

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF NIAGARA

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JEFFREY VANDERMAST and  
BRIDGET VANDERMAST,  
Individually and as Husband and Wife,  
on behalf of themselves and  
all persons similarly situated,

*Plaintiffs,*

v.

WALL & ASSOCIATES, INC.,

*Defendant.*

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AMENDED  
CLASS ACTION  
COMPLAINT

Index No. E168480/2019

Plaintiffs JEFFREY VANDERMAST and BRIDGET VANDERMAST (the “representative Plaintiffs”), on behalf of themselves and all others similarly situated (collectively, the “Plaintiffs”), by and through their attorneys, HoganWillig, PLLC, as and for their Amended Class Action Complaint against Defendant WALL & ASSOCIATES, INC. (the “Defendant”), herein allege as follows:

**PARTIES**

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.
2. Upon information and belief, at all times hereinafter mentioned, Defendant was and still is a foreign business entity incorporated in the State of Virginia with its principal place of business located at 10482 Armstrong Street, Fairfax, Virginia 22030.
3. Upon information and belief, Defendant is not registered to do business in New York.

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4. Upon information and belief, Defendant had and/or maintains temporary offices for the transaction of business within New York located at 300 International Drive, # 100 Buffalo, New York 14221; 5 Penn Plaza, 23rd Floor, New York, New York 10001; 1979 Marcus Avenue, Suite 210, Lake Success, New York 11042; 510 Clinton Square, Rochester, New York 14604; 300 Cadman Plaza West, One Pierreport Plaza, Brooklyn, New York 11201; 499 S. Warren Street, Syracuse, New York 13202; Hauppauge Center, 150 Motor Parkway, Hauppauge, New York 11788; 520 White Plains Road, Suite 500, Tarrytown, New York 10591; and 590 Madison Avenue, New York, New York 10022.

5. Upon information and belief, like its business within the State of New York, Defendant had and/or maintains temporary offices for the transaction of business throughout the country.

6. At all times hereinafter mentioned, Defendant advertised and continues to advertise itself as a group of highly skilled tax consultants with extensive experience with the Internal Revenue Service ("IRS") and knowledge of IRS rules, and does so throughout the country, including the State of New York.

7. Plaintiffs entered form contracts with the Defendant whereby the Defendant would provide the Plaintiffs with highly skilled tax services.

8. In reality, however, the Defendant did not and does not possess the skill or experience advertised or contracted for by the Plaintiffs.

#### JURISDICTION AND VENUE

9. The Court has jurisdiction over this action pursuant to its general jurisdiction under CPLR § 901, *et seq.*

10. Pursuant to CPLR § 503, venue is proper in this county because the representative Plaintiffs reside in Niagara County.

### BACKGROUND

11. Defendant offers so-called tax relief services nationwide, targeting consumers facing tax liens or other collection efforts from federal, state and/or local tax authorities.

12. Defendant deceives consumers by misrepresenting its office locations, the duration and cost of its services, and its employees' tax-related experience, qualifications and abilities.

13. Defendant advertises its services using television and radio commercials, direct mail and website advertisements.

14. Defendant also promotes its services through its own website and blog, available at [www.wallandassociates.net](http://www.wallandassociates.net) and [www.wallandassociatesblog.net](http://www.wallandassociatesblog.net), respectively.

15. Through its advertisements and solicitations, Defendant leads consumers to believe that Defendant is a company with offices around the country and employees who can provide consumers with expert tax advice to quickly and favorably resolve their tax problems.

16. Defendant has used the following or similar language in its television and/or radio advertisements to promote its tax relief services:

a. "You can trust the highly trained professionals at Wall & Associates to work hard for you. With over 30 years of experience, Wall & Associates has settled the tax problems of thousands of taxpayers for a small fraction of what they owed."

b. "Our average client settles for about 10 percent of their tax debt owed."

c. "Wall & Associates knows all about the tax code. They know how to fight the garnishments, seizures, and penalties the IRS [Internal Revenue Service] uses to collect money."

d. "Other tax companies may tell you they can't get a settlement because you own your own home or have too many assets...We know the strategies to get the very best outcome for your case, many times settling for a small fraction of your initial balance."

e. "We can help you keep your assets."

f. "[T]he IRS will search you out. They are the most powerful collection agency in the world. One call to Wall & Associates and your tax problems can be solved."

g. "If you hire Wall & Associates today, you'll never have to talk to the IRS again."

h. "We'll meet with you, in person, face-to-face, at a local office near you."

i. "Call Wall & Associates right now to speak to a professional tax relief agent..."

j. "The IRS has a program to eliminate tax debt, and Wall & Associates professionals are trained to maximize its benefits for you. You always speak with a live person, with real support and real knowledge."

17. Defendant has used the following or similar language in advertisements on third-party websites:

a. "We help clients solve federal and state tax problems. Our service offices are nationwide; Corporate headquarters is located in the metropolitan Washington, DC area."

b. "Our staff of tax professionals which include Certified Public Accountants, Enrolled Agents, and/or Tax Practitioners will review your case when necessary."

c. "If you haven't filed your tax return for a number of years, we can assist in restoring your financial security."

d. "In most cases we're able to settle outstanding taxes, penalties and accumulated interest for a fraction of the amount due."

e. "We provide a comprehensive set of tax representation services to: Individuals, Couples, Sole Proprietors, General and Limited Partnerships, Limited Liability Companies, Liability Partnerships, Corporations, Non-Profit Organizations, Certified Public Accountants, and Enrolled Agents."

f. "Serving Your Local Area – CALL NOW!"

