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Attorneys for Defendant

**IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY,
PENNSYLVANIA**

JANE LADLEY and CHRISTOPHER
MEIER,

Plaintiffs,

v.

PENNSYLVANIA STATE EDUCATION
ASSOCIATION

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No. CI-14-08552

**DEFENDANT PSEA'S ANSWER WITH NEW MATTER TO PLAINTIFFS'
SECOND AMENDED COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

NOW COMES the Defendant, the Pennsylvania State Education Association ("PSEA"), by and through its attorneys, Thomas W. Scott, Esquire of Killian & Gephart, LLP, and answers the allegations of the Plaintiffs' Second Amended Complaint as follows:

1. It is admitted only that Plaintiffs Ladley and Meier are former and current public school teachers, respectively, who oppose paying union fair share fees on religious grounds who have filed this suit against defendant PSEA. It is

denied that any of Plaintiffs' rights have been violated or that they have any rights to "vindicate."

2. This paragraph paraphrases and contains a partial quotation from 71 P.S. §575, the Fair Share Fee Law, which is a writing that speaks for itself. The entire statute is available to the Court for interpretation and application and any attempt by Plaintiffs to misstate or misuse the statute is denied.

3. This paragraph sets for a conclusion of law and no responsive pleading is required.

4. This paragraph sets forth Plaintiffs' request for relief, which does not require an answer. It is denied that Defendant has violated any of Plaintiffs' rights and that Plaintiffs are entitled to any relief.

5. It is admitted that the Plaintiffs have filed the suit pursuant to 42 U.S.C. § 1983, §1988, claiming violations of the First and Fourteenth Amendments to the United States Constitution and Article I of the Constitution of the Commonwealth. It is denied that Defendant has violated any of Plaintiffs' statutory or constitutional rights.

6. This paragraph sets for a conclusion of law and no responsive pleading is required.

7. This paragraph sets for a conclusion of law and no responsive pleading is required.

8. This paragraph sets for a conclusion of law and no responsive pleading is required.

9. Defendant PSEA does not have knowledge of the facts set forth in this paragraph regarding Plaintiff Ladley and strict proof thereof is demanded at trial, if relevant.

10. Defendant PSEA does not have knowledge of the facts set forth in this paragraph regarding Plaintiff Meier and strict proof thereof is demanded at trial, if relevant.

11. Admitted.

12. This paragraph sets for a conclusion of law and no responsive pleading is required.

13. This paragraph sets for a conclusion of law and no responsive pleading is required.

14. This paragraph contains a partial quotation from the Declaratory Judgments Act, which is a writing that speaks for itself. The entire statute is available to the Court for interpretation and application and any attempt by Plaintiffs to misstate or misuse the statute is denied.

15. This paragraph sets for a conclusion of law and no responsive pleading is required.

16. Defendant PSEA does not have knowledge of the facts set forth in this paragraph regarding Plaintiff Ladley and strict proof thereof is demanded at trial, if relevant. It is admitted that The Avon Grove Education Association (AGEA) is the exclusive representative for collective bargaining of the professional employees of the Avon Grove School District, with the clarification that AGEA is a unified affiliate local of the Pennsylvania State Education Association and National Education Association. The appropriate complete identifier of AGEA is The Avon Grove Education Association, PSEA/NEA. For simplicity, the Association will be identified herein as AGEA, unless the circumstances require a more complete identification.

17. Admitted.

18. Admitted that AGEA and Avon Grove School District ratified a collective bargaining agreement that includes section "15.1 FAIR SHARE," which requires non-members of the Association who are members of the bargaining unit represented by the Association to pay a fair share fee, which is defined within the CBA as "regular membership dues of the Association, less the cost for the previous fiscal year of its activities and undertakings which were not reasonably employed to implement the duties of the Association as the exclusive bargaining representative, as provided under Act 84 of 1988." By way of further answer, the CBA also provided Plaintiff Ladley with a salary of \$54,225.40 for a

190 day work year (\$285.40 per day), as well as excellent fringe benefits, including, *inter alia*, medical benefits, prescription drug benefits, dental insurance, vision insurance, life insurance, disability insurance, personal days, paid family sick days, and tuition reimbursement, all insured *via* just cause protection against any contractual violation or adverse employment action through access to a grievance procedure culminating in binding arbitration. The Avon Grove CBA is attached to the Second Amended Complaint as Exhibit A and speaks for itself. No further answer is required to the legal argument and case citation set forth in this paragraph.

