

# Supreme Court of Pennsylvania

## Court of Common Pleas Civil Cover Sheet

DAUPHIN COUNTY County

For Prothonotary Use Only:

Docket No:

2022-CV-167-CV

RECEIVED  
PROTHONOTARY  
2022 JAN 11 AM 11:58  
DAUPHIN COUNTY

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

SECTION A

**Commencement of Action:**

- Complaint   
  Writ of Summons   
  Petition  
 Transfer from Another Jurisdiction   
  Declaration of Taking

Lead Plaintiff's Name: **Michelle Jones**

Lead Defendant's Name: Service Employees International Union, Local 668

Are money damages requested?  Yes     No

Dollar Amount Requested:  within arbitration limits  
(check one)     outside arbitration limits

Is this a *Class Action Suit*?     Yes     No

Is this an *MDJ Appeal*?     Yes     No

Name of Plaintiff/Appellant's Attorney: The Fairness Center (Danielle R.A. Susanj, Nathan McGrath, Logan Hetherington)

Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)

SECTION B

**Nature of the Case:**

Place an "X" to the left of the **ONE** case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

**TORT** (do not include Mass Tort)

- Intentional  
 Malicious Prosecution  
 Motor Vehicle  
 Nuisance  
 Premises Liability  
 Product Liability (does not include mass tort)  
 Slander/Libel/ Defamation  
 Other: \_\_\_\_\_

**CONTRACT** (do not include Judgments)

- Buyer Plaintiff  
 Debt Collection: Credit Card  
 Debt Collection: Other  
 \_\_\_\_\_  
 Employment Dispute: Discrimination  
 Employment Dispute: Other  
 \_\_\_\_\_  
 Other: \_\_\_\_\_

**CIVIL APPEALS**

- Administrative Agencies  
 Board of Assessment  
 Board of Elections  
 Dept. of Transportation  
 Statutory Appeal: Other  
 \_\_\_\_\_  
 Zoning Board  
 Other: \_\_\_\_\_

**MASS TORT**

- Asbestos  
 Tobacco  
 Toxic Tort - DES  
 Toxic Tort - Implant  
 Toxic Waste  
 Other: \_\_\_\_\_

**REAL PROPERTY**

- Ejectment  
 Eminent Domain/Condemnation  
 Ground Rent  
 Landlord/Tenant Dispute  
 Mortgage Foreclosure: Residential  
 Mortgage Foreclosure: Commercial  
 Partition  
 Quiet Title  
 Other: \_\_\_\_\_

**MISCELLANEOUS**

- Common Law/Statutory Arbitration  
 Declaratory Judgment  
 Mandamus  
 Non-Domestic Relations Restraining Order  
 Quo Warranto  
 Replevin  
 Other: \_\_\_\_\_

**PROFESSIONAL LIABILITY**

- Dental  
 Legal  
 Medical  
 Other Professional: \_\_\_\_\_

THE FAIRNESS CENTER  
 Danielle R. Acker Susanj  
 Pa. Attorney I.D. No. 316208  
 E-mail: drasusanj@fairnesscenter.org  
 Nathan J. McGrath  
 Pa. Attorney I.D. No. 308845  
 E-mail: njmcgrath@fairnesscenter.org  
 Logan M. Hetherington  
 Pa. Attorney I.D. No. 326048  
 E-mail: lmhetherington@fairnesscenter.org  
 500 North Third Street, Suite 600B  
 Harrisburg, Pennsylvania 17101  
 Phone: 844.293.1001  
 Facsimile: 717.307.3424

*Attorneys for Plaintiff*

RECEIVED  
 OFFICE OF  
 PROthonotary  
 2022 JAN 11 AM 11:58  
 DAUPHIN COUNTY  
 PENNSA.

MICHELLE JONES,

Plaintiff,

v.

SERVICE EMPLOYEES  
 INTERNATIONAL UNION,  
 LOCAL 668,

Defendant.

: IN THE COURT OF COMMON PLEAS  
 : DAUPHIN COUNTY, PENNSYLVANIA

:  
 :  
 :  
 :  
 :  
 :  
 :

: NO. **2022-CV-167-CV**  
 : CIVIL ACTION

: JURY TRIAL DEMANDED

**NOTICE**

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

DAUPHIN COUNTY LAWYER REFERRAL SERVICE

213 North Front Street  
Harrisburg, PA 17101  
(717) 232-7536

**NOTICE**  
**CONCERNING MEDIATION OF ACTIONS PENDING BEFORE**  
**THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY**

The Judges of the Court of Common Pleas of Dauphin County believe that mediation of lawsuits is a very important component of dispute resolution. Virtually all lawsuits can benefit in some manner from mediation.

The Court has adopted Dauphin County Local Rule 1001 to encourage the use of mediation. This early alert enables litigants to determine the best time during the life of their lawsuit for a mediation session. The intent of this early alert is to help the parties act upon the requirement to consider good faith mediation at the optimal time.

The Dauphin County Bar Association provides mediation services and can be reached at 717-232-7536. Free mediation sessions for pro bono cases referred by MidPenn Legal Services are available through the DCBA.

