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

20 Alfred Sweet,

21 Plaintiff,

22 v.

23 California Association of Psychiatric
24 Technicians; Stephanie Clendenin, in her
25 official capacity as Acting Director of the
26 California Department of State Hospitals;
27 and Xavier Becerra, in his official capacity
28 as Attorney General of California,

Defendants.

Case No. _____

**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. Union dues deduction agreements signed in jurisdictions that required agency
8 fees before the Supreme Court’s decision in *Janus* are no longer enforceable. Union
9 members who signed such agreements could not have freely waived their right not to join
10 or pay a union because the Supreme Court had not yet recognized that right. All government
11 employees must be given the choice either to join the union or not to join the union without
12 paying dues or fees to the union.

13 3. Plaintiff, Alfred Sweet, is a psychiatric technician employed by the Atascadero
14 State Hospital (the “Hospital”). Prior to the Supreme Court’s decision in *Janus* on June 27,
15 2018, Mr. Sweet was a union member of Defendant California Association of Psychiatric
16 Technicians (“CAPT”).

17 4. CAPT is violating Mr. Sweet’s First Amendment rights to free speech and
18 freedom of association by refusing to allow him to withdraw his membership and by
19 continuing to charge him union dues after the Supreme Court’s June 27, 2018 decision in
20 *Janus* based solely on a union card Mr. Sweet signed before the *Janus* decision. Any union
21 card Mr. Sweet may have signed before the *Janus* decision could not have constituted
22 “affirmative consent” by Mr. Sweet to waive his First Amendment right not to have union
23 dues or fees withheld from his paycheck.

24 5. Defendant California Department of State Hospitals Acting Director Stephanie
25 Clendenin (“Director Clendenin”), acting in her official capacity, is violating Mr. Sweet’s
26 First Amendment rights to free speech and freedom of association by continuing to withhold
27 union dues from his paycheck, and, on information and belief, is transmitting those funds
28

1 to Defendant CAPT, despite not having received freely given, affirmative consent from Mr.
2 Sweet to do so.

3 6. Defendant Xavier Becerra (“General Becerra”), in his official capacity as
4 Attorney General of California, is violating Mr. Sweet’s First Amendment rights to free
5 speech and freedom of association by continuing to defend California laws that prohibit Mr.
6 Sweet from ending the withholding of union dues from his paycheck until thirty days before
7 the expiration of the union contract with the Hospital. Cal. Gov’t Code §§ 1157.12, 3513(i),
8 3515, and 3515.5.

9 7. General Becerra is violating Mr. Sweet’s First Amendment rights to free
10 speech and freedom of association by continuing to defend California laws that require the
11 deduction of full union dues from his paycheck, even though he requested to become an
12 agency fee payer. Cal. Gov’t Code §§ 3515 and 3515.7.

13 8. General Becerra is violating Mr. Sweet’s First Amendment rights to free
14 speech and freedom of association by continuing to defend California laws that require
15 CAPT to be the “exclusive representative” of Mr. Sweet, whether he is a union member or
16 not. Cal. Gov’t Code §§ 3515.5 and 3520.5.

17 9. Mr. Sweet, therefore, brings this case under 42 U.S.C § 1983 and 28 U.S.C. §
18 2201(a), seeking declaratory and injunctive relief, as well as damages in the amount of the
19 dues previously deducted from his paychecks.

20
21 **PARTIES**

22 10. Plaintiff, Alfred Sweet, is a psychiatric technician employed by Atascadero
23 State Hospital. He resides in San Luis Obispo County, California.

24 11. Defendant California Association of Psychiatric Technicians is a labor union
25 headquartered at 1220 S Street, Suite 100, Sacramento, California, 95811 in Sacramento
26 County.

27 12. Defendant Stephanie Clendenin is sued in her official capacity as the Acting
28 Director of the California Department of State Hospitals (“DSH”), the state public hospital

1 system. DSH is headquartered at 1600 9th Street, Rm. 151, Sacramento, CA 95814 in
2 Sacramento County.