19. Denied as stated. The fair share provisions of the CBA only apply to members of the bargaining unit represented by the AGEA, not to “all employees of the District” as averred. The CBA, including the fair share provisions, is a written document that speaks for itself and any mischaracterization or limitation is denied. It is admitted that the fair share fee for Plaintiff Ladley was approximately \$435.14 per year, amounting to \$2.29 per day, or eight-tenths of one-percent of her salary, and that, pursuant to the CBA, that amount was deducted from her pay.

20. Denied as stated. It is admitted that Defendant PSEA mailed Plaintiff Ladley a notice advising her of her rights as a non-member fee-payer. Exhibit “D” attached to Plaintiff’s Amended Complaint is but a portion of that notice. The notice is a writing that speaks for itself and any mischaracterization or paraphrase

is denied to the extent inconsistent with the document. It is denied that AGEA “negotiated for the right to extract fees” from Plaintiff Ladley or anyone else. AGEA and the School District agreed that non-members of the Association, who benefitted from the collective bargaining work and obligations of the Association, should pay their fair share toward the cost of those services – all as authorized by law. The notice says nothing about payment of the fair share fee being a condition of Plaintiff Ladley’s continued employment.

21. This paragraph sets forth Plaintiffs’ partial synopsis of the provisions of 71 P.S. §575, which is a written statute that speaks for itself, as well as conclusions of law and no responsive pleading is required.

22. It is admitted that on January 4, 2014 Plaintiff Ladley notified Defendant PSEA that she was claiming religious objector status under 71 P.S. §575(h). By way of further answer, Plaintiff Ladley also asked Defendant PSEA to respond to her request for religious objector status and to provide her “with a list of registered charities, so we can decide which non-religious charity is mutually agreeable as required by law. 71 P.S. §575(h).”

23. It is admitted that by letter dated March 7, 2014, Defendant PSEA advised Plaintiff Ladley that her religious objection to payment of the fair share fee to PSEA had been accepted. The letter of March 7, 2014 is a writing that speaks for itself and any mischaracterization is denied. The statements made in footnotes

5 and 6 of the Second Amended Complaint associated with this paragraph are likewise denied to the extent that they set forth conclusions of law and assert legal positions that do not require a response.

24. Admitted that Plaintiff Ladley sent a letter dated March 16, 2014 that is attached to the Second Amended Complaint as Exhibit "G," which is a writing that speaks for itself.

25. Admitted that Defendant PSEA sent a letter dated March 19, 2014 that is attached to the Second Amended Complaint as Exhibit "H," which is a writing that speaks for itself.

26. Admitted in part and denied in part. The letter dated March 19, 2014 attached to the Second Amended Complaint as Exhibit "H," is a writing that speaks for itself. By way of further answer, Defendant PSEA's December 12, 2013 notice (Exhibit D) advised ## that the local association and PSEA and NEA would all be referred to as "the Association." Footnote 7 accompanying this paragraph sets forth conclusions of law and no responsive pleading is required. If a response is required, the averment is denied.

27. Admitted that Plaintiff Ladley sent an email on March 30, 2014 that is attached to the Second Amended Complaint as Exhibit "I," which is a writing that speaks for itself.

28. Admitted in part and denied in part. Admitted that Defendant PSEA sent an email dated March 31, 2014 that is attached to the Amended Complaint as Exhibit "J." The email is writing that speaks for itself.

29. This paragraph sets forth conclusions of law and no responsive pleading is required. If a response is required, the averment is denied.

30. Admitted in part and denied in part. Admitted that Defendant PSEA sent an email dated March 31, 2014 that is attached to the Amended Complaint as Exhibit "J." The email is writing that speaks for itself, and accurately quotes from the CAF website.

31. Denied. Section 575 limits the distribution of fair share fees collected from religious objectors such as Plaintiff Ladley to "non-religious" charities, making the presence of specific religious tenets in the self-description of an organization a legitimate inquiry and potential basis for non-agreement to a selected charity.

32. Admitted.

33. Admitted. By way of further answer, any intimation that the delay in responding to the Plaintiff's alternate charity selection was excessive, or material to the issues present in this case is specifically denied.

34. Admitted in part and denied in part. It is admitted that by letter dated March 3, 2015, Defendant PSEA advised Plaintiff Ladley that it was not agreeable

to the alternate charity she selected to receive fair share fees, because COOL is a partisan organization. The letter of March 3, 2015 is a writing that speaks for itself and any mischaracterization is denied.

