

IN THE CIRCUIT COURT OF THE 19<sup>TH</sup>  
JUDICIAL CIRCUIT IN AND FOR MARTIN COUNTY, FLORIDA

Case No.:

AARON SCHAMBACK, DMD, PA

Plaintiff,

v.

AARON BROWN AND ASSOCIATES, INC, a  
Florida Corporation, d/b/a ELITE PAYROLL  
SOLUTIONS,

Defendant.

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**COMPLAINT**

COMES NOW, Plaintiff, AARON SCHAMBACK, DMD, PA, a Florida corporation, by and through its undersigned counsel and sues Defendant AARON BROWN AND ASSOCIATES, INC, a Florida Corporation, d/b/a ELITE PAYROLL SOLUTIONS and alleges:

1. This is an action for damages in excess of \$50,000.00 exclusive of costs, interest and attorney's fees.
2. AARON SCHAMBACK, DMD, PA is a Florida corporation with its principal place of business in St. Lucie County, Florida. This business employees on average one hundred employees at any given and relevant time. Such employees are paid wages. AARON SCHAMBACK, DMD, PA was required to withhold federal income and other taxes such as Social Security, Medicare and Medicare surtax (commonly referred to as "FICA") for its employees.
3. Defendant AARON BROWN AND ASSOCIATES, INC, a Florida Corporation, d/b/a ELITE PAYROLL SOLUTIONS, at all times relevant, operated a payroll servicing business with its principal place of business in Martin County, Florida. At all times material, AARON

BROWN AND ASSOCIATES, INC, a Florida Corporation, d/b/a ELITE PAYROLL SOLUTIONS represented that it had extensive experience in providing payroll and human resource services.

Defendant represented it hand “more than \$80 billion in annual payroll processed on our software platform” It further stated in its website that “you can rest easy, knowing you’re on a tried-and-true payroll solution”.

4. In April of 2014, AARON SCHAMBACK, DMD, PA and AARON BROWN AND ASSOCIATES, INC, a Florida Corporation, d/b/a ELITE PAYROLL SOLUTIONS entered into an agreement whereby Defendant agreed to provide Plaintiff with payroll tax services, make any and all necessary and appropriate tax filings in a timely fashion, and to provide other ancillary payroll services. Based on information and belief this was an oral agreement.

5. By entering into this agreement, an agency relationship was created by and between AARON SCHAMBACK, DMD, PA and AARON BROWN AND ASSOCIATES, INC, a Florida Corporation, d/b/a ELITE PAYROLL SOLUTIONS whereby Defendant agreed to make timely and appropriate payments to the IRS for such monies withheld from the Plaintiff’s employees and to file necessary appropriate and accurate IRS Form 941 forms and all other required filings to keep Plaintiff in compliance with federal laws.

6. In furtherance of its relationship and agreement, AARON SCHAMBACK, DMD, PA allowed AARON BROWN AND ASSOCIATES, INC, a Florida Corporation, d/b/a ELITE PAYROLL SOLUTIONS to withdraw funds from Plaintiff’s bank accounts to pay the taxes owed by AARON SCHAMBACK, DMD, PA to the IRS. Plaintiff relied on Defendant to make such timely payments.

7. At the end of each bi-weekly pay period, Defendant AARON BROWN AND ASSOCIATES, INC, a Florida Corporation, d/b/a ELITE PAYROLL SOLUTIONS would withdraw from Plaintiff, AARON SCHAMBACK, DMD, PA's bank accounts all necessary funds to pay the IRS the money Plaintiff had withheld from the employees paychecks. Defendant represented that such funds would in turn be paid to the IRS. Defendant AARON BROWN AND ASSOCIATES, INC, a Florida Corporation, d/b/a ELITE PAYROLL SOLUTIONS furnished an invoice to Plaintiff for each withdrawal indicating the amount withdrawn from Plaintiff's accounts representing the taxes Defendant was paying the IRS as well as Defendant's fees for services rendered.

