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11 **UNITED STATES DISTRICT COURT**  
12 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

13 **ROBERT ESPINOZA**, individual,

14 Plaintiff,

15 v.

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

Defendants,

Case No.: 8:21-cv-01898

**PLAINTIFF’S *EX PARTE***  
**MOTION FOR TEMPORARY**  
**RESTRAINING ORDER;**  
**MEMORANDUM OF POINTS**  
**AND AUTHORITIES**

**EXPEDITED HEARING**  
**REQUESTED.**

**Oral argument requested.**

1 **TO THIS HONORABLE COURT:**

2 Plaintiff Robert Espinoza, M.D., by and through his counsel of record, hereby  
3 moves this Court, under Federal Rule of Civil Procedure 65(b), for a Temporary  
4 Restraining Order:

- 5 1. Enjoining Defendant California Correctional Healthcare Services from  
6 authorizing deductions, actually deducting, and remitting any portion of  
7 Robert Espinoza’s lawfully earned wages to the Union of American  
8 Physicians and Dentists, AFSCME Local 206.
- 9 2. Enjoining Defendant California Controller Betty T. Yee from authorizing  
10 deductions, actually deducting, and remitting any portion of Robert  
11 Espinoza’s lawfully earned wages to the Union of American Physicians and  
12 Dentists, AFSCME Local 206.

13  
14 Respectfully submitted,

15  
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19 *Attorneys for Plaintiff*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Defendants California Controller Betty T. Yee, and the California  
4 Correctional Healthcare Services (the State Defendants) continue to take the  
5 lawfully earned wages of Robert Espinoza, M.D. without his affirmative consent  
6 and divert the money to the Union of American Physicians and Dentists, AFSCME  
7 Local 206 (UAPD), Ex. G, even after repeated assurance to Dr. Espinoza and to this  
8 Court that the unauthorized deductions would cease. Ex. E; Ex. F.

9 42 U.S.C. § 1983 authorizes injunctive relief against the State Defendants to  
10 prevent this continuing violation, which is occurring because Dr. Espinoza has  
11 neither affirmatively consented nor contractually agreed to waive his First  
12 Amendment rights pursuant to *Janus v. AFSCME*, 138 S. Ct. 2448, 2464 (2018). For  
13 approximately a year, calls, emails, letters, the filing of a civil lawsuit, and even an  
14 Application for a Temporary Restraining Order, have all been ineffective in securing  
15 the State Defendants' compliance with the U.S. Constitution. All Dr. Espinoza seeks  
16 is the Court's help to ensure that the State Defendants follow through on the failed  
17 assurance that the irreparable injury to his First Amendment rights will cease.

18 **II. STATEMENT OF FACTS**

19 Dr. Espinoza relies on his Declaration; his most recent paystub from  
20 December 1, 2021, showing the continued unauthorized deductions from his  
21 lawfully earned wages by the State Defendants, Exhibit G; Exhibits A and B,  
22 demonstrating that the unauthorized deductions should have ceased no later than

1 July 1, 2021; and Exhibits E and F, the failed assurances that the deductions would  
2 cease. For all other factual allegations and background on this case and motion, the  
3 Court is referred to the Verified Complaint and related Exhibits.<sup>1</sup>

### 4 III. LEGAL STANDARDS

5 A plaintiff seeking a preliminary injunction or temporary restraining order  
6 (TRO) must show that: (1) likelihood of success on the merits; (2) irreparable harm;  
7 (3) the balance of equities tips in his or her favor; and (4) that an injunction is in the  
8 public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). In the  
9 alternative, “serious questions going to the merits and a hardship balance that tips  
10 sharply toward the plaintiff can support issuance of an injunction, assuming the other  
11 two elements of the *Winter* test are also met.” *All. for the Wild Rockies v. Cottrell*,  
12 632 F.3d 1127, 1132 (9th Cir. 2011).

