

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

FERENCE & ASSOCIATES LLC,
individually and on behalf of all others
similarly situated,

Plaintiff,

v.

HENDRIK VAN DER VAART and
BOROUGH OF SEWICKLEY,

Defendants.

CIVIL DIVISION – CLASS ACTION

No.

CLASS ACTION COMPLAINT

Filed on behalf of Plaintiff

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NOTICE TO DEFEND

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 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 TO FIND OUT. 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.

LAWYER REFERRAL SERVICE
The Allegheny County Bar Association
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436 Seventh Avenue
Pittsburgh, PA 15219
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CLASS ACTION COMPLAINT

COMES NOW PLAINTIFF, Ference & Associates LLC, (“Plaintiff”), individually and on behalf of a class of similarly situated persons, by and through undersigned Counsel of Record, and files this Class Action Complaint against the above named Defendants, including Hendrick van der Vaart and Borough of Sewickley (collectively “Defendants”), showing the Court as follows:

INTRODUCTION

1. This civil action arises out of Defendants’ invasion of Plaintiff’s privacy by disclosure of confidential tax information. The Local Taxpayers Bill of Rights (the “LTBR”), 53 Pa. C.S. §§ 8421 et seq., provides that all information gained by a local taxing authority as a result of any audit, return, report, investigation, hearing or verification is confidential tax information. 53 Pa.C.S. § 8437. Despite the confidential nature of such tax information, Defendants knowingly and willfully disclosed such confidential tax information to unrelated third parties.

2. Defendant Hendrik van der Vaart (“van der Vaart”) is an individual who resides at 216 Linden Court, Sewickley, Allegheny County, Pennsylvania 15143 and is a Member of the Council of the Borough of Sewickley. The Borough of Sewickley is a municipal subdivision of the Commonwealth of Pennsylvania and is located in Allegheny County.

3. In his position as a Member of Council, van der Vaart was given access to confidential tax information by the Borough of Sewickley and in an effort to co-opt a third party into acting on behalf of the Borough of Sewickley, van der Vaart publically disclosed the confidential tax information.

4. Against this backdrop, Plaintiff asserts claims under Pennsylvania’s common law for invasion of privacy individually and on behalf of a class of all persons whose privacy was invaded by Defendants’ disclosure of confidential tax information and seeks all civil remedies provided under the causes of action, including but not limited to compensatory and/or punitive damages, and attorneys’ fees and costs.

THE PARTIES

5. At all times relevant herein, Plaintiff Ference & Associates LLC is and was a Pennsylvania restricted professional limited liability company with a registered office address in Allegheny County, Pennsylvania.

6. At all times relevant herein, Defendant van der Vaart is and was a resident of Allegheny County, Pennsylvania, having an address of 216 Linden Court, Sewickley, Allegheny County, Pennsylvania 15143.

7. At all times relevant herein, Defendant Borough of Sewickley is and was a municipality of the Commonwealth of Pennsylvania located within Allegheny County,

Pennsylvania, having an address of 601 Thorn Street, Sewickley, Allegheny County, Pennsylvania 15143.

JURISDICTION AND VENUE

8. The Court has subject matter jurisdiction over this action pursuant to Pa. Cons. Art. 5, § 5(b) and 42 Pa. C.S.A. § 931(b).

9. The Court has personal jurisdiction over Defendants pursuant to 42 Pa. C.S.A. § 5301.

10. Venue in Allegheny County is proper pursuant to Pa. R.C.P. No. 2179(a) because it is where Defendants reside, where Defendants regularly conduct business, and where the cause of action arose.

FACTUAL ALLEGATIONS

11. van der Vaart is Member of the Council of the Borough of Sewickley. In this position, he came into possession of certain tax information about businesses within the Borough of Sewickley. Despite him knowing, or should of knowing, that such tax information was confidential, van der Vaart intentionally publically disclosed such confidential tax information.

12. On January 10, 2019 van der Vaart sent an email to individuals associated with the Sewickley Chamber of Commerce with the subject line “Help with collecting BPT from Sewickley Businesses.” Plaintiff became aware of this email on December 12, 2019.

