UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

Kenneth Alvarez, an Individual Provider in Washington,

Plaintiff,

v.

GOVERNOR JAY INSLEE, in His Official Capacity as Governor of the State of Washington; KEVIN W. QUIGLEY in His Official Capacity as Director of the Washington Department of Social and Health Services ("DSHS"), SERVICE EMPLOYEES INTERNATIONAL UNION HEALTHCARE 775NW ("SEIU 775"), a labor organization; SEIU Healthcare NW Training Partnership ("Partnership"),

Defendants.

NO. 3:16-cv-05111-RJB

[CORRECTED] PLAINTIFF'S RESPONSE TO DEFENDANT PARTNERSHIP'S MOTION TO DISMISS

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I. INTRODUCTION & REQUESTED RELIEF

Plaintiff Kenneth Alvarez respectfully requests that this Court deny Defendant SEIU Healthcare NW Training Partnership's Motion to Dismiss (the "Partnership"). The Partnership is a necessary party pursuant to Federal Rule of Civil Procedure 19 and should remain in this case to facilitate complete and effective relief with respect to SEIU meetings during Partnership-run training.

II. FACTS

The Partnership is the sole and exclusive provider of state-required, state-funded training for all individual providers ("IPs") in the State of Washington. *See* Compl. ¶¶ 27, 3 (citing RCW 74.39A.360), fn. 3, fn. 4, Dkt. No. 1. The 2015-2017 CBA between the State of Washington and SEIU 775 ("CBA")—cited extensively in the Complaint, including provisions explicitly referencing the Partnership—make this clear. All IPs must attend training provided by the Partnership—no other entity prepares, plans, schedules, facilitates, manages, and runs the basic and continuing education training classes required for all IPs. *See* Compl. ¶¶ 27, 3, Dkt. No. 1 (citing RCW 74.39A.360). Defendants State and SEIU have admitted as much in their Answers. *See* State Defendants' Answer, ¶ 27, Dkt. No. 15 ("State Defendants admit that IPs are required to meet certain training requirements set forth in statute, rule, policy, or applicable CBA. State Defendants admit that SEIU 775 Training Partnership currently provides the mandatory training."); Answer of Defendant SEIU Healthcare 775 NW, ¶ 27, Dkt. No. 17 ("SEIU 775 admits that some IPs must attend basic training provided by the SEIU Healthcare NW Training Partnership."). Such training—again, provided by the Partnership—is required by the State as a condition of employment. *See* Compl. ¶¶ 27, 81, Dkt. No. 1. Mr. Alvarez alleges that forced meetings with SEIU, which occur during basic training and continuing education classes prepared,

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planned, scheduled, facilitated, managed and run by the Partnership, violate his First Amendment rights against compelled speech and receipt of speech. *See* Compl. ¶¶ 26- 32, 78-86, Dkt. No. 1. The Partnership's inextricable entwinement with state-mandated training, as clearly stated in the Complaint, instrumentally affects the heart of the relief Mr. Alvarez seeks.

Plaintiff filed a complaint for the above-referenced case on February 11, 2016. Dkt. No. 1. On April 7, 2016, Defendants Inslee and Lashway (collectively, "State") and Defendant SEIU 775 responded by filing Answers. *See* Dkt. No. 15, 17. Defendant Partnership also responded on April 7 by filing a Motion to Dismiss. *See* Dkt. No. 16. Plaintiff responds herewith.

III. ARGUMENT

The Partnership is the sole and exclusive trainer of IPs in Washington State, where it plans, prepares, schedules, facilitates and runs basic training and continuing education courses required for all IPs. The meetings at issue in this case—meetings with SEIU during state-mandated, state-funded training—occur during training run by the Partnership. Yet the Partnership claims that this Court should grant its Motion to Dismiss because Mr. Alvarez did not state a claim against it nor seek relief from it. *See* Partnership's Mot. To Dismiss at 2, Dkt. No. 18-1 ("With no claims against it, and no relief sought from it, the Training Partnership must be released from this litigation.") The Partnership is wrong. Mr. Alvarez sufficiently pled facts showing that the Partnership is a necessary party, *and the Partnership has not claimed otherwise*. Pursuant to Federal Rule of Civil Procedure 19 and related cases, plaintiffs need not state claims against nor seek relief from necessary parties. "Joinder is necessary for the sole purpose of effective complete relief between the parties by ensuring that both [the defendant] and the [necessary party] are bound by any judgment upholding or striking down the challenged lease provision." *E.E.O.C. v. Peabody*

