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Hon. Marsha J. Pechman

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
SEATTLE DIVISION

PAMELA CENTENO, MARY HOFFMAN,  
SUSAN ROUTH and JANICE WILEN, on  
behalf of themselves and others similarly  
situated,

Plaintiff,

v.

KEVIN W. QUIGLEY, in his capacity as  
Secretary of the Department of Social and  
Health Services of the State of Washington; and  
SEIU HEALTHCARE 775NW,

Defendants.

NO. 2:14-cv-00200 MJP

SECOND AMENDED COMPLAINT  
FOR MONEY DAMAGES AND  
DECLARATORY AND INJUNCTIVE  
RELIEF

JURY TRIAL DEMANDED

Plaintiffs allege as follows:

**I. INTRODUCTION**

1.1 Plaintiffs are individuals who provide in-home care services to adults with disabilities (“Individual Providers”). Plaintiffs receive compensation for their services from the State of Washington Department of Social and Health Services (“DSHS”), pursuant to a Medicaid waiver that DSHS received from the federal government.

1           1.2     The State of Washington compels Individual Providers to join and/or pay union  
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3 dues or fees to defendant Service Employees International Union Healthcare 775 NW (“SEIU”),  
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5 ostensibly for the purpose of funding SEIU’s representation of Individual Providers’ interests  
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7 with regard to their compensation and other terms of their relationship with DSHS.  
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9           1.3     In compelling Individual Providers to join and/or make payments to SEIU, the  
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11 State is violating Individual Providers’ rights under the First Amendment to the United States  
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13 Constitution, which forbids the government to compel individuals to join or financially support  
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15 the speech of third parties. The State can point to no compelling interest that it seeks to achieve  
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17 by this forced association, and any interest that the State has may be accomplished by means that  
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19 do not invade Individual Providers’ freedom of speech and association.  
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21           1.4.    The State contends that it may lawfully compel Individual Providers to support  
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23 SEIU, under an exception to the First Amendment rule that allows states to compel their  
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25 employees to pay dues to labor unions. However, the State may not invoke that exception here  
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27 because, by its own admission, Individual Providers are not full-fledged employees of the State,  
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29 but instead are merely deemed, by legislative fiat, to be State “employees” for the sole and  
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31 limited purpose of collective bargaining. The rationale that permits states to compel their  
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33 employees to pay union dues does not apply in the context of the relationship between Individual  
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35 Providers and DSHS. Indeed, the United States Supreme Court confirmed this in its recent  
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37 opinion in *Harris v. Quinn*, --- U.S. --- (Slip Op. June 30, 2014) (striking down similar Illinois  
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39 scheme forcing personal care providers to join and pay dues to SEIU-Illinois & Indiana).  
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**II. PARTIES**

2.1 Plaintiffs. Plaintiffs Pamela Centeno, Mary Hoffman, Janice Wilen and Susan Routh (collectively “Class Representatives”) are individuals residing in King County, Washington.

2.2 Defendants. Defendant Kevin Quigley is the Secretary of the Department of Social and Health Services of the State of Washington (“DSHS”). Defendant SEIU Healthcare 775NW is a labor union that, according to its website, “represents more than 40,000 long-term care workers providing quality in-home care, nursing home care and adult day health services in Washington State and Montana.”

**III. JURISDICTION AND VENUE**

3.1 Subject Matter Jurisdiction. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because it includes a claim brought pursuant to 42 U.S.C. § 1983 and the First and Fourteenth Amendments to the United States Constitution.

3.2 Personal Jurisdiction. The Court has personal jurisdiction over all parties.

3.3 Venue. Venue in this district is proper under 28 U.S.C. § 1391 because a substantial portion of the events giving rise to this lawsuit occurred in this district, and because the defendants reside in this district.

