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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

EUGENE DIVISION

**BONITA ENTWISTLE, MARY
JONGSMA, LYNDA BOYER, CAROLE
GARCIA, FRAN NUNGESSER, RANDI
DOOLAEGE, BONNIE CLARK,
STANLEY KEELER, DUSTIE VENEGAS,
BARBARA PADGETT, SUZANNE
STUART, CRYSTAL EVANS, HEIDI
MORIN, LOIS COURTNEY**, as individuals,
and on behalf of all others similarly situated,

Plaintiffs,

v.

KATE BROWN, in Her Official Capacity as
Governor of the State of Oregon; **CHERYL
MILLER**, in Her Official Capacity as
Executive Director of the Oregon Home Care
Commission; **KATY COBA**, in Her Official
Capacity as Director of the Oregon
Department of Administrative Services;

No.: 6:18-cv-00053-AA

**CLASS ACTION ALLEGATION
COMPLAINT (FIRST AMENDED)**

**(Constitutional Violation Action; Civil
Rights 42 U.S.C. § 1983; Contract)**

DEMAND FOR JURY TRIAL

FARIBORZ PAKSERESHT, in His Official Capacity as Director of the Oregon Department of Human Services; **SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 503, OPEU**, an unincorporated labor organization; **SEIU LOCAL 503, OPEU BUILDING CORPORATION**, an Oregon non-profit corporation; **BRIAN RUDIGER**, in His Individual Capacity as an officer and agent of SEIU, Local 503, OPEU and in His Official Capacity as an officer of SEIU Local 503, OPEU Building Corporation ; **HEATHER CONROY** in Her Official Capacity as an officer of the then-incorporated SEIU Local 503; **STEVE DEMAREST**, in His Individual Capacity as an agent of SEIU, Local 503, OPEU and in His Official Capacity as an officer of SEIU Local 503, OPEU Building Corporation; **MIKE SCOTT**, in His Individual Capacity as an agent of SEIU, Local 503, OPEU and in His Official Capacity as an officer of SEIU Local 503, OPEU Building Corporation; **MARY STEWART**, in Her Individual Capacity as an agent of SEIU, Local 503, OPEU and in Her Official Capacity as an officer of SEIU Local 503, OPEU Building Corporation; **ROB SISK**, in His Individual Capacity as an agent of SEIU, Local 503, OPEU and in His Official Capacity as an officer of SEIU Local 503, OPEU Building Corporation.

Defendants.

PRELIMINARY STATEMENT

1.

This case seeks to validate Plaintiffs' First Amendment right not to subsidize speech or be forced to associate with private groups against their will. This case is brought under 42 U.S.C. § 1983. This case further seeks to remedy breaches of contract by SEIU 503, OPEU Building Corporation and the Officers of these organizations.

JURISDICTION AND VENUE

2.

This Court has jurisdiction over this case pursuant to 28 U.S.C. § 1331 because it arises under the First and Fourteenth Amendments to the United States Constitution, 28 U.S.C. § 1343, and because Plaintiffs seek relief under the Civil Rights Act of 1871, 42 U.S.C. § 1983 and § 1988.

3.

Pursuant to Rule 65 of the Federal Rules of Civil Procedure, this Court has authority under 28 U.S.C. §§ 2201 and 2202 to grant declaratory relief and other relief for Plaintiffs, including preliminary and permanent injunctive relief.

4.

Venue is proper in this Court because the Defendants do business and operate in this district. 28 U.S.C. § 1391(b). Intradistrict assignment to the Eugene Division is proper under Local Rule 3-2 as Defendants do business in Marion County.

PARTIES

5.

Plaintiffs Bonita Entwistle, Mary Jongsma, Bonnie Clark, and Lois Courtney are homecare workers who provides their services in Multnomah County, Oregon and receive homecare payments from the Oregon Department of Human Services (“DHS”).

6.

Plaintiffs Lynda Boyer and Heidi Morin are homecare workers who provides their services in Washington County, Oregon and receive homecare payments from DHS.

7.

Plaintiffs Carole Garcia, Randi Doolaege, and Suzanne Stuart are homecare workers who provides their services in Josephine County, Oregon and receive homecare payments from DHS.

8.

Plaintiffs Fran Nungesser, Crystal Evans, and Dustie Venegas are homecare workers who provide their services in Jackson County, Oregon and receive homecare payments from DHS.

