

DMSJ at 35. Because the Court has only granted a limited part of Defendants' motion, this argument is unavailing. The Court therefore DENIES Defendants' motion as to Plaintiff's fourth and fifth causes of action.

VII. CONCLUSION AND ORDER

The Court GRANTS IN PART and DENIES IN PART Plaintiff's and Defendants' motions for summary judgment, Docs. 207 and 212, as follows:

The Court DENIES Plaintiff's motion for summary judgment as to the expense class for the period between December 13, 2007 to December 30, 2012, as well as Defendants' motion for the period between December 13, 2007 to September 2012.

The Court GRANTS Defendants' motion for summary judgment as to Plaintiff's expense class claims for the period between January 2013 to the present.

The Court DENIES Defendants' motion for summary judgment as to its first counterclaim.

The Court GRANTS Plaintiff's motion for summary judgment as to Defendants' liability to Deduction Class members pursuant to his second cause of action, for the period between December 13, 2007 and December 30, 2012. The Court DENIES Defendants' motion for summary judgment as to this same issue.

The Court DENIES Defendants' motion for summary judgment as to Plaintiff's third, fourth and fifth causes of action.

IT IS SO ORDERED



STATE OF CALIFORNIA, acting by and through the California Department of Transportation; and Sacramento Regional Transit District, Plaintiff,

v.

UNITED STATES DEPARTMENT OF LABOR; and Thomas E. Perez, in his official capacity as Secretary of Labor, Defendant.

No. 2:13-cv-2069 KJM DAD

United States District Court,
E.D. California.

Signed January 7, 2016

Filed January 8, 2016

Background: State of California, acting by and through a regional transit district and the California Department of Transportation, brought action against the Department of Labor (DOL), challenging the DOL's determination that pension reform provisions of the California Public Employees' Pension Reform Act of 2013 (PEPRA) was not a fair and equitable arrangement that protected the interests of employees, as required for state and local government to receive federal grants for transit assistance under the Urban Mass Transportation Act (UMTA). The United States District Court for the Eastern District of California, Kimberly J. Mueller, J., 76 F.Supp.3d 1125, entered summary judgment in State of California's favor, and remanded matter to DOL for further proceedings consistent with the court's order. State moved to enforce order.

Holdings: The District Court, Kimberly J. Mueller, J., held that:

- (1) DOL's post-remand decision was not inconsistent with provision of district court's order finding that DOL had relied on certain case, in reaching its determination, without considering

critical factual differences between PEPPRA and statute under review in that case;

- (2) DOL's post-remand decision was not inconsistent with provision of district court's order finding that DOL had ignored fact that, under federal labor policy, pension reform may be "back-drop" to collective bargaining;
- (3) DOL's post remand decision was not inconsistent with provision of district court's order concluding that DOL had acted in excess of its authority;
- (4) DOL's post-remand decision was not inconsistent with provision of district court's order holding that DOL had not considered realities of public sector bargaining and role of legislature;
- (5) DOL's post-remand decision was inconsistent with provision of district court's order holding that DOL had misinterpreted certain cases that it had relied on; and
- (6) State's proposed supplemental complaint addressed same factual matter as original complaint, and its filing promoted judicial efficiency.

Ordered accordingly.

1. Federal Courts ⇨2554

A federal court's inherent jurisdiction to enforce its judgments extends to specific context of a mandate issued to a federal agency.

2. Federal Courts ⇨2554

Should a federal agency neglect the order of a federal court, an order enforcing the original mandate is particularly appropriate.

3. Federal Courts ⇨2554

A motion to enforce a district court's previous judgment may be granted when the prevailing party demonstrates its op-

ponent has not complied with the judgment's terms.

4. Federal Courts ⇨2554

In granting a prevailing party's motion to enforce a previous judgment, upon a showing that the prevailing party's opponent has not complied with the judgment's terms, a district court may grant the moving party only that relief to which it is entitled under the original judgment.

5. United States ⇨346

Following remand, by District Court, of Department of Labor's (DOL) determination that State of California's application of California Public Employees' Pension Reform Act of 2013 (PEPPRA) was not a fair and equitable arrangement that protected the interests of employees, as required for state and local government to receive federal grants for transit assistance under the Urban Mass Transportation Act (UMTA), district court could not grant State's request to instruct DOL to certify the grants, since the court, in its remand order, had required DOL to conduct further proceedings "consistent with" the court's order, but had not instructed DOL to reach any particular result. 49 U.S.C.A. § 5333(b)(1); West's Ann.Cal.Gov. Code § 7522.

