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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

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| SPOKANE VALLEY FIRE DEPARTMENT,<br><br>Plaintiff,<br><br>v.<br><br>INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS AFL-CIO, LOCAL 3701,<br><br>Defendant. | No. 2:17-cv-00250-SMJ<br><br>**DEFENDANT'S REPLY BRIEF IN SUPPORT OF ITS MOTION TO DISMISS**<br><br>NOTE ON MOTION CALENDAR: September 25, 2017<br><br>Without Oral Argument |

## I. LOCAL 3701'S MOTION TO DISMISS IS PROPERLY SUBMITTED AND PREMISED ON THE DEPARTMENT'S FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED.

Defendant's Motion to Dismiss is properly before the Court under FRCP 12(b)(6). A court may take judicial notice of undisputed facts without converting a motion to dismiss into a motion for summary judgment. MGIC Indem. Corp. v.



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Weisman, 803 F.2d 500, 504 (9th Cir. 1986).[1] Contrary to the Department's vigorous assertions, Local 3701's Motion is premised entirely on the Department's allegations in the Complaint. Local 3701 submitted the Declaration of Richard Llewellyn only to provide context; not to negate or rebut the allegations contained in the Complaint. The Department's Rebuttal Submission of Facts confirms that Llewellyn's Declaration does not assert any facts in dispute. Defendant's Motion remains under FRCP 12(b)(6).

## II. THE DEPARTMENT FAILED TO PROVIDE ANY RELEVANT LEGAL AUTHORITY TO SUPPORT ITS CONTENTION THAT IT HAS STANDING TO BRING THIS SUIT AGAINST LOCAL 3701.

The Department filed suit against Local 3701 for a declaration that Local 3701's bargaining members are exempt employees under the FLSA. While Local 3701 provided the Court with a careful legal analysis of claims permitted under the FLSA (ECF No. 6, p.6-16), the Department did not rebut the clear authority that

[1] Federal Rule of Evidence 201 authorizes a court to take judicial notice of "matters of public record," Mack v. S. Bay Beer Distrib., 798 F.2d 1279, 1282 (9th Cir. 1986), or any other "adjudicative" facts which are "facts concerning the immediate parties." *See* U.S. v. Gould, 536 F.2d 216, 219 (8th Cir. 1976). As such, undisputed facts between the parties may be judicially noticed pursuant to FRE 201. Lee v. City of Los Angeles, 250 F.3d 668, 689 (9th Cir. 2001).



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the FLSA only applies to employers and employees, not to the employees' bargaining representative. Bonnette v. CA Health & Welfare Agency, 704 F.2d 1465, 1468 (9th Cir. 1983) (defendant must be an "employer" within the meaning of the FLSA for the FLSA to apply). Here, the lack of an employment relationship between the parties is fatal as a matter of law.

The Department baldly asserts that an employer has standing to seek declaratory relief against a union. As legal support for this specious claim, the Department cites to four 1940s era cases that are clearly not applicable to the case at hand.

First, in Waialua Agr. Co. v. Maneja, 178 F.2d 603 (9th Cir. 1949), the company filed suit against forty-eight individual employees, as well as the local union that represented those employees. The court set aside the judgment and remanded the case because the trial court had not developed an adequate record. The Ninth Circuit did not determine whether the union was a proper party, nor did it remand to determine the existence of an actual "controversy" under the DJA. Instead, the Ninth Circuit found the lower court's judgment to be "a nullity." Id. at 606. The court remanded the case because the record lacked findings as to specific employees, specific work, specific time, and exact results. Id. Wailalua demonstrates the established standard that declaratory relief under the FLSA



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requires individualized determinations for each classification of employee at issue. Such is not possible here, under the Department's request for a broad determination of all of Local 3701's members.

In Tennessee Coal v. Muscoda Local, 5 F.R.D. 174 (N.D. Alabama 1946), the sole issue decided by the District Court was whether similarly situated employees had timely petitioned to intervene. The court did not determine whether the employer had standing to sue a labor organization on its own.

