

**UNITED STATES DISTRICT
EASTERN DISTRICT OF NEW YORK**

**BARBARA MELI, STACEY CHAMPAGNE,
and TRACEY HASSEL,
individually & for all those similarly situated,**

Civil Case No.:19-cv-03807 (JMA-ARL)

Plaintiffs,

-against-

**SECOND AMENDED COMPLAINT
CLASS ACTION**

WAG LABS, INC.,

Defendants.

Jury Trial Demanded

Plaintiffs Barbara Meli, Stacey Champagne and Tracey Hassel individually and on behalf of a proposed Class (the “Class” or “Plaintiffs”), by and through their undersigned counsel, Susan Chana Lask, Esq., as and for her Complaint against Defendant Wag Labs, Inc. (“Wag”), hereby allege as follows:

NATURE OF THE ACTION

1. This a case of greed and profit trumping animal welfare as dogs nationwide, and in New York State, are being lost, stolen abused and killed while in the custody of Wag’s dog walkers. All of that as Wag has generated over \$360 Million Dollars in venture capital¹ to take advantage of a multi-Billion Dollar dog walking industry.²
2. In other words, Wag reaps huge profits in this new age of a mostly unregulated gig economy where lives are for profit, at a cost of silent deaths of the dogs who are meaningless by the standards of Wag’s technological business model. Otherwise, there would not be one death, nor would Wag seek non-disclosure agreements from the many pet owners whose dogs have been harmed, lost and killed by Wag walkers.
3. Since 2015, Wag operates an on-demand dog walking mobile app and website that consumers use to pay for a dog walker dispatched by Wag to their homes. They usually enter via a key or a door code on a lock provided by Wag, as often the home is vacant where the dog awaits the unknown walker.

¹ <https://www.vox.com/2018/1/30/16948506/wag-softbank-joshua-viner-ceo-hilary-schneider>

² <http://www.ibisworld.com/industry/dog-walking-services.html>

4. Consumers use this app and service this because they rely on Wag's app and web advertisements affirming that their dog walkers are "Trusted dog walkers" qualified to care for the safety of their pets, and licensed and bonded and vetted by Wag's "thorough background checks" (Exhibit A-Wag Website).
5. Those statements are deceptive, misleading, and incredible when Wag's business model relies on volume to make profits. Wag operates in 43 states and more than 100 cities nationwide³, using thousands of dog walkers they never personally met or interviewed.
6. Further deceptive claims by Wag include their taking over a "10 trillion steps":⁴



That calculates out to Wag's annual gross revenues since 2015 exceeding \$7 Billion Dollars:

10 trillion steps is equal to 10,000 billion steps, and every 10,000 steps is 5 miles, (<http://www.thewalkingsite.com/10000steps.html>), and that equals 5-billion miles. A 30-minute dog walk is normally about 1 mile (<https://www.rover.com/community/question/15366/approximately-how-far-is-the-average-distance-for-a-30-min-walk/>). That is about 5-billion walks since 2015 when Wag started. These figures increase each year by assuming from 2015 to 2019 as 0.25 + 0.50 + 1 + 1.5 + 1.75 billion for a typical VC-funded growth path. That results in 1.75 Billion walks at \$20 per walk, and that equals gross receipts of \$35B up to this year. Divide that by the past 5 years Wag has been operating and that is a \$7 Billion Dollar annual income.

7. If true, then **\$7 Billion Dollars** is ample money to personally interview, actually train their dog walkers, and fund competent background checks, which all are evidently not in place by virtue of the demonstrated criminal conduct of their walkers dispatched to consumer homes.
8. Indeed, Wag dog walkers regularly prove they are not properly trained and that trust is not a priority as they have stolen, lost, beaten and killed dogs. Then Wag offers pay-offs to silence

³ <https://www.linkedin.com/company/wag-labs-inc->

⁴ <https://www.facebook.com/WagWalking/photos/a.1482861178654340/2173605422913242/?type=3&theater>

the owners or they send actress Olivia Munn to meet and greet the distraught pet owners (<https://pagesix.com/2019/06/14/olivia-munn-dispatched-by-dog-walking-app-wag-after-alleged-dognapping/>).

9. This case seeks to hold Wag accountable and change the way Wag does business by adding appropriate safety standards for the pets and changing the company's (a) Processes of recruitment, training, certification, application functionality, and pet tracking, (b) Management by replacing Wag's "Trust & Safety" program with the guidance of an external auditor and establish ISO 9001/ Six-Sigma standards, (c) Oversight by removing a current board member and replacing with a nationally recognized expert on animal welfare and safety, and (c) Regulation by using only licensed and bonded dog walkers who pass a rigorous safety and background check and an Independent Audit. Injunctive relief is requested pending the above changes.
10. A transformed Wag will be a model for similar apps and regulation at the city, state and federal levels.

JURISDICTION AND VENUE

11. The jurisdiction of this action arises under diversity of citizenship, which is codified pursuant to 28 U.S.C. §1332, given that Plaintiffs are a citizens and residents of New York in Nassau County, and Defendant is incorporated in Delaware with its principal office in California, and this action involves an amount in controversy in excess of \$75,000, exclusive of interest and costs.
12. Subject matter jurisdiction over this action is established pursuant to the Class Action Fairness Act, 28 U.S.C. §1332(d). The aggregated claims of the individual class members exceed the sum or value of \$5,000,000, exclusive of interests and costs. Finally, 28 U.S.C. §§1332 and 1367 permits the supplemental state claims alleged herein.
13. Venue is proper in the Eastern District of New York pursuant to 28 U.S.C. §1391 and 18 U.S.C. §1965(a) because Defendant systematically conducts and transacts substantial business in this district on a regular and daily basis and the causes of action occurred here.

PARTIES

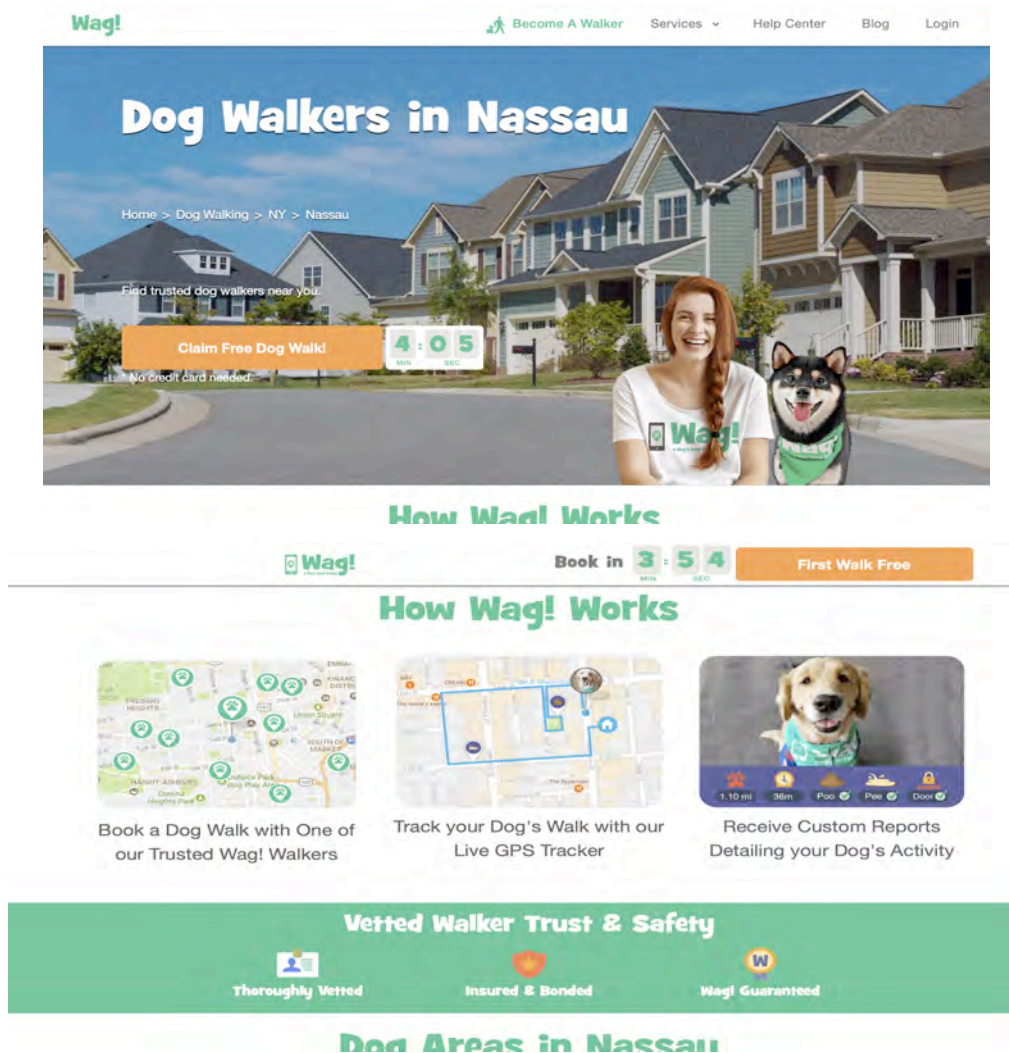
14. At all times material herein, Plaintiffs Barbara Meli, Stacey Champagne and Tracey Hassel are and were residents and citizens of the State of New York in Nassau County, Queens County and New York County, respectively.

