

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ALICIA QUIRARTE et al.,
Plaintiffs,
v.
UNITED DOMESTIC WORKERS
AFSCME LOCAL 3930 et al.,
Defendants.

Case No.: 19-CV-1287-CAB-KSC

**ORDER GRANTING MOTIONS
FOR JUDGMENT ON THE
PLEADINGS**

[Doc. Nos. 30, 34]

This matter comes before the Court on the Defendants’ motions for judgment on the pleadings. [Doc. Nos. 30, 34.] The motions have been fully briefed and the Court finds them suitable for determination on the papers submitted and without oral argument. *See* S.D. Cal. CivLR 7.1(d)(1). For the reasons set forth below, the motions are granted.

I. BACKGROUND¹

Plaintiffs Alicia Quirarte, Nora Maya, Anh Le, Viet Le, and Jose Diaz are In-Home Supportive Service (“IHSS”) providers that provide non-medical assistance services to disabled individuals who qualify for California Medicaid (“Medi-Cal”). [Doc. No. 1 at ¶¶

¹ The Court is not making any findings of fact, but rather summarizing the relevant allegations of Plaintiff’s complaint.

1 1, 17.²] Plaintiffs filed this putative class action complaint against Defendants Unified
2 Domestic Workers AFSCME Local 3930 (the “Union”) and California State Controller
3 Betty Yee (the “State Controller”) on July 11, 2019, alleging: (1) a violation of their First
4 Amendment rights pursuant to 42 U.S.C. § 1983 for deducting union dues from Plaintiffs’
5 wages; and (2) a violation of 42 U.S.C. § 1396a(a)(32) (“Section 32”) pursuant to 42 U.S.C.
6 § 1983 for deducting union dues from Medicaid payments made to IHSS providers. [*Id.* at
7 15–19.] On October 10, 2019, pursuant to stipulation between the parties, the Court
8 granted the request of Xavier Becerra, in his official capacity as Attorney General of
9 California, to intervene in this matter as a defendant. [Doc. No. 21.]

10 Plaintiffs are IHSS providers in various California counties. [Doc. No. 1 at ¶¶ 10–
11 14.] Pursuant to California Welfare and Institutions Code section 12301.6, the Union was
12 designated as the exclusive bargaining representative of certain IHSS providers in twenty-
13 one California counties, including the counties where the named Plaintiffs are employed.
14 [*Id.* at ¶ 22.] The State Controller deducts union dues from IHSS payments made to IHSS
15 providers who agree to the terms of a dues deduction assignment with the Union. [*Id.* at ¶
16 25.] Plaintiffs allege that the dues deduction assignments usually contain terms that make
17 the deduction of union dues not contingent on maintaining union membership and make
18 the deduction irrevocable except when notice of revocation is provided during a short,
19 annual escape period. [*Id.* at ¶ 26.] Plaintiffs further allege that the dues deduction
20 assignments do not contain language informing IHSS providers of their First Amendment
21 right not to subsidize the Union and its speech or stating that the provider waives that right
22 by executing the assignment. [*Id.* at ¶ 27.] While IHSS providers who are Union members
23 can resign at any time, deduction of union dues will continue if notice is provided outside
24 of the designated escape period. [*Id.* at ¶ 28.] Each of the Plaintiffs allege they were
25 pressured or induced into signing the assignment. [*Id.* at ¶¶ 30, 35, 41, 45.]
26
27

28 ² Document numbers and page references are to those assigned by CM/ECF for the docket entry.

1 On December 13, 2019, the Union moved for a judgment on the pleadings and on
2 December 27, 2019, Defendants Xavier Becerra and Betty Yee (the “State Defendants”)
3 moved for the same. [Doc. Nos. 30, 34.]

