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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SACRAMENTO

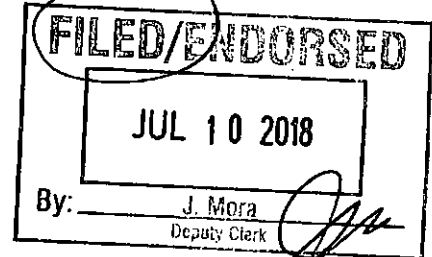
12 JEFF LYON; and
13 KAREN SANDBERG, as individuals, on their
14 own behalf and on behalf of all others
15 similarly situated,

16 Plaintiffs,

17 vs.

18 UNION OF CALIFORNIA STATE
19 WORKERS dba SEIU LOCAL 1000, a
20 California nonprofit corporation;
21 SERVICE EMPLOYEES INTERNATIONAL
22 UNION;
23 and DOES 1-20, inclusive,

24 Defendants.



Case No.

34-2018-00236695

CLASS ACTION

**CLASS ACTION COMPLAINT FOR
UNFAIR COMPETITION,
CONVERSION, TRESPASS TO
CHATELS, UNJUST ENRICHMENT,
AND MONEY HAD AND RECEIVED**

Trial Date: None Set

Plaintiffs Jeff Lyon and Karen Sandberg (collectively, "Plaintiffs") bring this action against defendants Union Of California State Workers dba SEIU LOCAL 1000 ("Local 1000") and Service Employees International Union ("SEIU") on behalf of themselves and all others similarly situated. Plaintiffs allege as follows:

INTRODUCTION

1. In 1977, the United States Supreme Court held that a public sector union may, with the full cooperation of its government employer whose shop the union has organized, take fees from every employee in the shop, including those who have chosen not to belong to the union. Since that date, state and local governments in states permitting such exactions have been able to take money from their employees' pay checks every period and pay to the union an involuntary political contribution, a kind of utterly repugnant forced speech in support of the union and its activities, from employees who conscientiously and strenuously object to them.

2. The premise of these exactions is that the union is providing services to the employees, such as collective bargaining and handling grievances, and the employee should therefore be required to pay for the services.

3. Employees who declined to join the union have as a result been assessed an “agency fee,” which amounts to a percentage of the union dues that excludes that portion of the dues – known as “nonchargeable” expenditures – that is used to fund a union’s political or ideological projects. However, a significant portion of what the union leaders deem to be “chargeable” are typically expenses for union activities opposed by assessed non-union employees.

4. So it has proven impossible to distinguish between chargeable and nonchargeable expenditures. Consequently, in 2018, the Court held quite consistently that even agency fees amount to forced speech, a plain, gross violation of the First Amendment to the United States Constitution.

5. California is one of the states that offers government worker unions an invitation to have government extract agency fees from its employees. In short, California law encourages

1 unions to require their state and local government employers to take and remit to the union a
2 payroll deduction for all employees in positions for which the union is the exclusive bargaining
3 representative. The result: California public sector union members pay union dues, while the
4 State's public sector non-member employees pay agency fees.¹

5 6. As the Supreme Court held in June 2018: "It is hard to estimate how many billions
6 of dollars have been taken from nonmembers and transferred to public-sector unions in violation
7 of the First Amendment. Those unconstitutional exactions cannot be allowed to continue
8 indefinitely." (*Janus v. American Fed'n of State, County, and Mun. Employees, Council 31*
9 (2018) 585 U.S. ___, ___ (slip op., at 47).)

10 7. Millions, if not billions, of dollars have been exacted from nonmembers in
11 California alone. Through this action, Plaintiffs and those similarly situated seek to recover those
12 fees that should never have been taken from them in the first place.

13 PARTIES AND VENUE

14 8. Plaintiff Jeff Lyon is an individual residing in Yolo County, California.

15 9. Plaintiff Karen Sandberg is an individual residing in Sacramento County,
16 California.

17 10. Defendant Local 1000 is a labor union and a California nonprofit corporation
18 affiliated with the SEIU. Local 1000's principal place of business is 1808 14th Street,
19 Sacramento, California, in Sacramento County.

20 11. Defendant SEIU is a labor union affiliated with Local 1000. SEIU's principal
21 place of business is 1800 Massachusetts Avenue NW, Washington, DC. SEIU transacts a
22 substantial amount of business in California.

