No. 19-35463

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DANIEL Z. CROWE; OREGON CIVIL LIBERTIES ATTORNEYS;
and LAWRENCE K. PETERSON,

Plaintiffs-Appellants,

v.

STATE BAR OF OREGON,

Defendant-Appellee.

On Appeal from the United States District Court
for the District of Oregon, Portland Division
Case No. 3:18-cv-02139-JR
Hon. Michael H. Simon

DEFENDANT-APPELLEE'S ANSWERING BRIEF

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INTRODUCTION

The Oregon State Bar (the "Bar") regulates the practice of law in Oregon, helping ensure that lawyers meet the high ethical and practice standards essential to their role "'as assistants to the court in search of a just solution to disputes.'" *Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447, 460 (1978) (quoting *Cohen v. Hurley*, 366 U.S. 117, 124 (1961)) (describing the U.S. Supreme Court's view of a central function of bar associations).

Plaintiffs, two members of the Bar and a nonprofit corporation,[1] claim that the Bar[2] is violating their constitutional rights by compelling their membership and assessing mandatory dues, using their membership dues for speech with which they disagree, and not implementing adequate procedural safeguards to protect members from involuntarily funding impermissible speech. Plaintiffs also assert that the Bar's publication of two statements in the April 2018 edition of *Oregon*

[1] Although it is inconsequential to this appeal because the two individual plaintiffs have standing, plaintiff Oregon Civil Liberties Attorneys has not established that it has standing to pursue the asserted claims on behalf of its members.

[2] Plaintiffs originally filed their claims against the Bar, the Oregon State Bar Board of Governors ("Board of Governors"), and five individuals (the "Individual Defendants"): the president and president-elect of the Board of Governors and the Chief Executive Officer, Director of Finance and Operations, and General Counsel of the Bar.

State Bar Bulletin (the "*Bulletin*") violated plaintiffs' speech and associational rights. In one of these statements, the Bar opined that recent national and local violence were antithetical to its mission to promote "access to justice, the rule of law, and a healthy and functional judicial system that equitably serves everyone" (the "Bar's April 2018 Statement"). ER 76, ¶¶ 42-43; ER 85. The other statement to which plaintiffs object was issued by seven specialty bars (the "Specialty Bar Statement"). ER 76, ¶¶ 42-43; ER 86.

The District Court properly dismissed plaintiffs' claims on a motion to dismiss. Long-standing U.S. Supreme Court precedent permits compulsory bar membership, mandatory bar dues, and the use of mandatory dues for speech germane to the regulation of attorneys and improvement of legal services. *Keller v. State Bar of Cal.*, 496 U.S. 1, 4 (1990). *Keller* and Ninth Circuit precedent confirm the constitutional sufficiency of the Bar's procedures for protecting members from involuntarily funding non-germane activity, procedures of which plaintiffs availed themselves after objecting to the April 2018 *Bulletin*.

Rather than demonstrating how they have stated any plausible claims in light of the foregoing precedent, plaintiffs urge the Court to extend the holding in *Janus v. Am. Fed'n of State, Cty., & Mun. Emps., Council 31*, ___ U.S. ___,

138 S. Ct. 2448, 2486 (2018), from public-sector labor unions to integrated bars.[3] But like the District Court, this Court is not at liberty to take plaintiffs' suggestion, because it is obligated to follow binding precedent when it exists. *See Agostini v. Felton*, 521 U.S. 203, 237 (1997) (when U.S. Supreme Court precedent "has direct application in a case, . . . the Court of Appeals should follow the case which directly controls, leaving to [the U.S. Supreme] Court the prerogative of overruling its own decisions") (internal quotation marks and citation omitted).

Because plaintiffs' claims all fail under *Keller*, this Court should affirm the District Court's ruling.

STATEMENT OF JURISDICTION

The Bar agrees with plaintiffs' statement that this Court would have jurisdiction over an appeal of the dismissal of plaintiffs' claims against the Individual Defendants under 28 U.S.C. § 1291, except that this Court does not have jurisdiction over any claims for damages against the Individual Defendants because plaintiffs conceded dismissal of those claims. SER 4. Moreover, it is not

[3] An organization composed of attorney members from whom dues are required as a condition of practicing law is commonly referred to as an "integrated bar." *See Keller*, 496 U.S. at 5. The Bar is an integrated bar.

clear that plaintiffs have in fact appealed the dismissal of their other claims against the Individual Defendants.[4]

Plaintiffs' brief does not affirmatively state whether they are appealing the dismissal of their claims against the Bar. The District Court dismissed all claims against the Bar because it is entitled to immunity from suit under the Eleventh Amendment to the U.S. Constitution. ER 13-14. Plaintiffs have not appealed the District Court's recognition of the Bar's right to that immunity. This Court therefore does not have jurisdiction over any claims against the Bar, which is the only named defendant-appellee.

In addition, plaintiffs' brief does not affirmatively state whether they are appealing the dismissal of their claims against the Oregon State Bar Board of Governors. Plaintiffs conceded dismissal of those claims. SER 5. This Court therefore does not have jurisdiction over any claims against the Oregon State Bar Board of Governors.

[4] The caption of plaintiffs' brief identifies the Bar as the only defendant-appellee and the substance of the brief also does not discuss the alleged conduct of the Individual Defendants. Similarly, plaintiffs' notice of appeal does not include the Individual Defendants.

Despite these apparent defects in plaintiffs' appeal, and without conceding jurisdiction, all defendants named in the case before the District Court respond to the arguments raised in plaintiffs' brief.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW[5]

1. Did the District Court correctly rule that plaintiffs failed to plead a plausible claim that their First and Fourteenth Amendment rights are violated by compulsory membership in the Bar?

2. Did the District Court correctly rule that plaintiffs failed to plead a plausible claim that their First and Fourteenth Amendment rights are violated when the Bar engages in germane political speech without members' affirmative consent?

3. Did the District Court correctly rule that plaintiffs failed to state a claim that the Bar's Bylaws do not adequately protect plaintiffs' First and Fourteenth Amendment associational and compelled speech rights?

4. Did the District Court correctly rule that whether or not publication of the *Bulletin*, including the Bar's April 2018 Statement, is germane,

[5] The Bar's brief addresses plaintiffs' claims in the order in which they were presented in the opening brief.

plaintiffs failed to state any plausible claims because the Bar provides its members with adequate First Amendment safeguards?