8. Each quarter Defendant AARON BROWN AND ASSOCIATES, INC, a Florida Corporation, d/b/a ELITE PAYROLL SOLUTIONS would prepare and file on Plaintiff AARON SCHAMBACK, DMD, PA's behalf an IRS Form 941 commonly referred to as the Employer's Quarterly Tax Return. On this form, Defendant AARON BROWN AND ASSOCIATES, INC, a Florida Corporation, d/b/a ELITE PAYROLL SOLUTIONS would list each tax payment it had made during the quarter on behalf of the Plaintiff, AARON SCHAMBACK, DMD, PA.

9. On or about February 27, 2023, special agents from the IRS Criminal Investigation Division appeared at the home of Plaintiff's principal Aaron Schamback, DMD. Dr. Schamback was served with a summons requiring Dr. Schamback to provide all of the Plaintiff's corporate bookkeeping, and financial and bank account records for various years. This was Plaintiff's first indication that anything was amiss with regard to Defendant's payment of the withholding and other taxes to the IRS from monies withdraw from Plaintiff;'s accounts by Defendant.

10. Based on information and belief, a discrepancy existed between the IRS W-2 forms issued to employees of Plaintiff AARON SCHAMBACK, DMD, PA., and the Forms 940/941 that were filed by Defendant AARON BROWN AND ASSOCIATES, INC, a Florida Corporation, d/b/a ELITE PAYROLL SOLUTIONS.

11. Based on information and belief, AARON BROWN AND ASSOCIATES, INC, a Florida Corporation, d/b/a ELITE PAYROLL SOLUTIONS has filed an amended return and paid all monies that the IRS has contended had not been paid and were owing.

12. The nature and extent of the non-payments of withheld taxes suggests more than a mere oversight, mistake or clerical error.

13. As a result of Defendant AARON BROWN AND ASSOCIATES, INC, a Florida Corporation, d/b/a ELITE PAYROLL SOLUTIONS non-payment of the withholding taxes, Plaintiff AARON SCHAMBACK, DMD, PA is liable for the unpaid payroll taxes, if such taxes have not been paid, penalties and interest on all unpaid or late paid taxes to be assessed by the IRS.

**COUNT 1**  
**FLORIDA'S DECEPTIVE AND UNFAIR TRADE PRACTICES ACT**  
**("FDUTPA")**  
**Section 501.201 ET SEQ.**

14. Plaintiff incorporates paragraphs 1-13 above as if fully set forth herein.

15. This is an action under the FDUTPA §501.201 *et seq.* Fla. Stat..

16. The FDUTPA is to be "construed liberally" to effects its polices, including protection of the consuming public from unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce. §501.202 Fla. Stat.

17. The language of the FDUTPA is notably broad and on-specific proscribing “unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices and unfair or deceptive acts or practices in the conduct of any trade or commerce.” See §501.204(1) Fla. Stat.

18. The providing of payroll and accounting services clearly entails “trade or commerce” for purposes of the FDUTPA. See §501.203(8) Fla. Stat.

19. The FDUTPA enables Plaintiff, AARON SCHAMBACK, DMD, PA to bring a private cause of action that may provide for recovery of actual damages, attorney’s fees, and court costs. See §501.211(2) Fla. Stat.

20. As described above, Defendant AARON BROWN AND ASSOCIATES, INC, a Florida Corporation, d/b/a ELITE PAYROLL SOLUTIONS routinely represented to Plaintiff, AARON SCHAMBACK, DMD, PA that the withholding taxes, funds which Defendant had withdrawn from Plaintiff’s bank accounts with Plaintiff’s full authority at Defendant’s request, had been timely paid to the IRS. These representations included but were not limited to the Employer’s Quarterly Tax returns received by Plaintiff from Defendant. Additionally, Defendant AARON BROWN AND ASSOCIATES, INC, a Florida Corporation, d/b/a ELITE PAYROLL SOLUTIONS provided Plaintiff with invoices indicating the amount withdrawn by Defendant from Plaintiff’s accounts.

21. These representations were false, and Defendant AARON BROWN AND ASSOCIATES, INC, a Florida Corporation, d/b/a ELITE PAYROLL SOLUTIONS knew or should have known of their falsity.

