IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

LUKAS DARLING 117 Regent Street Campbell, Ohio 44405 and TONYA IANNARINO 4160 Carthage Road Toledo, Ohio 43612 and CHELSEA KOLACKI 1849 Strathmoor Avenue Toledo, Ohio 43614 and KRISTY KOLACKI 1849 Strathmoor Avenue Toledo, Ohio 43614 and LAURA LANGSDALE 3043 Woodland Road Akron, Ohio 44312 and BARB LARROW 804 Wall Street Maumee, Ohio 43537 and RONNIE LEGG 5888 O'Reilly Drive Galloway, Ohio 44119 and	)	CASE NO: JUDGE: COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

DEBORAH PINION
334 N. 7th Street
Upper Sandusky, Ohio 43351

and

STEPHEN TULGA
210 Maple Drive
Columbus, Ohio 43228

and

CHRISTIN WILKINS
155 Stonegate Boulevard
Bowling Green, Ohio 43402

Plaintiffs,

vs.

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES
6800 North High Street
Worthington, Ohio 43085

and

COLUMBUS CITY SCHOOLS BOARD OF EDUCATION
270 E. State Street
Columbus, Ohio 43215

and

MAUMEE CITY BOARD OF EDUCATION
716 Askin Street
Maumee, Ohio 43537

and

OHIO ASSOCIATION OF PUBLIC SCHOOL EMPLOYEES/AFSCME LOCAL 4
6805 Oak Creek Drive
Columbus, Ohio 43229

and)
)
OHIO DEPARTMENT OF)
TRANSPORTATION)
1980 West Broad Street)
Columbus, Ohio 43223)
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and)
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OHIO EDUCATION ASSOCIATION)
225 E. Broad Street, Box 2550)
Columbus, Ohio 43216)
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and)
)
SPRINGFIELD LOCAL SCHOOL DISTRICT)
BOARD OF EDUCATION)
2410 Massillon Road)
Akron, OH 44312)
)
and)
TOLEDO CITY SCHOOL DISTRICT BOARD)
OF EDUCATION)
1609 N. Summit Street)
Toledo, Ohio 43604)
)
and)
)
UPPER ARLINGTON CITY SCHOOL)
DISTRICT BOARD OF EDUCATION)
1619 Zollinger Road)
Upper Arlington, Ohio 43221)
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Defendants.)
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Plaintiffs Lukas Darling, Tonya Iannarino, Chelsea Kolacki, Kristy Kolacki, Laura Langsdale, Barb Larrow, Ronnie Legg, Deborah Pinion, Stephen Tulga, and Christin Wilkins, by and through counsel, for their complaint hereby state as follows:

INTRODUCTION

1. In *Janus*, the Court held that the First Amendment protects public-sector employees from being compelled "to subsidize private speech on matters of substantial public concern" without prior affirmative consent. *Janus* v. *Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, __ U.S. __, 138 S.Ct. 2448, 2460, 201 L.Ed.2d 924 (2018).

2. The Court rejected the requirement that forced government employees either to pay monthly dues or agency fees, used to support union policies and union lawyers, even when employees objected to those policies and actions. Non-payment would trigger employment termination.

3. But "[c]ompelling individuals to mouth support for views they find objectionable violates [a] cardinal constitutional command, and in most contexts, any such effort would be universally condemned." *Id.* at 2463. Janus made clear that unions and governments cannot continue to compel "free and independent individuals to endorse ideas they find objectionable." *Id.* at 2464.

4. In light of *Janus*, the Plaintiffs have terminated their ostensible membership in their respective unions and the unions have accepted those terminations. The Plaintiffs have demanded that the union Defendants and the government Defendants stop the automatic deduction of membership dues from the—now—non-members' paychecks and refund any union membership dues taken after membership termination. The Defendants have refused and instead have

continued deducting union membership dues from the Plaintiffs' wages, which they justified based upon the terms of the alleged agreements set forth in deduction cards the employees had signed.

5. Such ostensible agreements are based on a mutual mistake of law and have been vitiated through mutual recission.

6. Even if such agreements have validity, any union claims to continued membership dues from non-members would be an unenforceable penalty.

7. Moreover, any ostensible agreements requiring the Plaintiffs to continue to pay union membership dues when they are not—in fact—union members are invalid because they are unconscionable contracts of adhesion as they do not include the amounts of the membership dues, they are not subject to negotiation, and are unreasonably favorable to the unions.

