstein@ucop.edu
ATTORNEY TO BE NOTICED

Defendant

Teamsters Local 2010 represented by **Andrew H Baker**
Beeson Tayer & Bodine
483 Ninth Street
Suite 200
Oakland, CA 94607
510-625-9700
Fax: 510-625-8275
Email: abaker@beesontayer.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Xavier Becerra
in his official capacity as Attorney General of California represented by **Maureen C Onyeagbako**
CAAG - Office of Attorney General
1300 I Street Suite 125
Sacramento, CA 95814
916-210-7324
Fax: 916-324-8835
Email: maureen.onyeagbako@doj.ca.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Lara Haddad
CAAG - Office of the Attorney General
California Department of Justice
300 South Spring Street Suite 1702
Los Angeles, CA 90013
213-269-6250
Fax: 213-897-5775
Email: lara.haddad@doj.ca.gov
TERMINATED: 05/02/2019

Defendant

Janet Napolitano represented by **Gilbert J Tsai**

in her official capacity as President of the University of California

(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Winston K Hu
(See above for address)
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
03/27/2019	1 R	COMPLAINT Receipt No: 0973-23449168 - Fee: $400, filed by Plaintiff Cara O'Callaghan. (Attachments: # 1 R Civil Cover Sheet) (Attorney Mark W Bucher added to party Cara O'Callaghan(pty:pla))(Bucher, Mark) (Entered: 03/27/2019)
03/27/2019	2	First EX PARTE APPLICATION of Non-Resident Attorney Reilly W. Stephens to Appear Pro Hac Vice on behalf of Plaintiff Cara O'Callaghan (Pro Hac Vice Fee - $400 Fee Paid, Receipt No. 0973-23450938) filed by Plaintiff Cara O'Callaghan. (Bucher, Mark) (Entered: 03/27/2019)
03/28/2019	3 R	NOTICE OF ASSIGNMENT to District Judge Dean D. Pregerson and Magistrate Judge Gail J. Standish. (lh) (Entered: 03/28/2019)
03/28/2019	4	NOTICE TO PARTIES OF COURT-DIRECTED ADR PROGRAM filed. (lh) (Entered: 03/28/2019)
03/28/2019	5 R	NOTICE OF DEFICIENCIES in Attorney Case Opening RE: Complaint (Attorney Civil Case Opening) 1 R . The following error(s) was found: Other error(s) with document(s): Attachments No. 1 Civil Cover Sheet should not have been attached to Docket Entry No. 1. Each document should have been filed separately. You are not required to take any action to correct this deficiency unless the Court so directs. (lh) (Entered: 03/28/2019)
03/28/2019	6 R	NOTICE OF DEFICIENCIES in Attorney Case Opening. The following error(s) was found: No Notice of Interested Parties has been filed. A Notice of Interested Parties must be filed with every partys first appearance. See Local Rule 7.1-1. Counsel must file a Notice of Interested Parties immediately. Failure to do so may be addressed by judicial action, including sanctions. See Local Rule 83-7. (lh) (Entered: 03/28/2019)
03/28/2019	7	NOTICE OF PRO HAC VICE APPLICATION DUE for Non-Resident Attorney Brian K. Kelsey. A document recently filed in this case lists you as an out-of-state attorney of record. However, the Court has not been able to locate any record that you are admitted to the Bar of this Court, and you have not filed an application to appear Pro Hac Vice in this case. Accordingly, within 5 business days of the date of this notice, you must either (1) have your local counsel file an application to appear Pro Hac Vice (Form G-64) and pay the applicable fee, or (2) complete the next section of this form and return it to the court at cacd_attyadm@cacd.uscourts.gov. You have been removed as counsel of record from the docket in this case, and you will not be added back to the docket until your Pro Hac Vice status has been resolved. (lh) (Entered: 03/28/2019)
03/28/2019	8	*Plaintiffs'* NOTICE of Interested Parties filed by Plaintiffs All Plaintiffs, (Bucher, Mark) (Entered: 03/28/2019)
03/29/2019	9 R	NOTICE of Deficiency in Electronically Filed Pro Hac Vice Application RE: First EX PARTE APPLICATION of Non-Resident Attorney Reilly W. Stephens to Appear Pro Hac Vice on behalf of Plaintiff Cara O'Callaghan (Pro Hac Vice Fee - $400 Fee Paid, Receipt No. 0973-23450938) 2 . The following error(s) was/were found: Incorrect

