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HONORABLE THOMAS O. RICE

**UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF WASHINGTON**

CINDY ELLEN OCHOA, as an
individual,

Plaintiff,

v.

SERVICE EMPLOYEES
INTERNATIONAL UNION LOCAL
775, an unincorporated labor
association; PUBLIC CONSULTING
GROUP, INC., a Massachusetts
corporation; PUBLIC
PARTNERSHIPS LLC, incorporated
in Delaware; CHERYL STRANGE
in her official capacity as
SECRETARY of the
DEPARTMENT OF SOCIAL AND
HEALTH SERVICES, and JAY
INSLEE, in his official capacity as
GOVERNOR of the STATE OF
WASHINGTON,

Defendants.

No. 2:18-cv-00297

FIRST AMENDED COMPLAINT

Demand for Jury Trial

//

1 **I. INTRODUCTION**

2 1. Ms. Cindy Ellen Ochoa, Plaintiff, brings this claim against the defendants for
3 collectively withholding wages and diverting them to a union to which she does not
4 belong and does not want to belong, twice, and twice failing to promptly remedy the
5 same.
6

7 2. Defendants Public Consulting Group, Inc., Public Partnerships LLC, Cheryl
8 Strange in her official capacity as secretary of the Washington Department Social
9 and Health Services (“DSHS”), and Jay Inslee (“State”) in his official capacity as
10 the Governor of the State of Washington have, together with Service Employees
11 International Union Local 775 (“SEIU 775”), collectively created a system which
12 subjects Cindy Ochoa to the risk of having wages withheld wrongfully and violation
13 of her First Amendment rights, and in fact wrongfully withheld wages from her.
14

15 3. Ochoa demands a trial by jury.

16 4. Ochoa seeks declaratory judgment, injunction, specific, general, and punitive
17 damages for violation of her First Amendment rights.
18

19 **II. PARTIES**

20 5. Plaintiff Cindy Ochoa is an Individual Provider (“IP”) providing in-home
21 health care services to her disabled son, under RCW 74.39A. Her employer is the
22 Governor, Jay Inslee and she is classified as a public employee for collective
23

1 bargaining purposes under RCW 41.56. She lives in the City of Spokane,
2 Washington.

3 6. Defendant Jay Inslee is Governor of Washington and is sued in his official
4 capacity. As Governor, Defendant Inslee is Washington’s chief executive officer and
5 IPs’ employer. RCW 74.39A.270.
6

7 7. Defendant Cheryl Strange is the Secretary of DSHS, and is sued in her official
8 capacity. DSHS administers the IP program under RCW 74.39A, is the agency
9 responsible for distributing IPs’ wages and/or withholding them, to include
10 managing the withdrawal and disbursement of union dues from IPs’ salaries, to
11 SEIU 775, the labor organization that represents individual providers, such as
12 Plaintiff.
13

14 8. Public Partnerships LLC is a limited liability company incorporated in
15 Delaware doing business in Washington State.

16 9. Public Consulting Group, Inc., is a corporation registered in Massachusetts
17 and doing business in Washington State.
18

19 10. Together Public Partnerships LLC and Public Consulting Group, Inc. operate
20 Individual Provider One (“IPOne”) under contract with the State of Washington to
21 pay wages to IPs, including in Spokane County, on behalf of the State.

22 **III. JURISDICTION AND VENUE**

23 11. This action arises under the Constitution and laws of the United States,

1 particularly the First and Fourteenth Amendments to the United States Constitution.
2 The original jurisdiction of this Court, therefore, is invoked under 28 U.S.C. §
3 1331 and 28 U.S.C. § 1343.

4
5 12. This Court has jurisdiction under 28 U.S.C. §§ 1331 and 1343 because this is
6 an action under 42 U.S.C. § 1983 for violation, under color of law, of rights,
7 privileges, and immunities secured by the Federal Constitution—the First and
8 Fourteenth Amendments. Pursuant to § 1343, the Court may grant damages,
9 restitution, and injunctive relief, and reasonable attorneys’ fees pursuant to 42 U.S.C.
10 § 1988.

11
12 13. This is also a case of actual controversy in which Ms. Ochoa seeks declaration
13 of her rights. Under 28 U.S.C. §§ 2201 and 2202, this Court may declare the rights
14 of Plaintiffs and grant further necessary or proper relief based thereon, to include
15 injunction.