8. Plaintiffs ask this Court, pursuant to Ohio contact law, to stop these practices and to require the unions to reimburse the Plaintiffs for the unions' improper membership dues collections from non-members.

NATURE OF THE ACTION

9. The Plaintiffs are ostensibly former union members who resigned from union membership following the U.S. Supreme Court's 2018 decision in *Janus*, 138 S.Ct. 2448.

10. Upon information and belief, union membership for the union Defendants is typically evidenced by a membership and dues-deduction authorization card ("Deduction Card").

11. The term "dues" means "the official payments you make to an organization that you belong to." Cambridge Dictionary, *dues*, https://tinyurl.com/CambridgeDues (accessed Dec. 2, 2022); Collins, *dues*, https://tinyurl.com/CollinsDues (accessed Dec. 2, 2022) ("charges, as for membership of a club or organization").

12. Upon information and belief, the Deduction Cards used by the Defendant unions do not contain any information on the amount of the union membership dues deductions.

13. Upon information and belief, the union Defendants do not sign the Deduction Cards.

14. Upon information and belief, the Deduction Cards apply only to the deduction of union membership dues, in other words for members and not for non-members.

15. Upon information and belief, the Defendant employers are only authorized to deduct union membership dues based upon, and after receipt of, the signed Deduction Cards for the specific employee.

16. Upon information and belief, the Deduction Cards contain a separate provision authorizing the employer to deduct union membership dues in an unspecified amount.

17. Upon information and belief, none of the collective bargaining agreements (or any other documents) which are binding on the Plaintiffs allow the respective unions to charge non-union members for membership dues.

18. Unions are not permitted to assess union membership dues to non-union members for union membership. *See, e.g.*, *Janus*, 138 S.Ct. 2448.

19. Upon information and belief, many of the Defendant employers deducted union membership dues from the Plaintiffs' respective paychecks without ever receiving Deduction Cards.[1]

[1] To the extent Plaintiffs have access such signed Deduction Cards, they are attached as Exhibits A1-A6. Unless otherwise indicated herein, Plaintiffs have not attached any such signed Deduction Cards pursuant to Ohio Civ.R. 10(D) because they do not have access thereto, if they exist.

20. The union Defendants—with the assistance of the Plaintiffs' public employers—took union membership dues out of the Plaintiffs' pay both before and after their resignation from the union, and in some cases, still continue to do so.

21. Plaintiffs are entitled to relief based on Ohio contract law principles, including rescission and unconscionable contract of adhesion as set forth herein.

22. Assuming *arguendo* the validity of the unions' claim of a contractual right to continue to take union membership dues, such payments are not valid as consequential damages and are not liquidated damages under Ohio law because liquidated damages must reflect the reasonable compensation for damages incurred; instead the assessed union membership dues are an unenforceable penalty. *See Boone Coleman Constr., Inc.* v. *Piketon*, 145 Ohio St.3d 450, 2016-Ohio-628, 50 N.E.3d 502, ¶ 17-19.

23. The Plaintiffs seek damages and declaratory and injunctive relief under Ohio's declaratory judgment statute establishing that the union membership contracts unconscionably and unreasonably penalize the Plaintiffs.

PARTIES

24. Plaintiff Lukas Darling is a resident of Campbell, in Mahoning County, Ohio. He was formerly employed by the Boardman Township Planning and Zoning Department as a Property Enforcement Officer. He was previously a member of the American Federation of State, County, and Municipal Employees ("AFSCME"). He resigned from any such union membership on November 4, 2020.

25. Plaintiff Tonya Iannarino is a resident of Toledo, in Lucas County, Ohio. She is employed by the Toledo Public Schools as an OMB Specialist. She was previously a member of the AFSCME. She resigned from any such union membership on November 13, 2020.

26. Plaintiff Chelsea Kolacki is a resident of Toledo, in Lucas County, Ohio. She is employed by the Maumee City School District as an Office Assistant. She was previously a member of the Ohio Association of Public School Employees ("OAPSE"). She resigned from any such union membership on September 24, 2020.

27. Plaintiff Kristy Kolacki is a resident of Toledo, in Lucas County, Ohio. She is employed by the Maumee City School District as a Secretary. She was previously a member of OAPSE. She resigned from any such union membership on September 24, 2020.

28. Plaintiff Laura Langsdale is a resident of Akron, in Summit County, Ohio. She is employed by the Springfield Local School District as a Custodian. She was previously a member of OAPSE. She resigned from any such union membership on October 20, 2020.