9.

Plaintiff Stanley Keeler is a homecare worker who provides his services in Douglas County, Oregon and receives homecare payments from DHS.

10.

Plaintiff Barbara Padgett is a homecare worker who provides her services in Klamath County, Oregon and receives homecare payments from DHS

11.

Defendant Kate Brown (“Defendant Brown”) is sued in her official capacity as the Governor of Oregon. As governor, Defendant Brown is Oregon’s Chief Executive, *see* Or Const., Art V, § 1, and “shall take care that the Laws be faithfully executed.” *Id.* at § 10. Because the Oregon Department of Administrative Services (“DAS”) is subsumed within the Executive Branch of Oregon, the Governor bears ultimate responsibility for the state actions entered into by DAS.

12.

Defendant Cheryl Miller is the Executive Director of the Oregon Home Care Commission (“HCC” or “Commission”) and is sued in her official capacity. Pursuant to Article XV, section 11(3)(f), of the Oregon Constitution, the HCC is the “employer of record” of homecare workers, “[f]or purposes of collective bargaining.” Also, the HCC is the employer of record for personal

support workers. As such, upon information and belief, Miller and HCC are charged with the responsibility of processing demands for union dues and/or fee deductions to cease.

13.

Defendant Katy Coba is the Chief Operating Officer and Director of DAS and is sued in her official capacity. DAS represents the State of Oregon, including the HCC, in collective bargaining negotiations with Defendant SEIU 503. Upon information and belief, she and DAS are charged with ceasing union dues and/or fee deductions when a demand is made for deductions to cease.

14.

Defendant Fariborz Pakseresht is the Director of DHS and is sued in his official capacity. Upon information and belief, DHS or an agent of DHS actually performs the dues and/or fee deductions from Plaintiffs' wages and remits that money to SEIU Local 503.

15.

Defendant Service Employees International Union, Local 503, OPEU ("SEIU 503") is an unincorporated labor union conducting business and operations throughout the State of Oregon with its headquarters located in this judicial district at 1730 Commercial St. SE, Salem, OR 97302. SEIU 503 is the exclusive bargaining representative of homecare workers and personal support workers, including Plaintiffs.

16.

Defendant SEIU 503, OPEU Building Corporation ("Building Corporation") is a non-profit corporation, incorporated in Oregon, conducting business and operations throughout the State of Oregon with its headquarters located in this judicial district at 1730 Commercial St. SE,

Salem, OR 97302. The Building Corporation is a successor in interest to the previous SEIU 503 non-profit corporation, which unincorporated on April 18, 2017.

17.

Defendant Brian Rudiger is the Executive Director of SEIU 503 and Building Corporation. As a member of the board of directors for the unincorporated labor union, Defendant Rudiger is sued in his individual capacity. As an officer of the Building Corporation, he is sued in his official capacity.

18.

Defendant Heather Conroy was the Executive Director of SEIU 503 in 2014. As a member of the board of directors of the then-incorporated union, Defendant Conroy is sued in her official capacity.

19.

Defendant Steve Demarest is the President of SEIU 503 and Building Corporation. As a member of the board of directors for the unincorporated labor union, Defendant Demarest is sued in his individual capacity. As an officer of the Building Corporation, he is sued in his official capacity.

20.

Defendant Mike Scott is the Vice President of SEIU 503 and Building Corporation. As a member of the board of directors for the unincorporated labor union, Defendant Scott is sued in his individual capacity. As an officer of the Building Corporation, he is sued in his official capacity.

21.

Defendant Mary Stewart is the Secretary-Treasurer of SEIU 503 and Building Corporation. As a member of the board of directors for the unincorporated labor union, Defendant Stewart is sued in her individual capacity. As an officer of the Building Corporation, she is sued in her official capacity.

22.

Defendant Rob Sisk is the Immediate Past President of SEIU 503 and Building Corporation. As a member of the board of directors for the unincorporated labor union, Defendant Rudiger is sued in his individual capacity. As an officer of the Building Corporation, he is sued in his official capacity.

CLASS ALLEGATIONS

23.

The class meets the prerequisites of FRCP 23(a)(1) because the class includes in excess of 500 individuals and joinder of all members in this action is impracticable.

24.