15. At all times alleged herein, Defendant Wag was and is a Delaware corporation, incorporated as a foreign business corporation in New York State, with a principal office at 8560 West Sunset Blvd., 100, West Hollywood, California 90069. Defendant operates nationwide under the name “Wag” and conducts substantial business in this District, where New York consumers use the Wag dog-walking app at fees averaging \$20-40.00 an hour paid to Wag. Also, Defendant Wag pays taxes to the City of New York.

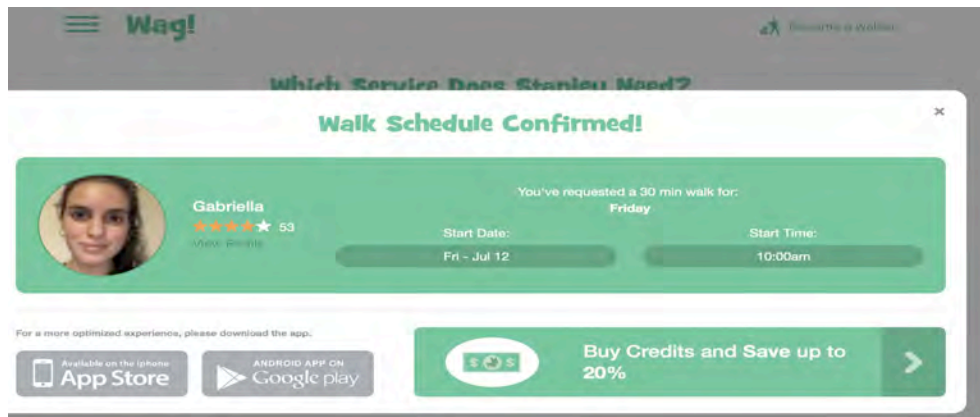
FACTS

Barbara Meli

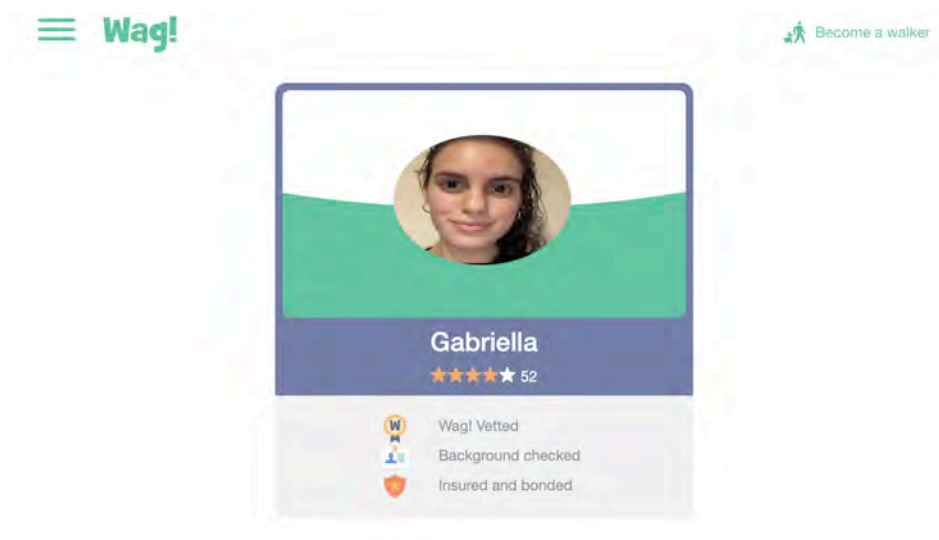
16. Plaintiff Barbara Meli has three dogs and was interested in dog walking services for July, 2019. On June 29, 2019, she used the Wag dog walking app that advertised dog walkers in Nassau County, where she lived, as “trusted dog walkers”, “thoroughly investigated”, “insured and bonded” and “Wag Guaranteed”, as shown below:



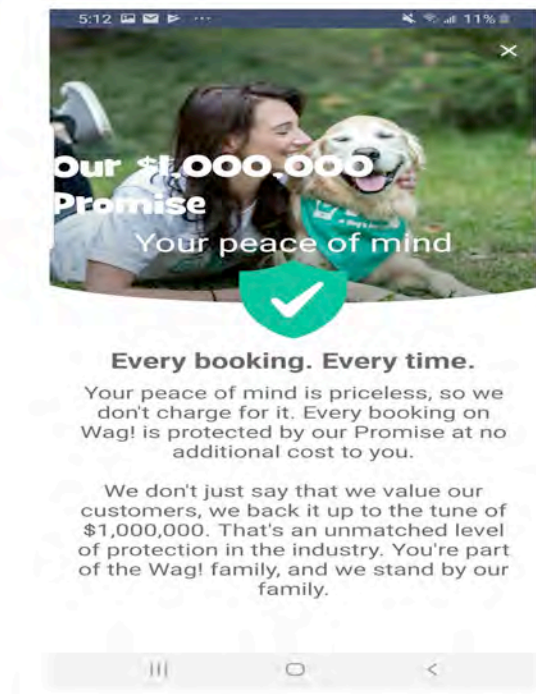
17. Plaintiff provided her email address and a password to open an account for Wag’s dog walking services. Next, the app offered her a free dog walk that she scheduled for July 12, and the app responded by assigning a dog walker named “Gabriella” with a four star rating:



18. There was no other information for Gabriella other than a “View Profile” link. Upon reviewing the “View Profile” link, there is still no information about this person’s last name, who she is or where she is from other than their bald statements that she is “Wag! Vetted”, “Background Checked” and “Insured and bonded”:



19. Wag's app even offers a "priceless" One Million Dollar promise to back-up their claims:



20. However, that too is deceptive and misleading as Wag makes it appear that they are so trustworthy that they promise a million dollars of theirs is on the line if anything happens.
21. Plaintiff Barbara Meli did some research on the web and discovered the beginning of a horrendous history of Wag dog killings, thefts and beatings and Wag dog walkers committing other crimes in consumer homes. None of those stories are published on Wag's app or website.
22. To protect her interests and her dogs, Plaintiff Meli retained legal counsel at a cost of \$750.00 to review Wag's website claims and terms to inform her of her rights. To her surprise, her counsel explained that Wag's Terms of Service contradicts everything they advertise by, among other things, expressly excluding liability by Wag, disclaims any relationship with its walkers advertised as "trusted" and insured, among its other claims stated herein, and once a consumer uses Wag's services the consumer actually loses all intellectual property rights to any pictures their walkers take of their dogs (**Exhibit B**).
23. In other words, those intellectual property rights unwittingly waived means a pet owner's cute little dog's picture taken by Wag's walker is now owned by Wag and can be sold by them--- ending up on a can of dog food that makes Wag and everyone else millions of dollars except the pet owner.

