

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK**

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**JESSICA MORRISON,  
on behalf of herself and  
all others similarly situated,**

**Plaintiff.**

**No. 20-cv-6468  
CLASS ACTION  
JURY DEMANDED**

**-against-**

**MIDLAND FUNDING LLC,  
MIDLAND CREDIT MANAGEMENT, INC.,  
and SELIP & STYLIANOU, LLP,**

**Defendants.**

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**COMPLAINT – CLASS ACTION**

**INTRODUCTION**

1. Plaintiff Jessica Morrison (“Morrison”) brings this action to secure redress regarding unlawful post-judgment collection practices engaged in by defendants Midland Funding LLC (“Midland Funding”), Midland Credit Management, Inc. (“Midland Credit Management”), and Selip & Stylianou, LLP (“Selip”). Plaintiff alleges violation of the Fair Debt Collection Practices Act, 15 U.S.C. §1692 et seq. (“FDCPA”) and New York General Business Law §349 (“GBL §349”).

2. Plaintiff complains that Defendants deceptively and abusively utilize income executions, one of the primary tools used by judgment creditors to enforce money judgments, with respect to Plaintiff and class members. The income executions:

- a. Fail to specify in the income execution the actual amount of income received from the employer as required by New York Civil Practice Law

and Rules (“CPLR”) §5231(a);

- b. Fail to set forth in the income execution the frequency of payments by the employer as required by CPLR §5231(a);
- c. Fail to provide in the income execution the actual monetary amount of installments sought to be collected calculated based on the amount of income, the frequency of income, and limitations on the amount of income subject to an income execution, as required by CPLR §5231(a);

3. These material omissions create a substantial likelihood, which materialized in Plaintiff’s case, that:

- a. Money will be taken from debtors that Defendants are not entitled to take;
- b. Fees will be improperly imposed on debtors;
- c. Defendants will improperly threaten to levy against employers where none of the judgment debtor’s income is subject to execution;
- d. The judgment debtor will be deprived of the opportunity, provided by New York law, to pay in installments without service on or levy against the employer;
- e. Defendants cause sheriffs to levy against employers on income not subject to execution, or where the judgment debtor has not been given an opportunity to pay in installments without levying against the employer, thus incurring unnecessary sheriff’s fees.

4. These debt collection deceptions, misrepresentations and abuses by Defendants injured Plaintiff and class members.

5. CPLR § 5231 provides in relevant part as follows with respect to income executions:

(a) Form. An income execution shall specify, in addition to the requirements of subdivision (a) of section 5230, the name and address of the person or entity from whom the judgment debtor is receiving or will receive money; the amount of money, the frequency of its payment and the amount of the installments to be collected therefrom; and shall contain a notice to the judgment debtor that he or she shall commence payment of the installments specified to the sheriff forthwith and that, upon his or her default, the execution will be served upon the person or entity from whom he or she is receiving or will receive money.

(b) Issuance. Where a judgment debtor is receiving or will receive money from any source, an income execution for installments therefrom of not more than ten percent thereof may be issued and delivered to the sheriff of the county in which the judgment debtor resides or, where the judgment debtor is a non-resident, the county in which he is employed; provided, however, that (i) no amount shall be withheld from the judgment debtor's earnings pursuant to an income execution for any week unless the disposable earnings of the judgment debtor for that week exceed the greater of thirty times the federal minimum hourly wage prescribed in the Fair Labor Standards Act of 1938 or thirty times the state minimum hourly wage prescribed in section six hundred fifty-two of the labor law as in effect at the time the earnings are payable; (ii) the amount withheld from the judgment debtor's earnings pursuant to an income execution for any week shall not exceed twenty-five percent of the disposable earnings of the judgment debtor for that week, or, the amount by which the disposable earnings of the judgment debtor for that week exceed the greater of thirty times the federal minimum hourly wage prescribed by the Fair Labor Standards Act of 1938 or thirty times the state minimum hourly wage prescribed in section six hundred fifty-two of the labor law as in effect at the time the earnings are payable, whichever is less; (iii) if the earnings of the judgment debtor are also subject to deductions for alimony, support or maintenance for family members or former spouses pursuant to section five thousand two hundred forty-one or section five thousand two hundred forty-two of this article, the amount withheld from the judgment debtor's earnings pursuant to this section shall not exceed the amount by which twenty-five percent of the disposable earnings of the judgment debtor for that week exceeds the amount deducted from the judgment debtor's earnings in accordance with section five thousand two hundred forty-one or section five thousand two hundred forty-two of this article. Nothing in this section shall be construed to modify, abrogate, impair, or affect any exemption from the satisfaction of a money judgment otherwise granted by law.