16
17 14. This Court has supplemental jurisdiction over the state law claims presented
18 in this matter under 28 U.S.C. § 1367, because the claims are so related to the federal
19 constitutional claims in this action such that they form part of the same case or
20 controversy, and the state law claims do not raise a novel or complex issues of state
21 law and do not substantially predominate over the federal claims. There are, further,
22 no exceptional circumstances compelling declining the state law claims.

23 15. Venue is proper pursuant to 28 U.S.C. § 1391(b) because Defendants do

1 business and operate in this judicial district of the United States District Court for
2 the Eastern District of Washington, and have sufficient minimal contacts with this
3 district to be subject to personal jurisdiction herein. The Plaintiff lives and works in
4 this judicial district. In addition, a substantial part of the events or omissions giving
5 rise to the claims occurred here.
6

7 **IV. FACTUAL ALLEGATIONS**

8 **Defendants and their relationship to one another**

9 16. Service Employees International Union Local 775 (“SEIU 775”) is the
10 exclusive bargaining representative for IPs, including Ms. Ochoa, in Washington
11 State.
12

13 17. When an IP agrees to pay union dues SEIU 775 benefits financially.

14 18. SEIU 775 has a pecuniary interest in expanding the number if IPs who pay
15 union dues to it.

16 19. Defendant State is Ms. Ochoa’s employer.

17 20. The State/DSHS receives federal government Medicaid monies and is
18 responsible for dispersing them.
19

20 21. As the agency responsible for administering the IP program under RCW
21 74.39A, DSHS is responsible for distributing IPs’ wages and/or withholding them.

22 22. Defendant DSHS is responsible for determining who qualifies to become an
23 IP.

1 23. Defendant DSHS dispenses, or is responsible for dispensing, federal
2 Medicaid funds to pay IPs' salaries.

3 24. Defendant DSHS is responsible for the withdrawal and disbursement of union
4 dues from IPs' salaries.

5 25. Defendant Public Consulting Group ("PCG") is a for-profit public sector
6 management consulting and operations firm.

7 26. PCG partners with governments to provide compliance and payment systems
8 services to States administering, among other things, Medicaid to IPs.

9 27. PCG specifically designs payment systems services for the disbursement of
10 Medicaid funds and the withholding of union and other deductions from personal
11 home care providers, such as Individual Providers.

12 28. Defendant PCG profits by selling/leasing/providing logistics support for
13 these payment systems and services to its customers, which are public entities.

14 29. Defendant Public Partnerships LLC ("PPL") is a subsidiary of PCG.

15 30. PCG owns more than ten percent (10%) of interests of PPL. ECF No. 22.

16 31. PPL works jointly with PCG to design and implement PCG's systems and
17 services, described above.

18 32. Defendant DSHS is responsible for the withdrawal and disbursement of union
19 dues from IPs' salaries.

1 33. Defendant DSHS relies entirely on the services provided by PCG and PPL,
2 or one or the other, described above to provide payroll processing, to include union
3 dues withholdings.

4 34. In the alternative, Defendant DSHS relies in part on the services provided by
5 PCG and PPL, or one or the other, described above to provide payroll processing.
6

7 35. Specifically, PPL has a contract with the State/DSHS to provide IP payroll
8 systems services and processing for the State/DSHS, to include union dues
9 withholdings, and benefits financially from the same.

10 36. Defendants DSHS and State rely on PPL and/or PCG to dispense Medicaid
11 funds to IPs.
12

13 37. On information and belief, the services that PPL administers are designed,
14 created, and influenced by PCG.

15 38. On information and belief, PCG works jointly with PPL in executing PPL's
16 contract with the State and DSHS, to provide services both to the State and DSHS,
17 and Individual Providers.

18 39. PPL and/or PCG, together with State and DSHS, process union dues
19 withholdings from IPs and remit those payments to SEIU 775.
20

21 40. PCG and/or PPL operate IPOne to provide the services described above to
22 IPs, including Cindy Ochoa.
23

1 41. IPs access IPOne to access and view time sheets, paychecks, W2 forms, and
2 also to address questions regarding payment matters, to include union dues
3 withdrawals.