3 13. Attorney General Xavier Becerra is sued in his official capacity as the
4 representative of the State of California charged with the enforcement of state laws,
5 including the provisions challenged in this case. His address for service of process is 1300
6 "I" Street Sacramento, CA 95814 in Sacramento County.

7 8 **JURISDICTION AND VENUE**

9 14. This case raises claims under the First and Fourteenth Amendments of the U.S.
10 Constitution and 42 U.S.C. § 1983. The Court has subject-matter jurisdiction under 28
11 U.S.C. § 1331 and 28 U.S.C. § 1343.

12 15. Venue is proper because all the defendants in the case are headquartered in the
13 Eastern District of California. 28 U.S.C. 1391(b)(1).

14 15 **FACTS**

16 16. Plaintiff, Alfred Sweet, has been a psychiatric technician employed by
17 Atascadero State Hospital since January 2011.

18 17. Atascadero State Hospital is a public hospital run by the California Department
19 of State Hospitals.

20 18. When Mr. Sweet began his employment with DSH in January 2011, he joined
21 CAPT.

22 19. Mr. Sweet later served as chairman of the American Association of Psychiatric
23 Technicians, during which service he developed a poor opinion of the representation CAPT
24 provides its members.

25 20. Mr. Sweet also grew concerned regarding CAPT's management practices and
26 the lack of transparency in CAPT's bookkeeping. He voiced his complaints of those
27 practices repeatedly.

28 21. On July 13, 2014, Mr. Sweet requested to leave the union.

1 22. On other occasions, Mr. Sweet also requested to leave the union and to become
2 an agency fee payer, but his requests were denied.

3 23. After the Supreme Court issued its decision in *Janus* on June 27, 2018, Mr.
4 Sweet learned that he had the right both not to be a member of the union and not to pay any
5 money to the union. Mr. Sweet submitted a resignation letter to CAPT, explaining that the
6 union agreement he had signed in January 2011 was invalid after the Supreme Court's
7 decision in *Janus*. Mr. Sweet requested, once again, to resign from the union and stop
8 having its dues deducted from his paycheck. He pleaded that he may have to resort to legal
9 action to uphold his constitutional rights.

10 24. Mr. Sweet also sent a copy of his resignation letter to the payroll department
11 at DSH, but he was advised by the department that all communications should be made to
12 CAPT.

13 25. CAPT responded to Mr. Sweet's resignation letter with its own letter stating
14 that Mr. Sweet was not permitted to resign his union membership except during a thirty-
15 day window prior to the expiration of the collective bargaining agreement, or June 1 to July
16 1, 2019.

17 26. The current CAPT collective bargaining agreement went into effect on July 1,
18 2016, and expires on July 1, 2019. Employees are, therefore, locked into union membership
19 for three years at a time.

20 27. Director Clendenin has deducted union dues from Mr. Sweet's paychecks
21 since he began employment in January 2011 and has, on information and belief, remitted
22 those dues to CAPT. Director Clendenin continues to deduct those dues, now approximately
23 fifty-nine dollars (\$59) per month, despite Mr. Sweet's repeated requests that the deductions
24 be stopped.

25 28. Under California law, unions that claim to represent public employees can
26 petition for recognition in order to be granted "exclusive representative" status. Cal. Gov't
27 Code § 3520.5.

1 29. Once the exclusive representative is certified, “the recognized employee
2 organization is the only organization that may represent that unit in employment relations
3 with the state.” Cal. Gov’t Code § 3515.5. The union then has the exclusive right to
4 represent the employees as to “wages, hours of employment, and other terms and conditions
5 of employment.” Cal. Gov’t Code § 3516.

