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14 **UNITED STATES DISTRICT COURT**
15 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

16 Isaac Wolf,

17 Plaintiff,

Case No. _____

18 v.

19 University Professional & Technical
20 Employees, Communications Workers of
21 America Local 9119; Anne Shaw, in her
22 official capacity as Secretary and Chief of
23 Staff to the Regents of the University of
24 California; Joshua Golka, in his official
25 capacity as Executive Director of the
26 California Public Employment Relations
27 Board; and Xavier Becerra, in his official
28 capacity as Attorney General of California,

Defendants.

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

INTRODUCTION

1
2 1. Government employees have a First Amendment right not to be compelled
3 by 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 limited Plaintiff’s withdrawal from his governmental union to an
8 arbitrary window of time and insisted that Plaintiff could only exercise his 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
13 or fees. Union members who signed such agreements could not have freely waived their
14 right not to join or pay a union because the Supreme Court had not yet recognized that
15 right.

16 4. Therefore, Plaintiff brings this case under 42 U.S.C § 1983 and 28 U.S.C. §
17 2201(a), seeking declaratory relief and damages in the amount of the dues previously
18 deducted from his paycheck.

19
20 **PARTIES**

21 5. Plaintiff, Isaac Wolf (“Wolf”), is a process engineer for the Lawrence
22 Berkeley National Laboratory (the “Berkeley Lab”) and is employed by the University of
23 California. He resides in Alameda County, California.

24 6. Defendant University Professional and Technical Employees,
25 Communications Workers of America Local 9119 (the “Union”) is a labor union with
26 offices at 2855 Telegraph Avenue, Suite 310, Berkeley, California 94705 in Alameda
27 County.

1 7. Defendant Anne Shaw (“Shaw”) is sued in her official capacity as Secretary
2 and Chief of Staff to the Regents of the University of California. The Berkeley Lab is
3 located in Alameda County, California and is managed by the University of California
4 system, for which Shaw serves as Secretary and Chief of Staff to the Regents. The Office
5 of the General Counsel of the Regents is authorized to accept service of process for Shaw
6 at 1111 Franklin Street, 8th Floor, Oakland, California 94607 in Alameda County.

7 8. Defendant Joshua Golka (“Golka”) is sued in his official capacity as
8 Executive Director of the California Public Employment Relations Board (“PERB”).
9 Golka administers eight collective bargaining statutes covering public employees in
10 California, including the Higher Education Employment Relations Act and other statutes
11 at issue here. PERB is authorized to accept service of process for Golka at 1031 18th
12 Street, Sacramento, California, 95811-4124 in Sacramento County.

13 9. Defendant Attorney General Xavier Becerra (the “Attorney General”) is sued
14 in his official capacity as the representative of the State of California charged with
15 enforcement of state laws, including the provisions challenged in this case. His address for
16 service of process is 1300 “I” Street, Sacramento, California 95814-2919 in Sacramento
17 County.

18 19 **JURISDICTION AND VENUE**

20 10. This case raises claims under the First and Fourteenth Amendments of the
21 U.S. Constitution and 42 U.S.C. § 1983. The Court has subject-matter jurisdiction under
22 28 U.S.C. § 1331 and 28 U.S.C. § 1343.

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

25 26 **FACTS**

27 12. Wolf has been employed as a process engineer by Shaw since March 2018.
28

1 13. On April 10, 2018, Wolf signed a form authorizing the Union to withhold
2 union dues from his paycheck.

3 14. At the time he signed a union dues deduction authorization, Wolf was not
4 informed that he had the constitutional right to pay nothing to the Union.

5 15. On November 2, 2018, Wolf sent an email to the Union resigning his
6 membership and requesting that union dues cease being deducted from his paycheck
7 immediately.

8 16. On November 3, 2018, Wolf sent a letter to the Union resigning his
9 membership and requesting that union dues cease being deducted from his paycheck
10 immediately.

11 17. On November 9, 2018, the Union sent a letter to Wolf stating that he could
12 only cancel his membership and payroll deduction during the “annual cancellation period”
13 prior to his renewal date.

14 18. On December 14, 2018, Wolf’s attorneys sent the Berkeley Lab an email
15 with a letter informing them that, per the *Janus* decision, workers must opt into union
16 membership, and membership and dues deduction agreements signed before the *Janus*
17 decision are unenforceable. The letter further stated that the Berkeley Lab was no longer
18 authorized to enforce any such agreements, nor could it defer to the Union to determine
19 whether to stop withholding dues or fees.

20 19. On December 14, 2018, the Berkeley Lab responded that it was no longer
21 permitted to correspond directly with employees regarding union membership due to
22 California law.

23 20. On January 30, 2019, during the “annual cancellation period”, Wolf sent an
24 email with a letter to the Union resigning his membership and requesting that union dues
25 cease being deducted from his paycheck immediately.

26 21. On February 12, 2019, the Union sent an email to the Berkeley Lab
27 requesting that Wolf’s dues deduction cease.

1 22. On February 14, 2019, the Berkeley Lab sent an email to the Union
2 confirming that Wolf's dues deduction had ceased.

3 23. On February 14, 2019, the Union sent an email to Wolf confirming that his
4 dues deduction had ceased.

