FILED ELECTRONICALLY

SCOTT A. KRONLAND (SBN CA171693) (*pro hac vice*)
P. CASEY PITTS (SBN CA262463) (*pro hac vice*)
ALTSHULER BERZON LLP
177 Post Street, Suite 300
San Francisco, CA 94108
Telephone: (415) 421-7151
Facsimile: (415) 362-8064
E-mail: skronland@altber.com
cpitts@altber.com

LAUREN M. HOYE (SBN PA307411)
WILLIG, WILLIAMS & DAVIDSON
1845 Walnut Street, 24th Floor
Philadelphia, PA 19103
Telephone: (215) 656-3687
E-mail: lhoye@wwdlaw.com

Attorneys for Defendant SEIU Local 668

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA
HARRISBURG DIVISION

FRANCISCO MOLINA,

Plaintiff,

v.

PENNSYLVANIA SOCIAL SERVICE UNION, SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 668; STEPHEN CATANESE, in his official capacity as President of Pennsylvania Social Service Union, Service Employees International Union, Local 668; and LEHIGH COUNTY BOARD OF COMMISSIONERS,

Defendants.

CASE NO.: 1:19-CV-00019-YK

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS BY DEFENDANTS SEIU LOCAL 668 AND STEPHEN CATANESE

Complaint Filed:	Jan. 7, 2019
Trial Date:	Not set.
Judge:	Hon. Yvette Kane

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

INTRODUCTION 1

FACTS 2

PROCEDURAL HISTORY 4

QUESTIONS PRESENTED 5

ARGUMENT 6

1. Molina's claims for prospective relief must be dismissed for lack of jurisdiction 6

   A. Molina's faces no risk of future compulsory dues deductions. 7

   B. Molina's resignation from Local 668 has been accepted and he faces no future risk of being compelled to remain a member. 9

2. Molina's claim for retrospective monetary relief must be dismissed for lack of jurisdiction to the extent Molina seeks to recover dues collected following his resignation. 12

3. Molina's claims against Stephen Catanese are redundant and should be dismissed. 15

CONCLUSION 16

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.8 18

TABLE OF AUTHORITIES

Federal Court Cases

Bain v. California Teachers Association,
891 F.3d 1206 (9th Cir. 2018) 8

Barrows v. Jackson,
346 U.S. 249 (1953) 11

Brice v. City of York,
528 F.Supp.2d 504 (M.D.Pa. 2007) 15

Brown v. Buhman,
822 F.3d 1151 (10th Cir. 2016), *cert. denied*, 137 S.Ct. 828 (2017) 10

Burton v. City of Pennsylvania,
121 F.Supp.2d 810 (E.D.Pa. 2000) 15

City of Erie v. Pap's A.M.,
529 U.S. 277 (2000) 14

City of Los Angeles v. Lyons,
461 U.S. 95 (1983) 6, 10

Cochetti v. Desmond,
572 F.2d 102 (3d Cir. 1978) 13

Common Cause of Pennsylvania v. Pennsylvania,
558 F.3d 249 (3d Cir. 2009) 6, 15

Damiano v. Scranton School Dist.,
135 F.Supp.3d 255 (M.D.Pa. 2015) 15

Donovan v. Pittston Area School Dist.,
2015 WL 3771420 (M.D.Pa. Jun. 17, 2015) 15

Friedman's, Inc. v. Dunlap,
290 F.3d 191 (4th Cir. 2002) 13

Friends of the Earth, Inc. v. Laidlaw Envtl. Servs.,
528 U.S. 167 (2000) 6

Gould Electronics Inc. v. U.S.,
220 F.3d 169 (3d Cir. 2000) 3

Grigsby v. Kane,
250 F.Supp.2d 453 (M.D. Pa. 2003) 16

Hill v. Borough of Kutztown,
455 F.3d 225 (3d Cir. 2006) 15

Interbusiness Bank, N.A. v. First Bank of Mifflintown,
328 F.Supp.2d 522 (M.D. Pa. 2004) 14

