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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

James Imhoff and Lucille Imhoff, as
individuals, and on behalf of others
similarly situated,

Plaintiffs,

v.

**California Teachers Association;
Colusa Educators Association**, as
representative of the class of all chapters
and affiliates of the California Teachers
Association,

Defendants.

Case No. _____

**Plaintiffs' Class-Action Complaint
Jury Trial Demanded**

1 James Imhoff and Lucille Imhoff are public-school teachers who bring this class
2 action on behalf of themselves and all others similarly situated, seeking redress for the

1 defendants' violations of their constitutionally protected rights. The defendants have
2 violated the representative plaintiffs' rights by establishing an unconstitutional
3 "agency shop," where employees were forced to either join the union or else pay "fair
4 share service fees" as a consequence for refusing to join. *See* Cal. Gov't Code §§ 3546
5 (attached as Exhibit 1). Mr. and Mrs. Imhoff refused to join or financially support the
6 California Teachers Association (CTA) because it advocates for policies that contra-
7 dict their religious beliefs, and as a consequence they were forced to pay money to a
8 third-party charity in lieu of paying "fair share service fees" to the union. *See* Cal.
9 Gov't Code § 3546.3 (attached as Exhibit 2) (protecting religious objectors from
10 being forced to pay "fair share service fees" to a union but allowing the union to
11 compel religious objectors to pay an equivalent amount to a charitable organization
12 instead).

13 Several class-action lawsuits have already been filed on behalf of teachers who
14 were compelled to pay union dues or "fair share service fees" to the CTA as a condi-
15 tion of their employment. *See, e.g., Babb v. California Teachers Association*, No. 8:18-
16 cv-00994-JLS-DFM (C.D. Cal.). But Mr. and Mrs. Imhoff are suing on behalf of a
17 separate and distinct class: The religious objectors who were forced pay money to a
18 third-party charity as a penalty for exercising their constitutional right not to join or
19 financially support the CTA. The Imhoffs seek to recover the money that the union
20 forced them to pay in violation of their constitutional rights, as well as an injunction
21 that prevents the union from requiring payments to third-party entities in the future.

22 JURISDICTION AND VENUE

23 1. The Court has subject-matter jurisdiction under 28 U.S.C. § 1331, 28 U.S.C.
24 § 1343, and 28 U.S.C. § 1367.

25 2. Venue is proper because at least one defendant resides or has its offices located
26 in this judicial district. *See* 28 U.S.C. § 1391(b)(2).

PARTIES

3. Plaintiff James Imhoff resides in Colusa County, California.

4. Plaintiff Lucille Imhoff resides in Colusa County, California.

5. Defendant California Teachers Association (CTA) is a labor union whose offices are located at 1705 Murchison Drive, Burlingame, California 94010. It has more than 1,300 chapters and affiliates throughout the State.

6. Defendant Colusa Educators Association is a local union chapter affiliated with the California Teachers Association. It is sued as representative of the class of all chapters and affiliates of the CTA.

STATEMENT OF THE CLAIM

7. Mr. and Mrs. Imhoff are public-school teachers who work for the Colusa Unified School District.

8. Mr. and Mrs. Imhoff refuse to join the CTA or its affiliates because the union advocates for policies that contradict their religious beliefs.

9. California law protects religious objectors from being forced to financially support a union that advocates for policies that contradict their religious beliefs, as required by the Constitution. *See* Cal. Gov't Code § 3546.3.

10. Nevertheless, California law simultaneously allows public-employee unions to compel religious objectors to pay an amount equal to the fair-share service fee to a union-approved charity rather than the union itself. *See* Cal. Gov't Code § 3546.3 (“[S]uch employee may be required, in lieu of a service fee, to pay sums equal to such service fee either to a nonreligious, nonlabor organization.”).

11. The CTA and the Colusa Educators Association compelled Mr. and Mrs. Imhoff to pay money to a union-approved charity as a consequence for exercising

1 their constitutional right not to join or support the union. This money was automat-
2 ically taken from their paycheck in the same way that union dues or “fair-share service
3 fees” were taken from other employees.

4 12. The CTA and the Colusa Educators Association violated Mr. and Mrs. Im-
5 hoff’s constitutional rights by forcibly diverting their wages to a third-party entity.
6 Religious objectors have a constitutional right to refrain from joining or lending fi-
7 nancial support to a union that advocates for policies that contradict their religious
8 beliefs, and they cannot be subject to any type of financial penalty for that decision.