**AVISO**

USTED HA SIDO DEMANDADO/A EN CORTE. Si usted desea defenderse de las demandas que se presentan más adelante en las siguientes páginas, debe tomar acción dentro de los próximos veinte (20) días después de la notificación de esta Demanda y Aviso radicando personalmente o por medio de un abogado una comparecencia escrita y radicando en la Corte por escrito sus defensas de, y objeciones a, las demandas presentadas aquí en contra suya. Se le advierte de que si usted falla de tomar acción como se describe anteriormente, el caso puede proceder sin usted y un fallo por cualquier suma de dinero reclamada en la demanda o cualquier otra reclamación o remedio solicitado por el demandante puede ser dictado en contra suya por la Corte sin más aviso adicional. Usted puede perder dinero o propiedad u otros derechos importantes para usted.

USTED DEBE LLEVAR ESTE DOCUMENTO A SU ABOGADO INMEDIATAMENTE. SI USTED NO TIENE UN ABOGADO, LLAME O VAYA A LA SIGUIENTE OFICINA. ESTA OFICINA PUEDE PROVEERLE INFORMACION A CERCA DE COMO CONSEGUIR UN ABOGADO.

SI USTED NO PUEDE PAGAR POR LOS SERVICIOS DE UN ABOGADO, ES POSIBLE QUE ESTA OFICINA LE PUEDA PROVEER INFORMACION SOBRE AGENCIAS QUE OFREZCAN SERVICIOS LEGALES SIN CARGO O BAJO COSTO A PERSONAS QUE CUALIFICAN.

DAUPHIN COUNTY LAWYER REFERRAL SERVICE  
213 North Front Street  
Harrisburg, PA 17101  
(717) 232-7536

**AVISO**  
**REFERENCIAS A LA MEDIACIÓN DE LAS ACCIONES PENDIENTES ANTES**  
**LA CORTE DE SOPLICAS COMUNES DEL CONDADO DE DAUPHIN**

Los jueces de la corte de súplicas comunes del condado de Dauphin creen que la mediación de pleitos es un componente muy importante de la resolución del conflicto. Virtualmente todos los pleitos pueden beneficiar de cierta manera de la mediación.

La code ha adoptado la regla local de condado de Dauphin 1001 para animar el use de la mediación. Esta alarma temprana permite a litigantes determinar la mejor época durante la vida de su pleito para una sesión de la mediación. El intento de esta alarma temprana es actuar sobre la mediación de la buena fe en el tiempo óptimo.

La asociación de la barra del condado de Dauphin proporciona servicios de la mediación y se puede alcanzar en 717-232-7536. La session libre de la mediación para los favorables casos del bono se refinio por MidPenn que los servicios juridicos están disponibles con el DCBA.

Dated: January 11, 2022

RECEIVED  
OFFICE OF  
PROthonotary  
2022 JAN 11 AM 11:58  
DAUPHIN COUNTY  
PENNA

THE FAIRNESS CENTER  
Danielle R. Acker Susanj  
Pa. Attorney I.D. No. 316208  
E-mail: drasusanj@fairnesscenter.org  
Nathan J. McGrath  
Pa. Attorney I.D. No. 308845  
E-mail: njmcgrath@fairnesscenter.org  
Logan M. Hetherington  
Pa. Attorney I.D. No. 326048  
E-mail: lmhetherington@fairnesscenter.org  
500 North Third Street, Suite 600B  
Harrisburg, Pennsylvania 17101  
Phone: 844.293.1001  
Facsimile: 717.307.3424

*Attorneys for Plaintiff*

MICHELLE JONES,

Plaintiff,

v.

SERVICE EMPLOYEES  
INTERNATIONAL UNION,  
LOCAL 668,

Defendant.

: IN THE COURT OF COMMON PLEAS  
: DAUPHIN COUNTY, PENNSYLVANIA

:  
:  
: NO. 2022-CV-167-CV

: CIVIL ACTION

: JURY TRIAL DEMANDED

**COMPLAINT**

AND NOW comes Plaintiff Michelle Jones (“Ms. Jones” or “Plaintiff”), by and through her undersigned counsel, and states the following claims for relief against Defendant Service Employees International Union, Local 668 (“Defendant” or “Local 668”), and avers as follows:

## SUMMARY OF THE CASE

1. Ms. Jones brings this civil action under the Declaratory Judgments Act, seeking a declaration that her application to become a member of Defendant is void and unenforceable as a contract.
2. Additionally, Ms. Jones brings this civil action to recoup funds unlawfully taken from her and retained by Defendant.
3. Defendant and its officials unjustifiably rely upon an unenforceable membership application to seize and retain Ms. Jones's wages as purported union dues even though Ms. Jones is no longer a member of Local 668.
4. The membership application is void and unenforceable under Pennsylvania law, so Defendant cannot rely on it to claim entitlement to seize or retain dues forcibly deducted from Ms. Jones's wages after she resigned her union membership.