		event selected. Correct event is Appear Pro Hac Vice (G-64) Local Rule 83-2.1.3.3(b) Proposed order not attached. Other error(s) with document(s): Document is an APPLICATION, not an Ex Parte, not a Motion or Request.. (lt) (Entered: 03/29/2019)
04/01/2019	10	First APPLICATION of Non-Resident Attorney Brian K. Kelsey to Appear Pro Hac Vice on behalf of Plaintiffs Jenee Misraje, Cara OCallaghan (Pro Hac Vice Fee - $400 Fee Paid, Receipt No. 0973-23471516) filed by Plaintiffs Jenee Misraje, Cara OCallaghan. (Attachments: # 1 Proposed Order Brian Kelsey) (Bucher, Mark) (Entered: 04/01/2019)
04/01/2019	11	ORDER RE TRANSFER PURSUANT TO GENERAL ORDER 19-03-Related Case-filed. Related Case No: SACV13-00676 JLS (CWx). Case transferred from Judge Dean D. Pregerson and Magistrate Judge Gail J. Standish to Judge Josephine L. Staton and Magistrate Judge Douglas F. McCormick for all further proceedings. The case number will now reflect the initials of the transferee Judge CV19-02289 JLS (DFMx). Signed by Judge Josephine L. Staton. (lwag) (Entered: 04/01/2019)
04/02/2019	12	INITIAL STANDING ORDER FOR CASES ASSIGNED TO JUDGE JOSEPHINE L. STATON (tg) (Entered: 04/02/2019)
04/02/2019	13	Request for Clerk to Issue Summons on Complaint (Attorney Civil Case Opening) 1 R filed by Plaintiffs Jenee Misraje, Cara OCallaghan. (Bucher, Mark) (Entered: 04/02/2019)
04/02/2019	14	Request for Clerk to Issue Summons on Complaint (Attorney Civil Case Opening) 1 R filed by Plaintiffs Jenee Misraje, Cara OCallaghan. (Bucher, Mark) (Entered: 04/02/2019)
04/02/2019	15	Request for Clerk to Issue Summons on Complaint (Attorney Civil Case Opening) 1 R filed by Plaintiffs Jenee Misraje, Cara OCallaghan. (Bucher, Mark) (Entered: 04/02/2019)
04/02/2019	16 R	ORDER ON APPLICATION OF NON-RESIDENT ATTORNEY TO APPEAR IN A SPECIFIC CASE PRO HAC VICE by Judge Josephine L. Staton: granting 2 Non-Resident Attorney Reilly W Stephens APPLICATION to Appear Pro Hac Vice on behalf of Plaintiff Cara O'Callaghan, designating Mark W Bucher as local counsel. (jp) (Entered: 04/02/2019)
04/02/2019	17	ORDER ON APPLICATION OF NON-RESIDENT ATTORNEY TO APPEAR IN A SPECIFIC CASE PRO HAC VICE by Judge Josephine L. Staton: granting 10 Non-Resident Attorney Brian K Kelsey APPLICATION to Appear Pro Hac Vice on behalf of Plaintiffs Jenee Misraje, Cara OCallaghan, designating Mark W Bucher as local counsel. (jp) (Entered: 04/02/2019)
04/02/2019	18 R	21 DAY Summons Issued re Complaint (Attorney Civil Case Opening) 1 R as to Defendant Xavier Becerra. (jp) (Entered: 04/02/2019)
04/02/2019	19	21 DAY Summons Issued re Complaint (Attorney Civil Case Opening) 1 R as to Defendant Regents of The University of California. (jp) (Entered: 04/02/2019)
04/02/2019	20	21 DAY Summons Issued re Complaint (Attorney Civil Case Opening) 1 R as to Defendant Teamsters Local 2010. (jp) (Entered: 04/02/2019)
04/08/2019	21	Notice of Appearance or Withdrawal of Counsel: for attorney Lara Haddad counsel for Defendant Xavier Becerra. Adding Lara Haddad as counsel of record for Xavier Becerra, Attorney General of California for the reason indicated in the G-123 Notice. Filed by Defendant Xavier Becerra, Attorney General of California. (Attorney Lara Haddad added to party Xavier Becerra(pty:dft))(Haddad, Lara) (Entered: 04/08/2019)