18. Defendant's nationwide television, radio and third-party website advertisements direct consumers to visit the company's website or blog for additional information, where it has used, or is using, the following or similar language:

a. "Wall & Associates, Inc. has been in business since 1982."

b. "[W]e put all our training, knowledge, and skills as Certified Tax Representatives to work for you." [Emphasis in original.]

c. "Meet Face-To-Face With A Tax Expert."

d. "With decades of experience and thousands of completed tax negotiations to our credit..."

e. "Due to our highly specialized representation, we deliver one of the highest rates of acceptance by the IRS of Offers in Compromise, Request for Innocent Spouse Relief, Equitable Relief, Collection Due Process Appeal, Abatement of Penalties and Interest, reduction of tax liability determinations, protection from harassing communications, and in some cases, even relief from all taxes due."

f. "This is a complex tax environment, one in which we have worked for many years, and have established a record of more than 90% OIC [Offer in Compromise] acceptance upon first submission."

g. "Wall & Associates, Inc. employs a trusted team including Certified Public Accounts (CPAs) and Enrolled Agents (EAs) that focus on the most effective ways to use Federal and State tax rules to your advantage in settlement negotiations. A tax attorney is available to assist the team where necessary."

h. "Wall & Associates, Inc. is authorized to practice before the IRS and other taxing authorities in all 50 states."

i. "Led by a Master in Taxation and Staffed by Tax Professionals."

j. "We were founded by a distinguished, nationally recognized tax expert. Think about it: the issues of your case are based on facts and IRS regulations. We know how to interpret the regulations to best protect you so you can come away with the best and lowest Offer."

k. "We have the level of seasoned experience necessary to best argue your case."

- We know the tax rules and IRS internal procedures.
- We know how to argue the facts, the rules, and the procedures.
- We are known among and credible with IRS agents.
- We have extensive IRS experience so we know how the IRS thinks.
- We know IRS procedures.
- We know the limits of IRS discretion.
- When necessary, we can write a technical memorandum on the facts and the IRS rules and procedures to accompany your request for an Offer in Compromise.”

l. “The IRS must respect your advocate, or your Offer will fail or, at best, your Offer will be higher than it should be. This is where Wall & Associates, Inc.’s knowledge and years of experience in both IRS background and the tax code can be exceptionally helpful. IRS Offer Specialists and Appeals Officers know that they cannot push a company that knows their rules and procedures sometimes better than they do themselves.”

m. “Offices Located Nationwide.”

n. Wall has a “corporate office” at 601 Pennsylvania Ave. NW in Washington, DC.

o. “There will be no charge for an initial one half-hour confidential tax consultation.”

p. “Contact us without delay for a free confidential initial half-hour tax consultation.”

q. “The original goal of the IRS in imposing penalties was to punish taxpayers in order to keep them in line. Unfortunately, these penalties have turned into additional sources of income for the IRS, the amounts of which are used to measure the performance of IRS managers.”

r. “IRS personnel are well aware that over 99% of all installment agreements are defaulted upon. That's when the full wrath of the IRS will fall upon you.”

19. Defendant has permanent offices in Virginia and Tennessee only.

20. Defendant deploys its salespeople nationwide to temporary offices, training them to feign tax expertise.

21. Defendant misleads consumers to believe it has local offices around the country.

22. Defendant's website lists locations and offices around the country. (<https://www.wallandassociates.net/nationwide-service>, last visited on May 18, 2020).

23. Defendant advertises that consumers will receive a “local” tax consultation with a so-called tax professional.

24. Defendant advertises throughout the country using local addresses and local area codes.

25. Upon information and belief, each of these local telephone numbers are routed to Defendant's call centers in either Virginia or Tennessee, the only states in which the Defendant maintains permanent offices.

26. Defendant's call center staff and/or salespeople tell these re-directed consumers that their face-to-face meetings will be held in a “local” office.

27. Defendant's so-called “local” offices are temporary rental office spaces booked through a third-party vendor known as “Regus”.



28. Defendant's salespeople use these temporary offices for sales meetings.
29. Other than sales meetings, Defendant does not work out of these temporary offices.
30. Defendant's employees who work on consumer tax disputes and provide so-called "tax services" work out of Defendant's permanent offices in Virginia or Tennessee.
31. To maintain its feigned nationwide presence, Defendant instructs its salespeople to conceal from consumers the geographic origin of its services.
32. Defendant instructs its salespeople to make the temporary office appear to be their own before the sales meeting by arriving early to set up the room; putting Regus brochures or information in desk drawers; learning the names of the Regus employees present at the office; and familiarizing themselves with where office equipment is located.
33. Defendant instructs its salespeople to maintain this ruse during the sales meeting by providing consumers with varying explanations why the temporary office lacks photographs or other personal items.
34. Defendant also instructs its salespeople to give specific instructions to Regus employees for when the salespeople are not there, namely to tell the consumers that the temporary office, "is one of our [Wall's] office locations and that we are not always at that particular office at all times," and to receive consumer documents and mail same to the Defendant's Virginia office.
35. Defendant also instructs its salespeople to tell the consumer that they will continue to be a part of the consumer's case team when, in fact, each consumer case will be managed entirely out of Virginia or Tennessee.

36. The purpose of Defendant's deception is threefold: (i) to convince consumers that they are dealing with a local company with a physical presence nearby; (ii) to convince consumers that Defendant is located in and familiar with the state or local jurisdiction with which consumers have tax disputes; and (iii) to dissuade consumers from using local attorneys or local accountants, whom the Defendant views as its competitors.

37. Defendant's initial "free tax consultation", "confidential tax consultation" or its advertised "meeting" with "a live person, with real support and real knowledge" is, in fact, a meeting with Defendant's salespeople.

38. Defendant tells the consumer that its salespeople are "tax consultants" or "tax experts" and, consistent with such representations, Defendant's salespeople present consumers with business cards identifying them as a "Tax Consultant", "Senior Tax Analyst" or another similar title.