## JURISDICTION AND VENUE

5. Where a complaint "sounds in contract," "the Court of Common Pleas ha[s] proper jurisdiction." *City of Phila. v. Dist. Council 33, AFSCME*, 598 A.2d 256, 259 (Pa. 1991).
6. This court has jurisdiction to award relief on the declaratory causes of action pursuant to 42 Pa.C.S.A. § 7531 *et seq.*
7. Venue is proper in Dauphin County, because Defendant's registered office and principal place of business is located in Dauphin County, Defendant regularly conducts business in Dauphin County, and transactions and occurrences described in this Complaint and giving rise to the causes of action set forth herein occurred in Dauphin County. *See Pa. R. Civ. P. 2179(a)(1)-(2), (4).*

## PARTIES

8. Plaintiff Michelle Jones is an employee of the Pennsylvania Department of Human

Services (“DHS”) and a former member of Local 668.

9. Defendant Local 668 is a labor union with a principal place of business at 2589 Interstate Drive, Harrisburg, Pennsylvania 17110.

### **FACTUAL ALLEGATIONS**

10. Ms. Jones is, and was at all relevant times hereto, employed by DHS as an Income Maintenance Caseworker or Supervisor.

11. At all relevant times hereto, as an Income Maintenance Caseworker or Supervisor for DHS, Ms. Jones’s bargaining unit has been exclusively represented by Defendant for purposes of collective bargaining.

12. In or around 2018, Ms. Jones, then a member in good standing of Local 668, attended a union event sponsored by Local 668 at Shady Maple Smorgasbord in East Earl, Pennsylvania.

13. On her way into the event, an official or representative of Defendant handed her a form titled “Membership Application,” which Defendant drafted, and instructed her to complete the form in order to “renew” her union membership status and dues.

14. Defendant’s official or representative did not provide any other information to Ms. Jones, nor offer any explanation as to what Ms. Jones would be signing.

15. The actions by Defendant’s official or representative led Ms. Jones to believe that she was merely updating her contact information to renew her union membership.

16. During this rushed interaction, Ms. Jones filled out the top portion of the document with her personal information and affixed her signature where indicated. A true and correct copy of that document (the “Application”) is attached hereto as “Exhibit A,” and incorporated by reference herein.

17. Notably, at the time of Ms. Jones’s signing, neither Ms. Jones nor any other

individual or representative of Defendant affixed a date next to any of Ms. Jones's signatures. *See* Ex. A.

18. Ms. Jones did not receive any copy or other record of the Application at the time she signed it.

19. On or around March of 2021, Ms. Jones transmitted a membership resignation letter to Defendant.

20. Ms. Jones's resignation letter notified Defendant that she resigned from Local 668 and its affiliates, effective immediately, and directed Defendant to immediately cease dues deductions from her wages.

21. On or about April 7, 2021, Defendant sent a letter to Ms. Jones notifying her that it had received her resignation letter. A true and correct copy of the April 7, 2021 letter from Defendant (the "Response") is attached hereto as "Exhibit B," and incorporated by reference herein.

22. Therein, Defendant informed Ms. Jones that while it would process her resignation, it would not cease dues deductions until a "window period" defined by Defendant. *See* Ex. B.

23. In the Response, Defendant did not identify any specific window period applicable to Ms. Jones; rather, Defendant decreed that Ms. Jones remained "obligated to pay an amount equal to [her] regular Union dues payments until the annual window period specified in the membership application." Ex. B.

24. The Response included an attached copy of the Application and alleged that the Application constituted a "valid contract between [Ms. Jones] and SEIU Local 668." Ex. B.

25. Upon receipt of a copy of the Application, Ms. Jones noticed that an additional section in the upper-right corner of the Application had been completed without her knowledge. *See* Ex. A.



26. Upon information and belief, that section of the Application had been completed by a representative or official of Defendant on a date or time after Ms. Jones affixed her signatures.

27. One of the notations made by Defendant, through its representative or official, was a “Date Received” of December 6, 2018. *See* Ex. A.

28. Thus, Defendant unilaterally added a date without Ms. Jones’s knowledge or consent.

29. After Defendant added the date to the Application, it did not give Ms. Jones any notice of the additional term, nor did it provide a copy of the Application to Ms. Jones until she received the Response.

30. From the time Ms. Jones signed the Application to the time she received the Response, Defendant did not show or provide any copy of the Application to Ms. Jones.

31. Interestingly, the Response cited December 6, 2018, as the date which Ms. Jones signed the Application despite the unmistakable absence of any dates next to her signatures. Exs. A, B.

32. The “window period” noted in the Response assumedly refers to the following dues deduction authorization provision from the Application:

This voluntary authorization and assignment of dues deduction shall be irrevocable, regardless of whether I am or remain a member of the Union, for a period of one year from the date of execution and for year to year thereafter as long as my employment continues, unless I give the Employer and the Union written notice of revocation not less than ten (10) days and not more than thirty (30) days before the end of any yearly period[.]

Ex. A.

33. Ms. Jones had never heard of or been informed of any such window period by Defendant.

34. Accordingly, Ms. Jones inquired to Defendant’s officials about her alleged window period and when dues deductions would cease.

35. At least one official could not explain what an anniversary or execution date related to the window period was, or how Ms. Jones could determine what it was.

36. Upon information and belief, this dues deduction authorization language was not in Ms. Jones's previous membership applications, cards, agreements, or dues deduction authorizations.

37. Defendant considers the Application to be an enforceable contract.

38. Defendant relies upon the Application to claim that Ms. Jones could not end the deduction of union dues at the time of her resignation from Local 668, because her resignation did not fall within an unspecified and undefined 20-day window period.

