

EXHIBIT A

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18 **UNITED STATES DISTRICT COURT**
19 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

20 Cara O’Callaghan and Jenée Misraje,
21
22 Plaintiffs,

23 v.

24 Janet Napolitano, in her official capacity as
25 President of the University of California;
26 Teamsters Local 2010; and Xavier Becerra,
27 in his official capacity as Attorney General
28 of California,

Defendants.

Case No. 2:19-cv-02289-JVS-DFM

**FIRST AMENDED COMPLAINT
SEEKING DECLARATORY RELIEF,
INJUNCTIVE RELIEF, AND
DAMAGES FOR DEPRIVATION OF
FIRST AMENDMENT RIGHTS**

INTRODUCTION

1
2 1. Government employees have a First Amendment right not to be compelled by
3 their employer to join a union or to pay any fees to that union unless an employee
4 “affirmatively consents” to waive that right. *Janus v. AFSCME*, 138 S. Ct. 2448, 2486
5 (2018). Such a waiver must be “freely given and shown by ‘clear and compelling’
6 evidence.” *Id.*

7 2. Defendants have limited Plaintiffs’ withdrawal from their governmental union
8 to an arbitrary window of time and insist that Plaintiffs can only exercise their First
9 Amendment rights at that time.

10 3. Union dues deduction authorizations signed by government employees in
11 California before the Supreme Court’s decision in *Janus* cannot constitute affirmative
12 consent by those employees to waive their First Amendment right not to pay union dues or
13 fees. Union members who signed such agreements could not have freely waived their right
14 to not join or pay a union because the Supreme Court had not yet recognized that right.

15 4. Government employees also have a First Amendment right of freedom of
16 association not to be represented in collective bargaining negotiations by a group that they
17 disagree with. The First Amendment protects “[t]he right to eschew association for
18 expressive purposes,” *Janus*, 138 S. Ct. at 2463, and “[f]reedom of association . . . plainly
19 presupposes a freedom not to associate.” *Roberts v. United States Jaycees*, 468 U. S. 609,
20 623 (1984).

21 5. The State of California is violating Plaintiffs’ First Amendment rights to free
22 speech and freedom of association through its laws that require employees to associate with
23 labor unions and to require that those unions be the “exclusive representative” of all
24 employees. Cal. Gov’t Code §§ 3570, 3571.1(e), 3574, and 3578.

25 6. Therefore, Plaintiffs bring this case under 42 U.S.C § 1983 and 28 U.S.C. §
26 2201(a), seeking declaratory and injunctive relief, as well as damages in the amount of the
27 dues previously deducted from their paychecks.

1 **PARTIES**

2 7. Plaintiff Cara O’Callaghan (“O’Callaghan”) is the finance manager of the
3 Sport Club program, employed by the Department of Recreation at the University of
4 California, Santa Barbara (“UCSB”). She resides in Santa Barbara County, California.

5 8. Plaintiff Jenée Misraje (“Misraje”) is an administrative assistant employed in
6 the Geography Department at the University of California, Los Angeles (“UCLA”). She
7 resides in Los Angeles County, California.

8 9. Defendant Janet Napolitano (“Napolitano”) is sued in her official capacity as
9 the President of the University of California system. UCLA and UCSB are campuses of the
10 University of California system overseen by Napolitano. The Office of the General Counsel
11 of the Regents of the University of California is authorized to accept service of process on
12 Napolitano at 1111 Franklin Street, 8th Floor, Oakland, California 94607 in Alameda
13 County, California.

14 10. Defendant Teamsters Local 2010 (the “Union”) is a labor union with offices
15 in this district at 9900 Flower Street, Bellflower, California 90706 in Los Angeles County,
16 California.

17 11. Defendant Attorney General Xavier Becerra (the “Attorney General”) is sued
18 in his official capacity as the representative of the State of California charged with the
19 enforcement of state laws, including the provisions challenged in this case. His address for
20 service of process is 300 South Spring Street, Los Angeles, California, 90013 in Los
21 Angeles County.