35. Denied as a conclusion of law to which no response is required. To the extent that a response is required, section 575 authorizes the donation of religious objector's fair share fees to mutually agreeable non-religious charities. Any time a religious objector identifies a charity as a potential recipient of the funds earned by Defendant PSEA that would otherwise be used by Defendant PSEA to defray the cost of negotiating and administering the contract that benefits all members of the bargaining unit, including religious objectors, Defendant PSEA has both the reason and the right to determine the religious, political, and partisan leanings of the selected "charity" to determine if it will agree to have its money sent there.

36. Defendant PSEA is does not have knowledge of the tax status of the COOL organization and strict proof thereof is demanded at trial, if relevant. No response is required to the legal citations and quotations set forth in this paragraph.

37. Admitted.

38. Admitted in part and denied in part. It is admitted that PSEA adopted comprehensive procedures for responding to requests by religious objectors to the payment of fair share fees that include procedures to resolve

disputes that may arise over the selection of a charity and that the procedures were communicated to Plaintiff Ladley through a letter addressed to her counsel on July 27, 2016. The Procedures and the correspondence are attached to the Second Amended Complaint as Exhibit P and are writings which speak for themselves.

39. The Procedures are a writing that speaks for itself and any mischaracterization is denied.

40. The Procedures are a writing that speaks for itself and any mischaracterization is denied.

41. Admitted.

42. PSEA is without knowledge as to Plaintiff Ladley's state of mind regarding her rights. It is denied that there is any reason for any uncertainty – the Procedures provide a mechanism to reach agreement on a charity if possible, and to resolve any disagreement when agreement is not possible.

43. It is admitted that the Penn Manor Education Association, PSEA/NEA (PMEA) is the exclusive collective bargaining representative for the non-management professional employees of the Penn Manor School District. Defendant PSEA does not have knowledge of the facts specific to Plaintiff Meier's employment and strict proof thereof is demanded at trial, if relevant.

44. Admitted that PMEA contracts prior to 2012 did not contain a fair share provision.

45. Admitted that PMEA negotiated a fair share provision into its collective bargaining agreement with Penn Manor School District in its 2012 – 2014 contract, attached as Exhibit “Q.” It is denied that the fair share provision applies to all employees of the District – it only applies to employees represented by PMEA. The CBA is a written document that speaks for itself and any inaccurate paraphrase or mischaracterization of its provisions is denied to the extent inconsistent with the document.

46. It is admitted that the fair share fee for Plaintiff Meier was approximately \$435.14 per year, amounting to \$2.29 per day school day. It is denied that the CBA gives PMEA “the contractual authority to extract fees” from Plaintiff Meier or anyone else. PMEA and the School District agreed that non-members of the Association, who benefit from the collective bargaining work and obligations of the Association, should pay their fair share toward the cost of those services – all as authorized by law. By way of further answer, the CBA also provided Plaintiff Meier with a substantial professional salary, a 190 day work year, as well as excellent fringe benefits, including, *inter alia*, medical benefits, prescription drug benefits, dental insurance, vision insurance, life insurance, disability insurance, personal days, paid family sick days, and tuition reimbursement, all insured *via* just cause protection against any contractual

violation or adverse employment action through access to a grievance procedure culminating in binding arbitration.

47. This paragraph quotes some language from 71 P.S. §575 and sets forth a conclusion of law and requires no answer.

48. Denied as stated. It is admitted that Defendant PSEA mailed Plaintiff Meier a notice advising him of his rights as a non-member fee-payer. The notice is a writing that speaks for itself and any mischaracterization or paraphrase is denied to the extent inconsistent with the document. The notice says nothing about payment of the fair share fee being a condition of Plaintiff Meier's continued employment.

49. Admitted.

50. PSEA does not have knowledge of the facts set forth in this paragraph and strict proof thereof is demanded at trial, if relevant.

51. It is admitted that Defendant PSEA responded to Plaintiff Meier on February 21, 2013. The PSEA response is a writing that speaks for itself and any mischaracterization or paraphrase is denied to the extent inconsistent with the document.

52. Admitted, with the caveat that the correspondence of March 13, 2013 is a writing that speaks for itself and any mischaracterization or paraphrase is denied to the extent inconsistent with the document.

53. It is admitted that Plaintiff Meier's fair share fees have been and continue to be held in an escrow account until agreement is reached on a non-religious charity acceptable to both PSEA and \$. Defendant PSEA does not have knowledge of the remaining facts set forth in this paragraph and strict proof thereof is demanded at trial, if relevant.

