

1 Freedom Foundation  
2 Raymond J. Nhan (SBN 306696)  
3 rnhan@freedomfoundation.com  
4 18002 Irvine Blvd, Suite 108  
5 Tustin, CA 92780  
6 Telephone: (949) 954-8914  
7 Facsimile: (360) 352-8174

8 Locke Lord LLP  
9 Kyle Foltyn-Smith (SBN: 307835)  
10 kyle.foltyn-smith@lockelord.com  
11 300 S. Grand Ave, Suite 2600  
12 Los Angeles, CA 90071  
13 Telephone: (213) 687-6737  
14 Facsimile: (213) 341-6737

15 *Pro Bono* Attorneys for Plaintiff  
16 MARIE DARE

**Locke Lord LLP**  
300 South Grand Avenue, Suite 2600  
Los Angeles, CA 90071

17 **UNITED STATES DISTRICT COURT**  
18 **CENTRAL DISTRICT OF CALIFORNIA**

19 MARIE DARE, an individual,

20 Plaintiff,

21 vs.

22 UNITED DOMESTIC WORKERS  
23 AFSCME Local 3930, a Labor Union;  
24 BETTY T. YEE, in her official capacity  
25 as State Controller,

26 Defendants.

) CASE NO.

) **COMPLAINT FOR**  
) **DECLARATORY RELIEF,**  
) **INJUNCTIVE RELIEF, AND**  
) **DAMAGES UNDER 42 U.S.C.**  
) **§ 1983**

) [Demand for Jury Trial]

**I. INTRODUCTION**

1  
2 1. This case seeks to enforce *Harris v. Quinn*, 134 S.Ct. 2618 (2014), by  
3 validating plaintiff Marie DaRe’s (“Ms. DaRe”) (pronounced “da ray”) First  
4 Amendment right to not be compelled to subsidize a labor union’s speech against her  
5 will. This case is brought under 42 U.S.C. section 1983.

6 2. At its most basic level, this case is about whether a labor union may  
7 mislead workers to get them to surrender their constitutional rights. Plaintiff Marie  
8 DaRe is an In-Home-Supportive-Service (“IHSS”) Provider in Orange County,  
9 California. IHSS Providers contract with the State of California and are paid from  
10 federal and other government funds to provide personal care services to disabled and  
11 elderly individuals (who are often relatives of the caregiver), such as feeding and  
12 bathing, household tasks, and transportation. IHSS Providers in Orange County, like  
13 Ms. DaRe, are represented by United Domestic Workers AFSCME Local 3930  
14 (“UDW 3930”) in collective bargaining. The State of California, via State Controller  
15 Betty Yee, deducts union dues or a fee equivalent to such union fees from IHSS  
16 Providers’ paychecks.

17 3. Ms. DaRe became an IHSS Provider in late 2015 to care for her disabled  
18 brother, who lives with her.

19 4. One day, after she began taking care of her brother, an organizer acting  
20 on behalf of UDW 3930 (“3930 Organizer”) came to Ms. DaRe’s home unsolicited.  
21 The 3930 Organizer used aggressive and misleading tactics to push Ms. DaRe to sign  
22 a UDW 3930 membership card. UDW 3930 maintains that the membership card  
23 locks Ms. DaRe into paying union dues and forfeiting her First Amendment right to  
24 leave UDW 3930 for at least a year. UDW 3930 never told Ms. DaRe that a signed  
25 UDW 3930 membership card purportedly allows the State of California (“State”) to  
26 deduct union dues from her paycheck and remit them to UDW 3930. Instead, the  
27 3930 Organizer, on behalf of UDW 3930, told Ms. DaRe that if she signed the  
28 membership card that she could still leave UDW 3930 at any time. Believing the

1 3930 Organizer's claim, not realizing union dues would be deducted from her  
2 paycheck, and wanting to get back to caring for her brother, Ms. DaRe signed the  
3 membership card.