4 II. LEGAL STANDARD

5 Under Federal Rule of Civil Procedure 12(c), any party may move for judgment on
6 the pleadings at any time after the pleadings are closed but within such time as not to delay
7 the trial. FED. R. CIV. P. 12(c). A motion for judgment on the pleadings must be evaluated
8 under the same standard applicable to motions to dismiss brought under Rule 12(b)(6). *See*
9 *Enron Oil Trading & Trans. Co. v. Walbrook Ins. Co., Ltd.*, 132 F.3d 526, 529 (9th Cir.
10 1997). Thus, the standard articulated in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), and *Bell*
11 *Atl. Corp. v. Twombly*, 550 U.S. 544 (2007) applies to a motion for judgment on the
12 pleadings. *Lowden v. T-Mobile USA, Inc.*, 378 Fed. Appx. 693, 694 (9th Cir. 2010) (“To
13 survive a Federal Rule of Civil Procedure 12(c) motion, a plaintiff must allege ‘enough
14 facts to state a claim to relief that is plausible on its face.’” (quoting *Twombly*, 550 U.S. at
15 544)). When deciding a motion for judgment on the pleadings, the Court assumes the
16 allegations in the complaint are true and construes them in the light most favorable to the
17 plaintiff. *Pillsbury, Madison & Sutro v. Lerner*, 31 F.3d 924, 928 (9th Cir. 1994). A
18 judgment on the pleadings is appropriate when, even if all the allegations in the complaint
19 are true, the moving party is entitled to judgment as a matter of law. *Milne ex rel. Coyne*
20 *v. Stephen Slesinger, Inc.*, 430 F.3d 1036, 1042 (9th Cir. 2005).

21 III. DISCUSSION

22 Plaintiffs allege two causes of action: (1) a § 1983 claim for violation of Plaintiffs’
23 First Amendment rights for the deduction of union dues from Plaintiffs’ wages and (2) a §
24 1983 claim for violation of 42 U.S.C. § 1396a(a)(32) for deducting union dues from
25 Medicaid payments made to IHSS providers. The Union and State Defendants
26 (collectively “Defendants”) move for judgment on the pleadings on similar grounds.

27 A. Mootness of Prospective Relief Claims

28 The Defendants contend that Plaintiffs’ claims for prospective relief do not present

1 a live controversy and are therefore moot. [Doc. No. 30-1 at 15–17; Doc. No. 34-1 at 11.]
2 According to the Defendants, Plaintiffs lack any cognizable interest in forward-looking
3 relief because the deduction of union membership dues from each of the Plaintiffs’ wages
4 has been terminated and Plaintiffs cannot show that they are likely to suffer any similarly
5 alleged injury in the future. Plaintiffs respond that the Ninth Circuit has already
6 considered, and rejected, an identical mootness argument in *Fisk v. Inslee*, 759 F. App’x
7 632 (9th Cir. 2019). In *Fisk*, the Ninth Circuit held under similar facts that while “no class
8 ha[d] been certified and [the union] and the State ha[d] stopped deducting dues,” this did
9 not result in the plaintiffs’ non-damages claims becoming moot. 759 F. App’x at 633.
10 Citing to *Gerstein v. Pugh*, 420 U.S. 103, 111 n.11 (1975), the Ninth Circuit held that the
11 plaintiffs’ “non-damages claims are the sort of inherently transitory claims for which
12 continued litigation is permissible.” *Fisk*, 759 F. App’x at 633. Like *Fisk*, this case
13 involves a putative class action where prospective class members presumably remain
14 subject to the challenged conduct. Accordingly, Plaintiffs’ claims for prospective relief
15 are not moot.

16 **B. State Action**

17 To prove a § 1983 violation, Plaintiffs must demonstrate that the Defendants: “(1)
18 deprived them of a right secured by the Constitution, and (2) acted under color of state
19 law.” *Collins v. Womancare*, 878 F.2d 1145, 1147 (9th Cir. 1989); 42 U.S.C. § 1983. “The
20 state-action element in § 1983 excludes from its reach merely private conduct, no matter
21 how discriminatory or wrongful.” *Caviness v. Horizon Cmty. Learning Ctr., Inc.*, 590 F.3d
22 806, 812 (9th Cir. 2010) (quotations and citation omitted). “[C]onstitutional standards are
23 invoked only when it can be said that the State is *responsible* for the specific conduct of
24 which the plaintiff complains.” *Naoko Ohno v. Yuko Yasuma*, 723 F.3d 984, 994 (9th Cir.
25 2013) (emphasis in original). However, “[u]nder § 1983, a claim may lie against a private
26 party who ‘is a willful participant in joint action with the State or its agents. Private
27 persons, jointly engaged with state officials in the challenged action, are acting ‘under
28 color’ of law for purposes of § 1983 actions.” *DeGrassi v. City of Glendora*, 207 F.3d