39. Defendant's salespeople generally have a sales background and often have little to no prior tax-related work experience or education.

40. Defendant's salespeople are incentivized to close as many sales as possible through a commission-based system with constant pressure to make as many sales as possible.

41. Defendant's salespeople are generally not qualified to practice before the IRS and are rarely, if ever, attorneys, certified public accountants ("CPAs"), enrolled agents, enrolled actuaries, enrolled retirement agents, or registered tax return preparers.

42. Defendant's employee training materials include talking points for dissuading consumers from seeking tax advice from local tax attorneys or local accountants, or using self-help.

43. Defendant trains its salespeople to obtain information regarding consumer tax debts, assets, income and expenses, giving consumers the impression that these salespeople are, in fact, tax practitioners, tax attorneys or accountants, capable of evaluating the consumer's tax liabilities, potential grounds for disputing those liabilities, the likelihood that they can have those liabilities reduced and the time frame for resolving those liabilities.

44. Consumers do not receive a tax consultation, nor a candid or proper evaluation of their tax problems and their tax dispute settlement options; instead, consumers receive a sales pitch.

45. During or following this pitch, if a consumer agrees to retain Defendant, salespeople are trained to present them with power of attorney forms and have them sign a contract for tax services.

46. The Defendant's salespeople are not credited with a sale until this contract is signed and the initial payment has been made.

47. Consumers hire the Defendant by signing an "Agreement" for tax relief services.

48. The Defendant uses the same form "Agreement" for each of its consumers. The "Agreement" presented to and entered into by the representative Plaintiffs is annexed hereto as Exhibit A.

49. The Defendant makes fraudulent representations and misrepresentations regarding the skill and experience of its employees, as well as the location of its offices, to induce the consumer to enter into an "Agreement".

50. As indicated by the "Agreement" entered into by the representative Plaintiffs, the form allows for changes to the fee arrangement, taxing authorities involved and types of taxes at

issue, but all remaining provisions of the form, including those outlining the Defendant's service obligations, remain the same between each "Agreement". *See id.*

51. The form "Agreement" generally obligates the consumer to pay a high initial payment (thousands of dollars) and then subsequent, ongoing monthly payments. *See id.*

52. Consumers are required to pay the entire initial fee before the Defendant will begin any work.

53. Consumers coming to Defendant usually have substantial and urgent tax problems, putting them in a vulnerable position.

54. Defendant's salespeople do not evaluate whether consumers can afford or need Defendant's services.

55. To the contrary, Defendant's salespeople encourage or pressure consumers to hire the Defendant even when the consumers appear to be unable to afford them.

56. Defendant trains or instructs salespeople to skim, skip over or misrepresent certain provisions of the "Agreement" when reviewing it with a consumer.

57. In or about October 2016, the representative Plaintiffs needed assistance with tax-related matters.

58. On October 26, 2016, the representative Plaintiffs met with Burney Gasque III, a representative of Defendant, at Defendant's Syracuse "office" located at 499 S. Warren Street, 3rd Floor, Syracuse, New York 13202.

59. During that meeting, Mr. Gasque fraudulently represented to the representative Plaintiffs that he was a qualified tax professional who could help with their tax-related matters.

60. In reality, however, Mr. Gasque was just a salesperson with little to no prior tax-related work experience or education.

61. Despite the representations made to the representative Plaintiffs, Mr. Gasque was not qualified to practice before the IRS, nor was he a CPA, enrolled agent, enrolled actuary, enrolled retirement agent or registered tax return preparer.

62. On October 26, 2016, Mr. Gasque, acting on behalf of Defendant, presented Plaintiff Jeffrey Vandermast with an "Agreement" requiring the representative Plaintiffs to pay \$30,000.00 as an initial fee, and \$2,000.00 per month for continued assistance in connection with their state and federal taxes for the years 2000-2015. *See id.*

63. Consistent with the language of the "Agreement", Mr. Gasque explained to the representative Plaintiffs that a large portion of Defendant's services are provided quickly, at the beginning of their work for clients. *See id.*

64. In reality, however, Defendant does not often provide a large portion of its services quickly or at the beginning of its work.

65. In addition to this language, the form "Agreement" indicates that the consumer "will not be presented with large invoices for periods in which the [Defendant] performs large amounts of work..." *See id.*

66. By making these representations, the Defendant gives itself a false justification for refusing any refunds, regardless of how soon after the "Agreement" is entered that a refund is requested.

67. In good faith and reliance upon Defendant's fraudulent representations, Plaintiff Jeffrey Vandermast signed his "Agreement" on October 26, 2016 and, just five (5) days later, terminated the Defendant's services and requested a refund.

68. To date, the representative Plaintiffs have not received any refund from the Defendant.

69. Clearly, the Defendant has developed and promoted a system in which the Defendant may quickly collect large payments from the consumer without any intention of performing any tax-related services or, alternatively, making any refunds to the consumer.

70. During the October 26, 2016 meeting, Mr. Gasque did not go over every provision of the "Agreement" with the representative Plaintiffs; in fact, he skimmed, skipped over and/or misrepresented the following terms:

a. "The [Defendant] reserves the right to cease all services and/or to terminate services if you do not pay an invoices within ten (10) days of the due date or billing date whichever is earlier.";

b. "[Y]ou will not be presented with large invoices for periods in which the [Defendant] performs large amounts of work...";

c. "Jurisdiction for any action by you, or by [Defendant], to enforce this agreement or concerning services under this agreement, or concerning charges under this agreement, shall be exclusively in the Virginia courts located in Fairfax County, Virginia.";

d. "This agreement is deemed entered into in Virginia and is subject to the laws of Virginia.";

e. "Any controversy, dispute, or claim arising out of, or under, or related to this Agreement will be finally settled by arbitration...[a]ny such arbitration will take place in Fairfax, Virginia.";

f. "You acknowledge that [the Defendant has] made no representation that [its] services will result in relieving you of any liability, for any taxes, interest and penalties whatsoever."; and

g. “All expressions relative to [any tax matters] are matters of [the Defendant’s] professional opinion only.”.