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Western Coal. Co., 400 F.3d 774, 783 (9th Cir. 2005) (internal quotations omitted). The Court should deny the Partnership's Motion to Dismiss because the Partnership is a necessary party.

1. The Partnership is a necessary party.

Mr. Alvarez properly structured his Complaint to show that the Partnership is a necessary party. "Pleadings are construed liberally in favor of the pleader, and in challenging the sufficiency of a complaint, all of its material allegations are taken as true." *Kelley Blue Book v. Car-Smarts, Inc.*, 802 F. Supp. 287, 290 (C.D. Cal. 1992*). See also Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Chipanno v. Champion Intern. Corp*., 702 F.2d 827, 831 (9th Cir. 1983) ("Plaintiffs were entitled to have the allegations of their complaint read broadly and liberally, and to have them taken as true."). Necessary parties must be joined to a case. *See Eldredge v. Carpenters 46 Northern California Counties Joint Apprenticeship and Training Committee*, 440 F. Supp. 506, 518 (E.D. Cal. 1977) ("If either of the [FRCP 19(a)(1) and 19(a)(2)] conditions [are] shown, Rule 19(a) requires that the absent parties be joined if to do so will not deprive the Court of jurisdiction over the subject matter.").

A necessary party is "properly named as a defendant for the *sole purpose* of facilitating the enforcement of any orders that might be made by the court" with respect to the claims at issue. *E.E.O.C.*, 400 F.3d at 781 (emphasis in original) (internal quotations omitted) (citing *Beverly Hills Federal Savings and Loan Association v. Webb*, 406 F.2d 1275, 1279-80 (9th Cir. 1969)). It is well established that "a plaintiff's inability to state a direct cause of action against an absentee does not prevent the absentee's joinder under Rule 19." *E.E.O.C.*, 400 F.3d at 781. "Rule 19(b) nevertheless made it clear that a person may be joined as a party for the sole purpose of making it possible to accord complete relief between those who are already parties, even though no present party asserts a grievance against such person." *Beverly Hills Federal Savings and Loan Association v. Webb*,

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406 F.2d 1275, 1279 (9th Cir. 1969). *See also International Brotherhood of Teamsters v. United States*, 431 U.S. 324, 356, n. 43 (1977), *overruling on other grounds recognized by U.S. v. State of N.C.*, 914 F. Supp. 1257, 1264 (E.D. N.C. 1996) (stating that a labor union, which was not liable for any discrimination at issue, "will properly remain in this litigation so that full relief may be awarded the victims of the employer's post-Act discrimination."); *Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385, 400 & N. 14 (1982) (reiterating the Supreme Court's holding in *Teamsters*, 431 U.S. at 356, n. 43); *National Wildlife Federation v. Espy*, 45 F.3d 1337, 1344-45 (9th Cir. 1995) (holding that private parties could be named as defendants along with federal agencies in a suit brought under federal statutes under Rule 19, even though none of the federal statutes authorized causes of action against the private parties); *Eldredge v. Carpenters 46 Northern California Counties Joint Apprenticeship and Training Committee*, 440 F. Supp. 506, 518 (N.D. Cal. 1977). Indeed, the court *Eldredge* explicitly addressed the issue presently before this Court:

> Plaintiff's initial contention is that when no relief is sought against absent parties, those parties cannot be regarded as 'indispensable.' This argument is wholly without merit. By definition, parties to be joined under Rule 19 are those against whom no relief has formally been sought but who are so situated as a practical matter as to impair either the effectiveness of relief or their own present parties' ability to protect their interests.

Eldredge, 440 F. at 518.