The class meets the prerequisites of FRCP 23(a)(2) because all members of the class are individual care providers who have attempted to opt-out of union SEIU 503 and whose opt-out request was not processed by SEIU 503.

25.

The class meets the prerequisites of FRCP 23(a)(3)-(4), because as set forth herein, the claims of the named parties are typical of the claims of the class and the representative parties will fairly and accurately protect the interests of the class and have no interests antagonist to the class. Moreover, the plaintiffs and the class are being represented on a pro bono basis by attorneys

experienced in constitutional law, labor law and litigation.

26.

A class action is warranted under FRCP 23(b)(1) because adjudication with respect to individual class members poses a substantial risk of establishing incompatible standards of conduct for the opposing parties and adjudications with respect to individual class members, as a practical matter, would be dispositive of the interests of other members not parties to the individual adjudications due to the similar facts and circumstances and the legal issues common to each members' claims.

27.

A class action is warranted under FRCP 23(b)(2) because the named defendants have acted or failed to act on grounds that apply to each of the class members, so that final injunctive or declaratory relief is appropriate on a class-wide basis.

28.

The questions of law and fact common to class members predominate over any questions pertaining to individual members. Specifically, the class members' all assert the same legal claims arising from an ongoing pattern of practice by defendants to circumvent the holding of *Harris v. Quinn, infra.*, and seize union fees from nonmembers without their consent, as set forth in detail herein.

29.

A class action is also superior to other methods of adjudicating the individual claims because it will result in the most efficient resolution to the issues presented, resulting in less burden on the court's time and resources, and the amount in controversy for each individual claim would make it impractical for individual members to maintain separate legal actions.

STATEMENT OF FACTS:

The Constitutional Rights at Issue

30.

In *Harris v. Quinn*, the Supreme Court recognized that the First Amendment prohibits states from forcing partial-public employees to financially support a union at all. *Harris v. Quinn*, 134 S. Ct. 2618, 2644 (2014). To evade *Harris*' holding, affected unions rapidly implemented comprehensive schemes to continue in practice what the Court prohibited in principle: seizing union fees from nonmembers without their consent.

31.

In Oregon, SEIU 503 also made changes to prevent workers from exercising their newly recognized rights. Specifically, SEIU 503 created opt-out "windows," limiting the periods of time in which workers could cease dues deduction. This was done through modification of the Collective Bargaining Agreement ("CBA") and through changes to the terms and conditions of SEIU 503's membership applications.

32.

All Plaintiffs have submitted written notices to SEIU 503 and HCC of their wish to cease from paying union dues to both HCC and SEIU 503.

33.

All Plaintiffs have been forced to continue paying union dues that are spent on political speech.

Relationship Between Homecare Workers, SEIU 503 and the State

34.

HCWs, including Plaintiffs, provide care for individuals who receive government funded in-home services. These HCWs help elderly and disabled government benefit recipients with personal care, activities of daily living, household tasks, and being active. The HCWs provide an alternative to institutionalized care that is invaluable to their “clients,” often family members or friends who would otherwise have to leave their homes. Public funds compensate HCWs for providing these services.

35.

HCWs are employees of the clients they care for; however, they have been deemed “public employees” for the purpose of collective bargaining. Defendant SEIU 503 is the exclusive bargaining representative for HCWs.

36.

Between December 15, 2013 and July 9, 2016, Plaintiffs Entwistle, Jongsma, Boyer, Garcia, Nungesser, Doolaege, Clark, Keeler, Venegas, Padgett, Stuart, and Courtney signed SEIU 503 membership applications that authorized their “employer” to deduct union membership dues and disburse those dues to Defendant SEIU 503. The membership applications stated,

This authorization is irrevocable for a period of one year from the date of execution and from year to year thereafter unless not less than thirty (30) and not more than forty-five (45) days prior to the end of any annual period . . . I notify the Union and my employer in writing, with my valid signature, of my desire to revoke this authorization.

37.

Between 2006 and 2012, Plaintiffs Evans, and Morin signed SEIU 503 membership applications that authorized their “employer” to deduct union membership dues and disburse those dues to Defendant SEIU 503. The membership applications stated,

I request my employer to deduct from my salary, wages, or other sums due me by virtue of my employment, the amount of my dues for membership in SEIU Local 503, OPEU as provided in its Bylaws, and disburse same to SEIU Local 503, OPEU, unless notified by me in accordance with any union security agreement in effect.

