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FILED  
2010 MAY 21 10  
IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

**MICHAEL CIRINO, on behalf of himself )**  
**AND ALL OTHERS SIMILARLY )**  
**SITUATED, )**  
**6687 Wildwood Trail )**  
**Mayfield Village, Ohio 44143 )**  
  
**Plaintiff, )**  
  
**vs. )**  
  
**OHIO BUREAU OF WORKERS' )**  
**COMPENSATION )**  
**30 W. Spring Street )**  
**Columbus, Ohio 43215 )**  
  
**Defendant. )**

Complaint  
JANET R BURNSIDE  
CV 10 727380  
  
**CLASS ACTION COMPLAINT  
WITH DISCOVERY ATTACHED**  
  
**(Jury demand endorsed hereon)**

**PARTIES**

1. At all times pertinent herein, Plaintiff Michael Cirino (hereinafter the "Named Plaintiff"), was a resident of the State of Ohio.
2. Defendant, Ohio Bureau of Workers' Compensation, is an instrumentality of the State of Ohio that is empowered to handle the administration of Ohio's Workers' Compensation scheme established by the legislature pursuant to statute.

**JURISDICTION & VENUE**

3. This action is properly brought in Common Pleas Court as the suit seeks appropriate declaratory and injunctive relief as well as the return of specific funds wrongfully collected and withheld, and / or for which the named Plaintiff and the class members assert title and right of possession to, as injured workers entitled to statutory payments in Ohio.

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Jurisdiction is afforded for this suit seeking the equitable return of specific funds wrongfully collected or withheld from Defendant's claim payment awards to the named Plaintiff and the class members, and / or for which the named Plaintiff and the class members assert title and right of possession to by virtue of *R.C. 2743.03(A)(2)*; *Santos v. Ohio Bur. Of Workers' Comp.*, 101 Ohio St.3d 74, 2004-Ohio-28; and *Measles v. Industrial Commission of Ohio*, (Case No. 623468 8th App. Dist. Ohio, 2010).

4. The named Plaintiff is and was at various times during the Class Period an Ohio Workers' Compensation claimant who received a statutory benefit award, and has been throughout the Class Period a citizen of the State of Ohio. The named Plaintiff and the Class Members are current and former Ohio Bureau of Workers' Compensation claimants.

5. Venue is proper in Cuyahoga County pursuant to Ohio R. Civ. P. 3(B)(3) and 3(B)(6) because Defendant maintained at all times during the Class Period and continues to maintain a physical presence in Cuyahoga County, has conducted activities giving rise to the claims for relief, and/or the named Plaintiff's and the Class Members' underlying claims for funds, unlawfully withheld and deducted, arose in this jurisdiction.

#### **FACTUAL ALLEGATIONS**

6. On April 10, 2009, the Named Plaintiff began to receive awarded Workers' Compensation claim payments for temporary total disability arising out of an accident that occurred while in the course and scope of his employment. The Named Plaintiff was awarded temporary total disability payments for an indefinite period of time that continues to this date. As ordered by the Industrial Commission, the Named Plaintiff is entitled to receive a weekly payment amount of \$443.00, paid bi-weekly by Defendant in the amount of \$886.

7. On or about August 20, 2009, the Named Plaintiff received a form letter communication from the Ohio Bureau of Worker's Compensation stating that,

"This may be the last paper check you receive from BWC. For your security and convenience, BWC has established an electronic benefits transfer (EBT) debit card account for you. BWC will make future payments to you through the EBT debit card program. Your EBT debit card is issued through Chase and will arrive soon."

*Exhibit A, appended hereto.*

Plaintiff was not given the option of continuing to receive claims payment drafts or checks free from "fee surcharges and restrictions" in the full amount of the periodic payments owed to him for his compensable injury. Instead, he was told that Defendant had automatically established a (EBT) debit card account for him (accessible through an issued EBT card or "Direct Payment Card") through which future claim payments would be made, and that he could alternatively receive direct deposits to his bank account by calling a 1-800 number or by completing a direct deposit authorization form. *Exhibit A, appended hereto.* Plaintiff did not desire to disclose his private banking account information to defendant or to any third party, and further did not want to provide account withdrawal authority to Defendant for any claimed errors in amounts deposited, or provide any other public or third-party access to his private banking account.