6. Administrative Law and Procedure ⇨815, 817.1

On direct review in a renewed challenge to an agency's decision, following a remand to the agency, by a district court, another remand may be unnecessary and wasteful when there is not the slightest uncertainty as to the outcome of a proceeding, in rare circumstances of overwhelming evidence and the agency's massive delays and inadequate decision-making, or within specific statutory regimes, and, in these instances, a district court has authority to forego games of

judicial-agency ping-pong and simply reverse the agency's decision.

7. United States ⇌346

Department of Labor's (DOL) decision, following remand by district court of DOL's determination that State of California's application of California Public Employees' Pension Reform Act of 2013 (PEPRA) was not a fair and equitable arrangement that protected the interests of employees, as required for state and local government to receive federal grants for transit assistance under the Urban Mass Transportation Act (UMTA), was not inconsistent with provision of remand order concluding that DOL had relied on certain case without considering critical factual differences between PEPRA and statute under review in that case, where, in post-remand decision, DOL considered anew whether it would reach the same result without relying on that case at all, and did. 49 U.S.C.A. § 5333(b)(1); West's Ann.Cal.Gov.Code § 7522.

8. United States ⇌346

Department of Labor's (DOL) decision, following remand, by district court, of DOL's determination that State of California's application of California Public Employees' Pension Reform Act of 2013 (PEPRA) was not a fair and equitable arrangement that protected the interests of employees, as required for state and local government to receive federal grants for transit assistance under the Urban Mass Transportation Act (UMTA), was not inconsistent with provision of remand order concluding that DOL had ignored fact that under federal labor policy, pension reform may be "backdrop" to collective bargaining, where, on remand, in lengthy and detailed analysis, DOL recognized that not all state laws that form a backdrop to public employee collective bargaining interfere with employees' rights under

UMTA. 49 U.S.C.A. § 5333(b)(1); West's Ann.Cal.Gov.Code § 7522.

9. United States ⇌346

Department of Labor's (DOL) decision, following remand, by district court, of DOL's determination that State of California's application of California Public Employees' Pension Reform Act of 2013 (PEPRA) was not a fair and equitable arrangement that protected the interests of employees, as required for state and local government to receive federal grants for transit assistance under the Urban Mass Transportation Act (UMTA), was not inconsistent with provision of remand order concluding that DOL had acted in excess of its authority when it determined that a pension was necessarily a defined benefit plan, where, in reaching post-remand decision, DOL considered differences between defined benefit plans and defined contribution plans. 49 U.S.C.A. § 5333(b)(1); West's Ann.Cal.Gov.Code § 7522.

10. United States ⇌346

Department of Labor's (DOL) decision, following remand, by district court, of DOL's determination that State of California's application of California Public Employees' Pension Reform Act of 2013 (PEPRA) was not a fair and equitable arrangement that protected the interests of employees, as required for state and local government to receive federal grants for transit assistance under the Urban Mass Transportation Act (UMTA), was not inconsistent with provision of remand order holding that DOL had not considered realities of public sector bargaining and role of legislature, where, in reaching post-remand decision, DOL expressly considered realities of public sector bargaining. 49 U.S.C.A. § 5333(b)(1); West's Ann.Cal.Gov.Code § 7522.

11. United States ⇌346

Department of Labor's (DOL) decision, following remand, by district court, of DOL's determination that State of California's application of California Public Employees' Pension Reform Act of 2013 (PEPRA) was not a fair and equitable arrangement that protected the interests of employees, as required for state and local government to receive federal grants for transit assistance under the Urban Mass Transportation Act (UMTA), was inconsistent with provision of remand order holding that DOL had misinterpreted laws of certain cases that it had relied on in reaching its decision, where, on remand, DOL found district court order to be "in error," and stood by its original conclusion. 49 U.S.C.A. § 5333(b)(1); West's Ann.Cal. Gov.Code § 7522.

12. Federal Civil Procedure ⇌862

Rule permitting supplemental pleadings is meant to avoid the costs, delays, and wastes associated with separate actions. Fed. R. Civ. P. 15(d).

13. Federal Civil Procedure ⇌861

Rule permitting supplemental pleadings allows supplemental claims under new statutes, and supplemental claims need neither arise out of the same transaction or occurrence as the claim at issue in the original complaint, nor involve common questions of law or fact. Fed. R. Civ. P. 15(d).