23 12. The true names and capacities – whether individual, corporate, associate, or
24 otherwise – of the defendants named herein as DOES 1 through 20 are unknown to Plaintiffs, who
25 therefore sues said defendants by such fictitious names. Plaintiffs will amend this complaint to
26 show their true names, involvement and capacities when those names have been ascertained.

27 ¹ In some cases, employees with religious objections are permitted to direct the payroll
28 deduction to an approved charity rather than to the union.

1 Plaintiffs are informed and believe and on that basis allege that each of the defendants named
2 herein as DOE was in some manner responsible for the injuries and losses suffered by Plaintiffs.
3 (Local 1000, SEIU and the DOE defendants are referred to herein collectively as "Defendants.")

4 13. At all times mentioned herein, each of the Defendants was the actual and apparent
5 agent, servant, and employee of each of the remaining Defendants and in doing the things
6 hereinafter alleged was acting within the course and scope of his or her actual or apparent agency
7 or employment and with the knowledge, notification, consent, and subsequent ratification of each
8 of the other Defendants.

9 14. Plaintiffs bring this class action against Defendants, pursuant to Code of Civil
10 Procedure section 382, on behalf of themselves and all persons in California from whom
11 Defendants received "agency fees" or "fair share service fees," i.e. all persons who were not a
12 member of the Defendant unions but were and are forced without their consent to pay fees and did
13 pay such fees to such unions in order to retain their jobs as public employees in the State of
14 California at all times preceding the filing of this Complaint and until said practice is terminated
15 (the "Class").

16 15. Venue is proper in this judicial district because Defendant Local 1000 resides in
17 this district and because the unlawful exaction of fees from Mr. Lyon and Ms. Sandberg took place
18 in this district.

19 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

20 16. On June 27, 2018, in *Janus v. American Fed'n of State, County, and Mun.*
21 *Employees, Council 31* (2018) 585 U.S. ___, the United States Supreme Court overruled *Abood v.*
22 *Detroit Bd. of Educ.* (1977) 431 U.S. 209 (public employee union may compel non-member to pay
23 agency fees for collective bargaining and other activities) and held that such agency fees violate
24 the First Amendment.

25 17. None of the Plaintiffs is a member of Local 1000 or SEIU.
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27
28

1 18. Mr. Lyon has worked in various positions -- from Associate Real Estate Officer
2 through Section Chief -- for the California Department of General Services ("DGS") in
3 Sacramento and West Sacramento from July 2001 until his retirement in December 2014.

4 19. Although Mr. Lyon was and is not a member of any of the Defendant unions, Mr.
5 Lyon was required, as a condition of continued employment until approximately 2011 (when he
6 was promoted to a management position and no longer required to pay agency fees), to pay an
7 agency fee of approximately \$40 per month through a payroll deduction since he started working
8 for DGS. Mr. Lyon never consented to paying such agency fees. The agency fee was remitted to
9 one or more of the Defendant unions.

10 20. Ms. Sandberg held various positions and job titles in Sacramento with the State of
11 California from September 1989 until December 31, 2015, the most recent being Associate Tax
12 Auditor from August 2004 through June or July 2006 and Program Specialist I thereafter through
13 December 31, 2015.

14 21. Although Ms. Sandberg was and is not a member of any of the Defendant unions,
15 Ms. Sandberg was required, as a condition of continued employment, to pay an agency fee of
16 approximately \$90 per month through a payroll deduction since she started working for the State.
17 Ms. Sandberg never consented to paying such agency fees. The agency fee was remitted to one or
18 more of the Defendant unions.

19 22. By this action, Plaintiffs seek restitution of all involuntarily paid agency fees from
20 the Defendant unions, with interest, for themselves and for all others similarly situated.

21 **CLASS ACTION ALLEGATIONS**

22 23. This lawsuit is brought on behalf of the ascertainable statewide Class defined
23 above.

24 24. This action has been brought and may properly be maintained as a class action
25 pursuant to Code of Civil Procedure section 382 and the case law construing that statute.

26 25. The members of the Class are so numerous that joinder of all members is
27 impracticable. While the exact number of Class members is unknown to Plaintiffs at this time,
28

1 such information can be ascertained through appropriate discovery which seeks records such as
2 payroll deductions for agency fees. The members of the Class may also be notified of the
3 pendency of this action by public notice, mailed notice, or e-mailed notice.