(c) Definition of earnings and disposable earnings.

(i) As used herein earnings means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program.

(ii) As used herein disposable earnings means that part of the earnings of any

individual remaining after the deduction from those earnings of any amounts required by law to be withheld.

(d) Service upon debtor; first service by sheriff. Within twenty days after an income execution is delivered to the sheriff, the sheriff shall serve a copy of it upon the judgment debtor, in the same manner as a summons or, in lieu thereof, by certified mail return receipt requested provided an additional copy is sent by regular mail to the debtor. If service is by mail as herein provided, the person effecting service shall retain the receipt together with a post office certificate of mailing as proof of such service.

(e) Levy upon default or failure to serve debtor; second service by sheriff. If a judgment debtor fails to pay installments pursuant to an income execution served upon him or her for a period of twenty days, or if the sheriff is unable to serve an income execution upon the judgment debtor within twenty days after the execution is delivered to the sheriff, the sheriff shall levy upon the money that the judgment debtor is receiving or will receive by serving a copy of the income execution, indorsed to indicate the extent to which paid installments have satisfied the judgment, upon the person or entity from whom the judgment debtor is receiving or will receive money. The income execution shall be served personally within any county in which the person or entity from whom the judgment debtor is receiving or will receive money has an office or place of business in the same manner as a summons, or by certified mail return receipt requested, except that such service shall not be made by delivery to a person authorized to receive service of summons solely by a designation filed pursuant to a provision of law other than rule 318.

6. The FDCPA broadly prohibits unfair or unconscionable collection methods, conduct which harasses or abuses any debtor, and the use of any false or deceptive statements in connection with debt collection attempts. It also requires debt collectors to give debtors certain information. 15 U.S.C. §§1692d, 1692e, 1692f and 1692g.

7. In enacting the FDCPA, Congress found that: “[t]here is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors. Abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.” 15 U.S.C. §1692(a).

8. Because of this, courts have held that “the FDCPA's legislative intent emphasizes the need to construe the statute broadly, so that we may protect consumers against debt collectors'

harassing conduct.” and that “[t]his intent cannot be underestimated.” *Ramirez v. Apex Financial Management LLC*, 567 F.Supp.2d 1035, 1042 (N.D.Ill. 2008).

9. The FDCPA encourages consumers to act as "private attorneys general" to enforce the public policies and protect the civil rights expressed therein. *Crabill v. Trans Union, LLC*, 259 F.3d 662, 666 (7th Cir. 2001).

10. Plaintiff seeks to enforce those policies and civil rights which are expressed through the FDCPA, 15 U.S.C. §1692 *et seq.*

11. GBL §349 prohibits deceptive acts or practices against consumers in New York State in the conduct of any business, trade or commerce, or furnishing of any service.

#### **JURISDICTION AND VENUE**

12. Jurisdiction of this Court arises under 15 U.S.C. §1692k(d) and 28 U.S.C. §1331, and supplemental jurisdiction exists for state law claims pursuant to 28 U.S.C. §1367.

13. Venue in this District is proper in that the Defendant transacts business here and the conduct complained of occurred here.

#### **PARTIES**

##### **Plaintiff**

14. Plaintiff Jessica Morrison (“Morrison”) is a natural person residing in Wayne County, New York.

##### **Defendant Midland Funding**

15. Defendant Midland Funding is a limited liability company organized under the laws of Delaware and engaged in the business of collecting debts in New York State and elsewhere. It is authorized to do business in this state. It operates from 350 Camino De La

Reina, Suite 100, San Diego, CA 92108. Its registered agent and office is Corporation Service Company, 80 State Street, Albany, New York 12207.

16. Midland Funding is engaged in the sole or principal business of collecting consumer debts, using the mails and telephone system for that purpose.