14. Federal Civil Procedure ⇌861

Supplemental pleadings should not be used to introduce entirely separate and distinct claims into an existing action; some relationship must exist between the newly alleged matters and the subject of the original action. Fed. R. Civ. P. 15(d).

15. Federal Civil Procedure ⇌861

In determining whether a supplemental pleading will serve the goal of judicial

efficiency, a district court considers whether the entire controversy ought to be settled in one action. Fed. R. Civ. P. 15(d).

16. United States ⇌346

District court would grant State of California leave to file proposed supplemental complaint against Department of Labor (DOL), to challenge DOL's post-remand proceedings, in State's action challenging DOL's determination that pension reform provisions of the California Public Employees' Pension Reform Act of 2013 (PEPRA) was not a fair and equitable arrangement that protected the interests of employees, as required for state and local government to receive federal grants for transit assistance under the Urban Mass Transportation Act (UMTA); supplemental pleadings addressed same general factual matters as original complaint, and its filing promoted judicial efficiency in that both the original and supplemental complaints contested DOL's decision not to certify grants under UMTA, and the proposed supplemental complaint alleged that DOL had undertaken a continuing and unjustified effort to find PEPRA inconsistent with UMTA. 49 U.S.C.A. § 5333(b)(1); West's Ann.Cal.Gov.Code § 7522.

17. Federal Civil Procedure ⇌851

Futility may preclude the filing of an amended complaint. Fed. R. Civ. P. 15(a).

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Susan Ullman, Govt, U.S. Department of Justice, Ryan Bradley Parker, Govt, Washington, DC, for Defendant.

ORDER

Kimberly J. Mueller, UNITED
STATES DISTRICT JUDGE

The California Department of Transportation (Caltrans) and the Sacramento Regional Transit District (SacRT), the plaintiffs in this action, seek an order directing the United States Department of Labor (the DOL) to certify their applications for funding under section 13(c) of the Urban Mass Transportation Act of 1964. They seek this relief in the form of a motion to enforce this court's previous order, which remanded the matter to the DOL for further proceedings. The plaintiffs also request leave to file a supplemental complaint to challenge several aspects of the post-remand proceedings. The matter was submitted for decision without a hearing. As explained below, the motion to enforce is GRANTED IN PART, and the motion for leave to file a supplemental complaint is GRANTED.

I. MOTION TO ENFORCE

A. General Background

The general background of this case is unchanged since the issuance of this court's previous order, reported at *California v. Department of Labor*, 76 F.Supp.3d 1125 (E.D.Cal.2014). To summarize, under section 13(c) of the Urban Mass Transportation Act of 1964 (UMTA), codified at 49 U.S.C. § 5333(b), state and local governments seeking federal financial assistance for transit projects must obtain certification from the DOL that the interests of employees affected by any assistance granted are protected by "fair and equitable" arrangements, 49 U.S.C. § 5333(b)(1). Specifically, these arrangements must preserve the employees' "rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or other-

wise." *Id.* § 5333(b)(2)(A). Similarly, arrangements must include provisions "necessary for . . . the continuation of collective bargaining rights." *Id.* § 5333(b)(2)(B).

Caltrans is an executive department of the state of California. Under authority of state law, it assists local transit agencies in their efforts to develop and operate mass transit systems, including applications for federal funds. Monterey-Salinas Transit (MST) is a local transit agency and recipient of pass-through funds from Caltrans. SacRT is a special regional transit district based in Sacramento, California. SacRT operates dozens of bus routes, light rail lines, light rail stations and park-and-ride lots, and thousands of bus stops. It relies heavily on federal funding. SacRT employs more than 900 people, about 500 of whom are represented by the Amalgamated Transit Union, or ATU. Its unionized employees participate in a defined benefit pension plan that pays an annual benefit upon retirement. Each employee's benefits are calculated as a percentage of his or her final average compensation multiplied by years of service. The plan is funded exclusively by employer contributions and earnings on plan assets.

In 2012, the Governor of California signed the California Public Employees' Pension Reform Act of 2013 (PEPRA), which was intended to reform the state's public employee pension systems and reduce the cost of funding those systems. Under PEPRA, among other provisions, employees hired after January 1, 2013 must contribute at least 50 percent of the costs of a defined benefit retirement plan, the amount of compensation usable in calculations of retirement benefits is capped, and public employees may no longer purchase non-qualified service time toward their pensions.