22. Defendant AARON BROWN AND ASSOCIATES, INC, a Florida Corporation, d/b/a ELITE PAYROLL SOLUTIONS' practice of withdrawing the monies and failing to pay same to the IRS per the agreement with Plaintiff AARON SCHAMBACK, DMD, PA is unconscionable, deceptive, and unfair.

23. Defendant AARON BROWN AND ASSOCIATES, INC, a Florida Corporation, d/b/a ELITE PAYROLL SOLUTIONS practice of providing documentation to Plaintiff AARON SCHAMBACK, DMD, PA that the withheld monies had been paid to the IRS is unconscionable, deceptive, and unfair.

24. Plaintiff AARON SCHAMBACK, DMD, PA has suffered a loss because of Defendant AARON BROWN AND ASSOCIATES, INC, a Florida Corporation, d/b/a ELITE PAYROLL SOLUTIONS' unconscionable, deceptive, and unfair practices and acts.

WHEREFORE, Plaintiff, AARON SCHAMBACK, DMD, PA demands actual, consequential, and other applicable damages, along with costs of litigation and attorney's fees to the extent authorized by existing law including but not limited to §501.2105 Fla. Stat , and such other relief as this Court deems appropriate.

**COUNT 2**  
**BREACH OF CONTRACT**

25. Plaintiff incorporates paragraphs 1-13 above as if fully set forth herein.

26. Plaintiff AARON SCHAMBACK, DMD, PA and Defendant AARON BROWN AND ASSOCIATES, INC, a Florida Corporation, d/b/a ELITE PAYROLL SOLUTIONS entered into a valid, binding and enforceable agreement.

27. Plaintiff AARON SCHAMBACK, DMD, PA fully performed its obligations to Defendant AARON BROWN AND ASSOCIATES, INC, a Florida Corporation, d/b/a ELITE

PAYROLL SOLUTIONS by timely making payments for services purportedly provided.

28. Plaintiff AARON SCHAMBACK, DMD, PA made timely payments to Defendant AARON BROWN AND ASSOCIATES, INC, a Florida Corporation, d/b/a ELITE PAYROLL SOLUTIONS for services that Defendant represented had been fully performed.

29. Defendant AARON BROWN AND ASSOCIATES, INC, a Florida Corporation, d/b/a ELITE PAYROLL SOLUTIONS breached its contractual obligations by failing to timely pay the monies to the IRS per its agreement with Plaintiff AARON SCHAMBACK, DMD, PA.

WHEREFORE Plaintiff AARON SCHAMBACK, DMD, PA demands judgment against Defendant AARON BROWN AND ASSOCIATES, INC, a Florida Corporation, d/b/a ELITE PAYROLL SOLUTIONS for restitution for all monies paid for services that were not provided, general compensatory damages, pre- and post judgment interest and any other relief this Court deems appropriate.

**COUNT 3**  
**BREACH OF FIDUCIARY DUTY**

30. Plaintiff incorporates paragraphs 1-13 above as if fully set forth herein.

31. Due to the agency relationship between Plaintiff AARON SCHAMBACK, DMD, PA and Defendant AARON BROWN AND ASSOCIATES, INC, a Florida Corporation, d/b/a ELITE PAYROLL SOLUTIONS with regard to the payment of withholding taxes by Defendant on behalf of Plaintiff AARON SCHAMBACK, DMD, PA to the IRS and/or reposing of confidence by Plaintiff in Defendant to pay the taxes and Defendant's acceptance of this confidence, a fiduciary or confidential relationship existed between Plaintiff AARON SCHAMBACK, DMD, PA and Defendant AARON BROWN AND ASSOCIATES, INC, a Florida Corporation, d/b/a ELITE PAYROLL SOLUTIONS.

32. As a result of this fiduciary or confidential relationship, AARON BROWN AND ASSOCIATES, INC, a Florida Corporation, d/b/a ELITE PAYROLL SOLUTIONS had a fiduciary duty to pay the monies entrusted to it by Plaintiff for the specific purpose of paying the withholding and other taxes and payments to the IRS.