38.

The membership applications of Plaintiffs Entwistle, Jongsma, Boyer, Garcia, Nungesser, Doolaege, Clark, Keeler, Venegas, Padgett, and Stuart as stated above gave them a fifteen-day annual window based upon the date they signed the application within which as HCWs or Providers they may exercise their right to revoke their dues deduction authorizations. As such, the fifteen-day annual window varies depending upon their respective signing dates. Until recently, the above-referenced plaintiffs did not know when their fifteen-day windows were, because they did not know or remember the date they signed their membership applications. Upon signing, Defendant SEIU 503 did not provide copies of the executed membership applications to the above-referenced plaintiffs.

39.

Upon information and belief, in September 2014, Defendants DAS, HCC, and SEIU 503 modified the CBA with the intent, mutual plan, and objective to make it more difficult for HCWs to exercise their *Harris* rights to withhold all financial support from a union.

40.

The modified CBA deleted Section 9 (“Fair Share” Requirement) presumably because *Harris* made such union security provisions unconstitutional. However, pursuant to Defendants’ scheme to make it difficult for HCWs to exercise their constitutional right to not subsidize the union, Defendants modified Section 8 (Dues Deductions) of the CBA.

41.

Prior to the September 2014 modification of the CBA, when Plaintiffs listed in ¶ 31 signed their membership applications, Section 8 of the CBA did not impose any significant restrictions on the right to revoke dues deduction authorizations, but simply held that “Dues deduction shall continue until such time that the HCW/PSW requests cancellation of the dues deduction in writing.”

42.

The September 2014 modification rewrote almost all of Section 8 of the CBA. The blackline edits in the agreement are as follows: underlines are added text and ~~strikethroughs~~ are deleted text.

Section 8. Dues Deduction.

a) Upon written, electronic or recorded telephonic message request-authorization from the HCW/PSW, monthly Union dues and/or other authorized deductions plus any additional voluntary Union deductions shall be deducted from the HCW’s/PSW’s salary and remitted to the Union. Additionally, upon written notice from the Union, authorized increases in dues in the form of special assessments shall be deducted from the HCW’s/PSW’s salary and remitted to the Union according to this Section. Such notice shall include the amount and duration of the

authorized special assessment(s). ~~Monthly Union dues will cease, upon written notice from the HCW/PSW.~~ All written applications for Union membership and/or authorizations for dues and/or other deductions ~~or dues cancellation~~, which the Employer receives, shall be promptly forwarded to the Union. The Union shall provide to the Employer an electronic file listing all HCW/PSWs who had authorized dues and/or other deductions. ~~HCW/PSW applications for Union membership or dues cancellation, which the Union receives, shall be promptly forwarded to the Employer.~~ The Union will maintain the written, electronic or recorded telephonic message authorization records and will provide copies to the Employer upon request of the Employer.

b) ~~Dues deduction shall continue until such time that the HCW/PSW requests cancellation of the dues deduction in writing.~~

Dues deduction authorizations submitted in writing, electronically or recorded telephonic messages that contain the following provision will cease only upon compliance by the HCW/PSW with the stated conditions as follow:

This authorization is irrevocable for a period of one year from the date of execution and from year to year thereafter unless not less than thirty (30) and not more than forty-five (45) days prior to the end of any annual period or the termination of the contract between my employer and the Union, whichever occurs first, I notify the Union and my employer in writing, with my valid signature, of my desire to revoke this authorization.

43.

After the September 2014 modification, SEIU 503 may easily procure binding dues deduction authorizations from HCWs, either in writing, by email, or by voice message. In stark contrast, HCWs who wish to cancel dues deductions (their First Amendment right) are required to (1) request cancellation in writing; (2) sign the cancellation request; (3) submit the cancellation request within an annual 15-day window that is different for every HCW (and which is unknown to many HCWs); and (4) submit the written request to both the employer and the union.

44.

Thus, three months after *Harris* declared compulsory union fee agreements for partial-public employees like HCWs unconstitutional, Defendants took steps to undercut, interfere with, and impinge upon those rights, preventing HCWs, including Plaintiffs, from exercising their constitutional right to choose whether or not to support a union.

45.

Upon information and belief, the September 2014 modification was never ratified nor properly added to the then-effective CBA; nonetheless, Defendants acted pursuant to and enforced it against HCWs, including Plaintiffs referenced in ¶¶ 31-32.

