

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Alexandria Division)**

**ACTION MAILING CORPORATION
D/B/A ACTION MAILING & PRINTING
SOLUTIONS**

3165 W. Heartland Drive
Liberty, Missouri 64068

Plaintiff

v.

Case No. _____

WILLIAM J. MCCARTHY

1006 Cameron Street
Alexandria, Virginia 22314

and

**WILLIAM J. MCCARTHY &
ASSOCIATES, INC.**

1006 Cameron Street
Alexandria, Virginia 22314

Serve: William J. McCarthy III
1006 Cameron Street
Alexandria, Virginia 22314

and

STATE DEPARTMENT WATCH, LTD

4445 Corporation Lane, Suite 264
Virginia Beach, Virginia 23463

Serve: Northwest Registered Agent LLC
4445 Corporation Lane, Suite 264
Virginia Beach, Virginia 23463

and

AMERICANS CARE, INC.
315 Riding Trail Court
Leesburg, Virginia 20176

Serve: Nensi Fiorenini
315 Riding Trail Court
Leesburg, Virginia 20176

Defendants

COMPLAINT

The Plaintiff, Action Mailing Corporation (“Action Mailing”), by and through its attorneys, Janet M. Nesse, Aaron D. Neal and McNamee, Hosea, Jernigan, Kim, Greenan & Lynch, P.A., sues the above-named Defendants, and says:

Parties & Jurisdiction

1. Action Mailing is a Missouri corporation engaged in the business of preparing mass-mailings to individuals on behalf of third parties.
2. William J. McCarthy is believed to be a resident of Virginia and is the owner of William J. McCarthy & Associates, Inc. (“WJMA”).
3. WJMA is a Virginia corporation with its principal place of business in Alexandria, Virginia. WJMA is in the direct marketing business.
4. State Department Watch, LTD (“SDW”) is a Virginia corporation which appears to operate primarily out of Washington, DC. SDW is believed to be in the business of collecting money from individuals to support various political causes.
5. Americans Care, Inc. (“ACI”) is a terminated Virginia corporation which appears to operate primarily out of Washington, DC. ACI is believed to be in the business of collecting money from individuals to support various political causes.

6. Venue is proper in this court because a substantial part of the events giving rise to Action Mailing's claims took place in this district.
7. Jurisdiction is proper in this court because the parties are completely diverse and the amount of damages sought by Action Mailing exceeds \$75,000.00.

Facts Common to All Counts

8. In September 2017, a representative of WJMA contacted Action Mailing to contract for direct mailing services.
9. On October 11, 2017, WJMA placed its first order for direct mailing services with Action Mailing. WJMA was advised in advance of the cost for its order and agreed that the costs would be paid.
10. Over the following months, WJMA placed numerous orders for direct mailing services.
11. Some of the orders indicated that the mailings were being made on behalf of "entities" other than WJMA.
12. However, many of the "entities" identified by WJMA were entities that no longer legally existed or never existed in the first place. For example, WJMA ordered mailing services for American Minuteman Project, Tea Party Command, The Tea Party Campaign, The Tea Party, Tea Party Guard and G.I. America, none of which appear to exist as valid corporate entities.
13. Rather, a review of the mailings themselves seems to indicate that those were the names of "projects" supervised by SDW.
14. Similarly, WJMA placed orders for American Presidential Task Force, Senior Americans Association and The Sovereignty Project, none of which appear to exist as valid corporate entities.

15. Those entities appear to be the names of “projects” supervised by ACI. It appears that ACI is no longer a legal entity in Virginia and is not believed to have legal existence in any other jurisdiction.
16. All of the mailings at issue were returnable to post office boxes in the District of Columbia, often with multiple senders (the unincorporated “projects”) using the same post office box.
17. Over 82 orders, Action Mailing sent out 1,143,170 pieces of mail for WJMA.
18. WJMA stopped paying invoices as they came due.
19. On October 4, 2018 at 12:12 pm, Mr. McCarthy promised to get caught up on the past due payments, stating “[s]horting postage caught up with us this week and we will be short. I will endeavor to get back on track in the next couple of weeks and get the postage caught up as well.”
20. Mr. McCarthy made similar misrepresentations regarding payment via emails throughout October, November and December 2018.
21. Mr. McCarthy repeatedly promised to pay the invoices but gave no indication that anyone other than himself or WJMA was responsible for paying. Mr. McCarthy verbally agreed to pay \$20,000.00 per month to catch up, but did not do so.
22. On March 19, 2019 at 6:14 pm, Mr. McCarthy stated via email to Action Mailing that “[c]ash flow has been extremely spotty and postage checks have gone astray. I will endeavor to increase payments over the next few weeks and get caught up as soon as possible.”
23. Mr. McCarthy made repeated misrepresentations to Action Mailing that he would catch up on past payments in a concerted effort to trick Action Mailing into continuing to do work

for WJMA, knowing that he and WJMA would neither catch up on the past due billing nor pay for the additional work.