29. Plaintiff, Barb Larrow is a resident of Maumee, in Lucas County, Ohio. She is employed by the Toledo Public Schools as a Bus Driver. She was previously a member of the AFSCME. She resigned from any such membership on March 11, 2021.

30. Plaintiff Ronnie Legg is a resident Galloway, in Franklin County, Ohio. He is employed by the Columbus City School District as a Driver. He was previously considered a member of OAPSE. Upon information and belief, he resigned from any such union membership on August 20, 2020. Upon information and belief, Defendant Columbus City School District has no signed Deduction Card for Plaintiff Legg.

31. Plaintiff Deborah Pinion is a resident of Upper Sandusky, in Wyandot, Ohio. She is employed by the Ohio Department of Transportation as a Highway Technician. She was previously considered a member of AFSCME. She resigned from any such union membership on March 20, 2020. Upon information and belief, Defendant ODOT has no signed Deduction Card for Plaintiff Pinion.

32. Plaintiff Stephen Tulga is a resident of Columbus, in Franklin County, Ohio. He is employed by the Upper Arlington City School District as a Bus Driver. He was previously a member of OAPSE. He resigned from any such union membership on May 6, 2021.

33. Plaintiff Christin Wilkins is a resident of Bowling Green, in Wood County, Ohio. She was employed by the Columbus City School District as an Eighth Grade Science Teacher. She was previously considered a member of the Ohio Education Association ("OEA"). She resigned from any such union membership on August 25, 2020. Upon information and belief, Defendant Columbus City School District has no signed Deduction Card for Plaintiff Wilkins.

34. The resignations referenced above are documented in the letters attached hereto as Exhibit B1-B9.

DEFENDANTS

35. Defendant American Federation of State, County, and Municipal Employees is a public sector labor union with its principal place of business in Franklin County Ohio.

36. Defendant Columbus City Schools Board of Education is a political subdivision of the State of Ohio that operates the Columbus City School District and employs Mr. Legg and Ms. Wilkins.

37. Defendant Maumee City School Board of Education is a political subdivision of the State of Ohio that operates the Maumee City School District, which employs both Chelsea and Kristy Kolacki.

38. Defendant Ohio Association of Public School Employees-AFSCME Local 4 is a public sector union with its principal place of business in Franklin County Ohio.

39. Defendant Ohio Department of Transportation is an agency of the State government of Ohio and employs Ms. Pinion.

40. Defendant Ohio Education Association is public sector labor union with its principal place of business in Franklin County Ohio.

41. Defendant Springfield Local School District Board of Education is a political subdivision of the State of Ohio that operates the Springfield Local School District and employs Ms. Langsdale.

42. Defendant Toledo City School District Board of Education is a political subdivision of the State of Ohio that operates the Toledo City School District and employs Ms. Iannarino and Ms. Larrow.

43. Defendant Upper Arlington City School District Board of Education is a political subdivision of the State of Ohio that operates the Upper Arlington City School District and employs Mr. Tulga.

VENUE AND JURISIDICTION

44. The matter is properly venued in Franklin County because all of the Defendant unions, as well as Defendants Columbus City School District and Ohio Department of Transportation are located in Franklin County, Ohio.

FACTS COMMON TO ALL PLAINTIFFS AND CLAIMS

45. On June 27, 2018, the United States Supreme Court decided *Janus v. AFSCME*, holding that agency-shop arrangements that require employees to fund public-sector unions, irrespective of union membership, violate "the free speech rights of nonmembers by compelling them to subsidize private speech on matters of substantial public concern." *Janus*, 138 S. Ct. at 2468.

46. The *Janus* decision fundamentally changed the law regarding public employees' rights to abstain from compelled payments to the unions chosen to represent them.

47. The Plaintiffs are all public employees who at one time were ostensibly members of the union Defendants, from whom the unions have collected union membership dues.

48. The mechanism for this continued extraction of dues from non-members is the public employers' automatic deduction of union membership dues from their employees' paychecks.

49. Following the United States Supreme Court decision in *Janus*, each of the Plaintiffs notified his or her respective union that he or she was opting out, and no longer wanted to be a member of or otherwise associated with his or her respective union.

50. Each Plaintiff specifically requested that he or she be removed from the union roll immediately and that union membership dues no longer be deducted from his or her paychecks. (Ex. B1-B9).

