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16 **UNITED STATES DISTRICT COURT**
17 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

18 Cara O’Callaghan and Jenée Misraje,
19

20 **Plaintiffs,**

21 v.

22 Regents of the University of California;
23 Teamsters Local 2010; and Xavier Becerra,
24 in his official capacity as Attorney General
25 of California,

26 **Defendants.**
27
28

Case No. _____

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

1 INTRODUCTION

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.

PARTIES

1
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 Regents of the University of California (the “Regents”) are the
9 governing board of the University of California system. They are sued in their official
10 capacity. UCLA and UCSB are campuses of the University of California system overseen
11 by the Regents. The Office of the General Counsel of the Regents is authorized to accept of
12 service of process on the Regents at 1111 Franklin Street, 8th Floor, Oakland, California
13 94607 in Alameda 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
23 **JURISDICTION AND VENUE**

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

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

FACTS

1
2 14. O’Callaghan was employed by UCSB from 2000 to 2004 and has been
3 continuously employed by UCSB since August 2009.

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

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

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

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

18 19. Under the terms of the collective bargaining agreement, notice was required to
19 be written and sent via U.S. mail to both the Union and UCSB during the thirty days prior
20 to the expiration of their collective bargaining agreement, which would not occur until
21 March 31, 2022.

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

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

26 22. On November 9, 2018, the Union confirmed to UCSB via e-mail that it should
27 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. The Regents have 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. The Regents 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. The Regents have deducted union dues from Misraje's paychecks since she
22 began employment in May 2015 and have, on information and belief, remitted those dues
23 to the Union. The Regents continue to deduct those dues, now approximately fifty-three
24 (\$53) dollars per month, despite Misraje's repeated requests that the deductions be stopped.

25
26 **COUNT I: Injunction against dues deduction**

27 42. The allegations contained in all preceding paragraphs are incorporated herein
28 by reference.

1 43. 42 U.S.C. § 1983 provides a cause of action for injunctive relief against any
2 person who, under color of law of any state, subjects any person within the jurisdiction of
3 the United States to a deprivation of any rights, privileges, or immunities secured by the
4 Constitution.

5 44. The rights to free speech and freedom of association in the First Amendment
6 have been incorporated to and made enforceable against the states through the Fourteenth
7 Amendment guarantee of Due Process. *Janus*, 138 S. Ct. at 2463; *NAACP v. Alabama*, 357
8 U.S. 449 (1958); *Gitlow v. New York*, 268 U.S. 652 (1925).

9 45. O’Callaghan and Misraje (collectively, “Plaintiffs”) do not affirmatively
10 consent to remaining members of the Union or to having union dues or fees deducted from
11 their paychecks by the Regents and the Union.

12 46. The Regents are state actors and are deducting union dues from Plaintiffs’
13 paychecks under color of state law.

14 47. The Union is acting in concert with the Regents to collect union dues from
15 Plaintiffs’ paychecks without their consent and to prohibit Plaintiffs from withdrawing from
16 the Union. In acting in concert with the Regents, the Union is acting under color of state
17 law because it is utilizing the state payroll system to exact its dues and is acting pursuant to
18 an exclusive collective bargaining agreement negotiated with a state entity.

19 48. Becerra is a state actor, who is defending California laws allowing for the
20 deduction of dues from Plaintiffs’ paychecks without their affirmative consent under color
21 of state law.

22 49. Forcing Plaintiffs to be members of the Union and to pay dues or fees to the
23 Union violates their First Amendment rights to free speech and freedom of association.
24 *Janus v. AFSCME*, 138 S. Ct. 2448, 2486 (2018).

25 50. Plaintiffs are entitled to an injunction under 42 U.S.C. § 1983 ordering the
26 Union immediately to withdraw their membership and to stop deducting union dues or fees
27 from their paycheck.

1 51. Plaintiffs are entitled to an injunction under 42 U.S.C. § 1983 ordering the
2 Regents immediately to stop deducting union dues from their paycheck.

3 52. Plaintiffs are entitled to an injunction under 42 U.S.C. § 1983 ordering Becerra
4 immediately to stop defending California laws allowing for the deduction of dues from
5 Plaintiffs' paychecks without their affirmative consent.

