

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT**

PHUONG KIM NGUYEN and VAN NGUYEN,

Plaintiffs,

v.

ADMINISTRATIVE AND RESIDUAL  
EMPLOYEES UNION, LOCAL 4200, AFT  
CONNECTICUT, AFT AFL-CIO and JOHN  
DISETTE, in his individual capacity and  
official capacity as President of Local 4200,

Defendants.

Case No. \_\_\_\_\_

**COMPLAINT**

SEPTEMBER 2, 2019

AND NOW come Plaintiffs Phuong Kim Nguyen and Van Nguyen, by and through their undersigned attorneys, and state the following claim for relief against Defendants Administrative and Residual Employees Union, Local 4200, AFT Connecticut, AFT AFL-CIO (“Local 4200”) and John DiSette, in his official and individual capacities as President of Local 4200, and aver as follows:

**SUMMARY OF THE CASE**

1. This is a civil rights action pursuant to 42 U.S.C. § 1983 for monetary relief, to redress the deprivation under the color of state law of rights, privileges, and immunities under the First and Fourteenth Amendments to the United States Constitution caused by statute and Defendants’ contracts, policies, and practices in

causing to be seized and accepting payments equal to full union dues from Plaintiffs' wages despite their status as nonmembers of the union, in violation of their First and Fourteenth Amendment rights established in *Janus v. AFSCME, Council 31*, 138 S. Ct. 2448 (2018).

2. Specifically, Defendants acknowledged Plaintiffs' resignations from union membership but continued to act in concert with the State of Connecticut, by and through its Comptroller and/or his agents, to seize and to accept payments equal to full union dues from Plaintiffs' wages, violating their First and Fourteenth Amendment rights to free association, self-organization, assembly, petition, and freedoms of speech, thought, and conscience. Plaintiffs thus seek a written judgment as to their rights and compensatory and nominal damages for the violation of their First and Fourteenth Amendment rights, as well as attorneys' fees and costs.

### **JURISDICTION AND VENUE**

3. This action arises under the Constitution and laws of the United States of America, including the Federal Civil Rights Act of 1871, 42 U.S.C. § 1983, to redress the deprivation, under color of state law, of Plaintiffs' rights, privileges, and immunities under the Constitution of the United States, and particularly the First and Fourteenth Amendments.

4. This Court has jurisdiction over Plaintiffs' claims under 28 U.S.C. § 1331—because the claims arise under the United States Constitution—and 28 U.S.C. § 1343—because they seek relief under 42 U.S.C. § 1983.

5. Venue is proper in this Court under 28 U.S.C. § 1391(b), because a defendant, Local 4200, is domiciled in and operates or does significant business in this judicial district and because the events giving rise to this action occurred in this judicial district.

### **PARTIES**

6. Plaintiff Phuong Kim Nguyen is employed as a Fiscal Administrative Officer for the Connecticut Workers' Compensation Commission. She is thus an "employee" within the meaning of the State Employee Relations Act ("SERA"), Conn. Gen. Stat. § 5-270(b). Phuong Nguyen is represented exclusively for purposes of collective bargaining by Local 4200 pursuant to SERA, Conn. Gen. Stat. § 5-271. She is not a member of Local 4200.

7. Plaintiff Van Nguyen is employed as a Fiscal Administrative Officer for the Connecticut Department of Administrative Services. She is thus an "employee" within the meaning of SERA, Conn. Gen. Stat. § 5-270(b). Van Nguyen is represented exclusively for purposes of collective bargaining by Local 4200 pursuant to SERA, Conn. Gen. Stat. § 5-271. She is not a member of Local 4200.

8. Defendant Local 4200 is an "employee organization" and "exclusive bargaining representative" within the meaning of SERA, Conn. Gen. Stat. §§ 5-270–280. Through the CBA with the State of Connecticut, Local 4200 represents employees of the State of Connecticut, including Plaintiffs, exclusively for purposes of collective bargaining with the State. Local 4200 maintains a place of business at 805

Brook Street, Rocky Hill, Hartford County, Connecticut, and conducts its business and operations throughout the State of Connecticut and within the District of Connecticut.

9. Defendant John DiSette is the President of Local 4200 and is sued in his individual capacity and official capacity as president.

### **FACTUAL ALLEGATIONS**

10. SERA authorizes the state labor board to recognize an employee organization as the exclusive representative of bargaining unit employees. Conn. Gen. Stat. §§ 5-270–280. Pursuant to and as authorized by SERA, the State of Connecticut has recognized Local 4200 as the exclusive representative for Plaintiffs’ bargaining unit.

11. Acting in concert under color of state law, and as authorized under SERA, the State of Connecticut and Local 4200 (as exclusive representative for Plaintiffs’ bargaining unit) entered into a CBA that controls the terms and conditions of Plaintiffs’ employment. The CBA is effective July 1, 2016, to June 30, 2021, and is attached hereto as “Exhibit A” and incorporated herein.