51. In each case, where the Plaintiffs have correspondence from the union, the union acknowledged in writing that the Plaintiff was no longer a member. (Ex. C1-C7).

52. Once a person is no longer a member of an organization, he or she cannot—as a basic definitional matter—owe membership "dues."

53. In fact, in the letter acknowledging each Plaintiff's termination of union membership, the unions urged the Plaintiffs to reconsider and rejoin the union. (Ex. C1-C7).

54. The letters touted benefits available only to members, most notably the ability to vote in union elections. (Ex. C1-C7).

55. Upon the termination of the respective Plaintiff's ostensible union membership, the respective union terminated the "membership only" benefits for said Plaintiffs. (Ex. C1-C7).

56. Following their resignations from their respective unions, certain Plaintiffs again demanded that the union immediately cease its unauthorized withdrawal of union membership

dues and refund all union membership dues withdrawn from the date of the employee's resignation. (Ex. D1-D3).

57. Upon information and belief, the unions did not provide to the respective Plaintiffs any information on the amount of union membership dues to be charged in advance of collecting said dues and still have not provided that information for any prospective union membership dues amounts.

58. The union Defendants uniformly refused to cease withdrawing dues as of the date of resignation, stating that each Plaintiff continued to be bound by his or her alleged contract with the union, and that those contracts allowed employees to opt-out of continued union membership dues payments only during certain times ("Opt-out Windows") during the life of the contract. (Ex. C1-C7).

59. The date of the earliest letter stating a refusal to terminate was September 24, 2020, with most significantly later. (Ex. C1-C7).

60. In some cases, this meant waiting months or even years for the expiration of the alleged contract before the union would stop withholding union membership dues. Each of the unions indicated that it would honor the Plaintiffs requests at the next contractual Opt-out Window. (Ex. C1-C7).

61. The unions further uniformly refused to refund union membership dues back to the date of the Plaintiffs' resignations. (Ex. E).

62. As a basis for these actions, the unions cited to the Ninth Circuit Court of Appeals' decision in *Belgau* v. *Inslee*, 975 F.3d 940 (9th Cir. 2020), which held that while *Janus* applied to nonunion employees who sought relief from "fair share" fees, it did not apply to employees who

had recently resigned their union membership and were bound by the terms of their alleged contracts with their unions.

63. The unions thus contended that under *Belgau*, the Plaintiffs had preemptively contractually waived their rights under *Janus* when they joined the union, or when they renewed their union membership. Accordingly, notwithstanding the Plaintiffs resignation from the union, the unions contend that the Plaintiffs continued to be bound by their alleged contracts with their respective unions (even though the unions recognized that the Plaintiffs were no longer union members) and must continue to pay union membership dues until the next Opt-out Window.

64. *Belgau* is inapplicable to this case because (1) its contractual holdings are based on different contracts and on California laws, (2) it is not binding on the Supreme Court of Ohio, (3) its reasoning is incorrect and inapposite on key issues in this case, and (4) it is factually distinguishable from the evidence anticipated to be proffered in this case.

OHIO'S COLLECTIVE BARGAINING LAW

65. R.C. Chapter 4117 sets forth Ohio's collective bargaining law for public employees.

66. R.C. 4117.04 requires that public employers recognize and bargain with an exclusive representative of the bargaining unit:

> (A)Public employers shall extend to an exclusive representative designated under section 4117.05 of the Revised Code, the right to represent exclusively the employees in the appropriate bargaining unit and the right to unchallenged and exclusive representation for a period of not less than twelve months following the date of certification and thereafter, if the public employer and the employee organization enter into an agreement, for a period of not more than three years from

> the date of signing the agreement. For the purposes of this section, extensions of agreements shall not be construed to affect the expiration date of the original agreement.
>
> (B) A public employer shall bargain collectively with an exclusive representative designated under section 4117.05 of the Revised Code for purposes of Chapter 4117 of the Revised Code.

67. R.C. 4117.03 allows public employees to "refrain from [] joining an employee organization."

68. The state employment relations board "shall decide in each case the unit appropriate for the purposes of collective bargaining. The determination is final and not appealable to any court." R.C. 4117.06(A).

69. Ohio law mandates that the employee may only bargain with the relevant employer through the designated union. *See Thompson* v. *Marietta Educ. Ass'n,* 972 F.3d 809, 812 (6th Cir. 2020), *cert. denied*, __ U.S. __, 141 S.Ct. 2721, 210 L.Ed.2d 882 (2021).