*See id.*

71. In particular, during the October 26, 2016 meeting, Mr. Gasque did not go over Section 13 of the Agreement, which specifies:

Any controversy, dispute, or claim arising out of, or under, or related to this Agreement will be finally settled by arbitration conducted with, and in accordance with the Rules of, the McCammon Group, an independent arbitration service headquartered in Virginia. Any arbitration is to be decided by one arbitrator, who will be agreed to by the parties from a list of five potential arbitrators (provided by the McCammon Group). Each party will strike one name after another until one name is left – the individual remaining will be the arbitrator. This section goes on to say that any arbitration will take place in Fairfax, Virginia and will be governed by the laws of the Commonwealth of Virginia and the United States of America.

*See id.*

72. The terms set forth above, including Section 13 of the “Agreement”, are systematically and routinely skimmed, skipped over and/or misrepresented by the Defendant’s salespeople during their sales pitch and, as a result, consumers frequently enter the “Agreement” without any knowledge of these terms.

73. The McCammon Group, as noted in Section 13 of the “Agreement”, is an independent arbitration service that follows its own set of rules.

74. In particular, The McCammon Group’s Rule 3 provides that a claim may be initiated based on an external agreement: “An External Agreement is a written agreement to arbitrate, properly executed by all Parties, using a contractual form other than TMG’s Agreement.” (<https://www.mccammongroup.com/wp-content/uploads/2019/09/Arbitration-Rules-Jan-2020.pdf>, last visited on May 18, 2020).

75. The McCammon Group does not handle arbitrations pursuant to external agreements unless (1) all of the parties EXECUTED the External Agreement AFTER consulting legal counsel OR (2) all parties, through legal counsel, agree to arbitrate at the time of the claim. *See id.*

76. None of the Plaintiffs consulted with legal counsel before executing the form "Agreement".

77. As such, with respect to the "Agreement", The McCammon Group would not conduct arbitration for disputes involving any of the Plaintiffs.

78. Simply put, the Defendant's fraud, fraudulent inducement and material misrepresentations render the "Agreement", including any and all venue selection and arbitration provisions, null, void and unenforceable against the Plaintiffs.

79. On October 26, 2016, Plaintiff Jeffrey Vandermast was also required to sign a power of attorney form, granting the Defendant and its agents authority to:

...represent the [named Plaintiffs] before the Internal Revenue Service and perform the following acts:

With the exception of the acts described in line 5b, I authorize my representative(s) to receive and inspect my confidential tax information and to perform acts that I can perform with respect to the tax matters described below. For example, my representative(s) shall have the authority to sign any agreements, consents or similar documents.

A copy of the power of attorney, along with a tax information authorization, is annexed hereto as Exhibit B.

80. Defendant knowingly and deliberately misrepresented their services to the Plaintiffs, including the representative Plaintiffs, primarily that their assigned caseworkers would generally not be attorneys, CPAs or enrolled agents.



81. Defendant also knowingly and deliberately misrepresented to Plaintiffs, including the representative Plaintiffs, that its salespeople, including Mr. Gasque, were not attorneys, CPAs or enrolled agents.

82. Defendant intentionally led the Plaintiffs, including the representative Plaintiffs, to believe that the caseworkers on their matters would be attorneys, CPAs or enrolled agents.

83. Defendant did not explain to Plaintiffs the IRS's limitations on representation in tax proceedings, nor did it tell Plaintiffs that their caseworkers lack the IRS-required qualifications.

84. On October 26, 2016, the representative Plaintiffs made an initial payment of \$2,000.00 toward the \$30,000.00 fee.

85. On October 27, 2016, the representative Plaintiffs made an additional cash payment of \$21,820.00 to Defendant.

86. On October 27, 2016, the representative Plaintiffs made an additional payment of \$5,000.00 via check to Defendant, which they subsequently put a stop payment on.

87. Between the October 26, 2016 and October 27, 2016 payments, the representative Plaintiffs paid Defendant a total of \$23,820.00.

88. Upon executing their "Agreements" and/ or shortly thereafter, each of the proposed Class members made the same or similar payments to the Defendant.

89. Plaintiff Bridget Vandermast never signed the original "Agreement" signed by her husband. *See Exhibit A.*

90. On October 28, 2016 (the "October 28 Letter"), Sharon Ripple, an employee of Defendant, sent a letter to the representative Plaintiffs requiring that both Plaintiffs initial and

sign the "Agreement" and return the same to Defendant. A copy of this letter is annexed hereto as Exhibit C.

91. Following the signing of the initial "Agreement" by Plaintiff Jeffrey Vandermast, the representative Plaintiffs consulted with several attorneys after researching the Defendant and reading several scathing reviews of the Defendant online.

92. As indicated herein, these scathing reviews evidence the Defendant's fraudulent tactics on a nationwide scale, affecting numerous consumers similarly situated to the representative Plaintiffs.

93. On October 31, 2016, the representative Plaintiffs terminated their "Agreement" and demanded a refund of all monies paid the Defendant.

94. The Defendant had done no work to resolve the representative Plaintiffs' tax issues.

95. The representative Plaintiffs terminated their "Agreement" by executing new powers of attorney and sending a letter to Defendant via fax, mail, and e-mail. A copy of the letter is annexed hereto as Exhibit D.

96. Counsel for the representative Plaintiffs, Diane R. Tiveron, Esq., also called Defendant to inform Defendant of the representative Plaintiffs' position.