Attempts to Exercise *Harris* Rights by Plaintiffs whose Signed Membership Applications

Not Containing 15-Day Opt-Out Windows

46.

On or about April 19, 2017, Plaintiff Evans submitted a signed request to Defendant SEIU 503 (Mr. Rudiger) to cancel her union membership and to cancel her authorization to deduct dues. She does not want to be a union member and does not want to financially support the union because the dues deductions are a financial burden on her.

47.

On or about March 22, 2016, Plaintiff Morin submitted a signed request to Defendant SEIU 503 (Ms. Conroy) to cancel her union membership and to cancel her authorization to deduct dues. She does not want to be a union member and does not want to financially support the union because she cannot afford the dues deductions and believes they are not necessary to provide care for her mother.

48.

Plaintiffs Evans and Morin signed dues deduction authorizations that did not contain terms and conditions restricting their ability to opt out to a 15-day window. All three of the above plaintiffs have submitted signed opt-out requests. In fact, Plaintiff Morin has submitted signed notices every two weeks for over a year, ensuring that even if her notice was governed by a 15 day opt-out window, it would be received by SEIU 503 within the appropriate time frame.

49.

Defendants did not stop deducting dues when asked to do so.

Attempts to Exercise *Harris* Rights by Plaintiffs whose Signed Membership Applications Contained 15-Day Opt-Out Windows

50.

On or about March 15, 2016, and again on or about February 24, 2017, Plaintiff Entwistle submitted a signed request to Defendant SEIU 503 (Ms. Conroy) to cancel her union membership and to cancel her authorization to deduct dues. She does not want to be a union member and does not want to financially support the union.

51.

On or about October 28, 2016, Plaintiff Jongsma submitted a signed request to Defendant SEIU 503 (Ms. Conroy) to cancel her union membership and to cancel her authorization to deduct dues. She does not want to be a union member and does not want to financially support the union because she disagrees with the union's political positions.

52.

On or about April 20, 2016, Plaintiff Boyer submitted a signed request to Defendant SEIU 503 (Ms. Conroy) to cancel her union membership and to cancel her authorization to deduct dues. She does not want to be a union member and does not want to financially support the union because she cannot afford the dues deductions and disagrees with how the union spends her money.

53.

On or about May 30, 2017, Plaintiff Garcia submitted a signed request to Defendant SEIU 503 (Mr. Rudiger) to cancel her union membership and to cancel her authorization to deduct dues. She does not want to be a union member and does not want to financially support the union.

54.

On or about February 28, 2017, Plaintiff Nungesser submitted a signed request to Defendant SEIU 503 (Mr. Rudiger) to cancel her union membership and to cancel her authorization to deduct dues. She does not want to be a union member and does not want the union to take her money.

55.

On or about February 27, 2016, and again on or about May 10, 2017, Plaintiff Doolaege submitted a signed request to Defendant SEIU 503 (Ms. Conroy or Mr. Rudiger) to cancel her union membership and to cancel her authorization to deduct dues. She does not want to be a union

member and does not want to financially support the union.

56.

On or about April 29, 2016, Plaintiff Clark submitted a signed request to Defendant SEIU 503 (Ms. Conroy) to cancel her union membership and to cancel her authorization to deduct dues. She does not want to be a union member and does not want to financially support the union because she believes it is unfair for the union to keep taking her money against her will.

57.

On or about October 9, 2015, Plaintiff Keeler submitted a signed request to Defendant SEIU 503 (Ms. Conroy) to cancel his union membership and to cancel his authorization to deduct dues. He does not want to be a union member and does not want to financially support the union because he believes the dues deductions are not necessary to provide care for his son.

58.

On or about March 31, 2017, Plaintiff Venegas submitted a signed request to Defendant SEIU 503 (Mr. Rudiger) to cancel her union membership and to cancel her authorization to deduct dues. She does not want to be a union member and does not want to financially support the union because she disagrees with how the union spends her money.

59.

On or about March 1, 2016, and again on or about May 10, 2017, Plaintiff Padgett submitted a signed request to Defendant SEIU 503 (Ms. Conroy or Mr. Rudiger) to cancel her union membership and to cancel her authorization to deduct dues. She does not want to be a union member and does not want to financially support the union.