04/11/2019	22 R	PROOF OF SERVICE Executed by Plaintiff Cara OCallaghan, Jenee Misraje, upon Defendant Xavier Becerra served on 4/3/2019, answer due 4/24/2019. Service of the Summons and Complaint were executed upon Xavier Becerra, Official Capacity as Attorney General of California in compliance with statute not specified by personal service.Original Summons NOT returned. (Bucher, Mark) (Entered: 04/11/2019)
04/15/2019	23	PROOF OF SERVICE Executed by Plaintiff Cara OCallaghan, Jenee Misraje, upon Defendant Regents of The University of California served on 4/4/2019, answer due 4/25/2019. Service of the Summons and Complaint were executed upon Regents of the University of California in compliance with statute not specified by personal service.Original Summons NOT returned. (Bucher, Mark) (Entered: 04/15/2019)
04/15/2019	24	NOTICE AND ACKNOWLEDGMENT OF SERVICE of Summons and Complaint returned Executed filed by Plaintiff Cara OCallaghan, Jenee Misraje, upon Defendant Teamsters Local 2010 acknowledgment sent by Plaintiff on 4/4/2019, answer due 4/25/2019. Acknowledgment of Service signed by Nicole Cornejo, Administrative Assistant. (Bucher, Mark) (Entered: 04/15/2019)
04/22/2019	25	STIPULATION Extending Time to Answer the complaint as to Xavier Becerra answer now due 5/24/2019, re Complaint (Attorney Civil Case Opening) 1 R filed by defendant Xavier Becerra.(Haddad, Lara) (Entered: 04/22/2019)
04/23/2019	26	MOTION for Preliminary Injunction filed by Plaintiffs Jenee Misraje, Cara OCallaghan. Motion hearing set for 6/7/2019 at 10:30 AM before Judge Josephine L. Staton. (Attachments: # 1 Memorandum ISO Motion for PI, # 2 Proposed Order ISO Motion for PI)(Bucher, Mark). Modified on 4/25/2019 (jp). (Entered: 04/23/2019)
04/25/2019	27 R	STIPULATION Extending Time to Answer the complaint as to Regents of The University of California answer now due 5/24/2019, re Complaint (Attorney Civil Case Opening) 1 R filed by Defendant Regents of The University of California.(Attorney Rhonda Stewart Goldstein added to party Regents of The University of California(pty:dft))(Goldstein, Rhonda) (Entered: 04/25/2019)
04/30/2019	28 R	ORDER TO REASSIGN CASE due to self-recusal pursuant to General Order 19-03 by Judge Josephine L. Staton. Case transferred from Judge Josephine L. Staton to the calendar of Judge James V. Selna for all further proceedings. Case number now reads as 2:19-cv-02289-JVS (DFMx). (dv) (Entered: 04/30/2019)
05/01/2019	29	INITIAL ORDER FOLLOWING FILING OF COMPLAINT ASSIGNED TO JUDGE SELNA (lb) (Entered: 05/01/2019)
05/01/2019	30	[IN CHAMBERS] SCHEDULING NOTICE: As this case was transferred to Judge Selna, on the Court's own motion, the Motion for Preliminary Injunction 26 previously scheduled for 6/7/2019 at 10:30 am before Judge Staton is continued to comply with Judge Selna's law and motion calendar to Monday, 6/10/2019 at 1:30 pm before Judge James V. Selna. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (lb) TEXT ONLY ENTRY (Entered: 05/01/2019)
05/01/2019	31	Order Setting Rule 26(f) Scheduling Conference set for 7/8/2019 at 11:30 am before Judge James V. Selna. Counsel shall file the Joint Rule 26 Meeting Report, with the completed Exhibit A, by 7/1/2019. (lb) (Entered: 05/01/2019)
05/02/2019	32	Notice of Appearance or Withdrawal of Counsel: for attorney Maureen C Onyeagbako counsel for Defendant Xavier Becerra. Adding Maureen C. Onyeagbako as counsel of record for Xavier Becerra for the reason indicated in the G-123 Notice. Filed by Defendant Xavier Becerra. (Attorney Maureen C Onyeagbako added to party Xavier Becerra(pty:dft))(Onyeagbako, Maureen) (Entered: 05/02/2019)