9 13. Section 3546.3 of the California Government Code is unconstitutional be-
10 cause it allows public-employee unions to compel religious objectors to pay money to
11 a third-party entity as a consequence for exercising their constitutional right not to
12 join or support the union.

13 14. The CTA and its affiliates, including the Colusa Educators Association, were
14 acting under color of state law by extracting these mandatory charitable contributions
15 from the Imhoffs and other religious objectors. *See, e.g.,* Cal. Gov’t Code § 3546.3;
16 *Lugar v. Edmondson Oil Co. Inc.*, 457 U.S. 922 (1982).

17 15. The Imhoffs and their fellow class members are entitled to recover the money
18 that was forcibly taken from them in violation of their constitutionally protected
19 rights. *See* 42 U.S.C. § 1983.

20 16. The CTA and its affiliates, including the Colusa Educators Association, have
21 violated state tort law by diverting money from the Imhoffs’ wages without their freely
22 given consent. The CTA and its affiliates cannot defend their tortious conduct by
23 relying on sections 3546 or 3546.3 of the California Government Code, because these
24 statutes are unconstitutional and unconstitutional statutes cannot confer immunity on
25 tortious conduct.

1 17. Section 1159 of the California Government Code does not shield the CTA
2 or its affiliates from liability under state tort law because the statute covers only law-
3 suits to recover “agency or fair share fees,” not forced charitable contributions that
4 were made in lieu of fair-share service fees. *See* Exhibit 3.

5 18. Mr. and Mrs. Imhoff sue on behalf of a class of all religious objectors to the
6 CTA or its affiliates who were forced to pay money to a charitable or third-party or-
7 ganization as a consequence of their refusal to financially support the union. The class
8 includes everyone who has ever fallen within this definition, including retired teachers
9 and teachers who have moved to other States, and it includes anyone who comes
10 within the class definition at any time before the conclusion of this action.

11 **CAUSES OF ACTION**

12 19. Mr. and Mrs. Imhoff bring suit under 42 U.S.C. § 1983 and the Declaratory
13 Judgment Act, 28 U.S.C. § 2201, each of which supplies a cause of action for the
14 individual and class-wide relief that they are requesting.

15 20. Mr. and Mrs. Imhoff are also suing the defendants under the state-law torts
16 of conversion, trespass to chattels, replevin, and any other state-law cause of action
17 that offers relief for this unlawful and unauthorized diversion of their wages. The
18 plaintiffs invoke the supplemental jurisdiction of this court over these pendent state-
19 law claims. *See* 28 U.S.C. § 1367.

20 **DEMAND FOR RELIEF—UNCONSTITUTIONAL AGENCY SHOP**

21 21. Mr. and Mrs. Imhoff respectfully request that the court:

- 22 a. certify a plaintiff class of all religious objectors to the CTA or its affil-
23 iates who were forced to pay money to a charitable or third-party or-
24 ganization as a consequence of their refusal to financially support the
25 union;
26 b. certify a defendant class of all chapters and affiliates of the CTA;

- 1 c. declare that Mr. and Mrs. Imhoff and their fellow class members have
2 a constitutional right to decline to join or financially support a public-
3 employee union, and that they cannot be penalized or forced to pay
4 money to a third-party entity as a consequence for exercising this con-
5 stitutional right;
- 6 d. declare that state tort law protects the right of the plaintiffs and their
7 fellow class members not to have their wages diverted to a non-union
8 entity as a consequence for exercising their right not to join or support
9 a public-employee union;
- 10 e. declare Cal. Gov't Code § 3546.3 unconstitutional because it allows
11 public-employee unions to compel religious objectors to pay money
12 to a union-approved charity and penalizes them for exercising their
13 constitutional right not to join or financially support a public-em-
14 ployee union;
- 15 f. permanently enjoin the CTA and its affiliates, including the Colusa
16 Educators Association, from entering into or enforcing collective-bar-
17 gaining agreements that compel non-union members to pay money
18 to a third-party entity as a consequence for exercising their right not
19 to join or support a public-employee union;
- 20 g. order the CTA and its affiliates, including the Colusa Educators As-
21 sociation, to repay the money that they unconstitutionally diverted
22 from the class members' wages;
- 23 h. award costs and attorneys' fees under 42 U.S.C. § 1988;
- 24 i. grant all other relief that the Court deems just, proper, or equitable.

