NOT FOR PUBLICATION

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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BETHANY MENDEZ; et al., Plaintiffs-Appellants, v. CALIFORNIA TEACHERS ASSOCIATION; et al., Defendants-Appellees.	No. 20-15394 D.C. No. 4:19-cv-01290-YGR MEMORANDUM[*]

Appeal from the United States District Court
for the Northern District of California
Yvonne Gonzalez Rogers, District Judge, Presiding

Submitted July 19, 2021[**]

Before: SCHROEDER, SILVERMAN, and MURGUIA, Circuit Judges.

Bethany Mendez, Linda Leigh Dick, Audrey Stewart, Angela Williams, Stephanie Christie, and Jennifer Gribben appeal from the district court's judgment dismissing their 42 U.S.C. § 1983 putative class action alleging First Amendment claims arising out of union membership dues. We have jurisdiction under 28

[*] This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

[**] The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

U.S.C. § 1291. We review de novo the district court's dismissal under Federal Rule of Civil Procedure 12(b)(6), and we may affirm on any ground supported by the record. *Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998 (9th Cir. 2010). We affirm.

The parties now agree that this court's intervening decision in *Belgau v. Inslee*, 975 F.3d 940 (9th Cir. 2020), *cert. denied*, No. 20-1120, 2021 WL 2519114 (June 21, 2021), controls the outcome of this appeal.

The district court properly dismissed plaintiffs' First Amendment claims against Associated Chino Teachers, California Teachers Association, Fremont Unified District Teachers Association, Hayward Education Association-CTA-NEA, National Education Association, Valley Center-Pauma Teachers Association because the deduction of union membership dues arose from the private membership agreements between the union defendants and plaintiffs, and "private dues agreements do not trigger state action and independent constitutional scrutiny." *Belgau*, 975 F.3d at 946-49 (discussing state action).

Dismissal of plaintiffs' First Amendment claims against superintendents Kim Wallace, Ron McCowan, Matt Wayne, Norm Engield, and Attorney General Rob Bonta was proper because plaintiffs affirmatively consented to the voluntary deduction of union membership dues, and the Supreme Court's decision in *Janus v. American Federation of State, County & Municipal Employees, Council 31*, 138

S. Ct. 2448 (2018), did not extend a First Amendment right to avoid paying union dues that were agreed upon under validly entered membership agreements. *See Belgau*, 975 F.3d at 950-52.

The district court did not abuse its discretion in denying leave to amend because any amendment would have been futile. *See Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1041 (9th Cir. 2011) (setting forth standard of review and explaining that dismissal without leave to amend is proper when amendment would be futile).

We do not consider matters not specifically and distinctly raised and argued in the opening brief. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

AFFIRMED.