

**FILED UNDER SEAL**

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

FEDERAL ELECTION COMMISSION,  
1050 First Street, NE  
Washington, DC 20463,

Plaintiff,

v.

PLUMBERS AND PIPEFITTERS LOCAL  
UNION NO. 9,

and

PLUMBERS AND PIPEFITTERS LOCAL  
UNION NO. 9 POLITICAL ACTION  
COMMITTEE,

Defendants.

Civil Action No. 24-1450

**COMPLAINT  
UNDER SEAL**

**COMPLAINT FOR DECLARATORY, INJUNCTIVE,  
AND OTHER APPROPRIATE RELIEF**

This action seeks enforcement of a conciliation agreement between the Plaintiff Federal Election Commission (“Commission” or “FEC”) and defendants Plumbers and Pipefitters Local Union No. 9 and Plumbers and Pipefitters Local Union No. 9 Political Action Committee for their failure to comply with the terms of the parties’ agreement

wherein defendants admitted to violations of federal campaign finance law and agreed to

cease and desist from such violations in the future. The Commission alleges as follows:

### **JURISDICTION AND VENUE**

1. This action seeks civil penalties, declaratory, injunctive, and other appropriate relief pursuant to the authority granted by Congress to the FEC in the Federal Election Campaign Act (“FECA” or “Act”), codified at 52 U.S.C. §§ 30101-30145.

2. This Court has subject-matter jurisdiction under 28 U.S.C. §§ 1331, 1345 and 52 U.S.C. §§ 30107(a)(6), 30109(a)(5)(D), (a)(6)(A).

3. Venue is proper in this district pursuant to the forum selection clause in the conciliation agreement entered into between the parties (attached as Exhibit 1 (“Conciliation Agreement”)). (Conciliation Agreement, Section VII.) Venue is also proper in this district because the agreement was negotiated and executed in this district, 52 U.S.C. §§ 109(a)(5)(A), (a)(6)(A), and a substantial part of the acts and omissions giving rise to this action arose in this district, 28 U.S.C. § 1391(b).

### **THE PARTIES**

4. Plaintiff FEC is the independent agency of the United States government with exclusive jurisdiction over the administration, interpretation, and civil enforcement of FECA. *See* 52 U.S.C. §§ 30106(b)(1), 30107(a), 30109. The Commission is authorized to institute investigations of possible violations of the Act, *id.* § 30109(a)(1)-(2), to issue advisory opinions construing the Act, *id.* §§ 30107(a)(7), 30108, to enter into conciliation agreements to correct or prevent violations of the Act, *id.* § 30109(a)(4)(A), (a)(5), and to initiate civil actions in the United States district courts to obtain judicial enforcement of the Act and conciliation agreements, *id.* §§ 30107(a)(6), 30109(a)(5)(D), (6). The Commission is located in Washington, D.C.

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5. Defendant Plumbers and Pipefitters Local Union No. 9 (“Union”) is a labor organization whose business address is 2 Iron Ore Road at Route 33, Englishtown, New Jersey 07726. Michael Maloney is the Union’s Business Manager.

6. Defendant Plumbers and Pipefitters Local Union No. 9 Political Action Committee (“PAC”) is a political action committee registered with the Commission and is the Union’s “separate segregated fund” under FECA. PAC’s business address is 2 Iron Ore Road at Route 33, Englishtown, New Jersey 07726. Michael Maloney also serves as PAC’s Treasurer.

7. The Union is a “collecting agent” for PAC under 11 C.F.R. § 102.6(b)(1).

**RELEVANT STATUTORY AND REGULATORY PROVISIONS**

8. FECA provides that:

In any case in which a person has entered into a conciliation agreement with the Commission under paragraph (4)(A), the Commission may institute a civil action for relief under paragraph (6)(A) if it believes that the person has violated any provision of such conciliation agreement. For the Commission to obtain relief in any civil action, the Commission need only establish that the person has violated, in whole or in part, any requirement of such conciliation agreement.