17. Midland Funding purchases defaulted consumer debts and then attempts to collect these debts. Among other things, it files thousands of debt collection lawsuits in its own name as plaintiff. Midland Funding files thousands of lawsuits against consumers each year in New York state courts.

18. Midland Funding does not originate loans or extend credit to consumers or have any source of revenue other than the liquidation of defaulted consumer debts.

19. Midland Funding purchases defaulted consumer debts for pennies on the dollar, so that it can derive large profits from collection on the consumer debt it purchases.

20. Midland Funding hires Midland Credit Management as its “servicer” to collect on its defaulted consumer debts via:

- a. Collection letters sent by Midland Credit Management to consumers; and
- b. Collection phone calls to consumers.

21. Midland Funding also has Midland Credit Management retain lawyers and law firms to file debt collection lawsuits against consumers. Midland Funding obtains judgments against consumers and then executes on the judgments.

22. Midland Funding’s debt collection complaints are supported by affidavits of employees of Midland Credit Management that state the consumer owes Midland Funding a certain balance on delinquent accounts.

23. Midland Funding and Midland Credit Management are wholly-owned subsidiaries of Encore Capital, a public company, and share common management with Encore Capital.

24. Midland Funding and Midland Credit Management operate in concert with one another and affiliates, to purchase and collect consumer debt on a massive scale.

25. Midland Funding and Midland Credit Management and their affiliates are one of the largest debt buyers and collectors in the United States.

26. Midland Funding and Midland Credit Management send collection letters by United States mail, call consumers from call centers in the United States, India, and Costa Rica, furnish consumer information to credit bureaus, and sue consumers in state courts across the country.

27. Midland Funding and Midland Credit Management purchase or claim to purchase portfolios of old consumer debt from some of the nation's largest consumer finance and telecommunications companies, and from other debt buyers, for pennies on the dollar. These debts primarily consist of charged-off consumer credit card and telecommunications debts, obtained at various points in time after default.

28. From 2009 to 2015, Encore states in SEC filings that it paid about \$4 billion for approximately 60 million consumer accounts with a total face value of some \$128 billion. Encore's SEC filings further state: "During the year ended December 31, 2018, we invested \$1,131.9 million to acquire portfolios, primarily charged-off credit card portfolios, with face values aggregating \$8.5 billion, for the average purchase price of 13.3% of face value. During the year ended December 31, 2017, we invested \$1,058.2 million to acquire portfolios, primarily

charged-off credit card portfolios, with face values aggregating \$10.1 billion, for an average purchase price of 10.5% of face value. During the year ended December 31, 2016, we invested \$9,06.7 million to acquire portfolios, primarily charged-off credit card portfolios, with face values aggregating \$9.8 billion, for an average purchase price of 9.2% of face value.”

29. About half of Midland Funding and Midland Credit Management’s U.S. collection income comes from “legal collections.” (Annual report of Encore Capital on SEC Form 10-K for year ending December 31, 2015, original page 39; annual report of Encore Capital on SEC Form 10-K for year ending December 31, 2018, original page 32.)

30. Requests for default judgments in cases filed in the name of Midland Funding generally are supported by affidavits of employees of Midland Credit Management, attesting to the ownership and amount of the debt.

31. Upon information and belief, almost all of Midland Funding’s resources are devoted to debt collection.

32. Upon information and belief, almost all of Midland Funding’s revenue is derived from debt collection.

33. Upon information and belief, almost all of Midland Funding’s expenses are related to debt collection, including the acquisition of the debts to be collected.

34. Midland Funding is a debt collector as defined by the FDCPA, 15 U.S.C. §1692a(6), as a person who uses one or more instrumentalities of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts.

### **Midland Credit Management**

35. Defendant Midland Credit Management, Inc. is a foreign for profit corporation operating from 350 Camino De La Reina, Suite 100, San Diego, CA 92108.

36. Midland Credit Management uses instrumentalities of interstate commerce or the mails in its business, the principal purpose of which is the collection of debts.

37. Midland Credit Management regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due to another, specifically Midland Funding and certain other subsidiaries of Encore.