24. Plaintiff Meli decided to pursue this action to protect her interests as a New York State consumer, and those of the consuming public, from the false and misleading claims advertised by Wag. To do so, she paid an additional filing fee of \$400 and legal fees.

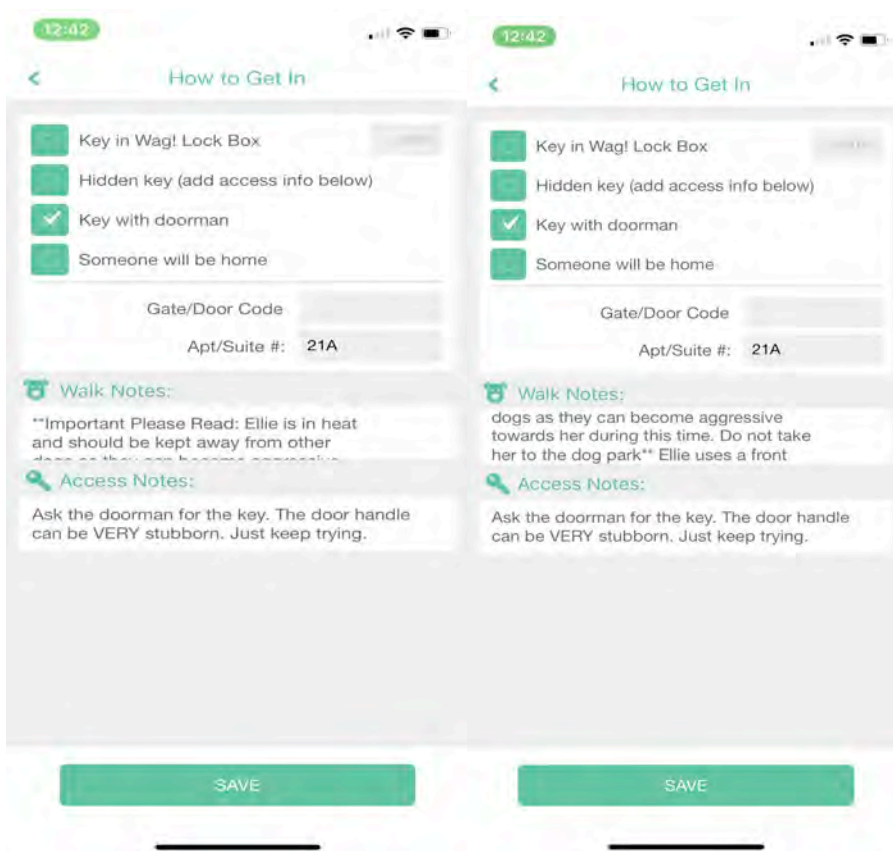
Stacey Champagne

25. Plaintiff Stacey Champagne also read the Wag app and website representations of Wag’s dog walkers being trusted, investigated, insured and bonded and presenting the image that Wag trains and investigates its walkers and they appeared to be licensed as Wag represents they are also bonded.

26. Relying on Wag’s advertisements, on July 10, 2019, Plaintiff Stacey Champagne scheduled a walk for her Golden Retriever puppy named Ellie-seen in the picture below:



27. Plaintiff Champagne was explicit in her instructions on the Wag app that Ellie was “in heat and should be kept away from other dogs as they can become aggressive towards her during this time. Do not take her to the dog park,” as the below instructions app show:



28. After Ellie’s walk, Plaintiff Champagne received the following report from the Wag dog walker stating that he did exactly the opposite of what he was instructed not to do:

“Ellie... got to play around with a bunch of other dogs on our walk. I brought her down to Court Square and at one point she was surrounded by five male dogs who wouldn’t stop sniffing her.”



29. Plaintiff Champagne was extremely distressed to see that report because Ellie was not allowed to be near other dogs while she was in heat as she could easily get impregnated, yet the walker takes her to a park where he lets her get “surrounded by five male dogs”. This report was beyond negligent-it was malicious.
30. Now Plaintiff Champagne live sin fear of whether Ellie was impregnated by any of those five male dogs as there are dangers for a dog being pregnant in its first heat cycle. In feat, Wag’s blog explains the increased risk of spaying a dog in heat (**Exhibit C**), yet it’s purported trained and trusted dog walker completely ignored Ellie’s situation and Wag’s own articles regarding the dangers of a dog in heat, and the dog walker put Ellie in danger by taking her to a park and let five males surround her.
31. As a direct result of Wag and its dog walker’s misconduct and ineptitude of not even being trained properly in dog handling and walking, Plaintiff Champagne is left to gamble with a "which is worse" situation -- either she waits to see if Ellie is pregnant and endanger her with the pregnancy, or she takes her to get spayed and endanger her with the risk of complications such as excessive blood loss.
32. Wag’s false advertising and ineptitude has interfered with Plaintiff Champagne’s option to raise her dog according to the plan of care she had decided for Ellie, which included getting her spayed 3 months after the end of her first heat cycle. That plan is what scientific journal studies about golden retrievers recommend as read by Plaintiff. Upon information and belief, studies inform that it can greatly affect the dog’s mortality, risk of disease and cancer risk, among other health issues, if pregnancy and/or spaying occurs before the first heat cycle.
33. Wag’s false advertising and ineptitude robbed Plaintiff of her ability to make the best decision for her dog. It will have lifelong ramifications on her pet that can affect Ellie’s quality of life.

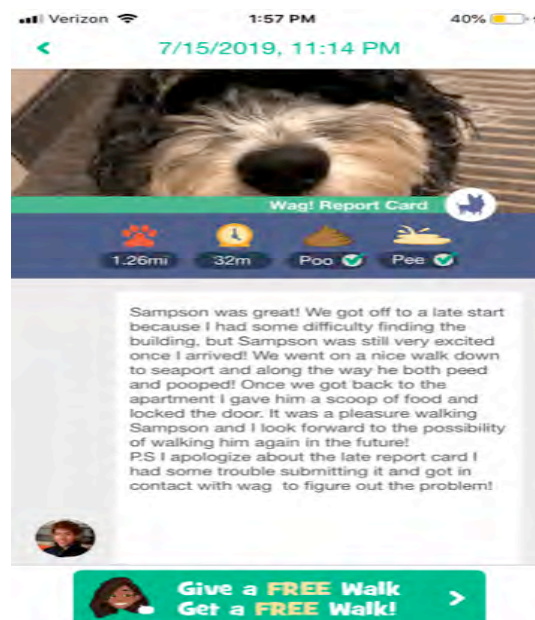
Tracey Hassel

34. On July 15, 2019, at about 10 p.m., Defendant Wag dispatched a dog walker named Jason to Plaintiff Tracey Hassel's home to take little Samson, a senior nine year-old Cockapoo, to pee and poop outside.