1 636, 647 (9th Cir. 2000) (quoting *Dennis v. Sparks*, 449 U.S. 24, 27-28 (1980)). “[A] bare
2 allegation of such joint action will not overcome a motion to dismiss; the plaintiff must
3 allege ‘facts tending to show that [the private party] acted ‘under color of state law or
4 authority.’” *Id.* (quoting *Sykes v. State of Cal.*, 497 F.2d 197, 202 (9th Cir. 1974)); *see also*
5 *Dietrich v. John Ascuaga’s Nugget*, 548 F.3d 892, 900 (9th Cir. 2008). Courts use a two-
6 prong framework to analyze “when governmental involvement in private action is itself
7 sufficient in character and impact that the government fairly can be viewed as responsible
8 for the harm of which the plaintiff complains.” *Ohno*, 723 F.3d at 994. First, the court
9 considers “whether the claimed constitutional deprivation resulted from the exercise of
10 some right or privilege created by the State or by a rule of conduct imposed by the state or
11 by a person for whom the State is responsible.” *Id.* Second, the court considers “whether
12 the party charged with the deprivation could be described in all fairness as a state actor.”
13 *Id.*

14 **1. Whether Plaintiffs’ Alleged Harm Results from the Exercise of a Right**
15 **or Privilege Created by the State or a Rule Imposed by the State**

16 Plaintiffs allege the constitutional deprivation in this case results from the State
17 Controller’s systematic extraction of monies for union speech from state payments made
18 to individuals pursuant to the statutory scheme created by California Welfare & Institutions
19 Code § 12301.6(i)(2). [Doc. No. 35 at 12; Doc. No. 36 at 12.] The Court is not persuaded
20 by Plaintiffs’ attempt to frame the alleged harm as resulting from state action. The crux of
21 Plaintiffs’ alleged harm in this case results from the dues deduction assignments that
22 Plaintiffs voluntarily signed with the Union.

23 “The fact that the State performs a ministerial function of collecting Plaintiffs’ dues
24 deductions does not mean that Plaintiffs’ alleged harm is the result of state action.” *Smith*
25 *v. Teamsters Local 2010*, 2019 WL 6647935, at *5 (C.D. Cal. Dec. 3, 2019). “Automatic
26 payroll deductions are the sort of ministerial act that do not convert the Union Defendants’
27 membership dues and expenditures decisions into state action.” *Bain v. California*
28 *Teachers Ass’n*, 2016 WL 6804921, at *8 (C.D. Cal. May 2, 2016); *see also Caviness*, 590

1 F.3d at 817 (“[A]ction taken by private entities with the mere approval or acquiescence of
2 the State is not state action”) (quoting *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 52
3 (1999)); *Belgau v. Inslee*, 359 F. Supp. 3d 1000, 1015 (W.D. Wash. 2019), appeal
4 docketed, No. 19-35137 (9th Cir. Feb. 20, 2019) (“The State Defendants’ obligation to
5 deduct fees in accordance with the authorization ‘agreements does not transform decisions
6 about membership requirements [that they pay dues for a year] into state action.’”) (quoting
7 *Bain*, 2016 WL 6804921, at *7). Under California law, “[e]mployee requests to cancel or
8 change deductions for employee organizations shall be directed to the employee
9 organization, rather than to the Controller.” Cal. Gov’t Code § 1153(h). In addition, “[t]he
10 Controller shall rely on information provided by the employee organization regarding
11 whether deductions for an employee organization were properly canceled or changed.” *Id.*

