

HON. ROBERT J. BRYAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

KENNETH ALVAREZ,

Plaintiff,

v.

GOVERNOR JAY INSLEE, et al.,

Defendants.

NO. 3:16-cv-05111-RJB

SEIU HEALTHCARE NW TRAINING
PARTNERSHIP'S REPLY IN SUPPORT OF
ITS RULE 12(b)(6) MOTION TO DISMISS

Noted for Consideration:
April 29, 2016

I. INTRODUCTION

Plaintiff Alvarez concedes that his Complaint asserts no claims against, and seeks no relief from, the SEIU Healthcare NW Training Partnership ("Training Partnership"). See Dkt. No. 19, p. 3, lns. 17-20; Dkt. No. 1, ¶¶ 73-101; 102-112; 113-139; 140-144. For this reason alone, the Training Partnership should be dismissed from the litigation.

Nor is the Training Partnership a "necessary party" to this litigation. Complete relief between Alvarez, the State and SEIU 775 – described by Alvarez as the invalidation of the terms of the CBA to which he objects, and an injunction prohibiting the parties to the CBA from enforcing those terms (Dkt. No. 1, ¶¶ 140-146) – can be afforded without the Training Partnership's involvement. *Eldredge v. Carpenters 46 N. Cal. Ctys. Joint Apprenticeship & Training Comm.*, 662 F.2d 534, 537 (9th Cir. 1981); *Makah Indian Tribe v.*

1 *Verity*, 910 F.2d 555, 558 (9th Cir. 1990). The Training Partnership is not a party to the
 2 disputed CBA. Its absence from the litigation will not risk subjecting Alvarez, the State
 3 or SEIU 775 to inconsistent obligations. *Salt River Project Agric. Improvement & Power*
 4 *Dist. v. Lee*, 672 F.3d 1176, 1181 (9th Cir. 2012). The Court may rule on the
 5 constitutionality of the CBA terms, and even enjoin the parties to the CBA from enforcing
 6 them, without joinder of the Training Partnership.

7 Alvarez's "necessary party" argument is also improper. Alvarez never alleged in
 8 his Complaint that the Training Partnership is a "necessary party" pursuant to FRCP 19.
 9 See Dkt. No. 1, ¶¶ 3, 13, 27, 29, 31, 32. Until Alvarez moves to amend his Complaint to
 10 join the Training Partnership as a "necessary party," this new allegation is not properly
 11 before the Court. See *Hughes v. United States*, 953 F.2d 531, 541 (9th Cir. 1992) (denying
 12 motion to join allegedly necessary parties: "As a preliminary matter, we note that all of
 13 the counts of the complaint alleged wrongdoing on the part of the [defendant]; the
 14 Hugheses never made any additional allegations against [the parties alleged to be
 15 necessary]").

16 The Court should grant the Training Partnership's Motion and dismiss it from
 17 this lawsuit.

18 II. ARGUMENT

19 A. No Claims and No Relief Are Sought from the Training Partnership.

20 Alvarez concedes that his Complaint states no claims against and seeks no relief
 21 from the Training Partnership. See Dkt. No. 19, p. 3, lns. 17-20; Dkt. No. 1, ¶¶ 73-101,
 22 102-112, 113-139, 140-144. For this reason alone, the Training Partnership should be
 23 dismissed from the litigation, pursuant to Rule 12 (b)(6). "[W]here there is no cognizable
 24 legal theory or an absence of sufficient facts alleged to support a cognizable legal theory,"
 25 dismissal pursuant to Rule 12 (b)(6) is appropriate. *Shroyer v. New Cingular Wireless Serv.,*
 26 *Inc.*, 622 F.3d 1035, 1041 (9th Cir. 2010).

B. The Training Partnership Is Not a Necessary Party.

Alvarez argues that the Training Partnership should be forced to remain in this litigation because it is a “necessary party.” Dkt. No. 19, p. 2. Alvarez bears the burden of showing that the Training Partnership is a necessary party. *Nev. Eighty-Eight, Inc. v. Title Ins. Co. of Minn.*, 753 F. Supp. 1516, 1522 (D. Nev. 1990) (“[T]he burden of proving that joinder is necessary rests with the party asserting it.”); *A. H. R. v. Wash. State Health Care Auth.*, 2016 U.S. Dist. LEXIS 2587, at *19 (W.D. Wash. Jan. 7, 2016) (same). “The inquiry is a practical one and fact specific.” *Makah Indian Tribe*, 910 F.2d at 558.

