IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

CHRISTINA DURANKO, GERRY MCLEAN, MARY MAROUS, JOYCE WOJTON, BEVERLY EVANS, JENNIFER POLLOCK, and MARTHA BAILEY, individually and on behalf of all others similarly situated, Plaintiffs, v. BIG LOTS INC., DOLLAR GENERAL CORPORATION, GIANT EAGLE, INC., JO-ANN STORES, LLC, OLLIE'S BARGAIN OUTLET HOLDINGS, INC., THE HOME DEPOT, INC., TUESDAY MORNING CORPORATION, ULTA BEAUTY, INC., and WALMART INC., Defendants.	CIVIL ACTION NO. 2:20-cv-02000-MJH

DEFENDANTS' MEMORANDUM OF LAW IN
SUPPORT OF THEIR MOTION TO DISMISS

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes and Rules

Other Authorities

Defendants Big Lots, Inc., Dollar General Corporation, Giant Eagle, Inc., Jo-Ann Stores, LLC, Ollie's Bargain Outlet Holdings, Inc., Home Depot U.S.A., Inc.,[1] Ulta Beauty, Inc., and Walmart Inc. (collectively "Defendants") respectfully submit this Memorandum of Law in Support of Their Motion to Dismiss.

I. INTRODUCTION

Plaintiffs filed this putative class action alleging that nine[2] retailers improperly charged Pennsylvania sales tax on their purchases of "protective" face masks during the COVID-19 pandemic and, therefore, violated the Pennsylvania Unfair Trade Practices and Consumer Protection Law ("UTPCPL"). *See* Compl. ¶ 17. As one federal court considering a similar claim recognized, "it makes absolutely no sense for the Store to charge a higher rate than it legitimately thinks it is required to charge because it is not in its economic interest to do so." *Bartolotta v. Dunkin' Brands Grp., Inc.*, No. 16-4137, 2016 U.S. Dist. LEXIS 168125, at *26–27 (N.D. Ill. Dec. 6, 2016). And, when retailers do collect sales tax, they act as mere agents of the Commonwealth. They briefly hold these funds in trust for the Commonwealth and promptly remit them to the Department of Revenue ("Department"). *See* 61 Pa. Code § 34.2(d); 72 P.S. §§ 7217(a)(2)–(4), 7222(a), 7225.

If consumers believe that they have paid sales tax in error, the Pennsylvania General Assembly created a statutory procedure for them to seek refunds from the Department. *See* 72 P.S. §§ 7252–53, 10003.1. Ignoring that procedure, Plaintiffs filed this lawsuit, seeking a windfall $100 penalty under the UTPCPL for each allegedly improper sales tax transaction. Plaintiffs'

[1] Home Depot U.S.A., Inc. is improperly identified in the Complaint as The Home Depot, Inc.

[2] Tuesday Morning Corporation, one of the initial Defendants named in this action, has been voluntarily dismissed. *See* Dkt. No. 10.

UTPCPL claims fail, however, because tax collection is outside the scope of the UTPCPL, and Plaintiffs fail to allege—and cannot otherwise demonstrate—any deceptive conduct, justifiable reliance, or ascertainable loss. In addition, Plaintiffs' claims are barred by the voluntary payment doctrine because they paid any sales tax voluntarily with full knowledge of the relevant facts. Plaintiffs' claims should therefore be dismissed with prejudice.

II. BACKGROUND

Retail sales of tangible personal property in Pennsylvania are generally subject to sales tax. 72 P.S. § 7202(a). Absent a specific exemption or exclusion, retailers are legally required to collect and remit tax on such items to the Commonwealth, and failure to do so can result in the imposition of fines or penalties and enforcement actions. *See* 72 P.S. §§ 7202(a), 7221; 61 Pa. Code § 35.2. While the Department exempts certain "medical supplies," including "surgical masks," non-medical face masks sold to the general public are typically considered as ornamental and/or clothing "accessories" rather than clothing and are thus not exempt and must be taxed. *See* 72 P.S. §§ 7204(17), (26); 61 Pa. Code § 58.1; *Retailer's Information*, Pa. Dep't Rev., REV-717 at 32, *available at* https://www.revenue.pa.gov/FormsandPublications/FormsforBusinesses/SUT/Documents/rev-717.pdf (last visited Jan. 29, 2021) ("REV-717") (attached as Exhibit A).[3]

[3] This Court may take judicial notice of public statements and documents available on public websites. Fed. R. Evid. 201(b) ("The court may judicially notice a fact that is not subject to reasonable dispute because it . . . can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned."); *id.* 201(c)(2) ("The court . . . must take judicial notice if a party requests it and the court is supplied with the necessary information."); *Smith v. Lynn*, 809 F. App'x 115, 117 (3d Cir. 2020) ("[I]n deciding a motion to dismiss, a district court is permitted to review matters of public record."); *Geness v. Admin. Office of Pa. Courts*, 974 F.3d 263, 276 (3d Cir. 2020) (noting that "matters of public record" are subject to judicial notice (internal quotation marks and citation omitted)); *Vanderklok v. United States*, 868 F.3d 189, 205 n.16 (3d Cir. 2017) ("[T]hat information is publicly available on government websites and therefore we take judicial notice of it."); *Pension Ben. Guar. Corp. v. White Consol. Indus., Inc.*, 998 F.2d 1192, 1197 (3d Cir. 1993) (stating that "letter decisions of government agencies" and "published reports of administrative bodies" are subject to judicial notice).

Plaintiffs do not allege that they purchased tax-exempt surgical masks, but argue that they should not have been charged tax on "protective face masks" following Governor Wolf's March 2020 emergency declaration relating to the COVID-19 pandemic.[4] *See* Compl. ¶¶ 17, 20.