38. Recently, Midland Credit Management also claims to take title to debts, and files collection suits in its name.

39. Upon information and belief, almost all of Midland Credit Management's resources are devoted to debt collection.

40. Upon information and belief, almost all of Midland Credit Management's revenue is derived from debt collection.

41. Upon information and belief, almost all of Midland Credit Management's expenses are related to debt collection.

42. Midland Credit Management is a "debt collector" within the meaning of the FDCPA.

### **Defendant Selip**

43. Defendant Selip & Stylianou, LLP ("Selip") is a law firm organized as a New York limited liability partnership. It has a principal place of business at PO Box 9004, 199 Crossways Park Drive, Woodbury, New York 11797.

44. Selip is engaged in the business of collecting consumer debts, using the mails and telephone system for that purpose.

45. Selip states on its web site (<http://www.seliplaw.com>) that it “provides its clients with thorough, complete and comprehensive legal representation throughout the entire states of New York and New Jersey in the practice area of Creditor’s Rights litigation and consulting.”

46. Selip files thousands of collection lawsuits against consumers each year in New York state courts.

47. Selip is a debt collector as defined by the FDCPA, 15 U.S.C. §1692a(6), as a person who uses one or more instrumentalities of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, and who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.

#### **FACTUAL ALLEGATIONS**

48. This action arises out of Defendants’ attempts to collect a credit card debt incurred for personal, family or household purposes.

49. On or about November 14, 2019, a lawsuit was filed by Midland Funding against Morrison in the Wayne County Supreme Court, Index No. CV085103, seeking to collect the credit card debt. A copy of the complaint and summons are in Appendix A.

50. Selip filed the lawsuit, and conducted all subsequent proceedings therein, as attorney for Midland Funding.

51. Midland Funding also filed two affidavits, from a person who was both “an officer of Midland Funding LLC” and “employed as a Legal Specialist by Midland Credit

Management, Inc.” (Appendix B) The first affidavit stated that Midland Credit Management was “servicer of this account on behalf of Plaintiff.”

52. On information and belief, Midland Credit Management communicated with Selip on behalf of Midland Funding and directed or approved all actions taken by Selip in connection with this and other New York collection lawsuits brought by Midland Funding.

53. On January 27, 2020, a default judgment in favor of Midland Funding and against Morrison was entered in the Wayne County Clerk’s Office in Index No. CV0805103. (Appendix C)

54. Midland Funding attempted to collect on the default judgment by filing an Income Execution with the Wayne County Sheriff’s Office on or about February 24, 2020. (Appendix D, attached).

55. The Income Execution was signed by an attorney at Selip.

56. Prior to filing the Income Execution, Defendants made no attempt to find out the amount of money Plaintiff received as earnings, the frequency of its payment and the amount of the installments to be collected therefrom.

57. On information and belief, the filing of the Income Execution and the failure to attempt to ascertain the actual income of Plaintiff was directed by Midland Credit Management on behalf of Midland Funding.

58. The Income Execution stated that Morrison “is receiving or will receive from the employer Webster Central School District, 119 South Street, Webster, New York 14580, 585-216-0000, more than \$354.00 per week.”

59. This statement was false.

60. Although required by CPLR §5231(a), nowhere in the Income Execution was Morrison's actual income set forth. In fact, Morrison's earnings from Webster Central School District were substantially less than \$354.00 per week and not subject to the Income Execution based on the limitations set forth in CPLR §5231(b).

61. Specifically, Morrison's disposable income was less than \$215.00 per week, which is less than 30 times the minimum wage of \$11.80 for Upstate New York, and therefore not subject to an income execution. CPLR §5231(b).

62. Defendants generally fail to set forth consumers' actual incomes in Income Executions despite the requirement to do so in CPLR §5231(a), instead typically setting forth as earnings a weekly amount that is 30 times one of the various New York State minimum wages (as was done in the Morrison Income Execution), or setting forth no amount at all.

63. Defendants failed to set forth anywhere in the Income Execution the actual frequency of payments of Morrison's earnings by Webster Central School District, which is bimonthly, despite the requirement in CPLR §5231(a) that the frequency of such payments be included in the income execution.

64. Defendants typically fail to set forth the frequency of payments by employers to consumers in income executions, instead alleging that the frequency is weekly or providing no frequency at all.