70. Thus, while a public employee may refrain from joining a union or choose to leave a union, they are not free to opt-out of the bargaining unit that is represented by that union.

71. Likewise, unions that are chosen as the bargaining unit representative are required to represent all members of the bargaining unit fairly, whether those bargaining unit members are union members or not.

72. In the case of each Plaintiff, the corresponding defendant union is the Plaintiff's exclusive representative for purposes of collective bargaining and grievances as set forth in R.C. 4117.05.

73. In other words, while an employee may choose not to join the union that is recognized as the exclusive representative of his or bargaining unit, the employee may not opt-out of the bargaining unit. Likewise, a union that has been designated as the exclusive representative for a bargaining unit cannot refuse to represent the members of that bargaining unit.

74. Ohio's declaratory judgment statute provides that

> [s]ubject to division (B) of section 2721.02 of the Revised Code, any person interested under a * * * written contract, or other writing constituting a contract * * * may have determined any question of construction or validity arising under the instrument, constitutional provision, statute, rule, ordinance, resolution, contract, or franchise and obtain a declaration of rights, status, or other legal relations under it.

R.C. 2721.03.

75. Before the Supreme Court's ruling in *Janus,* each Plaintiff was required to either join his or her respective union and pay full union membership dues or pay "fair-share fees" to the union. *See* R.C. 4117.09(C).

76. The collective bargaining agreements between the respective employers and unions are statutorily required to contain a provision authorizing the public employer to deduct periodic dues of union members (but not non-members fair share fees) "upon presentation of a written deduction authorization by the employee." R.C. 4117.09(B)(2).

77. The Plaintiffs have opposed and continue to oppose paying union membership dues because they are no longer members of a union and because they disagree with their respective unions' political advocacy and collective-bargaining activities. Like the plaintiff in *Janus*, they have been compelled by law and by their public employers' continued deduction of union

membership dues from their paychecks to provide monetary support for speech with which they disagree.

78. Before the *Janus* decision, the Plaintiffs had no meaningful choice regarding whether or not to support their respective unions financially. They were required to fund the union either through union membership dues or fair share fees. Accordingly, they reluctantly joined the respective unions.

79. When the Plaintiffs became aware of the change in the law after *Janus*, they resigned from their unions and were no longer members of said unions.

80. Accordingly, they demanded a cessation of union membership dues withdrawals and demanded refunds retroactively to the dates of their resignations.

81. The Defendants, however, through automatic union membership dues withdrawal and a refusal to recognize the Plaintiffs' rights under *Janus*, have continued to compel the Plaintiffs to subsidize their respective former unions' speech.

82. The union Defendants and employer Defendants were acting under color of state law by imposing these mandatory union membership dues payments on the Plaintiffs. *See, e.g.,* R.C. 4117.09(B)(2) and (C); *Lugar* v. *Edmondson Oil Co. Inc.*, 457 U.S. 922, 102 S.Ct. 2744, 73 L.Ed.2d 482 (1982) (holding private parties subject to liability under 42 U.S.C. § 1983 when acting under an unconstitutional statute).

83. The Plaintiffs have no control over the amount of union membership dues and, upon information and belief. At least as long as they are union members, neither the unions nor the employers ever offered to the Plaintiffs the option to pay union membership dues to the union directly (even though such arrangement is permissible under R.C. 4117.09), as opposed to the employer wage reduction for all union members—at least as long as they are union members.

84. Under the U.S. Supreme Court's holding in *Janus*, an employee must "clearly and affirmatively consent before any money is taken." *Janus*, 138 S.Ct. at 2486.

85. Here, to the extent that any of the Plaintiffs consented to the withdrawal of union membership dues from their respective paychecks, that consent was clearly revoked by their resignations.

86. The unions' respective Collective Bargaining Agreements ("CBA") do not allow for the continued deduction of union membership dues from non-members as described below.

87. For example, the CBA between Maumee and OAPSE permits the employer to "deduct union dues" from employee wages who have signed written authorizations. Maumee CBA Section 8.04(A), 19-MED-02-0088 (Mar. 5, 2020).

88. The CBA for Springfield provides for the deduction for dues "when so authorized in writing by each employee." Springfield CBA Section 3.3(A)(1), 17-MED-03-0321 (Oct. 5, 2017). There is nothing in the CBA preventing a non-member from cancelling such payroll deductions at any time and without permission from the union treasurer.