97. Effectively, the Defendant has engaged in fraud and deceptive acts and practices in violation of Section 349 of New York's General Business Law and each equivalent consumer protection law promulgated by the State in which the Class members are located.

### CLASS ALLEGATIONS

98. The representative Plaintiffs bring this action on behalf of themselves and all other similarly situated Class members pursuant to CPLR § 901(a) and seek certification of the following Class: All individuals who entered an "Agreement" with the Defendant for tax services between May 18, 2014 and the present without prior legal consultation.

99. Each member of the proposed Class similarly terminated their "Agreements" and requested refunds from the Defendant or, alternatively, have not received the tax services they contracted and paid for.

100. Like the representative Plaintiffs, those members of the proposed Class who requested refunds from the Defendant have not received any refunded monies through the date of this Amended Class Action Complaint.

101. **Numerosity.** The Class is so numerous and geographically dispersed that joinder of all Class members is impracticable. The representative Plaintiffs have reason to believe that there are thousands, if not more, members of the Class. Class members may be identified through objective means and notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. mail, electronic mail, internet postings, and/or published notice.

102. **Commonality and Predominance.** This action involves common questions of law and fact that predominate over any questions affecting individual Class members. These common questions include, but are not limited to:

- a. whether Defendant misled consumers as to their geographic location and nationwide presence;

b. whether Defendant misled consumers regarding the qualifications of their employees;

c. whether Defendant misled consumers as to the services they would provide under the form "Agreement";

d. whether Defendant improperly incentivized salespeople to mislead consumers regarding their qualifications and/or the services the Defendant would provide consumers under the form "Agreement";

e. whether Defendant's salespeople intentionally skimmed, skipped over and/or misrepresented certain terms of the form "Agreement" during sales meetings that were inherently harmful to consumers;

f. whether consumers have suffered economic harm from the form "Agreement"; and

g. whether members of the Class were damaged by the Defendant's misrepresentations, omissions, and deceptive acts and practices.

103. **Typicality.** The representative Plaintiffs are typical members of the Class. The representative Plaintiffs are consumers who, upon advertisement and solicitation by the Defendant, entered a form "Agreement" with the Defendant for tax-related services. The Defendant's salespeople misrepresented their qualifications to the representative Plaintiffs and the Class members and, by doing so, enticed the representative Plaintiffs and the Class members to sign a form "Agreement". Following the Defendant's instructions, these salespeople skimmed, skipped over and/or misrepresented certain provisions of the "Agreement". The representative Plaintiffs and the Class members all paid the Defendant significant sums of money for tax-related services. Very shortly thereafter, with notice to the Defendant, the representative

Plaintiffs terminated their "Agreement" and requested a full refund of all monies paid the Defendant. To date, the Defendant has not refunded any monies paid by the representative Plaintiffs. Like the representative Plaintiffs, the Class members have either requested refunds from the Defendant and not received same, or have simply not received the tax services they contracted and paid for. The representative Plaintiffs' injuries are akin to the other Class members and the representative Plaintiffs seek relief consistent with the relief owing to the Class.

104. **Adequacy.** The representative Plaintiffs are adequate representatives of the Class because they are members of the Class and are committed to pursuing this matter to obtain relief for themselves and for the Class. The representative Plaintiffs have no conflicts of interest with the Class. The representative Plaintiffs have also retained counsel competent and experienced in complex class action litigation. The representative Plaintiffs intend to vigorously prosecute this case and will fairly and adequately protect the interests of the Class.

105. **Superiority.** Class action litigation is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The primary purpose of the class action mechanism is to permit litigation against wrongdoers even when damages to the individual plaintiff may not be sufficient to justify individual litigation. Here, the damages suffered by the representative Plaintiffs and the Class may be relatively small compared to the burden and expense required to individually litigate their claims against the Defendant, and thus, individual litigation to redress the wrongful conduct of the Defendant would be impracticable. Individual litigation by each Class member would also strain the court system, create the potential for inconsistent or contradictory judgments, and increase the delay and expense to all parties and the

court system. By contrast, the class action mechanism presents far fewer management difficulties and provides the benefits of a single adjudication, economies of scale, and comprehensive supervision by a single court.

**AS AND FOR A FIRST CAUSE OF ACTION:**  
**FRAUD**

106. Plaintiffs repeat, reiterate, and reallege each and every allegation continued in paragraphs 1 through 105 above as if fully set forth herein.

107. On or about October 26, 2016 and October 27, 2016, at 499 S. Warren Street 3rd Floor, Syracuse, New York 13202, the Defendant made numerous false representations to the representative Plaintiffs.

108. On October 26, 2016, the representative Plaintiffs met with Burney Gasque III, a representative of Defendant, at Defendant's Syracuse "office" located at 499 S. Warren Street 3rd Floor, Syracuse, New York 13202.

109. The Defendant misrepresented to the representative Plaintiffs that this Syracuse location was a permanent office.

110. By doing so, the Defendant also misrepresented the geographic origin of its services to the representative Plaintiffs.

111. At various locations throughout the country, through numerous employees and representatives, the Defendant made the same or similar misrepresentations to each of the Class members.

112. The Defendant stated or implied to each of the Plaintiffs that it had "offices nationwide," when its offices are, in fact, located in Virginia and Tennessee and its corporate office is in Virginia.

113. The Defendant stated or implied to each of the Plaintiffs that its business was being conducted and services were being rendered out of these temporary offices, including the Syracuse office, when, in fact, the Defendant's employees only work out of Tennessee and Virginia.

114. During the sales meeting on October 26, 2016, Mr. Gasque represented to the representative Plaintiffs that he was a qualified tax professional who could help with their tax-related matters.