There are three different ways in which a non-party may be deemed “necessary” for joinder under Rule 19:

(1) A non-party may be necessary if, without the entity’s participation, relief among the existing parties will not be complete. *Salt River Project Agric. Improvement & Power Dist.*, 672 F.3d at 1179, *citing to* FRCP 19 (a)(1)(A).

(2) A non-party may also be necessary if resolving the case in its absence may “impair or impede” an interest in the litigation. *Id. citing* FRCP 19 (a)(1)(B)(i).

(3) A non-party may be necessary if resolving the action without it may leave a party to the litigation subject to inconsistent obligations. *Id., citing to* FRCP 19(a)(1)(B)(ii).

Alvarez does not show that any of the ways a non-party can be “necessary” under Rule 19 are met:

First, and most importantly, Alvarez can obtain all of the relief he seeks in his Complaint without any involvement from the Training Partnership. On its face, the relief sought by Alvarez can easily be ordered without joinder of the Training Partnership. Dkt. No. 1, ¶¶ 140-146; *Disabled Rights Action Committee v. Las Vegas Events, Inc.*, 375 F.3d 861, 880 (9th Cir. 2003).

Second, there is no risk of “inconsistent obligations” from future litigation by the Training Partnership. See Dkt. No. 19, p. 10, lns. 1-3. As a practical matter, the Training

Partnership's only interest in enforcement of the CBA relates to the provisions requiring employer contributions to the Training Partnership, none of which are at issue here. *See* 29 U.S.C. §1145.

Third, to the extent Alvarez threatens future breach of fiduciary duty or ERISA benefits litigation against the Training Partnership (*see* Dkt. No. 19, pp. 11, lns. 13-17), such litigation would be significantly different from this case, as it would be governed by ERISA's comprehensive administrative appeal and enforcement scheme. *See* 29 U.S.C. §§ 1132 (a)(1)(B), 1133; *Aetna Health, Inc. v. Davila*, 542 U.S. 200, 208, 124 S. Ct. 2488 (2004). It would not be "redundant" with this case. *See* Dkt. No. 19, pp. 11-12.

Fourth, Alvarez's "state actor" argument is nonsensical, mixing the standards for pursuit of a Section 1983 claim against a private entity with the requirements for a necessary party under Rule 19. *See id.*, pp. 12-14. Alvarez's conclusory assertion that the Training Partnership is a "state actor," while factually and legally incorrect, is irrelevant to the Court's analysis of whether the Training Partnership is a necessary party.

Each argument is addressed in detail below.

1. Alvarez Can Obtain Complete Relief Without the Training Partnership.

Complete relief can be afforded without the Training Partnership. According to Alvarez's Complaint, the relief he seeks is declaratory judgment that the provisions of the CBA that establish a "union meeting benefit" and certain other union access rights are unconstitutional and violate RCW 42.52.160. Dkt. No. 1, ¶¶ 140-146. He seeks no relief from the Training Partnership. *See id.* Should Alvarez prevail, the Court may order the relief he seeks without the Training Partnership's involvement.

Alvarez claims that because the Training Partnership provides the "locale" where the disputed union meetings occur, Training Partnership is a necessary party to this litigation. Dkt. No. 19, pp. 9, lns. 3-8. However, a close reading of Article 15.13(A) of the

1 CBA shows that the Training Partnership is only tangentially involved in the CBA's
 2 "union meeting benefit." The CBA states that the Training Partnership will provide
 3 SEIU 775 with "reasonable access" to its facilities so that SEIU 775 can hold union
 4 presentations, while the State pays the wages of participating home care workers who
 5 attend the presentations. Dkt. No. 1, ¶ 26, n.3, *citing to* Dkt. No. 18-2, CBA Art. 15.13(A).
 6 If this CBA provision is invalidated and the parties to the CBA (the State and SEIU 775)
 7 are enjoined from implementing it, as Alvarez requests, there will be no "union meeting
 8 benefit" and nothing to which the Training Partnership is asked to provide "reasonable
 9 access." That is the complete remedy sought by Alvarez in his Complaint.

10 Alvarez further contends that the Training Partnership is a necessary party
 11 simply because it is the ERISA multi-employer welfare benefit plan that provides
 12 training benefits under the CBA.¹ He relies chiefly on a single case, *Eldredge v. Carpenters*
 13 *46 N. Cal. Ctys. Joint Apprenticeship & Training Comm.*, 440 F. Supp. 506, 525 (N.D. Cal.
 14 1977). *See* Dkt. No. 19, repeatedly citing *Eldredge* pp. 4-10, 14-15. Alvarez omits that the
 15 *Eldredge* trial court's decision regarding FRCP 19 and "necessary parties" was reversed
 16 by the Ninth Circuit in *Eldredge v. Carpenters 46 N. Cal. Ctys. Joint Apprenticeship &*
 17 *Training Comm.*, 662 F.2d 534 (9th Cir. 1981).