Kentucky v. Graham,
473 U.S. 159 (1985) 15

McNair v. Synapse Group, Inc.,
672 F.3d 213 (3d Cir. 2012) 6, 11

Memphis Community Sch. Dist. v. Stachura,
477 U.S. 299 (1986) 13

O'Shea v. Littleton,
414 U.S. 488 (1974) 10

Powell v. Weiss,
757 F.3d 338 (3d Cir. 2014) 16

Rothblum v. Bd. of Trustees of Coll. of Med. & Dentistry of New Jersey,
474 F.2d 891 (3d Cir. 1973) 11

S-1 v. Spangler,
832 F.2d 294 (4th Cir. 1987) 14

Sands v. NLRB,
825 F.3d 778 (D.C. Cir. 2016) 14

Swedron v. Borough,
2008 WL 5051399 (W.D.Pa. Nov. 21, 2008) 15

Federal Statutory Authorities

42 U.S.C. §1983 ..... 13, 15, 16

State Statutory Authorities

43 Pa.Stat.Ann.
§1101.301(18).....11
§1101.401 .....2, 11

§1101.601 2
§1101.606 2
§1101.705 11

Federal Rules

Federal Rules of Civil Procedure,
Rule 12(b)(1) 1, 2, 7, 16
Rule 12(b)(6) 2, 16

INTRODUCTION

Francisco Molina is a former employee of defendant Lehigh County's Office of Children and Youth Services ("County"). Molina is also a former, voluntary member of defendant Pennsylvania Social Service Union, SEIU Local 668 ("Local 668"). Molina resigned his membership in Local 668 in July 2018. Local 668 thereafter notified the County that Molina had resigned his membership and instructed the County to stop deducting union membership dues from Molina. On August 14, 2018, the County terminated Molina's employment.

Nearly five months after his termination, Molina filed this lawsuit. His First Amended Complaint names Local 668, Local 668's President, and the County Board of Commissioners as defendants. Molina alleges that the defendants violated his constitutional rights by failing to accept his resignation from Local 668 and by deducting union membership dues from his pay both before and after his resignation. He seeks prospective injunctive and declaratory relief as well as retrospective monetary relief.

Molina's claims for prospective injunctive and declaratory relief should be dismissed under Rule 12(b)(1) for lack of subject matter jurisdiction because they do not present a live case or controversy. Molina is no longer a member of Local 668, is no longer paying union dues to Local 668, and is no longer employed by the County. He therefore faces no realistic risk of future injury—as he must to pursue any claim for prospective relief—from Local 668's processing of resignation requests, its receipt of membership dues, or any contract provisions or Pennsylvania statutes relating to resignation or dues payments.

Molina's claim for retrospective monetary relief must also be dismissed, in part, for lack of subject matter jurisdiction under Rule 12(b)(1). Molina seeks a refund of dues received by Local 668 following his resignation, but Local 668 has already issued Molina a full refund of those dues.

Finally, all of Molina's claims against defendant Stephen Catanese, who was sued in his official capacity as Local 668's president, should be dismissed pursuant to Rule 12(b)(6) because they are duplicative of Molina's claims against Local 668.

FACTS

Under Pennsylvania law, public employees may democratically choose a union to represent them in collective bargaining with their public employers about terms and conditions of employment. 43 Pa.Stat.Ann. §§1101.601, 1101.606. Public employees represented by a union have the right to choose whether to join the union as members, and Pennsylvania law makes it unlawful for a union or a public employer to coerce an employee into union membership. *See* 43 Pa.Stat.Ann. §1101.401.

Francisco Molina was a County employee and member of a bargaining unit represented by Local 668 and subject to the terms and conditions established by a collective bargaining agreement between the County and Local 668 ("CBA"). *See* First Amended Complaint ("FAC"), Dkt. #20, ¶¶8, 13, 23 & Ex. A. Molina became a member of Local 668 in 2006, when he signed a membership card and completed a form authorizing the deduction of union membership dues from his paycheck. Declaration of Claudia Lukert, submitted herewith ("Lukert Decl."), ¶5

& Exs. A-B.[1] Molina was a dues-paying member of Local 668 from 2006 until July 2018, when he mailed a letter to Local 668 resigning his membership. FAC ¶30. Local 668 received this resignation letter on or about July 20, 2018. FAC ¶31; Lukert Decl. ¶6.