65. Defendants failed to set forth anywhere in the Income Execution the monetary amount of the installment Morrison was expected to pay on the Income Execution based on the amount of her income, the frequency of her income, and limitations on income subject to execution set forth in CPLR §§5231(b), 5205 and 5222. In fact, it should have been zero if

properly calculated; therefore, no installments would have been due.

66. Defendants typically fail to specify in income executions a calculation of the actual monetary amount of installments expected to be paid based on the amount of income, the frequency of income, and limitations on income subject to execution set forth in §§CPLR 5231(b), 5205 and 5222.

67. Without the calculation of the monetary amounts of installments allegedly due, as required by CPLR §5231(a), Morrison and other consumers cannot:

- a. Determine the amount of installments they are actually responsible to pay to comply with a properly issued income execution;
- b. Avoid sheriffs' or other enforcement officers' levies on their employers;
- c. Determine whether they have to pay anything at all pursuant to income executions;
- d. Determine whether the amount of the installments is accurate.

68. As noted in the commentary CPLR 5231 in McKinney's Consolidated Laws of New York Annotated at C5231:2, Form and Content of Income Execution, "If the judgment creditor does not know how much the judgment debtor is receiving and cannot determine this by informal inquiries of the debtor or her employer, use can be made of the disclosure subpoenas of CPLR 5224."

69. CPLR §§5231(c) and (d) provide that judgment debtors must be served and have the opportunity to pay installments directly before employers are served and levied upon. Under these provisions, judgment debtors are given 20 days to commence payments before employers are served or levied upon. The purpose of this is to allow judgment debtors to directly pay

installments themselves to avoid having their employers served and levied upon.

70. Case law has established that a purpose of the requirements of CPLR § 5231(c) and (d) is to provide the judgment debtor with an opportunity to pay the judgment himself prior to the issuing of the execution on his employer. *Matter of Schleimer v. Gross*, 46 Misc. 2d 931, 261 N.Y.S.2d 670 (Nassau Co. Sup. Ct. 1965).

71. The sponsor's memorandum to a December 2015 amendment explains that this legislation would not circumvent one of the central goals of CPLR §5231, which is to afford the judgment debtor the option to pay the installments due pursuant to the income execution without his or her employer being made aware of the debt.

72. If the amounts of installments expected to be paid are not set forth in income executions, as required by CPLR §5231(a), an unsophisticated consumer cannot ascertain what amount is due on an installment in order to properly comply with the income execution, since the process for calculating the amounts of installments is fairly complex. It requires a knowledge of the amount of gross income paid by the employer, the definition of gross income for purposes of income executions, the definition of disposable income for purposes of income executions, an ability to calculate and determine the applicable limitations of income subject to execution pursuant to CPLR §5231(a), and any applicable limitations set forth in CPLR §§5205 and 5222.

73. The Income Execution deceptively threatened Morrison that if she defaulted in commencing forthwith the payment of installments to the enforcement officer, the income execution would be served on her employer, who would be subject to levy by the enforcement officer. This would result in additional fees for serving and levying on the employer.

74. Morrison and other consumers whose installment payments should have been

calculated to be zero dollars by Defendants do not default by failing to make installment payments because there is nothing to pay.

75. Because Defendants fail to properly calculate the installment payments for which they are liable, such consumers are subject to being served with income executions that do not apply to their earnings, and may be subject to levies against their employers.

76. Consumers who may owe some level of installments are not properly notified of the installment amounts and therefore are impeded in making direct payments to avoid service and levy upon their employers, and in determining whether the expected installment payments are accurate, and in any event very likely may not be able to determine the amount of the installment payments necessary to properly comply with the income execution.

77. Morrison's employer was levied upon pursuant to the Income Execution, and deductions were improperly taken against her income that were transmitted to the Wayne County Sheriff's Department. After she retained counsel, some or all of the amounts taken were returned. However, during the interim she was deprived of money necessary for her to live.

78. Other consumers whose income was executed upon but should not have been subject to execution may not have been reimbursed for their wage deductions and Sheriff's fees and/or expenses that should not have been incurred.