STATEMENT OF THE CASE

I. The Bar Serves the State's Compelling Interests of Regulating Attorneys and Improving Access to and the Quality of Legal Services in Oregon.

The Oregon legislature created the Bar in 1935 as part of the State Bar Act. *See* ORS 9.005-9.757; *In re Glover*, 156 Or. 558, 562, 68 P.2d 766 (1937). The Bar's mission "is to serve justice by promoting respect for the rule of law, by improving the quality of legal services, and by increasing access to justice."[6] The Bar, through its Board of Governors, is also responsible for advancing "the science of jurisprudence and the improvement of the administration of justice" in Oregon. ORS 9.080(1).

The Bar carries out these duties in a number of ways. It recommends rules for adoption by the Oregon Supreme Court regarding standards for admission to the practice of law and rules of professional conduct. ORS 9.490. Subject to the

[6] Oregon State Bar, Mission Statement, https://www.osbar.org/_docs/resources/OSBMissionStatement.pdf (last visited Oct. 12, 2019). The Bar amended the Mission Statement and Bylaws in the summer of 2019, after the District Court's decision, but the Mission Statement and Bylaws have not substantively changed in any way that would affect this case.

Oregon Supreme Court's oversight, the Bar administers the attorney disciplinary system. ORS 9.080; ORS 9.490; Or State Bar RP 2.3-2.4. It also administers programs designed to improve the quality of legal services provided by Oregon lawyers and to increase access to justice for underserved Oregonians.[7] ORS 9.080; ORS 9.114.

II. The Bar's Bylaws Protect Members From Involuntarily Funding Non-germane Speech and Provide Procedures for Objecting to the Bar's Use of Membership Dues.

In accordance with the Bar's Bylaws, all "legislative or policy activities [of the Bar] must be reasonably related to" nine listed topics that are germane to the Bar's purpose and the compelling state interest that it serves. Bylaws § 12.1.[8] The Bar's speech activities must be related to the following topics:

[7] The Bar's programs provide information about common legal topics and seek to increase pro bono legal services available to impoverished Oregonians, military families, and survivors of domestic violence. *See, e.g.*, Oregon State Bar, Public Information Home, https://www.osbar.org/public (last visited Oct. 23, 2019); Oregon State Bar, Legal Services Program, https://www.osbar.org/lsp (last visited Oct. 9, 2019).

[8] The District Court took judicial notice of the Bar's Bylaws, mission statement, and "other official statements and documents," because their content is not subject to reasonable dispute. ER 13 n.2. Plaintiffs do not dispute this on appeal and, in fact, have agreed to the court taking judicial notice of the Bar's Bylaws. SER 2-3.

- Regulating and disciplining lawyers;
- Improving the functioning of the courts, including issues of judicial independence, fairness, efficacy, and efficiency;
- Making legal services available to society;
- Regulating lawyer trust accounts;
- The education, ethics, competence, integrity, and regulation of the legal profession;
- Providing law improvement assistance to elected and appointed government officials;
- Issues involving the structure and organization of federal, state, and local courts in or affecting Oregon;
- Issues involving the rules of practice, procedure, and evidence in federal, state, or local courts in or affecting Oregon; or
- Issues involving the duties and functions of judges and lawyers in federal, state, and local courts in or affecting Oregon.

Id.; *see also* ER 75, ¶ 36.

In addition to these limitations on the Bar's speech activities, the Bar's Bylaws offer a dispute-resolution procedure if a member believes that the Bar has inappropriately funded speech that is not reasonably related to a germane speech topic under *Keller*. Through this procedure, the member can seek a prompt refund of the member's dues. Section 12.6 of the Bylaws outlines this procedure. In relevant part, it provides:

Section 12.6 Objections to Use of Bar Dues

Subsection 12.600 Submission

A member of the Bar who objects to the use of any portion of the member's bar dues for activities he or she considers promotes or opposes political or ideological causes may request the Board to review the member's concerns to determine if the Board agrees with the member's objections. . . .

Subsection 12.601 Refund

If the Board agrees with the member's objection, it will immediately refund the portion of the member's dues that are attributable to the activity, with interest paid on that sum of money from the date that the member's fees were received to the date of the Bar's refund. . . . If the Board disagrees with the member's objection, it will immediately offer the member the opportunity to submit the matter to binding arbitration between the Bar and the objecting member. . . .

Subsection 12.602 Arbitration

If an objecting member agrees to binding arbitration, the matter will be submitted to the Oregon Senior Judges Association ("OSJA") for the designation of three active status retired judges who have previously indicated a willingness to serve as volunteer arbitrators in these matters. The Bar and the objecting member will have one peremptory challenge to the list of arbitrators. . . . The arbitrator will promptly decide the matter, applying the standard set forth in *Keller v. State Bar of California*, 496 U.S. 1, 110 S. Ct. 2228, 110 L. Ed. 2d 1 (1990), to the expenditures to which the member objected. The scope of the arbitrator's review must solely be to determine whether the matters at issue are acceptable activities for which compulsory fees may be used under applicable constitutional law. . . . If the arbitrator agrees with the member's objection, the Bar will immediately refund the portion of the member's dues that are reasonably attributable to the activity, with interest at the statutory rate paid on the amount from the

> date that the member's fees were received to the date of the Bar's refund.

The Bar's Bylaws therefore protect members from involuntarily funding non-germane political speech and provide a means to remedy the inappropriate expenditure of member dues on non-germane speech.

III. The *Bulletin* Publishes Statements From a Variety of Authors With Differing Political Viewpoints and Creates a Forum for the Exchange of Ideas Pertaining to the Practice of Law.

As one of the services that the Bar provides its members, the Bar publishes ten issues of the *Bulletin* annually.[9] The *Bulletin* helps keep members apprised of bar events, continuing-legal-education opportunities, professionalism standards, legal developments, practice trends, and member news. The Bar's Bylaws provide that its statements in the *Bulletin* "should be germane to the law, lawyers, the practice of law, the courts and the judicial system, legal education and the Bar in its role as a mandatory membership organization." Bylaws § 11.1. The Bar's statements should also "advance public understanding of the law, legal ethics and the professionalism and collegiality of the bench and Bar." *Id.*

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[9] *See* Oregon State Bar, OSB *Bulletin* Archives, https://www.osbar.org/publications/bulletin/archive.html (last visited Oct. 9, 2019), for examples of the *Bulletin*. The Bar's motion to dismiss also provided this link to the *Bulletin*'s online archives. SER 8 n.5. Plaintiffs did not object to this in their response to defendants' motion to dismiss or their objections to the magistrate's findings and recommendation. *See, e.g.*, ER 36-86.

