

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

PATRICIA DOWNS, DALE CHUBIN, and  
ARTHUR RAMIREZ, on behalf of themselves  
and those similarly situated,

Plaintiffs,

v.

NATIONAL UNION OF HOSPITAL AND  
HEALTH CARE EMPLOYEES  
1319 Locust Street  
Philadelphia, PA 19107

and

HENRY NICHOLAS, PRESIDENT  
1319 Locust Street  
Philadelphia, PA 19107

Defendants.

CIVIL ACTION NO:

CLASS ACTION COMPLAINT

**JURY DEMANDED**

**CLASS ACTION COMPLAINT**

Plaintiffs Patricia Downs, Dale Chubin, and Arthur Ramirez, on behalf of themselves and those similarly situated (hereinafter collectively "Plaintiffs"), by and through their undersigned counsel, hereby complain as follows:

**INTRODUCTION**

1. Plaintiffs initiate the instant action on behalf of themselves and those similarly situated to redress violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), and for fraud, breach of contract, unjust enrichment, and breach of fiduciary duty, and for violations of state wage payment laws. Defendants defrauded Plaintiffs and those similarly

situated by designating a portion of their wages as “mandatory union dues,” even though Defendants, as Plaintiffs’ employer, were legally barred from representing Plaintiffs in a collective bargaining setting (and Defendants never represented Plaintiffs in a collective bargaining capacity). As a result of Defendants’ unlawful actions, Plaintiffs have suffered damages.

### **JURISDICTION AND VENUE**

2. This Court has jurisdiction over Plaintiffs’ and Class’ federal law claims pursuant to 28 U.S.C. § 1331. This Court has supplemental jurisdiction over Plaintiffs’ and Class’ state law claims pursuant to 28 U.S.C. § 1367.

3. This Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332(d) because this action is a class action in which the matter in controversy exceeds the sum or value of \$5,000,000 and a member of the class is a citizen of a state different from any Defendant.

4. This Court may properly maintain personal jurisdiction over Defendants because Defendants’ contacts with this judicial district are sufficient for the exercise of personal jurisdiction to comply with traditional notions of fair play and substantial justice.

5. Pursuant to 28 U.S.C. §§ 1391(b)(1) and (b)(2), venue is properly laid in this district because the acts and/or omissions giving rise to the claims set forth herein occurred in this judicial district and Defendants are deemed to reside where it is subject to personal jurisdiction, rendering Defendants residents of the Eastern District of Pennsylvania.

### **CLASS ACTION ALLEGATIONS**

6. Plaintiffs bring this class action pursuant to Rules 23(b)(1), 23(b)(2), 23(b)(3) of the Federal Rules of Civil Procedure on behalf of themselves and those similarly situated. Those similarly situated consist of all current and former employees of Defendants from whom

Defendants unlawfully deducted/withheld wages under the guise of deducting “union dues,” when no union represented the Plaintiffs.

7. The class is so numerous that joinder of all class members, whether required or permitted, is impracticable. Plaintiffs do not know the exact size of the class because such information is in the exclusive control of Defendants. Nonetheless, there are potentially hundreds of class members geographically dispersed throughout the United States.

8. Plaintiffs’ claims are typical of the claims of the members of the class because Plaintiffs, like all class members, were/are employees of Defendants from whom Defendants unlawfully deducted/withheld wages under the guise of making deductions for “union dues” (when no union represented Plaintiffs) and each has been damaged by such unlawful conduct.

9. Plaintiffs will fairly and adequately protect the interests of the class because Plaintiffs’ interests are coincident with, and not antagonistic to, those of the class. Plaintiffs have retained counsel with substantial experience in the prosecution of claims involving employee wages.

10. No difficulties are likely to be encountered in the management of this class action that would preclude its maintenance as a class action. The class will be easily identifiable from Defendants’ records.

11. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Such treatment will allow all similarly situated individuals to prosecute their common claims in a single forum simultaneously. Prosecution of separate actions by individual members of the class would create the risk of inconsistent or varying adjudications with respect to individual members of the class that would establish incompatible standards of conduct for the Defendants. Furthermore, the amount at stake for individual class members,

though substantial, is not great enough to enable the individual class members to maintain separate actions against Defendants.

12. Questions of law and fact that are common to the members of the class predominate over questions that affect only individual members of the class. Among the questions of law and fact that are common to the class is whether Defendants unlawfully deducted/withheld wages from Plaintiffs under the guise of making deductions for “union dues,” when no union represented Plaintiffs.