Upon receiving Molina's resignation letter, Local 668 began processing Molina's resignation. Lukert Decl. ¶6. On August 10, 2018, Local 668 sent a letter to the County informing the County that Molina had withdrawn from the union and instructing the County to immediately halt the deduction of union membership dues from Molina's pay. Lukert Decl. ¶6 & Exh. C. Local 668 does not consider Molina to be a member, and has not considered him a member since he submitted his resignation. *Id.* ¶¶6-7.[2]

On August 14, 2018, the County terminated Molina's employment. FAC ¶32. Molina does not contend that his termination was in any way related to his resignation from Local 668. *Id* .

Following its then-standard procedure for processing member resignations, Local 668's Finance Department processed and mailed a check to Molina in the amount of $120.37 to cover dues received after the member had canceled dues

[1] The evidence submitted by Local 668 is properly considered by the Court to determine whether it has subject matter jurisdiction, which includes determining whether Molina has standing and whether his claims are moot. *Gould Electronics Inc. v. U.S.*, 220 F.3d 169, 176-77 (3d Cir. 2000). Except with respect to facts going to the Court's jurisdiction, Local 668 assumes the truth of the allegations in the FAC for the purposes of this motion.

[2] In December 2018, Local 668 issued new membership cards to its more than 17,000 members. Lukert Decl. ¶15. The list of names provided to the vendor that prepared those cards inadvertently and erroneously included some individuals who had resigned from Local 668, including Molina. *Id.* ¶15. As a result, Molina was erroneously sent a new membership card even though he was no longer a member. FAC ¶35.

deductions and before the employer actually stopped dues deductions. Lukert Decl. ¶13. The amount of the check was equal to the total amount of dues deducted from Molina's pay for work performed between June 23, 2018 and August 17, 2018. *Id.* ¶13. Local 668 mailed the check to Molina before the Local's Finance Department learned of his lawsuit. *Id.* ¶14.

PROCEDURAL HISTORY

Molina filed this action against Local 668, Local 668's President Stephen Catanese (in his official capacity), the Lehigh County Board of Commissioners, the Lehigh County Office of Children and Youth Services, Lehigh County Executive Phil Armstrong (in his official capacity), and Lehigh County Director of Human Resources Judith Johnston (in her official capacity), on January 7, 2019. Dkt. #1. Local 668 was served with a copy of the Complaint on January 8, 2019. Dkt. #5.

On February 11, 2019, Molina filed his First Amended Complaint. Dkt. #20. The FAC asserts three claims against Local 668, Catanese, and the County Board of Commissioners.[3] Count 1 asserts that Molina was unconstitutionally prevented from resigning from Local 668 because of certain Pennsylvania state statutes and the CBA. FAC ¶¶47-48. Count 1 also alleges that Molina was unconstitutionally forced to continue paying dues to Local 668 after tendering his resignation. FAC ¶49. Count 1 seeks a refund of any post-resignation dues paid by Molina to Local 668, as well as prospective injunctive and declaratory relief against the union's alleged enforcement of the challenged provisions of Pennsylvania law and the CBA. FAC ¶49.

[3] The FAC deleted Molina's claims against the Office of Children and Youth Services, Phil Armstrong, and Judith Johnston.

Count 2 asserts that "[s]ince at least January 7, 2017," and notwithstanding Mr. Molina's decision to join Local 668 as a member, "Defendants have seized funds from Mr. Molina under the authority of [Pennsylvania's Public Employee Relations Act] and the CBA … without Mr. Molina's clear, affirmative consent or his agreement to waive his rights." FAC ¶53. Molina seeks monetary relief in an amount equal to the total amount of funds paid to Local 668 "from at least January 7, 2017, or as far back as the statute of limitations will allow, plus interest thereon." FAC ¶53 and p.20. He also seeks injunctive relief prohibiting Local 668 from deducting further dues from him. FAC ¶57.