4 5. After Ms. DaRe signed the card, she noticed that State Controller Yee  
5 was deducting union dues from her paycheck and sending the money to UDW 3930.  
6 Ms. DaRe also began researching UDW 3930. She opposes UDW 3930's political  
7 priorities and was dismayed that her money was subsidizing these activities.  
8 Therefore, Ms. DaRe attempted to take up the 3930 Organizer's promise and leave  
9 UDW 3930.

10 6. After Ms. DaRe advised UDW 3930 that she was resigning from UDW  
11 3930 and objected to the payment of any its dues or fees, the State continued to deduct  
12 union dues from Ms. DaRe's paychecks and forward the deduction to UDW 3930.  
13 UDW 3930 told Ms. DaRe the paycheck deductions would not stop because she had  
14 signed a Union membership card. The State continues to deduct dues from Ms.  
15 DaRe's paycheck, even though she has sent in three letters to UDW 3930 (including  
16 one certified letter) affirmatively resigning membership and objecting to the payment  
17 of any dues or fees, and made approximately 25 phone calls to UDW 3930's offices.  
18 She has repeatedly informed UDW 3930 that its organizer who got her to sign the  
19 membership card told her that she would be free to leave UDW 3930 at any time, even  
20 if she signed the membership card. These attempts have been fruitless. UDW 3930,  
21 via State Controller Yee, continues to deduct dues from Ms. DaRe's paycheck, despite  
22 her oppositions and repeated protests.

23 7. Ms. DaRe brings this suit to stop the State from deducting money from  
24 her paycheck and forwarding it to UDW 3930. Ms. DaRe has a First Amendment  
25 right under *Harris* to be free from paying union dues. She never waived her First  
26 Amendment right here because the 3930 Organizer lied to Ms. DaRe to get her to sign  
27 a UDW 3930 membership card, and shed relied on his untruths. Furthermore, the  
28 UDW 3930 membership card is not a valid contract under California law because the

1 3930 Organizer obtained Ms. DaRe’s signature through fraudulent means.

2 8. Ms. DaRe seeks (1) a declaratory judgment that (a) UDW 3930 and State  
3 Controller Yee are violating the First Amendment, incorporated by the Fourteenth  
4 Amendment, by continuing to deduct dues from her paycheck, despite her open  
5 dissent to paying any union dues, and (b) that UDW 3930 does not have a valid  
6 contract with her that allows it to take her dues because the 3930 Organizer obtained  
7 Ms. DaRe’s signature through fraudulent means; (2) injunctive relief to prohibit State  
8 Controller Yee or other agents of the State of California from taking dues from Ms.  
9 DaRe’s paycheck; (3) damages from UDW 3930 for the money it has illegally  
10 received from Ms. DaRe, plus interest; and (4) attorney’s fees under 42 U.S.C. section  
11 1988 and costs.

12 **II. JURISDICTION AND VENUE**

13 9. This Court has jurisdiction pursuant to 28 U.S.C. section 1331 because  
14 this case arises out of the First and Fourteenth Amendments, and 28 U.S.C. section  
15 1343 because Ms. DaRe is seeking relief under the Federal Civil Rights Act of 1871,  
16 42 U.S.C. section 1983.

17 10. This Court has jurisdiction to provide a declaratory relief under 28 U.S.C.  
18 section 2201.

19 11. This Court has jurisdiction to provide an injunction pursuant to 28 U.S.C.  
20 section 2202 and Rule 65 of the Federal Rules of Civil Procedure.

21 12. This Court has jurisdiction to provide damages under 28 U.S.C. section  
22 2202.

23 13. This Court has supplemental jurisdiction under 28 U.S.C. section 1367  
24 over claims stated in this Complaint that do not arise under federal law, as they are so  
25 related to the federal claims as to form part of the same case or controversy.

26 14. Venue is proper in this judicial district pursuant to 28 U.S.C. section  
27 1391(b)(2) because a substantial part of the events leading to this claim occurred in  
28 Orange County, California.