### **PARTIES**

13. Plaintiff Patricia Downs (“Downs”) is an adult individual with an address of 1630 Cuyamaca Avenue, Spring Valley, CA 91977; Downs worked for Defendant National Union of Hospital and Health Care Employees from approximately January 2004 through March 2009 as a “union organizer.”

14. Plaintiff Dale Chubin (“Chubin”) is an adult individual with an address of 1700 East 57th Circle, Anchorage, AK 99507; Chubin worked for Defendant National Union of Hospital and Health Care Employees from approximately January 2006 through August 2008 as an “administrative organizer” and “organizer.”

15. Plaintiff Arthur Ramirez (“Ramirez”) is an adult individual with an address of 2376 South Lenox Street, Milwaukee, WI, 53207; Ramirez worked for Defendant National Union of Hospital and Health Care Employees from approximately February 2006 through August 2008 as an “organizer.”

16. Plaintiffs Downs, Chubin, and Ramirez, and others similarly situated, shall be collectively referred to hereinafter as “Plaintiffs.”

17. Defendant National Union of Hospital and Health Care Employees (hereinafter “Defendant National Union”) is an employer that maintains an office and does business at the address as set forth in the caption.

18. At all times relevant herein, Defendant Henry Nicholas (hereinafter “Defendant Nicholas”) was the President of Defendant National Union and maintains his primary office at the address set forth in the caption.

19. At all times relevant herein, Defendant National Union acted by and through its agents, servants, and employees, each of whom acted at all times relevant herein in the course and scope of their employment.

#### **FACTUAL BACKGROUND**

20. The foregoing paragraphs are incorporated herein as if set forth in their entirety.

21. Plaintiffs (including those similarly situated) worked as employees for Defendant National Union.

22. As employees of Defendant National Union, Plaintiffs performed clerical, administrative, and/or organizing duties for Defendant National Union.

23. At all times relevant to this action, no union or other entity has ever bargained on behalf of Plaintiffs in a collective bargaining setting while Plaintiffs worked for Defendant National Union.

24. Further, Defendant National Union has never bargained on behalf of Plaintiffs in a collective bargaining setting.

25. In fact, Defendant National Union is prohibited as a matter of law from bargaining on behalf of Plaintiffs in a collective bargaining setting, because Defendant National Union was/is Plaintiffs’ employer.

26. Nonetheless, Defendant National Union deducted approximately \$50.00 every month from the wages of each Plaintiff (and from the wages of each individual similarly situated).

27. On Defendant National Union's paystub documents, Defendant National Union called these deductions "union dues."

28. These deductions, however, were not "union dues," as Plaintiffs were not represented by a union at any relevant time.

29. Defendant National Union knew that said deductions were not "union dues."

30. Defendant National Union was the recipient of the "union dues" it deducted from Plaintiffs' wages.

31. Defendant Nicholas mandated that the "union dues" deductions be made.

32. In mandating that the "union dues" deductions be made, Defendant Nicholas knew that no union represented the Plaintiffs.

**COUNT I**  
**RICO Violation**  
**(Against All Defendants)**

33. The foregoing paragraphs are incorporated herein.

34. Defendants misrepresented that the "union dues" deductions were mandatory to Plaintiffs and Class.

35. Defendants misrepresented that the "union dues" deductions were to be used to pay dues owed to a union.

36. There was no legitimate reason for the "union dues" deductions (no union represented Plaintiffs or Class).

37. Defendants used both the mail and wires for the purpose of executing this scheme.

38. Defendants' conduct constituted mail and wire fraud, in violation of 18 U.S.C. §§ 2, 1341, and 1343.

39. Defendant National Union and Defendant Nicholas were a group of persons associated for the common purpose of carrying out the fraudulent scheme described in this Complaint; as a result, Defendants and their officers, agents, and employees constitute an enterprise within the meaning of RICO.

40. During all relevant times this enterprise was engaged in, and its activities affected by, interstate commerce.

41. The enterprise had a pattern of racketeering activity consisting of the commission of continuing acts of mail and wire fraud as described above.

42. Defendants' conduct constitutes violations of RICO and has caused Plaintiffs to suffer damages.

**COUNT II**  
**Fraud**  
**(Against All Defendants)**

43. The foregoing paragraphs are incorporated herein as if set forth in their entirety.

44. Defendants misrepresented that the "union dues" deductions were mandatory.

45. Defendants misrepresented that the "union dues" deductions were to be used to pay dues owed to a union.

46. There was no legitimate reason for the "union dues" deductions (no union represented Plaintiffs).

47. Plaintiffs relied on Defendants' misrepresentations as to the mandatory nature of the deductions and as to the purpose of the deductions.