In the April 2018 edition of the *Bulletin*, the Bar published a "Statement on White Nationalism and Normalization of Violence" (as previously defined, the "Bar's April 2018 Statement"). ER 76, ¶¶ 42-43; ER 85. In the Bar's April 2018 Statement, the Bar reassured its members that in the wake of recent national and local violence, it "remain[ed] steadfastly committed to the vision of a justice system that operates without discrimination and is fully accessible to all Oregonians." ER 85. The Bar also "unequivocally condemn[ed] these acts of violence" and "the proliferation of speech that incites such violence," because, in the Bar's opinion, it threatened "access to justice, the rule of law, and a healthy and functional judicial system that equitably serves everyone." *Id.* The Bar reminded its members that lawyers are "stewards of the justice system[ ] [and that] it is up to us to safeguard the rule of law and to ensure its fair and equitable administration." *Id.* The Bar's April 2018 Statement ended with a pledge: "We not only refuse to become accustomed to this climate, we are intent on standing in support and solidarity with those historically marginalized, underrepresented and vulnerable communities who feel voiceless within the Oregon legal system." *Id.*

A statement by seven specialty bars appeared on the adjacent page of the April 2018 *Bulletin*. ER 76, ¶¶ 42-43; ER 86. That statement was titled "Joint Statement of the Oregon Specialty Bar Associations Supporting the Oregon State

Bar's Statement on White Nationalism and Normalization of Violence" (as previously defined, the "Specialty Bar Statement"). ER 86. The Specialty Bar Statement "condemn[ed] the violence that has occurred as a result of white nationalism and white supremacy" under, in the specialty bars' opinion, the leadership of the President, and "applaud[ed] the Oregon State Bar's commitment to equity and justice." *Id.*

IV. Plaintiffs Availed Themselves of the Procedures for Objecting to the Bar's Use of Members' Dues—and Received a Refund of Their Dues.

Mr. Crowe and Mr. Peterson disagreed with the Bar's publication of the two statements in the April 2018 *Bulletin*. ER 76, ¶¶ 47-48. They invoked the "Objections to Use of Bar Dues" procedure to formally object to the publication of these statements. ER 77, ¶¶ 49-50; Bylaws § 12.6.

Through this procedure, the Bar provided Mr. Crowe and Mr. Peterson with a refund for the full amount of their membership dues used to publish the April 2018 *Bulletin*, plus statutory interest calculated from the date on which their membership dues were owed to the Bar.[10] ER 77, ¶ 51. Other

[10] Plaintiffs do not allege that the Bar conceded wrongdoing by issuing a refund, and the Bar does not concede (and has never conceded) that it spent membership fees on non-germane speech by publishing the April 2018 *Bulletin*. Although the following explanation is beyond the scope of the pleadings, the Bar issued plaintiffs' refund because it has always sought, in accordance with its Bylaws, to strictly adhere to the standards of "germane" speech as set forth in *Keller*. To the

members who objected to the statements in the *Bulletin* also received a refund of their dues, with interest. ER 77, ¶ 52. The complaint does not state that Mr. Crowe or Mr. Peterson objected to the refund, despite the option of challenging it before an impartial decision-maker.[11] Bylaws § 12.601.

Despite plaintiffs' receiving a refund, this lawsuit followed.

SUMMARY OF ARGUMENT

The District Court properly dismissed plaintiffs' compelled membership claim (plaintiffs' third claim for relief) because long-standing U.S. Supreme Court precedent recognizes that states may constitutionally compel membership in integrated bars and assess mandatory membership dues. *See Lathrop v. Donohue*, 367 U.S. 820, 843 (1961); *Keller*, 496 U.S. at 4. The U.S. Supreme Court has repeatedly held that states have a compelling interest in regulating attorneys and improving the quality of legal services, which justifies compulsory membership in integrated bars and the assessment of mandatory dues.

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extent that some members of the Bar believed that the juxtaposition of the Bar's April 2018 Statement and the Specialty Bar Statement suggested otherwise, the Bar sought to avoid even the appearance of funding non-germane speech, by refunding their proportional dues with interest.

[11] Although not alleged in the complaint, in accordance with Bylaws § 12.601, Mr. Peterson initially objected to the refund amount and sought arbitration, but later withdrew this request.

Plaintiffs' assertion that their compelled membership in the Bar infringes on their freedom of association fails to state a plausible legal claim because *Lathrop* and *Keller* hold otherwise. This Court should affirm the dismissal of plaintiffs' compelled membership claim.

The District Court properly dismissed plaintiffs' affirmative consent claim (plaintiffs' second claim for relief) because *Keller* holds that integrated bars may engage in any speech—including political speech—germane to the compelling state interests that the bar serves. 496 U.S. at 13-14. Importantly, under this binding precedent, integrated bars do not need to receive members' affirmative consent before engaging in such germane speech. The First Amendment issues raised in this case are squarely controlled by *Keller* and *Lathrop*. The Court should affirm the dismissal of plaintiffs' affirmative consent claim.

The District Court properly dismissed plaintiffs' First Amendment safeguards claim (plaintiffs' first claim for relief) because *Keller* established that integrated bars can adequately protect members' freedom-of-speech and associational rights by adopting procedural safeguards. Constitutionally adequate safeguards inform members of how the bar uses membership dues, provide an opportunity for members to challenge the use of their dues, and protect members

from involuntarily funding non-germane speech. 496 U.S. at 15-17. No more is required: The Ninth Circuit has upheld the constitutionality of procedural safeguards that offer members a reasonable opportunity to reclaim fees used to fund allegedly non-germane speech. *Morrow v. State Bar of Cal.*, 188 F.3d 1174, 1175 (9th Cir. 1999). Here, the Bar's Bylaws (1) restrict the Bar's speech activities to germane topics under *Keller*, (2) provide a procedure for members to object to the Bar's use of membership dues and to make their case to an impartial decision-maker, and (3) provide for refunds of members' dues, plus interest, if the Bar engaged in non-germane speech. These procedures are constitutionally adequate. The Court should affirm dismissal of plaintiffs' First Amendment safeguards claim.