52 U.S.C. § 30109(a)(5)(D).

9. With certain exceptions, labor organizations are generally prohibited from making contributions to federal campaign committees. 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b); *see also* Conciliation Agreement, Section IV ¶ 7.

10. Labor organizations are permitted to use their general treasury funds to establish and administer a separate segregated fund (“SSF”), which in turn is permitted to

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make contributions in connection with federal elections. 52 U.S.C. § 30118(b)(2);

11 C.F.R. §§ 114.1(a)(2)(iii), 114.5(b); *see also* Conciliation Agreement, Section IV ¶ 7.

11. A labor organization or its SSF may only solicit contributions from the union’s members and executive or administrative personnel and their families. 52 U.S.C. § 30118(b)(4)(A)(ii); 11 C.F.R. § 114.5(g)(2); *see also* Conciliation Agreement, Section IV ¶ 7.

12. An SSF is prohibited from making contributions or expenditures “by utilizing . . . dues, fees, or other moneys required as a condition of membership in a labor organization or as a condition of employment.” 52 U.S.C. § 30118(b)(3)(A); 11 C.F.R. § 114.5(a)(1); *see also* Conciliation Agreement, Section IV ¶ 8.

13. It is unlawful for any person, including a labor organization (*see* 52 U.S.C. § 30101(11)), to solicit a contribution to an SSF without informing the employee of the political purpose of the SSF and of the right to refuse to contribute without any reprisal. 52 U.S.C. § 30118(b)(3)(B)-(C); 11 C.F.R. § 114.5(a)(3)-(4); *see also* Conciliation Agreement, Section IV ¶¶ 5, 8, 10.

14. If an amount for contributions is suggested, the person soliciting the contribution must state that the amount is merely a suggestion, that the member is free to contribute more or less without any reprisal, and that the union will not favor or disadvantage anyone because of the amount of the contribution or a decision not to contribute. 11 C.F.R. § 114.5(a)(2); *see also* Conciliation Agreement, Section IV ¶¶ 5, 8, 10.

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15. All contributions to a SSF must be voluntary and without coercion. 52 U.S.C. § 30118(b)(3)(A); 11 C.F.R. § 114.5(a); *see also* Conciliation Agreement, Section IV ¶ 8. A solicitation may be considered coercive if proper notices are not given. *Id.*

16. While a labor organization may use a payroll-deduction or check-off system to collect contributions to its SSF, a contributor must affirmatively authorize such payroll deductions from the contributor's wages. *See* 11 C.F.R. § 114.2(f)(4)(i); FEC, *Statement of Policy; Recordkeeping Requirements for Payroll Deduction Authorizations*, 71 Fed. Reg. 38,513 (July 7, 2006); Conciliation Agreement, Section IV ¶ 9. "The specific and voluntary donative intent of the solicited employee needs to be manifested in a written authorization by him [or her] prior to the actual deduction of any contributions." FEC Advisory Op. 2013-12 (Serv. Emp. Int'l Union), 2013 WL 5352759, at \*2 (Sept. 12, 2013).

17. A reverse check-off system, by which SSF contributions are deducted from wages unless an employee opts out, is a *per se* violation of 52 U.S.C. § 30118(b)(3)(A). *FEC v. Nat'l Educ. Ass'n*, 457 F. Supp. 1102, 1110 (D.D.C. 1978); Conciliation Agreement, Section IV ¶ 11.

#### **ADMINISTRATIVE PROCEEDINGS & FACTUAL BACKGROUND**

18. FECA permits any person to file an administrative complaint with the Commission alleging a violation of the Act. 52 U.S.C. 30109(a)(1); *see also* 11 C.F.R. § 111.4. "Such complaint shall be in writing, signed and sworn to by the person filing such complaint, shall be notarized, and shall be made under penalty of perjury and subject to the provisions of section 1001 of title 18." 52 U.S.C. § 30109(a)(1). FECA then provides respondents an opportunity to respond to the administrative complaint. *Id.* § 30109(a)(1).