Respectfully submitted.

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Dated: November 7, 2018

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*Counsel for Plaintiffs and
the Proposed Class*

State of California

GOVERNMENT CODE

Section 3546

3546. (a) Notwithstanding any other provision of law, upon receiving notice from the exclusive representative of a public school employee who is in a unit for which an exclusive representative has been selected pursuant to this chapter, the employer shall deduct the amount of the fair share service fee authorized by this section from the wages and salary of the employee and pay that amount to the employee organization. Thereafter, the employee shall, as a condition of continued employment, be required either to join the recognized employee organization or pay the fair share service fee. The amount of the fee shall not exceed the dues that are payable by members of the employee organization, and shall cover the cost of negotiation, contract administration, and other activities of the employee organization that are germane to its functions as the exclusive bargaining representative. Agency fee payers shall have the right, pursuant to regulations adopted by the Public Employment Relations Board, to receive a rebate or fee reduction upon request, of that portion of their fee that is not devoted to the cost of negotiations, contract administration, and other activities of the employee organization that are germane to its function as the exclusive bargaining representative.

(b) The costs covered by the fee under this section may include, but shall not necessarily be limited to, the cost of lobbying activities designed to foster collective bargaining negotiations and contract administration, or to secure for the represented employees advantages in wages, hours, and other conditions of employment in addition to those secured through meeting and negotiating with the employer.

(c) The arrangement described in subdivision (a) shall remain in effect unless it is rescinded pursuant to subdivision (d). The employer shall remain neutral, and shall not participate in any election conducted under this section unless required to do so by the board.

(d) (1) The arrangement described in subdivision (a) may be rescinded by a majority vote of all the employees in the negotiating unit subject to that arrangement, if a request for a vote is supported by a petition containing 30 percent of the employees in the negotiating unit, the signatures are obtained in one academic year. There shall not be more than one vote taken during the term of any collective bargaining agreement in effect on or after January 1, 2001.

(2) If the arrangement described in subdivision (a) is rescinded pursuant to paragraph (1), a majority of all employees in the negotiating unit may request that the arrangement be reinstated. That request shall be submitted to the board along with a petition containing the signatures of at least 30 percent of the employees in the negotiating unit. The vote shall be conducted at the worksite by secret ballot, and

shall be conducted no sooner than one year after the rescission of the arrangement under this subdivision.

(3) If the board determines that the appropriate number of signatures have been collected, it shall conduct the vote to rescind or reinstate in a manner that it shall prescribe in accordance with this subdivision.

(4) The cost of conducting an election under this subdivision to reinstate the organizational security arrangement shall be borne by the petitioning party and the cost of conducting an election to rescind the arrangement shall be borne by the board.

(e) The recognized employee organization shall indemnify and hold the public school employer harmless against any reasonable legal fees, legal costs, and settlement or judgment liability arising from any court or administrative action relating to the school district's compliance with this section. The recognized employee organization shall have the exclusive right to determine whether any such action or proceeding shall or shall not be compromised, resisted, defended, tried, or appealed. This indemnification and hold harmless duty shall not apply to actions related to compliance with this section brought by the exclusive representative of district employees against the public school employer.

(f) The employer of a public school employee shall provide the exclusive representative of a public employee with the home address of each member of a bargaining unit, regardless of when that employee commences employment, so that the exclusive representative can comply with the notification requirements set forth by the United States Supreme Court in *Chicago Teachers Union v. Hudson* (1986) 89 L.Ed. 2d 232.

(Amended by Stats. 2001, Ch. 805, Sec. 2. Effective January 1, 2002.)



State of California

GOVERNMENT CODE

Section 3546.3

3546.3. Notwithstanding subdivision (i) of Section 3540.1, Section 3546, or any other provision of this chapter, any employee who is a member of a religious body whose traditional tenets or teachings include objections to joining or financially supporting employee organizations shall not be required to join, maintain membership in, or financially support any employee organization as a condition of employment; except that such employee may be required, in lieu of a service fee, to pay sums equal to such service fee either to a nonreligious, nonlabor organization, charitable fund exempt from taxation under Section 501(c)(3) of Title 26 of the Internal Revenue Code, chosen by such employee from a list of at least three such funds, designated in the organizational security arrangement, or if the arrangement fails to designate such funds, then to any such fund chosen by the employee. Either the employee organization or the public school employer may require that proof of such payments be made on an annual basis to the public school employer as a condition of continued exemption from the requirement of financial support to the recognized employee organization. If such employee who holds conscientious objections pursuant to this section requests the employee organization to use the grievance procedure or arbitration procedure on the employee's behalf, the employee organization is authorized to charge the employee for the reasonable cost of using such procedure.