The District Court correctly ruled that even if the Bar's April 2018 Statement and publication of the *Bulletin* were not germane to the permissible topic of improving the quality of legal services in Oregon, the Bar's Bylaws adequately protect members from involuntarily funding non-germane speech. Consequently, although the District Court correctly ruled that the challenged statements were germane to a permissible topic of speech, these conclusions have no bearing on the outcome of this case and plaintiffs' fourth issue presented does not raise a material legal issue for appeal. For the reasons explained above, the Bar's procedural safeguards adequately protect members' First Amendment rights.

This Court should deny plaintiffs' fourth issue presented and affirm the District Court's dismissal of plaintiffs' claims.

ARGUMENT

I. Legal Standards.

This Court reviews de novo an order granting a motion to dismiss under Fed. R. Civ. P. 12(b)(6). *Ariz. Students' Ass'n v. Ariz. Bd. of Regents*, 824 F.3d 858, 864 (9th Cir. 2016).

Federal Rule of Civil Procedure 8(a)(2) provides that a complaint "must contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief." That rule "requires a 'showing,' rather than a blanket assertion, of entitlement to relief." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 n.3 (2007).

Claims that do not meet this pleading standard are dismissed under Fed. R. Civ. P. 12(b)(6). The court must grant a Fed. R. Civ. P. 12(b)(6) motion unless the plaintiff has alleged sufficient factual allegations that "state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks and citation omitted). When evaluating whether a claim is plausible, the court disregards all conclusory allegations and only "consider[s] the factual allegations in [the] complaint to determine if they plausibly suggest an entitlement to relief." *Iqbal*, 556 U.S. at 681.

II. The District Court Correctly Dismissed Plaintiffs' Compulsory Membership Claim.

Plaintiffs' third claim for relief asserted that their compelled membership in the Bar violates their First and Fourteenth Amendment rights "not to associate" and "to avoid subsidizing group speech with which" they disagree. ER 81, ¶¶ 81-83; Plaintiffs-Appellants' Opening Brief ("Brief") at 20-23.

The District Court correctly dismissed this claim on the grounds that binding precedent holds that lawyers may be constitutionally compelled to join an integrated bar and pay dues.

A. U.S. Supreme Court precedent unambiguously establishes that compulsory membership in an integrated bar does not violate the Constitution.

U.S. Supreme Court precedent establishes that compulsory membership in an integrated bar and the assessment of mandatory dues are constitutional. The Court first held that compulsory bar membership and dues do not impinge lawyers' freedom of association in *Lathrop*, 367 U.S. at 843. The issue before the *Lathrop* Court was whether a Wisconsin attorney could "be compelled to join and give support to [the State Bar of Wisconsin]." 367 U.S. at 827. The four-justice plurality held that compelled membership in an integrated bar is constitutional, even if the bar engages in legislative activity:

> We think that the Supreme Court of Wisconsin, in order to further the State's legitimate interests in raising the quality of professional services, may constitutionally require that the costs of improving the profession in this fashion should be shared by the subjects and beneficiaries of the regulatory program, the lawyers, even though the organization created to attain the objective also engages in some legislative activity. Given the character of the integrated bar shown on this record, in the light of the limitation of the membership requirement to the compulsory payment of reasonable annual dues, we are unable to find any impingement upon protected rights of association.

367 U.S. at 843.

The three concurring justices also agreed that compelled membership in an integrated bar is constitutional. *Lathrop*, 367 U.S. at 849 (Harlan, J., with Frankfurter, J., concurring) ("a State may Constitutionally condition the right to practice law upon membership in an integrated bar association"); 367 U.S. at 865 (Whittaker, J., concurring) ("[T]he State's requirement that a lawyer pay to its designee an annual fee of $15 as a condition of its grant, or of continuing its grant, to him of the special privilege (which is what it is) of practicing law in the State . . . does not violate any provision of the United States Constitution . . . .").

A unanimous U.S. Supreme Court affirmed the *Lathrop* holding in *Keller*, again recognizing that "lawyers admitted to practice in the State may be required to join and pay dues to the State Bar." 496 U.S. at 4. In *Keller*, the plaintiffs contended "that the use of their compulsory dues to finance political and

ideological activities of the State Bar with which they disagree violate[d] their rights of free speech guaranteed by the First Amendment." 496 U.S. at 9. But the Court held that an integrated bar may constitutionally engage in political speech, as long as it is germane to the purpose of the bar:

> [T]he compelled association and integrated bar are justified by the State's interest in regulating the legal profession and improving the quality of legal services. The State Bar may therefore constitutionally fund activities germane to those goals out of the mandatory dues of all members.

Keller, 496 U.S. at 13-14.

"Thus, the guiding standard must be whether the challenged expenditures are necessarily or reasonably incurred for the purpose of regulating the legal profession or 'improving the quality of the legal service available to the people of the State'"—not whether an integrated bar engages in speech that offends some of its members. *Keller*, 496 U.S. at 14 (quoting *Lathrop*, 367 U.S. at 843).

In *Harris v. Quinn*, 573 U.S. 616, 655 (2014), the U.S. Supreme Court again recognized the constitutionality of compulsory bar membership and mandatory dues.

None of these cases have been overruled or abrogated. Accordingly, *Keller* and *Lathrop* remain binding precedent. *Agostini*, 521 U.S. at 237.

B. The Ninth Circuit also treats the constitutionality of compulsory bar membership and mandatory dues as settled law.

Consistent with the holdings in *Lathrop*, *Keller*, and *Harris*, the Ninth Circuit has also repeatedly held that compulsory bar membership and the assessment of mandatory dues are constitutional under *Lathrop* and *Keller*. *See, e.g.*, *O'Connor v. State of Nev.*, 27 F.3d 357, 361 (9th Cir. 1994) ("a state may constitutionally condition the right of its attorneys to practice law upon the payment of membership dues to an integrated bar") (citing *Lathrop* and *Keller*); *Gardner v. State Bar of Nev.*, 284 F.3d 1040, 1042 (9th Cir. 2002) (holding that an integrated bar did not violate its members' freedom of association or freedom of speech by engaging in a public information campaign to improve its public image because "it is not unconstitutional for the state bar to spend its income from its members' dues 'for the purpose of regulating the legal profession or "improving the quality of the legal service available to the people of the State"'") (quoting *Keller*, 496 U.S. at 14 (quoting *Lathrop*, 367 U.S. at 843)); *Morrow*, 188 F.3d at 1176 ("On the question of mandatory bar membership, the issue presented here, *Keller* reaffirmed *Lathrop*'s holding that 'lawyers admitted to practice in the State may be required to join and pay dues to the State Bar.'") (quoting *Keller*, 496 U.S. at 4); *see also Eugster v. Wash. State Bar Ass'n*, 684 F. App'x 618, 619 (9th Cir. 2017) ("The district court properly dismissed Eugster's claims relating to his compulsory

membership in the WSBA because an attorney's mandatory membership with a state bar association is constitutional.") (unpublished decision citing *Lathrop* and *Keller*); *Caruso v. Wash. State Bar Ass'n 1933*, 716 F. App'x 650, 651 (9th Cir. 2018) (dismissing freedom-of-association and freedom-of-speech claims) (unpublished decision citing *Lathrop* and *Keller*).

