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Acting Director of the California Department of
 9 *State Hospitals*

10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE EASTERN DISTRICT OF CALIFORNIA

<p>14 ALFRED SWEET, 15 16 Plaintiff, 17 18 CALIFORNIA ASSOCIATION OF PSYCHIATRIC TECHNICIANS; 19 STEPHANIE CLENDENIN, in her official capacity as Acting Director of the California 20 Department of State Hospitals; and XAVIER BECERRA, in his official capacity 21 as Attorney General of California, 22 23 Defendants.</p>	<p>2:19-cv-00349-JAM-AC ANSWER OF DEFENDANTS BECERRA AND CLENDENIN TO COMPLAINT SEEKING DECLARATORY RELIEF, INJUNCTIVE RELIEF, AND DAMAGES FOR DEPRIVATION OF FIRST AMENDMENT RIGHTS Judge: The Honorable John A. Mendez Trial Date: N/A Action Filed: February 27, 2019</p>
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24 Defendants Xavier Becerra, in his official capacity as Attorney General of the State of
 25 California, and Stephanie Clendenin, in her official capacity as Acting Director of the California
 26 Department of State Hospitals, hereby answer the Complaint Seeking Declaratory Relief,
 27 Injunctive Relief, and Damages for Deprivation of First Amendment Rights (“Complaint”), filed
 28 February 27, 2019, as follows:

INTRODUCTION¹

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2 1. Answering Paragraphs 1 and 2, these paragraphs contain assertions and conclusions
3 of law, and to which no response is required. To the extent there are factual allegations for which
4 a response is necessary, Defendants deny them.

5 2. Answering Paragraph 3, Defendant Becerra lacks sufficient knowledge or information
6 to form a belief as to the truth of the allegations, and on that basis, denies them. Defendant
7 Clendenin admits the allegations in the first sentence in Paragraph 3, and lacks sufficient
8 knowledge or information to form a belief as to the truth of the allegations in the second sentence,
9 and on that basis denies them.

10 3. Answering Paragraph 4, this paragraph contains assertions and conclusions of law, to
11 which no response is required. To the extent there are factual allegations for which a response is
12 necessary, Defendants lack sufficient knowledge or information to form a belief as to the truth of
13 the allegations, and on that basis denies them.

14 4. Answering Paragraph 5, 6, 7, and 8, these paragraphs contain assertions and
15 conclusions of law, to which no response is required. To the extent there are factual allegations
16 for which a response is necessary, Defendants deny them.

17 5. Answering Paragraph 9, this paragraph contains characterizations of this lawsuit and
18 conclusions of law, to which no response is required. To the extent there are factual allegations
19 for which a response is necessary, Defendants deny them.

20 **PARTIES**

21 6. Answering Paragraph 10, Defendant Becerra lacks sufficient knowledge or
22 information to form a belief as to the truth of the allegations, and on that basis denies them.
23 Defendant Clendenin admits the allegations in the first sentence in Paragraph 10, and lacks
24 sufficient knowledge or information to form a belief as to the truth of the allegations in the second
25 sentence, and on that basis denies them.

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27 _____
28 ¹ For ease of reference, Defendants re-create the headings in this Answer, as they are used
in the Complaint. Defendants deny allegations contained in unremunerated subheadings that
appear in the Complaint.

1 **AFFIRMATIVE DEFENSES**

2 **First Affirmative Defense**

3 Defendants are entitled to qualified immunity from this action because Defendants’ actions
4 were objectively reasonable and did not violate any clearly established right.

5 **Second Affirmative Defense**

6 Plaintiff has voluntarily acquiesced in, or expressly or impliedly consented to, the actions
7 now claimed to be unconstitutional or unlawful, and cannot now be heard to complain about the
8 same actions.

9 **Third Affirmative Defense**

10 Plaintiff seeks relief that would be contrary to sound public policy, particularly the policy
11 rationales for accepted methods of management of a public-sector workforce of which Plaintiff is
12 a part.