12 The deduction of membership dues is a ministerial act by the State Controller who
13 relies upon the information provided by the Union and the employer. The State Controller
14 has no further involvement beyond processing the deduction pursuant to the membership
15 agreements the Plaintiffs voluntarily agreed to. The agreements themselves state that the
16 authorizations “are voluntary and not a condition of [Plaintiffs’] employment” and that the
17 Plaintiffs “hereby authorize the Office of the State Controller of California . . . to deduct
18 from [Plaintiffs’] payments and to remit to the Union those dues and fees that may now or
19 hereafter be established by the Union.” [Doc. No. 30-3 at 2.] Plaintiffs’ attempt to frame
20 this as state action would result in any voluntary agreed upon deduction of wages by the
21 State as state action (i.e. insurance premiums or retirement plan contributions). The
22 “statutory scheme” if anything, merely authorizes Controller Yee to legally perform this
23 ministerial function. Plaintiffs’ citation to wage garnishment cases is inapposite. Those
24 cases involve court or statutory mandated procedures to garnish wages without any prior
25 notice or approval whereas here the Plaintiffs voluntarily entered into membership
26 agreements with the Union and authorized the dues deductions. Accordingly, the Court is
27 not convinced that this case presents a state action. However, for purposes of this opinion,
28 even if the Court were to assume that Plaintiffs can satisfy the first prong, the Court finds

1 that Plaintiffs cannot satisfy the second prong that the Union is a state actor.

2 **2. Whether the Union is a State Actor**

3 “The state actor requirement ensures that not all private parties face constitutional
4 litigation whenever they seek to rely on some state rule governing their interactions with
5 the community surrounding them.” *Collins*, 878 F.2d at 1151. “The Supreme Court has
6 articulated four tests for determining whether a [non-governmental person’s] actions
7 amount to state action: (1) the public function test; (2) the joint action test; (3) the state
8 compulsion test; and (4) the governmental nexus test.” *Ohno*, 723 F.3d at 995 (quoting
9 *Tsao v. Desert Palace, Inc.*, 698 F.3d 1128, 1140 (9th Cir. 2012)). The Court addresses
10 each test below.

11 **a. Public Function**

12 “Under the public function test, when private individuals or groups are endowed by
13 the State with powers or functions governmental in nature, they become agencies or
14 instrumentalities of the State and subject to its constitutional limitations.” *Florer v.*
15 *Congregation Pidyon Shevuyim, N.A.*, 639 F.3d 916, 924 (9th Cir. 2011) (quotations and
16 citation omitted). “To satisfy the public function test, the function at issue must be both
17 traditionally and exclusively governmental.” *Lee v. Katz*, 276 F.3d 550, 555 (9th Cir. 2002)
18 (citing *Rendell-Baker v. Kohn*, 457 U.S. 830, 842 (1982)). “[V]ery few’ functions fall
19 into that category.” *Manhattan Cmty. Access Corp. v. Halleck*, 139 S. Ct. 1921, 1929
20 (2019) (citation omitted) (collecting cases rejecting “public function” challenges to private
21 conduct).

22 Plaintiffs contend that the Union is performing a public function because the State
23 has outsourced to the Union its constitutional responsibility under *Janus v. AFSCME,*
24 *Council 31*, — U.S. —, 138 S. Ct. 2448, 201 L.Ed.2d 924 (2018), to determine if
25 providers consented to dues deductions. [Doc. No. 35 at 19.] The Court finds Plaintiffs’
26 creative argument unavailing. Here, the Plaintiffs voluntarily signed off on the dues
27 deductions in the membership agreements which verified their consent. There is no
28 constitutional responsibility under *Janus* that needed to be “outsourced to the Union” in

1 this situation. As will be discussed further below, the Court does not find that Janus applies
2 when employees have voluntarily agreed to become union members and authorized the
3 dues deductions. The Court finds that Plaintiffs have failed to demonstrate that the Union
4 has been endowed with any governmental authority or that the Union is engaging in any
5 function that is traditionally and exclusively governmental under the public function test.

6 **b. Joint Action**

7 “‘Joint action’ exists where the government affirms, authorizes, encourages, or
8 facilitates unconstitutional conduct through its involvement with a private party, or
9 otherwise has so far insinuated itself into a position of interdependence with the non-
10 governmental party that it must be recognized as a joint participant in the challenged
11 activity.” *Ohno*, 723 F.3d at 996 (internal quotations and citations omitted).

12 Plaintiffs contend that the Union is a state actor under the joint action test because it
13 acts jointly with the State to take dues from the Plaintiffs without their consent. [Doc. No.
14 35 at 17.] According to Plaintiffs, the State Controller coordinates with the Union to deduct
15 union dues pursuant to a state-established system. Plaintiffs have failed to support these
16 conclusory allegations with sufficient factual support. The State Controller plays a
17 ministerial role in performing the deductions pursuant to the membership agreements.
18 Beyond this role, the State Controller has no further involvement. Plaintiffs have failed to
19 show that “state officials and private parties have acted in concert in effecting a particular
20 deprivation of constitutional rights” or that the deduction of membership dues amounts to
21 “significant assistance” that warrants a finding of joint action. *Ohno*, 723 F.3d at 996.