It is also well settled in other federal appellate courts "that conditioning the practice of law on membership in a state bar association does not itself violate the First Amendment." *Romero v. Colegio de Abogados de Puerto Rico*, 204 F.3d 291, 296-97 (1st Cir. 2000); *see also Kingstad v. State Bar of Wis.*, 622 F.3d 708, 713 (7th Cir. 2010) ("'[m]andatory' or 'unified' bars, under which dues-paying membership is required as a condition to practice law in a state, are also permitted"); *Kaimowitz v. Fla. Bar*, 996 F.2d 1151, 1154 (11th Cir. 1993) ("The *Lathrop* decision controls Plaintiff's claim regarding compulsory bar membership, and the Defendants' motion is due to be granted on that claim as well.").

C. The District Court did not err in finding that *Lathrop* and *Keller* are dispositive of plaintiffs' compelled membership claim.

Despite this overwhelming precedent, plaintiffs contend that *Keller* does not foreclose their compelled membership claim because the Court did not consider whether lawyers may "be compelled to associate with an [integrated bar]

that engages in political or ideological activities beyond those for which mandatory financial support is justified." *Keller*, 496 U.S. at 17; *see also* Brief at 21-22.

Contrary to plaintiffs' contention, the complaint does not raise any legal questions left unanswered by the U.S. Supreme Court. *Keller* reserved a claim of violation of associational rights only for instances in which an integrated bar engages in non-germane speech *and* lacks procedures for challenging its use of membership fees. 496 U.S. at 17; *see also Morrow*, 188 F.3d at 1177 ("The claim reserved in *Keller* was a broader claim of violation of associational rights than was at issue in either *Lathrop* or in this case.").

Here, the alleged violation is squarely within the scope of *Keller*. As alleged in the complaint, the Bar (1) is limited by its Bylaws to engaging in speech activities that are related to germane topics under *Keller*, ER 75, ¶¶ 35-36, and (2) provides procedures for members to challenge the Bar's use of members' dues and receive a proportional refund for any allegedly improper use of mandatory dues, consistent with the First Amendment safeguards required by *Keller*. ER 77, ¶ 51; Bylaws § 12.6; *Keller*, 496 U.S. at 17. Thus, plaintiffs have not raised a constitutional question that goes beyond *Lathrop* and *Keller*.

Because neither the U.S. Supreme Court nor the Ninth Circuit has held that *Lathrop* or *Keller* has been overruled or abrogated, these cases remain

binding precedent on the issue of compelled membership in an integrated bar. *See Fleck v. Wetch*, 937 F.3d 1112, 1118 (8th Cir. 2019) ("*Janus* did not overrule *Keller* and did not question use of the [*Chicago Teachers Union v. Hudson*, 475 U.S. 292 (1986)] procedures *when it is appropriate to do so*"). Accordingly, *Lathrop* and *Keller* foreclose plaintiffs' compelled membership claim. *Agostini*, 521 U.S. at 237 (requiring the Court of Appeals to follow U.S. Supreme Court precedent "which directly controls" the issue before the court) (internal quotation marks and citation omitted). This Court should affirm the District Court's dismissal of plaintiffs' third claim for relief.

III. The District Court Correctly Dismissed Plaintiffs' Affirmative Consent Claim.

Plaintiffs' second claim for relief is also foreclosed by *Keller*. Plaintiffs asserted that, under *Janus*, it is unconstitutional for the Bar to engage in political speech without members' "affirmative consent." ER 70, 80-81, ¶¶ 4, 73-79; Brief at 26-28. But as explained above, *Keller* held that an integrated bar may use mandatory membership dues to fund germane speech and need not require members' affirmative consent to do so.[12] 496 U.S. at 13-14.

[12] For the reasons explained in Section IV.B., below, obtaining members' affirmative consent also makes no sense in light of the Bar's Bylaws limiting its

A. *Janus* does not control plaintiffs' claims against the Bar.

Plaintiffs' attempt to extend *Janus*'s "affirmative consent" requirement from public-sector labor unions to integrated bars contradicts the U.S. Supreme Court's holding in *Keller*.

Plaintiffs assert that the Ninth Circuit "need not conclude that the Supreme Court has overruled *Keller*, nor disregard *Keller* itself," because integrated bars are "subject to the same constitutional rule with respect to the use of compulsory dues as are labor unions." Brief at 27. Building on the Court's ruling in *Janus*, 138 S. Ct. at 2486, that prohibits public-sector labor unions from collecting agency fees "unless the employee affirmatively consents to pay," plaintiffs argue that integrated bars must also receive members' affirmative consent to use mandatory dues to engage in any political speech or the "mandatory bar association fees must [survive] 'exacting' First Amendment scrutiny." Brief at 27-28.

But plaintiffs' attempt to extend *Janus*'s "affirmative consent" requirement from public-sector labor unions to integrated bars contradicts the U.S. Supreme Court's holding in *Keller*. First, *Keller* did not command that

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speech to germane topics under *Keller*, backstopped by its First Amendment procedural safeguards. Bylaws § 12.1.

integrated bars be treated like labor unions for purposes of First Amendment analysis; instead, the Court only went so far as to note in passing that the State Bar of California could be more readily analogized to a labor union than a traditional branch of state government, for the limited purpose of the Court's government speech analysis.[13] *Keller*, 496 U.S. at 13. Second, *Keller* held that integrated bars do not violate the Constitution by using mandatory dues to fund speech germane to "regulating the legal profession and improving the quality of legal services," as long as the bar has sufficient procedural safeguards to protect its members from involuntarily funding non-germane speech. 496 U.S. at 13-14, 17; *see also* Brief at 26. The U.S. Supreme Court therefore has already ruled that integrated bars may engage in germane speech without receiving members' affirmative consent.