48. Defendants' conduct constitutes fraud and has caused Plaintiffs to suffer damages.

**COUNT III**  
**Unjust Enrichment**  
**(Against Defendant National Union Only)**

49. The foregoing paragraphs are incorporated herein as if set forth in their entirety.

50. Defendant National Union has been unjustly enriched by the “union dues” deductions.

51. Defendant National Union never provided union representation to Plaintiffs, and Defendant National Union did not send the “union dues” to any other union.

52. Defendant National Union kept the “union dues” deductions for itself.

53. Plaintiffs did not receive any consideration for providing “union dues” to Defendant National Union.

54. Defendant National Union has been unjustly enriched by the aforementioned conduct.

**COUNT IV**  
**Breach of Contract**  
**(Against Defendant National Union Only)**

55. The foregoing paragraphs are incorporated herein as if set forth in their entirety.

56. Defendant National Union contracted with Plaintiffs to compensate them a set amount of wages for their work.

57. Defendant National Union breached this agreement by deducting, without a legitimate reason, “union dues” from Plaintiffs’ agreed upon wages.

58. Defendant National Union’s aforementioned conduct has caused Plaintiffs to suffer damages.



**COUNT V**  
**Breach of Fiduciary Duty**  
**(Against All Defendants)**

59. The foregoing paragraphs are incorporated herein as if set forth in their entirety.

60. Defendants had a fiduciary responsibility to provide wages to Plaintiffs without making unlawful deductions.

61. Defendants breached this duty by deducting “union dues” from the wages of Plaintiffs, when no union represented Plaintiffs.

62. Defendants conduct caused Plaintiffs to suffer damages.

**COUNT VI**  
**Conversion**  
**(Against All Defendants)**

63. The foregoing paragraphs are incorporated herein as if set forth in their entirety.

64. Defendant National Union took money (wages) that was the property of Plaintiffs.

65. Defendant National Union took such money without legal justification or cause.

66. Defendant Nicholas authorized and direct Defendant National Union to take Plaintiffs’ money without justification or cause.

67. Defendants’ conduct constitutes unlawful conversion and has caused Plaintiffs to suffer damages.

**COUNT VII**  
**Pennsylvania Wage Payment and Collection Law (“PaWPCL”)**  
**(Pennsylvania Plaintiffs only)**  
**(Against All Defendants)**

68. The foregoing paragraphs are incorporated herein as if set forth in their entirety.

69. Pursuant to the PaWPCL, an employer may only make deductions from wages in specific circumstances.

70. The PaWPCL permits deductions for “labor organization dues, assessments and initiation fees, and such other labor organization charges as authorized by law.”

71. The deductions of “union dues,” however, were neither labor organization dues, assessments, or initiation fees, nor labor organization charges authorized by law.

72. Defendants’ conduct violated the PaWPCL and caused Plaintiffs to suffer damages.

**COUNT VIII**  
**New Jersey Wage Payment Law (“NJWPL”)**  
**(New Jersey Plaintiffs only)**  
**(Against All Defendants)**

73. The foregoing paragraphs are incorporated herein as if set forth in their entirety.

74. Pursuant to the NJWPL, an employer may only make deductions from wages in specific circumstances.

75. The NJWPL permits deductions for “labor organization dues, assessments and initiation fees, and such other labor organization charges as authorized by law.”

76. The deductions of “union dues,” however, were neither labor organization dues, assessments, or initiation fees, nor labor organization charges authorized by law.

77. Defendants’ conduct violated the NJWPL and caused Plaintiffs to suffer damages.

**COUNT IX**  
**Connecticut Labor Law (“CLL”)**  
**(Connecticut Plaintiffs only)**  
**(Against All Defendants)**

78. The foregoing paragraphs are incorporated herein as if set forth in their entirety.

79. Pursuant to the CLL, an employer may only make deductions from wages in specific circumstances.

80. The CLL permits deductions only when the employer has “written authorization from the employee for deductions on a form approved by the commissioner.”

