

**FILED ELECTRONICALLY**

SCOTT A. KRONLAND (SBN CA171693) (*pro hac vice*)  
P. CASEY PITTS (SBN CA262463) (*pro hac vice*)  
MEGAN WACHSPRESS (SBN CA 310558) (*pro hac vice*)  
ALTSHULER BERZON LLP  
177 Post Street, Suite 300  
San Francisco, CA 94108  
Telephone: (415) 421-7151  
Facsimile: (415) 362-8064  
E-mail: skronland@altber.com  
cpitts@altber.com

LAUREN M. HOYE (SBN PA307411)  
WILLIG, WILLIAMS & DAVIDSON  
1845 Walnut Street, 24th Floor  
Philadelphia, PA 19103  
Telephone: (215) 656-3687  
E-mail: lhoeye@wwdlaw.com

*Attorneys for Defendant SEIU Local 668*

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA  
HARRISBURG DIVISION

FRANCISCO MOLINA,

Plaintiff,

v.

PENNSYLVANIA SOCIAL SERVICE  
UNION, SERVICE EMPLOYEES  
INTERNATIONAL UNION, LOCAL 668;  
*et al.*,

Defendants.

CASE NO.: 1:19-CV-00019-YK

**SUPPLEMENTAL BRIEF RE:  
MOTION TO DISMISS BY  
DEFENDANT SEIU LOCAL 668**

Complaint Filed: Jan. 7, 2019  
Trial Date: Not set.  
Judge: Hon. Yvette Kane

On July 18, 2019, this Court issued an opinion and order dismissing Plaintiff Francisco Molina’s (“Molina’s”) claims for prospective declaratory and injunctive relief for lack of jurisdiction under Rule 12(b)(1), dismissing as moot Molina’s claims for retrospective monetary relief premised upon the deduction of union membership dues from his pay following his resignation from defendant Pennsylvania Social Services Union, SEIU Local 668 (“Local 668”), and dismissing all of Molina’s claims against Local 668 President Stephen Catanese. Memorandum, ECF Doc. No. 40, at 14 n.9, 18-19. Based on the parties’ responses at oral argument, the Court directed Defendants to submit additional briefs “specif[ying] whether they are moving for dismissal under Rule 12 as to Plaintiff’s claim for pre-resignation dues in Count II and his due process claim set forth in Count III, and includ[ing] an appropriate discussion of the authority Defendants contend supports dismissal in this case.” *Id.* at 21. Local 668 submits this brief to clarify that it has not moved to dismiss Plaintiff’s claim in Count II for monetary relief premised upon his *pre*-resignation payment of union membership dues, and that it has moved to dismiss Count III only to the extent that Count seeks forms of relief over which this Court lacks jurisdiction for the reasons identified in this Court’s July 18 Order.

As Local 668 demonstrated in its Rule 12 motion, and as this Court agreed in its July 18, 2019 Memorandum, Molina’s claim in Count II for retrospective monetary relief based on his prior payment of union membership dues to Local 668 is moot to the extent it seeks a refund of post-resignation dues, because Local 668 has already refunded those dues to Molina. Memorandum, ECF Doc. No. 40, at 19-20. Because Local 668 has never refunded Molina’s *pre*-resignation dues,

however, Molina’s request for retrospective monetary relief based on those payments is not moot and Local 668 has not moved to dismiss that request for relief. Local 668 will instead move for summary judgment on that claim forthwith, including on the ground that the undisputed facts show that Molina voluntarily joined Local 668 and authorized all dues deductions made prior to his resignation. *See* ECF Doc. No. 29-2 (Declaration of Claudia Lukert), Exh. A, B.

With respect to Count III, Local 668 has sought the dismissal only of those forms of relief over which this Court lacks jurisdiction for the reasons set forth in the Court’s July 18, 2019 Memorandum—i.e., Molina’s requests for prospective declaratory and injunctive relief and for a refund of post-resignation dues. *See* ECF Doc. No. 29-2 (Revised Memorandum of Points and Authorities in Support of Defendants Local 668 and Stephen Catanese’s Motion to Dismiss) at 10, 12; *see also* Memorandum, ECF No. 40, at 17-20 (dismissing these claims for relief with respect to Counts I and II).<sup>1</sup> To the extent that Count III seeks a refund of pre-resignation dues or any other form of retrospective relief, Local 668 will address those claims in its forthcoming motion for summary judgment.

---

<sup>1</sup> Molina must demonstrate standing “separately for each form of relief sought,” Memorandum, ECF Doc. No. 40, at 17 n.11 (quoting *Freedom From Religion Found. Inc. v. New Kensington Arnold Sch. Dist.*, 832 F.3d 469, 476 (3d Cir. 2016)). As this Court has concluded, because any possibility of future injury to Molina is “grounded in speculation,” there is no “live case or controversy as to Plaintiff’s claims through which he seeks prospective declaratory and injunctive relief.” *Id.* at 18.

Dated: August 1, 2019

Respectfully Submitted,

/s/P. Casey Pitts

P. Casey Pitts (CA262463)

SCOTT A. KRONLAND (*pro hac vice*)  
P. CASEY PITTS (*pro hac vice*)  
MEGAN WACHSPRESS (*pro hac vice*)  
ALTSHULER BERZON LLP  
177 Post Street, Suite 300  
San Francisco, CA 94108  
Telephone: (415) 421-7151  
Facsimile: (415) 362-8064  
E-mail: skronland@altber.com  
cpitts@altber.com

LAUREN M. HOYE (SBN PA307411)  
WILLIG, WILLIAMS & DAVIDSON  
1845 Walnut Street, 24th Floor  
Philadelphia, PA 19103  
Telephone: (215) 656-3687  
E-mail: lhoeye@wwdlaw.com

*Attorneys for Defendant SEIU Local 668*