24. Finally, after Action Mailing retained counsel, Mr. McCarthy asserted for the first time in a June 14, 2019 letter that WJMA was not responsible for the outstanding invoices because WJMA was acting as an agent for a disclosed principal.

25. Disclosing the existence of fictitious, non-existent entities is not disclosing a principal such that WJMA can avoid liability for its own orders and resulting debts.

26. In the event that WJMA did adequately disclose any principals, those disclosed principals are responsible for their own debts and WJMA remains jointly responsible for the debts of any undisclosed principals.

27. As of the filing of this suit, the following amounts are due and owing by WJMA and the other Defendants:

a. State Department Watch, LTD – **Total: \$234,786.61**

- i. American Minuteman Project - \$333.51
- ii. Tea Party Command - \$75,191.43
- iii. The Tea Party Campaign - \$36,892.17
- iv. The Tea Party - \$32,177.71
- v. Tea Party Guard - \$36,709.38
- vi. G.I. America - \$13,991.32
- vii. State Department Watch, LTD - \$39,491.09

b. Americans Care, Inc. – **Total: \$62,620.04**

- i. American Presidential Task Force - \$22,463.06
- ii. Senior Americans Association - \$311.05

- iii. The Sovereignty Project - \$39,845.93
- c. WJMA – **Total: \$297,441.59**
 - i. Stop Payment Fee - \$35.00
 - ii. Payment - (\$0.06)
 - iii. State Department Watch LTD - \$234,786.61
 - iv. Americans Care Inc. - \$62,620.04

Count One – Fraud
(William J. McCarthy & WJMA)

28. Action Mailing incorporates by reference all other averments in the Complaint.
29. William J. McCarthy made the orders and misrepresented that Action Mailing would be paid, without any present intent to make payments and knowing that neither he nor the other Defendants would make payment in full.
30. William J. McCarthy made those misrepresentations knowingly and maliciously to induce Action Mailing to provide products and services, and to purchase postage, to Action Mailing's detriment.
31. Action Mailing reasonably relied upon William J. McCarthy's misrepresentations in providing good and services, and purchasing postage, based on WJMA and Mr. McCarthy's payment of the initial orders, which appears to have been done in furtherance of lulling Action Mailing into accepting additional work despite payments being arrears.
32. As a direct and proximate result of the fraud of WJMA and William J. McCarthy, Action Mailing has incurred damages in the amount of \$297,441.59.

WHEREFORE, Action Mailing demands judgment in its favor and against WJMA and William J. McCarthy, jointly and severally, in the amount of \$297,441.59, for punitive damages of \$1,000,000.00, reasonable attorney's fees, and the costs of this action.

Count Two – Constructive Fraud
(William J. McCarthy & WJMA)

33. Action Mailing incorporates by reference all other averments in the Complaint.
34. William J. McCarthy made the orders and misrepresented that Action Mailing would be paid, without any present intent to make payments and knowing that neither he nor the other Defendants would make payment in full.
35. William J. McCarthy made those misrepresentations innocently and negligently to induce Action Mailing to provide products and services, and to purchase postage, to Action Mailing's detriment.
36. Action Mailing reasonably relied upon William J. McCarthy's misrepresentations in providing good and services, and purchasing postage, based on WJMA and Mr. McCarthy's payment of the initial orders, which appears to have been done in furtherance of lulling Action Mailing into accepting additional work despite payments being arrears.
37. As a direct and proximate result of the fraud of WJMA and William J. McCarthy, Action Mailing has incurred damages in the amount of \$297,441.59.

WHEREFORE, Action Mailing demands judgment in its favor and against WJMA and William J. McCarthy, jointly and severally, in the amount of \$297,441.59, for punitive damages of \$1,000,000.00, reasonable attorney's fees, and the costs of this action.