In November 2012, SacRT submitted an application to the Federal Transportation

Agency for mass transit funding. The money it sought would contribute to an extension of its light rail system. The next month, the DOL notified SacRT and its unions that it intended to certify the grant under UMTA section 13(c). It invited objections and referred to PEPR. The ATU objected, citing the effect of PEPR on the collective bargaining of pensions and retirement issues, among other things. In January 2013, the DOL ordered the ATU and SacRT to engage in good faith discussions aimed at finding a resolution acceptable to both parties, but SacRT and the ATU were unable to reach an agreement, and the DOL eventually declined certification.

In September 2013, Caltrans sought federal funds on behalf of MST. ATU, which represents some of MST's employees, also objected to this application, citing the effects of PEPR. The DOL also denied the Caltrans-MST application. The plaintiffs then filed this action, challenging the DOL's decisions under the federal Administrative Procedure Act (APA) and the U.S. Constitution's Spending Clause. *See* Am. Compl., ECF No. 59.

B. This Court's Previous Order

In December 2014, this court issued an order dismissing the Spending Clause claims, denying the DOL's motion to dismiss the APA claims, granting the plaintiffs' motion for summary judgment on the APA claims, and remanding the matter to the DOL for further proceedings consistent with the court's order. *California v. Dep't of Labor*, 76 F.Supp.3d at 1148.¹ The court identified several aspects of the DOL's decision that violated the APA.

First, the DOL had relied reflexively on a particular decision of the D.C. Circuit,

Amalgamated Transit Union v. Donovan, without accounting for factual differences between that case and this one. *See* 76 F.Supp.3d at 1142–43 (citing *Donovan*, 767 F.2d 939 (D.C.Cir.1985)). Specifically, in *Donovan*, the circuit court reversed the certification of an agreement that did not permit collective bargaining on several subjects previously subject to bargaining. *Donovan*, 767 F.2d at 941, 943. PEPR, by contrast, does not eliminate collective bargaining rights or grant the plaintiffs unilateral authority; rather, it changes the parameters within which collective bargaining may proceed. *See* 76 F.Supp.3d at 1142–43.

Second, the DOL had ignored the fact that under federal labor policy, “[b]oth employers and employees come to the bargaining table with rights under state law that form a backdrop for their negotiations.” 76 F.Supp.3d at 1143 (quoting *Fort Halifax Packing Co., Inc. v. Coyne*, 482 U.S. 1, 21, 107 S.Ct. 2211, 96 L.Ed.2d 1 (1987)) (alteration in original). Pension reform may be part of this “backdrop,” because no provision of federal labor policy “expressly forecloses all state regulatory power with respect to those issues, such as pension plans, that may be the subject of collective bargaining.” *Id.* (quoting *Malone v. White Motor Corp.*, 435 U.S. 497, 504–05, 98 S.Ct. 1185, 55 L.Ed.2d 443 (1978)).

Third, “by finding that PEPR prevents collective bargaining over pensions, [the DOL] essentially determined that a pension is necessarily a defined benefit plan. . . .” *Id.* But “nothing in PEPR prevents bargaining over defined contribution plans, which are another form of pension.” *Id.* The DOL had therefore written a sub-

and not the case name.

1. Subsequent citations to this decision include only the numerical volume and page number,

stantive term into the parties' agreement, which it had no authority to do. *Id.*

Fourth, the DOL had not considered "the realities of public sector bargaining." *Id.* Bargaining in the public sector differs from bargaining in the private sector. A private employer may send a single representative to the bargaining table, with the authority to make a binding agreement, whereas a public employer may not be able to make concessions or change policy absent legislative enactment. In short, "[i]n the public sector, agreement at the bargaining table may be only an intermediate, not a final, step in the decisionmaking process." *Id.* at 1143–44 (quoting *Robinson v. State of N.J.*, 741 F.2d 598, 607 (3d Cir.1984)).

Fifth, to conclude that PEPRA did not preserve existing collective bargaining rights of employees hired after January 1, 2013, the DOL relied on *Wood v. National Basketball Association* and similar cases, but it did not consider whether factual differences between those cases and this one undermined their persuasive effect. *See id.* at 1144–45 (citing 602 F.Supp. 525, 529 (S.D.N.Y.1984)). In this case, unlike those on which the DOL relied, "neither 'new' employees nor the employers are pursuing individual agreements or are seeking some advantage outside the [collective bargaining agreement], but rather are constrained by PEPRA as a backdrop to their employment relationship." 76 F.Supp.3d at 1145. On a related note, the DOL essentially redefined "bargaining unit" when it found that employees who had not yet been hired were covered by a collective bargaining agreement. *Id.*

