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9 **UNITED STATES DISTRICT COURT**
10 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

11 **ROBERT ESPINOZA**, individual,

12 Plaintiff,

13 v.

14 **UNION OF AMERICAN PHYSICIANS**
15 **AND DENTISTS, AFSCME LOCAL**
16 **206**, an employee organization;
17 **CALIFORNIA CORRECTIONAL**
18 **HEALTHCARE SERVICES**, a public
19 agency; **BETTY T. YEE**, in her official
20 capacity as California State Controller; and
21 **ROB BONTA**, in his official capacity as
22 Attorney General of California,

23 Defendants,

Case No.:

VERIFIED COMPLAINT FOR
DECLARATORY JUDGMENT,
INJUNCTIVE RELIEF, AND
DAMAGES FOR VIOLATION OF
CIVIL RIGHTS.

[42 U.S.C. § 1983]

1 **INTRODUCTION**

2 When Robert Espinoza, M.D. (Dr. Espinoza), became a member of Defendant
3 Union of American Physicians and Dentists, AFSCME Local 206 (UAPD) in 2018,
4 Defendants California Correctional Health Care Services (CCHCS) and State
5 Controller Betty T. Yee not only deducted membership dues from his lawfully
6 earned wages, but an additional \$16.00 per paycheck fee for UAPD’s Political
7 Action Program. This money was then used by CCHCS to support specific
8 candidates and advocate for political issues of the union’s choosing.

9 But in December 2020, when Dr. Espinoza exercised his First Amendment
10 rights and withdrew any purported affirmative consent to the continued withdrawals,
11 the Defendants ignored his request and continued to take his money for use in
12 political speech. Yet, even by the terms of his agreement with CCHCS, the Political
13 Action Program fees should have ceased immediately, and the membership dues
14 should have ceased in July 2021. **These deductions and their use for political**
15 **speech continue unabated, in violation of Dr. Espinoza’s constitutional rights.**

16 This joint state action, committed with the implicit approval of Attorney
17 General Rob Bonta, violated, and continues to violate, Dr. Espinoza’s First
18 Amendment right against compelled speech, and Fourteenth Amendment due
19 process rights. Therefore, Dr. Espinoza brings this action under 42 U.S.C. § 1983
20 seeking emergency and permanent injunctive relief, a declaratory judgment,
21 damages, and any other relief this Court deems just and proper.

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1 **JURISDICTION AND VENUE**

2 1. This action arises under the First and Fourteenth Amendments to the
3 United States Constitution, 42 U.S.C. § 1983 (action for deprivation of federal civil
4 rights), and 28 U.S.C. §§ 2201-2202 (action for declaratory relief), including relief
5 pursuant to Federal Rule of Civil Procedure 65 (permanent injunctive relief).

6 2. The Court has subject-matter jurisdiction under 28 U.S.C. § 1331
7 (federal questions) and 28 U.S.C. § 1343 (deprivation of federal civil rights).

8 3. Venue is proper in the Central District of California pursuant to 28
9 U.S.C. § 1391(b)(1) and 28 U.S.C. § 1391(b)(2), because all Defendants are
10 residents of California, and a substantial part of the events giving rise to this action
11 occurred in this judicial district.

12 **PARTIES**

13 4. Plaintiff, Robert Espinoza, M.D., resides in Yorba Linda, California,
14 and has been employed as a physician by the California Correctional Health Care
15 Services since 2017.

16 5. Defendant Union of American Physicians and Dentists, AFSCME
17 Local 206, is a “recognized employee organization,” Cal. Gov’t Code §3513(b), and
18 the exclusive representative for Dr. Espinoza’s bargaining unit at Chino State Prison.
19 Under Cal. Gov’t Code § 1153 and the terms of the applicable Memorandum of
20 Understanding (MOU),¹ UAPD is empowered to represent whether Dr. Espinoza

21 _____
22 ¹ <https://www.calhr.ca.gov/labor-relations/Documents/mou-20160701-20200701-bu16.pdf>

1 and other employees have affirmatively consented to deductions from their lawfully
2 earned wages for union purposes. UAPD’s office is located at 520 Capitol Mall,
3 Suite 220, Sacramento, CA 95814.