05/02/2019	33	Notice of Appearance or Withdrawal of Counsel: for attorney Maureen C Onyeagbako counsel for Defendant Xavier Becerra. Lara Haddad is no longer counsel of record for the aforementioned party in this case for the reason indicated in the G-123 Notice. Filed by Defendant Xavier Becerra. (Onyeagbako, Maureen) (Entered: 05/02/2019)
05/17/2019	34	MEMORANDUM in Opposition to for Preliminary Injunction. Motion 26 filed by Defendant Teamsters Local 2010. (Attachments: # 1 R Declaration of Jason Rabinowitz, # 2 R Declaration of Nicole Cornejo, # 3 R Declaration of Regina Naterman, # 4 R Declaration of John Varga)(Attorney Andrew H Baker added to party Teamsters Local 2010(pty:dft))(Baker, Andrew) (Entered: 05/17/2019)
05/17/2019	35	NOTICE of Related Case(s) filed by Defendant Teamsters Local 2010. Related Case(s): 2:18-cv-08999 and 2:18-cv-09531-JLS-DFM (Baker, Andrew) (Entered: 05/17/2019)
05/17/2019	36	CERTIFICATE of Interested Parties filed by Defendant Teamsters Local 2010, identifying None. (Baker, Andrew) (Entered: 05/17/2019)
05/20/2019	37	Notice of Appearance or Withdrawal of Counsel: for attorney Gilbert J Tsai counsel for Defendant Regents of The University of California. Adding Gilbert J. Tsai as counsel of record for The Regents of the University of California for the reason indicated in the G-123 Notice. Filed by Defendant The Regents of the University of California. (Attorney Gilbert J Tsai added to party Regents of The University of California(pty:dft))(Tsai, Gilbert) (Entered: 05/20/2019)
05/20/2019	38	MEMORANDUM in Opposition to for Preliminary Injunction. Motion 26 filed by Defendant Regents of The University of California. (Tsai, Gilbert) (Entered: 05/20/2019)
05/20/2019	39	Notice of Appearance or Withdrawal of Counsel: for attorney Gilbert J Tsai counsel for Defendant Regents of The University of California. Charles F. Robinson is no longer counsel of record for the aforementioned party in this case for the reason indicated in the G-123 Notice. Filed by Defendant The Regents of the University of California. (Tsai, Gilbert) (Entered: 05/20/2019)
05/20/2019	40	Notice of Appearance or Withdrawal of Counsel: for attorney Gilbert J Tsai counsel for Defendant Regents of The University of California. Margaret L. Wu is no longer counsel of record for the aforementioned party in this case for the reason indicated in the G-123 Notice. Filed by Defendant The Regents of the University of California. (Tsai, Gilbert) (Entered: 05/20/2019)
05/20/2019	41	Defendant Xavier Becerra's Opposition to Plaintiffs' Motion for Preliminary Injunction Opposition re: for Preliminary Injunction. Motion 26 filed by Defendant Xavier Becerra. (Attachments: # 1 R Exhibit, # 2 R Certificate of Service)(Onyeagbako, Maureen) (Entered: 05/20/2019)
05/21/2019	42	Notice of Appearance or Withdrawal of Counsel: for attorney Dorothy Sheng-Ing Liu counsel for Defendant Regents of The University of California. Adding Dorothy S. Liu as counsel of record for The Regents of the University of California for the reason indicated in the G-123 Notice. Filed by Defendant The Regents of the University of California. (Attorney Dorothy Sheng-Ing Liu added to party Regents of The University of California(pty:dft))(Liu, Dorothy) (Entered: 05/21/2019)
05/24/2019	43	NOTICE OF MOTION AND MOTION to Dismiss Partial Dismissal of Complaint filed by Defendant Teamsters Local 2010. Motion set for hearing on 9/9/2019 at 01:30 PM before Judge James V. Selna. (Attachments: # 1 R Memorandum of Points and Authorities, # 2 Proposed Order) (Baker, Andrew) (Entered: 05/24/2019)
05/24/2019	44 R	NOTICE OF MOTION AND MOTION to Dismiss Defendant Regents of The