12. Pursuant to SERA, the CBA contains a “Union Security and Payroll Deduction” article, which provides that:

**Section One.** During the life of this Agreement, an employee retains the freedom of choice whether or not to become or remain a member of the Union, which has been designated as the exclusive bargaining agent.

**Section Two.** Union dues and/or assessments shall be deducted by the State employer biweekly from the paycheck of each employee who signs and remits to the State an authorization form. Such deduction shall be discontinued upon written request of an employee thirty (30) days in advance.

If a change in salary causes a change in the amount of dues or assessment, which should be withheld, the change in dues or assessment shall be made simultaneously with any change in salary.

Ex. A, art. 7, §§ 1–2.

13. SERA states,

(a) If an exclusive representative has been designated for the employees in an appropriate collective bargaining unit, each employee in such unit who is not a member of the exclusive representative shall be required, as a condition of continued employment, to pay to such organization for the period that it is the exclusive representative, an amount equal to the regular dues, fees and assessments that a member is charged.

(b) Employers and employee organizations are authorized to negotiate provisions in a collective bargaining agreement calling for the payroll deduction of employee organization dues and initiation fees and for payroll deduction of the service fee described in subsection (a) of this section.

Conn. Gen. Stat. § 5-280.

14. Plaintiffs joined Local 4200 in 2015.

15. Although both Plaintiffs had already signed the 2015 membership application/dues deduction authorization, they were asked by officers and/or

members of Local 4200 to sign new membership cards (“2017 membership cards”) on or about December 1, 2017, at Local 4200’s annual holiday party.

16. At the party, officers and/or members of Local 4200 were checking in partygoers before allowing them to enter the event, which was located at the Aqua Turf Club event facility. Once Plaintiffs entered the party, they were directed to go to the front table in the ballroom of the event facility in order to get a raffle ticket.

17. When Plaintiffs went to obtain their raffle tickets, members and/or officers of Local 4200 were behind the front table handing out both the raffle tickets and the 2017 membership cards.

18. Plaintiffs were instructed to sign the 2017 membership cards and were told that Local 4200 needed the cards in order to have updated information.

19. Upon information and belief, there were no chairs for partygoers to sit to review the 2017 membership cards, and many partygoers were in line before and behind Plaintiffs, also waiting to participate in the raffle.

20. No one offered to review the terms of the 2017 membership cards with Plaintiffs.

21. No one asked Plaintiffs if they understood the cards or if they needed assistance in understanding what the cards required. Instead, because there were many other partygoers in line behind them, Plaintiffs had to hurry to sign the 2017 membership cards, so that the line could keep moving quickly. This created a rushed atmosphere forcing Plaintiffs, and, upon information and belief, other Local 4200

union members, to sign the 2017 membership cards without adequate information or time to review what the cards stated.

22. Upon information and belief, Plaintiffs and other partygoers were given raffle tickets in exchange for their signed 2017 membership cards.

23. Although Local 4200's CBA with the State provides that union members "retain[] the freedom of choice whether or not to . . . remain a member of the Union" and that the deduction of union dues "shall be discontinued upon written request of an employee thirty (30) days in advance," the 2017 membership cards provided for a different process than the CBA.

24. Upon information and belief, the 2017 membership cards that Plaintiffs were told to sign at the party had a section labeled "DUES DEDUCTION/CHECKOFF AUTHORIZATION," which stated:

I hereby request and voluntarily authorize my employer to deduct from my earnings and to pay to A&R, Local 4200 an amount equal to the regular dues applicable to members of A&R. This authorization shall remain in effect and shall be irrevocable unless I revoke it by sending written notice via U.S. Mail to both the employer and Local 4200 during the window period, February 1-28 of any year. This authorization shall be automatically renewed as an irrevocable check-off from year to year unless I revoke it in writing during the window period.

25. On September 27, 2018, both Plaintiffs emailed written requests to the Local 4200 office email address to resign from Local 4200 and to cease paying dues.

26. Upon information and belief, a Local 4200 official replied to and acknowledged their requests but told each Plaintiff that, “[u]nfortunately,” dues could not be stopped until February 2019 due to the window period provided on the 2017 membership cards.

27. Plaintiff Van Nguyen was also instructed that she would have to send a notarized letter via certified mail to revoke her dues deduction authorization, although this requirement is contained in neither the CBA nor the 2017 membership cards, nor, upon information and belief, in any other documentation provided to Plaintiffs.

28. Defendant John DiSette confirmed via email and in voicemail messages left for Plaintiffs that Plaintiffs were no longer members of Local 4200 due to their emailed resignations; however, Local 4200 continued to take bi-weekly union dues from Plaintiffs’ wages. Defendant DiSette further informed Plaintiff Phuong Nguyen that he would not communicate with her because she was now a nonmember, that he “speak[s] with members, not non-members,” and that he would only talk with her again if she “sign[ed] a membership card in February.”