39. Ms. Jones signed the Application because she believed Defendant's representations that she had to do so to update her contact information, and desired to do so at that time.

40. However, Defendant's representations were false, because upon information and belief, not every member of Local 668 completed and signed a membership application form like the Application signed by Ms. Jones.

41. Upon information and belief, some members of Local 668 did not complete or sign new membership applications and Defendant continued to treat them as members.

42. Upon information and belief, members of Local 668 who did not sign new membership applications like the Application that Ms. Jones signed, have since resigned their memberships and Defendant immediately stopped their dues deductions.

43. Defendant never informed Ms. Jones that she did not have to complete and sign the Application to remain a member of Local 668.

44. At the time Ms. Jones signed the Application in 2018, Defendant either knew or should have known that Ms. Jones had the right not to pay any union dues should she become a nonmember, pursuant to *Janus v. AFSCME, Council 31*, 138 S. Ct. 2448, 2486 (2018).

45. No representative of Defendant ever explained to Ms. Jones that she had a right

under *Janus* not to pay any union dues should she become a nonmember.

46. No representative of Defendant explained to Ms. Jones that Defendant would claim that the language of the Application affected her right not to pay union dues as a nonmember.

47. Defendant either knew or should have known that Ms. Jones did not have an adequate understanding of her right to not pay union dues if she became a nonmember or that Defendant would take the position that the Application affected that right.

48. Had Ms. Jones known that Defendant would claim that the Application entitled it to have her employer collect dues from her wages against her will and after she was no longer a member of Local 668, she would not have signed the Application.

49. When Ms. Jones signed the Application, Defendant did not make any new or additional promises, commit to any new or additional obligations, or otherwise provide to Ms. Jones anything of value that she was not already entitled to before she signed the Application.

50. Since the date of Ms. Jones's resignation from Local 668 to in or around November of 2021, Defendant has continued to seize, receive, accept and/or retain purported union dues or fees from Ms. Jones's wages, against her will and without her consent.

## CAUSES OF ACTION

### COUNT I

#### **Declaratory Action: The Application Is Void and Unenforceable as a Contract**

51. The foregoing paragraphs are incorporated by reference as if set forth fully herein.

52. Ms. Jones brings this claim pursuant to the Declaratory Judgments Act, 42 Pa.C.S.A. § 7531 *et seq.* Under the Declaratory Judgments Act, "Courts . . . have power to declare rights, status and other legal relations whether or not further relief is or could be claimed." *Id.* § 7532. "Any person interested under a . . . written contract, or other writings constituting a contract . . . may have determined any question of construction *or validity* arising under the instrument . . . and obtain a declaration of rights, status, or other legal relations thereunder." *Id.* § 7533 (emphasis added).

### **The Application Is Void Because It Lacks an Essential Term**

53. “It is axiomatic that before a contract may be found, all of the essential elements of a contract must exist, including consideration.” *Commonwealth Dep’t of Transp. v. First Pa. Bank, N.A.*, 466 A.2d 753, 754 (Pa. Cmwlth. 1983).

54. “A contract is formed when the parties to it 1) reach a mutual understanding, 2) exchange consideration, and 3) delineate the terms of their bargain with sufficient clarity.” *Weavertown Transp. Leasing, Inc. v. Moran*, 834 A.2d 1169, 1172 (Pa. Super. 2003).

55. Additionally, “for an agreement to exist, there must be a ‘meeting of the minds,’” or mutual assent. *Schreiber v. Olan Mills*, 627 A.2d 806, 808 (Pa. Super. 1993).

56. Defendant unilaterally, and without Ms. Jones’s knowledge and consent, added a missing essential term—the date—and is attempting to enforce the Application in reliance on that unilaterally appended term.

57. There was no meeting of the minds or objective manifestation of assent regarding the date of execution.

58. Under *Bair v. Manor Care of Elizabethtown, P.A, LLC*, 108 A.3d 94, 97–98 (Pa. Super. 2015), an essential term is at least a term which the agreement expressly requires.

59. The language, “from the date of execution,” in the window provision of the Application, expressly required a *date* of execution.

60. The Application lacks any identifiable date of execution because there is no date affixed next to any of Ms. Jones’s signatures.

61. Moreover, “date of execution” is not defined anywhere in the Application.

62. Thus, Defendant’s attempt to insert its own date and characterize it as the essential term is misplaced and incompatible with principles of contract law.

63. Furthermore, any ambiguity as to the meaning or implementation of “date of execution” must be construed against Defendant as the drafter of the Application. *See, e.g., Rusiski v. Pribonic*, 515 A.2d 507, 510 (Pa. 1986); *New Charter Coal Co. v. McKee*, 191 A.2d 830, 835 (Pa. 1963).

64. There is no way that Ms. Jones could determine, from the plain language of the application, what the operational “date of execution” was or when a formal contract had been created.

65. With ambiguities construed against Defendant, there is no mutually agreeable or reasonably unambiguous date of execution because that term is not defined in the contract.

66. Therefore, the contract is void for lack of an essential term and an ambiguous provision related to dates.

#### **The Application Is Not an Enforceable Contract**

67. Not every document is a contract.

68. The document at issue is labeled “Membership Application,” and the first line reads, “I request and accept membership. . . .” Ex. A.