Plaintiffs allege that they purchased protective face masks between May and November 2020, and received receipts identifying the purchase price and the amount of sales tax charged. *See* Compl. ¶¶ 23–28 (alleging Plaintiff Wojton "bought a protective face mask from Big Lots" on June 28, 2020, for $2.18, including $0.14 that "[t]he receipt identified . . . as sales tax"); *id.* ¶¶ 34–39 (alleging Plaintiff Evans "bought protective face masks from Dollar General" on July 11, 2020, for $4.24, including $0.24 that "[t]he receipt identified . . . as sales tax"); *id.* ¶¶ 45–56 (alleging Plaintiff Marous paid $16.06 for a mask she purchased from Giant Eagle on July 3, 2020, including $1.04 that "[t]he receipt identified . . . as sales tax," and $12.81 for two masks on July, 27, 2020, including $0.83 that "[t]he receipt identified . . . as sales tax"); *id.* ¶¶ 84–89 (alleging Plaintiff Marous "bought two protective face masks from Home Depot" on November 18, 2020, for $16.01, including $1.04 that "[t]he receipt identified . . . as sales tax"); *id.* ¶¶ 62–67 (alleging Plaintiff Pollock "bought a protective face mask from [Jo-Ann]" for $3.99 plus an "amount equal[] to 6% of the masks' advertised price," which "[t]he receipt identified . . . as sales tax"); *id.* ¶¶ 73–78 (alleging Plaintiff Duranko "bought protective face masks from Ollie's" on May 4, 2020, for $42.78, including $2.79 that "[t]he receipt identified . . . as sales tax"); *id.* ¶¶ 106–11 (alleging Plaintiff Bailey "bought two protective face masks from Ulta Beauty" on October 17, 2020, for $5.30, including $0.30 that "[t]he receipt identified . . . as sales tax"); *id.* ¶¶ 117–27 (alleging Plaintiff McLean paid $6.38 for a mask she purchased from Walmart on September 11, 2020,

[4] While Defendants maintain that any sales tax collected in connection with Plaintiffs' alleged transactions was in accordance with Pennsylvania law, this Court need not reach this question to resolve Defendants' Motion to Dismiss.

including $0.41 that the "receipt identified . . . as sales tax," and $10.66 for a 5-pack of masks that she purchased on September 28, 2020, including $0.69 that "[t]he receipt indicated . . . as sales tax"). Plaintiffs attach their receipts to the Complaint, each of which plainly shows that sales tax was charged and disclosed. *See id.*, Exs. 5–13. Plaintiffs reviewed their receipts and understood that sales tax had been charged, but none allege that they challenged the transaction(s), returned the mask(s), or sought a refund of the sales tax from the Commonwealth. *See* Compl. ¶¶ 27–28, 38–39, 49–50, 55–56, 66–67, 77–78, 88–89, 110–11, 121–22, 126–27.

Plaintiffs acknowledge that non-medical protective face masks are typically taxable in Pennsylvania, but they claim that "Defendants knew or should have known that it was impermissible to charge or collect Pennsylvania sales tax on protective face masks following Governor Wolf's emergency declaration on March 6, 2020." *Id.* ¶ 20. Governor Wolf's emergency declaration and relevant extensions make no reference to either the Department or the tax status of non-medical protective face masks. *See id.*, Ex. 2. And, there have been no statutory changes or new regulations that have resolved the law on this point. Instead, throughout the COVID-19 pandemic, the Department has issued only informal, imprecise guidance on the taxability of non-medical protective face masks. For example, as Plaintiffs allege, the Department posted a "Q&A" response on its website on April 23, 2020, in which it wrote that "[m]asks sold at retail are typically subject to Pennsylvania sales tax." *See id.*, Ex. 1. The Department indicated, however, that it might consider "protective" face masks as "akin to medical equipment" during Pennsylvania's declared state of emergency. *See id.* On October 30, 2020, after all but one of the purchases at issue in this case, the Department updated its "Q&A" to state that "masks (both cloth and disposable) could *now* be considered everyday wear/clothing," which, "[g]enerally speaking, . . . is not subject to Pennsylvania sales tax." *See id.*, Ex. 4 (emphasis added).

On January 20, 2021, after this Complaint was filed, the Department issued a Sales and Use Tax Bulletin, explaining that prior to COVID-19, "non-medical masks and face coverings were subject to sales tax because non-medical masks and face coverings were generally classified as ornamental wear or clothing accessories and the use for which consumers purchased non-medical masks and face coverings was not for an exempt purpose." *See Sales and Use Tax Bulletin 2021-01*, Pa. Dep't Rev., *available at* https://www.revenue.pa.gov/GeneralTaxInformation/TaxLawPoliciesBulletinsNotices/TaxBulletins/SUT/Documents/st_bulletin_2021-01.pdf ("January 20 Tax Bulletin") (attached as Exhibit B). Because non-medical protective face masks historically were subject to taxation as ornamental wear or clothing accessories, the Department noted that "[r]etailers were not obligated to determine whether a non-medical mask or face covering would be used for medical purposes." *See id.* (citing 61 Pa. Code § 52.1(a)). Instead, retailers were entitled to rely on their *intended* purposes—in this case non-medical purposes. *See* January 20 Tax Bulletin, *supra* (citing 61 Pa. Code § 52.1(a)). While the Department acknowledged that retailers were not required to determine if non-medical masks were subject to a tax exemption, it nevertheless stated it would "not assess retailers for *failing* to collect sales tax on purchases of non-medical masks and face coverings." *See* January 20 Tax Bulletin, *supra* (emphasis added).

Further, in its January 20 Tax Bulletin, the Department advised that "consumers *who can certify to the department* that a cloth or disposable non-medical mask or face covering was purchased and *used as a means of protection against the virus* can petition the department for a refund of any sales or use tax paid." *See id.* (emphases added). This would make Plaintiffs whole if the Department determined that tax exemptions were appropriate for each of their purchases. Instead of pursuing this remedy, Plaintiffs have purported to sue the Commonwealth's tax

collection agents on the erroneous premise that these retailers have knowingly "deceived" their customers into paying improper sales taxes.

Plaintiffs' claims fail as a matter of law. First, Plaintiffs' claims are outside the scope of the UTPCPL because collecting taxes does not constitute "trade or commerce" under the statute. Second, Plaintiffs cannot state claims under the UTPCPL because they cannot allege any fraudulent or deceptive conduct, justifiable reliance, or ascertainable loss. Third, even assuming, *arguendo*, that Plaintiffs could state a claim under the UTPCPL, their claims are barred by the voluntary payment doctrine because they paid any sales tax voluntarily with full knowledge of the relevant facts. Accordingly, Plaintiffs' claims should be dismissed with prejudice.