4 42. Ipone.org prominently features the following logo:



8 43. On the bottom of the page, IPs are given a contact email to contact IPOne.
9 The email address is pplwaipone-cs@pcgus.com. On information and belief,
10 “pcgus” stands for “Public Consulting Group US.”

11 44. Ipone.org has a link to the “IPone provider portal.” If one enters this portal,
12 one is directed to ipone.publicpartnerships.com/login.aspx. This page prominently
13 features the following logo:



18 45. The IPOne.org website informs IPs that: “Washington State has contracted
19 with Public Consulting Group, Public Partnerships LLC. (PPL) to provide...
20 services and support to operate the Individual ProviderOne payment system.”

21 46. On information and belief, PCG operates IPOne together with PPL.
22
23

1 47. In the alternative, PPL operates IPOne using the systems, processes, tools,
2 mechanisms, protocols, personnel training, and other structures essential to the
3 operation of IPOne that PCG has created, designed and/or influenced.

4 **Defendants' dues withholding protocol**

5
6 48. Since 2014, IPs have not been required to pay union dues to maintain
7 employment with the State as IPs.

8 49. Defendants cannot compel an IP to pay union dues absent her consent.

9 50. Defendants begin withholding union dues from a particular IP's salary if and
10 when SEIU 775 represents to Defendants that that particular IP has consented to pay
11 union dues.

12
13 51. Defendants do not require SEIU 775 to submit proof of the IPs' consent to
14 pay union dues.

15 52. Defendants do not independently contact the IP to confirm that heshe has in
16 fact consented to union dues withholdings.

17 53. Defendants' practice of withholding union dues directly from IPs' salaries is
18 a benefit to SEIU 775 because it makes it easier for SEIU 775 to obtain union dues
19 payments.

20
21 54. On information and belief, Defendants do not have any protocols, nor provide
22 any training to their staff, on how to respond to an IP who challenges SEIU 775's
23 representation to Defendants that the IP consented to dues withholdings.

1 **Plaintiff's background**

2 55. Cindy Ochoa is a single mother and Individual Provider (“IP”) taking care of
3 her disabled, adult son. She lives and works in Spokane, WA. She has been an IP for
4
5 6 years.

6 56. Cindy Ochoa’s daily work schedule consists of taking care of household
7 chores in the morning, then shopping, cooking, cleaning, taking care of bills, tending
8 to the apartment, and performing necessary daily tasks for her disabled son, who
9 lives in an apartment away from her. She accompanies him to appointments and
10 doctor’s visits, and tends to his physical and hygienic needs, too. After taking care
11 of her son’s daily necessities, she tends to his emotional needs by relaxing with him:
12 watching movies with him, or taking him out to lunch or dinner.

13
14 57. Cindy Ochoa is also a mother of a teenage son, who lives at home with her.

15 58. Cindy Ochoa has never chosen to support SEIU 775. She does not believe
16 that it adequately advocates for her interests to her employer, and she does not
17 support the political, ideological, and social causes it advocates for.

18
19 59. When Ms. Ochoa began working as an IP in 2012, dues were automatically
20 withdrawn from her salary. Dues continued to be withdrawn from her salary until
21 July 2014, when Ms. Ochoa exercised her right, recognized in *Harris v. Quinn*, 134
22 S. Ct. 2618 (2014), to be free from union payments. At that time, she objected to
23

1 Defendants’ withdrawal of her dues, and Defendants stopped withdrawing union
2 dues from her salary from July 2014.

3 60. Ms. Ochoa has never communicated to any of the Defendants that she would
4 like to support SEIU 775—either financially or otherwise.
5

6 **2016-2017 Violations**

7 61. On May 28, 2016, an SEIU 775 representative arrived uninvited at Ms.
8 Ochoa’s home, Ms. Ochoa with an iPad, and told Ms. Ochoa that Ms. Ochoa needed
9 to sign the iPad to verify her contact information with SEIU 775. Ms. Ochoa told the
10 representative that she was not interested in signing anything from SEIU 775, and
11 declined.
12

13 62. When Ms. Ochoa refused to sign, the representative became angry and
14 walked away. Ms. Ochoa could see that the representative was writing something on
15 the iPad, and Ms. Ochoa yelled to the representative: “do not change my info!”