54. Admitted with the caveat that the January 17, 2014 document is a writing that speaks for itself and any mischaracterization or paraphrase is denied to the extent inconsistent with the document.

55. Admitted with the caveat that the June 26, 2014 document is a writing that speaks for itself and any mischaracterization or paraphrase is denied to the extent inconsistent with the document.

56. Admitted with the caveat that the June 27, 2014 document is a writing that speaks for itself and any mischaracterization or paraphrase is denied to the extent inconsistent with the document.

57. Admitted.

58. Admitted with the caveat that the July 31, 2014 document is a writing that speaks for itself and any mischaracterization or paraphrase is denied to the extent inconsistent with the document.

59. Admitted in part and denied in part. It is admitted that PSEA adopted comprehensive procedures for responding to requests by religious objectors to the

payment of fair share fees that include procedures to resolve disputes that may arise over the selection of a charity. The Procedures are attached as Exhibit P.

60. The Procedures are a writing that speaks for itself and any mischaracterization is denied.

61. The Procedures are a writing that speaks for itself and any mischaracterization is denied.

62. Admitted.

63. PSEA is without knowledge as to Plaintiff Meier's state of mind regarding his rights. It is denied that there is any reason for any uncertainty – the Procedures provide a mechanism to reach agreement on a charity if possible, and to resolve any disagreement when agreement is not possible.

64. Admitted.

65. Denied as stated. This paragraph sets forth estimated revenues that do not set forth an accurate portrayal of Defendant's dues revenue for 2015-2016.

66. Admitted with qualifications. At any given time the actual number of members, non-members, fair share fee payers and religious objectors may fluctuate.

67. Admitted with qualifications. At any given time the actual number of members, non-members, fair share fee payers and religious objectors may fluctuate.

68. Admitted with qualifications. At any given time the actual number of members, non-members, fair share fee payers and religious objectors may fluctuate. It is admitted that, pursuant to statute and contract, non-members in fair share locals pay a fair share fee.

69. Denied as stated. This paragraph sets forth estimated revenues that do not set forth an accurate portrayal of Defendant's dues revenue for 2015-2016.

70. Denied as stated. This paragraph sets forth estimated revenues that do not set forth an accurate portrayal of Defendant's dues revenue for 2015-2016.

71. This paragraph sets forth multiple conclusions of law that do not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied that any act or practice of PSEA violates any of Plaintiffs' statutory or constitutional rights.

Response to Count I

72. This paragraph incorporates prior paragraphs and does not require a separate answer. The responses to paragraphs 1 – 71 are incorporated herein by reference.

73. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied that any act or practice of PSEA violates any of Plaintiff Ladley's statutory or constitutional rights.

74. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied that any act or practice of PSEA violates any of Plaintiff Ladley's statutory or constitutional rights.

75. Admitted and Denied. It is admitted Plaintiff Ladley objected to payment of fair share fees on religious grounds; it is denied that Plaintiff Ladley ever directed her funds to a non-religious charity agreed to by PSEA, as required by the statute.

76. Denied as stated. PSEA has provided Plaintiff Ladley with a full procedure capable of resolving this dispute and having her funds directed to an appropriate non-religious charity that PSEA will agree upon.

77. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

78. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

79. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

80. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

81. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied. Although no further answer is required, this averment is clearly inaccurate as PSEA has offered Plaintiff Ladley access to an arbitrator selected through the auspices of the American Arbitration Association.

82. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

83. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

84. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

85. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

86. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

Count II

87. This paragraph incorporates prior paragraphs and does not require a separate answer. The responses to paragraphs 1 – 86 are incorporated herein by reference.

88. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied that any act or practice of PSEA violates any of Plaintiff Meier's statutory or constitutional rights.

89. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

90. Admitted and Denied. It is admitted Plaintiff Meier objected to payment of fair share fees on religious grounds; it is denied that Plaintiff Meier ever directed his funds to a non-religious charity agreed to by PSEA, as required by the statute.

91. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied. By way of further answer, PSEA has provided Plaintiff Meier with a procedure to resolve the impasse – he has chosen not to follow it.

92. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

93. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

94. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

95. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

96. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied. Although no further answer is required, this averment is clearly inaccurate

as PSEA has offered Plaintiff Meier access to an arbitrator selected through the auspices of the American Arbitration Association.

97. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

98. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

99. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

100. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

101. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

Count III

102. This paragraph incorporates prior paragraphs and does not require a separate answer. The responses to paragraphs 1 – 101 are incorporated herein by reference.

103. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

104. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

105. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

106. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

Count IV

107. This paragraph incorporates prior paragraphs and does not require a separate answer. The responses to paragraphs 1 – 107 are incorporated herein by reference.

108. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

109. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

110. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

111. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

Count V

112. This paragraph incorporates prior paragraphs and does not require a separate answer. The responses to paragraphs 1 – 111 are incorporated herein by reference.

113. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

114. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

115. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

116. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

117. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

118. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

119. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

120. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

121. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

122. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

123. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

124. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

Count VI

125. This paragraph incorporates prior paragraphs and does not require a separate answer. The responses to paragraphs 1 – 124 are incorporated herein by reference.

126. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

127. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

128. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

129. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

130. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

131. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

132. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

133. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

134. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

135. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

Count VII

136. This paragraph incorporates prior paragraphs and does not require a separate answer. The responses to paragraphs 1 – 135 are incorporated herein by reference.

137. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

Count VIII

138. This paragraph incorporates prior paragraphs and does not require a separate answer. The responses to paragraphs 1 – 137 are incorporated herein by reference.

139. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

140. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

Count IX

141. This paragraph incorporates prior paragraphs and does not require a separate answer. The responses to paragraphs 1 – 140 are incorporated herein by reference.

142. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

143. It is admitted that PSEA has refused to agree to the “charities” identified by Plaintiff Ladley. It is denied that Plaintiff Ladley has the right to

unilaterally select a charity or that PSEA has any obligation to agree with Plaintiff Ladley as the statute requires the selected non-religious charity to be agreeable to both the religious objector and the union.

144. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

145. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

146. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

147. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

148. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

149. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

150. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied. By way of further answer, it is denied that the funds in question are Plaintiff's funds. The fair share fee is funds *earned* by the union in the performance of collective bargaining obligations that benefit all members of the bargaining unit, including Plaintiff, and would otherwise be union funds, but for the provision that they be deferred to a non-religious charity agreed upon by the union and the fee payer.

151. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

152. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

153. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

154. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

155. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

156. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

157. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

158. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

159. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

160. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

161. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

162. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

163. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

164. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

165. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

166. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

167. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

168. The statutory provisions are writings that speak for themselves and must be viewed in the context of the entire statute.

169. The statutory provisions are writings that speak for themselves and must be viewed in the context of the entire statute.

170. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

171. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

172. The Collective Bargaining Agreement is a writing that speaks for itself.

173. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

174. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

175. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

Count X

176. This paragraph incorporates prior paragraphs and does not require a separate answer. The responses to paragraphs 1 – 175 are incorporated herein by reference.

177. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

178. It is admitted that PSEA has refused to agree to the “charities” identified by Plaintiff Meier. It is denied that Plaintiff Meier has the right to unilaterally select a charity, or that PSEA has any obligation to agree with Plaintiff

Meier as the statute requires the selected non-religious charity to be agreeable to both the religious objector and the union.

179. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

180. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

181. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

182. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

183. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

184. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

185. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

186. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

187. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

188. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

189. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

190. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

191. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

192. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

193. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

194. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

195. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

196. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

197. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

198. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

199. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

200. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

201. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

202. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

203. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

204. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

Count XI

205. This paragraph incorporates prior paragraphs and does not require a separate answer. The responses to paragraphs 1 – 204 are incorporated herein by reference.

206. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

207. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

208. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

209. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

Count XII

210. This paragraph incorporates prior paragraphs and does not require a separate answer. The responses to paragraphs 1 – 209 are incorporated herein by reference.

211. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

212. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

213. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

214. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

Count XII

215. This paragraph incorporates prior paragraphs and does not require a separate answer. The responses to paragraphs 1 – 214 are incorporated herein by reference.

216. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

217. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

218. This paragraph sets forth a conclusion of law that does not require a responsive pleading. To the extent that a response may be deemed necessary, it is denied.

NEW MATTER

By way of further response, Defendant PSEA sets forth the following New Matter to the issues raised by Plaintiffs' Amended Complaint:

219. PSEA is affiliated with the National Education Association ("NEA").

220. PSEA is an "employee organization" as defined in section 301 of the Public Employee Relations Act, Act of July 23, 1970, P.L. 563, No. 195, 43 P.S. §1101.301:

"Employee organization" means an organization . . . in which membership includes public employes, and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, employee-employer disputes, wages, rates of pay, hours of employment, or conditions of work.