The DOL filed an appeal, but later dismissed that appeal voluntarily. *See* Not. Appeal, ECF No. 83; Order Dismissing Appeal, ECF No. 86. On August 13, 2015, the DOL issued its decision on remand, concluding as it did before that the plain-

tiffs' grant applications could not be certified under section 13(c). *See* Kraft Decl. Ex. A (Remand Decision), ECF No. 87-3. It reached this conclusion on two independent grounds: (1) "PEPRA prevents the 'continuation of collective bargaining' as that phrase is used in section 13(c)(2)"; and (2) "PEPRA prevents 'the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements,' contrary to section 13(c)(1)." *Id.* at 8.

The plaintiffs moved to enforce this court's previous order on September 10, 2015. *See* Mot. Enforce, ECF No. 87. They argue the DOL ignored this court's order and simply disagreed with this court's interpretation of the law. Mem. P. & A. 5–12, ECF No. 87-1. They also argue a quick response is warranted in light of the DOL's delay tactics and attempts to coerce them into unfavorable and illegal agreements. *Id.* at 13–18. The plaintiffs request an order directing the DOL to certify their funding applications within thirty days and ordering immediate compliance with this court's previous decision. *Id.* at 18. The DOL opposes the motion, arguing its decision on remand complies with this court's previous order. Opp'n Enforce, ECF No. 93. The plaintiffs have replied. ECF No. 95.

C. Authority to Enforce

[1,2] Federal courts have inherent jurisdiction to enforce their judgments. *See Peacock v. Thomas*, 516 U.S. 349, 356, 116 S.Ct. 862, 133 L.Ed.2d 817 (1996). Without this jurisdiction, "the judicial power would be incomplete and entirely inadequate to the purposes for which it was conferred by the Constitution." *Riggs v. Johnson Cnty.*, 73 U.S. (6 Wall.) 166, 187, 18 L.Ed. 768 (1868). This general rule extends to the specific context of a mandate issued to a

federal agency. *See, e.g., Flaherty v. Pritsker*, 17 F.Supp.3d 52, 55 (D.D.C.2014). Should an agency neglect the orders of a federal court, an order enforcing the original mandate is in fact “particularly appropriate.” *Int’l Ladies’ Garment Workers’ Union v. Donovan*, 733 F.2d 920, 922 (D.C.Cir.1984).

[3,4] A motion to enforce the court’s previous judgment may be granted when the prevailing party demonstrates its opponent has not complied with the judgment’s terms. *Heartland Hosp. v. Thompson*, 328 F.Supp.2d 8, 11 (D.D.C.2004), *aff’d sub nom. Heartland Reg’l Med. Ctr. v. Leavitt*, 415 F.3d 24 (D.C.Cir.2005). The court may grant the moving party only that relief to which it is entitled under the original judgment. *Id.* (citing *Watkins v. Washington*, 511 F.2d 404, 406 (D.C.Cir.1975)). Were this not the rule, motions to enforce would allow an end run around the prevailing party’s original burden to establish an injury and entitlement to relief. For example, a plaintiff who is awarded compensatory damages of \$1 million and receives no payment, might then request the court “enforce” its previous order by instructing the disobedient defendant to pay \$2 million.

[5] Here, the court’s previous order remanded the matter to the DOL to conduct further proceedings “consistent with” the court’s order. 76 F.Supp.3d at 1148. The court did not instruct the DOL to reach any particular result, even though the plaintiffs had requested such an instruction. *See* Mot. Summ. J. 2, ECF No. 54 (requesting the court “remand the matter to the Department with specific instruction to enter certification decisions on the SacRT and Monterey-Salinas Transit grant applications”). The court cannot grant the plaintiffs’ request to instruct the DOL to certify the grants. On this motion, the plaintiffs could, at most, obtain an

order directing the DOL again to conduct proceedings consistent with this court’s previous order, if the court were persuaded the DOL’s proceedings in the interim were not consistent.