4 6. Defendant California Correctional Health Care Services is a “public
5 agency,” Cal. Gov’t Code § 3501(c), organized and managed by the State. Under
6 Cal. Gov’t Code § 1153 and the terms of the applicable MOU, CCHCS is responsible
7 for certifying to the State Controller that Dr. Espinoza and other employees have
8 affirmatively consented to deductions from their lawfully earned wages for union
9 purposes. CCHCS’s office is located at 8260 Longleaf Dr, Elk Grove, CA 95758.

10 7. Defendant Betty T. Yee, California’s Controller, is sued in her official
11 capacity as the state’s chief fiscal executive officer responsible for disbursing
12 paychecks for all state employees, including providing for the administration of
13 payroll deductions for union purposes under Cal. Gov’t Code § 1153. Yee’s office
14 is located at 300 Capitol Mall, Suite 1850, Sacramento, California 95814.

15 8. Defendant Rob Bonta, California’s Attorney General, is sued in his
16 official capacity as the representative of the State of California charged with the
17 enforcement of state laws, including the statutes challenged in this case. That state
18 law, as the Attorney General interprets and applies it, authorize the actions of the
19 State Controller, CCHCS, and UAPD challenged in this lawsuit. Bonta’s office is
20 located at 300 South Spring Street, Los Angeles, California 90013.

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FACTUAL ALLEGATIONS

A. Dr. Robert Espinoza: Dedicated physician and state employee.

9. Dr. Robert Espinoza, M.D., received his medical degree from the University of California at Irvine in 2006.

10. Dr. Espinoza began his residency in Family Medicine in June 2006, finishing his residency in June 2009, and has been Board Certified in Family Medicine since July 1, 2008.

11. Dr. Espinoza was employed as a physician at the Chino Institution for Women from April 2017 to October 2019, at which point he transferred to the Chino Institution for Men and has been employed there ever since.

12. In this role, Dr. Espinoza treats prisoner-patients with serious medical issues, including patients transported from other prisons and institutions for the purpose of receiving medical treatment.

13. From the beginning of his employment with CCHCS, until April 2018, Dr. Espinoza was not a member of the Union of American Physicians and Dentists, AFSCME Local 206 (UAPD), the exclusive representative of his bargaining unit.

14. During this time, agency or “fair share” fees were 99.75 % of full union dues and were already being deducted from each of Dr. Espinoza’s monthly paychecks as a condition of his employment with the state.

15. The fact that Dr. Espinoza was essentially already paying full UAPD membership dues was central to his decision to join the union.

1 16. It was not until April 23, 2018, Dr. Espinoza signed and submitted to
2 UAPD a union membership application.

3 17. The application states, in relevant part, “I hereby voluntarily authorize
4 and direct the State Controller to deduct from my salary each pay period the amount
5 of dues certified by the Union, and as may be adjusted periodically by the Union,
6 and the amount to the UAPD Political Action Program, and transmit said sum to the
7 Union.” Exhibit A.

8 18. Beginning in May 2018, Dr. Espinoza began having \$217.73 deducted
9 from each of his monthly paychecks and sent to UAPD.

10 **B. UAPD’s voluntary Political Action Program.**

11 19. On May 17, 2018, UAPD president, Dr. Stuart Bussey, sent Dr.
12 Espinoza a letter welcoming him to union membership. Exhibit B.

13 20. The letter states that the \$16.00 per paycheck fee to the UAPD Political
14 Action Program, which is used “to support candidates and issues that further the
15 interest of our members and the communities we serve,” is entirely voluntary and
16 consent may be withdrawn at any time without restriction.

17 21. In order to “opt-out” of contributions to the UAPD political action
18 program, members are required simply to put the union on notice of their desire to
19 opt out, at which point the deductions will immediately cease.

20 22. It is personally important to Dr. Espinoza that he make his own
21 decisions as to political candidates and issues after careful consideration.

1 23. From the time he joined UAPD in 2018, to the summer of 2020, Dr.
2 Espinoza became increasingly concerned that the union was spending his money on
3 political candidates and issues with which he did not agree.

4 **C. Dr. Espinoza's attempts to communicate with UAPD are ignored.**

5 24. Throughout the summer and early fall of 2020, Dr. Espinoza actively
6 inquired of UAPD how his membership dues payments and contributions to the
7 Political Action Program were being spent.

8 25. UAPD never responded any of Dr. Espinoza's multiple inquiries during
9 this period of time.