Count 3 alleges that Local 668 and Lehigh County did not "provide[] meaningful notice to Mr. Molina of his right to object to associating with or subsidizing the speech" of Local 668 or provide Molina a "meaningful opportunity to object to continued seizure of his funds," and that the defendants failed to provide Molina with "due process concerning his resignation." FAC ¶¶62-63, 65. Molina seeks declaratory relief requiring "due process" with respect to the "continued seizure of his funds," as well as monetary and injunctive relief. FAC ¶66 & p.19.

QUESTIONS PRESENTED

1. Should Molina's claims for prospective injunctive and declaratory relief be dismissed for lack of jurisdiction because Molina is no longer a member of Local 668, dues deductions for Molina have ended, and Molina is no longer employed in the bargaining unit?

2. Should Molina's claim for a refund of membership dues deducted from his paycheck after his resignation be dismissed for lack of jurisdiction

because the union has already issued him a refund of those dues and no further relief is available to Molina?

3. Should Molina's claims against Stephen Catanese be dismissed with prejudice because Catenese is sued in his official capacity and any claims against him are redundant of the claims against Local 668?

ARGUMENT

1. Molina's claims for prospective relief must be dismissed for lack of jurisdiction

This Court has Article III jurisdiction to hear a claim only if the plaintiff has standing. *Common Cause of Pennsylvania v. Pennsylvania*, 558 F.3d 249, 257-58 (3d Cir. 2009). A "plaintiff must demonstrate standing separately for each form of relief sought." *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs.*, 528 U.S. 167, 185 (2000). To establish Article III standing, a plaintiff must establish:

> (1) an injury in fact (i.e., a concrete and particularized invasion of a legally protected interest); (2) causation (i.e., a fairly traceable connection between the alleged injury in fact and the alleged conduct of the defendant); and (3) redressability (i.e., it is likely and not merely speculative that the plaintiff's injury will be remedied by the relief plaintiff seeks in bringing suit).

Common Cause of Pennsylvania, 558 F.3d at 258 (internal quotations omitted). A plaintiff seeking forward-looking forms of relief such as declaratory or injunctive relief "must show that he is 'likely to suffer future injury' from the defendant's conduct." *McNair v. Synapse Group, Inc.*, 672 F.3d 213, 223 (3d Cir. 2012) (quoting *City of Los Angeles v. Lyons*, 461 U.S. 95, 105 (1983)).

Here, Molina seeks prospective declaratory and injunctive relief: (1) prohibiting Local 668 from seizing Molina's wages without his affirmative

consent; (2) declaring that the Fourteenth Amendment requires "meaningful notice … and a meaningful opportunity to object" to the continued payment of membership dues; (3) declaring Article III, §3.1 of the CBA, its "union security" clause, and certain Pennsylvania statutory provisions permitting the negotiation of such union security clauses to be unconstitutional; (4) prohibiting Local 668 from restricting Molina's right to resign; and (5) ordering the defendants to honor his resignation. FAC at pp.18-20. But Molina's resignation already has been accepted, his dues deductions have stopped, and he is no longer subject to the challenged statutory or CBA provisions because he is neither a member of Local 668 nor even an employee of the County. As such, he cannot show any risk of future injury arising from the challenged practices. Molina thus lacks standing to pursue any relief targeting such practices, and his claims for prospective relief must be dismissed under Rule 12(b)(1).

A. Molina's faces no risk of future compulsory dues deductions.

Molina's FAC seeks injunctive and declaratory relief against any future "seizure" of his wages by Local 668, as well as a declaration that the Fourteenth Amendment requires "meaningful notice…and a meaningful opportunity to object" to the continued payment of membership dues. FAC at p.19. But all deductions of union membership dues from Molina's pay ended last August, well before Molina filed this lawsuit. Molina has not been an employee of the County since then, has had no dues deducted, and faces no risk that such a seizure will occur in the future.

Accordingly, Molina cannot assert that he has standing to seek relief from future dues deductions on the theory that he is currently being required to pay money to Local 668.

Molina premises his claim for prospective relief regarding future union dues deductions on his assertion that "in the event of reinstatement or an award of backpay" Local 668 will continue to "seize funds from his wages." FAC ¶¶41-42. That contention is insufficient to establish Molina's standing, and in any event is not true.