16 63. Six months later, in October of 2016, Defendants began withdrawing union
17 dues from Ms. Ochoa’s salary.
18

19 64. Ms. Ochoa only noticed that Defendants were withholding dues from her
20 soon before March 2017, about ten months after the SEIU 775 representative visited,
21 and 5 months after withholdings began.

22 65. Ms. Ochoa believed that IPOne was the entity that she should contact to
23 address payment issues.

1 66. Ms. Ochoa called IPOne on March 1, 2017 and requested that dues be
2 stopped. The woman she spoke with (Lisa) told Ms. Ochoa that she (Lisa) would
3 start an order to help Ms. Ochoa, but the call got disconnected.

4
5 67. Ms. Ochoa waited and called IPOne again on the same day and requested that
6 IPOne stop withdrawing dues from her. The man she spoke with (Patrick) told her
7 that Lisa had not started an order, and he started one for Ms. Ochoa, order no.
8 2883469.

9 68. IPOne personnel did not return a call to Ms. Ochoa.

10 69. Ms. Ochoa waited for exactly one month and contacted IPOne again.

11 70. On April 1, 2017, Ms. Ochoa emailed IPOne demanding that they stop
12 withdrawing dues from her salary. She asked that IPOne stop withdrawing dues as
13 soon as possible.
14

15 71. IPOne did not respond to Ms. Ochoa. She waited for exactly one month to
16 follow up, contacting IPOne again.

17 72. On May 1, 2017, Ms. Ochoa again contacted IPOne and demanded that dues
18 stop.
19

20 73. IPOne responded this time, informing her that she would need to contact
21 SEIU 775 for assistance.

22 74. The email sender was “pplwaipone-cs@pcgus.com.”
23

1 75. On the top left corner of the email, the following logo was displayed
2 prominently:



7 76. In addition, at the top of the message was written: “Public Consulting Group,
8 Inc. Secure Email Message View.”

9 77. Ms. Ochoa was confused as to why she had to contact SEIU 775. The next
10 day, Ms. Ochoa replied and asked IPOne why she had to contact the union. She
11 wrote:
12

13 “It is IPOne who started taking Union Dues out of my pay check, why
14 do I need to contact “the Union....” When IPOne took over our pay
15 check processing, in March 2016, there were No Union Dues being
16 taken, because I Opted out Why did IPOne start taking Union Dues
17 on October 2016, when they were not taking the dues from March 2016
18 through September 2016? Money that needs to be reimbursed to date is
19 \$300.27, and I would like my money returned from IPOne ASAP,
20 because that’s who deducted it, and I still want to know why they
21 deducted it!”
22

23 78. IPOne replied two days later, in relevant part:

1 “As the deduction order comes from the union via ETL file, the release
2 request also must come from the union before we can halt.”

3 79. The same logo, header, and email address described above were included in
4 the above email.

5
6 80. As soon as Cindy Ochoa realized that IPOne could not help her, she contacted
7 SEIU 775. She was first directed to a customer service line. The woman she spoke
8 with told Ms. Ochoa that SEIU 775 was withdrawing union dues from Ms. Ochoa’s
9 salary because Ms. Ochoa had signed a union membership card. Ms. Ochoa
10 informed the woman that she had not, and demanded that she be shown the card.

11 81. SEIU 775 eventually sent Cindy a copy of the electronic signature and card
12 that Ms. Ochoa had allegedly signed, dated May 28, 2016.

13
14 82. Ms. Ochoa immediately recognized that the signature was not her own. She
15 again contacted SEIU 775 and demanded that they stop withdrawing dues from her
16 salary, and remit the amount taken from her.

17 83. In June 2017, Adam Glickman, secretary treasurer of SEIU 775, sent Ms.
18 Ochoa a letter stating that SEIU 775 had previously received a request from Ms.
19 Ochoa to stop payment of dues, but then that SEIU 775 had received a letter
20 requesting that dues re-start. Mr. Glickman’s letter admitted that after reviewing the
21 signature on the recently received card, it was apparent that the electronic signature
22 on the card and other signatures on file for Ms. Ochoa did not match that of the
23

1 electronic “signature.” The letter included a check made out to Ms. Ochoa for
2 \$358.94.

3 84. A month later, in July 2017, SEIU 775 sent a second letter to Ms. Ochoa, for
4 an additional \$51.12.