10 26. In early November of 2020, Dr. Espinoza tried again to contact UAPD
11 requesting instructions regarding how to end all union deductions.

12 27. Dr. Espinoza was eventually told over the phone that he had to email
13 UAPD Program Specialist, Christine Cordova.

14 28. On November 10, 2020, Dr. Espinoza emailed Cordova, informing her
15 of his intent to dissociate with and stop funding all UAPD activities. Exhibit C.

16 29. Cordova did not respond to Dr. Espinoza's email.

17 30. On December 1, 2020, Dr. Espinoza again emailed Cordova, informing
18 her of his intent to dissociate with and stop funding all UAPD activities. Exhibit D.

19 31. On December 3, Cordova stated that she would forward Dr. Espinoza's
20 inquiries to UAPD Senior Representative, Glynnis Golden-Ortiz. Exhibit E.

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1 **D. Dr. Espinoza withdraws consent for all UAPD deductions.**

2 32. On December 9, 2020, Dr. Espinoza sent a letter to UAPD via certified
3 mail, stating, “I do not consent to any payment or withholding of dues, fees, or
4 political contributions to the union or its affiliates. If you believe I have given
5 consent in the past, that consent is revoked, effective immediately.” Exhibit F.

6 33. Dr. Espinoza’s letter demanded that UAPD “immediately cease
7 deducting any and all union dues or fees.”

8 34. This cancellation of dues and fees applied with equal force to both Dr.
9 Espinoza’s UAPD membership dues and voluntary contributions to UAPD’s
10 Political Action Program.

11 35. Dr. Espinoza received confirmation his letter was received and signed
12 for by UAPD president, Bussey, on December 15, 2020. Exhibit G.

13 36. Dr. Espinoza’s letter requested specific written instructions regarding
14 “what steps I must take to effectuate my constitutional rights and stop the deduction
15 of dues/fees” in the event that the union refused to immediately stop deductions.

16 37. Neither Bussey nor any other UAPD official ever acknowledged receipt
17 of Dr. Espinoza’s letter withdrawing consent for all deductions from his lawfully
18 earned wages for UAPD purposes.

19 **E. Dr. Espinoza’s given the run-around by UAPD officials.**

20 38. On January 7, 2021, Dr. Espinoza emailed Cordova once again,
21 referencing the opt-out letter and its proof of delivery. Exhibit H.

1 39. Dr. Espinoza informed Cordova that her assurance that Golden-Ortiz
2 would “take care of” end the deductions had not been fulfilled.

3 40. Cordova responded that she “was told” Golden-Ortiz had called him.
4 Exhibit I.

5 41. Later that same day Golden-Ortiz finally called Dr. Espinoza back.

6 42. Golden-Ortiz stated that she had attempted to call Dr. Espinoza.

7 43. Dr. Espinoza never received any missed calls from Golden-Ortiz.

8 44. Golden-Ortiz stated that “she would take care of” effectuating his
9 withdrawal and that all deductions from his lawfully earned wages for UAPD
10 purposes would immediately cease.

11 45. The deductions for both UAPD membership dues and contributions to
12 the UAPD Political Action Program continued unabated.

13 46. On February 2, 2021, Dr. Espinoza again called Golden-Ortiz.

14 47. Despite her earlier assertion that she would “take care” of ending the
15 deductions from his lawfully earned wages, she now claimed that Dr. Espinoza was
16 legally bound to subsidize the political activities of the union against his will until
17 July 2022 because of a “stipulation in our contract,” a copy of which she would send.

18 48. Dr. Espinoza replied that he did not see any such stipulation in his
19 agreement with the union, nor did he agree with such a stipulation.

20 49. Dr. Espinoza never received the promised contract stipulation from
21 Golden-Ortiz.

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1 **F. Dr. Espinoza forced to take action to protect his rights.**

2 50. Fed up with what appeared to be even more union evasion, Dr.
3 Espinoza sought legal advice and retained counsel.

4 51. On March 15, 2021, Dr. Espinoza's attorney sent a letter to UAPD
5 demanding that the union immediately cease authorizing the deduction of all monies
6 from his lawfully earned wages. Exhibit J.

7 52. On April 15, 2021, UAPD counsel, Anne Yen, responded to Dr.
8 Espinoza with a letter sent via email. Exhibit K.