69. Under Pennsylvania law, an application is not a contract in and of itself. *See Zayc v. John Hancock Mut. Life Ins. Co.*, 13 A.2d 34, 36 (Pa. 1940) (quotations and citations omitted).

70. Here, Ms. Jones’s submission of the Application is akin to the submission of an insurance application because Defendant was not bound to accept her membership, even upon payment of dues.

71. Accordingly, Ms. Jones’s completion of a portion of the Application and the attachment of her signatures did not create a contract.

72. At most, the Application represents an offer which could not have been accepted until Defendant bound itself to its terms. *Accord Constructors’ Ass’n of W. Pa. v. Furman*, 67 A.2d 590, 591 (Pa. Super. 1949) (“The application was defendant’s offer to become a member of the

association under the terms of its bylaws; the acceptance of his offer formed a contract; and the bylaws by reference became the terms of the contract.”). *See also Toberg v. Knights of Columbus*, 16 A.2d 687, 688–89 (Pa. Super. 1940) (explaining that a submitted insurance application is not a contract until essential conditions met and approval by issuing entity).

73. Defendant did not bind itself to any terms of the Application, and specifically did not bind itself to the dues deduction authorization laid out therein.

74. Therefore, the Application and its dues deduction authorization, including the window provision, is not an enforceable contract.

75. “A contract is evidenced by a mutuality of obligation. A mutuality of obligation exists when both parties to the contract are required to perform their respective promises. If a mutuality of promises is absent, the contract is unenforceable. . . . If the promise is entirely optional with the promisor, it is said to be illusory and, therefore, lacking consideration and unenforceable.” *Geisinger Clinic v. Di Cuccio*, 606 A.2d 509, 512 (Pa. Super. 1992) (citations omitted).

76. Defendant is not a party to the dues deduction authorization as it is merely an authorization to Ms. Jones’s employer for the deduction of dues.

77. Defendant is not bound in any way by the dues deduction authorization.

78. The dues deduction authorization does not require Defendant to perform any actions, nor does it contemplate any future actions by Defendant.

79. Defendant has not made any promises or offered any consideration for Ms. Jones’s authorization of dues deductions to her employer.

80. Ms. Jones’s authorization is nothing more than a gratuitous, “voluntary,” authorization.

81. Defendant may not enforce an agreement to which it is not bound.

82. Defendant may not enforce an agreement as a contract where it has not provided any consideration.

83. Therefore, Defendant may not enforce the noncontractual Application and/or dues deduction authorization because it lacks consideration and mutuality of obligations.

**Alternatively, the Application Is Void Because It Lacks Additional Consideration**

84. “Under Pennsylvania common law, once a contract is formed, additional consideration is required to modify the contract.” *Corsale v. Sperian Energy Corp.*, 374 F. Supp. 3d 445, 454 (W.D. Pa. 2019).

85. “Consideration is defined as a benefit to the party promising, or a loss or detriment to the party to whom the promise is made.” *Stelmack v. Glen Alden Coal Co.*, 14 A.2d 127, 128 (Pa. 1940) (internal citation omitted). The consideration must be “*quid pro quo.*” *Id.* at 129.

86. “If one party to a contract, in agreeing upon a modification of it, neither assumes an additional obligation nor renounces any right, the promise of the other is nudum pactum and *void.*” *Fedun v. Mike’s Café, Inc.*, 204 A.2d 776, 781 (Pa. Super. 1964) (emphasis added).

87. Despite Ms. Jones’s resignation, Defendant continued to seize purported dues from Ms. Jones’s wages until in or around November of 2021 and continues to retain those funds.

88. Defendant claims that it is entitled to Ms. Jones’s funds due to the Application signed by Ms. Jones.

89. Upon information and belief, the dues deduction authorization language on which Defendant relies to justify seizing and retaining Ms. Jones’s funds was not in any previous agreement or authorization between Ms. Jones and Defendant.

90. When Ms. Jones signed the Application, she was already a member in good standing of Defendant, entitled to all benefits of membership, and Defendant did not make any new or additional promises, commit to any new or additional obligations, or otherwise provide to Ms.

Jones anything of value to which she was not already entitled when she signed the Application.

91. Thus, while Defendant claims that Ms. Jones took on a new obligation, according to Defendant's interpretation of the Application, including the new provisions and resignation window period, Defendant did not take on any new obligation, loss, or detriment.

92. Accordingly, the modification of the purported contractual relationship between Ms. Jones and Defendant lacks consideration and is void.

**Alternatively, the Application Is Voidable  
Due to Defendant's Abuse of a Fiduciary Relation**

93. Pennsylvania courts look to the Restatement (Second) of Contracts as an authority in contract law. *See, e.g., TruServ Corp. v. Morgan's Tool & Supply Co.*, 39 A.3d 253, 263 (Pa. 2012); *Scarpitti v. Weborg*, 609 A.2d 147, 149 (Pa. 1992); *Merrill Lynch, Pierce, Fenner & Smith v. Perelle*, 514 A.2d 552, 559 (Pa. Super. 1986).