**Locke Lord LLP**  
300 South Grand Avenue, Suite 2600  
Los Angeles, CA 90071

1 **III. PARTIES**

2 15. Marie DaRe is an IHSS Provider who resides in Garden Grove,  
3 California. She provides care to her disabled brother, helping him with his day-to-day  
4 needs. She is a “partial-public employee” as described in *Harris v. Quinn*, 134 S. Ct.  
5 2618 (2014).

6 16. United Domestic Workers AFSCME Local 3930 (“UDW 3930”) is a  
7 union branch of the United Domestic Workers (“UDW”) labor union and the  
8 exclusive bargaining representative of IHSS Providers in Orange County, California.  
9 Its principal place of business is in San Diego, California and it has a field office in  
10 Santa Ana, California. UDW 3930 negotiated the most recent collective bargaining  
11 agreement (“CBA”) for Orange County IHSS Providers with the Orange County IHSS  
12 Public Authority. (The Orange County IHSS Public Authority does not withhold  
13 union dues from IHSS Providers’ paychecks and is therefore not named in this suit.)  
14 UDW 3930 informs the State of California on the amounts to withhold from its  
15 members’ paychecks and, State Controller Yee withholds such amounts.

16 17. Betty T. Yee (“State Controller Yee”) is the State Controller of California  
17 and is sued in her official capacity. Pursuant to state law and UDW 3930’s collective  
18 bargaining agreement with the Orange County IHSS Public Authority, she collects  
19 union dues from UDW 3930’s members and remits them to UDW 3930. Cal. Welf. &  
20 Inst. Code section 12301.6(i)(2). State Controller Yee is being sued solely for  
21 declaratory and injunctive relief.

22 **IV. FACTUAL ALLEGATIONS**

23 ***IHSS Providers and their Rights Under the First Amendment***

24 18. The IHSS program helps low-income individuals and disabled persons  
25 (known as “consumers” in the IHSS program) stay in their homes rather than move to  
26 a care facility. It does so by paying IHSS Providers to care for consumers in the  
27 consumers’ home.

28 19. IHSS Providers help consumers with personal care, like feeding and

1 bathing, household tasks (e.g., laundry, shopping, and meal preparation),  
2 transportation, protective supervision, and certain paramedical services. The State of  
3 California pays IHSS Providers through a combination of federal, state, and county  
4 funds.

5 20. Each consumer is responsible for hiring, and firing, their IHSS Provider.  
6 Quite often, consumers choose a family member or friend to be their IHSS Provider.  
7 The money paid to IHSS Providers helps them pay for routine bills such as groceries  
8 and other basic living expenses.

9 21. Each county in California is responsible for establishing an IHSS Public  
10 Authority to administer the IHSS program. Each IHSS Public Authority has a  
11 separate collective bargaining agreement with UDW 3930 representing the IHSS  
12 Providers in their area. The Orange County IHSS Public Authority is responsible for  
13 administering most of the IHSS program to IHSS Providers in Orange County, with  
14 the notable exception of withholding union dues from IHSS Providers' paychecks,  
15 which State Controller Yee does.

16 22. The Orange County IHSS Public Authority negotiated a CBA with UDW  
17 3930, which is the bargaining representative of IHSS Providers in Orange County.  
18 That collective bargaining agreement allows UDW 3930 to collect an agency fee from  
19 IHSS Providers.

20 23. It is a long-standing principal that government workers have a First  
21 Amendment right to not join a union as a condition of employment. *Abood v. Detroit*  
22 *Bd. of Educ.*, 431 U.S. 209, 235-36 (1977). But under *Abood*, government employees  
23 could still be forced to pay an agency fee to cover the cost of collective bargaining  
24 activities.

25 24. In 2014, the Supreme Court recognized that the First Amendment  
26 prohibits the government from forcing partial-government workers, such as IHSS  
27 Providers, to pay *any* money, including an agency fee, to a labor union as a condition  
28 of employment. *Harris v. Quinn*, 134 S. Ct. 2618, 2639-40 (2014).