Moreover, *Janus* did not overrule or abrogate *Keller* or its progeny. In fact, *Keller* is not mentioned at all in the *Janus* majority opinion, and only once in the dissent, which notes that *Keller* remains good law in the wake of *Janus*:

[13] In fact, any analogy between integrated bars and labor unions is of limited value. Integrated bars assist states in achieving their compelling interests of regulating lawyers and improving the quality of legal services throughout the state. *Keller*, 496 U.S. at 14. Labor unions serve the much different purposes of promoting "labor peace" and preventing "free riders," which are entirely inapplicable to integrated bars. *Janus*, 138 S. Ct. at 2465-66 (discussing the purposes of public labor unions).

"And indeed, the Court has relied on [the *Abood*] rule when deciding cases involving compelled speech subsidies outside the labor sphere—*cases today's decision does not question*. *See, e.g.*, *Keller v. State Bar of Cal.*, 496 U.S. 1, 9-17, 110 S.Ct. 2228, 110 L.Ed.2d 1 (1990) (state bar fees)." *Janus*, 138 S. Ct. at 2498 (Kagan, J., dissenting) (emphasis added).

Keller is therefore binding precedent and dispositive of plaintiffs' affirmative consent claim. *See Agostini*, 521 U.S. at 237.

B. Compulsory bar membership survives exacting scrutiny.

To the extent that plaintiffs argue that compulsory bar membership must meet an "exacting scrutiny" standard to comply with *Janus*, the U.S. Supreme Court has also already reasoned that—if that were to be the correct legal standard—it is met.[14] *See Harris*, 573 U.S. at 655. The *Harris* Court addressed a challenge to "fair share" fees assessed by the Illinois Department of Human Services to home health care workers. The Court applied "exacting First Amendment scrutiny" to the state's assessment of the mandatory fees. 573 U.S. at 648 (internal quotation marks and citation omitted). It held that the

[14] Neither the U.S. Supreme Court nor the Ninth Circuit has ever ruled that compulsory bar membership is subject to exacting scrutiny. In reasoning that the Bar can satisfy exacting scrutiny, the U.S. Supreme Court did not rule that it must.

fees did not survive exacting scrutiny because compulsory funding of the union did not "serve a compelling state interest that cannot be achieved through means significantly less restrictive of associational freedoms." 573 U.S. at 648-49 (internal punctuation and citations omitted).

The *Harris* Court then addressed whether its holding would "call into question" its ruling in *Keller*:

> Respondents contend, finally, that a refusal to extend *Abood* to cover the situation presented in this case will call into question our decisions in *Keller v. State Bar of Cal.*, 496 U.S. 1, 110 S.Ct. 2228, 110 L.Ed.2d 1 (1990), and *Board of Regents of Univ. of Wis. System v. Southworth*, 529 U.S. 217, 120 S.Ct. 1346, 146 L.Ed.2d 193 (2000). Respondents are mistaken.
>
> In *Keller*, we considered the constitutionality of a rule applicable to all members of an "integrated" bar . . . . We held that members of this bar could not be required to pay the portion of bar dues used for political or ideological purposes but that they could be required to pay the portion of the dues used for activities connected with proposing ethical codes and disciplining bar members. *Id.*, at 14, 110 S.Ct. 2228.
>
> This decision fits comfortably within the framework applied in the present case. Licensed attorneys are subject to detailed ethics rules, and the bar rule requiring the payment of dues was part of this regulatory scheme. The portion of the rule that we upheld served the "State's interest in regulating the legal profession and improving the quality of legal services." *Ibid.* States also have a strong interest in allocating to the members of the bar, rather than the general public, the expense of ensuring that attorneys adhere to ethical practices. Thus, our decision in this case is wholly consistent with our holding in *Keller*.

Harris, 573 U.S. at 655-56.

By articulating that *Keller* "fits comfortably within the framework applied in [*Harris*]," the U.S. Supreme Court effectively recognized that compulsory bar membership, the assessment of mandatory bar dues, and the use of members' mandatory dues to fund germane speech activities survive exacting First Amendment scrutiny, if that is the applicable legal standard. *Harris*, 573 U.S. at 655; *see also United States v. United Foods, Inc.*, 533 U.S. 405, 414 (2001) (concluding that *Keller* correctly reasoned that the attorneys "who were required to pay a subsidy for the speech of the association already were required to associate for other purposes, making the compelled contribution of moneys to pay for expressive activities a necessary incident of a larger expenditure for an otherwise proper goal requiring the cooperative activity").[15]

Plaintiffs' arguments therefore fail to establish that integrated bars must receive members' affirmative consent or that the use of members' dues for germane political speech does not pass exacting scrutiny, if that standard applies.[16]

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[15] The *Janus* Court explained that *United Foods* "applied what we characterized as 'exacting' scrutiny." 138 S. Ct. at 2465.

[16] Plaintiffs also mistakenly claim that the Bar has "not even tried" to show that compelled bar membership survives exacting scrutiny. Brief at 23. Contrary to plaintiffs' assertion, the Bar expressly made this argument to the District Court several times. SER 10-11 (Defendants' Motion to Dismiss arguing that "[t]he

Binding U.S. Supreme Court precedent holds that use of mandatory bar dues to fund germane political speech does not violate the First Amendment. *Keller*, 496 U.S. at 13-14 (political speech permitted); *Harris*, 573 U.S. at 655 (*Keller*'s rationale survives exacting scrutiny). This Court should affirm the District Court's dismissal of plaintiffs' second claim for relief. *See Agostini*, 521 U.S. at 237.

IV. The District Court Did Not Err in Dismissing Plaintiffs' Claim That the Bar Does Not Provide Adequate First Amendment Safeguards to Its Members.

Plaintiffs do not dispute that the Bar's Bylaws offer members an opportunity to promptly challenge the use of their dues—or that they received a refund for the publication of the April 2018 *Bulletin* through these procedures.[17] Plaintiffs, therefore, were not forced to subsidize the statements to which they objected. Nevertheless, they argue that the Bar fails to provide adequate

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[*Harris*] Court said that *Keller* fits comfortably within the framework applied in *Harris* and reiterated (a) that integrated bars are justified by a state's compelling interest in regulating the legal profession and improving the quality of legal services and (b) that states also have a strong interest in allocating to the members of the bar, rather than the general public, the expense of ensuring that attorneys adhere to ethical practices.") (internal quotation marks omitted); SER 14-15 (Defendants' Reply in Support of Their Motion to Dismiss); SER 18-19 (Defendants' Response to Plaintiffs' Objections to Findings and Recommendation).