5 85. From this point Defendants stopped withholding union dues from Plaintiff.

6 86. Ms. Ochoa, through her attorney, reported SEIU 775’s activity to the Spokane
7 County Prosecutor and Spokane Police Department. As of the drafting of this
8 complaint, no action has been taken.

9 87. Cindy Ochoa spent multiple hours and much mental energy trying to make
10 Defendants stop withdrawing union dues from her salary.

11 88. The time that she spent trying to protect herself from Defendants detracted
12 from her time tending to the needs of her disabled, adult son, and teenage son. The
13 time that she spent on these issues would delay her work activities, which would
14 cause her to arrive late to assist her son at his home, thereby delaying her care of
15 him. Sometimes she would have to then forgo relaxation and recuperation time with
16 him because she needed to tend to other tasks, which she had been unable to attend
17 to.
18
19
20

21 89. These stresses detracted from her life by draining her mentally and
22 emotionally, and prohibiting her from engaging in other, more fruitful activities,
23 such as providing quality care to her disabled son and family.

1 90. Separate and apart from the collateral consequences of spending time in
2 addressing these matters, she experienced mental and emotional anguish knowing
3 that Defendants were violating her First Amendment rights by using her monies for
4 causes she does not support; she suffered feelings of helplessness knowing that
5 Defendants forged her signature to override her attempt to exercise her First
6 Amendment rights.
7

8 91. To pursue her legal options, Ms. Ochoa, through her attorney, rejected the
9 checks sent to her by SEIU 775, so she could pursue her legal options.
10

11 **2018 Violations**

12 92. Defendants again, in July 2018, began withdrawing dues from Ms. Ochoa's
13 wages.
14

15 93. Ms. Ochoa contacted IPOne by phone on July 16, 2018. The woman she
16 spoke could not help her, and said that the problem was "on both sides," which Ms.
17 Ochoa took to mean that IPOne could not fix the problem on its own.
18

19 94. IPOne did not contact Ms. Ochoa for a month. During this time Ms. Ochoa
20 contacted SEIU 775 to try to stop them from withdrawing dues from her, too.
21

22 95. On August 17, 2018, Ms. Ochoa again contacted IPOne. She was put on hold
23 for a long time, was told by the person she was speaking with that she could not help
Ms. Ochoa, and was transferred to someone else within IPOne. This second person
also told Ms. Ochoa that she could not help Ms. Ochoa, and Ms. Ochoa was again

1 transferred to someone else within IPhone. Due to her schedule, Ms. Ochoa was
2 unable to continue waiting.

3 96. Given IPhone and SEIU 775's inability to stop union withdrawals promptly,
4 Ms. Ochoa's counsel informed SEIU 775 of the withholdings. Dues withholdings
5 ceased promptly thereafter.
6

7 97. Defendants withdrew dues from Ms. Ochoa's salary for July and August
8 2018.

9 98. Ms. Ochoa spent multiple hours on the phone speaking to SEIU 775 and
10 Defendants' representatives, attempting to stop Defendants from violating her rights,
11 and documenting her progress or lack thereof. She spent many hours, and much
12 mental, and emotional energy attempting to stop Defendants' violation of her First
13 Amendment rights.
14

15 99. Cindy Ochoa has always suffered from headaches. However, since
16 Defendants have begun withdrawing dues again, her headaches have become more
17 painful, and do not subside. The time she has spent on the phone and otherwise trying
18 to stop Defendants from violating her First Amendment rights has compounded her
19 inability to tend to her own health needs, and her mental and physical health has
20 suffered as a result.
21

22 V. CAUSES OF ACTION

23 COUNT I

1 ***Defendants failed to employ minimal procedural safeguards to avoid***
2 ***unconstitutional dues withholdings, and Plaintiff is entitled to remedies***
3 ***pursuant to 42 U.S.C. § 1983 and § 1988.***

4 100. Ms. Ochoa re-alleges and incorporates by reference the paragraphs set forth
5 above.

6 101. The Fourteenth Amendment to the Federal Constitution provides that no
7 State shall deprive its persons of life, liberty, or property without due process of law.