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Information pertaining to an administrative complaint must be kept confidential until the matter is closed or upon the respondent's written consent. *Id.* § 30109(a)(12).

19. On March 21, 2016, a member of the Union, Rupert Baptiste, filed an administrative complaint with the Commission alleging in relevant part that the Union and PAC improperly deducted contributions from his pay without his prior authorization and had failed to issue a refund of his contributions when requested. MUR 7028, Admin. Compl. This matter was designated as Matter Under Review ("MUR") 7028, for which the public file is available at <https://www.fec.gov/data/legal/matter-under-review/7028/>, which is hereby incorporated by reference.

20. Following receipt of responses to the administrative complaint from the Union and PAC, and upon the recommendation of the FEC's Office of the General Counsel, on March 21, 2017, the Commission decided by a vote of 5-0 to find reason to believe that the Union violated 52 U.S.C. § 30118(b)(3)(A)-(C) and 11 C.F.R. § 114.5(a)(2)-(5) by failing to obtain the appropriate voluntary authorizations to make payroll deduction from union members, found reason to believe that PAC and its treasurer violated 52 U.S.C. § 30118(b)(3)(A) and 11 C.F.R. § 114.5(a)(2)-(5) by accepting contributions from union members that were not obtained voluntarily or documented correctly, and authorized an investigation. MUR 7028, Vote Certification (Mar. 21, 2017); MUR 7028, First General Counsel's Report (Dec. 15, 2016); Conciliation Agreement at 1.

21. Following an investigation, the Union and PAC requested pre-probable cause conciliation. MUR 7028, Second General Counsel's Report at 2 (June 28, 2018).

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22. On October 25, 2018, the Commission decided by a vote of 4-0 to approve the Conciliation Agreement signed on behalf of the Union and PAC on September 28, 2018, which was counter-signed by the Commission and went into effect on October 30, 2018. MUR 7028, Vote Certification (Oct. 25, 2018); Conciliation Agreement, Section VIII.

23. The Conciliation Agreement has the effect of a conciliation agreement entered pursuant to 52 U.S.C. § 30109(a)(4)(A)(i). Conciliation Agreement, Section I.

24. In the Conciliation Agreement, the Union and PAC agreed that:

a. Between 2012 and 2017, the Union caused members to make payroll deductions for contributions to PAC. During this period of time, PAC accepted contributions totaling \$2,375,742.49 made via payroll deductions from 1,310 Union members.

b. The Union, in soliciting PAC funds, did not obtain written authorizations demonstrating the voluntary nature of those contributions for 1,185 of the 1,310 contributing Union members.

c. For the remaining 125 Union members, the written authorizations obtained by the Union did not satisfy the Act's requirements because the form it used (1) does not contain any language regarding the voluntary nature of the SSF contributions or noting the prohibition against reprisals for failure to participate, (2) includes a pre-set amount for the contributions, and (3) contains no language informing the member that he/she could choose not to contribute any sums of money or contribute more or less than the amount shown on the form.

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d. Between 2012 and 2017, the PAC made \$47,000 in contributions to federal candidates and committees and \$218,988.49 in transfers or contributions to a federal political action committee, the United Association Political Education Committee.

Conciliation Agreement, Section IV ¶¶ 3-6.

25. The Union and PAC further agreed that they “violated 52 U.S.C. § 30118(b)(3)(A)-(C) and 11 C.F.R. § 114.5(a)(2)-(5) by soliciting and accepting contributions for the PAC without obtaining the appropriate written authorizations demonstrating the voluntary nature of the contributions, by operating a reverse check-off system, and by using such funds to make federal contributions and expenditures.”

Conciliation Agreement, Section V.

26. In the Conciliation Agreement, the Union and PAC agreed to take the following actions:

a. The Union will cease and desist from violations of 52 U.S.C. § 30118(b)(3)(A)-(C) and 11 C.F.R. § 114.5(a)(2)-(5). Conciliation Agreement, Section VI ¶ 1.

b. PAC will cease and desist from violations of 52 U.S.C. § 30118(b)(3)(A) and 11 C.F.R. § 114.5(a)(2)-(5). Conciliation Agreement, Section VI ¶ 2.

c. The Union and PAC will pay a joint civil penalty of \$92,650 pursuant to 52 U.S.C. § 30109(a)(5)(A). Conciliation Agreement, Section VI ¶ 3.