Count Three – Breach of Contract
(All Defendants)

38. Action Mailing incorporates by reference all other averments in the Complaint.
39. Action Mailing and the Defendants entered into contracts by which Action Mailing would prepare and mail direct mailings on behalf of the Defendants.

40. A material term of the contracts required the Defendants to compensate Action Mailing for the mailings and postage.

41. The Defendants have breached the contracts by failing to pay when demanded the amounts due under the contracts.

42. As a direct and proximate result of the aforementioned breaches, Action Mailing has incurred damages in the amount of \$297,441.59.

WHEREFORE, Action Mailing demands judgment in its favor and against the Defendants, jointly and severally, in the amount of \$297,441.59, along with reasonable attorney's fees and the costs of this action.

Count Four – Unjust Enrichment
(All Defendants)

43. Action Mailing incorporates by reference all other averments in the Complaint.

44. Action Mailing prepared and mailed direct mailings which conferred a benefit on the Defendants.

45. The Defendants requested that Action Mailing prepare and mail direct mailings on their behalf, knowing that they would be enriched by those mailings and knowing that Action Mailing expected to be paid.

46. The Defendants should have reasonably expected to be required to compensate Action Mailing for the work done on behalf of the Defendants.

47. Defendants have retained the benefit conferred by Action Mailing without payment of its value.

48. The Defendants have been unjustly enriched in the amount of \$297,441.59.

WHEREFORE, Action Mailing demands judgment in its favor and against the Defendants, jointly and severally, for restitution in the amount of \$297,441.59, along with reasonable attorney's fees and the costs of this action.

Count Five – Civil Conspiracy
(All Defendants)

49. Action Mailing incorporates by reference all other averments in the Complaint.
50. The Defendants agreed among themselves to make false representations to Action Mailing for the purpose of defrauding Action Mailing and obtaining direct mailing services without paying for those services.
51. In furtherance of the Defendants' agreement, Mr. McCarthy and WJMA made numerous misrepresentations to Action Mailing to induce action mailing to perform direct mailing services prior to being compensated for past services.
52. Action Mailing and the Defendants entered into contracts by which Action Mailing would prepare and mail direct mailings on behalf of the Defendants.
53. A material term of the contracts required the Defendants to compensate Action Mailing for the mailings and postage.
54. The Defendants have breached the contracts by failing to pay when demanded the amounts due under the contracts.
55. As a direct and proximate result of the aforementioned conspiracy, Action Mailing has incurred damages in the amount of \$297,441.59.

WHEREFORE, Action Mailing demands judgment in its favor and against the Defendants, jointly and severally, in the amount of \$297,441.59, along with reasonable attorney's fees and the costs of this action.

Count Six –Piercing the Corporate Veil
(William J. McCarthy)

56. Action Mailing incorporates by reference all other averments in the Complaint.
57. Mr. McCarthy repeatedly misrepresented to Action Mailing that *he* would get caught up on payments and that *he* would “get back on track”.
58. Mr. McCarthy effectively disregarded the existence of WJMA as an entity and inserted himself personally in the business dealings with Action Mailing. William J. McCarthy and Associates, as the name indicates, was nothing more than the alter ego of Mr. McCarthy.
59. Upon information and belief, neither WJMA, Mr. McCarthy, nor any of the other Defendants were financially solvent at the time that orders were placed. The Defendants did not have sufficient assets to pay or the goods and services they were ordering.
60. WJMA is nothing more than a shield against Mr. McCarthy’s creditors.
61. It would be fundamentally unfair to permit Mr. McCarthy to hide behind WJMA’s corporate status and avoid the debts that he incurred with Action Mailing.
62. WJMA’s corporate veil should be pierced such that Action Mailing can maintain its breach of contract and unjust enrichment actions directly against Mr. McCarthy.
63. Action Mailing has incurred damages in the amount of \$297,441.59 for breach of contract and/or is entitled to restitution against Mr. McCarthy in that amount.

WHEREFORE, Action Mailing demands judgment in its favor and against William J. McCarthy, individually, in the amount of \$297,441.59, along with reasonable attorney’s fees and the costs of this action.

Respectfully submitted,

McNamee, Hosea, Jernigan, Kim,
Greenan & Lynch, P.A.

/s/ Janet M. Nesse
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/s/ Aaron D. Neal
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