8 102. IPs have a First Amendment liberty interest in not having union dues
9 withheld from their salary absent their consent. *Harris v. Quinn*, 134 S. Ct. 2618
10 (2014); *Janus v. AFSCME, Council 31*, 138 S. Ct. 2448 (2018).

11 103. The State has a duty to provide procedural safeguards to prevent violations
12 of constitutional rights. *See Carey v. Piphus*, 435 U.S. 247, 259, 98 S. Ct. 1042,
13 1050, 55 L. Ed. 2d 252 (1978); *Mathews v. Eldridge*, 424 U.S. 319 (1976); *Board of*
14 *Regents of State Colleges v. Roth*, 408 U.S. 564 (1972); *Krug v. Lutz*, 329 F.3d 692,
15 696–98 (9th Cir. 2003) (applying *Procurier v. Martinez*, 416 U.S. 396 (1974) and
16 its progeny) (inmates have a First Amendment liberty interest in receipt of
17 subscription mail; withholding mail must be accompanied by minimal procedural
18 safeguards, namely two-level review of the withholding); *City of Littleton, Colo. v.*
19 *Z.J. Gifts D-4, L.L.C.*, 541 U.S. 774 (2004); *4805 Convoy, Inc. v. City of San Diego*,
20 183 F.3d 1108, 1113 (9th Cir. 1999) (applying *FW/PBS, Inc. v. City of Dallas*, 493
21 U.S. 215 (1990) (adult entertainment business have a First Amendment liberty
22
23

1 interest in obtaining licenses to operate such that the Cities that withhold them must
2 provide two minimal procedural safeguards: a prompt decision and judicial review);
3 *Chicago Teachers Union, Local No. 1, AFT, AFL-CIO v. Hudson*, 475 U.S. 292
4 (1986) (establishing minimal procedural safeguards that unions must follow prior to
5 withdrawing union dues); *see also Knox v. Serv. Employees Int'l Union, Local 1000*,
6 567 U.S. 298, 302, 132 S. Ct. 2277, 2284, 183 L. Ed. 2d 281 (2012) (“[I]n *Hudson*
7 we identified procedural requirements that a union must meet in order to collect fees
8 from nonmembers without violating their rights.”).

9
10 104. The duty to provide procedural safeguards includes both pre- and post-
11 deprivation process for protection of constitutional rights.
12

13 105. The duty to provide procedural safeguards includes duty extends to IPs, to
14 avoid mistaken or unjustified deprivation of their First Amendment right to be free
15 from union dues.

16 106. Defendants DSHS and State owe a duty of providing adequate procedural
17 safeguards to Plaintiff.
18

19 107. The duty to provide procedural safeguards to avoid unjustified deprivations
20 of First Amendment liberty interests extends to private entities who, while acting
21 under color of law, deprive persons of those interests. *See Lugar v. Edmondson Oil*
22 *Co., Inc.*, 457 U.S. 922, 102 S. Ct. 2744, 73 L. Ed. 2d 482 (1982); *Aboud v. Detroit*
23 *Bd. of Ed.*, 431 U.S. 209 (1977); *Hudson v. Chicago Teachers Union Local No. 1*,

1 743 F.2d 1187, 1190–91 (7th Cir. 1984), *aff'd sub nom. Chicago Teachers Union,*
2 *Local No. 1, AFT, AFL-CIO v. Hudson*, 475 U.S. 292, 106 S. Ct. 1066, 89 L. Ed. 2d
3 232 (1986).

4 108. Here, Defendants PCG and PPL assume responsibility for, designed, and
5 execute payroll processing on behalf of DSHS and State.
6

7 109. Defendants PCG and PPL are the ones who initiate a dues withholding cycle
8 on a particular IP's salary; they are the last and final entities to review that all
9 requirements for lawful dues withholdings are met.

10 110. Defendants PCG and PPL are the 'face' of the State to IPs, since they handle
11 all payroll questions, process W2s, timesheets, and make withholdings, including
12 union dues withholdings.
13

14 111. Defendants PCG and PPL field questions from IPs regarding union dues,
15 and present themselves on the IPOne websites as the entities to contact for all
16 concerns.