22 **JURISDICTION AND VENUE**

23 12. This case raises claims under the First and Fourteenth Amendments of the U.S.
24 Constitution and 42 U.S.C. § 1983. The Court has subject-matter jurisdiction under 28
25 U.S.C. § 1331 and 28 U.S.C. § 1343.

26 13. Venue is proper because a substantial portion of the events giving rise to the
27 claims occurred in the Central District of California. 28 U.S.C. 1391(b)(2).
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FACTS

14. O’Callaghan was employed by UCSB from 2000 to 2004 and has been continuously employed by UCSB since August 2009.

15. When O’Callaghan began her latest stint of employment at UCSB, she did not join the Union but, instead, was forced to pay agency, or “fair share,” fees to the Union.

16. On May 31, 2018, a Union representative came to O’Callaghan’s workplace and pressured workers to join the Union. The Union representative did not inform O’Callaghan of the impending decision in *Janus* and the important effects it would have on her rights as a public employee. O’Callaghan relied on this lack of information and signed an application joining the Union and authorizing it to deduct union dues from her paycheck.

17. On July 25, 2018, upon learning of the *Janus* decision of June 27, 2018, O’Callaghan sent a letter to the Union resigning from the Union. The same day she sent a letter to UCSB requesting that it stop deducting union dues from her paycheck.

18. In a letter dated July 24, 2018, the Union responded that she was free to resign her membership at any time; however, her payroll deductions would continue until and unless she gave notice pursuant to the terms of the collective bargaining agreement between the Union and UCSB. The letter did not explain what those terms were.

19. Under the terms of the collective bargaining agreement, notice was required to be written and sent via U.S. mail to both the Union and UCSB during the thirty days prior to the expiration of their collective bargaining agreement, which would not occur until March 31, 2022—almost four years from the time of her request!

20. On October 16, 2018, Liberty Justice Center sent a letter to UCSB demanding that it immediately stop deducting union dues from O’Callaghan’s paycheck.

21. On October 24, 2018, UCSB referred the Liberty Justice Center letter to the Union via e-mail.

22. On November 9, 2018, the Union confirmed to UCSB via e-mail that it should continue to deduct union dues from O’Callaghan’s paycheck.

1 23. On November 29, 2018, UCSB sent a letter to Liberty Justice Center stating
2 that it would continue to deduct union dues from O’Callaghan’s paycheck.

3 24. Napolitano has deducted union dues and agency fees from O’Callaghan’s
4 paychecks since she began employment in 2000 and have, on information and belief,
5 remitted those dues to the Union. Defendants continue to deduct those dues, now
6 approximately forty-one (\$41) dollars per month, despite O’Callaghan’s repeated requests
7 that the deductions be stopped.

8 25. Misraje has been employed by UCLA since May 2015.

9 26. On July 27, 2015, Misraje signed an application joining the Union and
10 authorizing it to deduct dues from her paycheck.

11 27. On August 8, 2018, Misraje sent a letter to the Union requesting to withdraw
12 her union membership.

13 28. On August 9, 2018, the Union responded to Misraje via e-mail that she would
14 be dropped as a full member of the Union, but she could not end the deduction of union
15 dues from her paycheck except during a time window. The Union did not explain to her
16 when that time window would occur.

17 29. On August 27, 2018, Misraje sent an e-mail to the Union, requesting that it
18 immediately terminate her union membership and stop deducting union dues from her
19 paycheck. She also sent an e-mail to UCLA, requesting it to stop deducting union dues from
20 her paycheck.

21 30. On the same day, UCLA responded that it could not grant her request because
22 all such requests must come through the Union under California law.

23 31. On the same day, the Union replied that Misraje was no longer a member of
24 the Union but that she could not end the deduction of union dues from her paycheck except
25 during a time window.

26 32. On October 11, 2018, Misraje, once again, sent an e-mail to the Union
27 requesting that it withdraw her membership and stop deducting union dues from her
28 paycheck.