22 **c. State Compulsion**

23 Under the state compulsion test, “[a] state may be responsible for a private entity’s
24 actions if it has exercised coercive power or has provided such significant encouragement,
25 either overt or covert, that the choice must in law be deemed to be that of the State.”
26 *Caviness*, 590 F.3d at 816.

27 Plaintiffs contend that by allowing the Union to dictate the amount of the dues
28 deductions, the State and Union are in a relationship of mutual overt encouragement. [Doc.

1 No. 35 at 21.] Even if the Union can dictate the amount, the Court is not convinced that
2 the State Controller’s deduction of membership dues, or allowing the Union to dictate the
3 amount, on its own leads to a finding of significant encouragement, overt or covert, by the
4 State. The state compulsion test has not been met.

5 **d. Governmental Nexus**

6 “Under the governmental nexus test, a private party acts under color of state law if
7 there is a sufficiently close nexus between the State and the challenged action of the
8 regulated entity so that the action of the latter may be fairly treated as that of the State
9 itself.” *Ohno*, 723 F.3d at 996, n.13.

10 Again, Plaintiffs allege that the State and Union closely coordinate with one another
11 with respect to the dues deductions such that the Union’s actions can be fairly attributed to
12 that of the State itself. [Doc. No. 35 at 22.] As previously stated, the Court is not convinced
13 that the deduction of dues pursuant to the membership agreements lends to a finding of a
14 sufficiently close nexus between the Union and the State and therefore the governmental
15 nexus test has also not been met.

16 In conclusion, Plaintiffs have failed to satisfy any of the tests to find that the Union
17 is a state actor and have failed to allege facts tending to show that the Union acted under
18 color of state law or authority. Defendants’ motions for judgment on the pleadings as to
19 the First Amendment violation on the ground that Plaintiffs’ alleged harms do not arise
20 from any state action are therefore **GRANTED**.

21 **C. First Amendment Violation**

22 Even if Plaintiffs had sufficiently alleged state action, Plaintiffs have ultimately
23 failed to demonstrate that Defendants violated their First Amendment rights. Plaintiffs
24 contend that *Janus* requires proof of a First Amendment waiver to establish consent to dues
25 deductions. [Doc. No. 36 at 14.] Plaintiffs have not cited to, and the Court has been unable
26 to find on its own, any case that has broadened the scope of *Janus* to apply Plaintiffs’
27 waiver requirement argument when employees voluntarily agree to become members of
28 the union and authorize the deduction of union dues. The Court agrees with the numerous

1 courts in this circuit that have held the opposite. The waiver requirement does not apply
2 to the circumstances in this case compared to the situation in *Janus* involving the deduction
3 of agency fees from a nonmember.

4 In *Janus*, the Supreme Court discussed the First Amendment right to not be
5 “compel[ed] to mouth support for views [one] find[s] objectionable.” *Janus*, 138 S. Ct. at
6 2463. Any payment to a union, either in the form of dues or agency fees, “provide[s]
7 financial support for a union that ‘takes many positions during collective bargaining that
8 have powerful political and civic consequences.’” *See id.* at 2464 (quoting *Knox v. SEIU,*
9 *Local 1000*, 567 U.S. 298, 310-311 (2012)). A union’s extraction of fees from an employee
10 who has *not agreed* to support such positions thus constitutes a “compelled subsidization
11 of private speech.” *Id.* (emphasis added). *Janus* therefore held that “[n]either an agency
12 fee nor any other payment to the union may be deducted from a nonmember’s wages . . .
13 unless the employee affirmatively consents to pay.” 138 S. Ct. at 2486. When
14 nonmembers agree to pay, they are “waiving their First Amendment rights.” *Id.* The
15 waiver “must be freely given and shown by ‘clear and compelling’ evidence.” *Id.*