III. LEGAL STANDARD

To survive a motion to dismiss under Fed. R. Civ. P. 12(b)(6), a complaint must allege sufficient facts "to 'state a claim to relief that is plausible on its face.'" *Kerr v. State Farm Mut. Auto. Ins. Co.*, No. 18-0309, 2018 U.S. Dist. LEXIS 189502, at *5 (W.D. Pa. Nov. 6, 2018) (Horan, J.) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). "[A] formulaic recitation of a cause of action's elements" will not suffice. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). The complaint's "[f]actual allegations must be enough to raise a right to relief above the speculative level," i.e., they must "nudge[] [the] claims across the line from conceivable to plausible." *Id.* at 555, 570. "Determining whether a complaint states a plausible claim for relief will . . . be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Ashcroft*, 556 U.S. at 679. When it is clear that "an amendment would be inequitable or futile," the complaint should be dismissed with prejudice. *Kerr*, 2018 U.S. Dist. LEXIS 189502, at *7 (citing *Phillips v. County of Allegheny*, 515 F.3d 224, 236 (3d Cir. 2008)).

IV. ARGUMENT

A. Plaintiffs Cannot State Claims Under the UTPCPL Because They Have Not Alleged Unfair or Deceptive Conduct, Reliance, or Loss in Trade or Commerce.

Plaintiffs cannot establish the essential elements of their claims under the UTPCPL. First, the UTPCPL applies only to "trade or commerce" within the meaning of the statute. *See* 73 P.S. § 201-3(a). Even if Plaintiffs could meet that threshold requirement, which they cannot, they must also demonstrate, *inter alia*, that "the defendant was engaged in unfair methods of competition and unfair or deceptive acts or practices." *See Fazio v. Guardian Life Ins. Co. of Am.*, 62 A.3d 396, 409 (Pa. Super. Ct. 2012) (internal quotation marks and citation omitted). Finally, Plaintiffs must also establish an ascertainable loss as a result of justifiably relying on the Defendants' allegedly unfair or deceptive conduct. *See Hunt v. U.S. Tobacco Co.*, 538 F.3d 217, 226 (3d Cir. 2008). Because Plaintiffs cannot demonstrate any (1) "trade or commerce" within the meaning of the UTPCPL; (2) fraudulent, deceptive, or unfair acts by Defendants; (3) justifiable reliance; or (4) ascertainable loss, their UTPCPL claims fail as a matter of law.

1. Collecting Sales Tax Is Not "Trade or Commerce" and Therefore Is Outside the Scope of the UTPCPL.

The UTPCPL applies only to "unfair or deceptive acts or practices *in the conduct of any trade or commerce*." 73 P.S. § 201-3(a) (emphasis added); *Fazio*, 62 A.3d at 410 (explaining plaintiffs must "establish a consumer transaction in order to fall under the auspices of the UTPCPL"); *see also Dameshek v. Encompass Ins. Co. of Am.*, No. 11-0018, 2012 U.S. Dist. LEXIS 87570, at *24 (M.D. Pa. June 25, 2012); *Gywnedd Club Condo. Ass'n v. Dahlquist*, 208 A.3d 213 (Pa. Commw. Ct. 2019). "Trade or commerce" is defined as commercial activity for profit. *See Meyer v. Cmty. Coll. of Beaver Cty.*, 93 A.3d 806, 816 (Pa. 2014) (Castille, C.J., concurring) ("'Trade or commerce' is mercantile activity in which the person engaged in that

business is doing so for private profit which could motivate unfair or deceptive practices for private gain or, more accurately, private greed." (internal quotation marks and citation omitted)); *see also Beyers v. Richmond*, 937 A.2d 1082, 1088 (Pa. 2007); *Foflygen v. Zemel*, 615 A.2d 1345, 1354 (Pa. Super. Ct. 1992). Where, as here, a retailer is acting as a mere agent of the Commonwealth and "carrying out a public duty, it is not engaged in the conduct of a trade or commerce." *Meyer*, 93 A.3d at 816 (internal quotation marks and citation omitted); *see also 220 W. Rittenhouse Square Condo. Ass'n v. Stolker*, No. 2254, 2012 Phila. Ct. Com. Pl. LEXIS 142, at *10 (May 16, 2012) ("[T]here can be no sale of services to constitute . . . being engaged in 'trade or commerce' when [the] performance of services is statutorily required.").

A retailer collects sales tax as an agent of the Commonwealth because it is statutorily required to do so. 72 P.S. § 7237(b)(1) ("Every person maintaining a place of business in this Commonwealth and selling or leasing tangible personal property or services . . . the sale or use of which is subject to tax shall collect the tax from the purchaser or lessee at the time of making the sale or lease, and shall remit the tax to the department."); *see also Aldine Apartments, Inc. v. Commonwealth, Dep't of Revenue*, 379 A.2d 333, 336 (Pa. Commw. Ct. 1977) (holding that the utility companies that were alleged to have improperly collected sales tax were "*merely collecting agents* and, legally, [could] play no role in the refund of these taxes" (emphasis added)). Retailers briefly hold the tax in trust and promptly remit it to the Commonwealth. 72 P.S. § 7225 ("All taxes collected . . . shall constitute a trust fund for the Commonwealth."); *id.* § 7217(a)(2)–(4) (requiring monthly remittance). Thus, the collection of sales tax is not considered trade or commerce under the UTPCPL.

The highest courts in Massachusetts and Connecticut have held that the collection of sales tax is not commercial activity, and therefore is outside the scope of substantively identical

consumer protection statutes.[5] In *Feeney v. Dell*, the plaintiffs brought a class action against a retailer-defendant for allegedly violating the Massachusetts consumer protection law by charging sales tax on optional service contracts when no sales tax was due. 908 N.E.2d 753, 757 (Mass. 2009). The Supreme Judicial Court of Massachusetts dismissed the plaintiffs' claims because the "collection of such tax was not motivated by 'business or personal reasons' but was pursuant to legislative mandate" and was not "commercial" activity according to the statute. *Id.* at 770–71 ("Where a party's actions are motivated by legislative mandate, not business or personal reasons, this court has repeatedly held that [the consumer protection law] does not apply." (internal quotation marks and citations omitted)).