60.

On or about March 1, 2016, Plaintiff Stuart submitted a signed request to Defendant SEIU

503 (Ms. Conroy) to cancel her union membership and to cancel her authorization to deduct dues. She does not want to be a union member and does not want to financially support the union because the union has not been responsive to her concerns and she does not feel the union deserves to take her money.

61.

On or about May 14, 2017, Plaintiff Courtney submitted a signed request to Defendant SEIU 503 (Mr. Rudiger) to cancel her union membership and to cancel her authorization to deduct dues. She does not want to be a union member and does not want to financially support the union.

62.

Upon information and belief, Plaintiffs Entwistle, Jongsma, Boyer, Garcia, Nungesser, Doolaege, Clark, Keeler, Venegas, Padgett, Stuart, and Courtney discovered when their fifteen-day opt-out windows are and their cancellation forms were submitted by mail and e-mail during their opt-out windows to both SEIU 503 and Plaintiffs' employer, HCC. The Plaintiffs listed above lawfully complied with all revocation restrictions contained in their membership applications' terms and conditions. Yet, Defendants failed to honor their revocations and continue to deduct dues from their payments.

63.

Defendants did not stop deducting dues when asked to do so.

Defendants' Failure to Cease Deductions Has Resulted in Ongoing Harm to Plaintiffs

64.

Defendants have forced and are continuing to force Plaintiffs to subsidize the speech and activities of Defendant SEIU 503 and Defendants continue to divert Plaintiffs' wages to SEIU 503 against their will. Defendants have attempted to force Plaintiffs to waive or otherwise relinquish

their constitutional rights.

65.

Defendant SEIU 503 repeatedly refused to process authorization cancellation forms from HCWs and Providers for various improper reasons. Upon information and belief, SEIU 503 wrote to Plaintiffs Entwistle, Jongsma, Boyer, Garcia, Nungesser, Doolaege, Morin, and Courtney after receiving their signed opt-out notices and stated it was refusing to process their forms because the forms did not contain original signatures.

66.

Defendants continue to automatically assess union dues deductions from Plaintiffs' wages. Defendant SEIU 503 received Plaintiffs' repeated and timely requests to cease dues deductions, but has persisted in classifying Plaintiffs as members or dues-equivalent fee payors. Defendant SEIU 503's refusals illustrate that Defendant SEIU 503 acted with evil motive or reckless indifference to the constitutional rights of Plaintiffs so it could continue to receive their money.

67.

Defendants have refused to honor Plaintiffs' repeated requests to cease dues deductions, and they continue to deduct and accept fees from Plaintiffs' paychecks in violation of their constitutional rights. Defendants' refusal has caused Plaintiffs frustration and distress, and has resulted in economic and emotional injury.

68.

Defendants SEIU 503 and its officers acted under color of state law for several reasons including, but not limited to:

- a. The State of Oregon deducted union dues and/or fees from Plaintiffs' wages at Defendant SEIU 503's direction and remitted those amounts to Defendant SEIU

503, which deprived Plaintiffs of their First Amendment right under *Harris* to not subsidize Defendant SEIU 503;

- b. Defendant SEIU 503 executed a modified collective bargaining agreement in September 2014 with Defendants DAS and HCC in order to circumvent the effect of *Harris* and deprive Plaintiffs of their First Amendment right to not subsidize Defendant SEIU 503; and
- c. The State Defendants have delegated to SEIU 503, pursuant to the CBA, sole discretion and authority to decide whether HCWs' revocation requests will be honored and dues deductions will cease;
- d. Upon information and belief, Defendant SEIU 503 has otherwise planned, agreed and formed a joint enterprise in relation to the terms, process, payment, management, and negotiations for HCWs with respect to the symbiotic relationship between SEIU 503 and the State.

FIRST CLAIM FOR RELIEF

42 U.S.C. § 1983 - Violation of First Amendment

(Against State Defendants)

69.

Plaintiffs re-allege and incorporate by reference all paragraphs set forth above.

70.

Pursuant to the Fourteenth Amendment to the United States Constitution, Plaintiffs and are entitled to the First Amendment right of free speech and free association. As decided by the United States Supreme Court in *Harris v. Quinn*, this right of free speech includes the right of Plaintiffs to entirely withhold financial support from SEIU 503.

71.