1 33. On the same day, the Union responded that her membership had been
2 terminated; however, the Union continued to receive dues deducted from her paycheck.

3 34. On November 8, 2018, Misraje requested again through an e-mail to UCLA
4 that it stop deducting union dues from her paycheck.

5 35. On the same day, UCLA responded that it could not grant her request because
6 all such requests must come through the Union under California law.

7 36. On November 29, 2018, Misraje sent another e-mail to the Union requesting
8 that it stop deducting union dues from her paycheck.

9 37. On November 30, 2018, Misraje followed up the previous day's e-mail with a
10 letter to the Union requesting that it stop deducting union dues from her paycheck. She also
11 sent a letter to UCLA requesting the same.

12 38. On December 5, 2018, UCLA sent an e-mail to Misraje rejecting her request
13 again.

14 39. On December 7, 2018, the Union responded that Misraje was free to resign her
15 membership at any time; however, her payroll deductions would continue until and unless
16 she gave notice pursuant to the terms of her union application.

17 40. Under the terms of the union application Misraje signed on July 27, 2015,
18 notice is required to be written and sent to both the Union and UCLA during a fifteen-day
19 window "at least sixty (60) days, but not more than seventy-five (75) days" before the
20 anniversary date of the signed agreement.

21 41. Napolitano has deducted union dues from Misraje's paychecks since she began
22 employment in May 2015 and has, on information and belief, remitted those dues to the
23 Union. Napolitano continues to deduct those dues, now approximately fifty-three (\$53)
24 dollars per month, despite Misraje's repeated requests that the deductions be stopped.

25 42. On March 27, 2019, O'Callaghan and Misraje (collectively, "Plaintiffs") filed
26 this lawsuit to assert their rights.

1 72. Therefore, courts should scrutinize compelled associations strictly, because
2 “mandatory associations are permissible only when they serve a compelling state interest
3 that cannot be achieved through means significantly less restrictive of associational
4 freedoms.” *Knox v. SEIU*, 567 U.S. 298, 310 (quoting *Roberts v. United States Jaycees*, 468
5 U.S. 609, 623 (1984)) (internal quotation marks omitted).

6 73. In the context of public sector unions, the Supreme Court has likewise
7 recognized that “[d]esignating a union as the employees’ exclusive representative
8 substantially restricts the rights of individual employees. Among other things, this
9 designation means that individual employees may not be represented by any agent other
10 than the designated union; nor may individual employees negotiate directly with their
11 employer.” *Janus*, 138 S. Ct. at 2460.

12 74. California law expressly grants the unions the right to speak on Plaintiffs’
13 behalf on matters of serious public concern, including the wages, hours, and other
14 conditions of employment of public employees like Plaintiffs’. Cal. Gov’t Code §
15 3562(q)(1). These topics are inherently political questions in the context of public sector
16 unions. *Janus*, 138 S. Ct. 2473.

17 75. Under color of state law, Napolitano has designated the Union as Plaintiffs’
18 exclusive representative for bargaining purposes and has negotiated the terms and
19 conditions of Plaintiffs’ employment with the Union. Cal. Gov’t Code §§ 3570 and 3574.

20 76. Under color of state law, the Union has acted as Plaintiffs’ exclusive
21 representative in negotiating the terms and conditions of their employment.

22 77. This designation compels Plaintiffs to associate with the Union and, through
23 its representation of them, it compels them to petition the government with a certain
24 viewpoint, despite that viewpoint being in opposition to Plaintiffs’ own goals and priorities
25 for the State of California.

26 78. Plaintiffs are entitled to an injunction under 42 U.S.C. § 1983 ordering the
27 Union immediately to stop serving as the exclusive representative of Plaintiffs for collective
28 bargaining purposes.

1 79. Plaintiffs are entitled to an injunction under 42 U.S.C. § 1983 ordering
2 Napolitano immediately to stop recognizing the Union as the exclusive representative of
3 Plaintiffs for collective bargaining purposes.