Similarly, in *Blass v. Rite Aid of Connecticut, Inc.*, the Supreme Court of Connecticut held that, even if the retailer had collected tax in error, the plaintiff's claim under the Connecticut Unfair Trade Practices Act ("CUTPA") must be dismissed because "that law seeks to protect consumers from 'deceptive acts or practices in the conduct of any trade or commerce,'" and "[t]he mis-collection of taxes, whether negligent or intentional, does not constitute an unfair or deceptive act or practice in the conduct of any trade or commerce under the language of CUTPA." 16 A.3d 855, 863 (Conn. 2009). The court reasoned that the defendant's conduct could not have been an unfair or deceptive act because "[a] retailer gains no personal benefit from the over collection of taxes. In fact, such activity only increases the retailer's prices, working against its economic interest." *Id.* at 863. Nor could the plaintiff show that the defendant's conduct occurred in "trade or commerce" because "when it collected the plaintiff's money for taxes, it did so as an agent of the State." *Id.*

[5] Under Pennsylvania law, "[s]tatutes uniform with those of other states shall be interpreted and construed to effect their general purpose to make uniform the laws of those states which enact them." 1 Pa.C.S. § 1927.

Indeed, Plaintiffs' UTPCPL claims in this case are fundamentally at odds with the Pennsylvania Tax Reform Code (the "Tax Code"). The Department has exclusive authority for the enforcement of the Tax Code, 72 P.S. § 7270(a), and is tasked with effecting the statutory process for refunding overpaid sales tax, *see id.* § 7252. Plaintiffs' claims—essentially private enforcement actions—would, if allowed, plainly usurp the exclusive authority of the Department and undermine the Tax Code. *See* 72 P.S. §§ 7252, 7253(a). Plaintiffs' proposed application of the UTPCPL would thus create "illogical results" and should be rejected. *Thorne v. Pep Boys Manny Moe & Jack Inc.*, 980 F.3d 879 (3d Cir. 2020) ("A basic principle of statutory construction is that [courts] should avoid a statutory interpretation that leads to absurd results." (internal quotation marks and citation omitted)). The plain language of the statute confirms that alleged mis-collection of sales tax is not "trade or commerce" and is outside the scope of the UTPCPL.

2. Plaintiffs Have Not Alleged Any Facts to Show That Defendants Engaged in Fraudulent, Unfair, or Deceptive Conduct.

Plaintiffs allege that Defendants violated three subsections of the UTPCPL: 201-2(4)(v), (ix), and (xxi).[6] Subsections (v) and (ix) "apply only to claims of false advertising" and require the plaintiff to show that "(1) a defendant's representation is false; (2) it actually deceives or has a tendency to deceive; and (3) the representation is likely to make a difference in the purchasing decision." *Seldon v. Home Loan Servs.*, 647 F. Supp. 2d 451, 466 (E.D. Pa. 2009) (internal quotation marks and citations omitted); *see also Corsale v. Sperian Energy Corp.*, 412 F. Supp. 3d 556, 562 (W.D. Pa. 2019) (Horan, J.) (setting forth the elements under Subsection (ix)).

[6] Section 201-2(4)(v) prohibits "[r]epresenting that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have"; 201-2(4)(ix) prohibits "[a]dvertising goods or services with intent not to sell them as advertised"; and 201-2(4)(xxi) is the catch-all provision that prohibits "[e]ngaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding." 73 P.S. §§ 201-2(4)(v), (ix), (xxi).

Similarly, under Subsection (xxi), the catch-all provision, a plaintiff must show that the defendant committed "a deceptive act that is likely to deceive a consumer acting reasonably under similar circumstances." *Kerr*, 2018 U.S. Dist. LEXIS 189502, at *14.

Even if the collection of sales tax were trade or commerce under the UTPCPL, which it is not, Plaintiffs have not alleged *any* facts to support their allegations that Defendants engaged in fraudulent, deceptive, or unfair conduct. *See* 73 P.S. § 201-3(a) (addressing "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce"); *Kerr*, 2018 U.S. Dist. LEXIS 189502, at *15–16 (dismissing UTPCPL claim where the plaintiff "generally alleged elements under the UTPCPL without specific facts that would support the same").

Plaintiffs allege that Defendants advertised the sales price of non-medical protective face masks and identified that price and the amount of sales tax on their receipts. *See* Compl. ¶¶ 24, 28, 35, 39, 46, 50, 52, 56, 63, 67, 74, 78, 85, 89, 107, 111, 118, 122, 123, 127, Exs. 5–13. Thus, Plaintiffs have pled only that Defendants disclosed the actual pre-tax price of non-medical protective face masks and the actual amount of sales tax collected in connection with each transaction. Because no reasonable consumer could be deceived by these truthful and accurate representations, Plaintiffs' claims should be dismissed.[7] *See Pfendler v. PNC Bank*, 765 F. App'x 858, 861 (3d Cir. 2019) (affirming dismissal of UTPCPL claim because plaintiff failed to "plausibly suggest that anything in the Deed of Trust had the tendency to mislead a reasonable homebuyer"); *Haubrich v. Giant Eagle, Inc.*, No. 16-19133, 2017 Pa. Dist. & Cnty. Dec. LEXIS

[7] Nor can such truthful representations support Plaintiffs' claims that the goods were represented to have (unspecified) characteristics they did not have under Subsection 201-2(4)(v). *Karlsson v. F.D.I.C.*, 942 F. Supp. 1022, 1024 (E.D. Pa. 1996) (dismissing false advertising claims where land sold did not lack the characteristics advertised).

835, at *5 (Ct. Com. Pl., Allegheny Cty. Feb. 22, 2017) (dismissing UTPCPL claim because "[n]o reasonable customer" would find the advertisement at issue "confusing, misleading, deceptive, or fraudulent").[8]

In *Haubrich*, for example, the plaintiff alleged that a retailer's "buy one get one free" coupon was misleading because it advertised that "lesser" priced items would be free but actually provided the "least" priced items for free. 2017 Pa. Dist. & Cnty. Dec. LEXIS 835, at *2. In dismissing the UTPCPL claim, the court determined that the plaintiff had not advanced "a reasonable or a required reading of the [coupon's] language," and the alleged conduct did "not arise to the level of [a] misleading, confusing, fraudulent or deceptive practice pursuant to the UTPCPL." *Id.* at *6–7. Likewise, the disclosures in this case of both the pre-tax price and the amount of sales tax charged in connection with Plaintiffs' transactions cannot be considered deceptive to any reasonable consumer.