221. PSEA is also an "employee organization as defined in section 11-1101-A of the Public School Code of 1949, added July 9, 1992, P.L. 401, No. 88:

"Employee organization" shall mean a public school employee organization . . . in which membership is limited to public school employes, and which exists for the purpose, in whole or in part, of dealing with public school employers concerning grievances, public school employee-public school employer disputes, wages, rates of pay, hours of employment or conditions of work. . . .

222. PSEA is organized as a “unified membership” organization. That is to say, a “member” of a PSEA affiliated local association is also a member of PSEA and a member of NEA.

223. The Pennsylvania Fair Share Fee Law, added to the Administrative Code by the Act of July 13, 1988, P.L. 493, No. 84, 71 P.S. § 575, (hereinafter referred to as “the Law”) authorizes Pennsylvania public employers and public employee organizations to negotiate collective bargaining agreements which provide that “each nonmember of a collective bargaining unit shall be required to pay to the exclusive representative a fair share fee. 71 P.S. § 575(b).

224. PSEA is an “employe organization” and a “statewide employe organization” as defined in the Law. 71 P.S. § 575(a)

“Statewide employe organization” shall mean the Statewide affiliated parent organization of an exclusive representative, or an exclusive representative representing employes Statewide, and which is receiving nonmember fair share payments.

225. Each PSEA affiliated local association is an “Exclusive representative,” defined in the Fair Share Law as “the employe organization selected by the employes of a public employer to represent them for purposes of collective bargaining pursuant to the act of July 23, 1970 (P.L. 563, No. 195), known as the “Public Employe Relations Act.” 71 P.S. § 575(a)

226. The Law defines a “nonmember” as:

[A]n employe of a public employer, who is not a member of the exclusive representative, but who is represented in a collective bargaining unit by the exclusive representative for purposes of collective bargaining.

71 P.S. § 575(a).

227. In Pennsylvania, where the contract so provides, fair share feepayers pay a “fair share fee,” which is a percentage of union member dues that the union spends negotiating contracts, enforcing contracts, and generally fulfilling its responsibilities as the exclusive representative of all employees in the bargaining unit, union members and non-union members alike.

228. The fair share fee *does not include* money spent by the union that does not benefit all members of the bargaining unit, irrespective of union membership.

229. The Law defines a “fair share fee” is as:

[T]he regular membership dues required of members of the exclusive representative *less the cost* for the previous fiscal year of its activities or undertakings which were not reasonably employed to implement or effectuate the duties of the employe organization as exclusive representative. (emphasis supplied)

71 P.S. § 575(a).

230. The fair share fee (calculated as a percentage of membership dues) is the amount expended by PSEA and NEA on behalf of all members of represented bargaining units (union members and non-union members alike) for collective bargaining, contract administration, and every other “reasonable

expenditure that is employed to implement or effectuate the duties of the employee organization as exclusive representative.” 71 P.S. § 575.

231. To satisfy the constitutional requirements associated with the assessment and collection of fair share fees from nonmembers the Law requires that:

(d) As a precondition to the collection of fair share fees, the exclusive representative [PSEA] shall establish and maintain a full and fair procedure, consistent with constitutional requirements, that provides nonmembers, by way of annual notice, with sufficient information to gauge the propriety of the fee and that responds to challenges by nonmembers to the amount of the fee. The procedure shall provide for an impartial hearing before an arbitrator to resolve disputes regarding the amount of the chargeable fee.

71 P.S. § 575(d).

232. To comply with the Law, PSEA, for itself and on behalf of its locals and NEA, mails an annual notice to feepayers that explains the calculation of the fair share fee, advises them of the opportunity to challenge the amount of the fee and also advises them of their ability to object to payment of the fee to PSEA based upon a *bona fide* religious objection to having money they earned used by a union.

233. The Pennsylvania Fair Share Fee Law allows feepayers to raise two types of objections to the payment of the fair share fee: a calculation objection and a religious objection.

234. Neither of these objections relieves the feepayer from paying the fair share fee.

235. Feepayers may raise a calculation objection, arguing that the amount of fees charged to them was inaccurately calculated and thereby caused costs not attributable to bargaining (e.g., lobbying, political, or ideological expenses) to be assessed against them.

236. Feepayers raising a calculation challenge have the right to proceed before an impartial arbitrator, who determines if the amount assessed as the fair share fee is correct, and has the authority to adjust the fair share percentage.

237. The calculation arbitration may result in a reduction of the fair share fee, but the fee will never be eliminated. 71 P.S. § 575(g).