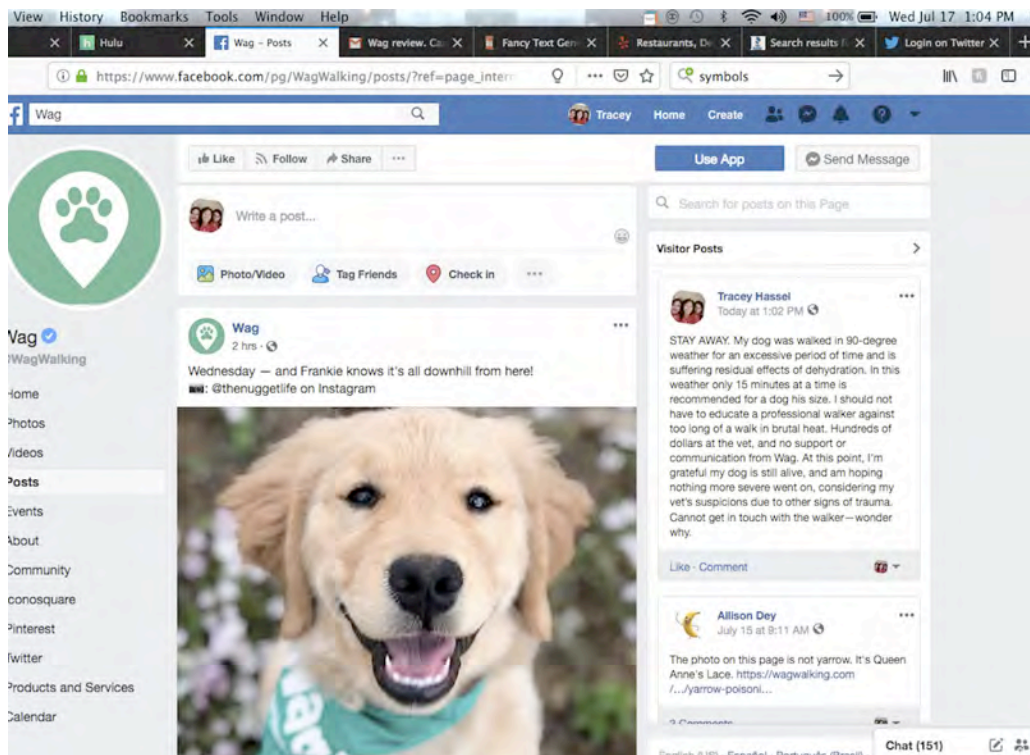


35. That day was the week of the New York City heat wave where temperatures were in the 90s and humidity was unbearable, even at night. It would be obvious to anyone, particularly a trained dog walker as advertised by Wag, that you do not walk a small senior dog in a heat wave for any period of time; rather, you let the dog do its business outside and bring it home immediately.

36. Instead, Jason walked senior Samson 1.26 miles to the Seaport in the heat wave, as his report states:



37. When Plaintiff Hassel returned home some four hours later that evening, little Samson was laying in the hallway, whimpering and shaking and not moving. Plaintiff called an emergency vet and was directed to immediately put him in a bath and feed him pedia-lite ice cubes as his symptoms were that of dehydration,
38. Since the incident, Samson he could not walk or move and was taken to an emergency vet by July 17th, who informed that Samson had dehydration and other trauma that had immobilized him.
39. To this day, Samson still suffers. He is not the same dog before Wag's walker Jason handled him. Samson is scared to walk around his own house, he will not play and he appears to have been abused by the walker by his fear to be himself in his own home.
40. Wag refuses to inform Plaintiff Hassel about what happened on that walk, will not provide the identification of Jason the walker, including his last name, will not provide his experience level or whether anyone else complained about him.
41. Interestingly, once Plaintiff Hassel complained about this incident on Face Book and Twitter, Wag has locked Plaintiff Hassel out from accessing their walker profiles and no one from Wag will give her any information about what happened:



42. Plaintiff Hassel paid \$166.75 in vet bills for Samson, \$14.75 for a taxi to get Samson to the vet, and paid Wag \$20 and a \$4 cash tip to the walker- all paid before she returned home to discover Wag's walker abused Samson.

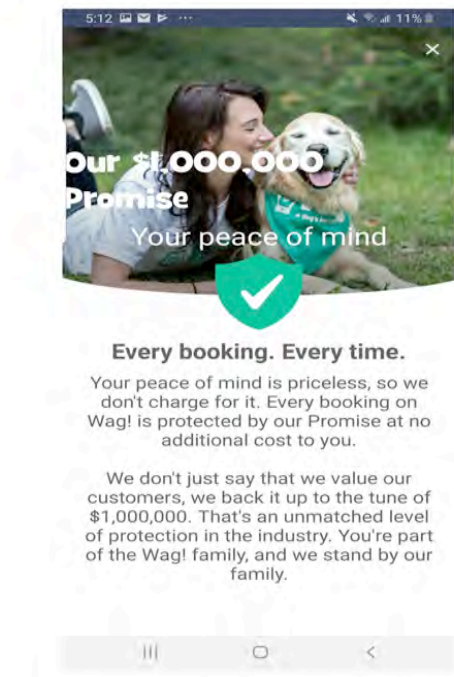
WAG'S BACKGROUND

43. In 2015, Wag commenced operating an on-demand dog walking mobile app and website that consumers use to pay for a dog walker that Wag dispatches to their vacant homes. They enter via a key or a door code.
44. Wag's advertisements at www.wagwalking.com are deceptive and misleading by claiming their dog walkers are "Trusted dog walkers" qualified to care for the safety of their pets and who are licensed and bonded and vetted by Wag's "thorough background checks".
45. Those statements are incredible and unverifiable considering the enormity of their operation, volume of consumers and dog walkers they handle nationwide, and the serious problems of deaths and thefts of the pets while under Wag's care that Wag many times pays-off consumers for their silence.
46. Regarding their claim of licensed and bonded dog-walkers and sitters alone, Wag's profiles of its dog-walkers and sitters nowhere display a license number or bond information for them. In fact, licensing and bonding is patently false because in New York City there is no law requiring a license or bond for dog walkers, so that cannot be true for New York City dog walkers are licensed and bonded. Yet, New York City consumers are misled to believe, and can reasonably believe, that is what they are paying for.
47. Wag operates in 43 states and more than 100 cities nationwide, making enormous profits from advertising nationwide, but failing to apply those profits to the safety of the pets by personally interviewing their walkers and sitters, proper training and background checks.
48. According to Wag's claims of taking over a "10 trillion steps", their gross revenues since 2015 have exceeded \$7 Billion Dollars -calculated as follows:

10 trillion steps is equal to 10,000 billion steps, and every 10,000 steps is 5 miles, (<http://www.thewalkingsite.com/10000steps.html>), and that equals 5-billion miles. A 30-minute dog walk is normally about 1 mile (<https://www.rover.com/community/question/15366/approximately-how-far-is-the-average-distance-for-a-30-min-walk/>). That is about 5-billion walks since 2015 when Wag started. These figures increase each year by assuming from 2015 to 2019 as 0.25 + 0.50 + 1 + 1.5 + 1.75 billion for a typical VC-funded growth path. That results in 1.75 Billion walks at \$20 per walk, and that equals gross receipts of \$35B up to this year. Divide that by the past 5 years Wag has been operating and that is a \$7 Billion Dollar annual income.

WAG’S FALSE ADVERTISING CONVINCES CONSUMERS THEIR SAFE

49. To convince consumers they are safe, Wag offers a “priceless” One Million Dollar promise of “trusted dog walkers” qualified to care for the safety of their pets:



50. That is deceptive and misleading as Wag makes it appear that they are so trustworthy that they promise a million dollars of theirs is on the line if anything happens.
51. In complete contradiction to their “priceless guarantee”, Wag’s Terms of Service contradict everything they advertise by, among other things, expressly excluding liability by Wag, disclaiming any relationship with its walkers advertised as “trusted” and insured, among its other claims stated herein, and Wag takes away all intellectual property rights to any pictures their walkers take of consumers’ dogs (**Exhibit B**).
52. In other words, those intellectual property rights unwittingly waived means a pet owner’s cute little dog’s picture taken by Wag’s walker is now owned by Wag and can be sold by them---ending up on a can of dog food that makes Wag and everyone else millions of dollars except the pet owner.
53. Wag’s advertisements at www.wagwalking.com are deceptive and misleading by claiming their dog walkers are “Trusted dog walkers” qualified to care for the safety of their pets and who are licensed and bonded and vetted by Wag’s “thorough background checks”.