**FIRST CLAIM – VIOLATION OF 15 U.S.C. §§ 1692e AND 1692f**

79. Plaintiff incorporates paragraphs 1-78.

80. Defendants violated 15 U.S.C. §§1692, 1692e, 1692e(4), 1692e(5), 1692e(10), 1692f and 1692f(1) by:

a. Filing income executions against Morrison and others whose income was

not subject to execution;

- b. Impermissibly threatening to serve and levy on income execution against the employers of Morrison and others whose income was not subject to execution;
- c. Attempting to enforce money judgments by issuing income executions without complying with the mandatory requirements under CPLR 5231(a), by failing to ascertain and set forth in the income execution the amounts of income paid to judgment debtors by their employers, the frequencies of such payments of income, and the calculation of the expected monetary amounts of installments allegedly due on the income executions.

81. Section 1692e provides:

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section: . . .

- (2) The false representation of—
  - (A) the character, amount, or legal status of any debt; . . .
- (4) The representation or implication that nonpayment of any debt will result in the . . . garnishment of any . . . wages or any person unless such action is lawful . . .
- (5) The threat to take any action that cannot legally be taken or that is not intended to be taken. . . .
- (10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer. . .

82. Section 1692f provides:

A debt collector may not use unfair or unconscionable means to collect or attempt to

collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

- (1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law. . . .

83. Plaintiff and each class member were damaged by all or some of the conduct complained of.

### **CLASS ACTION ALLEGATIONS**

84. Plaintiff brings this claim on behalf of two classes, pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure.

85. The Midland class consists of (a) all individuals (b) sued in a New York state court by Midland Funding or Midland Credit Management (c) where an Additional Notice of Consumer Credit Action was filed (d) against whom was issued an income execution that failed to set forth the actual amount of income received from the employer, the actual frequency of payments of income by the employer, and/or the calculated monetary amount of installments expected to be paid to the enforcement officer.

86. The Selip class consists of (a) all individuals (b) sued in a New York state court by Selip (representing anyone) (c) where an Additional Notice of Consumer Credit Action was filed (d) against whom was issued an income execution that failed to set forth the actual amount of income received from the employer, the actual frequency of payments of income by the employer, and/or the calculated monetary amount of installments expected to be paid to the enforcement officer.

87. Each class includes individuals where the income execution was filed with the

enforcement officer on or after a date one year prior to the filing of this action.

88. Based on the volume of filings and default judgments by Midland Funding and Selip, the members of each class exceed 35 in number. Each class is therefore so numerous that joinder of all members is impracticable.

89. There are questions of law and fact common to the class members, which predominate over any questions affecting only individual class members. The principal common questions are:

- a. Whether the failure to ascertain and set forth in income executions the amount of income received from the employer, the frequency of payments by the employer, and the calculated monetary amounts of installments expected to be paid is deceptive or unfair.
- b. Whether income executions that threaten to serve and levy against the employer where there is a default in paying installments are impermissible threats to take legal action that cannot be taken, where the income is not subject to execution and thus there can be no default, are deceptive or unfair.

90. The only individual issues are the identification of the class members, and damages. This can readily be determined from Defendants' records or official records.

91. Plaintiff's claims are typical of those of the class members. All claims are based on the same facts and legal theories.

92. Plaintiff will fairly and adequately represent class members' interests. Plaintiff has retained counsel experienced in bringing class actions pursuant to the FDCPA and GBL §349.

93. A class action is superior for the fair and efficient adjudication of the class members' claims, in that:
- a. The amount of each claim is too small to make individual litigation economical.
  - b. Congress specifically envisioned class actions as a principal means of enforcing the FDCPA. *See* 15 U.S.C. § 1692k.
  - c. The members of the class are generally unsophisticated consumers, whose rights will not be vindicated in the absence of a class action.
  - d. The gist of the Defendants' wrongdoing is the concealment of material facts that they are required by law to disclose; it is unlikely that the consumers to whom disclosures are required to be made will ascertain the necessary information without the disclosures.
  - e. Prosecution of separate actions by individual members of the class would also create the risk of inconsistent or varying adjudications resulting in the establishment of inconsistent or varying standards for the parties.