"Necessary" is broadly interpreted for the purposes of FRCP 19. Although "[the Ninth Circuit] and other courts use the term 'necessary' to describe persons to be joined if feasible…if understood in its ordinary sense, 'necessary' is too strong a word[.]" *E.E.O.C.*, 400 F.3d at 779 (internal citations and brackets omitted). "In fact, Rule 19(a) defines the persons whose joinder in the action is *desirable* in the interests of adjudication." *Id.* (emphasis in original) (internal quotations omitted). "Absentees whom it is desirable to join under Rule 19(a) are persons having

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an interest in the controversy, and who ought to be made parties, in order that the court may act." *E.E.O.C.*, 400 4.3d at 779 (internal quotations omitted) (quoting *Shields v. Barrow*, 58 U.S. (17 How.) 130, 139 (1854)).

Ultimately, "Rule 19(a) is concerned with consummate rather than partial or hollow relief as to those already parties, and with precluding multiple lawsuits on the same cause of action." *E.E.O.C.*, 400 F.3d at 780 (internal quotations omitted) (citing *Northrop Corp. v. McDonnell Douglas Corp.*, 705 F.2d 1030, 1043 (9th Cir. 1983)). The general policy of FRCP 19 is geared toward entertaining the broadest possible scope of action consistent with fairness to the parties. *See United Mine Workers of America v. Gibbs*, 383 U.S. 715, 724 (1966) ("Under the Rules, the impulse is toward entertaining the broadest possible scope of action consistent with fairness to the parties; ***joinder of claims, parties and remedies is strongly encouraged***.") (emphasis added); *Mayer Paving & Asphalt Co. v. General Dynamics Corp.*, 486 F.2d 763, 717 (7th Cir. 1973), *certiorari denied* 414 U.S. 1146, *rehearing denied* 416 U.S. 979; *Dintino v. Dorsey*, 91 F.R.D. 280, 282 (E.D. Pa. 1981) ("[FRCP 19] should be construed broadly in order to 'promote the full adjudication of disputes with minimum of litigation effort.'") (quoting 7 C. Wright & A. Miller, Federal Practice & Procedure: Civil s 1602, at 18 (1972)). Courts should seek to protect the intended relief to avoid "paper decrees which neither adjudicate, nor, in the end, protect rights." *See Eldredge*, 440 F. Supp. at 519. Finally, "district court[s] ought not to dismiss [a party] from the action unless and until it determines, in the exercise of a sound discretion, that the presence of [a party] as party defendant is not necessary in order to accord complete relief between the other parties." *Beverly Hills Federal Savings and Loan Association v. Webb*, 406 F.2d 1275, 1280 (9th Cir. 1969).

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In *Eldredge*, the court concluded that the employer and the union were necessary parties in a suit that plaintiffs filed against an apprentice training entity ("JATC") for sex discrimination in its referral program. *See Eldredge*, 440 F. Supp. at 510-11. In determining that the employer was a necessary party, the court noted that the employer was not obligated to hire beginning apprentices from JATC by either the governing collective bargaining agreement or by JATC's trust agreement. *Id*. at 519. It also noted that employers could refuse to hire women referred by JATC without violating the terms of a decree ordering the JATC to adopt a revised referral system. *Id*. Thus, the Court reasoned that the employer had numerous ways to defeat the practical relief sought. *Id*. at 519-20. It concluded that "plainly here…the Court should decline the invitation to grant 'rather ineffective symptomatic relief, leaving the root…to continue," and that the employer was a necessary party. *Id*. at 522. It also held that the union was a necessary party because JATC could be placed in the untenable position of being forced to simultaneously comply with a court order which might impair its contractual obligation with the union. *Id*. at 524.

