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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**



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           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.

## 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 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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