

Associates, Inc. in the Supreme Court of State of New York, County of Niagara, Index No. E168480/2019. Pursuant to 28 U.S.C. § 1446(a), a true and correct copy of the Initial Complaint is attached as Exhibit A.

2. On May 19, 2020, Plaintiffs Jeffrey Vandermast and Bridget Vandermast filed an amended complaint (“Amended Complaint”) asserting the following causes of action on behalf of themselves and all persons similarly situated: (1) fraud; (2) money had and received; (3) conversion; (4) unjust enrichment; and (5) deceptive acts and practices in violation of Section 349 of the New York General Business Law. The Amended Complaint is captioned *Jeffrey Vandermast and Bridget Vandermast, Individually and as Husband and Wife, on behalf of themselves and all persons similarly situated vs. Wall & Associates, Inc.* Pursuant to 28 U.S.C. § 1446(a), a true and correct copy of the Amended Complaint is attached as Exhibit H.

REMOVAL IS TIMELY

3. This Notice of Removal is timely under 28 U.S.C. § 1446(b)(3) because the case did not become removable until May 19, 2020, when the Amended Complaint was filed and served upon Wall & Associates, Inc.

4. Prior to May 19, 2020, while there was a diversity of citizenship (the plaintiffs residing in New York and the defendant being a Virginia corporation with its principal place of business in Virginia), the matter did not meet the jurisdictional monetary requirement under 28 U.S.C. §1332. See Ex. A [Initial Complaint].

5. Under 28 U.S.C. § 1453(b), a class action may be removed to a federal district court in accordance with the procedures set forth in 28 U.S.C. § 1446, except that the one-year limitation under § 1446(c)(1) does not apply to the removal of class actions.

6. This case is removable under 28 U.S.C. § 1446(b)(3), which provides the following, in relevant part:

[I]f the case stated by the initial pleading is not removable, a notice of removal may be filed within 30 days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.

7. This case stated in the Initial Complaint was not removable on the basis of diversity under 28 U.S.C. § 1332(a) because the amount in controversy was \$23,820. See Ex. A [Initial Complaint] at 1, 23.

8. As set forth below, the case became removable under the Class Action Fairness Action of 2005 (“CAFA”) and 28 U.S.C. §§ 1332, 1441, 1446, and 1453 when the Amended Complaint was filed on May 19, 2020. See Ex. H [Amended Complaint]. Accordingly, this Notice of Removal is timely under 28 U.S.C. § 1446(b)(3) because it has been filed within 30 days of May 19, 2020, which is the date on which the Amended Complaint was filed and served upon Wall & Associates. See Ex. H [Amended Complaint]

BASIS FOR REMOVAL

9. This Court has original subject-matter jurisdiction over Plaintiff’s claims under CAFA. Original jurisdiction in this Court exists under CAFA if the following elements exist: (1) the litigation is a “class action” as defined by CAFA; (2) the “matter in controversy exceeds the sum or value of \$5,000,000”; and (3) “any member of a class of plaintiffs is a citizen of a State different from any defendant.” 28 U.S.C. § 1332(d)(2).

10. CAFA defines a “class action” as “any civil action filed under rule 23 of the

Federal Rules of Civil Procedure or similar State statute or rule or judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action.” 28 U.S.C. §1332(d)(1)(B). Plaintiffs allege their Amended Complaint is asserted as a class action “on behalf of themselves and all other similarly situated Class members,” citing Section 901(a) of Article 9 of the New York Civil Practice Law and Rules. See Ex. H [Amended Complaint] at 19. Actions seeking class treatment under Article 9 of the New York Civil Practice Law and Rules are “class actions” for purposes of CAFA. See, e.g., Wurtz v. Rawlings Co., LLC, 761 F.3d 232, 239 (2d Cir. 2014) (holding CAFA’s “class action” requirement was satisfied where plaintiffs filed the action as a class action under Article 9 of the New York Civil Practice Law and Rules).

11. Plaintiffs Jeffrey Vandermast and Bridget Vandermast are residents of the County of Niagara in the State of New York. See Ex. H [Amended Complaint] at 1 (“At all times hereinafter mentioned, the representative Plaintiffs were and still are residents of the County of Niagara in the State of New York”). Defendant Wall & Associates, Inc. is incorporated and has its principal place of business in the Commonwealth of Virginia. Therefore, at least one plaintiff has citizenship diverse from the defendant, as required under 28 U.S.C. § 1332(d)(2).