Plaintiffs' First Amendment right to not subsidize the union has been violated by all State Defendants, who continue to deduct union dues and give those dues to Defendant SEIU 503 after receiving written notice, numerous times, of Plaintiffs' requests to cease dues deductions.

72.

An actual controversy exists between the parties of sufficient immediacy and reality to warrant issuance of a declaratory judgment and to permanently enjoin Defendants from refusing to cease collecting union dues, dues-equivalent fees, or any other form of union deductions from persons who have requested termination of those deductions. Plaintiffs request a declaration that it is unconstitutional to hinder and constrain their rights in the manner alleged herein. Plaintiffs are entitled to costs, disbursements and reasonable attorney fees pursuant to 42 U.S.C. § 1988.

SECOND CLAIM FOR RELIEF

42 U.S.C. § 1983 – Violation of First Amendment

(Against Defendant SEIU Local 503, OPEU)

73.

Plaintiffs re-allege and incorporate by reference all paragraphs set forth above.

74.

Defendant SEIU 503 has planned, executed an agreement, induced, directed and worked in concert with the State Defendants to deprive Plaintiffs of their First Amendment rights to refrain from subsidizing Defendant SEIU 503 and from their rights to know they are not required to subsidize Defendant SEIU 503 and to actually cease subsidizing SEIU 503. Defendant SEIU 503 has directly benefited financially by depriving Plaintiffs of their constitutional rights as defined in *Harris*.

75.

Plaintiffs are entitled to declaratory relief, permanent injunctive relief and compensatory damages against Defendant SEIU 503 in an amount to be proven at trial, but not less than the amounts Defendant SEIU 503 has deducted, diverted, or caused to be deducted from Plaintiffs' pay in violation of Plaintiffs' rights to cease supporting a private organization at any time. Plaintiffs are entitled to costs, disbursements and attorney fees under 42 U.S.C. § 1988 for vindicating their constitutional rights.

THIRD CLAIM FOR RELIEF

Breach of Contract

(Against Defendants SEIU 503, Building Corporation, and SEIU 503 Officers)

76.

Plaintiffs re-allege and incorporate by reference all paragraphs set forth above.

77.

Plaintiffs executed membership applications that constituted contracts between themselves and SEIU 503.

78.

Plaintiffs performed their obligations under said contract.

79.

In failing to acknowledge Plaintiffs' notices to cease dues deductions in conformity with the terms and conditions of Plaintiffs' membership applications, SEIU 503 and its officers breached those contracts.

80.

SEIU 503 and its officers caused damage to the Plaintiffs in the form of lost income.

81.

Plaintiffs are entitled to declaratory relief, permanent injunctive relief and compensatory damages against Defendant SEIU 503 in an amount to be proven at trial, but not less than the amounts Defendant SEIU 503 has deducted, diverted, or caused to be deducted from Plaintiffs' pay in violation of Plaintiffs' rights to cease supporting a private organization at any time. Plaintiffs are entitled to costs and attorney fees.

82.

On December 15, 2017, Plaintiffs sent a demand pursuant to ORS 20.082 for payment and refund of said wrongful deductions. This Complaint is filed more than 20 days after the service of the demands.

REQUESTED RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

A. On Plaintiffs' First and Second Claims for Relief:

1. A declaratory judgment that all Defendants, from the first date Plaintiffs notified Defendants of their desire to de-authorize union dues deductions, have violated the First Amendment and 42 U.S.C. § 1983 by continuing to deduct union dues or fees from Plaintiffs' wages;
2. A declaratory judgment that Plaintiffs' de-authorization notices are valid;
3. A permanent injunction enjoining all Defendants from refusing to process Plaintiffs' requests to de-authorize union dues deductions;
4. An award of compensatory and punitive damages in an amount to be determined at trial;

5. An award of costs, disbursements, and reasonable attorney fees pursuant to 42 U.S.C. § 1988.

6. Any and all other relief the Court deems just and proper.

B. On Plaintiffs' Third Claim for Relief:

1. An award of compensatory and punitive damages in an amount to be determined at trial against Defendant SEIU 503 and its officers under Plaintiffs' Third Claim for Relief;

2. An award of costs, disbursements, and reasonable attorney fees pursuant to ORS 20.082.

3. Any and all other relief the Court deems just and proper.

Dated: April 2, 2018.

s/Tyler Smith
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