13. Attached to the January 10, 2019 email was a spreadsheet entitled “2019-01-Business Who Have Not Paid BPT.xlsx” The spreadsheet identifies 149 businesses in a column entitled “Didn’t Pay in 2017” and number of these businesses also appear in a column entitled “Haven’t paid since at least 2013”. Given the confidential nature of the information contained in January 10, 2019 email and its attachment a copy is not being submitted herewith.

14. This disclosure of confidential tax information by van der Vaart was made as an agent of the Borough of Sewickley in furtherance of the business interests of the Borough of Sewickley, and with the knowledge of the Borough of Sewickley. Indeed, the President of the Council of the Borough of Sewickley, Jeff Neff, was copied on the email disclosure of the confidential tax information.

15. Plaintiff appears in the spreadsheet disclosed by van der Vaart as “FERENCE & ASSOCIATES.”

16. By disclosing confidential tax information, Defendants have violated Plaintiff’s privacy.

CLASS ACTION ALLEGATIONS

17. Plaintiff, pursuant to Rules 1702, 1708 and 1709 of the Pennsylvania Rules of Civil Procedure, asserts this action individually and on behalf of a class of any business alleged to be subject to the Sewickley Borough business privilege tax whose confidential tax information was disclosed by Defendants.

18. Excluded from the classes are Defendants, as well as their past and present officers, employees, agents or affiliates, any judge who presides over this action, and any attorneys who enter their appearance in this action.

19. Plaintiff reserves the right to expand, limit, modify or amend the class definitions, including the addition of one or more subclasses, in connection with his motion for class certification, or at any other time, based on, among other things, changing circumstances and new facts obtained during discovery.

20. **Numerosity – Pennsylvania Rule of Civil Procedure 1702(1).** The members of the classes are so numerous that individual joinder of all class members is impracticable. The

precise number of class members and their identities may be obtained from Defendants' books and records.

(a) **Commonality – Pennsylvania Rule of Civil Procedure 1702(2).** This action involves questions of law and fact that are common to the class members. Such common questions include, but are not limited to: (a) whether plaintiff and putative class members had a reasonable expectation of privacy in their confidential tax information; (b) whether Defendants invaded the privacy of Plaintiff and putative class members by disclosing their confidential tax information. Similar or identical violations, business practices, and injuries are involved. Individual questions, if any, pale by comparison, in both quality and quantity, to the numerous common questions that dominate this action.

21. **Typicality – Pennsylvania Rule of Civil Procedure 1702(3).** Plaintiff's claims are typical of the other class members' claims because, among other things, all class members were comparably injured, or can reasonably be expected to sustain damages, from the uniform prohibited conduct described above. For instance, Plaintiff and each class member had their confidential tax information disclosed in violation of their right to privacy. This uniform injury and the legal theories that underpin recovery make the claims of Plaintiff and the members of the classes typical of one another.

22. **Adequacy of Representation – Pennsylvania Rule of Civil Procedure 1702(4) and 1709.** Plaintiff is an adequate representative of the classes because Plaintiff's interests do not conflict with the interests of the other class members Plaintiff seeks to represent; Plaintiff has retained counsel competent and experienced in class action litigation; Plaintiff intends to prosecute this action vigorously; and Plaintiff's counsel have adequate financial means to vigorously pursue this action and ensure the interests of the classes will not be harmed.

Furthermore, the interests of the class members will be fairly and adequately protected and represented by Plaintiff and Plaintiff's counsel

23. **Predominance – Pennsylvania Rule of Civil Procedure 1708(a)(1).** Common questions of law and fact predominate over any questions affecting only individual class members. For example, Defendants' liability and the fact of damages is common to Plaintiff and each member of the class. If Defendants improperly disclosed confidential tax information, then Plaintiff and each class member suffered damages by that conduct.

24. **Manageability – Pennsylvania Rule of Civil Procedure 1708(a)(2).** While the precise size of the class is unknown without the disclosure of Defendants' records, the claims of Plaintiff and the class members are substantially identical as explained above. Certifying the case as a class action will centralize these substantially identical claims in a single proceeding and adjudicating these substantially identical claims at one time is the most manageable litigation method available to Plaintiff and the classes.