As an initial matter, whether Molina might at some point in the future be reinstated to his prior bargaining unit position or obtain a backpay award is entirely speculative. *See* FAC ¶33 (Molina filed grievance seeking reinstatement); Lukert Decl. ¶9 (Local 668 is processing Molina's grievance). Such a speculative possibility cannot establish standing to obtain prospective injunctive and declaratory relief with respect to hypothetical future dues deductions. *See Bain v. California Teachers Association*, 891 F.3d 1206, 1214 (9th Cir. 2018) (possibility that former bargaining unit member might return to teaching and thereafter rejoin bargaining unit was insufficient to establish standing to challenge practices that applied to bargaining unit members).

Equally to the point, even if Molina were to be reinstated to his job, no dues would be deducted from any backpay award or from his future wages. Before Molina's termination, and before the filing of this suit, Local 668 had already instructed the County that Molina was no longer a member and that the County should cease deducting membership dues from his pay. Lukert Decl. ¶6 & Ex. C. Article III, §3.2 of the CBA between Local 668 and the County provides that the County will deduct membership dues only from "those employees who individually request in writing that such deductions be made." FAC ¶15 & Ex. A. Because Molina was not a member at the time of his termination and Local 668

had already informed the County that it should terminate dues deductions from Molina, no membership dues would be deducted from any backpay award Molina might receive in the future. Lukert Decl. ¶10. And unless and until Molina provides a new, voluntary written authorization for the County to restart his dues deductions, the County will not deduct membership dues from any future wages he earns. *Id.* ¶11.

Accordingly, Molina faces no risk of being required to pay union dues to Local 668 against his will in the future, and his claims for prospective relief with respect to such payments must be dismissed.

B. Molina's resignation from Local 668 has been accepted and he faces no future risk of being compelled to remain a member.

Molina also seeks prospective declaratory and injunctive relief invalidating certain union security provisions of Pennsylvania law and the CBA and ordering Local 668 to honor his resignation, to refrain from interfering with any future resignation, to notify its members of their right to resign, and to provide them with an opportunity to do so. But Local 668 has already accepted Molina's resignation, and as a non-member, Molina faces no risk of future injury from any practices, CBA provisions, or statutory provisions governing *members*' rights to resign.

The record shows that Local 668 received Molina's resignation letter on July 20, 2018; informed Molina's employer that it should cease deducting membership dues from his pay on August 10, 2018; refunded all dues collected from Molina after his resignation; and no longer considers him a union member. Lukert Decl. ¶¶6-7, 13 & Exh. C. Molina admits that he received the letter from Local 668 acknowledging his resignation. FAC ¶39 & Exh. F. Molina also does not allege

that he has any plan to join Local 668 in the future. To the contrary, Molina is no longer even employed in a bargaining unit represented by Local 668. *See* FAC ¶32. Because Molina is no longer a member of Local 668 and has no plans to become a member in the future, he cannot demonstrate any likelihood of being injured in the future by Local 668's member resignation practices, and there is no "present case or controversy regarding injunctive relief" with respect to those practices. *Lyons*, 461 U.S. at 102 (quoting *O'Shea v. Littleton*, 414 U.S. 488, 495-96 (1974)).

For the same reason, Molina lacks standing to obtain a declaration that Local 668 has not provided its members with constitutionally adequate notice of their right to resign or a constitutionally adequate opportunity to exercise that right, or for an injunction ordering such relief. *See* FAC at p.19. Molina is not a member of Local 668 and does not allege he plans to rejoin the union, so he would be entirely unaffected by any order requiring Local 668 to provide information about resignation rights to its members or requiring Local 668 to alter when and how the union will accept a member's resignation. *See Brown v. Buhman*, 822 F.3d 1151, 1166 (10th Cir. 2016), *cert. denied*, 137 S.Ct. 828 (2017) (courts lack jurisdiction to consider claims for prospective relief where plaintiff "no longer suffers actual injury that can be redressed by a favorable judicial decision") (quotations omitted).