3. Plaintiffs Have Not Alleged Justifiable Reliance on Defendants' Representations.

Plaintiffs' claims also fail because they have not alleged that they justifiably relied on any false representations from Defendants when purchasing the non-medical protective face masks or paying sales tax. Plaintiffs "must prove justifiable reliance affirmatively." *Hunt*, 538 F.3d at 227; *see also Yocca v. Pittsburgh Steelers Sports, Inc.*, 854 A.2d 425, 438 (Pa. 2004) ("To bring a private cause of action under the UTPCPL, a plaintiff must show that he justifiably relied on the

[8] *See also Velazquez v. State Farm Fire & Cas. Co.*, No. 19-3128, 2020 U.S. Dist. LEXIS 55854, at *10 (E.D. Pa. Mar. 27, 2020) (dismissing UTPCPL claim because plaintiff "failed to plausibly show . . . a 'deceptive act'"), *adopted by* 2020 U.S. Dist. LEXIS 70637 (E.D. Pa. Apr. 22, 2020); *Corsale*, 374 F. Supp. 3d at 460–61 (charging fees that defendant disclosed "[did] not constitute deceptive conduct"); *Conquest v. WMC Mortg. Corp.*, 247 F. Supp. 3d 618, 647 (E.D. Pa. 2017) (dismissing UTPCPL claim where the alleged representations were truthful); *Karlsson*, 942 F. Supp. at 1024 (dismissing UTPCPL claim because plaintiffs "failed to allege any misrepresentation of fact contained in [the defendant's] advertising").

defendant's wrongful conduct or representation."). Because "private plaintiffs have no standing to bring actions in the public interest," they "must prove that they themselves *were actually deceived* and that the [alleged deceptive act] *actually influenced their purchasing decisions*." *Weinberg v. Sun Co.*, 777 A.2d 442, 445 (Pa. 2001) (emphases added); *see also Hunt*, 538 F.3d at 222 (same).

In *Weinberg*, the Pennsylvania Supreme Court held that the justifiable reliance requirement for a UTPCPL claim means that "a plaintiff must allege . . . that he purchased [the product] *because* he heard and believed [the company's] false advertising" about the product. 777 A.2d at 446 (emphasis added). Here, Plaintiffs have not alleged that they purchased non-medical protective face masks *because* they heard and relied on any representations, much less ones that were false. In fact, Plaintiffs have alleged only truthful representations—that truthful prices were advertised for the non-medical protective face masks Plaintiffs purchased, and that the sales tax was correctly disclosed on Plaintiffs' receipts. *See* Compl. ¶¶ 24, 28, 35, 39, 46, 50, 52, 56, 63, 67, 74, 78, 85, 89, 107, 111, 118, 122, 123, 127, Exs. 5–13. To the extent Plaintiffs suggest that they relied on the advertised price as the total, tax-inclusive, price of the non-medical protective face masks, their claims fail for at least two reasons.

First, any alleged reliance would not be justified because it is well-known that sales tax is collected on tangible goods. *See* 72 P.S. § 7202(a) ("There is hereby imposed upon each separate sale at retail of tangible personal property or services, as defined herein, within this Commonwealth a tax of six per cent of the purchase price."); *see also* Compl., Exs. 5–13 (identifying sales tax collected on various items). Plaintiffs acknowledge that non-medical protective face masks are typically subject to sales tax. *See* Compl., Ex. 1. Accordingly, it is not plausible that any reasonable consumer would have merely assumed that no sales tax would be

added to the purchase price at checkout. *See Danganan v. Guardian Prot. Servs.*, 813 F. App'x 769, 773 (3d Cir. 2020) ("[Plaintiff] does not allege justifiable reliance on deceptive conduct because the Agreement's terms are clear."); *Corsale*, 412 F. Supp. 3d at 566 ("In order for a plaintiff's reliance to be justifiable, it must be reasonable, and it often depends on whether the recipient knew or should have known that the information supplied was false. . . . After all, [i]f a man knows the truth about a representation, he is neither deceived nor defrauded, and any loss he may sustain is in effect self-inflicted." (internal quotation marks and citation omitted)).[9]

Second, Plaintiffs have not alleged that they would have acted differently if they had understood that sales tax would be added to the purchase price. *Hunt*, 538 F.3d at 228 (finding plaintiff failed to allege justifiable reliance where he did not explain how the alleged deceptive conduct "was material to [his] purchasing decision"); *Glover v. Udren*, No. 08-0990, 2014 U.S. Dist. LEXIS 121800, at *18 (W.D. Pa. Sept. 2, 2014) ("Plaintiff has failed to show justifiable reliance, i.e., how the allegedly illegal fees charged . . . would have altered her decision."); *Slapikas v. First Am. Title Ins. Co.*, 298 F.R.D. 285, 295 (W.D. Pa. 2014) ("[A] plaintiff must provide evidence demonstrating how his or her knowledge about a mortgage loan's actual terms would have altered his or her decision to execute the mortgage."); *Seldon*, 647 F. Supp. 2d at 466 (explaining that materiality of the alleged deceptive representation is a requirement for a UTPCPL claim). Tellingly, none of the Plaintiffs protested, sought to return the purchased items upon being

[9] *See also McIntosh v. Walgreens Boots All., Inc.*, 135 N.E.3d 73, 85 (Ill. 2019) ("[Plaintiff] had the ability to investigate the ordinance to determine if the bottled water tax applied to his purchases of carbonated or flavored water. He has not alleged that [the defendant] had superior access to the information set forth in the bottled water tax ordinance or that he could not have discovered what the ordinance required through the exercise of ordinary prudence. . . . Therefore, the alleged misrepresentation asserted by [the plaintiff] cannot form the basis of a claim for statutory consumer fraud." (citations omitted)).

presented with receipts disclosing the amount of sales tax collected, or even sought a refund of the purportedly improper tax.[10]

