

32<sup>ND</sup> JUDICIAL DISTRICT COURT FOR THE PARISH OF HOUMA

STATE OF LOUISIANA

CASE NO.: 184377

DIVISION:

HOUMA FIREFIGHTERS LOCAL 1405, BRENT CHASSION, JAKE ALLEMAND,  
JACOB AUCOIN, DIEDRICK AUSTIN, EDDIE BERTHELOT, JR.  
JACYLN CLEMENT, JORDAN COLLINS, HEATH DAVIS, MICHAEL DEROCHE, JR.,  
DAVE DOMANGUE, RAMON DOUCETTE, COREY DUPLANTIS, SEAN FONSECA,  
JIMMY GUILLOT, STEPHEN HEBERT, JOHN HICKMAN, JR., MATTHEW LANDRY,  
CHRIS LECOMPTE, JR., ROSS MALAGARIE, RAYMOND MCGUIRE, MICHAEL MILLET,  
ERNEST MOTT, BRAD PENNISON, JACK PLESSALA, BRUCE SHORT,  
HAYWARD SIMS, JR., MATTHEW SPRADLIN, MARK STEVENSON,  
RANDALL SWALLEY, JR., ALBERT SWAN, AND KEITH WARD

VERSUS

THE TERREBONNE PARISH CONSOLIDATED GOVERNMENT

FILED: JUL 10 2019

*Shannon Lee*  
DEPUTY CLERK

**PETITION FOR DAMAGES**

NOW INTO COURT, through undersigned counsel, come petitioners, Houma Firefighters Association Local 1405, and all individual petitioners specifically named in paragraph II of this petition for damages, who respectfully represent that:

I.

**PARTIES**

Houma Firefighters Association Local 1405, IAFF ("Local 1405") is an unincorporated labor organization having its principal office in the City of Houma, which is located in the Parish of Terrebonne, State of Louisiana. Local 1405 appears through its duly elected President, Brent Chaisson, who appears and sues in a representational capacity on behalf of the members of Local 1405. These members are commonly employed, work under similar, if not identical conditions of employment imposed by the City of Houma and the Terrebonne Parish Consolidated Government, and were and continue to be all affected by the actions and inactions of the City of Houma and the Terrebonne Parish Consolidated Government.

II.

The following members employed or formerly employed by the City of Houma and the Terrebonne Parish Consolidated Government are named as petitioners:

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**DAVID W. ARCENEUX  
JUDGE-DIVISION D**

BRENT CHAISSON  
JAKE ALLEMAND  
JACOB AUCOIN  
DIEDRICK AUSTIN  
EDDIE BERTHELOT, JR.  
JACYLN CLEMENT  
JORDAN COLLINS  
HEATH DAVIS  
MICHAEL DEROCHE, JR.  
DAVE DOMANGUE  
RAMON DOUCETTE

COREY DUPLANTIS  
SEAN FONSECA  
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JOHN HICKMAN, JR.  
MATTHEW LANDRY  
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RAYMOND MCGUIRE  
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BRAD PENNISON  
JACK PLESSALA  
BRUCE SHORT  
HAYWARD SIMS, JR.  
MATTHEW SPRADLIN  
MARK STEVENSON  
RANDALL SWALLEY, JR.  
ALBERT SWAN  
KEITH WARD

These petitioners are persons of the full age of majority who are residents of, and domiciled in, the parish of Terrebonne, State of Louisiana. All petitioners are members of Local 1405.

III.

The Terrebonne Parish Consolidated Government is a political subdivision of the State of Louisiana capable of suing and of being sued, which operates under a home rule charter, and subject to said charter, is authorized to exercise and power and perform any function necessary, requisite or proper for the management of its affairs, not denied by general law or inconsistent with the constitution. The Terrebonne Parish Consolidated Government is the successor to the former municipality "City of Houma," and does business and conducts some of its operations under the name "City of Houma." At all times pertinent hereto, the Terrebonne Parish Consolidated Government was and is the employer of Petitioners herein.

IV.

Local 1405 and its President have standing to sue on behalf of its Local 1405 members who are employed or were formerly employed by the Fire Department on July 5, 2018, the date on which the events giving rise to this lawsuit occurred. Local 1405 is the recognized bargaining agent for its members with respect to their wages, conditions of employment, and benefits. Local 1405 has an interest in civilly prosecuting matters impacting the rights of its membership and enforcing its legal standing as a de facto collective bargaining agent on behalf of its membership.

V.

**JURISDICTION**

This Court has jurisdiction over the claims, parties, and subject of this matter pursuant to Articles 2 and 6 of the Louisiana Code of Civil Procedure.

VI.

**VENUE**

Venue is proper in this parish under La. C.C.P. art. 76.1, as the employment contract was executed in this parish and all work under the contract was performed in this parish. Venue is further proper under La C.C.P. art. 42, as all parties to this proceeding are domiciled within the parish.