89. The CBA for Boardman requires that the Employer "deduct monthly dues, assessments, and initiation fees" but not fair share fees and not any funds from non-members. Boardman CBA at Article 8, Section 2, 18-MED-09-0941 (Apr. 30, 2019).

90. The CBA for Columbus allows for union member dues deductions but is silent as to any deductions for non-members. *See* Columbus City Schools CBA Section 109.03, 19-MED-02-0167 (Apr. 3, 2020).

91. The CBAs typically allow union members to cancel the automatic payroll deductions, but only at specified times.

92. The Defendants have copies of the relevant CBAs because they negotiated them

(without Plaintiffs' respective input) and are parties thereto. The CBAs are voluminous. As such, pursuant to Ohio Civ.R. 10(D), the relevant CBAs are not attached hereto.

93. There is thus a live dispute between the Parties regarding the Defendants' obligations under the contracts between the unions and Plaintiffs that can be properly resolved through a declaratory judgment action.

94. The Plaintiffs are entitled to a declaration that the Defendants' practice of continuing to collect union membership dues from employees after those employees have resigned from the union is unlawful, a permanent injunction enjoining such involuntary withdrawal of funds, and a refund of the money that was forcibly taken from them in violation of their constitutionally protected rights.

COUNT ONE: THE COURT SHOULD DECLARE THAT THE CONTRACTS BETWEEN THE PLAINTIFFS AND THE UNIONS ARE RESCINDED BASED ON MUTUAL REPUDIATION

95. The Plaintiffs restate the foregoing allegations and incorporate them here as if fully re-written.

96. To the extent that the union Defendants claim that any contracts or assignments of wages (via the Deduction Cards)—and specifically the Opt-out Windows contained therein remain in force even after the Plaintiffs have resigned from the unions, the Plaintiffs seek a declaration that their contracts with the unions were effectively rescinded and an order returning them to the financial situation as it existed at the time of the registration based on mutual repudiation.

97. The Plaintiffs have all unambiguously rescinded any contracts with their respective former unions and assignment of wages.

98. The union Defendants have, in turn, recognized and acknowledged that the Plaintiffs are no longer union members and have refused to provide any benefits or other consideration to

the Plaintiffs beyond the exclusive representation that they are required by law to provide to members and non-members alike.

99. When both parties repudiate or otherwise refuse to perform under a contract, Ohio courts treat the contract as rescinded. *See e.g.*, *Haman Ents., Inc.* v. *Sharper Impressions Painting Co.*, 2015-Ohio-4967, 50 N.E.3d 924, ¶ 19 (10th Dist.).

100. A party's assent to rescission can be inferred from their actions. *Id.*

101. In this case, the union Defendants by acknowledging that the Plaintiffs are no longer union members and withholding any purported benefits of union membership from the Plaintiffs have effectively rescinded any alleged contract with the Plaintiffs.

102. The CBAs do not provide for the deduction of union membership dues from nonmembers.

103. Despite this recission and the unions' termination of union member benefits to the Plaintiffs, the unions still claim the right—through state actors—to seize union membership dues from the non-member Plaintiffs.

104. There is therefore a dispute over the validity or interpretation of the contracts between the Plaintiffs and the union Defendants.

105. The Plaintiffs are entitled to a declaration that any contracts they may have had with the unions or any assignment of wages have been rescinded as of the date of the Plaintiffs' resignations and terminations of membership, a permanent injunction enjoining any further withdrawal of union membership dues pursuant to the purported contracts, and an order that the Defendants restore the Plaintiffs to their respective financial positions as of the date of their resignations by refunding all union membership dues collected after the date of the resignation.

COUNT TWO: THE COURT SHOULD DECLARE THAT THE CONTRACTS BETWEEN THE PLAINTIFFS AND THE UNIONS ARE RESCINDED BASED

ON MUTUAL MISTAKE

106. The Plaintiffs restate the foregoing and incorporate them here as if fully re-written.

107. In the alternative, to the extent that the union Defendants claim that their contracts with the Plaintiffs—and specifically the Opt-out Windows contained in those contracts— remain in force even after the Plaintiffs have resigned from the unions, the Plaintiffs seek a declaration that their contracts with the unions were effectively rescinded and an order returning them to the financial situation as of the date of resignation based on the doctrine of mutual mistake of law and fact.