6 30. Once a union has been certified, an employee, whether he agrees with the
7 union’s positions or not, is required by statute to either join the union and pay dues or to
8 provide it “organizational security” via a “fair share fee,” or agency fee. Cal. Gov’t Code §
9 3515.7; *see also* Cal. Gov’t Code § 3515.

10 31. Public employers must deduct dues from the paychecks of employees who
11 have signed a written authorization and must remit those funds to the union. Cal. Gov’t
12 Code §§ 1152, 3515.6, and 3515.7. Employee requests to cancel or change their dues
13 deductions are to be directed to the union rather than the employer. Cal. Gov’t Code
14 §1157.12. Employers are instructed to rely on the union to determine which employees have
15 authorized the deduction of dues and which have not. *Id.*

16 32. A certified union has the authority to set “reasonable” terms by which
17 employees may withdraw from union membership. Cal. Gov’t Code § 3515.5; *see also* Cal.
18 Gov’t Code § 3515 (allowing unions to impose a “maintenance of membership”
19 requirement). However, the bar for reasonableness is so low under California law that it is
20 met as long as the “maintenance of membership” requirement allows members to withdraw
21 within a 30-day window prior to the expiration of the union memorandum of understanding
22 with the public employer. *See* Cal. Gov’t Code § 3513(i).

23
24 **COUNT I**

25 **By refusing to allow Mr. Sweet to withdraw from the union and**
26 **continuing to deduct his dues, CAPT and Director Clendenin are violating his**
27 **First Amendment rights to free speech and freedom of association.**

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

3 34. Requiring a government employee to join a union or to pay fees to a union
4 violates that employee's First Amendment rights to free speech and freedom of association
5 unless the employee "affirmatively consents" to waive the rights. *Janus v. AFSCME*, 138
6 S. Ct. 2448, 2486 (2018). Such a waiver must be "freely given and shown by 'clear and
7 compelling' evidence." *Id.*

8 35. The rights to free speech and freedom of association in the First Amendment
9 have been incorporated to and made enforceable against the states through the Fourteenth
10 Amendment guarantee of Due Process. *Id.* at 2463; *NAACP v. Alabama*, 357 U.S. 449
11 (1958); *Gitlow v. New York*, 268 U.S. 652 (1925).

12 36. 42 U.S.C. 1983 provides a cause of action for both damages and injunctive
13 relief against any person who, under color of law of any state, subjects any person within
14 the jurisdiction of the United States to a deprivation of any rights, privileges, or immunities
15 secured by the Constitution.

16 37. 28 U.S.C. § 2201(a) allows a court of the United States, as a remedy, to declare
17 the rights and other legal relations of interested parties.

18 38. After the Supreme Court's decision in *Janus* on June 27, 2018, Mr. Sweet did
19 not provide any affirmative consent to remaining a member of CAPT or to union dues being
20 withheld from his paycheck by Director Clendenin.

21 39. Director Clendenin is a state actor, who is deducting dues from Mr. Sweet's
22 paycheck under color of state law.

23 40. General Becerra is a state actor, who is defending California laws allowing for
24 the deduction of dues from Mr. Sweet's paycheck under color of state law.

25 41. CAPT is acting in concert with Director Clendenin to collect union dues from
26 Mr. Sweet's paycheck without his consent and refuses to withdraw his union membership.
27 In doing so, CAPT is acting under color of state law. CAPT is acting pursuant to an
28 exclusive collective bargaining agreement negotiated with a state entity, is following the

1 laws of the State of California in doing so, and is utilizing the state payroll system to exact
2 its dues.

3 42. CAPT and Director Clendenin have limited withdrawal from the union to an
4 arbitrary 30-day period once every three years and insist that Mr. Sweet can only exercise
5 his First Amendment rights at that time.

6 43. The actions of CAPT, Director Clendenin, and General Becerra constitute a
7 violation of Mr. Sweet's First Amendment rights to free speech and freedom of association
8 not to join or financially support a union without his affirmative consent.