VII.

**ALLEGATIONS**

Petitioners incorporate, re-allege, and re-plead Paragraphs I-VII.

VIII.

The individually named petitioners are employees of the City of Houma Fire Department, a full-time paid fire department in Houma, considered a large municipality with a population between 13,000 and 400,000 residents for purposes of Louisiana law. The City of Houma Fire Department is funded and operated by the Terrebonne Parish Consolidated Government.

IX.

The City of Houma Fire Department provides fire suppression services within the geographical boundaries of the City of Houma. The City of Houma Fire Department represents to the public that it is a full-time career fire department, that it is made up of 60 personnel, and that all shift personnel are at a minimum certified Firefighter I and either First Responder or Emergency Medical Technician. It further represents that the City of Houma Fire Department responds to fires, auto accidents, hazardous materials incidents, medical emergencies, and various other types of incidents. It further represents that it averages around 1,900 calls for service per year.

X.

On or about December 10, 1952, the State of Louisiana entered into an agreement with the United States Secretary of Health, Education and Welfare pursuant to Section 218 of the Social Security Act, as amended (42 U.S.C. § 418), which permitted states to obtain social security coverage for designated governmental employees. This agreement and similar agreements in other states is commonly referred to as a "Section 218 Agreement".

XI.

The City of Houma, a municipality which was later consolidated with and incorporated

into the Terrebonne Parish Consolidated Government, executed a social security agreement with the Board of Trustees of the Public Employees Board of Louisiana. The agreement became effective January 1, 1953, in accordance with Act 204 of the Regular Session of the Louisiana Legislature of 1952, known as the Social Security Enabling Act of the State of Louisiana.

XII.

The Terrebonne Parish Police Jury, which was later consolidated with and incorporated into the Terrebonne Parish Consolidated Government, executed a social security agreement with the Board of Trustees of the Public Employees Board of Louisiana, effective January 1, 1951, in accordance with Act 204 of the Regular Session of the Louisiana Legislature of 1952, known as the Social Security Enabling Act of the State of Louisiana.

XIII.

Following execution of these agreements, the United States Secretary of Health, Education and Welfare and the State of Louisiana expanded their December 10, 1952 Agreement ("Section 218 Agreement") entered into pursuant to Section 218 of the Social Security Act, as amended (42 U.S.C. § 418), and accepted the City of Houma as an additional coverage group under the Section 218 Agreement.

XIV.

Under the Section 218 Agreement, firemen employed by the City of Houma were to be included in the coverage group, and thus were entitled to be covered by Social Security and to be eligible for and receive benefits from Social Security. The City of Houma was required to withhold a specified percentage of each employee's wages and to submit those wages, as well as an employer contribution, to the federal government to ensure that employees were covered.

XV.

The City of Houma acknowledged this obligation after voluntarily entering the agreement and becoming part of the state of Louisiana's coverage group. In response to a letter from the Public Employee's Board in 1965, inquiring as to whether firemen had been reported for Social Security purposes, the City of Houma responded "Social Security has been deducted from each since[sic] effective January 1, 1953, and reported continuously since that date."

XVI.

At some point between the issuance of the 1965 letter written by the City of Houma,

acknowledging firemen's coverage under Social Security, and before the initial employment date of any of the petitioners herein, the defendant ceased compliance with its obligations under the Section 218 agreement and its obligations to the firefighters. The defendant no longer deducted Social Security from the firefighters, made its own in-kind contributions under FICA, or reported Social Security contributions. These actions by the defendant Terrebonne Parish Consolidated Government were without the consent of, and outside of the control of, petitioners.

#### XVII.

Each and every one of the petitioners was hired by the defendant for an agreed upon wage and certain benefits, including retirement benefits. Each of the petitioners was hired with the employment condition that he or she contribute to and participate in the Firefighters' Retirement System ("FRS") established by La. R.S. 11:2251, et seq., and that this would be the exclusive retirement system for the firefighters of the City of Houma Fire Department. This constitutes part of the employment contract between each petitioner and the defendant.

#### XVIII.

Each of the petitioners accepted the initial position of firefighter at the agreed upon wage based upon the representation that the petitioners were exempt from Social Security coverage and contribution. Petitioners relied upon defendant's representation that the employee contribution required to the FRS was the exclusive retirement contribution which would be deducted from his or her wages. Each petitioner worked under this condition, and received wages paid by the defendant which were only subject to the deductions required to be contributed to the FRS. The defendant's actual implementation of this practice is further evidence of the meeting of the minds between petitioners and defendants. This constitutes part of the employment contract between each petitioner and the defendant.