**IV. CLASS ACTION ALLEGATIONS**

4.1 Numerosity. The class that Class Representatives seek to represent is comprised of all persons who are currently, or who have been at any time during the previous three years, Individual Providers within the meaning of RCW 74.39A.240 and have paid dues or fees to SEIU. That statute defines an Individual Provider as

1 a person, including a personal aide, who has contracted with [DSHS] to provide  
2 personal care or respite care services to functionally disabled persons under the  
3 Medicaid personal care, community options program entry system, chore services  
4 program, or respite care program, or to provide respite care or residential services  
5 and support to persons with developmental disabilities under chapter 71A.12  
6 RCW, or to provide respite care as defined in RCW 74.13. 270.  
7

8 *Id.* On information and belief, there are thousands of Individual Providers in the State of  
9 Washington.  
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12 4.2 Commonality. All members of the class have been compelled to join SEIU, pay  
13 dues to that union and accept it as their sole and exclusive representative. All have suffered the  
14 same infringement on their rights under the First Amendment to the United States Constitution.  
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17 4.3 Typicality. The claims of the Class Representatives are typical of the class  
18 because they have been forced to join and pay dues to SEIU.  
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21 4.4 Adequacy of Representation. Class Representatives will adequately represent the  
22 class because they are able and willing to vigorously prosecute this action on behalf of  
23 themselves and class members. Class Representatives have strong individual interests in this  
24 litigation because: (1) each has been the in-home caregiver for their respective disabled children  
25 for a number of years; (2) each believes that her constitutional rights have been infringed by  
26 virtue of being forced to support SEIU. Class Representatives do not have any interests that  
27 conflict with the class. Class counsel have significant experience in class action litigation,  
28 including class litigation on behalf of public sector employees, and have the resources and  
29 experience to prosecute this class action.  
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40 4.5 Threat of Inconsistent Rulings. The prosecution of multiple individual actions by  
41 Individual Providers to redress defendants' unlawful conduct would create the risk of  
42 inconsistent rulings. Such rulings would subject defendants to differing standards of conduct.  
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1           4.6    Impairment of Absent Parties' Interests. The prosecution of individual actions by  
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3 Independent Providers would as a practical matter dispose of the interests of absent Individual  
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5 Providers, by creating standards of conduct that would be applicable to all Individual Providers  
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7 alike.

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9           4.7    Defendants Acted On Grounds Applicable To Entire Class. The policies  
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11 challenged in this litigation apply to all members of the class. Defendants treated all members of  
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13 the class similarly with respect to those policies.

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15           4.8    Common Questions Predominate. The questions and issues common to the class  
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17 predominate over any matters that may require resolution on an individual basis. The crux of  
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19 this dispute is the legality of the State's policy, which policy applies to all class members alike.  
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21 A class action is the most efficient means of adjudicating the rights and responsibilities of the  
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23 defendants and the class, and is far superior to numerous individual lawsuits challenging the  
24  
25 same policy.

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27                                   **V.    FACTS ENTITLING THE CLASS TO RELIEF**

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29           5.1    Provision of Home Care Prior To May 19, 2009. Prior to the Legislature's May  
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31 19, 2009 Amendment of RCW 74.39A ("Long Term Care Services Options"), individuals with  
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33 developmental disabilities who needed in-home care could receive that care from one of several  
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35 sources. "Contract Providers" were private entities that enter contracts with the county or state  
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37 to provide individual care through employees. "Individual Providers" were caregivers who are  
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39 not employees of a Contract Provider. "Family Member Providers" were neither Individual  
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41 Providers nor employees of Contract Providers. Rather, they were family members of the  
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43 disabled individual who were certified as caregivers by DSHS. The majority of Family Member  
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1 Providers provided services under the auspices of an agency-employer, which handled training,  
2 supervision, payroll services, and the like. All three categories of caregivers received payment  
3 for services from federal Medicaid funds.  
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7 5.2 RCW 74.39A.270 Deems Individual Providers to Be Employees of the State, But  
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9 Only For Certain Limited Purposes. In 2008 the Legislature deemed all Individual Providers to  
10 be State employees, but only for the purpose of forcing them to join SEIU, pay union dues, work  
11 under a collective bargaining agreement, and accept SEIU as their representative vis-a-vis the  
12 State. RCW 74.39A.270.  
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17 5.3 RCW 74.39A.326 Forced Family Member Caregivers Out Of Home Care  
18 Agencies. Effective May 19, 2009 the Legislature prohibited DSHS from continuing to  
19 reimburse Home Care Agencies for services provided by Family Member Providers. RCW  
20 74.39A.326. This forced all Family Care Providers to become Individual Providers if they  
21 wished to continue to care for their disabled family member clients.  
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27 5.4 The Compelled Union Membership and Dues Requirement Violates Individual  
28 Providers' First Amendment Rights. The First Amendment to the United States Constitution  
29 generally forbids a state to compel individuals to join associations or to financially support the  
30 speech of third parties. The State can point to no compelling interest that it seeks to achieve by  
31 this forced association, and any interest that the State has may be accomplished by means that do  
32 not invade Individual Providers' freedom of speech and association. A narrow exception exists  
33 permitting the State in some circumstances to compel individual employees to accept and pay  
34 dues to a particular labor union. However, as in *Harris, supra*, that exception does not apply  
35 here because, inter alia, Individual Providers are not employees of the State, as that term is  
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1 defined for purposes of the exception. Indeed, in enacting RCW 74.39A.270, it appears that  
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3 defendants have attempted to label Individual Providers as State “employees,” without giving  
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5 them any of the benefits of being state employees, solely for the purpose of evading First  
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7 Amendment constraints.