### 13 IV. ARGUMENT

#### 14 A. Dr. Espinoza is suffering an irreparable and on-going injury.

15 In the Ninth Circuit, a party seeking preliminary injunctive relief can establish  
16 irreparable injury by demonstrating the existence of a colorable First Amendment  
17 claim. *Sammartano v. First Judicial Dist. Court in & for County of Carson City*, 303  
18 F.3d 959, 973–74 (9th Cir. 2002). Here, Dr. Espinoza neither consents nor is under  
19 any contractual obligation justifying the continued unauthorized deductions by the  
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21 <sup>1</sup> “Due to the urgency of obtaining a preliminary injunction at a point when there has  
22 been limited factual development, the rules of evidence do not apply strictly to  
23 preliminary injunction proceedings.” *Herb Reed Enters., LLC v. Fla. Ent. Mgmt.,*  
*Inc.*, 736 F.3d 1239, 1250 n.5 (9th Cir. 2013).

1 State Defendants. Compelled speech violates the First Amendment and constitutes  
2 an irreparable harm. *Goldie's Bookstore v. Superior Court*, 739 F.2d 466, 472 (9th  
3 Cir. 1984). Given that Dr. Espinoza raises substantial constitutional claims, no  
4 further showing of irreparable injury is necessary, *Elrod v. Burns*, 427 U.S. 347, 373  
5 (1976); *Sanders County Republican Cent. Comm. v. Bullock*, 698 F.3d 741, 744 (9th  
6 Cir. 2012), and the Court's intervention is warranted and appropriate.

7 **B. Dr. Espinoza is likely to succeed on the merits.**

8 In this case, both of the State Defendants, California Controller Betty T. Yee  
9 and the California Correctional Healthcare Services, are obviously state actors to  
10 whom § 1983 applies. The State Defendants are employed by the state, *Lugar v.*  
11 *Edmondson Oil Co.*, 457 U.S. 922, 935, n.18 (1982), are state officials, *id.* at 937,  
12 and are acting in their official capacities pursuant to authority provided by state law  
13 in continuing to take Dr. Espinoza's money and sending it to UAPD without his  
14 affirmative consent as required by the First Amendment, *West v. Atkins*, 487 U.S.  
15 42, 50 (1988) (“[A] public employee acts under color of state law while acting in his  
16 official capacity or while exercising his responsibilities pursuant to state law.”).  
17 Specifically in this case, Cal. Gov't Code § 1153.

18 It is irrelevant whether the State Defendants' conduct conforms with the letter  
19 of § 1153, as Section 1983 authorizes injunctive relief against the State Defendants  
20 acting unconstitutionally, even if they are following the letter of the authority  
21 granted by the state, and even if the Eleventh Amendment prohibits an award of  
22 money damages. *Ex parte Young*, 209 U.S. 123 (1908). In such a case, the official is

1 “stripped of his official or representative character and is subjected in his person to  
2 the consequences of his individual conduct.” *Id.* at 159-160; *see also Atkins*, 487  
3 U.S. at 49-50 (“It is firmly established that a defendant in a § 1983 suit acts under  
4 color of state law when he abuses the position given to him by the State.”); *Monroe*  
5 *v. Pape*, 365 U.S. 167, 171 (1961) (§ 1983 enforces provisions of the Fourteenth  
6 Amendment acting with state authority, “whether they act in accordance with their  
7 authority or misuse it.”). Dr. Espinoza seeks precisely this equitable remedy against  
8 the State Defendants for the continuing violation of his First Amendment rights.

9 In *Janus v. AFSCME*, the Supreme Court held that no deductions may be made  
10 from a non-member’s wages by the state for union purposes unless that employee  
11 affirmatively consents to the payment. 138 S. Ct. 2448, 2464 (2018). In the case of  
12 Dr. Espinoza, he withdrew consent for the deductions in December 2020, Ex. C; Ex.  
13 D, and all deductions from his pay by the State Defendants should have ceased no  
14 later than the anniversary of the conclusion of the operable collective bargaining  
15 agreement, July 1, 2021. Ex. A; Ex. E. Instead, the deductions have continued,  
16 including from his December 1, 2021, paycheck. Ex. G.