#### XIX.

Each of the petitioners who was subsequently promoted to a higher classification in the fire department, or who accepted an appointed position therein, accepted the position at the agreed upon wage based upon the representation that the petitioners were exempt from Social Security coverage and contribution. Petitioners relied upon defendant's representation that the employee contribution required to the FRS was the exclusive retirement contribution which would be deducted from his or her wages when considering whether or not to accept the promotion or

appointment. The defendant's actual implementation of this practice is further evidence of the meeting of the minds between petitioners and defendants. This constitutes part of the employment contract between each petitioner and the defendant.

**XX.**

On June 7, 2018, the defendant notified all employees of the City of Houma Fire Department that Social Security taxes would begin being withheld from their paychecks effective July 1, 2018, with the first paycheck subject to withholding being issued on July 5, 2018. This sudden change did not come as a result of the change of any law.

**XXI.**

This sudden change, which constituted a breach of the employment contract between petitioners and defendant, came as a result of an Internal Revenue System Audit of the defendant, which identified the defendant's negligent and reckless failure to comply with its own agreement with the State of Louisiana to include the firefighters as part of its coverage group and to provide the petitioners with Social Security coverage.

**XXII.**

This sudden change by the defendant resulted in a 6.2% reduction in the net wages of each petitioner, and constitutes a breach of the employment contract between each petitioner and the defendant. None of the petitioners accepted the position offered by the defendant with the understanding that any additional retirement contributions, beyond those required by the FRS, would be deducted from their pay. Defendant's practice throughout the entirety of petitioners' employment confirmed this understanding and constituted part of their contract of employment.

**XXIII.**

**COUNT ONE – NEGLIGENT MISREPRESENTATION**

Petitioners incorporate, re-allege, and re-plead Paragraphs I-XXII.

**XXIV.**

The defendant's failure to disclose to the petitioners the defendant's obligations to deduct Social Security taxes pursuant to its own agreement with the State of Louisiana, and its representation to petitioners that the FRS deductions were the only retirement deductions for which petitioners were responsible, constitutes negligent misrepresentation under article 2315 of the Louisiana Civil Code.

XXV.

The defendant's representation that the petitioners were employees exempt from coverage under Social Security, and exempt from the contribution requirements with respect to Social Security tax, along with the defendant's failure to pay its share of Social Security tax on behalf of the petitioners constitutes further negligent misrepresentation under article 2315 of the Louisiana Civil Code.

XXVI.

Defendant is the municipality or political subdivision which voluntarily entered into an agreement which designated all of defendant's employees as an additional coverage group in the state of Louisiana. As the employer of each petitioner, the defendant had a duty to supply to the petitioners correct information about the defendant's contract with the state, about petitioners' inclusion in Social Security under federal and state law, about the petitioners' obligations with respect to Social Security tax deductions required of them, and about the defendant's obligations with respect to retirement contributions and Social Security.

XXVII.

Petitioners relied on the misrepresentation that they were excluded from Social Security, and thus the resulting higher net wage, when accepting employment at the agreed upon rate. Adequate net wages are not only necessary for petitioners' quality of life, but are also necessary to recruit, hire, and retain firefighters.

XXVIII.

Petitioners accepted employment for the agreed upon wage based upon the defendant's representation of the limited extent of retirement deductions required of petitioners. The petitioners' reliance upon the defendant's representation that the deductions made from the petitioners' wages were the only retirement deductions required of petitioners was justified. This reliance became further justified on each paycheck received by each petitioner in which social security was not deducted. This reliance was justified each time any petitioner received any paystub, W-2, Social Security statement, or other document which indicated that they were not contributing and were not being reported as such for their years of employment by defendant.

XXIX.

This reliance resulted in a significant detriment to the firefighters when they suddenly were hit with a significant cut to the amount of pay they took home. This effective reduction in pay has resulted in a reduced quality of life and has caused unnecessary stress and emotional distress to the firefighters. The defendant did not calculate or consider the 6.2% deduction for Social Security at the time it fixed the wage at \$9.44 per hour. Since it began making the deductions after negligently misrepresenting the petitioner's status as excluded from Social Security, the defendant has not adjusted any of the petitioner's wages. The loss in net pay constitutes damages to the petitioners.

XXX.

This reliance further has damaged the firefighters' ability to fully and wholly participate in and partake in the Social Security benefits to which they were entitled by federal and state law. Through lack of continuous contributions throughout their employment, petitioners will see a significantly reduced benefit amount under Social Security as a result of the Windfall Elimination Provision ("WEP"). Without the defendant's negligent misrepresentations, and had petitioners been given the opportunity to contribute throughout the entire durations of their employment, they would have not been subject to the WEP and would thus receive additional or full benefits under the law. These damages were solely the result of the negligence of the defendant.

XXXI.

#### COUNT 2 - BREACH OF CONTRACT

Petitioners incorporate, re-allege, and re-plead Paragraphs I-XXX.