115. Defendant misrepresented that Ms. Gasque was a qualified tax professional.

116. In reality, Mr. Gasque was just a salesperson with little to no prior tax-related work experience or education.

117. Despite the representations made to the representative Plaintiffs, Mr. Gasque was not qualified to practice before the IRS, nor was he a CPA, enrolled agent, enrolled actuary, enrolled retirement agent or registered tax return preparer.

118. At various locations throughout the country, through numerous employees and representatives, the Defendant made similar misrepresentations to each of the Class members.

119. The Defendant led each of the Class members to believe that they were meeting with a qualified tax professional when, in fact, the representatives they met were just salespeople.

120. During the sales meeting on October 26, 2016, Defendant also misrepresented who would be providing tax services to the representative Plaintiffs.

121. The same or similar misrepresentations were made by the Defendant during the sales meetings held for each of the Class members.

122. The Plaintiffs were informed by Defendant, through its representatives, that tax services would be provided by tax professionals with the appropriate experience, knowledge, qualifications, training, authorization and certification.

123. The Defendant misrepresented the experience, knowledge, qualifications, training, authorization and certification of its so-called “tax professionals.”

124. The Defendant stated or implied that Defendant’s employees were “tax consultants”, “tax practitioners”, “tax professionals”, “professional tax relief agents” or “certified tax representatives”, when its case team members actually have limited to no prior tax experience, had limited to no prior tax education, had limited to no tax-related training, and were not attorneys, CPAs, enrolled agents, enrolled actuaries, enrolled retirement agents or registered tax return preparers.

125. With respect to the representative Plaintiffs, Defendant stated and/or implied that Defendant’s case team members were from New York or were familiar with New York’s state and local tax authorities, when case team members were not from New York and were not familiar with New York’s state and local tax authorities.

126. The Defendant made similar statements and/or implications as stated in the preceding paragraph to each of the Class members by using and referencing the state and local tax authorities from the location of each Class member.

127. During these sales meetings, including the representative Plaintiffs’ sales meeting on October 26, 2016, Defendant further misrepresented the average or typical outcome or results for consumers and the amounts of fees needed to resolve each case.



128. Defendant represented that “a large portion of the Company’s services are provided quickly, at the beginning of the work for you,” when, in fact, services were not provided quickly at the beginning of the work.

129. During the representative Plaintiffs’ October 26, 2016 meeting, Mr. Gasque did not go over every term of the Agreement, and skimmed, skipped over and/or misrepresented the following terms:

a. “The [Defendant] reserves the right to cease all services and/or to terminate services if you do not pay an invoice within ten (10) days of the due date or billing date whichever is earlier.”;

b. “[Y]ou will not be presented with large invoices for periods in which the [Defendant] performs large amounts of work...”;

c. “Jurisdiction for any action by you, or by [Defendant], to enforce this agreement or concerning services under this agreement, or concerning charges under this agreement, shall be exclusively in the Virginia courts located in Fairfax County, Virginia.”;

d. “This agreement is deemed entered into in Virginia and is subject to the laws of Virginia.”;

e. “Any controversy, dispute, or claim arising out of, or under, or related to this Agreement will be finally settled by arbitration...[a]ny such arbitration will take place in Fairfax, Virginia.”;

f. “You acknowledge that [the Defendant has] made no representation that [its] services will result in relieving you of any liability, for any taxes, interest and penalties whatsoever.”; and

g. “All expressions relative to [any tax matters] are matters of [the Defendant’s] professional opinion only.”.

*See Exhibit A.*

130. In particular, during the October 26, 2016 meeting, Mr. Gasque did not go over Section 13 of the Agreement, which specifies:

Any controversy, dispute, or claim arising out of, or under, or related to this Agreement will be finally settled by arbitration conducted with, and in accordance with the Rules of, the McCammon Group, an independent arbitration service headquartered in Virginia. Any arbitration is to be decided by one arbitrator, who will be agreed to by the parties from a list of five potential arbitrators (provided by the McCammon Group). Each party will strike one name after another until one name is left – the individual remaining will be the arbitrator. This section goes on to say that any arbitration will take place in Fairfax, Virginia and will be governed by the laws of the Commonwealth of Virginia and the United States of America.

*See id.*

131. The terms set forth above, including Section 13 of the “Agreement”, were systematically and routinely skimmed, skipped over and/or misrepresented by the Defendant’s salespeople during their sales pitches and, as a result, the Class members each entered the form “Agreement” without any knowledge of these terms.

132. The McCammon Group, as noted in Section 13 of the Agreement, is an independent arbitration service that follows its own set of rules.

133. In particular, The McCammon Group’s Rule 3 provides that a claim may be initiated based on an external agreement. “An External Agreement is a written agreement to arbitrate, properly executed by all Parties, using a contractual form other than TMG’s Agreement.” (<https://www.mccammongroup.com/wp-content/uploads/2019/09/Arbitration-Rules-Jan-2020.pdf>, last visited on May 18, 2020).

134. The McCammon Group does not handle arbitrations pursuant to external agreements (such as the subject Agreement) unless (1) all of the parties EXECUTED the External Agreement AFTER consulting legal counsel OR (2) all parties, through legal counsel, agree to arbitrate at the time of the claim. *See id.*

135. Neither the representative Plaintiffs nor any of the Class members consulted with legal counsel before executing the "Agreement".

136. The Defendant did not advise the representative Plaintiffs or any of the Class members of The McCammon Group's policies or rules.

137. The Defendant did not advise the representative Plaintiffs or any of the Class members to seek legal counsel, nor did they give the representative Plaintiffs or any of the Class members an opportunity to seek legal counsel before signing the "Agreement".

138. As such, with respect to the "Agreement", The McCammon Group would not conduct arbitration for any disputes involving the Plaintiffs.

139. Defendant's false representations regarding arbitration and The McCammon Group were made with Defendant's knowledge that the representations were false and for the purpose of exploiting the Plaintiffs.