4 26. There is a well-defined community of interest in the questions of law and fact
5 affecting the parties represented in this action.

6 27. Common questions of law and fact exist as to all members of the Class. These
7 common questions predominate over the questions affecting only individual members of the Class.

8 28. Among the question of law and fact common to the Class are:

- 9 a. Whether the Class members are entitled to restitution of agency or fair share
10 service fees paid prior to the issuance of the *Janus* decision.
11 b. Whether the Class members are entitled to restitution of agency or fair share
12 service fees paid after the issuance of the *Janus* decision.
13 c. The extent of Defendants' liability to the Class members for such
14 restitution.
15 d. The period of time prior to the filing of this action for which the Class
16 members are entitled to recover the fees they were forced to pay
17 Defendants.
18 e. The amount of interest accruable on the fees exacted by or at the behest of
19 the Defendants.

20 29. Plaintiffs' claims are typical of those of the other Class members because Plaintiffs,
21 like every other Class member, were required to pay agency or fair share service fees to
22 Defendants as a condition of keeping their jobs although Plaintiffs were not members of the
23 Defendant unions.

24 30. Plaintiffs can fairly and adequately represent the interests of the Class, they have no
25 conflicts of interest with other Class members, they are subject to no unique defenses, and they
26 have retained counsel competent and experienced in the prosecution of class actions.

31. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because joinder of all members is impracticable, the likelihood of individual Class member prosecuting separate claims is remote, and individual Class members do not have a significant interest in individually controlling the prosecution of separate actions. Relief concerning Plaintiffs' rights under the law alleged herein and with respect to the Class as a whole would be appropriate. Plaintiffs know of no difficulty to be encountered in the management of this action that preclude its maintenance as a class action.

32. Plaintiffs explicitly reserve the right to add additional class representatives, provided that Defendants are given an opportunity to conduct discovery on the chosen representatives. Plaintiffs will identify and propose class representatives with the filing of Plaintiffs' motion for class certification.

FIRST CAUSE OF ACTION

(For Statutory Unfair Competition, against all Defendants)

33. Plaintiffs reallege and incorporate herein by reference as though set forth in full all of the allegations of the previous paragraphs.

34. Plaintiffs bring this cause of action on behalf of themselves, and on behalf of the Class members, against Defendants for their unlawful or unfair business acts or practices pursuant to California's Unfair Competition Law, Business & Professions Code section 17200 et seq. (the "UCL"), which prohibits all such acts or practices.

35. Plaintiffs assert this claim as they are the representatives of an aggrieved group whose funds Defendants have unlawfully caused to be exacted and retained and which funds Defendants should be required to restore under the UCL's restitutionary remedy.

36. This claim is predicated on Defendants' willful retention of agency or fair share service fees contrary to Plaintiffs' and the Class members' rights.

37. By engaging in the above-described acts and practices, Defendants have committed one or more acts of unfair competition within the meaning of UCL.

38. Defendants' retention of such fees constitutes an unlawful business act or practice within the meaning of UCL, and is unfair because it offends established public policy.

39. As a direct and proximate result of the aforementioned unlawful and unfair practices, Defendants have deprived Plaintiffs and the Class members of a portion of their pay to which they are entitled under California law.

40. As a direct and proximate result of the aforementioned unlawful and unfair practices, Defendants retained, and used for their own benefit, money that rightfully belongs to Plaintiffs and the Class members.

41. As a direct and proximate result of the aforementioned unlawful and unfair practices, Plaintiffs and the Class members suffered substantial monetary losses and are entitled to restitution for the losses. Plaintiffs and the Class members are direct victims of Defendants' unlawful and unfair conduct, and each has suffered injury in fact, and has lost money or property as a result of Defendants' unfair competition.

42. Defendants' unlawful and unfair business practices, as fully described herein, present a continuing threat to members of the public, as Defendants continue to retain agency or fair share service fees, in violation of Plaintiffs' and the Class members' rights. Plaintiffs and other members of the general public have no other remedy at law that will prevent Defendants' misconduct as alleged herein from occurring or reoccurring in the future.

43. Plaintiffs and the Class members are entitled to equitable relief, including restitution; restitutionary disgorgement of sums acquired by Defendants because of their unlawful and unfair acts or practices; attorney's fees and costs; declaratory relief; and a permanent injunction enjoining Defendants from engaging in the wrongful activity alleged herein.