6
7 **COUNT II: Declaration against dues deduction**

8 53. The allegations contained in all preceding paragraphs are incorporated herein
9 by reference.

10 54. 28 U.S.C. § 2201(a) allows a court of the United States, as a remedy, to declare
11 the rights and other legal relations of interested parties.

12 55. Plaintiffs are entitled to a declaration from this Court that deducting union dues
13 after a government employee has requested that they stop is a violation of the First
14 Amendment.

15
16 **COUNT III: Declaration that California dues deduction statutes are unconstitutional**

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

19 57. Under California law, government employers are instructed to rely on unions
20 to determine which employees have authorized dues deductions, and employee requests to
21 stop deductions must be directed to the union rather than the employer. Cal. Gov't Code
22 §1157.12.

23 58. Under California law, unions may adopt reasonable provisions regarding the
24 dismissal of members from the union. Cal. Gov't Code § 3515.5.

25 59. Under California law, unions may adopt a "maintenance of membership
26 provision" regarding how and when government employees can withdraw from a union.
27 Cal. Gov't Code § 3515.

1 60. Under California law, government employees can be forced to remain
2 members of a union without their consent, as long as the collective bargaining memorandum
3 of understanding contains a “maintenance of membership” provision, which must allow
4 employees to withdraw from the union only thirty days prior to the expiration of the
5 memorandum by signing a withdrawal letter to the union and to the Controller. Cal. Gov’t
6 Code §§ 3513(i) and 3583.

7 61. Plaintiffs are entitled to a declaration from this Court that Cal. Gov’t Code §§
8 1157.12, 3513(i), 3515, 3515.5, 3583, and all related provisions constitute an
9 unconstitutional violation of their First Amendment rights to free speech and freedom of
10 association for prohibiting their immediate withdrawal from the Union and stoppage of their
11 dues deductions.

12
13 **COUNT IV: Refund of union dues**

14 62. The allegations contained in all preceding paragraphs are incorporated herein
15 by reference.

16 63. Because Plaintiffs were not given the option of paying nothing to the Union
17 as a non-member of the Union, they could not have provided affirmative consent to join
18 the Union. Any consent that Plaintiffs may have given to dues collection was not “freely
19 given” because it was given based on an unconstitutional choice between union
20 membership or the payment of union agency fees without the benefit of union
21 membership. *Janus*, 138 S. Ct. at 2486.

22 64. If Plaintiffs’ choice had been between paying union dues or paying nothing,
23 they would have chosen to pay nothing. Therefore, Plaintiffs’ alleged consent, compelled
24 by the false information and false dichotomy given to them, was not “freely given.” *Id.*

25 65. Plaintiffs are entitled under 42 U.S.C. § 1983 to monetary damages from the
26 Union in the amount of all dues and fair share fees deducted and remitted to the Union since
27 the commencement of their employment.

COUNT V: Injunction against exclusive representation

66. The allegations contained in all preceding paragraphs are incorporated herein by reference.

67. “Compelling individuals to mouth support for views they find objectionable violates that cardinal constitutional command, and in most contexts, any such effort would be universally condemned.” *Janus*, 138 S. Ct. at 2463.

68. For this reason, the Supreme Court has repeatedly affirmed that “[f]orcing free and independent individuals to endorse ideas they find objectionable is always demeaning . . . a law commanding ‘involuntary affirmation’ of objected-to beliefs would require ‘even more immediate and urgent grounds’ than a law demanding silence.” *Janus*, 138 S. Ct. at 2464 (2018) (quoting *West Virginia Bd. of Ed. v. Barnette*, 319 U. S. 624, 633 (1943)).

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

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

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

1 72. Under color of state law, the Regents have designated the Union as Plaintiffs'
2 exclusive representative for bargaining purposes and has negotiated the terms and
3 conditions of Plaintiffs' employment with the Union. Cal. Gov't Code §§ 3570 and 3574.

4 73. Under color of state law, the Union has acted as Plaintiffs' exclusive
5 representative in negotiating the terms and conditions of their employment.