Because Plaintiffs do not, and cannot, allege that they relied on any representations made by any of the Defendants when they allegedly purchased non-medical protective face masks, their UTPCPL claims fail. *See Smith v. State Farm Mut. Auto. Ins. Co.*, 506 F. App'x 133, 137 (3d Cir. 2012) ("Because justifiable reliance is a necessary element for standing under the UTPCPL's private-plaintiff standing provision, and reliance cannot be presumed, . . . the District Court did not err in dismissing [the UTPCPL claim]." (citation omitted)); *Kemezis v. Matthews*, 394 F. App'x 956, 959 (3d Cir. 2010) (affirming dismissal with prejudice where plaintiffs failed to plausibly allege a deceptive act or justifiable reliance); *Angino v. Wells Fargo Bank, N.A.*, No. 15-0418, 2016 U.S. Dist. LEXIS 21262, at *32 (M.D. Pa. Feb. 19, 2016) ("[T]he plaintiffs' UTPCPL claim simply does not identify any affirmative deceptive acts by [the defendant] upon which the plaintiffs justifiably relied to their financial detriment."), *adopted by* 2016 U.S. Dist. LEXIS 23466 (M.D. Pa. Feb. 26, 2016); *Walkup v. Santander Bank, N.A.*, 147 F. Supp. 3d 349, 363 (E.D. Pa. 2015) ("Plaintiffs have failed to assert facts that, if true, would demonstrate justifiable reliance on Defendants' conduct that resulted in ascertainable loss.").

4. Plaintiffs Have Not Suffered Any Ascertainable Loss.

Plaintiffs' claims also fail because they have not suffered an ascertainable loss, let alone any loss caused by justifiable reliance on any alleged representations by Defendants. *See Corsale*, 412 F. Supp. 3d at 566 ("[T]he UTPCPL requires that a plaintiff show that he has suffered, [as] a

[10] Plaintiffs Marous and McLean are foreclosed from arguing that they would have acted differently had they known that sales tax would be added to the advertised prices because they each returned to the same retailer and made a subsequent purchase within weeks of being presented with receipts disclosing the sales price and the amount of sales tax collected on behalf of the Commonwealth. *See* Compl. ¶¶ 45, 50, 51, 56, 117, 122, 127.

result of his justifiable reliance, an 'ascertainable loss of money or property, real or personal.'" (quoting 73 P.S. § 201-9.2(a))). Even if Plaintiffs had paid sales tax not due, they would be entitled to a refund from the Department and would thus be made whole by following the statutory refund procedures set forth in the Tax Code. *See* 72 P.S. §§ 7252–53; *Lilian v. Commonwealth*, 354 A.2d 250, 252 (Pa. 1976) (explaining the statutory process that "provide[s] for the refunding of improperly assessed or paid sales taxes, and set[s] forth the procedure whereby such refunds may be obtained"); January 20 Tax Bulletin, *supra*. Plaintiffs *chose* not to seek refunds of what they claim to be due; they cannot rely on this voluntary, manufactured "loss" to support their claims for penalties under the UTPCPL and, for this reason, their lawsuit must also be dismissed. *See Singh v. Wal-Mart Stores, Inc.*, No. 98-1613, 1999 U.S. Dist. LEXIS 8531, *26–27 (E.D. Pa. June 10, 1999) (holding that plaintiff did not suffer an ascertainable economic loss under the UTPCPL where he declined a full refund); *see also Homer v. Nationwide Mut. Ins. Co.*, No. 15-1184, 2016 U.S. Dist. LEXIS 114548, at *33 (W.D. Pa. Aug. 26, 2016) ("Because [plaintiff] has not pled justified reliance or ascertainable loss, his UTPCPL claim will be dismissed."), *aff'd*, 722 F. App'x 200 (3d Cir. 2018); *Weinberg*, 777 A.2d at 446.

B. Plaintiffs' Claims Are Barred by the Voluntary Payment Doctrine.

Plaintiffs were each aware of, and voluntarily paid, the sales tax that is now the basis of their claims. Their claims are therefore barred by the voluntary payment doctrine, under which "one who has voluntarily paid money with full knowledge, or means of knowledge of all the facts, without any fraud having been practiced upon him . . . cannot recover it back by reason of the payment having been made under a mistake or error as to the applicable rules of law." *Liss & Marion, P.C. v. Recordex Acquisition Corp.*, 983 A.2d 652, 661 (2009) (alterations in original) (quoting *In re Kennedy's Estate*, 183 A. 798, 802 (1936)); *see also Williams v. Enter. Holdings,*

Inc., No. 12-05531, 2013 U.S. Dist. LEXIS 38897, at *7 (E.D. Pa. Mar. 20, 2013) ("[W]here . . . one voluntarily and without fraud or duress pays money to another with full knowledge of the facts, the money paid cannot be recovered." (internal quotation marks and citation omitted) (alteration in original)); *Corp. Aviation Concepts, Inc. v. Multi-Service Aviation Corp.*, No. 03-3020, 2005 U.S. Dist. LEXIS 14568, at *18 (E.D. Pa. July 19, 2005) (same); *Kirk v. Allegheny Towing, Inc.*, 620 F. Supp. 458, 461 (W.D. Pa. 1985) (same); *Abrevaya v. VW Credit Leasing, Ltd.*, No. 09-0521, 2009 U.S. Dist. LEXIS 131478, at *5–6 (E.D. Pa. July 22, 2009) ("Individuals who are fully cognizant of all the relevant facts and are presented with a demand for payment . . . must thus choose either to fight the demand or make the rational calculation to acquiesce . . . . If one chooses the second option, the law binds one to his or her choice because the choice was voluntary and fully informed."); *William Sellers & Co. v. Clarke-Harrison, Inc.*, 46 A.2d 497, 499 (Pa. 1946) ("Money deliberately and voluntarily paid . . . with knowledge or means of knowledge of the material facts . . . cannot be recovered back.").[11]

The voluntary payment doctrine bars claims asserted under consumer protection statutes like the UTPCPL to recover "an erroneous tax that was paid voluntarily and remitted by the retailer to the taxing authority." *See McIntosh*, 135 N.E.3d at 83. Plaintiffs may avoid the doctrine only