[6] Although the court cannot enforce an order it did not previously issue, the plaintiffs may yet obtain the relief they seek in a renewed challenge and direct review. In *Food Marketing Institute v. Interstate Commerce Commission*, for example, the court considered an agency’s post-remand decisions on direct review, taking care to “recognize the danger that an agency, having reached a particular result, may become so committed to that result as to resist engaging in any genuine reconsideration of the issues.” 587 F.2d 1285, 1290 (D.C.Cir.1978). Furthermore, on direct review in a renewed challenge, remand may be unnecessary and wasteful in a number of situations: when “[t]here is not the slightest uncertainty as to the outcome of a proceeding,” *N.L.R.B. v. Wyman-Gordon Co.*, 394 U.S. 759, 766 n. 6, 89 S.Ct. 1426, 22 L.Ed.2d 709 (1969); “in rare circumstances” of “overwhelming evidence” and the agency’s “massive delays and inadequate decision-making,” *Middle Rio Grande Conservancy Dist. v. Norton*, 294 F.3d 1220, 1226 (10th Cir.2002); or within specific statutory regimes, *see Bennecke v. Barnhart*, 379 F.3d 587, 593 (9th Cir.2004) (Social Security benefits appeals). In these instances, the court has authority to forego games of judicial-agency ping-pong and simply reverse. *See Wyman-Gordor*, 394 U.S. at 766 & n. 6, 89 S.Ct. 1426.

But here, because the court previously remanded the matter “to the Department for further proceedings consistent with [the prior] order,” the court considers only whether the proceedings post-remand were consistent with that previous order.

D. The DOL's Post-Remand Decision

1. Reliance on *Donovan*

[7] As summarized above, the court's previous order concluded the DOL had relied on *Amalgamated Transit Union v. Donovan* without considering critical factual differences between PEPRA and the statute under review in that case. *See* 76 F.Supp.3d at 1142–43 (citing 767 F.2d at 943, 949–51). On remand, the DOL expressed its disagreement with this court's analysis, including the court's analysis of its previous reliance on *Donovan*. Remand Decision at 7. Nevertheless, the DOL considered anew whether it would reach the same result without relying on *Donovan* at all. *See id.* at 7–8. The DOL considered the text of UMTA section 13(c) and that statute's legislative history, *see id.* at 8–11, then concluded the plaintiffs' application of PEPRA did not preserve employees' rights or provide for the continuation of collective bargaining. This analysis was not inconsistent with the court's order as it pertained to *Donovan*.

2. PEPRA as a Backdrop

[8] The court's previous order concluded the DOL had ignored the fact that under federal labor policy, pension reform may be a "backdrop" to the bargaining table, because no provision of federal labor policy "expressly forecloses all state regulatory power with respect to those issues, such as pension plans, that may be the subject of collective bargaining." 76 F.Supp.3d at 1143 (quoting *Fort Halifax*, 482 U.S. at 21, 107 S.Ct. 2211, and *Malone*, 435 U.S. at 504–05, 98 S.Ct. 1185, and citing *Metro. Life Ins. Co. v. Mass. Travelers Ins. Co.*, 471 U.S. 724, 756, 105 S.Ct. 2380, 85 L.Ed.2d 728 (1985)). On remand, in a lengthy and detailed analysis, the DOL recognized that "not all state laws that 'form a backdrop to' public employee collective bargaining interfere with section

13(c) rights." Remand Decision at 13. It considered *Fort Halifax*, *Malone*, and *Metropolitan Life*, but concluded "PEPRA is not the kind of state law that can remove issues from the collective bargaining obligation established by section 13(c)." *Id.* This analysis also was not inconsistent with the court's previous order, which noted the backdrop to collective bargaining "may be pension reform." 76 F.Supp.3d at 1143.

3. Pensions as Defined Benefits Plans

[9] The court's previous order concluded the DOL had acted in excess of its authority when it "essentially determined that a pension is necessarily a defined benefit plan. . . ." 76 F.Supp.3d at 1143. To address this error, the DOL considered the differences between defined benefits plans and defined contribution plans. Remand Decision at 20. It concluded that "[e]mployees faced with [the] investment risks and decisions in a defined contribution plan quite reasonably may prefer to keep an existing defined benefit plan, particularly if their union has been able to negotiate generous terms." *Id.* Therefore, it found, "[w]hen a law like PEPRA makes fundamental changes and substantial benefit rollbacks to defined benefit plans, employees can also reasonably view the possibility of a defined contribution plan as insufficient to make up for those losses." *Id.* (citation omitted). This analysis was not inconsistent with the court's previous order, which did not require the DOL to conclude that any replacement for the previous defined benefit plan warranted certification under section 13(c).