[17] As explained above, under the Bar's Bylaws, plaintiffs also could have received a hearing before an impartial decision-maker. Bylaws § 12.6. Plaintiffs did not avail themselves of this option.

safeguards under *Keller* because it (1) allegedly does not provide adequate explanation of how it "determines what portion of its expenses are chargeable" and (2) does not put disputed dues in escrow. Brief at 30, 32. These arguments are flawed because the Bar limits its speech to topics germane to regulating the profession and improving the quality of legal services, and provides adequate procedural safeguards to protect its members from funding non-germane speech.

A. The Bar's procedural safeguards satisfy *Keller*'s requirement to protect members from funding non-germane speech.

The U.S. Supreme Court has indicated that an integrated bar must have procedural safeguards to ensure that its members are not required to fund non-germane political speech. *Keller*, 496 U.S. at 17. Such procedures can be "the sort of procedures described in *Hudson*." *Id*. The Ninth Circuit has also indicated that integrated bars can satisfy *Keller*'s safeguard requirements by providing members with the opportunity "to seek a refund of the proportion of their dues that the State Bar has spent on political activities unrelated to its [purpose]." *Morrow*, 188 F.3d at 1175. The Bar provides adequate First Amendment safeguards, as contemplated by the U.S. Supreme Court and the Ninth Circuit.

First, Section 12.1 of the Bar's Bylaws requires that the Bar's speech activities "be reasonably related to" at least one of nine permissible topics, which include regulating Oregon attorneys, improving the functioning and fairness of the

judicial system in Oregon, and making legal services available to Oregonians. *See also* ER 75, ¶ 36.

Second, if a member believes that the Bar has nonetheless funded speech that is not germane under *Keller*, Section 12.6 of the Bar's Bylaws sets forth a dispute-resolution procedure by which the member can (1) seek a prompt refund of the member's dues and (2) challenge the Bar's determination before an impartial decision-maker. *See also* ER 77, ¶¶ 49-51.

These procedures comply with *Keller*'s requirements, as the Ninth Circuit has recognized. *See Morrow*, 188 F.3d at 1175; *see also Gibson v. Fla. Bar*, 906 F.2d 624, 632 (11th Cir. 1990) (explaining that a refund procedure that "calculate[s] interest as of the date that payment of the members' bar dues was received" adequately ensures that objecting members' dues are not used to fund non-germane speech).

Plaintiffs argue that the Bar's procedural safeguards are inadequate because the Bar "publishes no information at all about whether or how it determines whether a given allocation of dues was for purposes germane to improving the quality of legal services and regulating attorneys." Brief at 30

(emphasis omitted).[18] But their argument makes no sense. Because the Bar's Bylaws expressly limit the Bar to engaging in speech on germane topics under *Keller*, all expenditures are necessarily intended to be for activities that are germane and therefore proper. Bylaws §§ 11.1, 12.1. Thus, plaintiffs' contention that the Bar must provide additional information about what portion of members' dues are used for germane speech makes no sense because the Bylaws do not allow the Bar to intentionally engage in *any* non-germane speech.

B. The District Court did not err in finding that the Bar's refund procedure is an adequate alternative to placing disputed dues in escrow.

Plaintiffs also assert that the Bar's procedural safeguards are inadequate because the Bar does not put disputed dues in escrow. Brief at 32. Plaintiffs argue that putting disputed dues in escrow is necessary "to guarantee that no amount of a member's money will be used for non-germane political and ideological speech for any length of time." *Id.*

[18] At the same time, the complaint acknowledges that the Bar publishes information about its projected and actual expenses. *See*, *e.g.*, ER 74-75 ¶¶ 32-33; *see also* ORS 9.100 (requiring "a statement explaining the financial condition of the Oregon State Bar" be submitted annually to the Chief Justice of the Oregon Supreme Court); Bylaws § 7.2 (the Board of Governors reviews and approves the Bar's proposed annual budget during public meetings).

Putting disputed dues in escrow may be one way to protect an objecting member from involuntarily subsidizing non-germane speech. But nothing in existing precedents suggests that escrow is the only way for an integrated bar to carry out its responsibilities. And, critically, that procedure makes no sense because the Bar's Bylaws direct it not to engage in *any* non-germane speech, which means that the Bar would only engage in such speech inadvertently. Consequently, (1) the Bar does not have any non-germane speech activities about which to provide advance notice to its members, (2) under plaintiffs' suggested approach, the amount of any advance deduction of dues or amount put in escrow would therefore be zero, and (3) it necessarily follows that any dispute about whether the Bar has inappropriately engaged in non-germane speech would not arise until *after* the speech activity has occurred. Further, if a member successfully objects to the Bar's use of dues, the Bar avoids receiving any benefit from the member's dues—and makes the member whole—by refunding the proportion of the member's dues used to fund the non-germane speech, with interest.

Plaintiffs' suggested approach impermissibly presumes that the Bar will intentionally violate its Bylaws by engaging in non-germane speech. No such presumption is appropriate. And the Bar's refund procedure satisfies any

constitutional requirement that the Bar not benefit from an objecting member's dues. *See Gibson*, 906 F.2d at 632 (refund procedure that calculates interest complies with *Keller*'s requirements).

In sum, the Bar's procedural safeguards include (1) publishing the Bar's projected and actual major categories of expenses, (2) Bylaws that limit the Bar's speech to germane topics under *Keller*, (3) Bylaws that establish procedures for a member to object to the Bar's use of membership dues, (4) Bylaws that require refunding members' proportional dues, with interest, if a member prevails in showing that the Bar engaged in non-germane speech, and (5) Bylaws that allow members to present their case to an impartial decision-maker. Bylaws §§ 11.1, 12.1, 12.6. The Bar's First Amendment safeguards are consistent with *Keller*'s requirements and Ninth Circuit case law. *See, e.g.*, *Morrow*, 188 F.3d at 1175. This Court should therefore affirm the District Court's dismissal of plaintiffs' first claim for relief.

V. The District Court Properly Ruled That Adequacy of the Bar's First Amendment Safeguards Moots the Question of the "Germaneness" of the April 2018 *Bulletin* Statements.