In Bowie v. Gonzales, 117 F.2d 11 (1st Cir. 1941), no party was a labor organization. The employer claimed its employees were engaged in agriculture, and therefore exempt from the FLSA. Id. at 14-15. The parties first submitted the issue to the FLSA Administrator. Id. at 15. The employer then filed suit alleging that the Administrator's decision was arbitrary and unreasonable, and that the Administrator lacked the authority to define an area of production for the sugar grinding industry. Id. The employer filed suit against three employees (and no labor organization) and the Administrator filed a brief as amicus curiae. Id. The First Circuit concluded that the FLSA applied to the employees in question and that they were entitled to minimum wages. Id. at 19. Not only was no labor organization named a party, but the employer and employees had first submitted



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the issue to the Administrator of the Act. Neither are the case in the matter at hand.

Finally, the Department cites to Oil Workers Int'l Union v. Texoma Natural Gas Co., 146 F.2d 62 (5th Cir. 1944), wherein the employer and union were signatory to a collective bargaining agreement, and had submitted their dispute to an arbitrator, who issued a decision. The employer brought suit "for a declaratory judgment to interpret the contract as to the issues raised, and to pass on the validity of the [arbitrator's] award." Id. at 64. These facts are clearly distinguishable from this case. The Department's claims are not based on the collective bargaining agreement, and the alleged dispute was never submitted to an arbitrator.

The most recent case that the Department cites is from 1949, Waialua Agr. Co., 178 F.2d 603. In the 68 years since that decision, courts have clearly confirmed that organizations cannot sue for declaratory relief under the FLSA. *See* UFCW, Local 1564 v. Albertson's Inc., 207 F.3d 1193, 1202 (10th Cir. 2000) (explaining that, because the FLSA precludes unions from asserting representational standing on members' behalf, union could not assert claim for FLSA violation under theory of declaratory relief: "[The DJA] is inapplicable to this case, because that statute cannot confer standing to sue on a party otherwise expressly prohibited from seeking both damages and injunctive relief"); FOP,



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Lodge 3 v. Baltimore Police Dep't, 1996 U.S. Dis. LEXIS 22502 (Dist. Md. 1996) (a cause of action may be maintained by employees for themselves and other similarly situated employees but the statute bars unions from bringing representative actions under the FLSA).

Finally, the Department seeks declaratory relief that would be applicable against Local 3701 members not against Local 3701 itself. The Department cannot avoid naming individuals by naming their union in a representational capacity.

## III. THE COURT LACKS SUBJECT MATTER JURISDICTION TO HEAR THE DEPARTMENT'S CLAIMS.

The fact that the parties have agreed to disagree on the FLSA overtime status of individual members of Local 3701's bargaining unit does not entitle the Department to declaratory relief under the DJA. (ECF No. 1, p.1) The DJA allows a court to declare rights of an interested party "[i]n a case of actual controversy within its jurisdiction." 28 U.S.C. § 2201(a). The Department has failed to present either an actual controversy or a basis for jurisdiction.

No Actual Controversy – An actual controversy exists within the meaning of the DJA when the dispute is "definite and concrete, touching the legal relations of parties having adverse legal interests." MedImmune, Inc. v. Genentech, Inc., 549 U.S. 118, 127 (2007). The dispute must be "real and substantial" and "admit of specific relief through a decree of a conclusive character, as distinguished from an



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opinion advising what the law would be upon a hypothetical set of facts." Id. (internal quotations omitted). The basic question is "whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." Id. "An 'adverse legal interest' requires a dispute as to a legal right – for example, an underlying legal cause of action that the declaratory defendant could have brought or threatened to bring." Arris Group, Inc. v. British Telecomm. PLC, 639 F.3d 1368, 1374 (11th Cir. 2011).