SECOND CAUSE OF ACTION

(For Conversion, against all Defendants)

44. Plaintiffs reallege and incorporate herein by reference as though set forth in full all of the allegations of the previous paragraphs.

1 45. At all times relevant to this complaint, Plaintiffs and the Class members were the
2 owners of the agency or fair share service fees that were exacted from their pay and delivered to
3 Defendants.

4 46. Defendants substantially interfered with Plaintiffs' and the Class members'
5 property by knowingly or intentionally taking possession of such fees or refusing to return such
6 fees after Plaintiffs and the Class members demanded their return.

7 47. Neither Plaintiffs nor the Class members consented to Defendants retaining such
8 fees.

9 48. Plaintiffs and the Class members were harmed by Defendants' retention of such
10 fees.

11 49. Defendants' conduct was a substantial factor in causing Plaintiffs' and the Class
12 members' harm.

13 **THIRD CAUSE OF ACTION**

14 **(For Trespass to Chattels, against all Defendants)**

15 50. Plaintiffs reallege and incorporate herein by reference as though set forth in full all
16 of the allegations of the previous paragraphs.

17 51. At all times relevant to this complaint, Plaintiffs and the Class members were the
18 owners of the agency or fair share service fees that were exacted from their pay and delivered to
19 Defendants.

20 52. Defendants intentionally interfered with Plaintiffs' possession of such fees.

21 53. Neither Plaintiffs nor the Class members consented to Defendants retaining such
22 fees.

23 54. Plaintiffs and the Class members were harmed by Defendants' retention of such
24 fees.

25 55. Defendants' conduct was a substantial factor in causing Plaintiffs' and the Class
26 members' harm.

1 **FOURTH CAUSE OF ACTION**

2 **(For Unjust Enrichment, against all Defendants)**

3 56. Plaintiffs reallege and incorporate herein by reference as though set forth in full all
4 of the allegations of the previous paragraphs.

5 57. At all times relevant to this complaint, Defendants received the agency or fair share
6 service fees exacted from Plaintiffs' and the Class members' pay.

7 58. At all times relevant to this complaint, Defendants unjustly retained the benefit of
8 such fees at the expense of Plaintiffs and the Class members.

9 59. Under the doctrine of unjust enrichment, Defendants must restore such fees to
10 Plaintiffs and the Class members.

11 **FIFTH CAUSE OF ACTION**

12 **(For Money Had and Received, against all Defendants)**

13 60. Plaintiffs reallege and incorporate herein by reference as though set forth in full all
14 of the allegations of the previous paragraphs.

15 61. Defendants received money that was intended to be used for the benefit of
16 Plaintiffs and the Class members.

17 62. That money was not used for the benefit of Plaintiffs and the Class members.

18 63. Defendants have not given the money to Plaintiffs and the Class members.

19 **PRAYER**

20 WHEREFORE, Plaintiffs and the Class members pray for judgment as follows:

21 1. for an order certifying this matter as a class action;

22 2. for an order awarding Plaintiffs and each Class member restitution of all agency or
23 fair share service fees paid to Defendants by exactions from Plaintiffs and each Class member
24 from the time such exactions commenced or for as much time prior to the filing of this action as is
25 permitted by law;

1 3. for an order awarding prejudgment interest to Plaintiffs and each Class member, i.e.
2 interest on all agency or fair share service fees returned to Plaintiffs and each Class member from
3 the time such fees were exacted until the entry of judgment;

4 4. for an award of attorney's fees as authorized by statute, including but not limited to
5 Code of Civil Procedure section 1021.5, as authorized under the "common fund" doctrine, and as
6 authorized by the "substantial benefit" doctrine;

7 5. for costs of suit;

8 6. for a permanent injunction preventing Defendants from seeking the exaction of and
9 retaining agency or fair share service fees from Plaintiffs and the Class members; and

10
11
12 7. for such other and further relief as the Court may deem proper.

13
14 DATED: July 10, 2018

Respectfully submitted,

15 BROWNE GEORGE ROSS LLP
16 Eric M. George

17
18 By: _____

Eric M. George

19 Attorneys for Plaintiffs Jeff Lyon and
20 Karen Sandberg

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