1 ***UDW 3930 Deceives Ms. DaRe Into Unwittingly Joining UDW 3930***

2 25. Ms. DaRe is a registered nurse living in Garden Grove, California.

3 26. In December 2015, Ms. DaRe became an IHSS Provider. As of May  
4 2017, she earns \$10.50 per hour (before UDW 3930 dues are deducted) and works 20  
5 to 25 hours per week.

6 27. On an evening in August 2016, a 3930 Organizer knocked at Ms.  
7 DaRe’s door while she was preparing dinner. Ms. DaRe answered the door,  
8 struggling to keep her dogs inside her home. The 3930 Organizer she found on her  
9 front porch immediately began pressuring her to join UDW 3930. The 3930  
10 Organizer told Ms. DaRe she needed UDW 3930 so that she would have someone to  
11 fight for her.

12 28. Ms. DaRe was skeptical about signing anything from the 3930 Organizer.  
13 She believes that she can fight for herself and does not need UDW 3930’s  
14 representation. To coax Ms. DaRe into signing the UDW 3930 membership card, the  
15 3930 Organizer assured Ms. DaRe that she was free to leave UDW 3930 at any time,  
16 even if she signed the card. The 3930 Organizer never told Ms. DaRe that the terms  
17 of the membership card purport to make dues deductions irrevocable for a full year.

18 29. Because Ms. DaRe wanted the 3930 Organizer to leave her alone and to  
19 quiet her barking dogs and because she had been assured that she could leave UDW  
20 3930 at any time, she signed the UDW 3930 membership card.

21 30. If Ms. DaRe had known that UDW 3930 would take the position that  
22 signing a membership card automatically waives *Harris* rights, she would have not  
23 signed the UDW 3930 membership card.

24 ***Ms. DaRe Fights to Leave UDW 3930, But UDW 3930 Refuses to Let Her Leave***

25 31. Soon after Ms. DaRe signed UDW 3930 membership card, she noticed  
26 that money was being taken out of her paycheck and sent to UDW 3930. As of April  
27 2017, about \$30—or 3.2% of her earnings—is being deducted from her paycheck and  
28 sent to UDW 3930 every month.

1           32. Money has been deducted from her paycheck since she first became an  
2 IHSS Provider. Before Ms. DaRe signed the UDW 3930 membership card, she could  
3 have stopped paying union dues to UDW 3930 at any time.

4           33. After Ms. DaRe signed the UDW 3930 membership card, she began  
5 researching UDW 3930. Ms. DaRe was dismayed to learn of UDW 3930's political  
6 activities, as she disapproves of UDW 3930's stances on issues. She also did not want  
7 her money to go towards causes she disapproves of. Upon learning these things, Ms.  
8 DaRe tried taking up the 3930 Organizer's offer and resigned her Union membership  
9 and objected to paying its monthly dues.

10           34. However, Ms. DaRe's efforts were fruitless. She called UDW 3930's  
11 offices approximately 25 times to get UDW 3930 to instruct the State to stop  
12 deducting dues from her paycheck. But UDW 3930 rarely answered her calls, and  
13 whenever she reached a UDW 3930 employee they spurned her request to end the  
14 deductions and told her she had to pay dues until at least August 2017.

15           35. In these rare instances the UDW 3930 staff spoke to Ms. DaRe, Union  
16 staff have frequently been either dismissive or hostile and unprofessional towards her.  
17 For instance, one UDW 3930 employee told Ms. DaRe that she could not leave UDW  
18 3930 unless she talked with an IHSS supervisor. However, there is no such  
19 requirement that IHSS Providers must speak to a supervisor before exercising the  
20 constitutional right to leave a union or stop paying its dues. On another occasion, a  
21 Union employee was openly hostile towards Ms. DaRe and to pressured her to not  
22 drop her membership.