6 74. This designation compels Plaintiffs to associate with the Union and, through
7 its representation of them, it compels them to petition the government with a certain
8 viewpoint, despite that viewpoint being in opposition to Plaintiffs' own goals and priorities
9 for the State of California.

10 75. Plaintiffs are entitled to an injunction under 42 U.S.C. § 1983 ordering the
11 Union immediately to stop serving as the exclusive representative of Plaintiffs for collective
12 bargaining purposes.

13 76. Plaintiffs are entitled to an injunction under 42 U.S.C. § 1983 ordering the
14 Regents immediately to stop recognizing the Union as the exclusive representative of
15 Plaintiffs for collective bargaining purposes.

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

19
20 **COUNT VI: Declaration against exclusive representation**

21 78. The allegations contained in all preceding paragraphs are incorporated herein
22 by reference.

23 79. Plaintiffs are entitled to a declaration from this Court that recognizing the
24 Union as the exclusive representative of Plaintiffs for collective bargaining purposes is a
25 violation of the First Amendment.

26
27 **COUNT VII: Declaration that California exclusive representation statutes are**
28 **unconstitutional**

1 80. The allegations contained in all preceding paragraphs are incorporated herein
2 by reference.

3 81. Under California law, the Regents shall recognize the Union as the exclusive
4 representative of Plaintiffs if a majority of employees in the bargaining unit approve, and
5 no other unions have been recognized. Cal. Gov't Code § 3574.

6 82. Under California law, the Regents shall meet and confer with the Union, which
7 shall serve as the exclusive representative of Plaintiffs. Cal. Gov't Code § 3570.

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

11 84. Plaintiffs are entitled to a declaration under 42 U.S.C. § 1983 and 28 U.S.C. §
12 2201(a) that Cal. Gov't Code §§ 3570, 3571.1(e), 3574, 3578, and all related provisions
13 constitute an unconstitutional violation of Plaintiffs' First Amendment rights to free speech
14 and freedom of association for requiring the Union to serve as their exclusive representative
15 for bargaining purposes.

16
17 **PRAYER FOR RELIEF**

18 Plaintiffs respectfully request that this Court:

- 19 a. Enjoin the Union to withdraw Plaintiffs from union membership and to stop
20 collecting dues from Plaintiffs' paychecks;
- 21 b. Enjoin the Regents from deducting dues from Plaintiffs' paychecks;
- 22 c. Enjoin Becerra from defending California laws allowing for the deduction of
23 union dues from Plaintiffs' paychecks.
- 24 d. Declare that deducting union dues after a government employee has requested
25 that they stop is a violation of the First Amendment.
- 26 e. Declare that Cal. Gov't Code §§ 1157.12, 3513(i), 3515, 3515.5, 3583, and all
27 related provisions constitute an unconstitutional violation of Plaintiffs' First
28 Amendment rights to free speech and freedom of association for prohibiting

1 their immediate withdrawal from the Union and stoppage of their dues
2 deductions.

- 3 f. Award monetary damages against the Union for all union dues and agency fees
4 collected from Plaintiffs during their employment;
- 5 g. Enjoin the Union from serving as the exclusive representative of Plaintiffs for
6 collective bargaining purposes;
- 7 h. Enjoin the Regents from recognizing the Union as the exclusive representative
8 of Plaintiffs for collective bargaining purposes;
- 9 i. Enjoin Becerra from defending California laws recognizing the Union as the
10 exclusive representative of Plaintiffs for collective bargaining purposes;
- 11 j. Declare that recognizing the Union as the exclusive representative of Plaintiffs
12 for collective bargaining purposes is a violation of the First Amendment;
- 13 k. Declare that Cal. Gov't Code §§ 3570, 3571.1(e), 3574, 3578, and all related
14 provisions constitute an unconstitutional violation of Plaintiffs' First
15 Amendment rights to free speech and freedom of association for requiring the
16 Union to serve as their exclusive representative for bargaining purposes;
- 17 l. Award Plaintiffs their costs and attorneys' fees under 42 U.S.C. § 1988; and
- 18 m. Award Plaintiffs any further relief to which they may be entitled and such other
19 relief as this Court may deem just and proper.

20
21 Dated: March 27, 2019

Respectfully submitted,

22 /s/ Mark W. Bucher

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