17 112. By doing the above, Defendants PPL and PCG willfully engage in joint
18 action with the Defendants DSHS and State.
19

20 113. Defendants PPL and PCG perform a function that only the State is
21 authorized to perform, namely, the allocation of Medicaid funds.
22
23

1 114. Such a close nexus exists as between Defendants PPL and PCG and State
2 Defendants that PPL and PCGs' seemingly private behavior may be fairly treated as
3 that of the State itself.

4 115. Defendants PPL and PCG owe a duty of providing adequate procedural
5 safeguards to Plaintiff.
6

7 116. Defendants breached their duty of providing procedural safeguards to
8 Plaintiff, and such breach has proximately caused a violation of Plaintiff's rights.

9 117. Defendants facilitate SEIU 775's receipt of union dues by withholding
10 union dues from IPs' salaries, instead of allowing SEIU 775 to make its own
11 arrangements with IPs.
12

13 118. Defendants know that SEIU 775 has a pecuniary interest in obtaining union
14 dues from IPs.

15 119. In this context, Defendants breached their duty to provide procedural
16 safeguards to IPs, which Plaintiff is, by:

- 17 a. Withholding dues from IPs based on SEIU 775's representations alone.
18
19 b. Withholding dues without independently confirming, with the IP, that
20 the IP wishes to pay dues.
21
22 c. Not requiring SEIU 775 to submit proof that the IP wished to pay union
23 dues, *i.e.* maintaining a union membership card on file.

1 d. Not having any protocols, nor providing any training to employees, to
2 guide IPs who wish to challenge union dues withholdings.
3

4 120. In addition to the above, Defendants PPL and PCG breached their duty to
5 provide procedural safeguards to Plaintiff by:

6 a. Not featuring, prior to initiation of withholdings, and as a final check
7 in their dues withholding protocol, a necessary condition that, at some
8 point in the past, the IP consented to dues withholdings.
9

10 121. The failures described above factually and proximately caused the
11 deprivation of Plaintiff's rights described in this complaint, as follows:

12 a. Withholding dues from IPs based on SEIU 775's representations alone
13 allowed SEIU 775 to submit a forged signature that Defendants relied
14 upon. Such forgery was a foreseeable result given SEIU 775's self-
15 interest and the total lack of accountability afforded to SEIU 775.
16

17 b. Withholding dues without independently confirming that Ms. Ochoa
18 wished to pay dues caused Defendants to withhold dues without her
19 consent twice, since if they had asked Plaintiff if she wanted to pay dues
20 prior to the withholdings, she would have told them that she did not.
21

22 c. Not maintaining union cards on file prolonged Plaintiff's discovery of
23 the forged signature in 2017 because if the card had been on file then

1 IOne would have produced it quicker and Plaintiff would have
2 addressed her concerns quicker.

3 d. The prolonged withholdings in 2018 would have ended sooner because
4 if IOne had known that it was required to have union cards on file then
5 it would have quickly realized that it did not, and would have stopped
6 withholdings.

7
8 e. Not having any protocols, nor providing any training to employees, to
9 guide IPs who wish to challenge union dues withholdings prolonged
10 Plaintiff's deprivation of rights because, at the very least, if she had
11 spoken to an IOne representative who knew whom she should speak
12 to, she would have contacted SEIU 775 more quickly.

13
14 122. In addition to the above, Defendants PPL and PCGs' breach of duty
15 factually and proximately caused the deprivation of Plaintiff's rights as follows:

16
17 a. Not featuring a final check in their dues withholding protocol on
18 whether the IP has consented to pay dues caused IOne to initiate dues
19 withholdings from Plaintiff in July 2018, where no card was on file.

20 123. Defendants have created an unjustifiable risk of First Amendment liberty
21 deprivation, and failed to provide adequate procedural safeguards to avoid
22 unjustified violation of that liberty interest.
23

1 124. These violations of Ms. Ochoa's First Amendment rights harmed her in
2 that she:

- 3 i. was prevented from exercising her right and privilege as a citizen
4 to be free from paying for union activities;
5
6 ii. suffered monetary damages in the amount of the forced fees that
7 were illegally seized from her;
8
9 iii. spent hours trying to determine the cause of the withdrawals and
10 how to stop them;
11
12 iv. spent mental and emotional energy on attempting to determine
13 the cause of the First Amendment violation, and stopping it, this
14 loss of energy detracting from her execution of her
15 responsibilities, enjoyment of leisure activities, and enjoyment
16 of life;
17
18 v. was caused mental pain, anguish, and stress knowing that her
19 money was being used for causes which she does not support
20 while she was powerless to stop it;
21
22 vi. suffered the irreparable harm, damage, and injury for which there
23 is no adequate remedy at law that is inherent in the violation of
First Amendment rights.