8. The Named Plaintiff and the proposed class were specifically advised in writing that they would receive one-hundred percent (100%) of their claim benefits without any fees or charges. *Exhibit B, appended hereto.* This representation was false. When the Named Plaintiff received his EBT card, he learned that the Direct Payment Card could be used to withdraw cash in local currency at a designated number of Automated Teller Machines (ATMs) worldwide, with surcharge-free access limited to Chase and Allpoint ATMs in the U.S. Additional cash withdrawal restrictions were discovered upon Plaintiff's use of the ETB card as well as withheld or collected amounts as and for transaction fees, charges, costs or expenses

based on the amount of usage of the card and daily monetary restrictions as to withdrawal amount from the supposedly "surcharge-free access" at Chase and Allpoint ATMs.

9. Every Workers' Compensation claim payment amount that Plaintiff withdraws from his Electronic Benefit Card Account is considered a separate transaction. Fees or charges are withheld, deducted or collected for each transaction in excess of one per month. In order to withdraw the payments which are credited to his Electronic Benefit Card Account every fourteen (14) days, the Named Plaintiff involuntarily incurs deductions collected or withheld from his account balance for the fees, charges, costs or expenses that are made for each withdrawal in excess of one. In addition to these "transaction fees or charges" that are deducted, collected and withheld from his awarded claim payments, the money electronically deposited in the account set up by Defendant for the Named Plaintiff and members of the class are subject to further restrictions on withdrawal amount whenever accessed from ATMs (automated teller machines).

10. In making cash withdrawals from the issued EBT account using Defendant's provided EBT card, the Named Plaintiff and the class members have received reduced claim payment amounts due to the withheld and collected transaction fees, charges, costs or expenses that have been improperly and unlawfully charged against their account balances. These amounts were involuntarily incurred by the Named Plaintiff and the class members as a result of their necessary transactions to withdraw their awarded claims payments for which withheld or collected fees, costs or expenses were charged as a condition of two or more monthly withdrawals of the awarded Workers' Compensation cash payment benefits.

11. Defendant is required by law to pay all claim benefit amounts awarded to the Named Plaintiff and the class members under Ohio Revised Code Sections 4123.55 through

4123.63, without any reduction in amount, including any withheld or collected deductions for claims payment-related or claims payment administrative costs or expenses.

12. The Defendant failed to pay all amounts owed under Ohio statutory law for awarded Workers' Compensation benefits.

13. As a direct and proximate result of the Defendants' failure to pay all amounts owed under Ohio statutory law, the Named Plaintiff and the members of the class have been damaged in the amounts wrongfully withheld by Defendant.

14. Furthermore, Defendant knew that Workers' Compensation claimants, including the Named Plaintiff and the Class Members herein, were substantially certain to be harmed from the improper and unlawful collecting and withholding of full award payment amounts for fees, charges, costs or expenses and the partial withholding of funds, but nevertheless proceeded with Defendant's Direct Payment Card Program throughout the class period and continuing today.

15. At no time has Defendant offered to pay for the collected, deducted and withheld fees, charges, costs or expenses or provide restitution to the Named Plaintiff and members of the class for the amounts wrongfully withheld or collected from the accounts.

16. The deducted fees, charges, costs or expenses for withdrawing awarded Workers' Compensation Claim Benefits is expected to be ongoing into the future, directly and proximately resulting in past and future losses in payments to the Named Plaintiff and the Class Members.

#### **CLASS ACTION ALLEGATIONS**

17. Plaintiff brings this class action pursuant to Ohio R.Civ.P. 23 on behalf of a general class (the "Class") consisting of:

All State of Ohio Workers' Compensation claimants who had withdrawal transaction fees, charges, costs or expenses collected or withheld from the amounts of their awarded Workers' Compensation claim payments deposited in Accounts established under Defendant's Direct Payment Card (Debit Card) Program.

18. Excluded from the Class are: (i) all present and former employees of Defendant; (ii) all present and former spouses of such employees of Defendant; (iii) any Class member who timely elects to be excluded from the Class; and, (iv) all members of the judiciary and staff of this Court and their immediate families.