9 53. In this letter, Yen stated that according to the agreement Dr. Espinoza
10 signed with UAPD in April 2018, he agreed that the deductions from his pay would
11 continue until the expiration of the MOU then in effect between UAPD and CCHCS
12 in effect at the time he signed the agreement, July 2021.

13 54. Hence, Yen assured Dr. Espinoza that the opt-out he submitted in
14 December 2020 would take effect in July 2021, and the deductions from his lawfully
15 earned wages would cease immediately at that time.

16 **G. Unauthorized deductions and political spending continues.**

17 55. The "voluntary" contributions to the UAPD Political Action Program,
18 which should have ceased in January 2021, as confirmed by UAPD president
19 Bussey, Exhibit B, *have continued to be deducted from Dr. Espinoza's lawfully*
20 *earned wages and used for political speech.* Exhibit L.

21 56. The purported membership dues, which according to the agreement
22

1 between Dr. Espinoza and UAPD, as confirmed by UAPD attorney Yen, Exhibit K,
2 should have ceased in July 2021, have continued to be deducted from Dr.
3 Espinoza's lawfully earned wages and used for political speech. Exhibit L.

4 57. Dr. Espinoza has received no indication that these continued deductions
5 will cease.

6 58. Dr. Espinoza does not affirmatively consent to the continued
7 withdrawals from his lawfully earned wages for purported UAPD membership dues
8 or contributions to UAPD's Political Action Program.

9 59. To the degree that his previous UAPD membership card could be
10 construed as affirmative consent to these deductions, he withdrew such consent
11 pursuant to his December 9, 2020, letter.

12 60. According to UAPD counsel Yen, given his withdrawal of affirmative
13 consent in December 2020, the UAPD membership dues should have ceased being
14 taken from Dr. Espinoza's pay in July 2021.

15 61. Beginning in September 2021, and continuing for the months of
16 October and November, however, the purported union dues taken from Dr.
17 Espinoza's pay without his affirmative consent have increased from \$217.73 to
18 \$249.50 per monthly paycheck.

19 62. Thus, since July 2021 the Defendants have authorized and taken
20 \$1,183.96 of Dr. Espinoza's lawfully earned wages in the form of purported UAPD
21 dues without his affirmative consent.

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1 63. Since December 2020, the Defendants have also authorized and taken
2 \$368.00 of Dr. Espinoza’s lawfully earned wages in the form of “voluntary”
3 contributions to UAPD’s Political Action Program without his affirmative consent.

4 64. In total, the Defendants have taken a total of \$1,551.96 of Dr.
5 Espinoza’s lawfully earned wages and spent it on political speech without his
6 affirmative consent.

7 65. This includes contributions to political candidates’ campaigns and
8 advocacy for specific political issues of UAPD’s choosing.

9 66. Specifically, since January 2021 UAPD has spent and continues
10 spending Dr. Espinoza’s lawfully earned wages without his affirmative consent on
11 political speech. Exhibit M.

12 67. This political spending includes, but not limited to:

- 13 • Cortese for CA Senate 2024 (January 7, 2021).
- 14 • Ting for CA Controller 2022 (January 15, 2021).
- 15 • Arambula for CA Assembly 2022 (January 26, 2021).
- 16 • Durazo for CA State Senate 2022 (January 26, 2021).
- 17 • Californians for Responsible Healthcare (January 26, 2021).
- 18 • Pan for CA State Controller 2022 (February 3, 2021).
- 19 • MA for CA State Treasurer 2022 (February 8, 2021).
- 20 • Calderon for CA Assembly 2022 (February 10, 2021).
- 21 • Gonzalez for CA Assembly 2022 (February 16, 2021).