12. This action satisfies \$5,000,000 jurisdictional amount-in-controversy requirement under 28 U.S.C. § 1332(d). The representative plaintiffs—Jeffrey Vandermast and Bridget Vandermast (“the Vandermasts”)—claim, among other things, that Defendant made false representations and induced them to enter into an agreement (“Agreement”) under which they paid Defendant a sum of \$23,820 for tax relief services. See Ex. H [Amended Complaint] at 11, 17. The Vandermasts claim they are entitled to a refund of

“all monies” (\$23,820) they paid to Defendant, and that Defendant has not provided a refund in any amount. See Ex. H [Amended Complaint] at 17-19.

13. The Amended Complaint alleges that “there are *thousands*, if not more, members of the Class” of similarly situated individuals. See Ex. H [Amended Complaint] at 19 (emphasis added). The Amended Complaint further alleges the “representative Plaintiffs and the Class members all paid the Defendant significant sums of money,” and “[t]he representative Plaintiffs’ injuries are akin to the other Class members.” See Ex. H [Amended Complaint] at 20-21.

14. Pursuant to 28 U.S.C. §1332(d)(6), the claims of class members are aggregated to determine whether the amount in controversy exceeds the jurisdictional threshold of \$5,000,000 for removal of a class action. Here, the Vandermasters seek compensatory damages of \$23,820 for themselves and claim there are “thousands, if not more” other Class members with similar injuries. See Ex. H [Amended Complaint] at 20-21. Multiplying the Plaintiffs’ alleged damages by the number of prospective class members, the amount in controversy exceeds the \$5,000,000 jurisdictional threshold required under 28 U.S.C. §1332(d).

REMOVAL TO THIS JURISDICTION IS PROPER

15. Pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453, removal of this action from the Supreme Court of the State of New York, County of Niagara, to the United States District Court for the Western District of New York is appropriate.

16. Pursuant to 28 U.S.C. § 1441(a), any civil action brought in a state court of which the district courts of the United States have original jurisdiction can be removed. Pursuant to 28 U.S.C § 1332(d), a district court has original jurisdiction when the matter

in controversy exceeds \$5,000,000, and any member of a class of plaintiffs is a citizen of a State different from any defendant.

17. As such, Removal of this action to this Court is proper under 28 U.S.C. § 1441(a) because the Supreme Court of the State of New York, County of Niagara is located within this federal judicial district. Furthermore, the representative Plaintiffs are residents of the County of Niagara in the State of New York. See Ex. H [Amended Complaint] at 1.

18. This Court has original jurisdiction as to Defendant, Wall & Associates, Inc., under 28 U.S.C. § 1332, and removal of this action to this Court is proper under 28 U.S.C. § 1441(a).

PROCEDURAL REQUIREMENTS

19. Pursuant to 28 U.S.C. § 1446(a) and Local Rule 81(a), a copy of all process, pleadings and orders served upon Defendant in this action are attached to this Notice of Removal and consist of the following:

- Exhibit A Initial Complaint (including summons and related proof of service);
- Exhibit B: Defendant's Motion to Dismiss;
- Exhibit C: Plaintiff's Opposition to Motion to Dismiss;
- Exhibit D: Defendant's Reply in Support of Motion to Dismiss;
- Exhibit E: Proposed Order;
- Exhibit F: Order dated April 29, 2020;
- Exhibit G: Notice of Entry dated May 18, 2020;
- Exhibit H: Amended Complaint; and
- Exhibit I: Notice of Appeal.

20. Pursuant 28 U.S.C. 1446(d) and Local Rule 81(a), Wall & Associates, Inc. will serve a copy of this Notice of Removal on Plaintiffs and will file a copy of this Notice

of Removal with the clerk of the New York State Supreme Court, County of Niagara.

WHEREFORE, pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453, Wall & Associates, Inc. hereby removes this action from the Supreme Court of the State of New York, County of Niagara, to the United States District Court for the Western District of New York.

DATED: Buffalo, New York
June 16, 2020

COLUCCI & GALLAHER, P.C.

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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on June 16th, 2020, a copy of this Notice of Removal, exhibits, was served on the following counsel of record by depositing a copy in the United States Mail, first class postage prepaid:

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