[11] The Pennsylvania Supreme Court has repeatedly held that the voluntary payment doctrine bars recovery of tax payments unless specifically authorized by statute. *See, e.g.*, *Universal Film Exchs., Inc. v. Bd. of Fin. & Revenue*, 185 A.2d 542, 544–45 (Pa. 1962) ("If payment of taxes is voluntary, even though the taxing statute is later held unconstitutional, the money paid cannot be recovered in the absence of statutory authorization." (collecting cases)); *In re Royal McBee Corp. Tax Case*, 143 A.2d 393, 395 (Pa. 1958) ("At common law a voluntary payment of taxes, erroneously made, could not, in the absence of a statute, be recovered." (collecting cases)). Indeed, "[t]he refund of taxes voluntarily paid is a matter of legislative grace and not a right." *Hazleton Nat'l Bank v. Commonwealth*, 308 A.2d 195, 197 (Pa. Commw. Ct. 1973). To that end, the Pennsylvania General Assembly established the statutory refund procedure as a means to recover taxes voluntarily paid. *See* 72 P.S. § 7252; *id.* § 7253(a) ("[T]he refund or credit of tax . . . shall be made only where the person who has actually paid the tax files a petition for refund with the department."). Plaintiffs did not pursue that remedy.

by alleging that they paid the sales tax "without full knowledge of the facts, or because of the other party's fraud, or under some type of duress." *Williams*, 2013 U.S. Dist. LEXIS 38897, at *8. Here, however, Plaintiffs themselves allege that Defendants disclosed all relevant facts, including the purchase price of the face masks and the amount of sales tax collected. *See, e.g.*, Compl. ¶ 118 ("Walmart advertised the mask that [Plaintiff] McLean purchased on September 11, 2020 as costing $5.97."); *id.* ¶ 122 ("The September 11, 2020 receipt identified the extra $0.41 charge as sales tax for the mask that [Plaintiff] McLean purchased."); *see also id.* ¶¶ 24, 28, 35, 39, 46, 50, 52, 56, 63, 67, 74, 78, 85, 89, 107, 111, 123, 127 (making substantively identical allegations with respect to each Defendant); *id.*, Exs. 5–13 (providing receipts identifying the sales price and amount of sales tax collected). That Plaintiffs implausibly claim they initially "did not discover" the sales tax—when the facts were fully available to them, including on the face of the receipts provided to them at the time of the purchases—does not avoid the application of the voluntary payment doctrine. *See Liss*, 983 A.2d at 661 ("Under the voluntary payment defense, 'one who has voluntarily paid money with full knowledge, *or means of knowledge of all the facts*, without any fraud having been practiced upon him . . . cannot recover it back by reason of the payment having been made under a mistake or error as to the applicable rules of law.'" (emphasis added) (citation omitted)).

Plaintiffs cannot avoid the consequence of their voluntary payment of the tax by claiming that the tax was improper. Plaintiffs' assertion that "protective face masks or face coverings . . . are nontaxable," Compl. ¶ 17, is a *legal* conclusion—not a *factual* allegation, and thus is irrelevant to the voluntary payment analysis. *See Ne. Pa. Imaging Ctr. v. Commonwealth*, 35 A.3d 752, 757–58 (Pa. 2011) (explaining that whether an item is subject to sales tax "is an issue of statutory interpretation of the Tax Reform Act's applicable provisions" and thus "it is a pure

question of law"); *see also McIntosh*, 135 N.E.3d at 85 (explaining that a retailer's indication on a receipt that an item is taxable is a representation of the retailer's "understanding and interpretation of what the [tax statute] required"). A tax payment made with knowledge of the facts is voluntary even if there was a mistake of law (though, Defendants maintain that the tax was proper). *See Kirk*, 620 F. Supp. at 460 ("[M]oney voluntarily paid on a mistake of law cannot be recovered on the ground that the party supposed he was bound in law to pay it when in truth he was not.").[12] Where, as here, "one voluntarily and without duress or fraud pays money to another with full knowledge of the facts, the money paid cannot be recovered." *Id.* at 461.

McIntosh, which involved a substantially similar consumer protection statute, is particularly instructive.[13] In that case, the plaintiff brought a class action against a defendant-retailer under the state's consumer protection act for allegedly improperly collecting sales tax on bottled water. *See McIntosh*, 135 N.E.3d at 77. Like Plaintiffs here, the plaintiff in *McIntosh*

---

[12] *See also Williams*, 2013 U.S. Dist. LEXIS 38897, at *8–9 ("[A] mistaken belief that one is legally required to pay the debt is insufficient to overcome the doctrine, as the doctrine accounts for mistakes of fact and law."); *Coregis Ins. Co. v. Law Offices of Carole F. Kafrissen P.C.*, 140 F. Supp. 2d 461, 464 (E.D. Pa. 2001) ("Money paid voluntarily, although under a mistake of law as to the interpretation of a contract, cannot be recovered." (internal quotation marks and citations omitted)); *Box Office Pictures, Inc. v. Bd. of Fin. & Revenue*, 166 A.2d 656, 659 (Pa. 1961) ("[M]onies paid voluntarily under mistake of law cannot be recovered back."); *Acme Mkts., Inc. v. Valley View Shopping Ctr., Inc.*, 493 A.2d 736, 737 (Pa. Super. Ct. 1985) ("Where, under a mistake of law, one voluntarily and without fraud or duress pays money to another with full knowledge of the facts, the money paid cannot be recovered."); *Abrams v. Toyota Motor Credit Corp.*, No. 071049, 2001 Phila. Ct. Com. Pl. LEXIS 83, *33 (Dec. 5, 2001) (same); *McIntosh*, 135 N.E.3d at 82 ("Merely characterizing an act or practice as illegal is insufficient to defeat application of the doctrine.").

[13] Both the UTPCPL and the Illinois Consumer Fraud Act are based on Section 5(a) of the Federal Trade Commission Act. *See Commonwealth v. Monumental Props., Inc.*, 329 A.2d 812, 818 (Pa. 1974) ("[I]n all relevant respects the language of section 3 of the Consumer Protection Law and section 5 of the FTC Act is identical."); *Laughlin v. Evanston Hosp.*, 550 N.E.2d 986, 992 (Ill. 1990) (Clark, J., concurring) ("The statute provides that in construing the Consumer Fraud Act, courts shall give consideration to Federal decisions interpreting section 5(a) of the Federal Trade Commission Act, on which our statute is patterned."). Accordingly, they should be interpreted and construed consistently. *See* 1 Pa.C.S. § 1927.