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- 1 • Atkins for CA Lt. Governor 2026 (February 24, 2021).
- 2 • CA Independent Leadership Alliance (March 5, 2021).
- 3 • Atkins for Lt. Governor 2026 (March 10, 2021).
- 4 • Garcia for CA Assembly 2022 (March 18, 2021).
- 5 • Pan for CA State Senate 2018 (March 19, 2021).
- 6 • Californians for Responsible Healthcare (March 30, 2021).
- 7 • Rendon for CA Assembly 2022 (April 5, 2021).
- 8 • Gonzalez for CA Assembly 2022 (April 8, 2021).
- 9 • Arambula for CA Assembly 2022 (April 9, 2021).
- 10 • Hertzberg for CA State Controller (April 23, 2021).
- 11 • Bonta for CA Attorney General 2022 (April 30, 2021).
- 12 • Bonta for CA Assembly 2022 (May 7, 2021).
- 13 • Californians for Responsible Healthcare (May 12, 2021).
- 14 • Newsom (Stop the Republican Recall) (May 14, 2021).
- 15 • Dodd for CA State Senate 2020 (May 14, 2021).
- 16 • Roy for CA Assembly 2022 (May 26, 2021).
- 17 • Hurtado for CA State Senate 2022 (June 1, 2021).
- 18 • Weber for CA Secretary of State (June 3, 2021).
- 19 • Ting for CA Assembly 2022 (June 10, 2021).
- 20 • Californians for Responsible Healthcare (June 17, 2021).
- 21 • Thurmond for CA Superintendent 2022 (June 22, 2021).
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- 1 • Bonta for CA Assembly 2021 (July 7, 2021).
- 2 • Dodd for CA Lt. Governor 2026 (July 12, 2021).
- 3 • Archuleta for CA State Senate 2022 (July 12, 2021).
- 4 • Californians for Responsible Healthcare (July 27, 2021).
- 5 • Allen for CA State Senate 2022 (July 27, 2021).
- 6 • Bonta for CA Assembly 2021 (August 11, 2021).
- 7 • Californians for Responsible Healthcare (August 26, 2021).
- 8 • Nazarian for CA Assembly 2022 (September 1, 2021).
- 9 • Californians for Responsible Healthcare (September 8, 2021).

10 **H. Allegations applicable to equitable relief.**

11 68. The controversy between Dr. Espinoza and the Defendants is a concrete
12 dispute concerning the legal relations of parties with adverse legal interests.

13 69. The dispute is real and substantial, as the Defendants continue to take
14 Dr. Espinoza’s lawfully earned wages without his affirmative consent and use it in
15 political speech without his affirmative consent.

16 70. The Defendants maintain the constitutionality of their actions.

17 71. Injunctive relief is appropriate, as Dr. Espinoza is suffering a
18 continuing irreparable injury to his First and Fourteenth Amendment rights for
19 which there is no adequate remedy at law.

20 72. The declaratory relief sought is not based on a hypothetical state of
21 facts, nor would it amount to a mere advisory opinion.

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1 73. Dr. Espinoza and the Defendants dispute the legality of the ongoing
2 taking and spending of Dr. Espinoza's lawfully earned wages on political speech
3 without his affirmative consent.

4 74. As a result of the foregoing, an actual and justiciable controversy exists
5 between Deering and the Defendants regarding their respective legal rights, the
6 matter is ripe, and judicial review is appropriate.

7 **CAUSES OF ACTION**

8 **COUNT I**
9 **Freedom from Compelled Speech-UAPD Political Fees**
10 **(42 U.S.C. § 1983)**

11 75. Dr. Espinoza re-alleges and incorporates by reference each and every
12 paragraph set forth above.

13 76. Under the First Amendment, the Defendants cannot compel any
14 employee to subsidize nakedly partisan speech or compel that employee to make
15 unwanted political donations to objectionable candidates.

16 77. Dr. Espinoza effectively ended his voluntary contributions to UAPD's
17 Political Action Program in December 2020.

18 78. As confirmed by UAPD president, Dr. Stuart Bussey, in his May 17,
19 2018, letter, the UAPD Political Action Program fees should have immediately
20 ceased being removed from Dr. Espinoza's lawfully earned wages at that time. *See*
21 Exhibit B.

22 79. Instead, the Defendants, acting jointly under the color of state law under

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1 Cal. Gov't Code § 1153 and the applicable MOU, have continued to take \$16.00
2 from Dr. Espinoza's lawfully earned wages each month for the UAPD Political
3 Action Program.

4 80. From July 2021 to the present, the Defendants have jointly taken
5 approximately \$368.00 of Dr. Espinoza's lawfully earned wages for the UAPD
6 Political Action Program and spent these monies on political speech without Dr.
7 Espinoza's affirmative consent in violation of the First Amendment's prohibition on
8 compelled speech.