Molina also seeks prospective relief against a "union security" provision in the CBA purporting to require members to resign during a period fifteen days prior to the expiration of the CBA. FAC ¶15 & Exh. A §3.1. But Molina was terminated by the County on August 14, 2018, and is therefore no longer subject to *any* provisions of the CBA, including the union security provision. FAC ¶¶32-33.

Any suggestion that Molina will be reinstated is entirely speculative. Further, even if Molina were reinstated, he would not be treated as a union member subject to the challenged CBA provision upon his return to work because his resignation from the union was accepted prior to his termination. Lukert Decl. ¶¶6-7, 10-11. Molina could not even potentially become subject to the challenged CBA provision unless he voluntarily rejoins Local 668, which he has not alleged he intends to do.[4] Molina therefore lacks standing to challenge the union security provision. *See McNair*, 672 F.3d at 223-25 (former magazine subscribers lacked standing to seek injunctive relief against allegedly unlawful renewal policy).

Molina similarly lacks standing to seek a declaration that 43 Pa.Stat.Ann. §§1101.301(18), 1101.401, and 1101.705 violate the First and Fourteenth Amendments. *See* FAC at p.18. "[A] person cannot challenge the constitutionality of a statute unless he shows that he himself is injured by its operation." *Barrows v. Jackson*, 346 U.S. 249, 255 (1953); *accord, e.g. Rothblum v. Bd. of Trustees of Coll. of Med. & Dentistry of New Jersey*, 474 F.2d 891, 898 (3d Cir. 1973). Molina is no longer a public employee—let alone a public employee union member—and he is therefore not subject to the challenged provisions. Even if he returned to public employment, he would become subject to these provisions only

[4] The CBA provision Molina challenges was never even applied to him: Molina was allowed to resign membership and stop paying dues *outside* the period set forth in the challenged union security provision. *Compare* FAC ¶15 & Exh. A ¶3.1 (purporting to limit resignation to 15-day period immediately prior to expiration of CBA); *and id.* Exh. A (CBA expired December 31, 2018); *with* Lukert Decl. ¶6 (notifying County of Molina's resignation and instructing County to stop deducting dues on August 10, 2018).

if he voluntarily chose to rejoin Local 668, which he has not alleged he intends to do.

Accordingly, just as with his claims for prospective relief with respect to dues deductions, Molina's claims for prospective declaratory and injunctive relief regarding membership resignation must be dismissed for lack of standing.

2. Molina's claim for retrospective monetary relief must be dismissed for lack of jurisdiction to the extent Molina seeks to recover dues collected following his resignation.

In addition to seeking prospective relief, Molina seeks monetary relief in an amount equal to all dues deducted from his wages both before and after his resignation. FAC at 20. The monetary relief sought under Count 1, however, is limited to a refund of post-resignation dues, given that that Count alleges that Molina suffered "compelled association with and financial subsidization" of Local 668 when the County continued to deduct membership dues from Molina's paycheck after Local 668's received Molina's resignation letter. FAC ¶¶31, 32, 42. The monetary relief sought under Counts 2 and 3 also arguably encompasses dues received from Molina after his resignation letter was received. *See*, *e.g.*, FAC ¶¶63-64, 66 (alleging in Count 3 that Local 668 "rejected" his "initial resignation" and that Molina "suffered monetary damages" as a result).

To the extent Molina seeks retrospective monetary relief premised on Local 668's receipt of *post*-resignation dues, that claim does not present a live controversy. Local 668 already refunded Molina's post-resignation dues. Molina admits that he received a refund of dues withheld from the July 6, 2018 pay period through the August 17, 2018 pay period. FAC ¶39. This refund included dues

deducted from wages earned by Molina from June 23, 2018, through August 14, when he was terminated. Lukert Decl. ¶13 (explaining that the pay periods for which dues were refunded started on June 23, 2018 and ended on August 17, 2018). Indeed, because Molina was issued a refund of dues paid for work from June 23, 2018 forward, he received a refund substantially larger than the amount of dues he paid after submitting his resignation letter to Local 668 on or around July 20, 2018.