125. Ms. Ochoa seeks general damages and punitive damages for a violation of

1 her First Amendment rights, under 42 U.S.C. § 1983 from Defendants, PCG and
2 PPL.

3 126. Defendants, acting under color of law, knowingly, recklessly, or because
4 of callous indifference, deprived her of her First Amendment right to be free from
5 union dues payments by failing to employ and abide by procedural safeguards to
6 protect her from a violation of her First Amendment liberty interest. Ms. Ochoa is
7 entitled to costs and reasonable attorneys' fees under 42 U.S.C. § 1988.
8

9 **COUNT II**

10 ***Declaratory Judgment and Injunction***

11 127. Ms. Ochoa seeks declaratory judgment that Defendants violated her First
12 Amendment rights by failing to employ procedural safeguards protect the same.

13 128. She has suffered the irreparable harm, damages, and injury inherent in the
14 violation of First Amendment rights.
15

16 129. This is a case of actual controversy for which there is no adequate remedy
17 at law and Ms. Ochoa seeks declaration of her rights.
18

19 130. Ms. Ochoa seeks such other further necessary or proper relief, to include
20 injunction, as the Court deems just under 28 U.S.C. §§ 2201 and 2202.

21 **COUNT III**

22 ***Defendants willfully withheld wages under RCW 49.52.050 (2018 only)***

23 131. Ms. Ochoa re-alleges and incorporates by reference the paragraphs, above.

1 132. Any employer, including an elected public official, who willfully and with
2 intent to deprive the employee of any part of her wages in fact pays an employee a
3 lower wage than the employer is obligated to pay, shall be guilty of a misdemeanor.
4 RCW 49.52.050(2).
5

6 133. Any employer, officer, or agent who violates RCW 49.52.050(2) shall be
7 liable in a civil action for twice the amount of wages unlawfully withheld by way
8 of exemplary damages, together with costs and reasonable attorney's fees. RCW
9 49.52.070.
10

11 134. Defendants willfully withheld wages from Cindy Ochoa when they began
12 to withhold union dues from her wages without authorization in July 2018.

13 135. Defendants willfully withheld wages from Cindy Ochoa in August 2018
14 when they withheld union dues from her wages without authorization and after Ms.
15 Ochoa contested the wage withholdings to them.

16 136. Cindy Ochoa seeks statutory reimbursement, damages, exemplary
17 damages, interest at the maximum rate allowed by law, and costs and reasonable
18 attorneys' fees under RCW 49.52.070.
19

20 VI. PRAYER FOR RELIEF

21 Wherefore, Plaintiffs request that this Court:

22 137. Award general and punitive damages for violation of constitutional rights,
23 under 42 U.S.C. § 1983 from Defendants, PCG and PPL.

1 138. Award statutory damages, reimbursement, exemplary interests, interest to
2 the maximum allowed by law, and reasonable costs and attorneys' fees under RCW
3 49.52.070.

4 139. Enter declaratory judgment that Defendants failed to observe procedural
5 safeguards necessary to protect Ms. Ochoa's First Amendment rights. 28 U.S.C.
6 §§ 2201 and 2202.

7 140. Enjoin Defendants from engaging in a practice whereby they rely
8 exclusively and without independent corroboration upon the union to trigger union
9 dues withholdings. 28 U.S.C. §§ 2201 and 2202.
10

11 141. Award costs and reasonable attorneys' fees, under 42 U.S.C. § 1988.

12 142. Order all other appropriate relief as the Court may deem just and proper.

13 Dated: May 6, 2019
14

15 By:
16

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CERTIFICATE OF SERVICE


I hereby certify that on May 6, 2019, I filed the foregoing with the Clerk of the Court using the CM/ECF System, which in turn automatically generate a Notice of Electronic Filing (NEF) to all parties in the case who are registered users of the CM/ECF system. The NEF for the foregoing specifically identifies recipients of electronic notice:

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Signed this 6th day of May, 2019.



Sydney Phillips