16 The *Janus* waiver requirement does not apply under the circumstances of this case.
17 In *Janus*, the plaintiff never signed a union membership agreement that authorized a dues
18 deduction assignment. *Janus* specifically concerned the “deduct[ions] from a
19 nonmember’s wages” without “affirmative[] consent[].” *Id.* at 2486. Notably, “the
20 relationship between unions and their voluntary members was not at issue in *Janus*.”
21 *Cooley v. Cal. Statewide Law Enf’t Ass’n*, 2019 WL 331170, at *2 (E.D. Cal. Jan. 25,
22 2019). When an employee agrees to union membership and authorizes a dues deduction
23 assignment, an employee is consenting to financially support the union and its “many
24 positions during collective bargaining,” *see id.* at 2464, and therefore his speech is not
25 compelled. Because dues deductions do not violate a voluntary member’s First
26 Amendment right not to be compelled to speak, the *Janus* waiver requirement does not
27 apply to voluntary members. *See Belgau*, 359 F. Supp. 3d at 1016-17 (W.D. Wash. 2019)
28 (“*Janus* does not apply here -- *Janus* was not a union member, unlike the Plaintiffs here,

1 and Janus did not agree to a dues deduction, unlike the Plaintiffs here.”).

2 Plaintiffs in this case voluntarily agreed to union membership and deduction of union
3 dues. “Where the employee has a choice of union membership and the employee chooses
4 to join, the union membership money is not coerced. The employee is a union member
5 voluntarily.” *Kidwell v. Transp. Commc’ns Int’l Union*, 946 F.2d 283, 293 (4th Cir. 1991);
6 *see also Anderson v. Serv. Emps. Int’l Union Local 503*, 400 F. Supp. 3d 1113, 1116-18
7 (D. Or. 2019) (“To the extent that Plaintiffs may argue they were ‘coerced’ into
8 membership, the Court does not agree.”).

9 Moreover, “[t]he fact that plaintiffs would not have opted to pay union membership
10 fees if *Janus* had been the law at the time of their decision does not mean their decision
11 was therefore coerced.” *Crockett v. NEA-Alaska*, 367 F. Supp. 3d 996, 1008 (D. Alaska
12 2019); *Smith v. Bieker*, No. 18-CV-05472-VC, 2019 WL 2476679, at *2 (N.D. Cal. June
13 13, 2019) (finding a valid agreement, even if plaintiffs did not know they could choose not
14 to pay dues at the time of signing, because “changes in intervening law – even
15 constitutional law – do not invalidate a contract”) (citing *Brady v. United States*, 397 U.S.
16 742, 757 (1970)). As this case involves voluntary members, the Union has not violated
17 Plaintiffs’ First Amendment rights. Accordingly, Defendants do not need to show a *Janus*
18 waiver to enforce the agreement.

19 Finally, “the First Amendment does not confer . . . a constitutional right to disregard
20 promises that would otherwise be enforced under state law.” *Cohen v. Cowles Media Co.*,
21 501 U.S. 663, 672 (1991); *see also Fisk*, 759 F. App’x at 633 (holding that the First
22 Amendment does not preclude the enforcement of plaintiffs’ voluntary union membership
23 contracts); *Belgau*, 359 F. Supp. 3d at 1009. Accordingly, the Plaintiffs have not shown a
24 violation of their First Amendment rights and Defendants’ motions for judgment on the
25 pleadings on the First Amendment violation are **GRANTED**.

D. Medicaid Act Violation

1
2 In addition to the First Amendment violation, Plaintiffs also claim that the State
3 Controller's deduction of union dues from Plaintiffs and other IHSS providers violates
4 Section 32 of the Medicaid Act. [Doc. No. 36 at 26.] Plaintiffs contend Section 32 gives
5 Medicaid providers a right to direct payment for their services and prohibits diversions of
6 those payments to any other party, except as expressly permitted. *Id.* The Court does not
7 find that Section 32 creates a private right of action under § 1983. *See Aliser v. SEIU Cal.*,
8 2019 WL 6711470, at *1 (N.D. Cal. Dec. 10, 2019) (“[Section 32] of the Medicaid Act
9 doesn't give the plaintiffs a federal right to sue under section 1983.”).