Notably, the Court explicitly rejected the argument that relief could be achieved even with the employer's and union's absence:

> In a similar vein, plaintiffs contend that complete relief can be accorded by an order against the JATC alone, since pursuant to the trust fund agreement it is solely responsible for establishing and maintaining apprenticeship programs, since no particular procedure for selecting apprentices is enshrined in any agreement to which absent parties are signatories, and since it alone selected and can abolish the "hunting license" system, subject to state approval. ***This argument misconceives the nature of the issues under Rule 19(a)(1).*** Although the legal position of the present defendant and its theoretical ability to comply with an order are relevant, ***they may be outweighed by a finding that absent parties may as a practical matter prevent the full realization of the intended relief. The Court must guard against the formulation of "'paper' decrees which neither adjudicate nor, in the end, protect rights."*** *Schutten v. Shell Oil Co.*, 421 F.2d 869, 874 (5 Cir. 1970). Thus the contractual rights and duties relied on by plaintiffs are only a starting point for a full

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> consideration of the actual role of each party in the formulation of the practices complained of and the stake each has in maintaining them. *See LeBeau v. Libby-Owens-Ford Co.*, 484 F.2d 798, 800 (7 Cir. 1973).

Eldredge, 440 F. Supp. at 519 (emphasis added).

In *E.E.O.C.*, the Ninth Circuit concluded that the Navajo Nation was a necessary party in a suit that Equal Employment Opportunity Commission ("E.E.O.C.") filed against a coal company. *E.E.O.C.*, 400 F.3d at 780. Because the Nation was a signatory to the challenged lease provisions, "declaratory and injunctive relief could be incomplete unless the Nation is bound by res judicata." *Id*. at 780. The Court reasoned that "[i]f the EEOC is victorious in this suit but the Nation has not been joined, the Nation could possibly initiate further action to enforce the employment preference against Peabody, even though that preference would have been held illegal in this litigation." *Id*. at 780. The Court further reasoned that "[b]y similar logic, we have elsewhere found that tribes are necessary parties to actions that might have the result of directly undermining authority they would otherwise exercise." *Id*.

In the instant case, *the Partnership has failed to cite any law or fact supporting its presumed (yet unstated) contention that it is not a necessary party*. Regardless, Mr. Alvarez alleged sufficient facts to show that the Partnership is a necessary party that must be joined pursuant to FRCP 19. Mr. Alvarez stated that the Partnership provides basic training to IPs. Compl. ¶ 27, Dkt. No. 1. He pointed to—and extensively quoted—provisions of 2015-2017 CBA which state that the Partnership runs basic training which makes the Partnership a third-party beneficiary.[1] He cited Washington statutory law which states that the Partnership is the sole entity allowed to train all

[1] *See GECCMC 2005-C1 Plummer Street Office Ltd. Partnership v. JPMorgan Chase Bank, Nat. Ass'n*, 617 F.3d 1027, 1033 (9th Cir. 2012) ("To prove intended beneficiary status, the third party must show that the contract reflects the express or implied intention of the parties to the contract to benefit the third party."); *Lonsdale v. Chesterfield*, 99 Wn.2d 353, 361 (1983) ("The creation of a third-party beneficiary contract requires that the parties intend that the promisor assume a direct obligation to the intended beneficiary at the time they enter into the contract.").

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IPs in Washington state. Compl. ¶ 3 (citing RCW.74.39A.360), Dkt. No. 1. He cited an IP training checklist *created and provided by the Partnership*. Compl. fn. 4, 7, Dkt. No. 1. Mr. Alvarez could not have alleged more clearly that the Partnership trains IPs; a fact to which even the State and SEIU agree. Mr. Alvarez also alleged that the training—again, run by the Partnership and required by the State—is the locale where the unconstitutional meetings with SEIU 775 occur. Compl. ¶¶ 21-32; 77-86, Dkt. No. 1. However, even if Mr. Alvarez had omitted *any* reference to the Partnership at all, or even failed to name the Partnership as a defendant, the Partnership still must be joined as a necessary party. The status of a necessary party does not rise or fall on the plaintiff's pleading, but rather on the context of the particular case and the circumstances surrounding the alleged necessity of the party. *See E.E.O.C.*, 400 F.3d at 778 (where the *defendant* moved for dismissal under FRCP 12(b)(7) for failure to join a necessary party); *CP Nat. Corp. v. Bonneville Power Admin.*, 928 F.2d 905, 911-12 (9th Cir. 1991) ("The absence of "necessary" parties may be raised by reviewing courts sua sponte. The issue can be properly raised at any stage in the proceeding. An entity's status as a necessary party is not judged by a prescribed formula, but instead can only be determined in the context of particular litigation.") (internal citations omitted).