"concede[d] that the bottled water tax was disclosed on the receipts issued" for the purchases. *Id.* at 84. In holding that the plaintiff's claim was barred by the voluntary payment doctrine, the court reasoned that "[w]here the nature and amount of a charge is fully disclosed, the plaintiff cannot successfully assert that he or she was operating under a mistake of fact with regard to the charge." *Id.*

The same result is warranted here. Plaintiffs allege that they voluntarily purchased non-medical protective face masks with full knowledge of the relevant facts, including the purchase price and the amount of sales tax. *See* Compl., Exs. 5–13. Even if any sales tax were collected in error (which Defendants dispute), Plaintiffs' claims are barred by the voluntary payment doctrine and should be dismissed. *See Williams*, 2013 U.S. Dist. LEXIS 38897, at *8–9; *Coregis Ins. Co.*, 140 F. Supp. 2d at 464; *Kirk*, 620 F. Supp. at 460; *Box Office Pictures, Inc.*, 166 A.2d at 659; *Acme Mkts., Inc.*, 493 A.2d at 737; *Abrams*, 2001 Phila. Ct. Com. Pl. LEXIS 83 at *33; *McIntosh*, 135 N.E.3d at 82.[14]

V. CONCLUSION

For the foregoing reasons, Defendants respectfully request that their Motion to Dismiss be granted and Plaintiffs' claims be dismissed with prejudice.

[Signature page follows.]

[14] Defendants respectfully submit that Plaintiffs' UTPCPL claims are also barred by the economic loss doctrine as set forth in *Werwinski v. Ford Motor Co.*, 286 F.3d 661, 671 (3d Cir. 2002) ("The economic loss doctrine 'prohibits plaintiffs from recovering in tort economic losses to which their entitlement flows only from a contract.'" (citation omitted)). Defendants recognize that this Court has concluded that *Werwinski* is not controlling, but they raise it in this brief to preserve their argument. *See Kerr*, 2018 U.S. Dist. LEXIS 189502, at *8–13.

Dated: February 1, 2021

Respectfully submitted,

/s/ James W. Forsyth
James W. Forsyth (PA 59180)
COZEN O'CONNOR
One Oxford Centre
301 Grant Street, 41st Floor
Pittsburgh, PA 15219
Telephone: (412) 620-6500
Email: jforsyth@cozen.com

Michael W. McTigue Jr. (admission pending)
(PA 69548)
Meredith C. Slawe (admission pending)
(PA 201489)
COZEN O'CONNOR
One Liberty Place
1650 Market Street, Suite 2800
Philadelphia, PA 19103
Telephone: (215) 665-2000
Email: mmctigue@cozen.com
mslawe@cozen.com

Counsel for Defendant Walmart Inc.

/s/ Molly E. Meacham
Molly E. Meacham (PA 318272)
BABST, CALLAND, CLEMENTS AND
ZOMNIR, P.C.
Two Gateway Center, 6th Floor
603 Stanwix Street
Pittsburgh, PA 15222
Telephone: (412) 394-5400
Email: mmeacham@babstcalland.com

Counsel for Defendant The Home Depot U.S.A., Inc.

/s/ Courtney S. Schorr
Courtney S. Schorr (PA 317370)
Gerald J. Stubenhofer, Jr. (PA 72921)
MCGUIREWOODS LLP
260 Forbes Avenue, Suite 1800
Pittsburgh, PA 15222
Telephone: (412) 667-6000
Email: cschorr@mcguirewoods.com
gstubenhofer@mcguirewoods.com

Bethany Gayle Lukitsch (*pro hac vice* forthcoming)
MCGUIREWOODS LLP
1800 Century Park East, 8th Floor
Los Angeles, CA 90067
Telephone: (310) 315-8227
Email: blukitsch@mcguirewoods.com

Counsel for Defendant Big Lots, Inc.

/s/ Courtney S. Schorr
Courtney S. Schorr (PA 317370)
Gerald J. Stubenhofer, Jr. (PA 72921)
MCGUIREWOODS LLP
260 Forbes Avenue, Suite 1800
Pittsburgh, PA 15222
Telephone: (412) 667-6000
Email: cschorr@mcguirewoods.com
gstubenhofer@mcguirewoods.com

Bethany Gayle Lukitsch (*pro hac vice* forthcoming)
MCGUIREWOODS LLP
1800 Century Park East, 8th Floor
Los Angeles, CA 90067
Telephone: (310) 315-8227
Email: blukitsch@mcguirewoods.com

Counsel for Defendant Dollar General Corporation

/s/ Robert M. Barnes
Robert M. Barnes (PA 58655)
Darlene M. Nowak (PA 37093)
MARCUS & SHAPIRA, LLP
One Oxford Centre
301 Grant Street, 35th Floor
Pittsburgh, PA 15219
Telephone: (412) 471-3490
Email: rbarnes@marcus-shapira.com
nowak@marcus-shapira.com

Counsel for Defendant Giant Eagle, Inc.

/s/ Courtney S. Schorr
Courtney S. Schorr (PA 317370)
Gerald J. Stubenhofer, Jr. (PA 72921)
MCGUIREWOODS LLP
260 Forbes Avenue, Suite 1800
Pittsburgh, PA 15222
Telephone: (412) 667-6000
Email: cschorr@mcguirewoods.com
gstubenhofer@mcguirewoods.com

Bethany Gayle Lukitsch (*pro hac vice* forthcoming)
MCGUIREWOODS LLP
1800 Century Park East, 8th Floor
Los Angeles, CA 90067
Telephone: (310) 315-8227
Email: blukitsch@mcguirewoods.com

Counsel for Defendant Jo-Ann Stores, LLC

/s/ Jack B. Cobetto
Jack B. Cobetto (PA 53444)
ECKERT SEAMANS CHERIN & MELLOTT, LLC
U.S. Steel Tower
600 Grant Street, 44th Floor
Pittsburgh, PA 15219
Telephone: (412) 566-6000
Email: jcobetto@eckertseamans.com

Counsel for Defendant Ollie's Bargain Outlet Holdings, Inc.

/s/ Kenneth M. Argentieri
Kenneth M. Argentieri (PA 41468)
DUANE MORRIS LLP
600 Grant Street, Suite 5010
Pittsburgh, PA 15219
Telephone: (412) 497-1005
Email: kmargentieri@duanemorris.com

Counsel for Defendant Ulta Beauty, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on February 1, 2021, a true and correct copy of the foregoing document was filed using the CM/ECF system, which will send notification of such filing to all current counsel of record.

/s/ James W. Forsyth
James W. Forsyth