23           36. Ms. DaRe also sent written correspondence to UDW 3930 numerous  
24 times. She faxed three letters—sent on September 21, 2016, November 8, 2016, and  
25 January 19, 2017—which informed UDW 3930 of her resignation from membership  
26 and objecting to paying dues. In addition to the January 19, 2017 fax, Ms. DaRe sent  
27 UDW 3930 a letter that same day via certified mail affirmatively opting-out of UDW  
28 3930 and demanding that it stop taking dues from her. UDW 3930 has not responded



1 to any of these requests and continues to take dues from Ms. DaRe.

2 37. No one from UDW 3930 has provided Ms. DaRe any meaningful  
3 information about how to opt-out of union membership. UDW 3930 has only told her  
4 that she cannot leave UDW 3930 until August 2017. No one has told her what steps  
5 she needs to take to get UDW 3930 to stop taking dues from her (via State Controller  
6 Yee withholding her dues).

7 **V. CLAIMS FOR RELIEF**

8 **Count 1**

9 ***The State is Violating 42 U.S.C. § 1983 by Deducting Money from Ms. DaRe's***  
10 ***Paycheck and Sending it to UDW 3930***

11 38. Ms. DaRe re-alleges and incorporates by reference each and every  
12 allegation contained in paragraphs 1 through 37 of this complaint.

13 39. The First Amendment, incorporated against the State of California by the  
14 Fourteenth Amendment, protects Ms. DaRe's right of free speech and association.  
15 Specifically, she may not be forced to pay union dues as a condition of employment.

16 40. State Controller Yee is violating 42 U.S.C. section 1983 by deducting  
17 dues from Ms. DaRe's paycheck and remitting the money to UDW. Ms. DaRe has  
18 orally and in writing, resigned from Union membership and objected to paying any  
19 union dues. She did not waive her First Amendment right under *Harris* to be free  
20 from being forced to pay union dues.

21 **Count 2**

22 ***UDW 3930 is Violating 42 U.S.C. § 1983 by Ordering State Controller Yee to***  
23 ***Deduct Money from Ms. DaRe's Paycheck and Sending it to UDW 3930***

24 41. Ms. DaRe re-alleges and incorporates by reference each and every  
25 allegation contained in paragraphs 1 through 37 of this complaint.

26 42. UDW is violating 42 U.S.C. section 1983 by deducting dues from Ms.  
27 DaRe and remitting the money to UDW. Ms. DaRe has resigned both orally and in  
28 writing from UDW 3930 membership and objected to paying its dues. She did not

1 waive her First Amendment right to be free from paying union dues. Ms. DaRe  
2 signed UDW 3930 membership card after being falsely told by the 3930 Organizer  
3 that she could leave UDW 3930 at any time.

4 43. UDW is a state actor because it is using the State of California's  
5 instruments (State Controller Yee's dues deduction system) to collect money from  
6 Ms. DaRe.

7 **Count 3**

8 ***UDW 3930 Does Not Have a Valid Contract with Ms. DaRe Because***  
9 ***Her Signature Was Fraudulently Obtained***

10 44. Ms. DaRe re-alleges and incorporates by reference each and every  
11 allegation contained in paragraphs 1 through 37 of this complaint.

12 45. UDW 3930 is not allowed to cause the deduction of dues from Ms.  
13 DaRe's paycheck because she has resigned from UDW 3930 membership and because  
14 there is no valid contract that permits UDW 3930 to deduct such dues as its agent  
15 fraudulently induced Ms. DaRe to sign a contract (the membership card).

16 46. The 3930 Organizer misrepresented to Ms. DaRe that she would be free  
17 to leave UDW 3930 at any time if she signed the membership card. A reasonable  
18 person, including the 3930 Organizer, would understand this statement to mean that a  
19 person would be free to cease all activities with UDW 3930—including paying dues  
20 to UDW 3930. The 3930 Organizer did not tell Ms. DaRe that signing a Union  
21 membership card would allow UDW 3930 to deduct dues from her paycheck for a full  
22 year with no opportunity to stop the payments.