5 24. From April 2018 until February 2019, Shaw and Golka withheld union dues
6 from Wolf's paycheck, and on information and belief, remitted those dues to the Union.
7 The union dues withheld from Wolf were approximately sixty-five dollars (\$65) per
8 month.

9
10 **COUNT I: Declaration against dues deduction**

11 25. The allegations contained in all preceding paragraphs are incorporated herein
12 by reference.

13 26. 42 U.S.C. § 1983 provides a cause of action against any person who, under
14 color of law of any state, subjects any person within the jurisdiction of the United States
15 to a deprivation of any rights, privileges, or immunities secured by the Constitution.

16 27. The rights to free speech and freedom of association in the First Amendment
17 have been incorporated to and made enforceable against the states through the Fourteenth
18 Amendment guarantee of Due Process. *Janus*, 138 S. Ct. at 2463; *NAACP v. Alabama*,
19 357 U.S. 449 (1958); *Gitlow v. New York*, 268 U.S. 652 (1925).

20 28. Wolf did not affirmatively consent to being a member of the Union or to
21 having union dues or fees deducted from his paycheck by Shaw, Golka, and the Union
22 because he was not told of his right to pay nothing.

23 29. Shaw and Golka are state actors and deducted union dues from Wolf's
24 paychecks under color of state law.

25 30. The Union acted in concert with Shaw and Golka to collect union dues from
26 Wolf's paycheck without his consent and to prohibit Wolf from withdrawing from the
27 Union. In acting in concert with Shaw and Golka, the Union acted under color of state law
28

1 because it utilized the state payroll system to exact its dues and acted pursuant to an
2 exclusive collective bargaining agreement negotiated with a state entity.

3 31. Forcing Wolf to be a member of the Union and to pay dues or fees to the
4 Union violated his First Amendment rights to free speech and freedom of association.
5 *Janus v. AFSCME*, 138 S. Ct. 2448, 2486 (2018).

6 32. 28 U.S.C. § 2201(a) allows a court of the United States, as a remedy, to
7 declare the rights and other legal relations of interested parties.

8 33. Wolf is entitled to a declaration from this Court that deducting union dues
9 after a government employee has requested that they stop is a violation of the First
10 Amendment.

11
12 **COUNT II: Declaration that California dues deduction statutes are unconstitutional**

13 34. The allegations contained in all preceding paragraphs are incorporated herein
14 by reference.

15 35. Under California law, government employers are instructed to rely on unions
16 to determine which employees have authorized dues deductions, and employee requests to
17 stop deductions must be directed to the union rather than the employer. Cal. Gov't Code
18 §1157.12.

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

21 37. Under California law, unions may adopt a “maintenance of membership
22 provision” regarding how and when government employees can withdraw from a union.
23 Cal. Gov't Code § 3515.

24 38. Under California law, government employees can be forced to remain
25 members of a union without their consent, as long as the collective bargaining
26 memorandum of understanding contains a “maintenance of membership” provision,
27 which must allow employees to withdraw from the union only thirty days prior to the
28

1 expiration of the memorandum by signing a withdrawal letter to the union and to the
2 Controller. Cal. Gov't Code §§ 3513(i) and 3583.

3 39. Golka is a state actor, who under color of state law, is charged with enforcing
4 California laws which allowed for the deduction of dues from Wolf's paycheck without
5 his affirmative consent.

6 40. The Attorney General is a state actor, who under color of state law, is
7 defending California laws which allowed for the deduction of dues from Wolf's paycheck
8 without his affirmative consent.

9 41. Wolf is entitled to a declaration from this Court that Cal. Gov't Code §§
10 1157.12, 3513(i), 3515, 3515.5, 3583, and all related provisions constitute an
11 unconstitutional violation of his First Amendment rights to free speech and freedom of
12 association for prohibiting his immediate withdrawal from the Union and stoppage of his
13 dues deductions.

14
15 **COUNT III: Refund of union dues**

16 42. The allegations contained in all preceding paragraphs are incorporated herein
17 by reference.

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

24 44. If Wolf's choice had been between paying union dues or paying nothing, he
25 would have chosen to pay nothing. Therefore, Wolf's alleged consent, compelled by the
26 false information and false dichotomy given to him, was not "freely given." *Id.*

1 45. Wolf is entitled under 42 U.S.C. § 1983 to monetary damages from the
2 Union in the amount of all dues deducted and remitted to the Union since the
3 commencement of his employment.
4

5 **PRAYER FOR RELIEF**

6 Wolf respectfully requests that this Court:

- 7 a. Declare that deducting union dues after a government employee has
- 8 requested that they stop is a violation of the First Amendment;
- 9 b. Declare that Cal. Gov’t Code §§ 1157.12, 3513(i), 3515, 3515.5, 3583,
- 10 and all related provisions constitute an unconstitutional violation of Wolf’s First
- 11 Amendment rights to free speech and freedom of association for prohibiting his
- 12 immediate withdrawal from the Union and stoppage of his dues deductions;
- 13 c. Award monetary damages against the Union for all union dues
- 14 collected from Wolf during his employment;
- 15 d. Award Wolf his costs and attorneys’ fees under 42 U.S.C. § 1988; and
- 16 e. Award Wolf any further relief to which he may be entitled and such
- 17 other relief as this Court may deem just and proper.
- 18

19 Dated: May 24, 2019

20 Respectfully submitted,

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