10 42 U.S.C. § 1396a(a) lists requirements that a state must follow under its state
11 Medicaid plan. The Secretary of Health and Human Services is authorized to determine
12 whether states are complying with the requirements of section 1396a, and to withhold
13 Medicaid funding from noncompliant states. § 1396c. Under Section 32, a state plan must
14 “provide that no payment under the plan for any care or service provided to an individual
15 shall be made to anyone other than such individual or the person or institution providing
16 such care or service, under an assignment or power of attorney or otherwise.” §
17 1396a(a)(32). Section 32 does not create an individually enforceable right. *See*
18 *Transitional Services of New York for Long Island, Inc. v. New York State Office of Mental*
19 *Health*, 91 F. Supp. 3d 438, 445 (E.D.N.Y. 2015). On its face, Section 32 restricts the
20 entities to whom a payment can be made under the plan; it does not create an entitlement
21 to payment. *See Gonzaga v. Doe*, 536 U.S. 273, 290 (2002) (“[I]f Congress wishes to
22 create new rights enforceable under § 1983, it must do so in clear and unambiguous
23 terms.”). Unlike Section 23, the subject of *Planned Parenthood Arizona Inc. v. Betlach*,
24 Section 32 does not contain language that “unambiguously confers . . . a right.” *See*
25 *Betlach*, 727 F.3d 960, 966 (9th Cir. 2013) (“[A]ny individual eligible for medical
26 assistance . . . may obtain such assistance from any institution, agency, community
27 pharmacy, or person, qualified to perform the service or services required.” (quoting §
28 1396a(a)(23)); cf. *Ball v. Rodgers*, 492 F.3d 1094, 1107 (9th Cir. 2007) (“[N]either

1 provision uses the word ‘individuals’ simply in passing. Instead, both are constructed in
2 such a way as to stress that these ‘individuals’ have two explicitly identified rights.”).

3 Courts have determined that the purpose of Section 32 was to prevent healthcare
4 providers from assigning their entitlement to reimbursement to a third party:

5 “Prior to 1972, it was possible for state departments of public aid to reimburse
6 medical providers at any address designated by the provider on the bill for
7 services rendered. Quite frequently, physicians had their payment vouchers
8 sent directly to factoring companies which would pay the provider at a
9 discounted amount of the face value of the bills in exchange for an assignment
10 of the physician’s interest in the bills. In this manner, the provider obtained
11 immediate payment for services rendered, albeit at a discounted rate.
12 However, this system of payment was believed to be responsible for inflated
13 and sometimes fraudulent charges for services rendered.”

14 *Michael Reese Physicians & Surgeons, S.C. v. Quern*, 606 F.2d 732, 734 (7th Cir. 1979),
15 adopted en banc, 625 F.2d 764 (7th Cir. 1980), cert. denied, 449 U.S. 1079 (1981). In
16 response to this problem, Congress amended § 1396a(a) to stop the “factoring” of Medicaid
17 receivables. See *Danvers Pathology Associates, Inc. v. Atkins*, 757 F.2d 427, 428-31 (1st
18 Cir. 1985) (Breyer, J.) (discussing the legislative history of § 1396a(a)(32)).

19 Section 32 does not compel payment to healthcare providers. Rather, it states that if
20 a payment is made under the plan, then it must be made to the provider alone. Thus, Section
21 32 does not require the state to issue any payment at all; instead, it places restrictions on
22 who can receive such a payment. In other words, there is no rights-conferring language in
23 the provision. Absent such language, the Court concludes that Section 32 does not confer
24 a federal right upon medical providers. Accordingly, Defendants’ motions for judgment
25 on the pleadings on the Medicaid Act violation are **GRANTED**.

26 **IV. CONCLUSION**

27 For the reasons set forth above, the Court **GRANTS** the Defendants’ motions for
28 judgment on the pleadings. Because no First Amendment violation can be shown, and no

1 private right of action exists under Section 32 of the Medicaid Act, no amendment will be
2 able to cure the deficiencies of Plaintiffs' complaint. Accordingly, this case is
3 **DISMISSED with prejudice** and the Clerk of Court shall **CLOSE** this matter.

4 It is **SO ORDERED**.

5 Dated: February 10, 2020



6
7 Hon. Cathy Ann Bencivengo
8 United States District Judge
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28