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19 **UNITED STATES DISTRICT COURT**
20 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

21 Isaac Wolf,
22 Plaintiff,

23 v.

24 University Professional & Technical
25 Employees, Communications Workers of
26 America Local 9119; Janet Napolitano, in
27 her official capacity as President of the
28 University of California; Joshua Golka, in
his official capacity as Executive Director of
the California Public Employment Relations
Board; and Xavier Becerra, in his official
capacity as Attorney General of California,

Defendants.

Case No. 3:19-cv-02881-WHA

**FIRST AMENDED 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.

7. Defendant Janet Napolitano (“Napolitano”) is sued in her official capacity as President of the University of California. The Berkeley Lab is located in Alameda County, California and is managed by the University of California system, for which Napolitano serves as President. The Office of the General Counsel is authorized to accept service of process for Napolitano at 1111 Franklin Street, 8th Floor, Oakland, California 94607 in Alameda County.

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

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

JURISDICTION AND VENUE

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

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

FACTS

12. Wolf has been employed as a process engineer by Napolitano since March 2018.

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, Napolitano and Golka withheld union
6 dues from Wolf’s paycheck, and on information and belief, remitted those dues to the
7 Union. The union dues withheld from Wolf were approximately sixty-five dollars (\$65)
8 per 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 Napolitano, Golka, and the
22 Union because he was not told of his right to pay nothing.

23 29. Napolitano 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 Napolitano and Golka to collect union dues
26 from Wolf’s paycheck without his consent and to prohibit Wolf from withdrawing from
27 the Union. In acting in concert with Napolitano and Golka, the Union acted under color of
28

1 state law because it utilized the state payroll system to exact its dues and acted pursuant to
2 an 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, unions may adopt a provision limiting resignation
16 from the union to a 30-day time period that occurs only once every several years. Cal.
17 Gov't Code § 3583. Higher education employees can be forced to remain members of a
18 union without their consent, as long as the collective bargaining memorandum of
19 understanding allows employees to withdraw from the union only thirty days prior to the
20 expiration of the memorandum. *Id.*

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

24 37. Wolf is entitled to a declaration from this Court that Cal. Gov't Code §3583
25 and all related provisions constitute an unconstitutional violation of his First Amendment
26 rights to free speech and freedom of association for prohibiting his immediate withdrawal
27 from the Union and stoppage of his dues deductions.

COUNT III: Refund of union dues

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

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

40. If Wolf’s choice had been between paying union dues or paying nothing, he would have chosen to pay nothing. Therefore, Wolf’s alleged consent, compelled by the false information and false dichotomy given to him, was not “freely given.” *Id.*

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

PRAYER FOR RELIEF

Wolf respectfully requests that this Court:

a. Declare that deducting union dues after a government employee has requested that they stop is a violation of the First Amendment;

b. Declare that Cal. Gov’t Code § 3583 and all related provisions constitute an unconstitutional violation of Wolf’s First Amendment rights to free speech and freedom of association for prohibiting his immediate withdrawal from the Union and stoppage of his dues deductions;

c. Award monetary damages against the Union for all union dues collected from Wolf during his employment;

d. Award Wolf his costs and attorneys’ fees under 42 U.S.C. § 1988; and

1 e. Award Wolf any further relief to which he may be entitled and such
2 other relief as this Court may deem just and proper.
3

4 Dated: August 9, 2019

5 Respectfully submitted,

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PROOF OF SERVICE

Wolf v. Shaw, et al.
United States District Court, Northern District Case No. 3:19-cv-02881-WHA

I am an employee in the County of Riverside. I am over the age of 18 years and not a party to the within entitled action; my business address is 25026 Las Brisas Road, Murrieta, California 92562.

On August 9, 2019, I served a copy of the following document(s) described as **FIRST AMENDED COMPLAINT SEEKING DECLARATORY RELIEF AND DAMAGES FOR DEPRIVATION OF FIRST AMENDMENT RIGHTS** on the interested party(ies) in this action as follows:

SEE ATTACHED SERVICE LIST

BY E-MAIL OR ELECTRONIC TRANSMISSION. Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I transmitted copies of the above-referenced document(s) on the interested parties in this action by electronic transmission. Said electronic transmission reported as complete and without error.

BY FACSIMILE TRANSMISSION. Pursuant to agreement and written confirmation of the parties to accept service by facsimile transmission, I transmitted copies of the above-referenced document(s) on the interested parties in this action by facsimile transmission from (951) 600-4996. A transmission report issued as complete and without error.

BY UNITED STATES POSTAL SERVICE. I am readily familiar with the practice for collection and processing of correspondence for mailing and deposit on the same day in the ordinary course of business with the United States Postal Service. Pursuant to that practice, I sealed in an envelope, with postage prepaid and deposited in the ordinary course of business with the United States Postal Service in Murrieta, California, the above-referenced document(s).

BY OVERNIGHT DELIVERY. I enclosed the above-referenced document(s) in an envelope or package provided by an overnight delivery carrier and addressed as above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

BY PERSONAL SERVICE. I caused copies of the above-referenced documents to the addressee(s) noted above served by process server.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am an employee in the office of a member of the bar of this Court who directed this service.



Ashley A. Richardson

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SERVICE LIST

Wolf v. Shaw, et al.
United States District Court, Northern District Case No. 3:19-cv-02881-WHA

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