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d. The Union and PAC will ensure that all solicitations comply with the Act and regulations and that signed payroll deduction authorizations are obtained for all Union members contributing to the PAC. Conciliation Agreement, Section VI ¶ 4.

e. The Union and PAC will refund contributions withheld from administrative complainant Baptiste's pay between 2012 and 2017 in the amount of \$1,426.93. Conciliation Agreement, Section VI ¶ 5.

f. The Union and PAC will send notifications by mail to the last known address of each of the 1,310 members, from whom they obtained contributions between 2012 and 2017, informing them of the improper payroll deductions for PAC contributions and of their right to request reimbursement therefor; and PAC will issue a refund within 30 days of receiving such a refund request. Conciliation Agreement, Section VI ¶ 6.

27. The Conciliation Agreement further provided:

The Commission, on request of anyone filing a complaint under 52 U.S.C. § 30109(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

Conciliation Agreement, Section VII.

28. Since the effective date of the Conciliation Agreement, PAC itself and, upon  
information and belief, acting as an agent of the Union, has continued to make contributions  
to federal political action committees.

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29. On November 21, 2019, the Commission received an administrative complaint from Union member Baptiste, which was notarized and sworn under penalty of perjury, alleging in relevant part that, after the effective date of the Conciliation Agreement, the Union and PAC improperly deducted contributions from his and other Union members' pay without his or their prior authorization. MUR 7664, Admin. Compl. (Oct. 9, 2019) (attached as Exhibit 2); *see also* MUR 7664, Supp. Admin Compl. (Apr. 21, 2021) (attached as Exhibit 3). This matter was designated as MUR 7664. In a subsequent supplement to the administrative complaint, Baptiste provided copies of his alleged paystubs from May 2021 and June 2021, which state that money was deducted from his paycheck for a contribution to PAC, and for which Baptiste stated he did not give prior written authorization. MUR 7664, 2d Supp. Admin Compl. (June 11, 2021) (attached as Exhibit 4).

30. The Commission provided notification of the administrative complaint to the Union, PAC, and Maloney in both his official capacity as Treasurer of PAC and in his personal capacity of this administrative complaint. The Union, PAC, and Maloney designated a single attorney to represent them.

31. In the responses to the administrative complaint and its supplements, PAC and Maloney did not deny that, after the effective date of the Conciliation Agreement, contributions to PAC had been deducted from other Union members' paychecks without their prior authorization. MUR 7664, Resp. (Jan. 9, 2020) (attached as Exhibit 5); MUR 7664, Supp. Resp. (May 6, 2021) (attached as Exhibit 6); MUR 7664, 2d Supp. Resp. (July 22, 2021) (attached as Exhibit 7).

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32. [In one of their responses, PAC and Maloney admitted that contributions to PAC had been deducted from Baptiste's paycheck without his written prior authorization after the effective date of the Conciliation Agreement. MUR 7664, Resp. (Jan. 9, 2020); MUR 7664, Supp. Resp. (May 6, 2021); MUR 7664, 2d Supp. Resp. (July 22, 2021).]

33. [After the effective date of the Conciliation Agreement and despite its clear language, the Union deducted contributions to the PAC from the pay of one or more union members without first obtaining a signed payroll deduction authorization form; therefore, the Union violated Section VI ¶ 4 of the Conciliation Agreement.]

34. [Upon information and belief, after the effective date of the Conciliation Agreement and despite its clear language the Union itself, and acting as an agent of PAC, has deducted contributions to the PAC from the pay of one or more union members without first obtaining a signed payroll deduction authorization form; therefore the PAC has violated Section VI ¶ 4 of the Conciliation Agreement.]