108. Assuming Plaintiffs entered into a valid contract or assignment of wages for payment of union membership dues at the time Plaintiffs did so, both the Plaintiffs and the respective Defendants understood that the controlling law thereof was that set forth in *Abood* v. *Detroit Bd. Of Ed.*, 431 U.S. 209, 97 S.Ct. 1782, 52 L.Ed.2d 261 (1977), which allowed unions to require all employees in the bargaining unit to pay either union membership dues or non-member fair share fees to the union through their employers.

109. Based on the law at the time when the Plaintiffs' entered into any contract or assignment, they understood that they would be liable for union membership dues or non-member fair share fees whether or not they joined the applicable union.

110. After the Plaintiffs' entered into any contract or assignment, the law changed by virtue of the holding in *Janus*, which held that "States and public-sector unions may no longer extract agency fees from nonconsenting employees." *Janus*, 138 S.Ct. at 2486.

111. The status of the law under *Abood* was an important component in the parties' understanding of the import of joining or not joining the respective unions and the unions' permitted usage of the funds.

112. The foregoing was a material term or basis for the Plaintiffs' respective decisions in whether or not to join the union.

113. "A mutual mistake of fact or law regarding a material term of a contract is grounds for rescission." *Quesinberry* v. *Quesinberry*, 2022-Ohio-635, 185 N.E.3d 1163, ¶ 36 (2d Dist.), *appeal not accepted*, 167 Ohio St.3d 1467, 2022-Ohio-2490, 191 N.E.3d 437.

114. The Plaintiffs are entitled to a declaration that any contract with the unions and/or assignment of wages have been rescinded as of the date of the Plaintiffs' resignations, a permanent injunction enjoining any further withdrawal of union membership dues pursuant to the purported contracts and ordering that the Defendants restore the Plaintiffs to their respective financial positions as of the date of their resignations by refunding all union membership dues collected after the date of the resignation.

COUNT THREE: THE COURT SHOULD DECLARE THAT THE CONTRACTS BETWEEN THE PLAINTIFFS AND THE UNIONS IMPOSE AN UNENFORCEABLE PENALTY

115. The Plaintiffs restate the foregoing allegations and incorporate them here as if fully re-written.

116. In the alternative, to the extent that the Plaintiffs' resignations from the unions and termination of any signed Deduction Cards constitute a breach of contract, the unions' continued withdrawal of union membership dues constitutes an unreasonable and unenforceable penalty for such breach of contract.

117. Ohio law permits liquidated damages only when they represent a reasonable measure of compensation for the contract's breach. *Boone*, 145 Ohio St.3d 450, 2016-Ohio-628, 50 N.E.3d 502, at ¶ 17-19.

118. Conversely, a penalty is

> "a sum inserted in a contract, not as the measure of compensation for its breach, but rather as a punishment for default, or by way of security for actual damages which may be sustained by reason of nonperformance, and it involves the idea of punishment. A penalty is an agreement to pay a stipulated sum on breach of contract, irrespective of the damage sustained. Its essence is a payment of money stipulated as in terrorem of the offending party, *while the essence of liquidated damages is a genuine covenanted pre-estimate of damages.* The amount is fixed and is not subject to change; however, if the stipulated sum is deemed to be a penalty, it is not enforceable, and the non-defaulting party is left to the recovery of such actual damages as he can prove."

(Emphasis sic.) *Id.*, quoting *Piper* v. *Stewart & Inlow*, 5th Dist. Licking No. CA-2530, 1978 WL 217430, *1 (June 14, 1978).

119. In this case, the continued payment of union membership dues in an amount never specified in the Deduction Card—presumably subject to increase by unilateral determination by the union—and imposed upon the union members without advance knowledge, is not related to any additional cost or damages sustained by the unions.

120. The unions stopped providing those services to the Plaintiffs that they were not otherwise required by law to provide to members and non-members alike on or about the date of the Plaintiffs' resignations.

121. The unions were therefore immediately relieved of those costs associated with servicing additional union members and thus—assuming that the Plaintiffs' resignations constituted a breach of their contracts with the unions—suffered no damages from those breaches.

122. The additional union membership dues that the unions have received from the Plaintiffs after their respective resignations are thus unenforceable penalties.

123. The continued union membership dues payments are not consequential damages because a contracting party "is not, however, liable in the event of breach for loss that he did not at the time of contracting have reason to foresee as a probable result of such a breach." *Williams* v. *Gray Guy Grp., L.L.C.*, 2016-Ohio-8499, 79 N.E.3d 1146, ¶ 33 (10th Dist.). Since the Deduction Card does not specify the amount to be deducted, the employee cannot have foreseen what might be the probable result of a breach at the time of signing the Deduction Card.