Last, plaintiffs take issue with the District Court's conclusions that the Bar's April 2018 Statement was germane to improving the quality of legal services and that the *Bulletin* "routinely publishes statements from a variety of authors with

differing political viewpoints and creates a forum for the exchange of ideas pertaining to the practice of law," which the court found was also germane to improving the quality of legal services. Brief at 33-38.

But plaintiffs' attempt to dispute these conclusions on appeal is misplaced. As the District Court held, its discussion of the Bar's April 2018 Statement and publication of the *Bulletin* had no bearing on its dismissal of plaintiffs' claims, because the dispositive legal issue is that "the Bar has adequate safeguards in place to protect members' use of dues" from compelled speech:

> However, even assuming the Specialty Bars' Statement includes political speech that is not germane to a permissible topic, and it is a statement made on behalf of the Bar and consequently compelled speech of its members, it still would not violate the First Amendment because the Bar has adequate safeguards in place to protect members' use of dues in this manner.

ER 26.

Accordingly, whether or not the District Court's conclusions regarding the Bar's April 2018 Statement and publication of the *Bulletin* as a whole were correct, plaintiffs' fourth issue presented—which seeks

to reverse the District Court's rulings that the Bar's April 28 Statement was germane[19] and that it is permissible for the Bar to publish the

[19] Although this Court need not reach the District Court's conclusion regarding the Bar's April 2018 Statement, it was well reasoned. This Court has recognized that it is permissible for integrated bars to speak on topics that advance the public's "understanding of the law, the system of justice, and the role of lawyers . . . to make the law work for everyone." *Gardner*, 284 F.3d at 1043 (internal quotation marks and citation omitted); *see also Kingstad*, 622 F.3d at 719-21 ("The [*Gardner*] court provided a powerful defense of the legal profession and the need for fostering—and earning—public trust[.]"); *Ramstead v. Morgan*, 219 Or. 383, 400, 347 P.2d 594 ("The courts can be fully effective in serving the public only if they can be seen by the people as a symbol of impartial judgment. To maintain this necessary symbolism it is essential that there be no doubt, even in the mind of the most suspicious, of that impartiality and of the integrity of those entrusted with the legal machinery which insures it."). In line with these principles, the Bar's April 2018 Statement reminds lawyers "to safeguard the rule of law and to ensure its fair and equitable administration" and condemns violence and speech that incites violence because it threatens "access to justice, the rule of law, and a healthy and functional judicial system that equitably serves everyone." ER 85. Plaintiffs' argument that the Bar's April 2018 Statement was not permissible because it was not "politically and ideologically neutral" and it addressed a "controversial legal and political issue" misses the mark. Brief at 33-34. The Bar is not required to be politically neutral or speak on noncontroversial topics—*Keller* requires only that the Bar's speech be germane to, as relevant here, the topic of improving the quality of legal services. *Keller*, 496 U.S. at 15 (inferring that an integrated bar may fund "[speech] activities having political or ideological coloration" that are "reasonably related to the advancement of" improving legal services with mandatory dues); *see also Gardner*, 284 F.3d at 1043 ("It is no infringement of a lawyer's First Amendment freedoms to be forced to contribute to the advancement of the public understanding of law."). The Bar's April 2018 Statement therefore did not violate plaintiffs' constitutional rights even if it addressed an allegedly political or controversial topic.

Bulletin[20]—does not raise a material legal issue for this Court to consider. That is, this Court should affirm the District Court's dismissal of each of plaintiffs' claims even if it finds that the District Court should not, as a matter of law, have reached its conclusions regarding the germaneness of the Bar's April 2018 Statement and its publication of the *Bulletin*.

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[20] As with the Bar's April 2018 Statement, this Court need not reach the District Court's conclusion regarding the publication of the *Bulletin*, although it was also well reasoned and supported by the pleadings. Ample legal precedent supports the conclusion that the Bar may constitutionally use members' mandatory dues to create a forum for the exchange of ideas pertaining to the practice of law, even if some members find some of the *Bulletin*'s content "objectionable and offensive" and would prefer that their mandatory dues not subsidize its publication. *See Bd. of Regents of Univ. of Wis. Sys. v. Southworth*, 529 U.S. 217, 232-33 (2000) ("The University may determine that its mission is well served if students have the means to engage in dynamic discussions of philosophical, religious, scientific, social, and political subjects in their extracurricular campus life outside the lecture hall. If the University reaches this conclusion, it is entitled to impose a mandatory fee to sustain an open dialogue to these ends."); *see also Harris*, 573 U.S. at 655 (affirming that *Southworth* remains good law); *Janus*, 138 S. Ct. at 2498 (same) (Kagan, J., dissenting). And the *Bulletin*, as a publication, was incorporated by reference into the complaint because it alleges that "OSB uses member dues to publish a periodical called the *Bar Bulletin*." ER 76 ¶ 41; *see Coto Settlement v. Eisenberg*, 593 F.3d 1031, 1038 (9th Cir. 2010) (the court may consider materials incorporated into the complaint or matters of public record).

CONCLUSION

The District Court carefully analyzed plaintiffs' claims and correctly concluded that plaintiffs failed to plead any claims that are plausible in light of binding U.S. Supreme Court precedent. The Bar respectfully requests that the Court affirm the judgment of the District Court in its entirety, dismissing all of plaintiffs' claims with prejudice.

Date: November 6, 2019

Respectfully submitted,

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STATEMENT OF RELATED CASES

In accordance with Ninth Circuit Rule 28-2.6, the Bar states that it is aware of *Diane L. Gruber, et al. v. Oregon State Bar,* Case No. 19-35470, pending before this Court, in which plaintiffs appealed the District Court's May 24, 2019, order granting defendants' motion to dismiss for lack of subject-matter jurisdiction and failure to state a claim.

Date: November 6, 2019

s/ *Taylor D. Richman*
Taylor D. Richman, OSB No. 154086

Of Attorneys for Defendant(s)-Appellee(s)

FORM 8. CERTIFICATE OF COMPLIANCE FOR BRIEFS

9th Cir. Case Number(s): 19-35463

I am the attorney or self-represented party.

This brief contains 8,673 words, excluding the items exempted by Fed. R. App. P. 32(f). The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6).

I certify that this brief *(select only one)*:

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Date: November 6, 2019

s/ *Taylor D. Richman*
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