81. The deductions of “union dues,” however, were neither authorized by Plaintiffs nor approved by the commissioner.

82. Defendants’ conduct violated the CLL and caused Plaintiffs to suffer damages.

**COUNT X**  
**The District of Columbia Wage Payment and Wage Collection Law**  
 **(“DCWPWCL”)**   
**(District of Columbia Plaintiffs only)**  
**(Against All Defendants)**

83. The foregoing paragraphs are incorporated herein as if set forth in their entirety.

84. Pursuant to the DCWPWCL, an employer must pay employees all wages due, with wages defined as monetary compensation after lawful deductions.

85. The deductions of “union dues,” however, were not lawful deductions because they were based on fraud.

86. Defendants’ conduct violated the DCWPWCL and caused Plaintiffs to suffer damages.

**COUNT XI**  
**Illinois Wage Payment and Collection Act (“IWPCA”)**  
**(Illinois Plaintiffs only)**  
**(Against All Defendants)**

87. The foregoing paragraphs are incorporated herein as if set forth in their entirety.

88. Pursuant to the IWPCA, an employer may only make deductions from wages in specific circumstances.

89. The IWPCA permits deductions for “the benefit of the employee” or “made with the express written consent of the employee, given freely at the time the deduction was made.”

90. The deductions of “union dues,” however, were not to the benefit of the Plaintiffs nor made with the express and freely given written consent of the Plaintiffs.

91. Defendants conduct violated the IWPCA and caused Plaintiffs to suffer damages.

**COUNT XII**  
**New Mexico Employment Law – Payment of Wages (“NMEL”)**  
**(New Mexico Plaintiffs only)**  
**(Against All Defendants)**

92. The foregoing paragraphs are incorporated herein as if set forth in their entirety.

93. Pursuant to the NMEL, an employer must pay wages in full, less lawful deductions.

94. The deductions of “union dues,” however, were not lawful because they were procured by fraud.

95. Defendants conduct violated the NMEL and caused Plaintiffs to suffer damages.

**COUNT XIII**  
**California Labor Code (“CLC”)**  
**(California Plaintiffs only)**  
**(Against All Defendants)**

96. The foregoing paragraphs are incorporated herein as if set forth in their entirety.

97. Pursuant to the CLC, an employer may deduct wages when expressly authorized to do so by the employee.

98. The deductions of “union dues,” however, were not expressly authorized by the Plaintiffs.

99. Defendants conduct violated the CLC and caused Plaintiffs to suffer damages.

**COUNT XIV**  
**Wisconsin Wage Payment and Collection Law (“WWPCL”)**  
**(Wisconsin Plaintiffs only)**  
**(Against All Defendants)**

100. The foregoing paragraphs are incorporated herein as if set forth in their entirety.

101. Pursuant to the WWPCL, an employer must pay wages in full, less lawful deductions.

102. The deductions of “union dues,” however, were not lawful because they were procured by fraud.

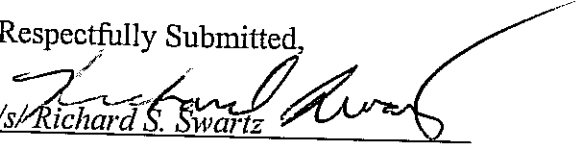
103. Defendants conduct violated the WWPCL and caused Plaintiffs to suffer damages.

**WHEREFORE**, Plaintiffs pray that this Court enter an order providing that:

- A. Defendants are to be prohibited from continuing to maintain their illegal policy, practice, or custom of making unlawful deductions from their employees’ paychecks ;
- B. Defendants are to compensate Plaintiffs and those similarly situated by reimbursing and making them whole by providing all pay and benefits Plaintiffs and those similarly situated would have received had it not been for Defendants’ illegal actions, including but not limited to reimbursing Plaintiffs for all “union dues” deducted from their paychecks, with interest and liquidated/punitive and other damages as permitted by law, trebled pursuant to RICO;
- C. Plaintiffs and those similarly situated are to be awarded liquidated and/or punitive damages as permitted by applicable law, in an amount believed by the Court or trier of fact to be appropriate to punish Defendants for their willful, deliberate, malicious, and outrageous conduct, and to deter Defendants or other employers from engaging in such misconduct in the future;
- D. Plaintiffs and those similarly situated and those similarly situated are to be accorded any and all other equitable and legal relief as the Court deems just, proper, and appropriate;

- E. Plaintiffs and those similarly situated are to be awarded the costs and expenses of this action and reasonable legal fees as provided by applicable federal and state law; and
- F. Plaintiffs' claims are to receive a trial by jury to the extent allowed by applicable law.

Respectfully Submitted,

  
/s/ Richard S. Swartz

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