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55. Regarding their claim of licensed and bonded dog-walkers and sitters alone, Wag's profiles of its dog-walkers and sitters nowhere display a license number or bond information for them. In fact, in New York City there is no law requiring a license or bond for dog walkers, so that cannot be true for New York City dog walkers. Yet, New York City consumers are misled to believe, and can reasonably believe, that is what they are paying for and getting.

WAG'S FALSE CLAIMS & ADVERTISEMENTS OF SAFETY & INSURANCE

56. Wag publicly claims they "use a robust vetting process that includes an application and verification process, a third-party background check, and online tests covering dog safety and handling knowledge that each applicant must pass to be approved to work on our platform." Wag claims publicly that they use an "extensive third-party background screening, two online tests for dog safety and care and that many of their employees were "dog walkers, vet techs, shelter volunteers, and animal-welfare advocates".
57. They claim only about 10% of the applicants pass their test, and that a "safety team" investigates and resolves issues (<https://www.outsideonline.com/2345986/cautionary-tale-about-dog-walking-apps>).
58. Wag's website reiterates and advertises those claims of safety and insurance as having "trusted dog walkers", "Vetted dog walkers", "pre-screened and insured" dog walkers who are "background checked and insured" and they use a "thorough vetting process-which includes dog handling, safety tests, phone screening, and background checks - many of our walkers have worked as veterinary technicians, shelter volunteers..."**(Exh A)**.
59. Wag convinces the public that its methods are reliable and safe by affirming on its website in an unconditional promise that "Our \$1,000,000 Promise, Your peace of mind" and continues to baldly and deceptively promise that every booking is protected at no additional cost "to the tune of \$1,000,000" (see above). The net effect is that consumers believe Wag is so trustworthy and reliable that they are willing to pay \$1,000,000 if something goes wrong.

60. To Wag's discredit, their website and app does not list any license or bond number on the profiles of their dog walkers and pet sitters. Also, their "priceless" \$1 Million Dollars for peace of mine is wholly contradicted by their Terms of Service that Wag is not responsible for anything, that use of Wag means consumers waive any claims against Wag, they limit any claim to \$500.00 (<https://wagwalking.com/terms> , **Exh. B**).
61. Furthermore, even in cases of the death of the dogs in their charge, the evidence of Wag's repeated pattern of behavior is that they engage in cover-up internally and attempt to gag consumers from sharing the true course of events to media or other consumers. **That behavior denies the consuming public informed consent before they pay for and use Wag's services.**

Wag's Hidden Terms of Service Has Consumers Waive All of Their Rights

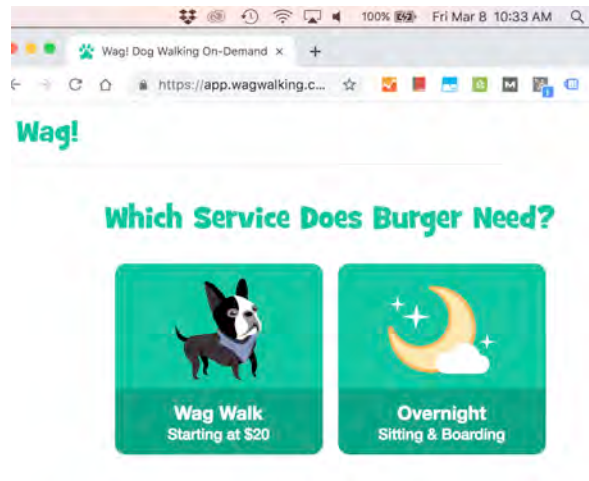
62. Wag's thirteen page Terms of Service ("TOS") agreement is not easily accessible nor prominent, but hidden away at the very bottom of their web page as one of many links. It is deliberately hidden because it is not meant to be read as it contradicts everything that Wag advertises by a number of improper waivers and false representations (Exhibit B and see <https://wagwalking.com/terms>).
63. At page 1, the TOS says WAG has "no control" over the conduct of it dog walkers and at page 8, under the "Limitation of Liability", Wag disclaims all liability for anything that occurs by the "Pet Care Provider" even if Wag had notice before the damages occurred and limits its liability to \$500. However, those terms contradict their web advertising and affirming in numerous articles, as above stated, that they train their dog walkers, insure they are licensed and bonded and conduct extensive background searches on them.
64. The TOS, at page 3, confirms that Wag takes an unidentified fee for itself from the payments consumers make through its app, and then Wag pays the dog walkers. Conspicuously absent is exactly what fees Wag takes from the on-line payments consumers make to Wag through its app and, again, why Wag takes money then pays their dog walkers but disclaims any relationship with them or liability because of them.
65. The TOS page 4 waives the consumer's privacy rights as Wag dog walkers can take pictures, videos and other recordings of the consumer's dog that Wag can use in its "promotional and marketing activities". Hence, making more money off of the consumer, unbeknownst to the consumer that their paying Wag for a service while Wag profits from the consumer every which way it can once it gets into the consumer's home.

66. At page 6, the TOS confirms that “You agree that the licenses you grant are royalty-free, perpetual, sublicenseable, irrevocable, and worldwide.” Otherwise meaning that Wag can further profit from pictures and recordings of consumers’ dogs without paying any compensation to the consumer for what is actually the consumer’s property.
67. It is inconceivable that anyone would just give up their rights to any profit made from their dog- but the hidden TOS terms do just that, unbeknownst to the consumer. The TOS at page 7, under the heading “Third Party Interactions”, explains that Wag relies on third party advertising to subsidize its services and that consumers who do not agree to receive such advertising will be charged a higher fee for services.
68. It also states that consumer profiles of how they use the services will be compiled and released anonymously, but does not inform where they are being released and whether it is for a fee. So Wag can penalize consumers by charging a higher fee without the consumer knowing that and they also take that same penalized consumer’s private information and likely profits from that too.
69. The consumer thinks they are getting a deal for a half hour walk at a mere \$20 when in fact their dog’s picture becomes the property of Wag that can be sold at profits that the consumer waives its property rights to per the TOS, and gives up so many other rights
70. Wag knows no consumer is reading their 13 page TOS, nor would they completely understand its legal jargon and consequences. Wag has a history of neglect, abuse, thefts of dogs and killings of dogs while in the custody of Wag dog walkers dispatched by Wag to consumers using their app. These walkers are nothing that Wag represents, and in fact they are callous and uncaring, and definitely not trained as the below examples of horrific dog walkers from Wag show.

DOGS KILLED, STOLEN AND LOST ON WAG’S WATCH

71. From what we know from the New York Post and other publications, Wag lost eleven dogs from 2015 up to March, 2018 that we know of, and several more as of June, 2019 are dead (<https://nypost.com/2018/05/14/embattled-dog-walking-app-loses-yet-another-dog/> ; <https://nypost.com/2018/03/16/lawmakers-look-to-muzzle-embattled-dog-walking-app/>)
72. The actual total of lost, dead and abused dogs surely exceeds the number stated above due to the suppressive effect of Wag’s standard operating procedure of pressing distraught pet owners to accept minor settlements in return for aggressive confidentiality agreements.