9 44. Because Mr. Sweet was not given the option of paying nothing to the union
10 as a non-member of the union, he could not have provided affirmative consent to join the
11 union. Any consent that Mr. Sweet may have given to dues collection was not "freely
12 given" because it was given based on an unconstitutional choice between union
13 membership or payment to the union of agency fees without the benefit of union
14 membership. *Janus*, 138 S. Ct. at 2486. If Mr. Sweet's choice had been between paying
15 union dues or paying nothing, he would have chosen to pay nothing. Therefore, Mr.
16 Sweet's alleged consent, compelled by the false information and false dichotomy given to
17 him, was not "freely given." *Id.*

18 45. Mr. Sweet is entitled to an injunction under 42 U.S.C. § 1983 ordering CAPT
19 immediately to withdraw his union membership.

20 46. Mr. Sweet is entitled to an injunction under 42 U.S.C. § 1983 ordering Director
21 Clendenin immediately to stop deducting union dues from his paycheck.

22 47. Mr. Sweet is entitled to a declaration under 42 U.S.C. § 1983 and 28 U.S.C. §
23 2201(a) that Cal. Gov't Code §§ 1157.12, 3513(i), 3515, and 3515.5 constitute an
24 unconstitutional violation of his First Amendment rights to free speech and freedom of
25 association for allowing the withholding of union dues from his paycheck until thirty days
26 before the expiration of the union contract.

27 48. Mr. Sweet is entitled to a declaration under 42 U.S.C. § 1983 and 28 U.S.C. §
28 2201(a) that Cal. Gov't Code §§ 3515 and 3515.7 constitute an unconstitutional violation

1 of his First Amendment rights to free speech and freedom of association for allowing the
2 deduction of agency fees from his paycheck after he requested to become an agency fee
3 payer.

4 49. Mr. Sweet is entitled under 42 U.S.C. § 1983 to damages in the amount of all
5 dues deducted and remitted to CAPT since the commencement of his employment in
6 January 2011.

7 50. In the alternative, Mr. Sweet is entitled under 42 U.S.C. § 1983 to damages in
8 the amount of all dues deducted and remitted to CAPT since the ruling in *Janus* on June 27,
9 2018.

10
11 **COUNT II**

12 **The state law forcing Mr. Sweet to continue to associate with CAPT**
13 **without his affirmative consent violates Mr. Sweet’s First Amendment rights**
14 **to free speech and freedom of association and 42 U.S.C. § 1983.**

15 51. The allegations contained in all preceding paragraphs are incorporated herein
16 by reference.

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

20 53. For this reason, the Supreme Court has repeatedly affirmed that “[f]orcing free
21 and independent individuals to endorse ideas they find objectionable is always demeaning
22 . . . a law commanding ‘involuntary affirmation’ of objected-to beliefs would require ‘even
23 more immediate and urgent grounds’ than a law demanding silence.” *Janus*, 138 S. Ct. at
24 2464 (2018) (quoting *West Virginia Bd. of Ed. v. Barnette*, 319 U. S. 624, 633 (1943)).

25 54. Therefore, courts should scrutinize compelled associations strictly, because
26 “mandatory associations are permissible only when they serve a compelling state interest
27 that cannot be achieved through means significantly less restrictive of associational
28

1 freedoms.” *Knox v. SEIU*, 567 U.S. 298, 310 (quoting *Roberts v. United States Jaycees*, 468
2 U.S. 609, 623 (1984)) (internal quotation marks omitted).

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

9 56. California law expressly grants the union the right to speak on Mr. Sweet’s
10 behalf on matters of serious public concern, including the wages, hours, and other
11 conditions of employment of public employees like Mr. Sweet. Cal. Gov’t Code § 3516.
12 These topics are inherently political questions in the context of public sector unions. *Janus*,
13 138 S. Ct. 2473.