9 81. Because it authorizes the confiscation of Dr. Espinoza's lawfully
10 earned wages without his affirmative consent, the scheme created by Cal. Gov't
11 Code § 1153 and the applicable MOU, on its face and as applied, violates Dr.
12 Espinoza's First Amendment right against compelled speech.

13 82. The Defendants have no legitimate, let alone compelling, interest in
14 depriving Dr. Espinoza of his First Amendment right against compelled speech.

15 83. Even if the challenged statute did have a legitimate or compelling
16 purpose, it is not narrowly tailored to support that interest.

17 84. Therefore, Dr. Espinoza seeks compensatory and nominal damages,
18 and injunctive and declaratory relief against all Defendants, for the continuing
19 withdrawal of his lawfully earned wages to fund the UAPD Political Action Program
20 without his affirmative consent, pursuant to 42 U.S.C. § 1983 and 28 U.S.C. §§
21 2201-2202.

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COUNT II
Right to Freedom from Compelled Speech-Union Dues
(42 U.S.C. § 1983)

1
2
3 85. Dr. Espinoza re-alleges and incorporates by reference each and every
4 paragraph set forth above.

5 86. Under the First Amendment, the Defendants cannot take money from a
6 public employee's lawfully earned wages without their affirmative consent.

7 87. Dr. Espinoza effectively ended his UAPD membership and withdrew
8 his dues' authorization in December 2020.

9 88. As confirmed by UAPD counsel Yen, Exhibit K, the UAPD dues'
10 deductions from Dr. Espinoza's lawfully earned wages should have ceased on July
11 1, 2021.

12 89. Instead, the Defendants, acting jointly under the color of state law under
13 Cal. Gov't Code § 1153 and the applicable MOU, continued to take \$217.96 for the
14 months of July and August 2021, and \$249.50 for the months of September, October,
15 and November, 2021.

16 90. From July 2021 to the present, the Defendants have jointly taken
17 \$1,183.96 of Dr. Espinoza's lawfully earned wages for purported membership dues
18 and spent these monies on political speech without his affirmative consent in in
19 violation of the First Amendment's prohibition on compelled speech.

20 91. Each month the Defendants will continue to take additional amounts to
21 fund political speech.

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1 92. Because it authorizes the confiscation of Dr. Espinoza’s lawfully
2 earned wages without his affirmative consent, the scheme created by Cal. Gov’t
3 Code § 1153 and the applicable MOU, on its face and as applied, violates Dr.
4 Espinoza’s First Amendment right against compelled speech.

5 93. The Defendants have no legitimate, let alone compelling, interest in
6 depriving Dr. Espinoza of his First Amendment right against compelled speech.

7 94. Even if the challenged statute did have a legitimate or compelling
8 purpose, it is not narrowly tailored to support that interest.

9 95. Therefore, Dr. Espinoza seeks compensatory and nominal damages,
10 and injunctive and declaratory relief against all Defendants, for the continuing
11 withdrawal of his lawfully earned wages without his affirmative consent pursuant to
12 42 U.S.C. § 1983 and 28 U.S.C. §§ 2201-2202.

13 **COUNT III**
14 **Right to Procedural Due Process-Liberty and Property Interests**
15 **(42 U.S.C. § 1983)**

16 96. Dr. Espinoza re-alleges and incorporates by reference each and every
17 paragraph above.

18 97. The Fourteenth Amendment requires the provision of adequate
19 procedures before an individual is deprived of liberty or property.

20 98. Dr. Espinoza has a cognizable liberty interest in his First Amendment
21 rights against compelled speech.

22 99. Dr. Espinoza has a cognizable property interest in his lawfully earned
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1 wages confiscated by the Defendants without his affirmative consent.

2 100. This property interest includes both purported membership dues
3 collected between July 2021 and continuing through the present, and monies taken
4 for the purposes of UAPD Political Action Program since December 2020
5 continuing through the present.

6 101. The Defendants' scheme for the seizure of Dr. Espinoza's lawfully
7 earned wages under Cal. Gov't Code § 1153 and the applicable MOU, did not
8 include any procedural protections sufficient to meet the procedural requirements of
9 the Due Process Clause.

10 102. Neither Cal. Gov't Code § 1153 nor the applicable MOU, establish any
11 procedures to convey notice to Dr. Espinoza before the Defendants seized his
12 lawfully earned wages without his affirmative consent for use in political speech.