73. For instance, it was unknown until now of the recent horrific incident of a Wag walker victimizing a senior Frenchie named Burger, on a walk that was nothing short of depraved by the walker and hell for Burger, leading to his death because the dog walker ignored instructions just as what occurred in Plaintiff Stacey Champagne's case.
74. Burger's demise started on March 3, 2019 when Wag dispatched dog walker Gabrielle Brientenbach to a home in New York City to walk Burger pursuant to its app:



75. Burger's profile on Wag stated that he was 10 years old and walks very slow. Yet New York City store video footage shows Wag walker Gabrielle looking on her cell phone, not watching Burger, and leaving him behind the entire walk, in what was nothing but her gross and inhuman behavior to ignore an innocent senior dog who trusted the dog walker:



76. The callous dog walker, Gabrielle, left little Burger some 15 feet behind her in the cross-walk of busy New York City intersections while she walked ahead, concerned for her own safety, with headphones on and looking down at her phone.

That tiny black spot is Burger in a cross-walk alone



77. Other videos show Burger being victimized as he was almost struck by a bicycle and a car, until finally he was hit and killed by an SUV at the intersection of 8th Avenue and 26th Street in New York City because the dog walker left him behind as she crossed the street, with no regard for little Burger's safety.

78. The weight of the SUV caused Burger's leash to snap. People who witnessed this horrific incident ran to Burger's help, while others collapsed in tears (image below):

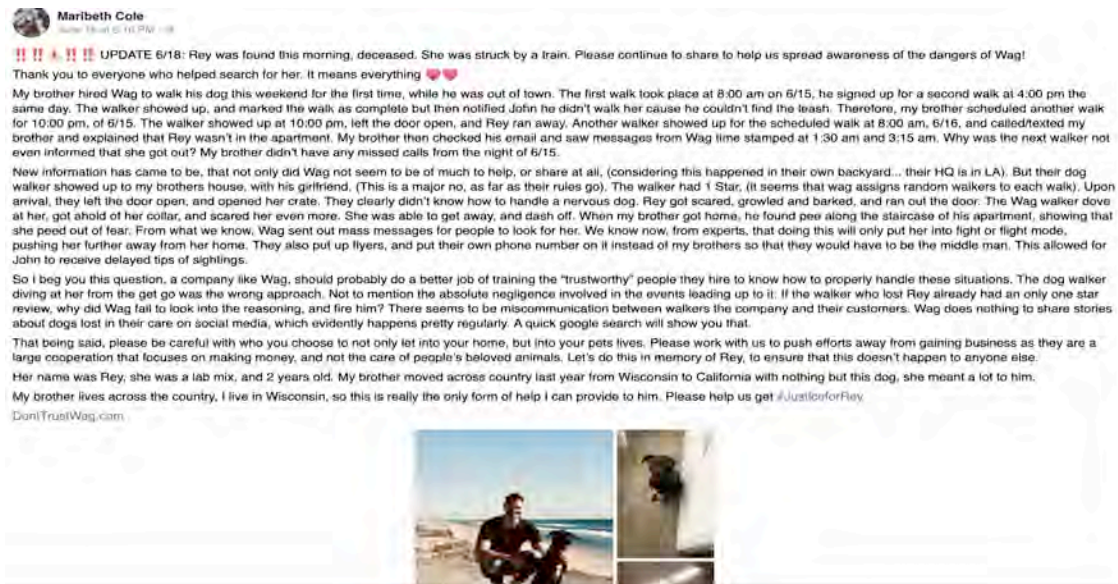


79. Witnesses inform that while Burger lied in the street, blood dripping from his mouth and struggling to stay alive, the inhumane Wag dog walker, Gabrielle, did not come to his rescue but stood there concerned about losing her job with Wag.

80. Upon information and belief, Wag commenced an elaborate cover-up by removing all evidence from its app of Burger’s walk and refused any information to Burger’s parent
81. Upon information and belief, Wag deleted all social media comments made by Burger’s parent about Wag’s conduct in covering up Burger’s death, and Wag’s insurance carrier, AIG, demanded that Burger’s parent “cease communication” about the incident.
82. Just 48 hours after the fatal incident, Wag dog walker Gabrielle staged a photo-shoot at the intersection perpendicular to where Burger was run over and killed, all smiles:

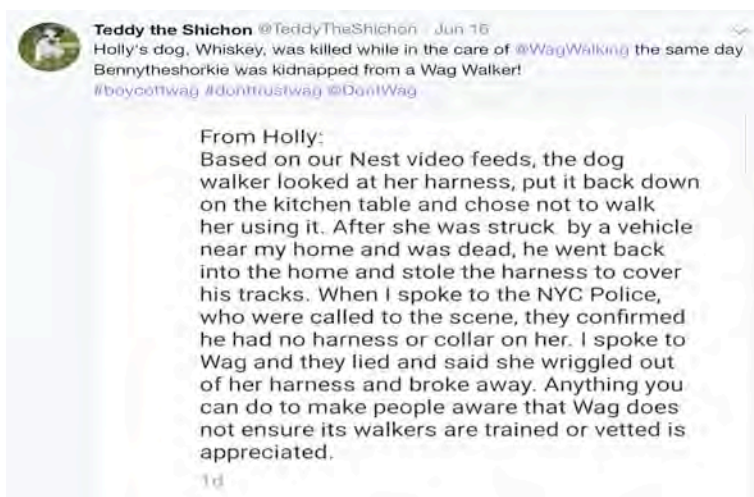


83. On June 18, 2019, Rey the dog was struck and killed by a train when a Wag walker lost him during a walk. The grief stricken family shared their horror story:⁸



⁸ https://m.facebook.com/story.php?story_fbid=1157874567754510&id=100005959330590

84. Temporal to Rey's incident, on June 13, 2019, a little Yorkshire terrier named Whiskey was killed and her crystal necklace stolen off her dead body and other property stolen from Whiskey's parents' home by Wag's dog walker in New York City—all caught on video tape. Whiskey's distraught parents published their story on social media:



85. That same week, a Wag dog walker stole Benny the dog in New York City (<https://newyork.cbslocal.com/2019/06/14/nyc-dog-found-stolen-wag-app/>). Wag sent actress Olivia Munn to quiet the bad press by meeting Benny's parents (<https://pagesix.com/2019/06/15/olivia-munn-thanks-nypd-for-tracking-down-dog-allegedly-stolen-by-wag-walker/>). Later that week, the NYPD found Benny at the Wag dog walker's home.
86. Further examples of Wag's ineptitude are legion. Duckie the dog, from Brooklyn, was walked by a Wag dog walker who failed to leash the dog, ending in Duckie being struck and killed by a car (<https://abc7ny.com/pets/brooklyn-women-blame-wag-app-for-the-death-of-their-dog-duckie/1106715/>). Buddy the dog from Long Island disappeared after a Wag dog walker took Buddy, at which point Wag tried to buy the owner's silence to avoid unfavorable media coverage (<https://www.bloomberg.com/news/articles/2017-10-16/wag-the-uber-for-dog-walking-is-drawing-uber-like-scrutiny>). In Houston, Winnie the dog was killed by a car while with a Wag dog walker who later tried to conceal her death; and Wag offered to pay for Winnie's cremation and send her dead paw print if the owner signed a confidentiality agreement (<https://www.cbsnews.com/news/houston-texas-nick->

[sara-moore-winnie-dog-died-dog-walker-wag-app/](#)). Temporal to Winnie’s death, a Wag dog walker beat Ollie the dog in Danville California. Id.

87. The above are some of the deaths and thefts we know about; however, because Wag buys the silence of consumers with money and confidentiality agreements then there could be 100 or a thousand more deaths and thefts that discovery in this action should reveal.