As the sole and exclusive entity that provides training to IPs in Washington, any ruling that affects trainings indisputably provided by the Partnership—pursuant to CBA, statutory law, the Defendants' admissions, and the Partnership's own promotional materials—*necessarily affects and involves the Partnership*. Just as the necessary parties in *Eldredge* and *E.E.O.C.*, the Partnership's unique position as the facilitator of the unconstitutional meetings which occur at the trainings it runs, it has the ability to defeat any relief ordered in this action in a number of ways.

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First, as a third-party beneficiary to the CBA,[2] the Partnership "could possibly initiate further action to enforce" its training preferences against the State or SEIU 775, "even though that preference would have been held illegal in this litigation." *See E.E.O.C.*, 400 F.3d at 780. The CBA devotes an entire section to delegating the State's training responsibilities to the Partnership, and describes the manner and amount in which the State will regulate, fund, and monitor the Partnership's training activities. *See* Art. 15 of the CBA, Appendix A at 27-31, Dkt. No. 18-2. One of the obligations agreed to by the parties in the CBA is that SEIU 775 will provide a union representative during Partnership-run trainings. *See* Compl. at 7, Dkt. No. 1 (citing Art. 15.13 of the CBA). If SEIU 775 may no longer provide its representatives pending the outcome of this case, the Partnership of its own accord may still require SEIU 775 to provide representatives for mandatory meetings with IPs. This places SEIU 775 "between the proverbial rock and a hard place—comply with [a court order] prohibiting [the illegal activity at issue] or comply with the lease requiring it." *E.E.O.C.*, 400 F.3d at 780. *See also Eldredge*, 440 F. Supp. at 524 ("The JATC would then be placed in the untenable position of choosing between two mutually exclusive obligations: to assure the indenturing of women pursuant to court order, and to maintain the program as required by contract."). The Partnership should be joined to avoid creating a tension for the State and SEIU to either comply with a court order or acquiesce to the Partnership by way of its in monitoring, approving, and providing SEIU representatives for meetings previously deemed unconstitutional. The unique relationship between the Partnership, the Union, and the

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[2] *See supra* n. 1. The Partnership is clearly a third-party beneficiary to the CBA, and thus can seek to enforce the promised benefits in the CBA. *See Lonsdale v. Chesterfield*, 99 Wn.2d 355, 361 (1983). The CBA devotes an entire section to training provided by the Partnership; a section that names the Partnership, outlines the Partnership's benefits and responsibilities for training, and describes the funding the State will give to the Partnership. The CBA's text amply demonstrates a clear intent on the part of the State and SEIU 775 to benefit the Partnership. *See GECCMC 2005-C1 Plummer Street Office Ltd. Partnership v. JPMorgan Chase Bank, Nat. Ass'n*, 617 F.3d 1027, 1033 (9th Cir. 2012); *Lonsdale v. Chesterfield*, 99 Wn.2d 353, 361 (1983).

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State in this case makes it logical that the Partnership be joined so that Plaintiff will be afforded the opportunity to seek full and total relief.

Second, even if the Partnership does not initiate further action to enforce its training preferences against the State or the Union, the Partnership's absence creates the unsavory possibility that it will continue to compel meetings between SEIU and IPs during state-required training. One of the chief purposes behind FRCP 19 is to avoid "partial or hollow relief as to those already parties, and with precluding multiple lawsuits on the same cause of action." *E.E.O.C.*, 400 F.3d at 780. Mr. Alvarez's relief would be entirely hollow and wholly incomplete if the CBA provisions describing the meetings were to be held unconstitutional, yet the Partnership continued to force such meetings in state-mandated training. Mr. Alvarez and similarly-situated IPs would effectively vindicate their constitutional rights in court, only to be forced to surrender their rights once again when completing government-required, government-funded Partnership training.