18 In *Eldredge*, a case alleging gender discrimination in the practices of an ERISA
 19 multi-employer apprenticeship training plan, the district court requested briefing as to
 20 whether the participating employers and labor unions were "necessary parties" because
 21 as the participating employers and labor unions they were "intimately involved" in the
 22 operation of the ERISA plan. *Eldredge*, 440 F. Supp. at 510. After such briefing, the trial
 23

24
 25 ¹ Alvarez alleged that the Training Partnership was formed by SEIU 775 and participating employers
 26 to provide training benefits as a condition of employment, pursuant to collective bargaining agreements.
See Dkt. No. 1, ¶¶ 13, 27. That is the very definition of an ERISA multi-employer employee welfare benefit
 plan. 29 U.S.C. § 1002(1), (37).

1 court concluded that all participating employers and labor unions were “necessary
 2 parties” and ordered that they be joined within 60 days or the case would be dismissed.
 3 *Id.* at 527. When the plaintiffs were unable to join all participating employers, the trial
 4 court dismissed the litigation for failure to join indispensable parties. *Eldredge v.*
 5 *Carpenters 46 N. Cal. Ctys. Joint Apprenticeship & Training Comm.*, 83 F.R.D. 136, 139 (N.D.
 6 Cal. 1979).

7 On appeal, the Ninth Circuit reversed: “We believe that the district court
 8 misapprehended the legal inquiry required by rule 19(a) (1).” *Eldredge*, 662 F.2d at 537.
 9 The Ninth Circuit continued, “If the [defendant’s] activities violate Title VII, a question
 10 not yet decided, then the court has both the power and the duty to enjoin those
 11 activities.” *Id.* The appellate court *rejected* the trial court’s assumption that, in a case
 12 involving a CBA and the provision of benefits by a multi-employer welfare benefit plan,
 13 all three categories of ERISA entities—the employers, the labor unions and the ERISA
 14 multi-employer welfare benefit plan—must be joined in order to prevent presumed
 15 future misconduct. *Id.* at 537-38.

16 This case is the “mirror image” of *Eldredge*. Here, the plaintiff is pursuing claims
 17 against the participating labor and employer entities, rather than the ERISA plan. The
 18 dispute centers on the terms of the CBA, not the provision of training by the ERISA plan.
 19 Consistent with the Ninth Circuit’s holding in *Eldredge*, the only parties that are
 20 necessary are the actual parties accused by Alvarez of civil rights violations, the State
 21 and SEIU 775. If Alvarez succeeds, the Court can fashion complete, meaningful relief by
 22 declaring the disputed CBA provisions invalid and enjoining their enforcement by the
 23 State and SEIU 775, the parties to the CBA. *See Eldredge*, 662 F.2d at 537; *see also Disabled*
 24 *Rights Action*, 375 F.3d at 880. The Training Partnership is not a necessary party.

1 **2. If the Training Partnership Is Dismissed from the Litigation,**
 2 **There Is No Risk of “Inconsistent Obligations.”**

3 Alvarez also posits that if the Training Partnership is not joined as a party to this
 4 litigation, it could try to enforce the disputed CBA provisions even if they are ruled
 5 unconstitutional. *See* Dkt. No. 19, p. 10, lns. 1-3. Whether the Training Partnership
 6 could, in theory, litigate to enforce these particular CBA provisions is unclear.² From a
 7 practical perspective, however, the Training Partnership is highly unlikely to commence
 8 litigation in order to *impose upon itself* an obligation to provide “access” to meetings
 9 that this Court rules are unconstitutional.³

10 Alternatively, Alvarez argues that the Training Partnership is a necessary party
 11 because it might “circumvent” an order by this Court and “force” meetings between
 12 SEIU 775 and its participating students, even if Alvarez succeeds in striking the “union
 13 meeting benefit” from the CBA as unconstitutional. *See* Dkt. No. 19, p. 11, lns. 8-10.
 14 Alvarez offers no basis for his implausible “circumvention” argument. *See Eldredge*, 662
 15 F.2d at 537 (where there is no evidence in the record that a non-party will thwart the
 16 Court’s order, the trial court may not simply assume it). Nonetheless, to be clear to
 17 Mr. Alvarez and the Court, if a final judgment in this case determines that the disputed
 18 terms of the CBA are unconstitutional and enjoins their application, the Training
 19 Partnership will not provide “reasonable access” to the CBA “union meeting benefit.”
 20