140. All the representations made to Plaintiffs by Defendant about the tax services to be provided, Defendant's location and all other aspects of its business, as discussed above, were false.

141. All of Defendant's false representations were made with Defendant's knowledge that the representations were false and for the purpose of exploiting Plaintiffs.

142. Defendant was engaged in a fraudulent scheme intended to induce Plaintiffs to pay Defendant for the purpose of exploitation and Defendant's own financial benefit.

143. Defendant's scheme to defraud Plaintiffs related to all aspects of the "Agreement", as demonstrated by Defendant's skimming, skipping over and/or misrepresenting certain terms of the "Agreement".

144. Plaintiffs believed Defendant's representations to be true and justifiably relied upon the representations made by Defendant.

145. At the time of the false representations made by Defendant, Plaintiffs did not know the true facts and believed the representations were true, relied upon them and were thereby induced to enter into "Agreements" and pay the Defendant significant fees.

146. Defendant continues to retain the monies it fraudulently obtained from the Plaintiffs.

147. The Defendant or its agents were within or represented themselves to be within the State of New York at the time these frauds were perpetrated upon the representative Plaintiffs.

148. Similarly, the Defendant or its agents were within or represented themselves to be within the state of each Class member's location at the time these frauds were perpetrated upon each of those Class members.

149. By reason of the foregoing, Defendant is also liable for punitive damages.

150. Thus, Plaintiffs and Class members similarly situated are entitled to compensatory damages together with interest thereon, the costs and disbursements of this action, including but not limited to reasonable attorneys' fees, and such other and further relief as the Court deems just, proper and equitable.

**AS AND FOR A SECOND CAUSE OF ACTION:**  
**MONEY HAD AND RECEIVED**

151. Plaintiffs repeat, reiterate, and reallege each and every allegation continued in paragraphs 1 through 150 above as if fully set forth herein.

152. On October 26, 2016 and October 27, 2016, Defendant attempted to enroll the representative Plaintiffs with Defendant for administrative tax services. *See id.*; *see also* Exhibit B.

153. At that time, Defendant falsely and fraudulently represented to the representative Plaintiffs that Defendant was fully capable of performing the described work and would need an initial fee of \$30,000.00 and a monthly payment of \$2,000.00 to complete said work.

154. At various locations throughout the country, through numerous employees and representatives, the Defendant made the same or similar misrepresentations to each of the Class members.

155. Defendant knew that the representations about the services and their costs were false at the time Defendant made them.

156. The representations were made to induce Plaintiffs to sign the form "Agreement" and pay the disproportionate fees.

157. Plaintiffs did not know the truth with regard to the work required for their tax matters or the acceptable fees for such work; relied upon the false representations by Defendant; and would not have paid the fees had they known the truth.

158. Upon ascertaining the truth regarding the Defendant's ability to perform the tax-related services and Defendant's disproportionate fee, the representative Plaintiffs immediately terminated their "Agreement" with the Defendant. *See* Exhibit D.

159. The representative Plaintiffs notified the Defendant that they wanted their money returned. *See id.*

160. To date, however, the Defendant has failed and refused, and still fails and refuses to repay that money.

161. Upon ascertaining the truth in regard to the Defendant's ability to perform the tax-related services and Defendant's disproportionate fee, the Class members similarly terminated their "Agreements" with the Defendant and demanded refunds or, more simply, have not received the tax services they contracted and paid for.

162. To date, the Defendant has failed and refused, and fails and refuses to repay the Class members who terminated their "Agreements".

163. Similarly, with respect to those Class members who have not terminated their "Agreements" or demanded refunds, the Defendant has not fulfilled its obligations thereunder.

164. By reason of the foregoing, the Defendant has unlawfully taken and withheld monies from the Plaintiffs to which they are entitled.

165. By reason of the foregoing, the Defendant is liable for punitive damages for withholding the Plaintiffs' funds.

166. Thus, Plaintiffs and Class members similarly situated are entitled to compensatory damages together with interest thereon, the costs and disbursements of this action, including but not limited to reasonable attorneys' fees, and such other and further relief as the Court deems just, proper and equitable.

**AS AND FOR A THIRD CAUSE OF ACTION:**  
**CONVERSION**

167. Plaintiffs repeat, reiterate, and reallege each and every allegation continued in paragraphs 1 through 166 above as if fully set forth herein.

168. Pursuant to the "Agreement", which has been rescinded, the representative Plaintiffs gave the Defendant \$23,820.00.

169. Each of the Class members similarly paid the Defendant a significant sum of money.

170. The Defendant continues to retain money belonging to the Plaintiffs and Class members.

171. Plaintiffs demanded the return of their money from the Defendant and/or the Defendant's performance of the services contracted for. *See Exhibit D.*

172. Similarly situated Class members have likewise demanded the return of the money paid to the Defendant and/or the Defendant's proper performance.

173. The Defendant refuses to return the money or perform its obligations under the form "Agreement" on behalf of the Plaintiffs or Class members.

174. The Defendant acted illegally, maliciously, and recklessly with the purpose of intentionally exploiting the Plaintiffs and Class members.

175. By reason of the foregoing, the Defendant is liable for punitive damages for converting funds belonging to the Plaintiffs and Class members.

176. Thus, Plaintiffs and Class members similarly situated are entitled to compensatory damages together with interest thereon, the costs and disbursements of this action, including but not limited to reasonable attorneys' fees, and such other and further relief as the Court deems just, proper and equitable.

**AS AND FOR A FOURTH CAUSE OF ACTION:**  
**UNJUST ENRICHMENT**

177. Plaintiffs repeat, reiterate, and reallege each and every allegation continued in paragraphs 1 through 176 above as if fully set forth herein.