94. Restatement (Second) of Contracts § 173 (Am. L. Inst. 1981) states that:

If a fiduciary makes a contract with his beneficiary relating to matters within the scope of the fiduciary relation, the contract is voidable by the beneficiary, unless

- (a) it is on fair terms, and
- (b) all parties beneficially interested manifest assent with full understanding of their legal rights and of all relevant facts that the fiduciary knows or should know.

95. Because Ms. Jones was a member in good standing of Defendant and was employed in a bargaining unit represented by Defendant when she signed the Application, Defendant was a fiduciary and Ms. Jones was its beneficiary.

96. The terms of the Application discussed above are not fair, meaning not made on fair terms.

97. At the time Ms. Jones signed the Application, Defendant either knew or should have known that Ms. Jones had the right under *Janus* not to pay any union dues should she become a



nonmember of Local 668 and that Defendant would use the Application to force Ms. Jones to pay dues even as a nonmember.

98. Defendant did not explain to Ms. Jones the facts related to the Application or Ms. Jones's rights under *Janus*.

99. Rather, an official or representative of Defendant instructed Ms. Jones to sign the Application to "renew her dues" and ostensibly her membership in Local 668.

100. Ms. Jones did not have an adequate understanding of all the legal rights and of all relevant facts that Defendant either knew or should have known.

101. The Application is within the scope of the parties' fiduciary relationship because it purports to govern Ms. Jones's rights and obligations as a member.

102. Had Ms. Jones understood the relevant facts, she would not have signed the Application.

103. Because Defendant owed a fiduciary duty to Ms. Jones and made representations and omissions that caused Ms. Jones to sign the Application without a full understanding of her legal rights or all relevant facts that Defendant knew or should have known, the Application is voidable.

**Alternatively, the Dues Deduction Authorization  
Is an Unenforceable, Unconscionable Contract of Adhesion**

104. An adhesion contract is a standard form type document which is offered without any room for negotiation. *See Denlinger, Inc. v. Dendler*, 608 A.2d 1061, 1066 (Pa. Super. 1992).

105. "Once a contract is deemed to be one of adhesion, its terms must be analyzed to determine whether the contract as a whole, or specific provisions of it, are unconscionable." *Id.* at 1067.

106. "An unconscionability analysis requires a two-fold determination: (1) that the contractual terms are unreasonably favorable to the drafter ('substantive unconscionability'), and (2) that there is no meaningful choice on the part of the other party regarding the acceptance of the

provisions ('procedural unconscionability')." *Cardinal v. Kindred Healthcare, Inc.*, 155 A.3d 46, 53 (Pa. Super. 2017) (citation omitted).

107. A contract of adhesion is procedurally unconscionable under Pennsylvania law. *See Quilloin v. Tenet HealthSystem Phila., Inc.*, 673 F.3d 221, 235 (3d Cir. 2012) (citing *McNulty v. He&R Block, Inc.*, 843 A.2d 1267, 1273 & n.6 (Pa. Super. 2004)).

108. A contract or provision is substantively unconscionable where it "unreasonably favors the party asserting it." *Salley v. Option One Mortg. Corp.*, 925 A.2d 115, 119 (Pa. 2007).

109. Defendant and/or agents or representatives of Defendant drafted the Application and the dues deduction authorization provision that included language regarding a dues revocation window of 20 days.

110. Defendant did not provide Ms. Jones with any opportunity to negotiate the terms or language of the Application and dues deduction authorization.

111. Defendant induced Ms. Jones to sign the Application and dues deduction authorization in a rushed interaction and based on misrepresentations and/or omissions as to Ms. Jones's rights and obligations.

112. Ms. Jones had no meaningful choice in whether to sign the Application and dues deduction authorization.

113. Thus, the Application and its dues deduction authorization is a procedurally unconscionable contract of adhesion.

114. The dues deduction authorization is also substantively unconscionable because it unfairly imposes a tight window for effective revocation of dues, even though Ms. Jones no longer receives any benefit from membership in Local 668.

115. The Third Circuit has found employment contract provisions requiring employees to submit a claim to arbitration within five to thirty days of the event to be substantively

unconscionable and unreasonably favorable to the employer. *See Nino v. Jewelry Exchange, Inc.*, 609 F.3d 191, 202 (3d Cir. 2010); *Parilla v. LAP Worldwide Servs. VI, Inc.*, 368 F.3d 269, 277–78 (3d Cir. 2004); *Alexander v. Anthony Int'l, LP*, 341 F.3d 256, 266 (3d Cir. 2003).

116. According to Defendant's interpretation, the "window period" contained in the dues deduction authorization is only 20 days in length, per year.

117. Furthermore, the dues deduction authorization is purportedly irrevocable, regardless of whether Ms. Jones resigned her membership in Local 668.

118. This unjustifiably short "window period" unreasonably favors Defendant because Defendant receives dues from Ms. Jones despite her resignation from Local 668.

119. In other words, the dues deduction provision has been unconscionably utilized by Defendant to take Ms. Jones's wages without conferring any benefit upon her, and without affording her a reasonable method or time period for revocation.

120. Additionally, the language of the dues deduction authorization is ambiguous and confusing.

121. Because Defendant did not provide Ms. Jones with a copy of the Application prior to her resignation, she did not even have an opportunity to attempt to comprehend the misleading revocation window provision.