25. **Risk of Inconsistent, Varying or Prejudicial Adjudications – Pennsylvania Rule of Civil Procedure 1708(a)(3).** If the claims of Plaintiff and the members of the classes were tried separately, Defendants may be confronted with incompatible standards of conduct and divergent court decisions. Furthermore, if the claims of Plaintiff and the members of the classes were tried individually, adjudications with respect to individual class members and the propriety of their claims could be dispositive on the interests of other members of the class not party to those individual adjudications and substantially, if not fully, impair or impede their ability to protect their interests.

26. **Litigation Already Commenced – Pennsylvania Rule of Civil Procedure 1708(a)(4).** To Plaintiff's knowledge, there are no other cases that have been brought against

Defendants, or that are currently pending against Defendants, where a Pennsylvania resident seeks to represent a class of Pennsylvania residents based on the conduct alleged in this Complaint.

27. **The Appropriateness of the Forum – Pennsylvania Rule of Civil Procedure 1708(a)(5).** This is the most appropriate forum to concentrate the litigation because Defendants reside or are headquartered in this County and a substantial number of class members were injured in this County.

28. **The Class Members’ Claims Support Certification – Pennsylvania Rule of Civil Procedure 1708(a)(6) and (7).** Given the relatively low amount recoverable by each Class member, the expenses of individual litigation are insufficient to support or justify individual suits. Furthermore, the damages that may be recovered by the classes will not be so small such that class certification is unjustified.

29. **The General Applicability of Defendants’ Conduct – Pennsylvania Rule of Civil Procedure 1708(b)(2).** Defendants’ uniform non-consensual towing practices are generally applicable to the classes as a whole, making equitable and declaratory relief appropriate with respect to each class member.

CAUSES OF ACTION

COUNT I

Invasion of Privacy against All Defendants

30. Plaintiff incorporates by reference each and every prior and subsequent allegation of this Class Action Complaint as if fully restated herein.

31. Pennsylvania common law recognizes the tort of invasion of privacy. The right to privacy is also embodied in multiple sections of the Pennsylvania constitution.

32. Plaintiff brings this claim individually and on behalf of the class.

33. The tax information of Plaintiff and class members was confidential and Plaintiff and class members had an interest in precluding the dissemination and/or misuse of their confidential tax information.

34. Defendants intentionally violated Plaintiff's and class members' privacy.

35. Defendants' conduct is highly objectionable to a reasonable person and constitutes an egregious breach of the social norms underlying the privacy right.

36. Plaintiff and class members were harmed by Defendants' wrongful conduct.

WHEREFORE, Plaintiff requests judgment in its favor and against Defendants, and seeks all relief set forth in its Prayer for Relief.

REQUEST FOR RELIEF

Plaintiff, individually and on behalf of the other members of the proposed Class, respectfully request that the Court enter judgment in Plaintiff's favor and against Defendant as follows:

- A. Declaring that this action is a proper class action, certifying the Class as requested herein, designating Plaintiff as Class Representative, and appointing the undersigned counsel as Class Counsel;
- B. Ordering Defendant to pay actual and consequential, statutory, and/or punitive damages to Plaintiff and the Class members;
- C. Ordering declaratory and injunctive relief as permitted by law or equity, including enjoining Defendant from continuing the unlawful conduct as set forth herein;
- D. Ordering Defendant to pay attorneys' fees and litigation costs to Plaintiff and the other members of the Class;
- E. Ordering Defendant to pay both pre- and post-judgment interest on any amounts awarded; and

F. Ordering such other and further relief as may be just and proper.

JURY DEMAND

Plaintiff respectfully demands a jury trial on all matters so triable.

Respectfully submitted,

Dated: January 10, 2020

/s/ Stanley D. Ference III

Stanley D. Ference III

Pa ID No. 59899

courts@ferencelaw.com

/s/ Brian Samuel Malkin

Brian Samuel Malkin

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VERIFICATION

I, Stanley D. Ference III, hereby certify that the facts set forth in the foregoing Complaint are true and correct to the best of my knowledge, or information and belief, and that this statement is made subject to the penalties of 18 Pa. C.S.A. 4904 relating to unsworn falsification to authorities.

Date: January 10, 2020

/s/ Stanley D. Ference III
Stanley D. Ference III