19. The proposed Class is sufficiently definite so that it is administratively feasible to determine whether a particular individual is a member. Defendant possesses the administrative ability to identify all Class members.

20. Plaintiff believes that the proposed Class is so numerous that joinder is impractical. Defendant has not disclosed exactly how many Class Members it has shortchanged by way of the practices described herein.

21. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy.

22. The Named Plaintiff's claims are typical of the claims of the Class because Plaintiff, like all Class members, has been damaged by the common claims payment practices under factual circumstances involving common facts and issues.

23. There are questions of law and fact common to the Class which include, but are not limited to:

- A. Whether Defendant violated Ohio statutory law in making its claim payments awarded to Ohio Workers' Compensation claimants under its Direct Payment Card Program which withholds funds from awarded payments;
- B. Whether Defendant should be required to provide restitution to the Named Plaintiff and members of the Class for all amounts

withheld and / or not paid as and for transaction fees, expenses or costs collected and withheld from awarded claim payment amounts;

- C. Whether the Named Plaintiff and the Class are entitled to any declaratory and injunctive relief for the harm caused by the Defendant and to prevent future harm.

24. These common issues of law and fact predominate over individual issues pertaining to individual Class members and class certification is a superior method of resolving the claims.

25. The Named Plaintiff will fairly and adequately represent and protect the interests of the Class. The Named Plaintiff is a member of the Class and is willing to serve as representative of the Class. Plaintiff has retained counsel with substantial experience in prosecuting state and nationwide consumer and other types of class actions. Plaintiff and Plaintiff's counsel are committed to vigorously prosecuting this action on behalf of the Class.

26. Class certification pursuant to Ohio.R.Civ.P. 23(b)(2) is appropriate because Defendant's course of dealing with members of the Class adversely affects all members of the Class, thereby making appropriate final injunctive and declaratory relief with respect to the Class as a whole and making appropriate the furnishing of such additional equitable relief as is necessary.

27. Class certification pursuant to Ohio.R.Civ.P 23(b)(3) is appropriate because questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy. Further, it would be virtually impossible for the members of the Class individually to effectively redress the wrongs that they have individually suffered. In addition, individualized litigation increases the delay and expense to all parties and to the court system. Individualized litigation also presents a potential for

inconsistent or contradictory judgments. By contrast, class litigation presents far fewer management difficulties, allows adjudication of claims that might otherwise go unaddressed because of the expense of bringing individual litigation, and provides the benefits of uniform adjudication, economies of scale, and comprehensive supervision by a single court.

**COUNT ONE**  
**(STATUTORY VIOLATION)**

28. Plaintiff incorporates by reference each of the allegations contained in the preceding paragraphs as if fully set forth herein.

29. In providing the Named Plaintiff and the members of the Class with a method or mode of payment that was subject to monthly transaction fees, charges, costs or expenses, Defendant violated the duties set forth in O.R.C. Section 4123.341 providing that,

*“The administrative costs of the industrial commission, the workers’ compensation council, the bureau of workers’ compensation board of directors, and the bureau of workers’ compensation shall be those costs and expenses that are incident to the discharge of the duties and performance of the activities of the industrial commission, the council, the board, and the bureau under this chapter and Chapters 4121., 4125., 4127. and 4167. of the Revised Code, and all such costs shall be borne by the state and by other employers amenable to this chapter ...” [italics added for emphasis].*

In providing the Named Plaintiff and the members of the Class with a method or mode of payment that was subject to monthly withholding of transaction fees, charges, costs or expenses from amounts owed, Defendant further violated the duties set forth in O.R.C. Section 4123.67 providing that,

*“... compensation before payment shall be exempt from all claims of creditors and from any attachment or execution, and shall be paid only to the employees or their dependents.” [italics added for emphasis].*

In providing the Named Plaintiff and the members of the Class with a method or mode of payment that was subject to withdrawal restrictions and monthly transaction fees, charges, costs



or expenses wrongfully withheld, Defendant further violated its statutory payment obligations to make full payment for awarded amounts under Ohio Revised Code Chapters 4121., 4123., 4127., 4131 as result of Defendant's unexcused and material breaches of its statutory obligations. The Named Plaintiff and the Class have not received the full claims payments they were entitled to be paid by Defendant, which underpayment of claim awards is due, owing, unreimbursed and expected to be ongoing.