		University of California filed by Defendant Regents of The University of California. Motion set for hearing on 9/9/2019 at 01:30 PM before Judge James V. Selna. (Attachments: # 1 Memorandum of Points and Authorities, # 2 Proposed Order) (Tsai, Gilbert) (Entered: 05/24/2019)
05/24/2019	45	NOTICE OF MOTION AND MOTION to Dismiss Case *; MEMORANDUM OF POINTS AND AUTHORITIES* filed by Defendant Xavier Becerra. Motion set for hearing on 9/9/2019 at 01:30 PM before Judge James V. Selna. (Attachments: # 1 Exhibit A, # 2 Proposed Order) (Onyeagbako, Maureen) (Entered: 05/24/2019)
05/29/2019	46	REPLY IN SUPPORT for Preliminary Injunction. Motion 26 filed by Plaintiffs Jenee Misraje, Cara OCallaghan. (Kelsey, Brian) (Entered: 05/29/2019)
05/29/2019	47	NOTICE OF MOTION AND MOTION for Extension of Time to File Reply in support of Plaintiffs' motion for preliminary injunction filed by Plaintiffs Jenee Misraje, Cara OCallaghan. Motion set for hearing on 6/10/2019 at 01:30 PM before Judge James V. Selna. (Attachments: # 1 Proposed Order on motion to extend time to file reply in support of Plaintiffs' motion for preliminary injunction) (Kelsey, Brian) (Entered: 05/29/2019)
05/30/2019	48	ORDER ON MOTION TO EXTEND TIME TO FILE REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION 47 by Judge James V. Selna: Plaintiffs are granted an extension until May 29, 2019 to file their Reply in Support of Plaintiffs' Motion for Preliminary Injunction. (es) (Entered: 05/30/2019)
06/06/2019	49	STIPULATION to Continue Case Management Conference from July 8, 2019 to September 9, 2019 filed by Defendant Teamsters Local 2010. (Attachments: # 1 Proposed Order)(Baker, Andrew) (Entered: 06/06/2019)
06/07/2019	50	ORDER FOR CONTINUANCE OF CASE MANAGEMENT CONFERENCE [Local Rule 40-1] 49 by Judge James V. Selna. The Case Management Conference previously scheduled for July 8, 2019 at 11:30 a.m. is hereby continued to September 9, 2019 at 1:30 p.m., to be heard in conjunction with the hearing on Defendants' motions for dismissal and partial dismissal. IT IS SO ORDERED. (lom) (Entered: 06/07/2019)
06/10/2019	51	MINUTES (IN CHAMBERS) Order Regarding Motion for Preliminary Injunction by Judge James V. Selna: The Court, having been informed by the parties in this action that they submit on the Courts tentative ruling previously issued, hereby rules in accordance with the tentative ruling as follows: For the following reasons the Court denies the motion for a preliminary injunction. (See document for further details) (es) Modified on 6/10/2019 (NEF regenerated) (es). (Entered: 06/10/2019)
06/14/2019	52	FIRST AMENDED COMPLAINT against Defendants All Plaintiffs amending Complaint (Attorney Civil Case Opening) 1 , filed by Plaintiffs Cara OCallaghan, Jenee Misraje(Kelsey, Brian) (Entered: 06/14/2019)
06/26/2019	53	NOTICE OF MOTION AND MOTION to Dismiss First Amended Complaint filed by Defendant Teamsters Local 2010. Motion set for hearing on 9/9/2019 at 01:30 PM before Judge James V. Selna. (Attachments: # 1 Memorandum of Points and Authorities, # 2 Proposed Order) (Baker, Andrew) (Entered: 06/26/2019)
06/28/2019	54	NOTICE OF MOTION AND MOTION to Dismiss Case *; Memorandum of Points and Authorities* filed by Defendant Xavier Becerra. Motion set for hearing on 9/9/2019 at 01:30 PM before Judge James V. Selna. (Attachments: # 1 Exhibit, # 2 Proposed Order) (Onyeagbako, Maureen) (Entered: 06/28/2019)
08/12/2019	55	NOTICE OF MOTION AND MOTION to Dismiss PLAINTIFFS FIRST AMENDED COMPLAINT filed by Defendant Janet Napolitano, Regents of The University of

