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

18 Isaac Wolf,
19 Plaintiff,

20 v.

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

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

**JOINT CASE MANAGEMENT
STATEMENT**

Date: August 22, 2019
Time: 11:00 A.M.
Courtroom: 19th Floor, Courtroom 12

1 Defendants. |

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23 *Attorneys for Defendant University Professional and Technical Employees*

1 Pursuant to the Court’s order setting the Case Management Conference (Dkt. 10),
2 Plaintiff Isaac Wolf, Defendants University Professional & Technical Employees,
3 Communications Workers of America Local 9119 (“UPTE”), Janet Napolitano, Joshua
4 Golka, and Xavier Becerra (“the parties”) met and conferred on August 14, 2019
5 regarding the scheduled Case Management Conference set for August 22, 2019.

6 1. Jurisdiction and Service

7 This case is brought under 42 U.S.C. § 1983 for abridgement of First Amendment
8 Rights. All defendants have been served. The parties agree that the Northern District of
9 California is the proper venue for this claim, and that the Court has jurisdiction, except
10 that Defendants dispute whether the Court has subject matter jurisdiction because
11 Plaintiff’s claims do not present a live controversy.

12 2. Facts

13 Isaac Wolf, a process engineer at the Lawrence Berkeley National Laboratory
14 (“LBNL”), is an employee of the University of California (“UC”). First Amended
15 Complaint (“FAC”) at ¶ 5. He began working at LBNL in March 2018. *Id.* at ¶ 12.

16 Wolf’s position is part of the Research Support Professional (“RX”) bargaining unit
17 at UC, and UPTE is the exclusive bargaining representative for this unit. UPTE and UC
18 were parties to a collective bargaining agreement (“CBA”) for the RX bargaining unit with
19 a term of December 20, 2013 to October 31, 2017.

20 On April 10, 2018, Wolf signed a union membership authorization for the deduction
21 of union dues, or an equivalent voluntary service fee, from his wages. UC deducted UPTE
22 union dues from Wolf’s paycheck and sent them to UPTE. FAC ¶¶ 13, 24. On November
23 2, 2018, Wolf emailed UPTE requesting to resign his membership and that UPTE cease
24 deducting all dues from his wages. *See id.* at ¶ 15. According to Wolf, UPTE responded by
25 letter informing him that he could cancel deductions only during his “annual cancellation
26 period” prior to his renewal date. *See id.* at ¶ 17. Under the terms of Wolf’s membership
27 agreement, his 30-day cancellation window ran from January 25, 2019 through February
28 24, 2019. Wolf later contacted UPTE during his cancellation window, on January 30, 2019,

1 by emailing UPTE a letter resigning his membership and requesting that payroll deductions
2 end. *Id.* at ¶ 20. UPTE contacted UC to request deductions be cancelled, and payroll
3 deductions for Wolf stopped on or around February 14, 2019. *Id.* at ¶¶ 21-23. Wolf alleges
4 that he had approximately \$65 per month withheld from his paycheck for the period from
5 April 2018 until February 2019. *Id.* at ¶ 24.

6 3. Legal Issues

7 Wolf's First Amended Complaint asserts three claims for relief. Count I requests a
8 declaration that the deduction of union dues from Wolf's paycheck was carried out without
9 operative affirmative consent as Plaintiff claims is required by *Janus v. AFSCME*, Council
10 31, 138 S. Ct. 2448, 2486 (2018). Count II requests a declaration that California
11 Government Code section 3583, the provision of California law pursuant to which Plaintiff
12 alleges this money was taken, violates Wolf's First Amendment rights under *Janus*. Count
13 III requests damages in the amount of unions dues previously deducted from Wolf's
14 Paycheck. Defendants deny all three claims. Defendants also believe that the Court lacks
15 subject matter jurisdiction and that Plaintiff fails to state a claim upon which relief can be
16 granted.

17 4. Motions

18 Defendants each filed Motions to Dismiss, but pursuant to this Court's Order (Dkt.
19 42), Wolf's filing of the First Amended Complaint (Dkt. 39) has mooted those motions.
20 Defendants intend to refile new Motions to Dismiss for this Court's consideration.

21 If the Motions to Dismiss are denied, or denied in part, Plaintiff believes the issues
22 in the case are primarily legal in nature, that there is very little factual dispute, and would
23 seek to file a Motion for Summary Judgment to resolve the case on the pleadings.

24 5. Amendment of Pleadings

25 Wolf filed his First Amended Complaint (Dkt. 39) on August 9, 2019. At this time
26 no further amendments are expected.