Under these circumstances, Molina has received all the retrospective monetary relief potentially available to him for claims premised upon Local 668's receipt of post-resignation dues, which includes *all* of the retrospective relief he seeks under Count 1. The constitutional injury Molina purportedly suffered under Count 1 was the continued deduction of union membership dues following his resignation, but those dues have already been returned to Molina. *See* Lukert Decl. ¶¶13-14. There is no further retrospective relief available to him, because Molina's retrospective damages under §1983 are limited to those necessary "to compensate injuries caused by the constitutional deprivation" he alleges. *Memphis Community Sch. Dist. v. Stachura*, 477 U.S. 299, 309 (1986) (internal quotation, emphasis, and brackets omitted).

When a plaintiff already has received all of the relief he could possibly obtain from a claim, that claim is moot and should be dismissed. *Friedman's, Inc. v. Dunlap*, 290 F.3d 191, 197 (4th Cir. 2002). The mootness of a claim does not turn upon whether the underlying conduct was wrongful but solely upon whether the plaintiff has received all the relief he could obtain through the suit. *See Cochetti v. Desmond*, 572 F.2d 102, 105 (3d Cir. 1978) (employee's suit for

wrongful termination moot where arbitrator had already reinstated employee and awarded backpay); *Interbusiness Bank, N.A. v. First Bank of Mifflintown*, 328 F.Supp.2d 522, 529-30 (M.D. Pa. 2004) (claim to enforce priority security interest moot where plaintiff had already received "full satisfaction of the debt"). Indeed, the D.C. Circuit has specifically held that a suit by a former union member against his union for the purportedly unlawful collection of membership dues is moot once the union tenders a refund of the dues paid. *Sands v. NLRB*, 825 F.3d 778, 783-85 (D.C. Cir. 2016) (unfair-practice claim against union for purportedly failing to inform member that she had option of paying agency fees rendered moot by union's tendering of refund of dues paid).

Because Local 668 has refunded Molina's post-resignation dues, Molina "ha[s] no present need for remedial relief from the federal courts" with respect to those dues, and his claims for retrospective monetary relief are moot to the extent they seek a refund of those dues. *See S-1 v. Spangler*, 832 F.2d 294, 297 (4th Cir. 1987) (dismissing §1983 action as moot where plaintiffs had obtained tuition reimbursement that was "ultimate object of their action"). The issues presented by Molina's claims for such relief "are no longer 'live'" and Molina "lack[s] a legally cognizable interest in the outcome" of his suit with respect to these claims. *City of Erie v. Pap's A.M.*, 529 U.S. 277, 287 (2000) (quotation omitted).[5]

[5] Although the facts will ultimately show that Molina is not entitled to a refund of pre-resignation dues either because he paid those dues entirely voluntarily, *see, e.g.*, Lukert Decl. ¶5 & Exhs. A-B (attaching Molina's signed union membership application and dues deduction authorization card), the facts relevant to that issue are not pleaded in the FAC, so Local 668 and Catanese are not moving to dismiss those claims at this time.

3. Molina's claims against Stephen Catanese are redundant and should be dismissed.

Claims under 42 U.S.C. §1983 brought against individuals in their official capacities are generally "redundant of the claims" against the entity of which they are a part. *Damiano v. Scranton School Dist.*, 135 F.Supp.3d 255, 268 (M.D.Pa. 2015). "Official-capacity suits … generally represent only another way of pleading an action against an entity of which an officer is an agent." *Kentucky v. Graham*, 473 U.S. 159, 165 (1985); *accord Hill v. Borough of Kutztown*, 455 F.3d 225, 233 n.9 (3d Cir. 2006). For that reason, when a plaintiff has sued the entity in question directly, the claims against an official sued solely in her official capacity are merely nominal and should be dismissed with prejudice. *See, e.g. Damiano*, 135 F.Supp.3d at 268 (dismissing with prejudice §1983 claims brought against school board members in their official capacity); *Donovan v. Pittston Area School Dist.*, 2015 WL 3771420, at *5 (M.D.Pa. Jun. 17, 2015) (same); *Swedron v. Borough*, 2008 WL 5051399, at *4 (W.D.Pa. Nov. 21, 2008) (dismissing §1983 brought against police officers in their official capacities); *Brice v. City of York* , 528 F.Supp.2d 504, 516 n.19 (M.D.Pa. 2007) ("[C]laims against state officials in their official capacities merge as a matter of law with the municipality that employs them."). Dismissal is warranted without regard to the merits or sufficiency of the plaintiff's claims. *See Burton v. City of Pennsylvania*, 121 F.Supp.2d 810, 812-13 (E.D.Pa. 2000) (dismissing claims against individual defendants even where those allegations "suffice[d] to state a §1983 [claim] against [defendants] in their official capacities")