33. AARON BROWN AND ASSOCIATES, INC, a Florida Corporation, d/b/a ELITE PAYROLL SOLUTIONS breached this fiduciary or confidential duty by not timely paying the entirety of the monies withdrawn from Plaintiff's accounts.

34. As a result of Defendant AARON BROWN AND ASSOCIATES, INC, a Florida Corporation, d/b/a ELITE PAYROLL SOLUTIONS' breach of its fiduciary duty or confidential relationship Plaintiff AARON SCHAMBACK, DMD, PA is entitled to restitution for all monies paid for services allegedly provided, interest and penalties owed to the IRS, attorney's fees incurred in the defense of the claims of the IRS and any other relief this Court deems appropriate.

WHEREFORE Plaintiff AARON SCHAMBACK, DMD, PA demands judgment against Defendant AARON BROWN AND ASSOCIATES, INC, a Florida Corporation, d/b/a ELITE PAYROLL SOLUTIONS for general compensatory damages, pre- and post judgment interest and any other relief this Court deems appropriate.

#### **COUNT 4**

#### **FRAUD**

35. Plaintiff incorporates paragraphs 1-13 above as if fully set forth herein.

36. Defendant AARON BROWN AND ASSOCIATES, INC, a Florida Corporation, d/b/a ELITE PAYROLL SOLUTIONS represented to Plaintiff, AARON SCHAMBACK, DMD, PA that the monies withheld, and withdrawn from Plaintiff's bank accounts, had been timely paid

to the IRS by Defendant on Plaintiff's behalf. Such statements of fact included the provision of Employer's Quarterly Tax Returns filed by Defendant and invoices and accounting of the amounts withdrawn from Plaintiff's accounts.

37. Defendant AARON BROWN AND ASSOCIATES, INC, a Florida Corporation, d/b/a ELITE PAYROLL SOLUTIONS knew at the time of providing the Employer's Quarterly Tax Returns and the rendering of invoices that such statements were false.

38. Defendant AARON BROWN AND ASSOCIATES, INC, a Florida Corporation, d/b/a ELITE PAYROLL SOLUTIONS' provision of Employer's Quarterly Tax Returns filed by Defendant and invoices and accounting of the amounts withdrawn from Plaintiff's accounts were made with the intention of inducing Plaintiff, AARON SCHAMBACK DMD, PA to act in reliance thereon by paying the invoices and continuing to allow Defendant unfettered access to its bank accounts.

39. Plaintiff, AARON SCHAMBACK DMD, PA acted on the purported correctness of the representations of Defendant AARON BROWN AND ASSOCIATES, INC, a Florida Corporation, d/b/a ELITE PAYROLL SOLUTIONS by allowing the business relationship between the parties to continue and to continue to pay Defendant for services and access to Plaintiff's bank accounts to withdraw funds.

40. As a direct and proximate result of the fraudulent conduct of Defendant AARON BROWN AND ASSOCIATES, INC, a Florida Corporation, d/b/a ELITE PAYROLL SOLUTIONS Plaintiff, AARON SCHAMBACK DMD, PA suffered damages including but not limited to attorney's fees relating to the IRS investigation, accounting fees, plus interest and penalties owed to the IRS.

WHEREFORE Plaintiff AARON SCHAMBACK, DMD, PA demands judgment against Defendant AARON BROWN AND ASSOCIATES, INC, a Florida Corporation, d/b/a ELITE PAYROLL SOLUTIONS for attorney's fees incurred in representation of Plaintiff with regard to the IRS investigation, accounting fees, interest and penalties owed to the IRS, and any other relief this Court deems appropriate. Plaintiff reserves the right to seek punitive damages pursuant to §768.72, Fla. Stat. upon a reasonable showing by the evidence in the record or a proffer by Plaintiff which would provide a reasonable basis for recovery of such damages.

**DEMAND FOR JURY TRIAL**

Plaintiff, AARON SCHAMBACK, DMD, PA, demands a trial by jury on all issues triable as of right by a jury.

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By: /s Francis R. DeLuca  
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