4. The Realities of Public-Sector Bargaining

[10] The court previously held that the DOL had not considered "the realities of public sector bargaining," and most impor-

tantly, the role of the legislature. *See* 76 F.Supp.3d at 1143–44 (citing *Robinson*, 741 F.2d at 607). To address this error, the DOL expressly considered the realities of public sector bargaining. Remand Decision at 17–18. In light of the fact that “SacRTD admit[ted] that it is required by state law to bargain collectively, and cite[d] nothing in state law that requires the state legislature to ratify the agreements it reaches through collective bargaining,” the DOL found “ratification by the state legislature is not an issue for SacRTD.” *Id.* at 17. Because the court’s previous order only required the DOL to consider these questions, not to consider them and reach a particular conclusion, the DOL’s decision on remand is not inconsistent with the court’s previous order in this respect.

5. New Employees

The DOL previously found that PEPPRA did not preserve existing collective bargaining rights for employees hired after January 1, 2013. *See* 76 F.Supp.3d at 1144. To reach its conclusion, the DOL relied on several “cases suggesting, at least under the [National Labor Relations Act, or NLRA], mandatory collective bargaining includes wages for unrepresented, non-union members . . .” *Id.* But the court held these cases were distinguishable and found the DOL had misinterpreted the law by relying on them as it did. *Id.* at 1144–45. The court’s previous order also found the DOL had redefined “bargaining unit” for purposes of the collective bargaining agreement. *Id.* at 1145. In particular, because the agreement defines bargaining unit as employees in SacRT’s service, and because an employee cannot be “in service” before he or she starts work, an employee who has not yet been hired is not part of a bargaining unit. *Id.*

[11] On remand, the DOL found this court’s order to be “in error,” and found

the collective bargaining agreement indeed applies to new employees. Remand Decision at 21. For this reason, the DOL stood by its original conclusion that SacRTD did not preserve the rights of employees under its collective bargaining agreement “as it is properly construed.” *Id.* at 21–22. That conclusion is inconsistent with this court’s order. The DOL may not disregard this court’s orders simply because it disagrees with them or finds they are premised on a misinterpretation of law or fact. The appellate bodies designed to fulfill that role are the Ninth Circuit Court of Appeals and the United States Supreme Court.

The decision on remand is therefore vacated inasmuch as the DOL concluded SacRTD has not preserved rights under an existing collective bargaining agreement. Nevertheless, because the DOL relied on this conclusion as “an independent reason for denying certification,” Remand Decision at 8, the matter need not be remanded.

II. LEAVE TO FILE A SUPPLEMENTAL COMPLAINT

[12, 13] Federal Rule of Civil Procedure 15(d) allows the court to grant a plaintiffs’ motion to serve a supplemental complaint, “setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented.” The rule allows district courts broad discretion to permit supplemental pleadings. *Keith v. Volpe*, 858 F.2d 467, 473 (9th Cir.1988). Rule 15(d) is meant to avoid the costs, delays, and wastes associated with separate actions. *Id.* The Ninth Circuit has even held that a motion to file a supplemental pleading “ought to be allowed as of course” absent specific reasons to the contrary. *Id.* (citation and quotation marks omitted). Rule 15(d) allows supplemental claims under new statutes, and supplemental claims need neither arise out of the

same transaction or occurrence nor involve common questions of law or fact. *Id.* at 474.

[14, 15] Nevertheless, supplemental pleadings should not be used to introduce entirely separate and distinct claims into an existing action. *Planned Parenthood of S. Ariz. v. Neely*, 130 F.3d 400, 402 (9th Cir.1997). “[S]ome relationship must exist between the newly alleged matters and the subject of the original action.” *Keith*, 858 F.2d at 474. In determining whether a supplemental pleading will serve the goal of “judicial efficiency,” the court considers whether the entire controversy ought to be settled in one action. *Planned Parenthood*, 130 F.3d at 402.

The Ninth Circuit has expressed doubt about the advisability of a supplemental complaint when, as here, the original action has reached its final disposition. *See id.* (citing a “handful of cases” where post-judgment supplemental pleadings were permitted). Resurrecting a case this way may be appropriate when the plaintiff alleges the defendant has attempted to contravene earlier rulings. *See id.* (citing *Griffin v. County Sch. Bd.*, 377 U.S. 218, 84 S.Ct. 1226, 12 L.Ed.2d 256 (1964); *Keith*, 858 F.2d at 467; *Poindexter v. La. Fin. Assistance Comm’n*, 296 F.Supp. 686 (E.D.La.), *aff’d sub nom. La. Comm’n for Needy Children v. Poindexter*, 393 U.S. 17, 89 S.Ct. 48, 21 L.Ed.2d 16 (1968)).