122. Moreover, Defendant's unilateral addition of a date provides it with the opportunity to pick and choose terms that are more favorable to it when identifying the applicable window period.

123. Defendant unreasonably demands that Ms. Jones submit her resignation and revoke the dues deduction authorization within a window period that she was wholly unaware of due to Defendant's failure to provide her with a copy of the Application.

124. Likewise, Defendant's unilateral choice of a "date of execution" is inherently unfair.

125. Therefore, the Application's dues deduction authorization is an unenforceable, unconscionable contract of adhesion.

126. In sum, there is no valid contract, agreement, or any other document signed by Ms. Jones which authorized Defendant to seize and retain purported dues after Ms. Jones resigned her membership in Local 668 and revoked her authorization to have dues deducted from her wages.

127. Accordingly, Ms. Jones seeks a declaration that the Application and/or the dues deduction authorization is not an enforceable contract, and that Defendant is not entitled to any funds retained by Defendant in reliance on the Application and/or the dues deduction authorization.

## **COUNT II Unjust Enrichment**

128. The foregoing paragraphs are incorporated by reference as if set forth fully herein.

129. Ms. Jones conferred membership dues deducted from her wages to Defendant even after she had resigned from Local 668.

130. Defendant accepted and has retained these membership dues to which it was not entitled after Ms. Jones resigned from Local 668.

131. Defendant justified its acceptance and retention of these membership dues after Ms. Jones resigned from Local 668 based upon the void and unenforceable Application.

132. Because Defendant had no legitimate justification for the taking of union dues from Ms. Jones's wages after she had resigned, it would be inequitable to allow Defendant to retain Ms. Jones's money.

133. Unless Defendant is ordered to return Ms. Jones's funds that Defendant improperly seized and retained as purported membership dues, or to otherwise pay restitution to Ms. Jones, then Defendant will continue to be unjustly enriched.

**PRAYER FOR RELIEF**

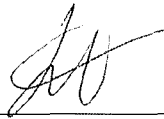
WHEREFORE, Plaintiff respectfully requests this Honorable Court to:

- a) Enter a declaratory judgment declaring the Application and/or the dues deduction authorization void and unenforceable as a matter of law;
- b) Order restitution of any dues paid by Plaintiff under the void and unenforceable Application and/or dues deduction authorization after Plaintiff resigned from Defendant;
- c) Issue an injunction ordering the return of funds unjustly realized by Defendant;
- d) Award damages to Plaintiff; and
- e) Award costs and fees, including reasonable attorneys' fees, and such other relief as the Court deems appropriate.

**JURY DEMAND**

Plaintiff demands a trial by jury on all matters triable by jury pursuant to Pennsylvania Rule of Civil Procedure 1007.1.

Dated: January 11, 2022



---

**Logan M. Hetherington**  
Pa. Attorney I.D. No. 326048  
E-mail: [lmhetherington@fairnesscenter.org](mailto:lmhetherington@fairnesscenter.org)  
**Danielle R. Acker Susanj**  
Pa. Attorney I.D. No. 316208  
E-mail: [drasusanj@fairnesscenter.org](mailto:drasusanj@fairnesscenter.org)  
**Nathan J. McGrath**  
Pa. Attorney I.D. No. 308845  
E-mail: [njmcgrath@fairnesscenter.org](mailto:njmcgrath@fairnesscenter.org)  
THE FAIRNESS CENTER  
500 North Third Street, Suite 600B  
Harrisburg, Pennsylvania 17101  
Phone: 844.293.1001  
Facsimile: 717.307.3424

*Attorneys for Plaintiff*

**VERIFICATION**

I, Michelle Jones, hereby verify that I am the plaintiff in this action and subject to the penalties of 18 Pa.C.S.A. § 4904, relating to unsworn falsification to authorities, hereby state that the facts set forth in Plaintiff's Complaint are true and correct to the best of my knowledge, information and belief.


Date: January 11, 2022

By: Michelle Jones

## CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that requires filing confidential information and documents differently than non-confidential information and documents.

Dated: January 11, 2022



---

**Logan M. Hetherington**

Pa. Attorney I.D. No. 326048

E-mail: [lmhetherington@fairnesscenter.org](mailto:lmhetherington@fairnesscenter.org)

THE FAIRNESS CENTER

500 North Third Street, Suite 600B

Harrisburg, Pennsylvania 17101

Phone: 844.293.1001

Facsimile: 717.307.3424

*Attorney for Plaintiff*

# EXHIBIT A

Membership Application





# Membership Application

2589 Interstate Drive, Harrisburg, PA 17110

Date Received: <u>12/1/15</u>	New Member <input type="checkbox"/>
Date Sent to employer: _____	Fee Payer <input type="checkbox"/>
Processed by: <u>Kautshell</u>	Recommit <input checked="" type="checkbox"/>

NAME: Michelle Jones mt 22213 EMPLOYER: LCAO DHS  
 DATE HIRED: 5/20/13 JOB TITLE: JMCWS DEPARTMENT: Human Services  
 PERSONAL E-MAIL: \_\_\_\_\_ CELL PHONE\*: \_\_\_\_\_ HOME PHONE\*: \_\_\_\_\_  
 HOME ADDRESS: \_\_\_\_\_ ZIP: \_\_\_\_\_  
 SOCIAL SECURITY NUMBER (Last Four Only): \_\_\_\_\_ DATE OF BIRTH: \_\_\_\_\_ Work Site: LCAO

### YES! I want to join my fellow employees and become a member of SEIU Local 668.

I request and accept membership in SEIU Local 668 and I agree to abide by the SEIU Local 668 constitution and by-laws. I authorize SEIU Local 668 to act as my exclusive representative in collective bargaining over wages, benefits and other terms and conditions of employment with my employer. I understand that membership and dues deduction require separate authorizations. I also understand that dues deduction is a requirement for membership in SEIU Local 668 and that my financial obligations to SEIU Local 668 are governed by the provisions below.