13 103. Neither Cal. Gov't Code § 1153 nor the applicable MOU establish any
14 procedures to provide Dr. Espinoza with any pre-deprivation or post-deprivation
15 hearing or other opportunity to object to the Defendants seizure of his lawfully
16 earned wages for use in political speech.

17 104. Pursuant to state law, Cal. Gov't Code § 1153 and the applicable MOU,
18 the Defendants acted jointly to deny Dr. Espinoza his procedural due process rights.

19 105. Because it lacked the necessary procedural safeguards to protect Dr.
20 Espinoza's First Amendment liberty interests, and his property interests in his
21 lawfully earned wages, the challenged statute, on its face and as applied, violates Dr.

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1 Espinoza’s right to procedural due process.

2 106. Therefore, Dr. Espinoza seeks compensatory and nominal damages,
3 and injunctive and declaratory relief against all Defendants, for the continuing
4 deprivation of his liberty and property interests without procedural due process,
5 pursuant to 42 U.S.C. § 1983 and 28 U.S.C. §§ 2201-2202.

6 **COUNT IV**
7 **Right to Substantive Due Process-First Amendment Liberty Interests**
8 **(42 U.S.C. § 1983)**

9 107. Dr. Espinoza re-alleges and incorporates by reference each and every
10 paragraph above.

11 108. The substantive component of the Due Process Clause prohibits
12 restraints on liberty that are inherently arbitrary.

13 109. Hence, substantive due process bars certain government actions
14 regardless of the fairness of the procedures used to implement them.

15 110. Infringements of substantive due process rights are subject to strict
16 constitutional scrutiny and must be narrowly tailored to serve a compelling state
17 interest.

18 111. Dr. Espinoza has a cognizable liberty interest in his First Amendment
19 right against compelled speech.

20 112. The sole means available to Dr. Espinoza and public employees to
21 terminate their union memberships and end their dues deductions under Cal. Gov’t
22 Code § 1153 and the applicable MOU, requires their termination requests be directed

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1 to unions, rather than directly to their employers.

2 113. UAPD is an inherently biased and financially interested party with an
3 incentive for dues deductions to continue, whether an employee like Dr. Espinoza
4 has given their affirmative consent or refused it.

5 114. UAPD has no incentive to release Dr. Espinoza, or other comparable
6 situated public employees, from their memberships or supposed dues authorizations.

7 115. Rather, UAPD has a direct financial and legal incentive to represent to
8 CCHCS and the State Controller that Dr. Espinoza provided the affirmative consent
9 required by the First Amendment.

10 116. This was true even when Dr. Espinoza had effectively terminated his
11 dues' authorization under the terms of his 2018 authorization agreement and
12 withdrew consent for deductions for UAPD's Political Action Program.

13 117. Under Cal. Gov't Code § 1153 and the applicable MOU, neither
14 CCHCS nor the State Controller are allowed to independently verify whether Dr.
15 Espinoza affirmatively consented to the deduction of monies from his lawfully
16 earned wages for UAPD purposes, nor request he submit a new verifiable
17 authorization.

18 118. As a result, Defendants' scheme under Cal. Gov't Code § 1153 and the
19 applicable MOU has the purpose and effect of arbitrarily burdening Dr. Espinoza's
20 ability to exercise his First Amendment rights against compelled speech.

21 119. Dr. Espinoza has a substantive due process right to exercise his First
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1 Amendment rights without suffering the conflict of interest imposed by Defendants’
2 scheme.

3 120. Pursuant to Cal. Gov’t Code § 1153, UAPD jointly acted with CCHCS
4 and the State Controller to deny Dr. Espinoza his substantive due process rights.

5 121. Because it creates an inherent and arbitrary conflict of interest
6 burdening Dr. Espinoza’s ability to exercise his First Amendment rights,
7 Defendants’ scheme, for both purported dues and monies for the UAPD Political
8 Action Program, on their face and as applied, violate Dr. Espinoza’s right to
9 substantive due process.

10 122. The Defendants had no legitimate, let alone compelling, interest in
11 depriving Dr. Espinoza of his substantive due process rights.

12 123. Even if the Defendants’ scheme did have a legitimate or compelling
13 purpose, it is not narrowly tailored to support that interest.