		California. Motion set for hearing on 9/9/2019 at 01:30 PM before Judge James V. Selna. (Attachments: # 1 Memorandum, # 2 Proposed Order) (Attorney Winston K Hu added to party Janet Napolitano(pty:dft), Attorney Winston K Hu added to party Regents of The University of California(pty:dft)) (Hu, Winston) (Entered: 08/12/2019)
08/12/2019	56	NOTICE OF ERRATA filed by Defendant Janet Napolitano, Regents of The University of California. (Hu, Winston) (Entered: 08/12/2019)
08/19/2019	57	OPPOSITION opposing re: NOTICE OF MOTION AND MOTION to Dismiss First Amended Complaint 53 filed by Plaintiffs Jenee Misraje, Cara OCallaghan. (Stephens, Reilly) (Entered: 08/19/2019)
08/19/2019	58	OPPOSITION opposing re: NOTICE OF MOTION AND MOTION to Dismiss PLAINTIFFS FIRST AMENDED COMPLAINT 55 filed by Plaintiffs Jenee Misraje, Cara OCallaghan. (Stephens, Reilly) (Entered: 08/19/2019)
08/19/2019	59	OPPOSITION opposing re: NOTICE OF MOTION AND MOTION to Dismiss Case *; Memorandum of Points and Authorities* 54 filed by Plaintiffs Jenee Misraje, Cara OCallaghan. (Stephens, Reilly) (Entered: 08/19/2019)
08/26/2019	60	REPLY in Support NOTICE OF MOTION AND MOTION to Dismiss First Amended Complaint 53 filed by Defendant Teamsters Local 2010. (Baker, Andrew) (Entered: 08/26/2019)
08/26/2019	61	REPLY support NOTICE OF MOTION AND MOTION to Dismiss Case *; Memorandum of Points and Authorities* 54 filed by Defendant Xavier Becerra. (Onyeagbako, Maureen) (Entered: 08/26/2019)
08/26/2019	62	REPLY in Support NOTICE OF MOTION AND MOTION to Dismiss PLAINTIFFS FIRST AMENDED COMPLAINT 55 filed by Defendant Janet Napolitano. (Attorney Gilbert J Tsai added to party Janet Napolitano(pty:dft))(Tsai, Gilbert) (Entered: 08/26/2019)
08/30/2019	63	MINUTE ORDER IN CHAMBERS by Judge James V. Selna: Regarding Request for Additional Documentation. The Court requests that Plaintiffs file a supplemental document of a "redline" version of the FAC showing all additions and deletions of material by close of business on Wednesday, September 4, 2019. re: Amended Complaint/Petition 52 . (twdb) (Entered: 08/30/2019)
08/30/2019	64	JOINT REPORT Rule 26(f) Discovery Plan ; estimated length of trial 3, filed by Plaintiffs Jenee Misraje, Cara OCallaghan.. (Attachments: # 1 Exhibit A)(Stephens, Reilly) (Entered: 08/30/2019)
09/04/2019	65	[IN CHAMBERS] SCHEDULING NOTICE: On the Court's own motion, the Motions to Dismiss 43 , 44 , 45 , 53 , 54 , 55 previously set for 9/9/2019 at 1:30 pm are continued to 9/30/2019 at 01:30 PM before Judge James V. Selna. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (lb) TEXT ONLY ENTRY (Entered: 09/04/2019)
09/04/2019	66	[IN CHAMBERS] SCHEDULING NOTICE: On the Court's own motion, the Scheduling Conference previously set for 9/9/2019 at 1:30 pm is continued to 9/30/2019 at 01:30 PM before Judge James V. Selna. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (lb) TEXT ONLY ENTRY (Entered: 09/04/2019)
09/04/2019	67	FIRST AMENDED COMPLAINT against Defendant All Defendants amending Amended Complaint/Petition 52 , filed by Plaintiffs Cara OCallaghan, Jenee Misraje(Bucher, Mark) (Entered: 09/04/2019)