14 57. Under color of state law, Director Clendenin has designated CAPT as Mr.
15 Sweet’s exclusive representative for bargaining purposes and has negotiated the terms and
16 conditions of Mr. Sweet’s employment with CAPT. Cal. Gov’t Code §§ 3515.5, 3516, and
17 3520.5.

18 58. Under color of state law, CAPT has acted as Mr. Sweet’s exclusive
19 representative in negotiating the terms and conditions of his employment.

20 59. This designation compels Mr. Sweet to associate with the union and, through
21 its representation of him, it compels him to petition the government with a certain
22 viewpoint, despite that viewpoint being in opposition to Mr. Sweet’s own goals and
23 priorities for the State of California.

24 60. The exclusive representative provisions of Cal. Gov’t Code §§ 3515.5 and
25 3520.5 and all related provisions are, therefore, an unconstitutional abridgement of Mr.
26 Sweet’s right under the First Amendment not to be compelled to associate with speakers
27 and organizations without his consent.

1 61. Mr. Sweet is entitled to a declaration under 42 U.S.C. § 1983 and 28 U.S.C. §
2 2201(a) that Cal. Gov't Code §§ 3515.5 and 3520.5 and all related provisions constitute an
3 unconstitutional violation of his First Amendment rights to free speech and freedom of
4 association for requiring CAPT to serve as his exclusive representative for bargaining
5 purposes.

6
7 **PRAYER FOR RELIEF**

8 Mr. Sweet respectfully requests that this Court:

9 a. Declare that limiting the ability of Mr. Sweet to resign his union
10 membership to a window of time is unconstitutional because he did not provide
11 affirmative consent;

12 b. Declare that Mr. Sweet's signing of a union card cannot provide a basis
13 for his affirmative consent to waive his First Amendment rights upheld in *Janus*
14 because such authorization was based on the unconstitutional choice between paying
15 the union as a member or paying the union as a non-member;

16 c. Declare that the practice by Director Clendenin of withholding union
17 dues from Mr. Sweet's paycheck has been unconstitutional because Mr. Sweet did
18 not provide affirmative consent for him to do so;

19 d. Enjoin Director Clendenin from deducting dues from Mr. Sweet's
20 paycheck, unless he first provides freely given, affirmative consent;

21 e. Enjoin CAPT from collecting dues from Mr. Sweet, unless he first
22 provides freely given, affirmative consent;

23 f. Award damages against CAPT for all union dues collected from Mr.
24 Sweet during his employment by the Hospital;

25 g. In the alternative, award damages against CAPT for all union dues
26 collected from Mr. Sweet since the *Janus* decision on June 27, 2018;

1 h. Enjoin General Becerra from enforcing Cal. Gov't Code §§ 3515 and
2 3515.7 and any other provisions of California law that require Mr. Sweet to pay what
3 amount to agency fees to CAPT because he requested to become an agency fee payer;

4 i. Enjoin General Becerra from enforcing Cal. Gov't Code §§ 1157.12,
5 3513(i), 3515, and 3515.5 and all other provisions of California law that require Mr.
6 Sweet to wait until a specified window of time to stop the deduction of union dues
7 from his paycheck.

8 j. Declare that Mr. Sweet has a constitutional right not to be represented
9 by CAPT as his exclusive representative without his affirmative consent;

10 k. Enjoin CAPT from acting as Mr. Sweet's exclusive representative in
11 bargaining negotiations with his employer, DSH;

12 l. Enjoin General Becerra from enforcing Cal. Gov't Code §§ 3515.5 and
13 3520.5 and all other provisions of California law that provide for exclusive
14 representation of employees who do not affirmatively consent to union membership;

15 m. Award Mr. Sweet his costs and attorneys' fees under 42 U.S.C. § 1988;
16 and

17 n. Award Mr. Sweet any further relief to which he may be entitled and such
18 other relief as this Court may deem just and proper.

19 Dated: February 26, 2019

20 Respectfully submitted,

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