21 ² ERISA plans, like the Training Partnership, typically enforce CBA terms that relate to payment of
 22 timely and adequate contributions. *See* 29 U.S.C. § 1145. Those terms are generally the only CBA
 23 provisions to which the Training Partnership is a true “third-party beneficiary.” *See* Dkt. No. 19, p. 8, n.1.
 24 In any event, “[a] nonparty to a commercial contract ordinarily is not a necessary part to an adjudication
 25 of rights under the contract.” *Northrop Corp. v. McDonnell Douglas Corp.*, 705 F.2d 1030, 1044 (9th Cir. 1983).
 Where, as here, the litigation does not seek to invalidate the contract as a whole, or even the provisions of
 the CBA that benefit the Training Partnership, the Training Partnership’s joinder is unnecessary. *See id.*,
distinguishing Lomayaktewa v. Hathaway, 520 F.2d 1324, 1326 (9th Cir. 1975).

26 ³ The disputed terms in the CBA do not impose binding obligations on the Training Partnership,
 despite the seemingly mandatory language. *Toensing v. Brown*, 528 F.2d 69, 72 (9th Cir. 1975) (CBA terms
 are not “binding or obligatory” for an ERISA trust); 29 U.S.C. §§ 1103(c)(1); 1104(a)(1)(A), (D).

1 **3. Any Future Litigation Between Alvarez and the Training Partnership**
 2 **Over the Training Partnership's Benefits Is Governed by ERISA.**

3 Alvarez speculates that if he wins this case, the Training Partnership may
 4 “facilitate” other kinds of meetings between SEIU 775 and its participating students, and
 5 claims that such meetings would be a “breach of fiduciary duty.” Dkt. No. 19, p. 11.
 6 Alvarez then threatens that such meetings would result in “further litigation on
 7 essentially the same issues,” as a justification for joinder of the Training Partnership. *Id.*

8 Alvarez gets ahead of himself; first he has to win this case. Indulging Alvarez's
 9 speculation, if he were to prevail in this case, *and* Training Partnership decided to
 10 “facilitate” some sort of new meetings between its students and SEIU 775 outside of the
 11 CBA terms, *and*, if Alvarez then believed that the fiduciary duties owed to him by the
 12 Training Partnership were breached by such “facilitation,” then *ERISA would provide*
 13 *the exclusive means of adjudicating that dispute.* See 29 U.S.C. §§ 1132 (a)(1)(B), 1133.

14 Congress enacted ERISA to provide a uniform regulatory regime over employee
 15 benefit plans. *Aetna Health, Inc.*, 542 U.S. at 208. In particular, ERISA established a
 16 comprehensive civil enforcement scheme. *Id.* “This integrated enforcement mechanism,
 17 ERISA § 502(a), 29 U.S.C. § 1132(a), is a distinctive feature of ERISA, and *essential* to
 18 accomplish Congress' purpose of creating a comprehensive statute for the regulation of
 19 employee benefit plans.” *Id.* (emphasis added); *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41,
 20 54, 107 S.Ct. 1549 (1987) (same). Thus, if a participant wishes to bring a lawsuit to
 21 alleging a violation of his ERISA right to benefits and/or fiduciary duties, ERISA
 22 provides a clear, comprehensive mechanism for doing so. *Aetna Health, Inc.*, 542 U.S. at
 23 210, *citing to* 29 U.S.C. 1132(a)(1)(B). Should Mr. Alvarez have a dispute with the Training
 24 Partnership regarding the provision of a benefit that he receives from it, unless he asserts
 25 some other independent legal claim, his cause of action against the Training Partnership
 26 is pursuant to ERISA. *Id.*; 29 U.S.C. §§ 1132, 1133. ERISA litigation is a distinctly different
 kind of case (different statutory framework, limited legal claims and remedies, narrow

discovery rights) than the constitutional and state statutory claims Alvarez is now pursuing. It would not be “redundant” to this case. Dkt. No. 19, pp. 11-12.

4. Alvarez’s “State Actor” Argument Is Irrelevant.

Alvarez claims that the Training Partnership is a necessary party because it is a “state actor.” Dkt. No. 19, pp. 12-14. Alvarez’s argument makes no sense.