238. In virtually every year since the Law has been in place (and every year in current memory) at least one feepayer has filed a calculation objection challenging the fair share fees assessed and PSEA. In each year the objector(s) and PSEA have proceeded to a “fair share fee arbitration,” where PSEA presented evidence to support its fair share fee. Following a hearing the annual fair share fee percentage has been set by the arbitrator.

239. At the present time PSEA has approximately 179,000 members organized in 587 affiliated local Education Associations (professional school

employees) and 449 affiliated Education Support Professional Associations (non-professional school employees) spread across Pennsylvania.

240. Hundreds of collective bargaining agreements negotiated between PSEA affiliated local associations and public school districts contain “fair share fee” authorization pursuant to the Law.

241. Although the precise language of fair share fee authorization agreements varies from one contract to another, the provisions in the Penn Manor and Avon Grove Education Association collective bargaining agreements attached to the Amended Complaint are representative.

242. At the present time there are 6,183 “nonmembers” of PSEA who work under contracts negotiated by PSEA affiliated bargaining units that have a contractual provision providing for the collection of fair share fees from nonmember feepayers as authorized by the Law.

243. For the 2015/2016 school year, annual PSEA dues are \$511.00 for Education Association members and \$255.00 for full-time Education Support Professional members.

244. The PSEA fair share percentage for 2015-2016 will be 77% of full dues. The 2015/2016 PSEA fair share fee for EA feepayers will be \$393.47; the fair share fee will be \$196.74 for full-time ESP feepayers.

245. The Law provides that a feepayer may also object to paying fees that will be used by a collective bargaining representative on religious grounds, by filing a *bona fide* religious objection to payment of the fair share fee to the union. 71 P.S. § 575 (e)(2).

246. A religious objection does not relieve the feepayer of the obligation to pay the fair share fee.

247. When PSEA accepts the religious objection to be a *bona fide* religious objection, the Law provides that the fair share fee is to be paid to a “nonreligious charity agreed upon by the nonmember and the exclusive bargaining representative.” 71 P.S. § 575(h).

248. To facilitate the collection and payment of fair share fees from those with religious objections to paying money to the union, and the eventual payment of those fees to the agreed upon non-religious charities, PSEA contracts with and pays for an independent escrow agent to serve as the recipient and repository for all fair share fees collected from religious objectors.

249. While the feepayer and PSEA are reaching agreement on the charity to receive the fair share fee, the fee remains in the interest-bearing escrow account. 71 P.S. § 575(i).

250. Once a mutually agreeable charity is selected by the feepayer, the fees attributable to that feepayer, plus any interest accrued in the escrow account, are forwarded to the selected charity.

251. After the religious objector's status is accepted, PSEA looks to the objector to identify an acceptable charity. PSEA may suggest examples of charities that have broad appeal and have been agreed upon in many other instances.

252. In most instances there is little discussion and no dispute regarding the charity selected by the fee payer because it is readily apparent that the charity is non-religious, serves a valid charitable purpose, and is not in obvious conflict with the principles, goals and objectives of PSEA/NEA. In the overwhelming number of cases the initial charity selected by the non-member has been agreed to by PSEA and payments have begun flowing to that charity in relatively short order.

253. Payments were made to at least 170 different charities, from Adams County Children's Advocacy Center to YWCA Hanover Safe Home, during the 2013-14 PSEA membership year, the PSEA membership year immediately preceding the initiation of this litigation. (A listing of charities that received fair share payments during the 2013/2014 membership year is attached as Exhibit 1.)

254. A comprehensive historic review of fair share fee payments reveals that, since the 1999/2000 membership year, PSEA has provided fair share fee payments to at least 373 different charities.

255. When the initial charity selected by the fee payer is not agreed to by PSEA, an informal exchange of communication between PSEA and the religious objector has virtually always resolved the issue, resulting in agreement as to the selected charity, or an alternate selected by the fee payer.

256. When evaluating whether PSEA will agree to a charity selected by the religious objector, several criteria may be applied, together or separately.

257. PSEA will require that the charity be a recognized 501(c)(3) organization under the Internal Revenue Code.

258. PSEA will not agree to a charity where it appears that the religious objector has a personal interest in the selected charity (such as being a founder, officer, or member of a local charity who may be able to benefit personally from the work of the charity).

259. PSEA will not agree to a charity that may appear to be “non-religious,” (as required by the statute) if it appears that the underlying principles or overarching mission of the selected entity are essentially congruent with or directly supportive of those of a religious entity. It is PSEA’s belief that payment of the fair share fee to that organization would be tantamount to supporting the tenets of

the religious organization, and therefore inconsistent with the stated legislative intent that the religious objector's fair share fees be paid over to a non-religious charity.