23 47. The 3930 Organizer, on behalf of UDW 3930, intended to defraud Ms.  
24 DaRe. The 3930 Organizer knew, or should have known, that Ms. DaRe would  
25 understand the promise to mean that at any time Ms. DaRe could end all obligations,  
26 including paying dues, she owed to UDW 3930.

27 48. The 3930 Organizer, on behalf of UDW 3930, misrepresented this fact to  
28 Ms. DaRe to get her to sign the membership card. The 3930 Organizer knew, or

1 should have known, that Ms. DaRe would understand the organizer’s promise to mean  
2 that if she left UDW 3930, it would stop taking dues from her.

3 49. Ms. DaRe was justified in relying on the 3930 Organizer’s representation  
4 that she could leave UDW 3930 at any time, even if she signed the membership card.  
5 Implicit in the understanding that she could leave UDW 3930 at any time, is an  
6 understanding that she would not have to carry out additional responsibilities of Union  
7 membership, namely paying dues to UDW 3930.

8 50. Because of the 3930 Organizer’s misrepresentation, Ms. DaRe has been  
9 harmed by being forced to pay hundreds of dollars in union dues—even against her  
10 demands that UDW 3930 cease deducting dues from her.

11 51. UDW 3930’s conduct in violating Ms. DaRe’s constitutional rights was  
12 done with evil intent, wanton and reckless indifference, or willful and malicious  
13 disregard for Ms. DaRe’s safety, health, or constitutional rights.

14 **VI. PRAYER FOR RELIEF**

15 Wherefore, Ms. DaRe requests this Court enter:

16 1. **A Declaratory Judgment** that UDW 3930 and State Controller Yee have  
17 violated, and continue to violate, 42 U.S.C. section 1983 by infringing on Ms. DaRe’s  
18 First Amendment right, incorporated against the State of California through the  
19 Fourteenth Amendment, by deducting union dues from her paycheck after she has  
20 asserted her rights under *Harris v. Quinn*, and that UDW 3930 does not have a valid  
21 contract (the membership card) with Ms. DaRe because it obtained her signature  
22 through fraudulent means.

23 2. **A Permanent Injunction** prohibiting State Controller Yee, those acting  
24 in concert with her, and UDW 3930 from continuing to deduct dues from Ms. DaRe’s  
25 paycheck.

26 3. **Compensatory Damages** ordering UDW 3930 to repay Ms. DaRe’s dues  
27 with interest, according to proof.

28 4. **Punitive Damages** against UDW 3930 because its conduct in violating

1 Ms. DaRe’s constitutional rights was done with evil intent, wanton and reckless  
2 indifference, or willful and malicious disregard for Ms. DaRe’s safety, health, or  
3 constitutional rights.

- 4 5. **Costs and attorney’s Fees** pursuant to 42 U.S.C. section 1988.
- 5 6. **All Prejudgment and Post Judgment Interest** as allowed by law.
- 6 7. And **any other or further relief** the Court may deem just and proper.

8 Dated: June 29, 2017

Respectfully Submitted,  
LOCKE LORD LLP

By: /s/ Kyle Foltyn-Smith  
Kyle Foltyn-Smith  
*Pro Bono* Attorneys for  
Marie DaRe

**Locke Lord LLP**  
300 South Grand Avenue, Suite 2600  
Los Angeles, CA 90071

**DEMAND FOR JURY TRIAL**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Plaintiff Marie DaRe hereby demands trial by jury in this action.

Dated: June 29, 2017

Respectfully Submitted,  
LOCKE LORD LLP

By: /s/ Kyle Foltyn-Smith  
Kyle Foltyn-Smith  
*Pro Bono* Attorneys for  
Marie DaRe

**Locke Lord LLP**  
300 South Grand Avenue, Suite 2600  
Los Angeles, CA 90071