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9 5.5. SEIU’s Liability. SEIU has acted under color of state law and is jointly liable for  
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11 the infringement on Individual Providers’ First Amendment rights described above. It worked  
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13 jointly with the State to establish the statutory scheme that deprives Individual Providers of their  
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15 First Amendment rights against compelled association. Having lobbied the State and  
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17 campaigned to have an initiative passed to institute this unlawful scheme, it has benefitted  
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19 enormously from that compelled association, in the form of union dues that Individual Providers  
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21 have been forced to pay out of the monies they receive in return for their services.

## 22 23 VI. CAUSES OF ACTION

24  
25 6.1 Violation of First and Fourteenth Amendments to the United States Constitution  
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27 and 42 U.S.C. § 1983. Because Individual Providers are not employees of the State, as that term  
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29 is defined for purposes of the exception to the prohibition against compelled association,  
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31 defendants have violated the Individual Providers’ First Amendment rights. Section 1983  
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33 prohibits the deprivation of rights, under color of State law, enjoyed under the United States  
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35 Constitution. Section 1983 prohibits private entities—such as SEIU—from acting in concert  
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37 with the government to deprive individuals of rights secured by the United States Constitution.

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39 6.2. Unjust Enrichment. Individual Providers have conferred benefits upon SEIU in  
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41 the form of union dues they have been compelled to pay, through deductions made by the State  
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43 from their compensation. SEIU acted in concert with the State to arrange for these deductions to  
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1 go to SEIU’s coffers, and it knowingly and willingly accepted those dues payments. The  
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3 circumstances under which those payments were made—the State’s unlawful compulsion of  
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5 Individual Providers to make those payments and SEIU’s participation in the creation and  
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7 enforcement of the statutory scheme that enacted that compulsion—render it unjust for SEIU to  
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9 retain those dues, and gives Individual Providers a right to have those dues restored to them.

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11 **VII. RELIEF REQUESTED**

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13 Plaintiffs pray for the following relief:

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15 7.1 Declaratory and Injunctive Relief. An actual justiciable controversy currently  
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17 exists between plaintiffs and defendants regarding plaintiffs’ rights under the First Amendment  
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19 to the United States Constitution to be free from state compulsion to join and fund the State’s  
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21 chosen representative (SEIU) for Individual Providers. Plaintiffs seek a declaration that RCW  
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23 74.39A.270 violates the First Amendment to the United States Constitution by compelling dues  
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25 payments to SEIU, and an order enjoining the State from further enforcement of that statute and  
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27 SEIU from further collection of dues paid pursuant to same. Plaintiffs further seek an order  
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29 compelling SEIU to disgorge the dues it has collected by virtue of RCW 74.39A.270, and restore  
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31 those monies to the Individual Providers.

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33 7.2 Damages. Plaintiffs seek an award of damages to compensate them for union  
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35 membership dues that they were forced to pay by virtue of the State’s unlawful enactment and  
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37 enforcement of RCW 74.39A.270 and the collective bargaining agreements entered under the  
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39 ostensible authority of that statute. Plaintiffs further seek an award of nominal damages for  
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41 violation of their rights under the First Amendment to the United States Constitution.



1           7.3    Attorneys' Fees and Costs. For all reasonable fees and costs, including without  
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3 limitation for attorney's fees pursuant to 42 U.S.C. § 1988 and any other applicable statute,  
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5 and/or an award of fees based on the common fund doctrine.  
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7           7.4    Further Relief. For such other relief as the Court deems just and equitable.  
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9           DATED this 11<sup>th</sup> day of July, 2014.

10  
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23           DATED this 11<sup>th</sup> day of July, 2014.

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