WAG’S FALSE CLAIMS & ADVERTISEMENTS OF SAFETY & INSURANCE

88. Wag publicly claims they “use a robust vetting process that includes an application and verification process, a third-party background check, and online tests covering dog safety and handling knowledge that each applicant must pass to be approved to work on our platform.” Wag claims publicly that they use an “extensive third-party background screening, two online tests for dog safety and care and that many of their employees were “dog walkers, vet techs, shelter volunteers, and animal-welfare advocates”.
89. They claim only about 10% of the applicants pass their test, and that a “safety team” investigates and resolves issues (<https://www.outsideonline.com/2345986/cautionary-tale-about-dog-walking-apps>).
90. Wag’s website reiterates and advertises those claims of safety and insurance as having “trusted dog walkers”, “Vetted dog walkers”, “pre-screened and insured” dog walkers who are “background checked and insured” and they use a “thorough vetting process-which includes dog handling, safety tests, phone screening, and background checks - many of our walkers have worked as veterinary technicians, shelter volunteers...”(**Exhibit A**-incorporated here as if fully set forth).
91. Wag convinces the public that its methods are reliable and safe by affirming on its website in an unconditional promise that “Our \$1,000,000 Promise, Your peace of mind” and continues to baldly and deceptively promise that every booking is protected at no additional cost “to the tune of \$1,000,000” (see above). The net effect is that consumers believe Wag is so trustworthy and reliable that they are willing to pay \$1,000,000 if something goes wrong.
92. To Wag’s discredit, their website and app does not list any license or bond number on the profiles of their dog walkers and pet sitters. Also, their “priceless” \$1 Million Dollars for peace of mine is wholly contradicted by their Terms of Service that Wag is not responsible

for anything, that use of Wag means consumers waive any claims against Wag, they limit any claim to \$500.00 (<https://wagwalking.com/terms> , **Exh. B**).

93. Furthermore, even in cases of the death of the dogs in their charge, the evidence of Wag’s repeated pattern of behavior is that they engage in cover-up internally and attempt to gag consumers from sharing the true course of events to media or other consumers. **That behavior denies the consuming public informed consent before they pay for and use Wag’s services.**

Wag’s Hidden Terms of Service Has Consumers Waive All of Their Rights

94. Wag’s thirteen page Terms of Service (“TOS”) agreement is not easily accessible nor prominent, but hidden away at the very bottom of the page as one of many links. It is deliberately hidden because it is not meant to be read as it contradicts everything that Wag advertises by a number of improper waivers and false representations (Exhibit B and see <https://wagwalking.com/terms>).
95. At page 1, the TOS says WAG has “no control” over the conduct of its dog walkers and at page 8, under the “Limitation of Liability”, Wag disclaims all liability for anything that occurs by the “Pet Care Provider” even if Wag had notice before the damages occurred and limits its liability to \$500. However, those terms contradict their web advertising and affirming in numerous articles, as above stated, that they train their dog walkers, insure they are licensed and bonded and conduct extensive background searches on them.
96. The TOS, at page 3, confirms that Wag takes an unidentified fee for itself from the payments consumers make through its app, and then Wag pays the dog walkers. Conspicuously absent is exactly what fees Wag takes from the on-line payments consumers make to Wag through its app and, again, why Wag takes money then pays their dog walkers but disclaims any relationship with them or liability because of them.
97. The TOS page 4 waives the consumer’s privacy rights as Wag dog walkers can take pictures, videos and other recordings of the consumer’s dog that Wag can use in its “promotional and marketing activities”. Hence, making more money off of the consumer, unbeknownst to the consumer that their paying Wag for a service while Wag profits from the consumer every which way it can once it gets into the consumer’s home.
98. At page 6, the TOS confirms that “You agree that the licenses you grant are royalty-free, perpetual, sublicenseable, irrevocable, and worldwide.” Otherwise meaning that Wag can further profit from pictures and recordings of consumers’ dogs without paying any

compensation to the consumer for what is actually the consumer's property. It is inconceivable that anyone would just give up their rights to any profit made from their dog- but the hidden TOS terms do just that, unbeknownst to the consumer.

99. The TOS at page 7, under the heading "Third Party Interactions", explains that Wag relies on third party advertising to subsidize its services and that consumers who do not agree to receive such advertising will be charged a higher fee for services. It also states that consumer profiles of how they use the services will be compiled and released anonymously, but does not inform where they are being released and whether it is for a fee. Thus, Wag can penalize consumers by charging a higher fee without the consumer knowing that and they also take that same penalized consumer's private information and likely profits from that too.
100. Overall, the consumer thinks they are getting a deal for a half hour walk at a mere \$20 when in fact their dog's picture becomes the property of Wag that can be sold to profits that the consumer waives its property rights to per the TOS, and gives up so many other rights that Wag knows no consumer is reading their 13 page TOS, nor would they completely understand its legal jargon and consequences.

CLASS ACTION ALLEGATIONS

101. Plaintiffs seek to redress in their individual capacities and on behalf of a Class consisting of similarly situated consumers. Pursuant to Fed. R. Civ. P. 23(a) and (b)(2) or (b)(3), Plaintiffs seek Class certification of a Class defined as follows:

"From June 18, 2016 to date, all persons nationwide, including New York State, who paid money for dog walking or pet sitting services through Wag's mobile app and/or website and had a dog walker or pet sitter come to their home and walk their dog or sit for the pet owners."

102. Plaintiffs reserve the right to amend or modify the Class definition with greater specificity or subclass divisions after discovery.
103. Excluded from the Class are: (i) any judge presiding over this action and their family members; (ii) Wag, its subsidiaries, successors, or any entity in which Wag or its parent

companies may have a controlling interest, Wag's current or former employees, officers, or directors; (iii) persons that properly exclude themselves from the Class; and (iv) the legal representatives, successors, or assignees of any properly excluded persons.

NUMEROSITY

104. The potential Class members as defined are so numerous and diversely located throughout the U.S. that joinder of all Class members is impracticable. While the exact number of Class members is unknown because such information is in the exclusive control of Wag, upon information and belief, the Class is greater than 100 individuals.

COMMON QUESTIONS OF LAW AND FACT

105. There are questions of law and fact common to Plaintiffs and the Class that predominate over any questions affecting only individual Class members. These common questions of law and fact include, inter alia, whether:
- a) Wag violated New York's General Business Law §349;
 - b) Wag violated New York's General Business Law §350;
 - c) Wag engaged in, and continues to engage in, unlawful, fraudulent, and unfair practices that are substantially likely to mislead the public, and therefore members of the Class;
 - d) Wag has engaged in and continues to engage in unlawful, fraudulent, and unfair practices, including by representing to the public, and Class members, that it provides trustworthy, licensed and bonded, insured and background checked dog walkers;
 - e) Wag fraudulently and unfairly misrepresents to Class members that it had the ability to and would in fact ensure that its dog walkers were safe and properly trained to handle consumers' dogs;
 - f) Wag adequately trains, supervises, and properly background checks each and every one of its dog walkers;
 - g) Wag's false and misleading statements concerning its services were likely to deceive the reasonable consumer;
 - h) Wag's TOS was hidden and/or not prominently displayed so consumers would be locked into terms they never read nor would agree to but for the TOS being hidden;

- i) Class members are entitled to actual and/or statutory damages and, if so, the appropriate amount of damages due the class; and
- j) Declaratory and injunctive relief is available in this action.

TYPICALITY

106. Plaintiffs' claims are typical of the claims of the Class. Plaintiffs and Class members were exposed and subjected to Wag's uniform practices and policies surrounding its representations to the public that it has safety requirements in place, including trained, licensed and bonded dog walkers to protect their pets that has resulted in, and will continue to cause, irreparable harm but for immediate action by the Court.

ADEQUACY OF REPRESENTATION

107. Plaintiff will fairly and adequately assert and protect the interests of the class and have retained competent and experienced counsel in both federal and state class action litigation, who has been appointed class counsel before, including having experience applicable to this consumer fraud case.