**SIGN HERE**  **Date:** \_\_\_\_\_

This voluntary authorization and assignment of dues deduction shall be irrevocable, regardless of whether I am or remain a member of the Union, for a period of one year from the date of execution and for year to year thereafter as long as my employment continues, unless I give the Employer and the Union written notice of revocation not less than ten (10) days and not more than thirty (30) days before the end of any yearly period; provided however, if the applicable collective bargaining agreement specifies a longer period before the revocation window, then only that longer period shall apply. The applicable collective bargaining agreement will be made readily available. I acknowledge that my dues deduction authorization is a contractual agreement between myself, as a bargaining unit employee, and SEIU Local 668, separate from any statutory provisions of Act 195 and is not a condition of employment.

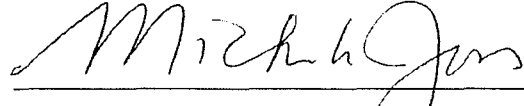
**SIGN HERE**  **Date:** \_\_\_\_\_

**Direct Deposit Authorization, Public Sector:** I acknowledge that failure to pay my dues on a timely basis may affect my membership standing in the union, as set forth in the SEIU Constitution and Bylaws. In the event my employer ceases payroll deductions, I authorize SEIU Local 668 to bill my designated account at my financial institution, in accordance with the authorization provided below. SEIU Local 668 will notify me of the transition to direct pay at the current mailing address on file with SEIU Local 668 prior to initiating the first payment via checking or savings account as authorized below.

I hereby authorize SEIU Local 668 to initiate a recurring, automatic electronic funds transfer with my financial institution beginning on the date listed in the transition notice provided to me in order to deduct from the account the regular monthly dues and initiation fees uniformly applicable to members of SEIU Local 668.

To facilitate payment of the dues or other contributions from my bank account, I authorize my employer to provide to SEIU's Local 668 designated secure payment processor the information for the bank account (bank account number and routing number) on file with my employer ("Account") that I have designated to receive the proceeds of my paycheck via direct deposit. If my employer makes direct deposit of my paycheck to a checking account and a savings account, I hereby authorize my employer to provide the designated secure payment processor the information for the checking account and for my dues and/or other contributions to be deducted from this account. Contributions to SEIU Local 668 are not tax deductible as charitable contributions. However, they may be tax deductible as ordinary and necessary business expenses.

In the case of checking and savings accounts, adjusting entries to correct errors is also authorized. I agree that these withdrawals and adjustments may be made electronically and under the Rules of the National Automated Clearing House Association. This direct deposit authorization shall remain in full effect until I revoke my dues authorization in accordance with applicable provisions set forth above.

**SIGN HERE**  **Date:** \_\_\_\_\_

\*By providing my phone number, I understand that SEIU and its locals and affiliates may use automated calling technologies and/or text message me on my cellular phone on a periodic basis. SEIU will never charge for text message alerts. Carrier message and data rates may apply to such alerts. Text STOP to 787753 to stop receiving messages. Text HELP to 787753 for more information.

Collected by: \_\_\_\_\_



# EXHIBIT B

Response Letter from SEIU, Local 668

# SEIU 668

2589 INTERSTATE DRIVE  
HARRISBURG, PA 17110-9602  
MAIN (717) 657-7677  
TOLL FREE (800) 932-0368  
FAX (717) 657-7662

PRESIDENT STEVE CATANESE • SECRETARY-TREASURER JOANNE P. SESSA



April 7, 2021

Michelle Jones  


Dear Michelle,

We recently received your request to withdraw from Union membership. If there is something specific that prompted your decision, we would urge you to speak with your shop steward, Chapter Chair or Business Agent as your concern may be something that can be answered or addressed.

Please be advised that the membership application you signed on December 6, 2018 constitutes a valid contract between yourself and SEIU Local 668. While we will process your request to withdraw from Union membership, you remain obligated to pay an amount equal to your regular Union dues payments until the annual window period specified in the membership application. (Please see attached). This will stop immediately upon commencement of the window period unless you notify us in advance that you wish to rescind your request to withdraw.

I will process your request to withdraw from Union membership immediately. However, if you wish to reconsider your request to resign from Union membership at this time, please contact me at [kaitlyn.gutshall@seiu668.org](mailto:kaitlyn.gutshall@seiu668.org) within 10 days.

Sincerely,

*Kaitlyn Gutshall*

Kaitlyn Gutshall  
Administrative Staff

Cc: Claudia Lukert, Esq., Chief of Staff  
Kieran Kenny, Esq  
Dan Sainovich, Business Agent

UEU Local#1/KG