27 6. Evidence Preservation

28 The parties have met and conferred, and do not anticipate any special procedures

1 will be necessary for the preservation of evidence. The parties additionally certify that the
2 parties have reviewed the Guidelines Relating to the Discovery of Electronically Stored
3 Information (“ESI”).

4 7. Disclosures

5 The parties have not yet made initial disclosures. Initial disclosures are currently
6 due on August 28 (Dkt. 4), but the parties request the deadline for initial disclosures be
7 extended until after the Motions to Dismiss have been decided, as the outcome of those
8 motions may obviate the need for initial disclosures.

9 8. Discovery

10 No discovery has been taken to date. The parties propose that the timeline for
11 written discovery be set after the Motions to Dismiss have been decided, as the outcome
12 of those motions will significantly affect the scope of any discovery.

13 To the extent formal discovery may be necessary to resolve the issues in this matter,
14 the parties submit their Rule 26(f) Report as follows. The parties request that the deadline
15 for initial disclosures be extended until after the Motions to Dismiss have been decided, as
16 discussed in section 7, *supra*. The anticipated subjects of discovery are limited. Plaintiff
17 expects to seek only the exact amount of union dues that were withheld from Plaintiff’s
18 paycheck, and any union agreements allegedly signed by Plaintiff. Defendants will depose
19 Plaintiff regarding his knowledge of the issues raised by his First Amended Complaint and
20 seek documents regarding the facts relevant to those claims. A proposed schedule for
21 discovery is detailed in section 17, *infra*.

22 The parties do not anticipate any issues related to electronically stored information
23 (“ESI”), issues related to privileged materials, changes to limitations on discovery that
24 should be made, issues related to protective orders, or any other Rule 26(c), Rule 16(b) or
25 16(c) issues. Should such issues arise, they will meet and confer in an effort to reach a
26 mutually agreeable resolution.

27 9. Class Actions

28 This case is not brought as a class action, and no class procedures are necessary.

1 10. Related Cases

2 There are dozens of cases around the country that raise similar claims to the
3 Plaintiff in this case. None of them involve Plaintiff Isaac Wolf. *O'Callaghan v.*
4 *Napolitano*, 2:19-cv-02289-JVS-DFM, currently pending in the Central District of
5 California, also involves similar claims by University of California employees against
6 their employer. Below the parties list some of the many other cases, not involving the
7 same parties but raising the same or similar issues, pending or recently decided.

- 8 • *Martin v. California Teachers Ass'n*, No. 2:18-cv-08999-JLS-DFM, 2019
9 U.S. Dist. LEXIS 79812 (C.D. Cal. May 8, 2019).
- 10 • *Matthews v. United Teachers Los Angeles*, No. 2:18-cv-06793-JLS-DFM,
11 2019 U.S. Dist. LEXIS 79812 (C.D. Cal. May 8, 2019).
- 12 • *Wilford v. National Education Ass'n*, No. 8:18-cv-1169-JLS-DFM, 2019 U.S.
13 Dist. LEXIS 79812 (C.D. Cal. May 8, 2019).
- 14 • *Babb v. California Teachers Ass'n*, No. 8:18-cv-00994-JLS-DFM, 2019 U.S.
15 Dist. LEXIS 79812 (C.D. Cal. May 8, 2019).
- 16 • *Babb v. California Teachers Ass'n*, No. 8:18-cv-00994-JLS-DFM, 2019 U.S.
17 Dist. LEXIS 79812 (C.D. Cal. May 8, 2019).
- 18 • *Few v. United Teachers Los Angeles*, No. 2:18-cv-09531-JLS-DFM, 2019
19 U.S. Dist. LEXIS 79812 (C.D. Cal. May 8, 2019).
- 20 • *Sweet v. California Association of Psychiatric Technicians*, 2:19-cv-00349-
21 JAM-AC, Eastern District of California.
- 22 • *Belgau v. Inslee*, No. 18-5620 RJB, 2018 U.S. Dist. LEXIS 175543 (W.D.
23 Wash. Oct. 11, 2018).
- 24 • *Adams v. Teamsters Local 429*, 1:19-CV-00336- SHR, Middle District of
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1 Pennsylvania.