Third, such circumvention of this court's possible ruling would not only be highly improper, but it would also breach any fiduciary duties the Partnership may claim to possess to IPs by forcing IPs to attend meetings in state-required training that in essence were declared by a court to be unconstitutional. Such conduct would give rise to further litigation on essentially the same issues—an outcome FRCP 19 expressly seeks to avoid. *See CP Nat. Corp.*, 928 F.2d at 912 ("We think it plain that BPA is a necessary party…excluding BPA from this lawsuit would merely result in unnecessary and repetitive litigation."); *Schutten v. Shell Oil Co.*, 421 F.2d 869, 874 (5th Cir. 1970) ("one of the purposes…of Rule 19 is the avoidance of multiple litigation on essentially the same issues.:.); *Murphey v. American General Life Ins. Co.*, 74 F. Supp. 3d 1267, 1282 (C.D. Cal. 2015) ("In sum, a party is necessary under Fed.R.Civ.P. 19(a) if a failure to join will lead to separate and redundant actions.") (internal quotations omitted). The Partnership's absence from

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this suit may very well torpedo Mr. Alvarez's First Amendment rights and create a need for essentially the same litigation. The Partnership must remain a party to this litigation as a necessary party to avoid duplicative or inconsistent litigation, and to prevent an unnecessary drain on the Court's time and resources.

Fourth, the Partnership should be bound by the outcome of this case because, as the sole provider of State-mandated training, the Partnership is a state actor and acts under the color of state law for Fourteenth Amendment and § 1983 purposes. An entity is a state actor and acts under the color of state law when it has been delegated a public function by the State, when it is "entwined with government policies," when government is "entwined with its management or control," or is a "willful participant in joint activity with the State or its agents." *Brentwood Academy v. TN Secondary School Athletic Ass'n*, 531 U.S. 288, 296 (2001) (holding that a private interscholastic athletic association was a state actor under the entwinement test because 84% of its membership came from public schools, public officials sat on the board of the organization, the state reviewed and approved the association's rules, and the state indicated a willingness to allow students to satisfy its physical education requirements by taking part in the activities sponsored by the Association). *See also West v. Atkins*, 487 U.S. 42 (1988) (holding that a private medical doctors who contracted with a state prison, yet also had other private clients, was a state actor under the public function test because the only medical care a prisoner could receive was from the physicians authorized by the State).

Here, the State delegated the training of all IPs to the Partnership. *See* Compl. ¶¶ 3, 27, Dkt. 1; Appendix A to the Partnership's Motion to Dismiss, Dkt. 18-2. Prior to the Partnership's creation, the State functioned as trainer for IPs. *See SEIU Healthcare 775 NW v. Washington State*, Decision No. 1093 Case No. 21917-U-08-5583, n. 7 (PECB, 2008) (citing WAC 388-71-

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0500 through WAC 388-71-0560 and WAC 388-71-05665 through 388-71-05909). Indeed, the State created the Partnership for the sole purpose of training IPs. *SEIU Healthcare 775 NW v. Washington State*, Decision No. 1093 Case No. 21917-U-08-5583 (PECB, 2008) ("The partnership's *sole purpose* is to provide training, peer mentoring, educational and career development, and examinations *for individual providers* beginning January 1, 2010. RCW 74.39A.360.") (emphasis added). The State funds the Partnership's training activities. *See* Appendix A to the Partnership's Motion to Dismiss, Dkt. 18-2. Yet the state is still significantly entwined with the Partnership by monitoring its training, approving its curriculum, and requiring monthly and quarterly spending reports. *See* RCW 74.39A.360, RCW 74.39A.074, RCW 79.39A.341 and CBA (citing in the Compl., ¶ 3, Dkt. No. 1). Numerous state statutes and regulations, and the CBA, i) require the State to monitor, oversee, and approve the training curriculum created by the Partnership, ii) dictate the topics, instructors, and hours of the training curriculum, iii) require monthly and quarterly spending reports from the Partnership to ensure appropriate spending of government funds, and iv) mandate other activities to facilitate the State's role as monitor of IP training. *See* Chapter 74.39A RCW ("Long-term Care Service Options"); Chapter 388-71 WAC ("Home and Community Services and Programs"); Art. 15 of the CBA. The Partnership's private status does not override its status as a state actor. *See Brentwood Academy*, 531 U.S. at 298 ("The nominally private character of the Association is overborne by the pervasive entwinement of public institutions and public officials in its compositions and workings, and there is no substantial reason to claim unfairness in applying constitutional standards to it."). Thus, the Partnership is a state actor under the public function test because it performs a function historically reserved exclusively to the state—i.e., the training of IPs. *See West v. Atkins*, 487 U.S. 42 (1988). It is also a state actor under the entwinement tests because it is regulated, monitored, and led in