For example, in Sunshine Mining Co. v. Carver, 34 F. Supp. 274, 278-79 (D. Idaho 1940), the District Court determined that the facts constituted an actual controversy sufficient for declaratory relief where: the employees contended their employer's past and continuing actions violated the FLSA; the employer would be directly liable to those employees for wages owed for overtime worked; the Wage and Hour Division of the Department of Labor and the Department of Justice had threatened prosecution and the imposition of penalties; and the defendants, the U.S. District Attorney as well as a large number of employees, had, in fact, threatened to bring action against the employer under the FLSA.



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The Department's factual and legal allegations do not constitute an actual controversy. The parties continue to negotiate a new contract. (ECF No. 1, ¶ 4.14) The Department does not allege that Local 3701 has threatened to file an unfair labor practice, threatened litigation, or even made allegations that the Department has violated the FLSA. Meanwhile, neither the Wage and Hour Division of the DOL nor the Department of Justice have threatened prosecution or imposed any penalty against the Department. No actual controversy exists to trigger declaratory relief.

No Independent Jurisdiction – Even assuming that the parties' dispute does constitute an "actual controversy," the Department has not provided a basis for this Court's jurisdiction. The Court is only empowered to grant declaratory relief when it has jurisdiction to hear the underlying claims. Cal. Assoc. of Emp'rs v. Bldg. & Constr. Trades Council, 178 F.2d 175, 177 (9th Cir. 1949). The DJA is not a jurisdictional statute and does not create subject matter jurisdiction where none otherwise exists, but rather creates "a particular kind of remedy available in actions where the district court **already** has jurisdiction to entertain a suit." Jarrett v. Resor, 426 F.2d 213, 216 (9th Cir. 1970) (emphasis added). The Department has failed to allege an independent right of action that would provide jurisdiction.



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As previously demonstrated, the Department does not have a valid FLSA claim against Local 3701. Without a valid FLSA claim, there is no jurisdiction to support the Department's request for declaratory relief. Because the Department's non-existent FLSA claim is subject to dismissal as a matter of law, the FLSA does not constitute an independent basis for federal question jurisdiction. If one were to remove the claim for declaratory relief under the DJA, no viable claim(s) remain in the Complaint. Therefore, because declaratory relief against a labor organization is not a viable claim under the FLSA, and because the Complaint fails to state any other claim upon which relief can be granted, the Complaint must be summarily dismissed for lack of jurisdiction.[2]

## IV. THE COURT SHOULD AWARD LOCAL 3701 ITS COSTS AND FEES INCURRED IN BRINGING ITS MOTION TO DISMISS.

Local 3701 asks this Court to exercise its inherent power to assess attorney fees where a losing party has "acted in bad faith, vexatiously, wantonly, or for oppressive reasons." Alyeska Pipeline Serv. Co. v. Wilderness Soc'y, 421 U.S. 240, 258-59 (1975). The Department is engaged in impermissible forum shopping,

[2] Moreover, the First Circuit has held that prospective declaratory judgments may not be available to private plaintiffs asserting FLSA claims, reasoning that the FLSA only permits the Department of Labor's Secretary of Labor to bring claims for injunctive relief. Mills v. State of Me., 118 F.3d 37, 55 (1st Cir. 1997).



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seeking declaratory relief without legal foundation and against an improper party. Despite Local 3701's proposal that the Department submit this issue to the DOL, the Department instead initiated suit against Local 3701, requiring it to incur substantial legal costs and attorney fees to defend itself against baseless claims. The Department's decision to bring this lawsuit amounts to a wanton disregard for the law and clearly demonstrates bad faith and an abuse of the judicial process. This warrants an award of costs and attorney fees to Local 3701.

## CONCLUSION

For the foregoing reasons and those set forth in the opening memorandum, the Court should dismiss the Complaint with prejudice and award Local 3701 costs and attorney fees.

Dated this 8th day of September, 2017.

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 8, 2017, I electronically filed the foregoing **DEFENDANT'S REPLY BRIEF IN SUPPORT OF ITS MOTION TO DISMISS** 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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