XXXII.

The low rate of wages paid to petitioners by the City of Houma, as low as \$9.44 per hour, does not leave room for error. Upon information and belief, the \$9.44 wage was fixed by the City of Houma based partially on consideration of what amount employee firefighters would "clear" after all deductions were made, or net pay. Upon further information and belief, the \$9.44 wage was fixed by the defendant with the consideration that the petitioners were excluded from Social Security, and thus excluded from the 6.2% employee deductions required by law. The petitioners acceptance of the \$9.44 base wage was done with the consideration that, as the defendant represented, petitioners were excluded from Social Security deductions and would thus receive a higher net pay than if petitioners were included in the coverage group.



XXXIII.

Defendant's offer of employment to petitioners as employees who were excluded from Social Security Coverage, and petitioners' acceptance of said offer under those terms, constituted part of the contract of employment between the petitioners and the defendant. Defendant's offer of employment at a certain wage, with the understanding that petitioners were excluded from having to pay the 6.2% Social Security deduction, and petitioners' acceptance of said offer under those terms, constituted part of the contract of employment between the petitioners and the defendant.

XXXIV.

When the defendant was revealed by the IRS to have negligently and recklessly disregarded its obligations under the agreement which it voluntarily entered with the state, the petitioners had an additional 6.2% deducted from their already low net pay. This 6.2% deduction, or any deductions from Social Security (from which petitioners were told they were excluded), was not part of the employment contract between petitioners and the defendant. The City's breach of contract has caused petitioners damages in the form of a loss of net wages.

XXXV.

The actions of the defendant constitute a breach of the contract of employment between the petitioners and defendant.

**COUNT 3 – NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

XXXVI.

Petitioners incorporate, re-allege, and re-plead Paragraphs I-XXXV.

XXXVII.

Some of the petitioners have worked nearly their entire careers paying into the FRS as required under the terms of their employment. The sudden 6.2% reduction in pay, and corresponding contribution to the Social Security system, constitutes a loss in pay. Because of the defendants violation of federal and state law; namely, their failure to properly deduct Social Security tax, report Social Security earnings, and make contributions as petitioner's employer for the entire durations of their up to 34 year employment, these petitioners will not see any benefit, or will receive a significantly reduced benefit, from Social Security.

XXIII.

Had the defendant complied with the terms of the agreement which it requested and voluntarily entered, and the terms of FICA it agreed to comply with, these petitioners would have contributed to Social Security for the entire duration of their employment and thus be eligible to properly receive benefits. This constitutes a loss of not only the current 6.2% of wages contributed to a system from which petitioners will see little or no benefit, but also the loss of access to the full Social Security benefit to which they are entitled under the law due solely to the actions of the defendant.

XXXIX.

As the employer of the petitioners, the defendant had a legal duty to correctly represent to petitioners' their status with respect to Social Security, to comply with federal and state law, to deduct taxes as required by law, to report earnings to Social Security as required by law, and to make the employer's share of contributions as required by law.

XL.

The actions of the defendant, to totally mismanage the employment of petitioners despite defendant's own agreement, and to dramatically alter and negatively impact the retirement benefits of the same petitioners, are outrageous to a person of ordinary sensibilities. This constitutes negligent infliction of emotional distress under Louisiana law.

L.

The defendant, being the employer of the individually named petitioners, is liable to Local 1405 on behalf of its members, and to each affected petitioner, for:

- (a) wages of which they were wrongfully deprived between the dates of July 5, 2018 to present;
- (b) adjustments to past wages, or "back pay";
- (b) adjustments to present and future wages;
- (c) adjustments to pension contributions;
- (d) adjustments to Social Security contributions; and
- (e) all costs of this proceeding, including attorney's fees

LI.

In addition, the defendant is liable to plaintiffs for damages for breach of their contracts of

employment, as well as for negligent misrepresentation, as well as for negligent infliction of emotional distress. They are further liable for incomplete measures taken to correct their negligence.

**WHEREFORE**, petitioners pray that this petition be served upon the Terrebonne Parish Consolidated Government, and that it be duly cited to appear and respond to the same; and, after due proceedings are had, there be judgment rendered herein in favor of the plaintiffs and against the defendant, the Terrebonne Parish Consolidated Government as follows:

- (1) wages of which they were wrongfully deprived between the dates of July 5, 2018 to present;
- (2) adjustments to past wages, or "back pay";
- (3) adjustments to present and future wages;
- (4) adjustments to pension contributions;
- (5) adjustments to Social Security contributions;
- (6) for all costs of these proceedings, including attorneys' fees;
- (7) damages for breach of contract, negligent misrepresentation, and negligent infliction of emotional distress.
- (8) for all other relief to which plaintiffs are entitled.

Respectfully submitted,

**RODRIGUE & ARCURI, LLP**



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