If Alvarez wants to allege that the Training Partnership is a “state actor” and acted under color of law pursuant to Section 1983, then Alvarez must amend his Complaint and articulate actual factual allegations, direct legal claims and remedies that apply to its conclusory allegation of “state action” by the Training Partnership. Despite ample opportunity to do so, Alvarez has failed to move for such an amendment.

Instead, Alvarez asserts, without analysis, that being a “state actor” renders a nonparty sufficiently “necessary” to require Rule 19 joinder. Dkt. No. 19, pp. 12-14. Whether or not a claim under Section 1983 could be leveled at the Training Partnership has no bearing on the Court’s Rule 19 analysis. In every “state action” case cited by Alvarez, the plaintiff asserted an actual constitutional claim against the private entity alleged to be acting under “color of law.”⁴ See *Brentwood Acad. v. Tenn. Secondary Sch. Ath. Ass’n*, 531 U.S. 288, 293, 121 S. Ct. 924 (2001) (private association sued for violations of First and Fourteenth Amendments); *West v. Atkins*, 487 U.S. 42, 45, 108 S. Ct. 2250 (1988) (Section 1983 claims against private physician for Eighth Amendment violations); *Brunette v. Humane Soc’y*, 294 F.3d 1205, 1207 (9th Cir. 2002) (claim against a private media company for violating Fourth Amendment rights). Not a single case cited by Alvarez stands for the proposition that the mere conclusory allegation by a plaintiff that

⁴ Alvarez goes so far as to offer a proposed Order which would have the Court conclude that the Training Partnership is a “state actor” without any claim asserted against the Training Partnership, no motion for summary judgment and not a scintilla of evidentiary support. See Dkt. No. 19-1, p. 2. Counsel for Alvarez grossly overreach by proposing factual findings/conclusions of law in a proposed Order purporting to deny a Motion for Rule 12(b)(6) dismissal.

1 a non-party is a “state actor” is sufficient for joinder pursuant to Rule 19. Whether or
 2 not the Training Partnership is a “state actor” (and the Training Partnership, a private
 3 nonprofit school and ERISA multi-employer welfare benefit plan, is not), has no bearing
 4 on whether it is a necessary party.

5 **C. Alvarez Does Not Move to Amend His Complaint to Allege that the**
 6 **Training Partnership Is a Necessary Party.**

7 In any event, Alvarez failed to allege *anywhere* in his Complaint that the Training
 8 Partnership is a “necessary party.”⁵ See generally, Dkt. No. 1. Alvarez did not allege any
 9 facts to show that the Training Partnership is needed to obtain complete relief. See *id.*
 10 He did not even request any relief that includes the Training Partnership. *Id.*, ¶¶ 140-146.
 11 Unless and until Alvarez moves to amend his Complaint to include such an allegation,
 12 the Court should not even consider Alvarez’s belated “necessary party” arguments. See
 13 *Hughes v. United States*, 953 F.2d 531, 541 (9th Cir. 1992); see e.g., *Richland Partners, LLC v.*
 14 *Cowry Enters.*, 2014 U.S. Dist. LEXIS 141385 (D. Mont. Sep. 29, 2014) (denying motion to
 15 amend complaint to join allegedly necessary parties because (1) there was no showing
 16 of good cause to amend the complaint and (2) the parties were not necessary).

17 **III. CONCLUSION**

18 Plaintiff Alvarez concedes that he has failed to allege any specific claims against
 19 or seek any relief from the Training Partnership.

20 Plaintiff’s belated argument that the Training Partnership is a “necessary party”
 21 pursuant to Rule 19 is meritless. The Court may fashion complete relief without joinder
 22 of the Training Partnership, if Alvarez prevails. The Training Partnership has no right
 23
 24

25 ⁵ Alvarez disingenuously claims that the Training Partnership does not dispute that it is *not* a
 26 necessary party. See Dkt. No. 19, pp. 3, 8. The Training Partnership has no obligation to respond to
 unasserted allegations.

1 or interest in the outcome of this litigation. Its absence from this case will not result in
2 inconsistent outcomes.

3 The Court should grant the Training Partnership's Motion pursuant to
4 Rule 12(b)(6) and dismiss it from this case.

5 DATED: April 29, 2016.

6
7 SIRIANNI YOUTZ
8 SPOONEMORE HAMBURGER

9 /s/ Eleanor Hamburger
10 Eleanor Hamburger (WSBA #26478)
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13 Attorneys for Defendant
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CERTIFICATE OF SERVICE

I hereby certify that on April 29, 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 29, 2016, at Seattle, Washington.

/s/ Eleanor Hamburger
Eleanor Hamburger