260. PSEA will not agree to a charity that is a political, "advocacy" or "partisan" organization with a mission or objective that is known to advance issues and advocate for policies that are directly antagonistic to the interests of PSEA/NEA/ or its local affiliates, or which conflict directly with the established policies of PSEA or NEA.

261. PSEA refused to agree to have a Plaintiff Meier's fair share fees contributed to the National Right to Work Foundation – an organization with a mission directly antagonistic to organized labor, public sector organized labor, and that has in the past and continues to this day to fund and sponsor litigation directly against PSEA.

262. At the present time there are approximately 292 feepayers in collective bargaining units represented by PSEA who have filed religious objections to paying a fair share fee to PSEA, and who have been accepted as *bona fide* religious objectors by PSEA.

263. At the present time there are four religious objectors engaged in litigation with PSEA over their selection of a religious charity, Plaintiffs Ladley and Meier, and Linda Misja and James Williams, who are also represented by the

Fairness Center, in litigation pending in the United States District Court for the Middle District of Pennsylvania at No. 1:15-cv-01199 and 1:16-cv-02529.

264. One other religious objector refuses to identify any non-religious charity to receive the fair share fee. Until that person identifies a charity, fair share fees attributed to him will remain in the escrow account and may, eventually, escheat to the Commonwealth.

265. Several (4 or 5) recent religious objectors are in the process of reaching agreement on an appropriate non-religious charity.

266. Consistent with PSEA's policy to escrow all fair share fees potentially attributable to religious objectors, a separate sub-account under each Plaintiff's name was established with PSEA's independent escrow agent and all fair share fees collected from each Plaintiff were deposited into the escrow account and credited to each Plaintiff's sub-account.

267. At all times relevant to these proceedings PSEA has acted reasonably in an attempt to reach agreement with Plaintiffs on the identity of an appropriate non-religious charity to receive the fair share fees collected from Plaintiffs that are currently held in escrow.

268. The Procedures now objected to by Plaintiffs were instituted to provide regularity and certainty in the time line for processing religious objectors'

selections of a non-religious charity and a mechanism to resolve intractable disputes through arbitration, (at the sole cost to PSEA) if necessary.

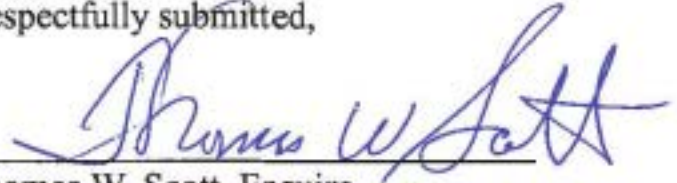
269. PSEA's election to defer intractable disputes to arbitration is consistent with the clear intent of the General Assembly that all parties to the selection process act reasonably and in good faith to reach agreement, with an outside arbitrator available if agreement is impossible due to the recalcitrance of one party or the other.

270. Arbitration is the General Assembly's preferred mechanism for resolving public sector labor disputes in fair share fee cases and in all other disputes arising out of public sector collective bargaining relationships.

271. PSEA will continue to try and reach agreement with Plaintiffs on the identity of an appropriate charity to receive the fair share fees collected from Plaintiffs.

WHEREFORE, Defendant, the Pennsylvania State Education Association, requests that the Court find in favor of Defendant on all counts, deny each and every one of Plaintiffs' prayers for relief, and dismiss the Plaintiffs' Second Amended Complaint in its entirety, with each party to bear their own costs.

Respectfully submitted,



Dated: June 7, 2017

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VERIFICATION

I hereby verify that the statements of fact made in the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that any false statements therein are subject to the penalties contained in 18 Pa.C.S.A. §4904, relating to unsworn falsification to authorities.

6/7/17
Date

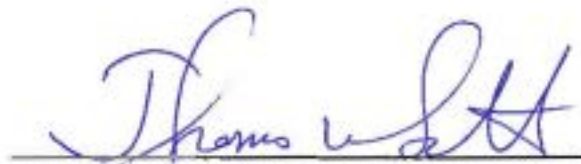
Lynne L. Wilson
Lynne L. Wilson, General Counsel
Pennsylvania State Education Association

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Defendant PSEA's Answer to Plaintiffs' Amended Complaint has on this date been served on counsel for the Plaintiffs by first class mail, postage prepaid, addressed as follows:

David R. Osborne, Esquire
The Fairness Center
225 State Street, Suite 303
Harrisburg, PA 17101

Dated: June 7, 2017



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