29. Following up on her resignation, Plaintiff Phuong Nguyen sent another letter, via certified mail, to Local 4200, with a copy to a Principal Human Resources Specialist for her employer, confirming her resignation and her request that the deduction of purported union dues from her wages cease. Upon information and belief, Local 4200 received the letter on December 10, 2018.

30. Upon information and belief, although Plaintiff Phuong Nguyen's state employer received the letter, the state did not cease deducting money for the union from her wages.

31. Plaintiff Van Nguyen also followed-up on her September 2018 resignation with certified letters to her state employer and Local 4200, confirming her resignation and her request that the deduction of purported union dues from her wages cease. Upon information and belief, Local 4200 received the letter on December 20, 2018, and her state employer received the letter on December 21, 2018. Despite this, the state did not cease deducting money for the union from her wages.

32. No Defendant or any other official of Local 4200 asked Plaintiffs to agree to pay money to Local 4200 following their status change to nonmembers of Local 4200.

33. Upon information and belief, after Plaintiffs' resignation from Local 4200 on September 27, 2018, through at least February 14, 2019, Defendant Local 4200 and the Comptroller for the State of Connecticut, and/or his agents, pursuant to the CBA, SERA, and the State and Local 4200's joint policy and practice, acted in concert under color of state law to collect, distribute and/or accept an amount of money equal to full union membership dues from Plaintiffs' wages.

## **CLAIM FOR RELIEF**

### **COUNT ONE**

(Violation of 42 U.S.C. § 1983 and  
the Constitution of the United States)

34. Plaintiffs re-allege and incorporate by reference all allegations contained in the foregoing paragraphs of this Complaint as if fully set forth herein.

35. The First Amendment to the Constitution of the United States protects the associational, free speech, and free choice rights of United States citizens, and the Fourteenth Amendment to the Constitution of the United States incorporates the protections of the First Amendment against the States.

36. The First Amendment requires that “[n]either an agency fee nor any other payment to the union may be deducted from a nonmember’s wages, nor may any other attempt be made to collect such a payment, unless the employee affirmatively consents to pay.” *Janus*, 138 S. Ct. at 2486.

37. Because Plaintiffs are nonmembers of Local 4200, their First Amendment rights protected them from being forced to pay dues and/or fees to Local 4200 without their consent.

38. Because Plaintiffs are nonmembers of Local 4200, their First Amendment rights protected them from having the State of Connecticut, and/or its agents, withhold payments for Local 4200 from Plaintiffs’ wages.

39. A valid waiver of First Amendment rights requires clear and compelling evidence that the putative waiver was voluntary, knowing, and intelligent and that enforcement of the waiver is not against public policy. Defendants bear the burden of proving that these criteria are satisfied.

40. Plaintiffs did not make a valid waiver of their First Amendment rights as nonmembers not to pay dues and/or fees to Local 4200 or its affiliates.

41. The Comptroller of the State of Connecticut, and/or its agents, and the Defendants and/or their agents acted in concert to seize and/or accept deductions of monies/fees from Plaintiffs' wages under color of state law, which violated Plaintiffs' rights, privileges, and immunities granted by the First and Fourteenth Amendments to the United States Constitution, and violated 42 U.S.C. § 1983 by causing Plaintiffs to support the activities and speech of Local 4200 and its affiliates without their consent.

42. Actions of the Comptroller of the State of Connecticut and/or his agents, in concert with Local 4200, were under color of state law in seizing payments from Plaintiffs' wages via payroll deduction, pursuant to the CBA, despite Plaintiffs' requests for the deductions to cease.

43. Defendants, by deducting and collecting union dues and/or fees from Plaintiffs without clear and compelling evidence that they waived their First Amendment rights to refrain from subsidizing Local 4200 and its speech, deprived Plaintiffs of their First Amendment rights to free speech and association, as secured against state infringement by the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

44. As a direct result of Defendants' concerted actions with the State of Connecticut, taken under SERA and the CBA, Plaintiffs:

- a. were prevented from exercising their rights and privileges as citizens of the United States to disassociate from and not support the agenda, expenses, and speech of a private organization;
- b. were deprived of their civil rights guaranteed under the statutes of the United States; and
- c. suffered monetary damages and other harm.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray that this Court order the following relief:

- A. Written judgment awarding damages resulting from the deprivation of Plaintiffs' rights, privileges, and immunities secured by the Constitution of the United States, including actual damages in the full amount of monies that were seized from Plaintiffs' wages from the date of their resignation from Local 4200 until the seizures stopped, plus interest thereon, and nominal exemplary damages, under 42 U.S.C. § 1983.
- B. **Attorneys' Fees and Costs:** A judgment awarding Plaintiffs their reasonable attorneys' fees and costs under 42 U.S.C. § 1988; and
- C. **Other:** Such other and further relief as the Court may deem just and proper.

Dated: SEPTEMBER 2, 2019      Respectfully submitted,

*/s/ Craig C. Fishbein*

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\*motion for admission *pro hac vice* to be filed