124. The Plaintiffs are entitled to a declaration that the unions' continued withdrawal of union membership dues from their paychecks is an unenforceable penalty, a refund of all post-resignation union membership dues collected, and a permanent injunction enjoining any further union membership dues deductions.

COUNT FOUR: THE COURT SHOULD DECLARE THE PLAINTIFFS' CONTRACTS WITH THE UNIONS TO BE UNCONSCIONABLE CONTRACTS OF ADHESION

125. The Plaintiffs restate the foregoing allegations and incorporate them by reference here as if fully re-written.

126. Any contract, assignment of wages or Deduction Card signed by any Plaintiff is substantively unconscionable because not including any amounts and requiring monthly membership dues deduction every month for a full year without possible termination thereof upon leaving the union is "unfair and commercially unreasonable." *Porpora* v. *Gatliff Bldg. Co.,* 160 Ohio App.3d 843, 2005-Ohio-2410, 828 N.E.2d 1081, ¶ 8 (9th Dist.).

127. Additionally, any such contract, assignment of wages, or Deduction Card is unconscionable because the Plaintiffs—by virtue of the Ohio Revised Code, the collective bargaining agreements in place, and the mandatory recognition of only one bargaining unit—created "the absence of meaningful choice on the part of [Plaintiffs]" which was "combined with contract terms that are unreasonably favorable to the [unions]." *Sabo* v. *Hollister Water Assn.*, 4th

Dist. Athens No.06CA8, 2007-Ohio-7178, ¶ 34, citing *Collins* v. *Click Camera & Video, Inc.*, 86 Ohio App.3d 826, 834, 621 N.E.2d 1294 (2d Dist. 1993).

128. Further, "price is an essential element of a contract that must be proven for the contract to be enforceable." *Ross* v. *Belden Park Co.,* No. 1996CA00429, 1998 WL 347064, *3 (5th Dist. June 1, 1998) (internal quotation marks omitted). Any alleged contract between the Plaintiffs and Defendants had no stated amount—or price—to be deducted as union membership dues. Upon information and belief, there is no other document incorporated by reference into the Deduction Card which shows the essential price element.

129. Accordingly, any such contract, assignment of wages, or Deduction Card is invalid, and unconscionable.

130. The Plaintiffs are entitled to a declaration that any contracts they may have had with the unions or any assignment of wages are unenforceable contracts of adhesion, a permanent injunction enjoining any further withdrawal of union membership dues pursuant to the purported contracts and ordering that the Defendants restore the Plaintiffs to the financial situation as it existed at the time of their resignations by refunding all union membership dues collected after the date of the resignation.

131. The union could have made the contract fair and enforceable, and can do so prospectively through execution of a fair and enforceable Deduction Card, by providing the 'price' element, notifying the party of the option of direct payment to the union rather than automatic dues deductions, allowing that dues deductions can be cancelled at any time, and correcting any other practices which the court determines to be unfair or improper.

COUNT FIVE: THE DEFENDANT UNIONS HAVE BEEN UNJUSTLY ENRICHED

132. The Plaintiffs restate the foregoing allegations and incorporate them here as if fully re-written.

133. Any contract, agreement or assignment of wages has been rescinded or otherwise terminated.

134. By continuing to deduct union membership dues from the Plaintiffs' paychecks after the Plaintiffs resigned from union membership, the unions have been unjustly enriched.

135. Specifically, the unions continued to deduct union membership dues while at the same time not providing services.

136. The Plaintiffs have demanded the refund of their union membership dues after they were no longer union members, but the unions have refused.

137. The unions have thus retained a benefit under circumstances where it is inequitable to do so.

138. Accordingly, the Plaintiffs are entitled to damages in the form of a refund of their union membership dues, plus interest.

WHEREFORE, Plaintiffs pray for the following relief:

A. A Declaration that the Defendants continued withdrawal of union membership dues from Plaintiffs' paychecks is unlawful;

B. A Declaration that the Plaintiffs' contracts with their respective unions were rescinded or terminated upon the Plaintiffs' resignations or are otherwise invalid;

C. A refund of all union membership dues improperly withheld;

D. A permanent injunction barring further deductions;

E. An award of Plaintiffs' costs and attorneys' fees; and

F. Any further relief the Court deems just and equitable.

Respectfully submitted,

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