- 2 • *Hannay v. AFSCME Council 8*, 5:19-cv-00951, Northern District of Ohio.
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- 4 • *Thompson v. Marietta Education Ass'n*, No. 2:18-cv-00628-MHW-CMV,
- 5 ECF Dkt. 52, (S.D. Ohio Jan. 14, 2019).
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- 7 • *Uradnik v. Inter Faculty Org.*, No. 18-1895 (PAM/LIB), 2018 U.S. Dist.
- 8 LEXIS 165951 (D. Minn. Sep. 27, 2018).
- 9
- 10 • *Reisman v. Associated Faculties of the Univ. of Me.*, No. 1:18-cv-00307-JDL,
- 11 2018 U.S. Dist. LEXIS 203843 (D. Me. Dec. 3, 2018).
- 12
- 13 • *Hendrickson v. AFSCME Council 18*, 18-CV-01119-RB-LF, District of New
- 14 Mexico.
- 15
- 16 • *Bennett v. AFSCME Council 31*, 4:19-cv-04087-SLD-JEH, Central District
- 17 of Illinois.
- 18
- 19 • *Leitch v. AFSCME Council 31*, 1:19-cv-02921, Northern District of Illinois.
- 20
- 21 • *Mandel v. SEIU Local 73*, 1:18-cv-08385, Northern District of Illinois
- 22
- 23 • *Sweeney v. Madigan*, No. 18-cv-1362, 2019 U.S. Dist. LEXIS 19389 (N.D.
- 24 Ill. Feb. 6, 2019).
- 25
- 26 • *Janus v. Am. Fed'n of State*, No. 15 C 1235, 2019 U.S. Dist. LEXIS 43152
- 27 (N.D. Ill. Mar. 18, 2019).
- 28
- *Oliver v. SEIU Local 668*, 19-0891, Eastern District of Pennsylvania.
- *Bierman v. Dayton*, 900 F.3d 570 (8th Cir. 2018).

- 1 • *Fisk v. Inslee*, No. 17-35957, 2018 U.S. App. LEXIS 35317 (9th Cir. Dec.
2 17, 2018).
- 3 • *Mentele v. Inslee*, 916 F.3d 783, 789 (9th Cir. 2019).

5 11. Relief

6 Plaintiff seeks declaratory relief and damages in the amount of union dues
7 previously taken from him. Defendants have not asserted any counterclaims against him,
8 and do not believe that any relief for Plaintiff is justified or appropriate.

9 12. Settlement and ADR

10 Given the nature of the issues in the case, the parties do not think they are likely to
11 reach a settlement, and do not expect that ADR procedures would be a productive use of
12 resources.

13 13. Consent to Magistrate Judge for All Purposes

14 Plaintiff declined magistrate judge jurisdiction. (Dkt. 7).

15 14. Other References

16 The parties do not believe that arbitration, a special master, or the judicial panel on
17 multidistrict litigation would be useful avenues to resolve this case.

18 15. Narrowing of Issues

19 The parties do not feel that the issues in this case would be productively narrowed
20 by agreement or motion, except that the defendants intend to move to dismiss aspects of
21 Plaintiff's First Amended Complaint.

22 16. Expedited Trial Procedure

23 The parties do not feel this case is an appealing candidate for expedited trial
24 procedures.

25 17. Scheduling

26 The parties propose the following tentative schedule, with the understanding that
27 this Court's resolution of the Motions to Dismiss may necessitate reconsideration in the
28

1 future.

2 December 1, 2019 — Deadline for amendment of pleadings or addition of parties.

3 December 1, 2019 — Deadline for designation of experts.

4 January 30, 2020 — Cutoff of fact discovery.

5 February 27, 2020 — Deadline for dispositive motions.

6 April 4, 2020 — Pretrial conference.

7 April 4, 2020 — Deadline for pretrial disclosures.

8 May 4, 2020—Trial.

9 18. Trial

10 The parties anticipate no more than a three-day trial will be necessary to resolve
11 this case. None of the parties intend to request a jury.

12 19. Disclosure of Non-party Interested Entities or Persons

13 The only interested party Plaintiff Isaac Wolf is aware of is himself, and the
14 Defendants named in his First Amended Complaint. UPTE has filed its certification
15 confirming that there are no such interested parties to name. (Dkt. 23.) Defendants
16 Attorney General Xavier Becerra, Joshua Golka, and Janet Napolitano are not required to
17 file a Certificate of Interested Entities, pursuant to Local Rule 3-15(a).

18 20. Professional Conduct

19 Counsel for each of the parties have reviewed the Guidelines for Professional
20 Conduct for the Northern District of California.

21 **Exceptions**

22 The above statement is the joint statement of all the undersigned parties, and no
23 parties has any exceptions to enter to what is stated above.

24
25 Dated: August 20, 2019

26 Respectfully submitted,

27 /s/ Mark W. Bucher

28 Mark W. Bucher

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18 Technical Employees*

19 **FILER'S ATTESTATION**

20 Pursuant to Civil Local Rule 5-1(i)(3) regarding signatures, I, Reilly Stephens, attest
21 that concurrence in the filing of this document has been obtained.

22 Dated: August 20, 2019

23 /s/ Reilly Stephens