PREDOMINANCE

108. With respect to the Class, questions common to the class predominate over those that only affect individual owners. This case involves Defendant's deceptive practice in advertising its services to the consuming public to get them to pay for what was not true, and will primarily be predicated upon the jury's evaluation of Defendant's sales, advertising, practices and conduct in regards to its services provided.

SUPERIORITY

109. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because joinder of all of the Class members is impracticable. Furthermore, the adjudication of this controversy through a class action will avoid the possibility of inconsistent and potentially conflicting adjudication of the asserted claims. There will be no difficulty in the management of this action as a class action.

INJUNCTIVE AND DECLARATORY RELIEF.

110. Wag's practices are uniform as to all Class members. Wag has acted or refused to act on grounds that apply generally to the Class, so that final injunctive or declaratory relief is appropriate with respect to the Class as a whole.

COUNT ONE (NY General Business Law §349)

111. The averments of each paragraph above are restated here as if fully set forth herein.
112. New York's General Business Law §349 prohibits "[d]eceptive acts or practices in the conduct of any business."
113. Defendant's acts and practices are not unique to the parties and have a broader impact on the public.
114. Defendant Wag's conduct, acts and practices in its business were and are materially misleading and deceptive because its claims are untrue that all of its dog walkers and pet sitters are "trusted dog walkers", "Vetted dog walkers", "pre-screened and insured" dog walkers who are "background checked and insured" and they use a "thorough vetting process-which includes dog handling, safety tests, phone screening, and background checks - many of our walkers have worked as veterinary technicians, shelter volunteers..."
115. Moreover, Wag's Million Dollar guarantee is deliberately deceptive by giving consumers a false sense of trust by believing that if Wag is willing to put up a Million Dollars for the safety of the owners and their pets then their claims, at issue here, must be true.
116. At all times during which Defendants made the above-referenced representations to Plaintiffs, and to the public, Defendants knew, or were willful in not knowing, that they were false and misleading in the manner referenced above.
117. Plaintiffs and the class reasonably relied upon and were deceived by Wag's false and misleading advertising and they all paid money relying on obtaining a properly vetted, experienced, trained and bonded and insured dog walker when in fact they paid for someone whom Wag never personally met, interviewed or trained, and of whom they did not conduct a thorough or proper background check, nor who was bonded or insured.
118. Wag's false claims and Million Dollar guarantee caused consumers to pay for services that are not as advertised.
119. The above-referenced representations were material facts that Plaintiff and the proposed Class relied on, paying prices for dog walking that Defendants would not have been able to charge absent the above-referenced representations, and having to pay legal fees to understand their rights and the deceptive advertising by Wag.
120. As a result, Plaintiff and the proposed Class have suffered damages in an amount to be determined at trial.

121. Plaintiff further seeks to enjoin such unlawful deceptive acts and practices described above. Unless the unlawful actions of Defendant are enjoined, Defendant will continue to deceptively advertise its services that it actually disclaims all liability for.
122. Each demands compensatory damages in the form of the greater of their actual damages or statutory damages of \$50 per violation. In addition, pursuant to G.B.L. §349, Plaintiff and the putative class seek injunctive and declaratory relief declaring the advertisements deceptive and prohibited by the statute, and to enjoin use of the deceptive advertising and conduct.

COUNT TWO (NY General Business Law §350)

123. The averments of each paragraph above are restated here as if fully set forth herein.
124. New York's General Business Law § 350 provides, "[f]alse advertising in the conduct of any business, trade or commerce or in the furnishing of any service in this state is hereby declared unlawful."
125. With regard to New York consumers, Defendant's advertisements were false and misleading in a material respect and were directed at and misleading to reasonable consumers.
126. With regard to New York consumers, Plaintiff and the putative class have been aggrieved by Defendants' false advertising, and demand compensatory damages in the form of the greater of actual damages and/or statutory damages of \$500 per violation. In addition, pursuant to G.B.L. §350, Plaintiff and the putative class seek injunctive and declaratory relief declaring the advertising deceptive and prohibited by the statute and to enjoin further deceptive advertising.

COUNT THREE (Negligent Misrepresentation)

127. The averments of each paragraph above are restated here as if fully set forth herein.
128. Defendant was in a special relationship with the Plaintiff and the proposed Class of dog owners as Wag advertised and provided, and still does, the care of their beloved pets. Notably, advertising that their dog walkers were former vet technicians with the experience to care for dogs and all had a special expertise in caring for dogs by virtue of alleged training they received from Wag. Therefore, imposing a special relationship of trust and confidence between the pet owners and the Wag dog walker.
129. Defendant Wag made false representations that it should have known were incorrect.

130. The information supplied in the representation was known by Defendant to be desired by the Plaintiff and the class for a serious purpose to care for their dogs.

131. Plaintiff and the class intended to rely and act upon it and they reasonably relied on it to their detriment as they all paid money based on false representations and Plaintiff paid for legal retention to protect her rights as Wag's website and app claims were vague and confusing.

COUNT FOUR (Unjust Enrichment)

132. The averments of each paragraph above are restated here as if fully set forth herein.

133. Defendant was enriched and benefited from the increased sales of its services and the use of its app as a result of Plaintiff and putative class members having been deceived by the advertisements and were thereby caused to use the app and purchase the services.

134. The enrichment and benefit to Defendant came at the expense of Plaintiff and putative class members who purchased services from Defendant because of its deceptive and misleading advertising and had to retain legal counsel to protect themselves.

135. The circumstances are such that equity and good conscience require Defendant to make restitution to Plaintiffs and putative class members for its enrichment , which came as a result of the deceptive and misleading advertising, and not be permitted to retain the revenues accrued from those sales to Plaintiff and putative class members.

136. Defendant has failed to make restitution.

137. As a result, Plaintiff and the putative class have been damaged.

DEMAND FOR JURY TRIAL

138. Plaintiff, individually and on behalf of the putative class, hereby demands a Jury trial on all issues and claims regarding this Complaint.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

- a. That the Court determine that this action may be maintained as a class action pursuant to Fed. R. Civ. P. 23, and designate Plaintiff as representative of the Class, and her counsel of record as Class counsel.
- b. An award of damages, including statutory damages where applicable, to Plaintiff and the Class in an amount of no less than Five Million Dollars to be paid by Defendant;
- c. Disgorgement or restitution by Defendant Wag of all revenue earned from its fraudulent and unlawful advertising practices described herein during the class period;

- d. That the aforesaid conduct of Defendants be adjudged and declared to have been in violation of GBL 349 and 350 and that judgment be entered for Plaintiffs and the members of the class and against Defendants for threefold the amount of damages sustained by Plaintiff and the class, together with the costs of this action, including reasonable attorneys' fees;
- e. That the aforesaid conduct of Defendants be adjudged and declared to have been in violation of the common law and statutes of New York, and that judgment be entered for Plaintiffs and the members of the class and against Defendants for the amount of damages determined to have been sustained by them or otherwise allowed by law;
- f. That Defendants, their subsidiaries, successors, transferees, assignees and their respective officers, directors, partners, agents, and employees, and all other persons acting or claiming to act on their behalf or in concert with them, be permanently enjoined and restrained from in any manner continuing, maintaining, or reviving the unlawful conduct alleged herein with respect to their services;
- g. That reasonable attorney fees and costs of the suit be granted to Plaintiff and the Class;
- h. That Punitive damages be granted to Plaintiff and the Class;
- i. That compensatory damages, restitution and all allowable damages be granted to Plaintiff and the Class for all violations alleged herein above; and
- j. That Plaintiff and members of the class have such other, further and different relief as the Court may deem just and proper.

Dated: July 19, 2019
New York, NY

LAW OFFICES OF SUSAN CHANA LASK

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