09/17/2019	68	NOTICE of Decision: Order Granting Motion to Dismiss in two similar cases filed by Defendant Teamsters Local 2010. (Baker, Andrew) (Entered: 09/17/2019)
09/30/2019	69	MINUTES [IN CHAMBERS] Order Regarding Motions to Dismiss by Judge James V. Selna: The Court, having been informed by the parties in this action that they submit on the Court's tentative ruling previously issued, hereby rules in accordance with the tentative ruling as follows: For the following reasons the Court GRANTS Defendants' motions. (See document for further details.) (MD JS-6. Case Terminated) (es) (Entered: 09/30/2019)
10/03/2019	70	STIPULATION for Judgment as to Dismissal filed by Defendant Teamsters Local 2010. (Attachments: # 1 Proposed Order [Proposed] Judgment)(Baker, Andrew) (Entered: 10/03/2019)
10/04/2019	71 R	JUDGMENT by Judge James V. Selna, this Court issued an order granting Defendants' motions to dismiss. The parties agree that the order granting the motions to dismiss disposes of the case in its entirety in favor of Defendants and against Plaintiffs. IT IS ADJUDGED that this entire action is dismissed. 69 (es) (Entered: 10/04/2019)
11/01/2019	72	NOTICE OF APPEAL to the 9th Circuit Court of Appeals filed by Plaintiffs Jenee Misraje, Cara OCallaghan. Appeal of Judgment, 71 R . (Appeal Fee - 505.00 Previously Paid on 11/01/2019, Receipt No. 26L8BVE6.) (Bucher, Mark) (Entered: 11/01/2019)
11/01/2019	73	REPRESENTATION STATEMENT re Notice of Appeal to 9th Circuit Court of Appeals 72 . (Bucher, Mark) (Entered: 11/01/2019)
11/01/2019	74	NOTIFICATION from Ninth Circuit Court of Appeals of case number assigned and briefing schedule. Appeal Docket No. 19-56271 assigned to Notice of Appeal to 9th Circuit Court of Appeals 72 as to plaintiff Jenee Misraje, Cara OCallaghan. (es) (Entered: 11/01/2019)

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CERTIFICATE OF SERVICE

I hereby certify that on December 27, 2019, I electronically filed the forgoing Excerpts of Record with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/Reilly Stephens
Reilly Stephens
Counsel for Appellants