4 80. Plaintiffs are entitled to an injunction under 42 U.S.C. § 1983 ordering Becerra
5 immediately to stop defending California laws recognizing the Union as the exclusive
6 representative of Plaintiffs for collective bargaining purposes.

7
8 **COUNT VI: Declaration against exclusive representation**

9 81. The allegations contained in all preceding paragraphs are incorporated herein
10 by reference.

11 82. Plaintiffs are entitled to a declaration from this Court that recognizing the
12 Union as the exclusive representative of Plaintiffs for collective bargaining purposes is a
13 violation of the First Amendment.

14
15 **COUNT VII: Declaration that California exclusive representation statutes are**
16 **unconstitutional**

17 83. The allegations contained in all preceding paragraphs are incorporated herein
18 by reference.

19 84. Under California law, Napolitano shall recognize the Union as the exclusive
20 representative of Plaintiffs if a majority of employees in the bargaining unit approve, and
21 no other unions have been recognized. Cal. Gov't Code § 3574.

22 85. Under California law, Napolitano shall meet and confer with the Union, which
23 shall serve as the exclusive representative of Plaintiffs. Cal. Gov't Code § 3570.

24 86. Under California law, the Union must act as the exclusive representative of all
25 employees in the bargaining unit, including Plaintiffs, whether they want to be represented
26 by the Union or not. Cal. Gov't Code §§ 3571.1(e) and 3578.

27 87. Plaintiffs are entitled to a declaration under 42 U.S.C. § 1983 and 28 U.S.C. §
28 2201(a) that Cal. Gov't Code §§ 3570, 3571.1(e), 3574, 3578, and all related provisions

1 constitute an unconstitutional violation of Plaintiffs' First Amendment rights to free speech
2 and freedom of association for requiring the Union to serve as their exclusive representative
3 for bargaining purposes.

4 5 **PRAYER FOR RELIEF**

6 Plaintiffs respectfully request that this Court:

- 7 a. Enjoin the Union to withdraw Plaintiffs from union membership and to stop
8 collecting dues from Plaintiffs' paychecks;
- 9 b. Enjoin Napolitano from deducting dues from Plaintiffs' paychecks;
- 10 c. Enjoin Becerra from defending California laws allowing for the deduction of
11 union dues from Plaintiffs' paychecks.
- 12 d. Declare that deducting union dues after a government employee has requested
13 that they stop is a violation of the First Amendment.
- 14 e. Declare that Cal. Gov't Code §§ 1157.12, 3513(i), 3515, 3515.5, 3583, and all
15 related provisions constitute an unconstitutional violation of Plaintiffs' First
16 Amendment rights to free speech and freedom of association for prohibiting
17 their immediate withdrawal from the Union and stoppage of their dues
18 deductions.
- 19 f. Award monetary damages against the Union for all union dues and agency fees
20 collected from Plaintiffs during their employment;
- 21 g. Enjoin the Union from serving as the exclusive representative of Plaintiffs for
22 collective bargaining purposes;
- 23 h. Enjoin Napolitano from recognizing the Union as the exclusive representative
24 of Plaintiffs for collective bargaining purposes;
- 25 i. Enjoin Becerra from defending California laws recognizing the Union as the
26 exclusive representative of Plaintiffs for collective bargaining purposes;
- 27 j. Declare that recognizing the Union as the exclusive representative of Plaintiffs
28 for collective bargaining purposes is a violation of the First Amendment;

- 1 k. Declare that Cal. Gov't Code §§ 3570, 3571.1(e), 3574, 3578, and all related
2 provisions constitute an unconstitutional violation of Plaintiffs' First
3 Amendment rights to free speech and freedom of association for requiring the
4 Union to serve as their exclusive representative for bargaining purposes;
5 l. Award Plaintiffs their costs and attorneys' fees under 42 U.S.C. § 1988; and
6 m. Award Plaintiffs any further relief to which they may be entitled and such other
7 relief as this Court may deem just and proper.
8

9 Dated: June 14, 2019

Respectfully submitted,

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