[16] Here, the proposed supplemental complaint addresses the same general factual matter as the original complaint, and its filing promotes judicial efficiency. Both the original and supplemental complaints contest the DOL’s decision not to certify the grants under section 13(c), and the proposed supplemental complaint alleges the DOL has undertaken a continuing and unjustified effort to find PEPPRA inconsistent with section 13(c). The DOL has identified no inefficiency that would result

from the supplemental complaint’s filing. It argues only that “the issues raised in [the] supplemental complaint will have to be decided separately.” Opp’n Suppl. Compl. at 6. And it has identified only one source of prejudice: the possibility that the court may require its response “within a specified time.” *Id.* at 7–8 (quoting Fed. R. Civ. P. 15(d)). The DOL’s detailed arguments that the supplemental complaint would be futile undermine this theory of prejudice by demonstrating it has already anticipated the substance of a responsive pleading. *See id.* at 8–12.

[17] Finally, the DOL also argues the supplemental complaint invites unnecessary litigation because it states no claim. *See id.* Futility may preclude the filing of an amended complaint under Rule 15(a), *see, e.g., DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 186 (9th Cir.1987), and federal courts have concluded that “[t]he legal standard for granting or denying a motion to supplement under Rule 15(d) is the same as the standard for granting or denying a motion under Rule 15(a),” *Yates v. Auto City* 76, 299 F.R.D. 611, 614 (N.D.Cal.2013) (citation and quotation marks omitted). Here, the supplemental complaint’s legal sufficiency will be better tested by later motion, not in the parties’ current opposition and reply papers. The motion for leave to file a supplemental complaint is granted.

III. CONCLUSION

The motion to enforce is GRANTED IN PART. The decision on remand is VACATED IN PART inasmuch as the DOL concluded SacRT has not preserved rights under an existing collective bargaining agreement.

The motion for leave to file a supplemental complaint is GRANTED. The proposed supplemental complaint, ECF No.

88-2, is DEEMED FILED. The defendants shall file a responsive pleading within thirty days of the date this order is filed.

This order resolves ECF Nos. 87 and 88.
IT IS SO ORDERED.



NORTHWEST ENVIRONMENTAL DEFENSE CENTER, Center for Biological Diversity, and Neighbors for Clean Air, Plaintiffs,

v.

CASCADE KELLY HOLDINGS LLC, d/b/a Columbia Pacific Bio-Refinery, and Global Partners LP, Defendants.

Case No. 3:14-cv-01059-SI

United States District Court,
D. Oregon.

Signed December 30, 2015

Background: Environmental organizations brought action against operator of crude oil transloading terminal and affiliated entities, alleging that the construction and operation of the terminal without a federal Prevention of Significant Deterioration (PSD) permit violated the Clean Air Act. Bench trial was held.

Holdings: The District Court, Michael H. Simon, J., held that:

- (1) organizations were not required to exhaust administrative remedies;
- (2) issue preclusion doctrine did not apply;
- (3) court had jurisdiction under the CAA;
- (4) court would give some deference to factual determination of Oregon's De-

partment of Environmental Quality (DEQ); and

- (5) plant site emission limit (PSEL) in state-issued air contaminant discharge permit (ACDP) was practically enforceable.

Ordered accordingly.

1. Environmental Law ⚡297

The purpose of the CAA's citizen suit provision is to permit citizens to enforce the statute when the responsible agencies fail or refuse to do so. Clean Air Act § 304, 42 U.S.C.A. § 7604.

2. Environmental Law ⚡297

When a state agency charged with administering a permit program determines that no permit is required for an activity, a citizen may still bring suit under the CAA against a private party for the unpermitted activity; any finding to the contrary would frustrate the purposes of the statute's empowerment of citizen suit. Clean Air Act § 304, 42 U.S.C.A. § 7604.

3. Environmental Law ⚡665

Environmental organizations were not required to exhaust administrative remedies before bringing citizen suit under the CAA challenging the Oregon Department of Environmental Quality's (DEQ) decision not to require a federal Prevention of Significant Deterioration (PSD) permit for crude oil transloading terminal. Clean Air Act § 304, 42 U.S.C.A. § 7604.

4. Federal Courts ⚡3045(6)

The preclusive effect in federal court of a decision by an Oregon state court or agency is determined by Oregon law.

5. Judgment ⚡634

In Oregon, issue preclusion applies when: (1) the issue in the two proceedings is identical; (2) the issue was actually litigated and was essential to a final decision