(Added by Stats. 1980, Ch. 816.)



Code: GOV

Section: 1159.

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GOVERNMENT CODE - GOV

TITLE 1. GENERAL [100 - 7914] (Title 1 enacted by Stats. 1943, Ch. 134.)

DIVISION 4. PUBLIC OFFICERS AND EMPLOYEES [1000 - 3599] (Division 4 enacted by Stats. 1943, Ch. 134.)

CHAPTER 1. General [1000 - 1241] (Chapter 1 enacted by Stats. 1943, Ch. 134.)

ARTICLE 6. Salary and Wage Deductions [1150 - 1159] (Article 6 enacted by Stats. 1943, Ch. 134.)

1159. (a) The Controller, a public employer, an employee organization, or any of their employees or agents, shall not be liable for, and shall have a complete defense to, any claims or actions under the law of this state for requiring, deducting, receiving, or retaining agency or fair share fees from public employees, and current or former public employees shall not have standing to pursue these claims or actions, if the fees were permitted at the time under the laws of this state then in force and paid, through payroll deduction or otherwise, prior to June 27, 2018.

(b) This section shall apply to claims and actions pending on its effective date, as well as to claims and actions filed on or after that date.

(c) The enactment of this section shall not be interpreted to create the inference that any relief made unavailable by this section would otherwise be available.

(d) For purposes of this section:

(1) "Employee organization" means any organization that functioned as an exclusive collective bargaining representative for public employees under any statute, ordinance, regulation, or other state or local law, and any labor organization with which it was affiliated.

(2) "Public employer" means any public employer, including, but not limited to, the state, the Regents of the University of California, the Trustees of the California State University, the California State University, the Judicial Council, a trial court, a city, a county, a city and county, a school district, a community college district, a transit district, any public authority, public agency, or any other political subdivision or public corporation, or any other entity considered a public employer for purposes of the labor relations statutes of California.

(e) The Legislature finds and declares:

(1) Application of this section to pending claims and actions clarifies existing state law rather than changes it. Public employees who paid agency or fair share fees as a condition of public employment in accordance with state law and Supreme Court precedent prior to June 27, 2018, had no legitimate expectation of receiving that money under any available cause of action. Public employers and employee organizations who relied on, and abided by, state law and Supreme Court precedent in deducting and accepting those fees were not liable to refund them. Agency or fair share fees paid for collective bargaining representation that employee organizations were obligated by state law to provide to public employees. Application of this section to pending claims will preserve, rather than interfere with, important reliance interests.

(2) This section is necessary to provide certainty to public employers and employee organizations that relied on state law, and to avoid disruption of public employee labor relations, after the Supreme Court's decision in *Janus v. American Federation of State, County, and Mun. Employees*, Council 31 (2018) 138 S.Ct. 2448.

(Added by Stats. 2018, Ch. 405, Sec. 1. (SB 846) Effective September 14, 2018.)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
James Imhoff and Lucille Imhoff
(b) County of Residence of First Listed Plaintiff Colusa
(c) Bradley Benbrook, Benbrook Law Group, 400 Capitol Mall, Suite 2530, Sacramento, CA 95814 (916) 447-4900; Jonathan F. Mitchell, Mitchell Law PLLC, 106 E. 6th St., Suite 900, Austin, TX 78701, (512) 686-3940

DEFENDANTS
California Teachers Association and the Colusa Educators Association
County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only) Click here for: Nature of Suit Code Descriptions.

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories and codes.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. § 1983, 28 U.S.C. § 2201
Brief description of cause:
Class-action lawsuit challenging the constitutionality of California labor laws and seeking refund of agency fees

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$
CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY
(See instructions): JUDGE Judge Morrison C. England DOCKET NUMBER 2:18-cv-02574-MCE-CKD

DATE November 6, 2018 SIGNATURE OF ATTORNEY OF RECORD /s/ Bradley Benbrook

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Claims CA Teachers Association, Colusa Educators Charge Fees 'As a Consequence' to Those Against Joining Union](#)