35. [Upon information and belief, after the effective date of the Conciliation Agreement and despite its clear language, the Union itself, and acting as an agent of PAC, has used a reverse check-off system for PAC contributions from union members, PAC has accepted such contributions, and PAC itself, and acting as an agent of the Union, has made contributions to federal political action committees, which, as the Union and PAC agreed in the Conciliation Agreement, is a *per se* violation of 52 U.S.C. § 30118(b)(3)(A). Therefore, the Union and PAC have, in turn, violated Section VI ¶ 1 and ¶ 2 of the Conciliation Agreement, respectively.]

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36. After the effective date of the Conciliation Agreement and despite its clear language, the Union has violated 52 U.S.C. § 30118(b)(3)(B)-(C) and 11 C.F.R. § 114.5(a)(2)-(4) by failing to provide the required notices when soliciting one or more union members for contributions to PAC, which, in turn, violated Section VI ¶ 1 of the Conciliation Agreement.

37. After the effective date of the Conciliation Agreement and despite its clear language, PAC has violated Section VI ¶ 4 of the Conciliation Agreement by failing to ensure that all solicitations for contributions to PAC comply with the Act and regulations since the Union itself and, upon information and belief, acting as an agent of PAC failed to provide the notices required by 52 U.S.C. § 30118(b)(3)(B)-(C) and 11 C.F.R. § 114.5(a)(2)-(4) when soliciting one or more union members for contributions to PAC.

38. On April 16, 2024, the Commission decided by the requisite number of votes to institute a civil action to enforce the Conciliation Agreement under 52 U.S.C. § 30109(a)(6).

39. The Commission has satisfied all jurisdictional prerequisites to the filing of this suit.

#### **FIRST CAUSE OF ACTION**

40. Paragraphs 1 through 39, inclusive, are incorporated herein by reference.

41. Defendants Union and PAC have violated one or more of the requirements imposed upon them by the Conciliation Agreement.

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**REQUEST FOR RELIEF**

WHEREFORE, plaintiff Federal Election Commission requests that this Court:

A. Declare that defendants Union and PAC have violated one or more of the requirements set forth in the conciliation agreement that they entered into with the Commission;

B. Permanently enjoin defendant Union from making deductions from any and all Union members' paychecks for contributions to PAC without obtaining prior written authorization and providing the notice required by 52 U.S.C. § 30118(b)(3)(B)-(C) and 11 C.F.R. § 114.5(a)(2)-(4);

C. Permanently enjoin PAC from accepting contributions from union members who have not first provided written prior authorization for any and all contributions to PAC that are deducted from the Union's payroll and received the notice required by 52 U.S.C. § 30118(b)(3)(B)-(C) and 11 C.F.R. § 114.5(a)(2)-(4);

D. Order the Union and PAC to send notifications by mail to the last known address of each union member who had a contribution to PAC deducted from their paycheck by the Union between October 30, 2018 and the date of the order's issuance stating: (a) that it is illegal for the Union to deduct PAC contributions from Union members' paychecks without prior written authorization; and (b) informing the members of their right to request reimbursement of such contributions;

E. Order PAC to refund the previously unauthorized contributions of all members who request refunds within 30 days of receiving a refund request;

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F. Assess an appropriate civil penalty against defendants Union and PAC, not to exceed the greater of \$24,255 or the amount equal to the contributions made to PAC for which the contributing union member did not give prior written authorization and/or receive the notice required under 52 U.S.C. § 30118(b)(3)(B)-(C) and 11 C.F.R. § 114.5(a)(2)-(4), for which defendants shall be jointly and severally liable, for failing to comply with the terms of the conciliation agreement they entered into with the Federal Election Commission. See 52 U.S.C. § 30109(a)(6)(A)-(B); Debt Collection Improvement Act, Pub. L. No. 104-134, 110 Stat 1321, 1373 (2006); 11 C.F.R. § 111.24(a) (2024);

G. Award plaintiff Federal Election Commission its costs in this action; and

H. Grant plaintiff Federal Election Commission such other relief as may be appropriate.

Respectfully submitted,

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