30. Defendant's violation of law, as set forth above, is a breach of statutory provisions intended to be for the benefit of and protection of the Named Plaintiff and the members of the Class.

**COUNT TWO**  
**(RESTITUTION / UNJUST ENRICHMENT / EQUITABLE DISGORGEMENT AND**  
**INJUNCTIVE RELIEF)**

31. The named Plaintiff repeats and realleges the allegations contained in the paragraphs above, as if fully set forth herein.

32. The named Plaintiff and the Class Members were involuntarily and unlawfully assessed service fees, charges, costs or expenses, wrongfully withheld from their statutory payments or awards, which were collected from the accounts set up or required to be set up by Defendant. The named Plaintiff and the Class Members have never been afforded the opportunity to continue to receive payment checks, warrants or drafts for 100% of their awarded Workers' Compensation payments that can be cashed at any financial institution or deposited into an account without transaction fees, charges, costs or expenses. Defendant's Direct Payment Card Program was established by, and continues to be administered by Defendant without statutory authorization for the deduction, collection or withholding of service fees, charges, costs or expenses from awarded claim payment amounts.

33. Pursuant to its unauthorized and therefore wrongful conduct, Defendant has withheld and / or collected and / or deducted or otherwise wrongfully permitted the withholding of amounts rightfully belonging to the named Plaintiff and class members, which never should have been withheld, deducted or collected. Plaintiffs reasonably believe, and therefore allege, that Defendant will be continuing these wrongful practices indefinitely into the future.

34. The public interest would be best served if Defendant was restrained and enjoined from violating Ohio statutory law in the manner described herein.

35. The Named Plaintiff and members of the class are entitled to the imposition of preliminary and permanent injunctive relief enjoining and restraining Defendant, and all persons and entities acting in concert with Defendant, from engaging in the unlawful claims payment practices described herein.

36. Defendant has acted or refused to act on grounds generally applicable to the Named Plaintiff and the class members, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

37. The named Plaintiff and the Class Members are thus entitled to restitution, disgorgement, and other appropriate equitable relief necessary to fully restore them to the *status quo ante*.

**COUNT THREE**  
**(DECLARATORY RELIEF)**

38. The named Plaintiff repeats and realleges the allegations contained in the paragraphs above, as if fully set forth herein.

39. A live justiciable controversy exists between the named Plaintiff and the members of the Class and Defendant as described herein. A declaration of rights, status and legal relations is requested in the determination of the questions of the prayed for restitution of

the wrongfully withheld payment amounts based on fees, charges, costs or expenses improperly and illegally withheld or deducted from the payments owed to the named Plaintiff and the members of the Class, as raised herein.

40. The named Plaintiff, on behalf of himself and the Class Members, demands payment of all amounts owed for reimbursement of the illegal deductions and withheld amounts taken from his Workers' Compensation claim payment award.

41. Pursuant to Ohio Revised Code Chapter 2721, the named Plaintiff and the Class seek declaratory relief in the form of a judgment establishing that Defendant's continuing practices described herein are violative of Defendant's authority provided under Ohio statutory laws and that Defendant's practices are unlawful and unenforceable against the Class Members. The named Plaintiff and the Class further request a declaration establishing the restitution and remedies that are due to them.

### PRAYER

**WHEREFORE**, the Named Plaintiff requests that the Court enter judgment in his favor and in the favor of the members of the Class and against Defendant as follows:

- a. Determining that the action is properly maintained as a Class action; certifying the defined Class; certifying the named Plaintiff as Class representative for the Class; and appointing the named Plaintiff's counsel as counsel for the Class;
- b. Awarding equitable restitution by way of the cessation of the taking complained of herein, the disgorgement of wrongfully withheld amounts and the restoration of benefits wrongfully taken from statutory payments Plaintiff and the members of the class were entitled to, and awarding attorney fees, litigation expenses, and court costs paid out of the class action common fund only;

c. Awarding such declaratory, injunctive, and other equitable relief as is just and appropriate; and

Respectfully submitted,



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s/Charles J. Gallo (per consent)

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**JURY DEMAND**

Trial by jury is hereby demanded.



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