178. Plaintiffs and Class members made payments to Defendant, which thereby enriched the Defendant.

179. Such enrichment was at the expense of the Plaintiffs and Class members.

180. The circumstances are such that equity and good conscience require the Defendant to make restitution.

181. Thus, Plaintiffs and Class members similarly situated are entitled to compensatory damages together with interest thereon, the costs and disbursements of this action, including but not limited to reasonable attorneys' fees, and such other and further relief as the Court deems just, proper and equitable.

**AS AND FOR A FIFTH CAUSE OF ACTION:**  
**DECEPTIVE ACTS AND PRACTICES IN VIOLATION OF**  
**SECTION 349 OF NEW YORK'S GENERAL BUSINESS LAW AND**  
**EACH EQUIVALENT CONSUMER PROTECTION LAW PROMULGATED**  
**BY THE STATE OF EACH CLASS MEMBER**

182. Plaintiffs repeat, reiterate, and reallege each and every allegation continued in paragraphs 1 through 181 above as if fully set forth herein.

183. Plaintiffs and the Class members relied on the Defendant's website, blog, nationwide advertisements and solicitations, which indicated that Defendant's employees were experienced and highly qualified to resolve their tax-related matters.

184. Plaintiffs and the Class members also relied on the Defendant's website, blog, nationwide advertisements and solicitations, which represented that Defendants maintained permanent offices throughout the country.



185. Plaintiffs and Class members met with employees of the Defendant at various office locations throughout the country, but those employees were neither experienced or qualified to handle tax-related matters, and those offices did not belong to the Defendant.

186. In reality, these employees were salespeople and the offices, which the Defendant led Plaintiffs and Class members to believe were permanent office locations, were only temporary rental office spaces.

187. Given the representations made by the Defendants and the lengths the Defendant went to feign its nationwide presence, the reliance of the Plaintiffs and Class members on the Defendant's representations was entirely reasonable.

188. The Defendant took advantage of this reasonable reliance by enticing the Plaintiffs and Class members to enter into form "Agreements" and pay for tax-related services which the Defendant never intended to perform.

189. The Defendant instructed its salespeople, who were incentivized through a commission-based system, to skim, skip over or misrepresent certain terms of the form "Agreement" during sales meetings that were inherently harmful to the Plaintiffs and Class members.

190. As a result, the Plaintiffs and Class members entered a form "Agreement" with little to no knowledge of the Defendant's obligations thereunder.

191. Plaintiffs and Class members entered into the form "Agreement" with no knowledge of one or more of the following terms:

a. "The [Defendant] reserves the right to cease all services and/or to terminate services if you do not pay an invoice within ten (10) days of the due date or billing date whichever is earlier.";

b. “[Y]ou will not be presented with large invoices for periods in which the [Defendant] performs large amounts of work...”;

c. “Jurisdiction for any action by you, or by [Defendant], to enforce this agreement or concerning services under this agreement, or concerning charges under this agreement, shall be exclusively in the Virginia courts located in Fairfax County, Virginia.”;

d. “This agreement is deemed entered into in Virginia and is subject to the laws of Virginia.”;

e. “Any controversy, dispute, or claim arising out of, or under, or related to this Agreement will be finally settled by arbitration...[a]ny such arbitration will take place in Fairfax, Virginia.”;

f. “You acknowledge that [the Defendant has] made no representation that [its] services will result in relieving you of any liability, for any taxes, interest and penalties whatsoever.”; and

g. “All expressions relative to [any tax matters] are matters of [the Defendant’s] professional opinion only.”.

*See Exhibit A.*

192. Such conduct benefitted the Defendant at the detriment of the Plaintiffs and Class members.

193. Based on the representation that a large portion of the work would be done quickly at the beginning, the Defendant was able to collect large fees with no obligation to provide any itemized invoice for services.

194. In effect, the Defendant was able to collect large fees from the Plaintiffs and Class members with no intention of ever performing any services.

195. Such deceptive acts caused the Plaintiffs and Class members substantial injury.

196. The Plaintiffs and Class members were seeking the Defendant's so-called expert advice for substantial and urgent tax problems, putting them in a vulnerable position.

197. The Defendant's salespeople did not evaluate whether the Plaintiffs and Class members could afford or needed the Defendant's services.

198. To the contrary, the Defendant's salespeople encouraged or pressured the Plaintiffs and Class members to hire the Defendant even when they appeared to be unable to afford them.

199. As such, the Plaintiffs and Class members were not able to avoid the deceptive acts or the injuries caused by such acts.

200. By reason of the foregoing, the Defendant's acts, practices and omissions, as set forth herein, constitute deceptive acts and practices in violation of Section 349 of New York's General Business Law and each equivalent consumer protection law promulgated by the State in which each Class member resides.

201. The Defendant is liable for punitive damages for its deceptive acts and practices.

202. Thus, the Plaintiffs and the similarly situated Class members are entitled to compensatory damages together with interest thereon, the costs and disbursements of this action, including but not limited to reasonable attorneys' fees, and such other and further relief as the Court deems just, proper and equitable.

WHEREFORE, on their own behalves and on behalf of the proposed Class, the representative Plaintiffs pray for judgment as follows:

- (1) determining this action may proceed as a class action under CPLR § 902;
- (2) declaring the conduct of the Defendant as alleged herein as unlawful;
- (3) awarding the Plaintiffs and Class members damages to which they are entitled under the law and the causes of action herein, including an award of compensatory and punitive damages, along with pre- and post-judgment interest;
- (4) granting the Plaintiffs and the Class members the costs and disbursements of this action, including but not limited to reasonable attorneys' fees, as allowed by law; and
- (5) awarding such other and further relief that this Court deems just, proper and equitable.

DATED: May 19, 2020  
Amherst, New York



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