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part by the State. *Brentwood Academy v. TN Secondary School Athletic Ass'n*, 531 U.S. 288, 296 (2001). It is also a state actor under the joint action test because it willfully participates with the State in organizing, planning, and getting approval for its training classes, which include the unconstitutional meetings with SEIU. *See Brunette v. Humane Society of Ventura County*, 294 F.3d 1205, 12111 (9th Cir. 2002) ("to be engaged in joint action, a private party must be a 'willful participant' with the State or its agent in an activity which deprives others of constitutional rights.") (citing *Dennis v. Sparks*, 449 U.S. 24, 27 (1980)). Therefore, any ruling issued by the court for state-required, state funded meetings with IPs should bind the entity that facilitates the meetings as a state actor and under the color of state law.

Finally, any argument from the Partnership that relief in this case can be complete without it is not only facially unpersuasive, it has been explicitly rejected. *See supra* at 6-7 (quoting *Eldredge*, 440 F. Supp. at 519). Such an argument "misconceives the nature of issues under Rule 19(a)(1)." *Id*. The court in *Eldridge* specifically held that other defendants' "theoretical ability to comply with an order are relevant, they may be outweighed by a finding that absent parties may as a practical matter prevent the full realization of the intended relief." *Id*. In *Eldridge*, just as in the instant case, "the contractual rights and duties relied on by plaintiffs are only a starting point for a full consideration of the actual role of each party in the formulation of the practices complained of and the stake each has in maintaining them." For the reasons discussed above, the Partnership's unique status as the sole entity to provide state-required, state-funded training—which includes the very meetings at issue in this case—allows it to prevent full realization of Mr. Alvarez's intended relief; namely, the right not to be compelled to attend to, listen and receive SEIU's speech during state-mandated training. The Partnership's absence would merely create a

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"paper decree[] which neither adjudicate, nor, in the end, protect rights." *Id*. The Partnership must remain a party to this case in order that Mr. Alvarez may be awarded his full relief.

The Partnership is a necessary party and thus must remain in the case. Liberal pleading standards weigh heavily in favor of joining parties. The Partnership is the sole entity that trains IPs in the state of Washington. State-mandated and state-funded IP training—which the Partnership schedules, plans, prepares, operates, facilitates and runs—is where the majority of the meetings at issue in this case occur. The Partnership's unique status as the state-mandated, state funded trainer allows it to circumvent Mr. Alvarez's intended relief without its joinder. Law and equity demand that the Partnership remain in the instant litigation.

IV. CONCLUSION

In accordance with well-established Ninth Circuit and Supreme Court precedent, the Partnership should remain in this case as a necessary party regardless of whether Mr. Alvarez stated claims or asserted relief against it. The law is crystal clear. Mr. Alvarez properly named the Partnership as a defendant because of the Partnership's unique ability to facilitate the enforcement of any orders that may be handed down from this Court regarding the constitutionality of the meetings with SEIU. For the foregoing reasons, Mr. Alvarez respectfully requests that Court deny the Partnership's Motion to Dismiss.

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Dated: April 25, 2016

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DECLARATION OF SERVICE

I hereby certify that on April 25, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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and I hereby certify that I have mailed by United States Postal Service the document to the following non CM/ECF participants:

• (no manual recipients)

DATED: April 15, 2016, at Olympia, Washington.

/s/ Stephanie Olson
Stephanie Olson

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