Here, Molina has brought his §1983 claims against Stephen Catanese solely in the latter's official capacity as Local 668's President. The First Amended Complaint does not contain any allegations about Catanese's conduct, much less allegations sufficient to state a claim against Catanese separate and distinct from Molina's claims against Local 668. Indeed, other than naming Catanese as a defendant, *see* FAC ¶10, the First Amended Complaint does not mention him. The relief sought from Catanese is identical to that sought from Local 668.

Under these circumstances, Molina's claims against Catanese are identical to the claims against Local 668 and entirely redundant. They should be dismissed with prejudice under Rule 12(b)(6).[6]

CONCLUSION

For the foregoing reasons, Molina's claims for prospective declaratory and injunctive relief should be dismissed for lack of jurisdiction under Rule 12(b)(1). Molina's claims for retrospective monetary relief arising from Local 668's receipt of post-resignation membership dues should also be dismissed for lack of jurisdiction under Rule 12(b)(1). Because Count 1 of the First Amended Complaint seeks no other forms of relief, that Count should be dismissed in its entirety, while the relief potentially available to Molina under Counts 2 and 3

[6] To the extent Molina might assert that his claims against Catanese are *not* identical to his claims against Local 668, they should be dismissed for failure to state a claim because Molina has failed to allege Catanese is personally responsible for any of the injuries for which he seeks relief. *See, e.g.*, *Powell v. Weiss*, 757 F.3d 338, 346 (3d Cir. 2014) (dismissing lawsuit against corrections defendants for miscalculation of parole where officials "had no involvement"); *Grigsby v. Kane*, 250 F.Supp.2d 453, 459 (M.D. Pa. 2003) (dismissing complaint for failure to allege that defendant played any role in injury-causing conduct).

should be limited to claims premised upon Molina's payment of dues to Local 668 prior to his resignation. Finally, all of Molina's claims against Stephen Catanese should be dismissed with prejudice.

Dated: March 4, 2019

Respectfully Submitted,

/s/P. Casey Pitts
P. Casey Pitts (CA262463)

SCOTT A. KRONLAND (*pro hac vice*)
P. CASEY PITTS (*pro hac vice*)
ALTSHULER BERZON LLP
177 Post Street, Suite 300
San Francisco, CA 94108
Telephone: (415) 421-7151
Facsimile: (415) 362-8064
E-mail: skronland@altber.com
cpitts@altber.com

LAUREN M. HOYE (SBN PA307411)
WILLIG, WILLIAMS & DAVIDSON
1845 Walnut Street, 24th Floor
Philadelphia, PA 19103
Telephone: (215) 656-3687
E-mail: lhoye@wwdlaw.com

Attorneys for Defendants SEIU Local 668 and Stephen Catanese

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.8

Pursuant to Local Rule 7.8(b)(2), I hereby certify that the foregoing brief, excluding the caption page, tables, and signature block, includes 4,570 words, as determined by the word count feature of the word processing program used to prepare the brief.

Date: March 4, 2019 By: /s/P. Casey Pitts
P. Casey Pitts (CA262463)

P. CASEY PITTS (*pro hac vice*)
ALTSHULER BERZON LLP
177 Post Street, Suite 300
San Francisco, CA 94108
Telephone: (415) 421-7151
Facsimile: (415) 362-8064
E-mail: cpitts@altber.com

Attorney for Defendants SEIU Local 668 and Stephen Catanese