17 Dr. Espinoza is in precisely the same position as was Mark Janus: A non-  
18 member who has not waived his First Amendment rights but has nonetheless had  
19 money deducted from his lawfully earned wages without his affirmative consent by  
20 the State Defendants and remitted to a union engaged in inherently political conduct.  
21 Hence, Dr. Espinoza is likely to succeed on the merits of his First Amendment  
22 claims, or at the very least, raises “serious questions” going to the merits of his First  
23

1 Amendment claims. Unlike in *Belgau v. Inslee*, 975 F.3d 940 (9th Cir. 2020), Dr.  
2 Espinoza’s motion seeks injunctive relief against the State, and does not require the  
3 Court to determine whether UAPD is a state actor under *Lugar*. Even applying  
4 *Belgau*, which is unnecessary and unwarranted, Dr. Espinoza was not under any  
5 contractual terms that may have required him to continue making payments without  
6 affirmative consent and over his express objections. *Cf. id.* at 950. Dr. Espinoza’s  
7 motions for emergency relief should be granted.

### 8 **C. The equities weigh in Dr. Espinoza’s favor.**

9 When the government’s ability to enforce otherwise invalid laws is hindered,  
10 its interests are not harmed. *E.g.*, *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir.  
11 2012). Here, any harms the State Defendants might assert are “entirely speculative  
12 and in any event may be addressed by more closely tailored regulatory measures.”  
13 *Enzell v. City of Chicago*, 651 F.3d 684, 710 (7th Cir. 2011). Enjoying the State  
14 Defendants from taking Dr. Espinoza’s lawfully earned wages and sending the  
15 money to UAPD will not affect their ability to constitutionally collect such monies  
16 from those who have rendered affirmative consent.

17 On the other hand, the continual violation of Dr. Espinoza’s First Amendment  
18 rights against compelled speech is a far greater hardship. *Allen v. County of Lake*, 71  
19 F. Supp. 3d 1044, 1057 (N.D. Cal. 2014) (“[T]he protection of constitutional rights  
20 is a strong equitable argument in favor of issuing [an] injunction.”). The balance of  
21 equities weighs in favor of granting Dr. Espinoza’s motion for a temporary  
22 restraining order.

1 **D. Granting emergency relief is in the public interest.**

2 It is always in the public interest to prevent violation of constitutional rights.  
3 *Sammartano v. First Judicial District Court*, 303 F.3d 959, 974 (9th Cir. 2002);  
4 *Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005) (“Generally, public interest  
5 concerns are implicated when a constitutional right has been violated, because all  
6 citizens have a stake in upholding the Constitution.”). Here, Dr. Espinoza’s First  
7 Amendment rights are being violated, and granting his motion for a temporary  
8 restraining order is squarely in the public interest.

9 **E. Bond should be waived or nominal.**

10 Where a preliminary injunction merely requires compliance with the  
11 Constitution, the Court has discretion to find that no bond is required, *see Doe v.*  
12 *Pittsylvania County*, 842 F. Supp. 2d 927, 937 (W.D. Va. 2012); *Baca v. Moreno*  
13 *Valley Unified Sch. Dist.*, 936 F. Supp. 719, 738 (C.D. Cal. 1996), or render such  
14 bond only nominal, *Barahona-Gomez v. Reno*, 167 F.3d 1228, 1237 (9th Cir. 1999).  
15 Any bond requirement here should be waived, or nominal.

16 **V. CONCLUSION**

17 “When speech is compelled...individuals are coerced into betraying their  
18 convictions. Forcing free and independent individuals to endorse ideas they find  
19 objectionable is always demeaning.” *Janus*, 138 S. Ct. at 2464. Dr. Espinoza  
20 respectfully requests this Court prevent the State Defendants from continuing the  
21 inherently demeaning violation of his First Amendment rights against compelled  
22 speech by ordering that they simply comply with the repeated failed assurances that



1 the conduct would cease. Specifically, by ceasing to authorize, deduct, and remit any  
2 portion of his lawfully earned wages to UAPD without his affirmative consent.

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4 Dated: December 3, 2021

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