14 124. Therefore, Dr. Espinoza seeks compensatory and nominal damages,
15 and injunctive and declaratory relief against all Defendants, for the continuing
16 violation of his rights to substantive due process pursuant to 42 U.S.C. § 1983 and
17 28 U.S.C. §§ 2201-2202.

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1 **PRAYER FOR RELIEF**

2 Wherefore, Dr. Espinoza respectfully requests that this Court:

3 **A. Emergency injunctive relief:**

4 • Issue an immediate injunction directing Defendants to cease diverting
5 Dr. Espinoza’s lawfully earned wages to the UAPD for use in political contributions
6 and speech without his affirmative consent as required by the First Amendment

7 **B. Issue a declaratory judgment:**

8 • That the Defendants continuing withdrawal of money from Dr.
9 Espinoza’s lawfully earned wages for use in political speech after he effectively
10 withdrew consent pursuant to the terms of his union agreement, under Cal. Gov’t
11 Code §1153 and the applicable MOU, is a violation of Dr. Espinoza’s First
12 Amendment right against compelled speech, as well as the First Amendment rights
13 of all similarly situated employees.

14 • That the Defendants’ failure to provide Dr. Espinoza, and similarly
15 situated employees, with prior notice and an opportunity to dispute the seizure of
16 their wages without their affirmative consent, is a violation of the Fourteenth
17 Amendment’s guarantee of procedural due process;

18 • That the Defendants’ scheme requiring Dr. Espinoza, and other
19 similarly situated employees, to direct their membership and dues authorization
20 termination requests to a third-party union with a direct financial incentive to
21 continue authorizing dues deductions without the employees’ affirmative consent, is

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1 inherently arbitrary and a violation of the Fourteenth Amendment’s guarantee of
2 substantive due process.

3 **B. Issue a permanent injunction:**

4 • Enjoining the Defendants from seizing the lawfully earned wages of
5 Dr. Espinoza and similarly situated public employees for the purposes of being spent
6 on UAPD’s political speech without their affirmative consent;

7 • Enjoining the Defendants from agreeing to and enforcing a procedure
8 for deducting money from the lawfully earned wages of Dr. Espinoza and similarly
9 situated public employees that violates the First and Fourteenth Amendments and
10 ordering the Defendants to implement a process providing adequate procedures for
11 confirming public employees’ affirmative consent prior to the deduction of any
12 money from their pay for UAPD purposes.

13 • Enjoining the Defendants from agreeing to and enforcing an inherently
14 arbitrary procedure that violates the First and Fourteenth Amendment rights of Dr.
15 Espinoza and similarly situated employees and ordering the Defendants to
16 implement a process by which CCHCS and the State Controller must directly
17 confirm public employees’ voluntary and informed affirmative consent prior to the
18 deduction of any money from their pay for UAPD purposes.

19 **C. Enter a judgment:**

20 • Awarding Dr. Espinoza damages in the amount of \$2510.86, plus
21 interest at the maximum amount allowed by law, for the money unconstitutionally
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1 seized from his lawfully earned wages without his affirmative consent by the
2 Defendants through October 2021, together with additional amounts for the
3 subsequent and continuing diversions;

4 • Awarding Dr. Espinoza compensatory damages for the deprivation of
5 his First and Fourteenth Amendment rights, in an amount to be determined at trial;

6 • Awarding Dr. Espinoza \$1.00 in nominal damages for the deprivation
7 of his First Amendment and Fourteenth Amendment rights;

8 • Awarding Dr. Espinoza his costs and attorneys’ fees under 42 U.S.C. §
9 1983 and § 1988;

10 • Awarding Dr. Espinoza any further relief to which he may be entitled
11 and any other relief this Court may deem just and proper.

12

13 Date: November 17, 2021

Respectfully submitted,

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FREEDOM FOUNDATION

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Freedom Foundation

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Verification

I, Dr. Espinoza, declare as follows:

1. I am the Plaintiff in the present case, a citizen of the United States of America, and a resident of the State of California.

2. I have personal knowledge of myself, my activities, and my intentions, including those set out in the foregoing *Verified Complaint for Declaratory Judgement, Injunctive Relief, and Damages for Violation of Civil Rights*, and if called I would competently testify as to the matters stated herein.

3. I verify under penalty of I declare under penalties of perjury, under the laws of the United States, that the foregoing statements are true and correct.

Executed on: November 17, 2021

/s/Robert Espinoza
Robert Espinoza

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