13 **Fourth Affirmative Defense**

14 Plaintiff failed to exhaust available administrative remedies before bringing this lawsuit.

15 **Fifth Affirmative Defense**

16 Plaintiff has failed to state a claim upon which relief can be granted, or any justiciable
17 claim.

18 **Sixth Affirmative Defense**

19 The statutes authorizing mandatory “agency” or “fair share” fees with respect to certain
20 public-sector employees and their unions have already been rendered unenforceable by *Janus v.*
21 *American Federation of State, County, and Municipal Employees, Council 31*, 138 S. Ct. 2448
22 (2018), and are not presently being enforced by any California state government entity, official,
23 or employee. *See* “Public Notice; Regular Business Meeting Agenda; Public Employment
24 Relations Board; October 11, 2018 ~10:00 a.m.,” Item 6(D), available online at
25 <https://www.perb.ca.gov/meetings/docs/94/2018.10.11%20agenda.pdf>. The Complaint, or at
26 least part of it, is therefore void for mootness.

27 **Seventh Affirmative Defense**

1 Plaintiff lacks standing to challenge the constitutionality of each of the statutes in question
2 in this case, because the statutes do not apply to Plaintiff.

3 **Eighth Affirmative Defense**

4 Plaintiff has not suffered an actual injury or damages.

5 **Ninth Affirmative Defense**

6 The applicable statute of limitations prevents Plaintiff from recovering past union dues
7 paid.

8 **Tenth Affirmative Defense**

9 The Complaint and both of its counts cannot be pursued because of the doctrines of
10 estoppel, laches, and waiver.

11 **Eleventh Affirmative Defense**

12 Plaintiff contributed to his own damages, if any, by failing withdraw from union
13 membership before the current collective bargaining agreement for psychiatric technicians went
14 into effect.

15 **Twelfth Affirmative Defense**

16 The acts or omissions of third persons or parties are the legal cause of Plaintiff's damages
17 in whole or in part, and Plaintiff may not collect from Defendants Becerra and Clendenin that
18 percentage of damages attributable to the acts or admissions of such third persons or parties.

19 **Thirteenth Affirmative Defense**

20 Because the Complaint allegations are couched in conclusory terms, Defendants cannot
21 fully anticipate all affirmative defenses that may be applicable to this action. Thus, Defendants
22 reserve the right to assert additional affirmative defenses, if and to the extent such affirmative
23 defenses apply.

24 **DEFENDANTS' PRAYER FOR RELIEF**

25 Defendants Becerra and Clendenin pray that the Court provide the following relief:

- 26 1. That Plaintiff take nothing by this action;
27 2. Entry of judgment for Defendants Clendenin and Becerra;
28 3. An award of costs of suit and attorneys' fees to Defendants Clendenin and Becerra;

1 and

2 4. Such other relief as the Court deems proper.

3 Dated: April 22, 2019

Respectfully submitted,

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XAVIER BECERRA
Attorney General of California

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ANTHONY R. HAKL
Supervising Deputy Attorney General

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/s/ MAUREEN C. ONYEAGBAKO

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MAUREEN C. ONYEAGBAKO

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Deputy Attorney General

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*Attorneys for Defendant Xavier Becerra, in
his official capacity as California Attorney
General, and Stephanie Clendenin, in her
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California Department of State Hospitals*

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CERTIFICATE OF SERVICE

Case Name: **Sweet, Alfred v. California** No. **2:19-cv-00349-JAM-AC**
Association of Psychiatric
Technicians, et al

I hereby certify that on April 22, 2019, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

**ANSWER OF DEFENDANTS BECERRA AND CLENDENIN TO COMPLAINT
SEEKING DECLARATORY RELIEF, INJUNCTIVE RELIEF, AND DAMAGES
FOR DEPRIVATION OF FIRST AMENDMENT RIGHTS**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on April 22, 2019, at Sacramento, California.

Eileen A. Ennis

Declarant

/s/ Eileen A. Ennis

Signature