WHEREFORE, Plaintiff requests that the Court enter judgment in favor of Plaintiff and the class members and against Defendants for:

- i. Statutory damages;
- ii. Actual damages;
- iii. Attorney's fees, litigation expenses and costs of suit;
- iv. Such other or further relief as is proper.

**SECOND CLAIM – VIOLATIONS OF GBL § 349**

94. Plaintiff incorporates paragraphs 1-78.
95. Defendants engaged in deceptive practices in violation of GBL §349 by:
  - a. Filing income executions against Morrison and others whose income was not subject to execution;
  - b. Impermissibly threatening to serve and levy on income execution against the employers of Morrison and others whose income was not subject to execution;
  - c. Attempting to enforce money judgments by issuing income executions without complying with the mandatory requirements under CPLR 5231(a), by failing to ascertain and set forth in the income execution the amounts of income paid to judgment debtors by their employers, the frequencies of such payments of income, and the calculation of the expected monetary amounts of installments allegedly due on the income executions.

96. New York General Business Law §349(a) provides that “Deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are hereby declared unlawful.”

97. Defendants’ deceptive conduct was consumer oriented in that it was directed against and harmed thousands of consumers.

98. Defendants’ practices were deceptive and misleading in a material way.

99. The conduct complained of was likely to harm a reasonable consumer acting reasonably under the circumstances.

### CLASS ACTION ALLEGATIONS

100. Plaintiff brings this claim on behalf of two classes, pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure.

101. The Midland class consists of (a) all individuals (b) sued in a New York state court by Midland Funding or Midland Credit Management (c) where an Additional Notice of Consumer Credit Action was filed (d) against whom was issued an income execution that failed to set forth the actual amount of income received from the employer, the actual frequency of payments of income by the employer, and/or the calculated monetary amount of installments expected to be paid to the enforcement officer.

102. The Selip class consists of (a) all individuals (b) sued in a New York state court by Selip (representing anyone) (c) where an Additional Notice of Consumer Credit Action was filed (d) against whom was issued an income execution that failed to set forth the actual amount of income received from the employer, the actual frequency of payments of income by the employer, and/or the calculated monetary amount of installments expected to be paid to the enforcement officer.

103. Each class includes individuals where the income execution was filed with the enforcement officer on or after a date three years prior to the filing of this action. *Gaidon v. Guardian Life Ins. Co.*, 96 N.Y.2d 201, 208, 727 N.Y.S.2d 30, 750 N.E.2d 1078 (2001).

104. Based on the volume of filings and default judgments by Midland Funding and Selip, the members of each class exceed 35 in number. Each class is therefore so numerous that joinder of all members is impracticable.

105. There are questions of law and fact common to the class members, which

predominate over any questions affecting only individual class members. The principal common questions are:

- a. Whether the failure to ascertain and set forth in income executions the amount of income received from the employer, the frequency of payments by the employer, and the calculated monetary amounts of installments expected to be paid is deceptive.
- b. Whether income executions that threaten to serve and levy against the employer where there is a default in paying installments are impermissible threats to take legal action that cannot be taken, where the income is not subject to execution and thus there can be no default, are deceptive.

106. The only individual issues are the identification of the class members, and damages. This can readily be determined from Defendants' records or official records.

107. Plaintiff's claims are typical of those of the class members. All claims are based on the same facts and legal theories.

108. Plaintiff will fairly and adequately represent class members' interests. Plaintiff has retained counsel experienced in bringing class actions pursuant to the FDCPA and GBL §349.

109. A class action is superior for the fair and efficient adjudication of the class members' claims, in that:

- a. The amount of each claim is too small to make individual litigation economical.
- b. The members of the class are generally unsophisticated consumers, whose rights will not be vindicated in the absence of a class action.

- c. The gist of the Defendants' wrongdoing is the concealment of material facts that they are required by law to disclose; it is unlikely that the consumers to whom disclosures are required to be made will ascertain the necessary information without the disclosures.
- d. Prosecution of separate actions by individual members of the class would also create the risk of inconsistent or varying adjudications resulting in the establishment of inconsistent or varying standards for the parties.

WHEREFORE, Plaintiff requests that the Court enter judgment in favor of Plaintiff and the class members and against Defendants for:

- i. Statutory damages;
- ii. Actual damages;
- iii. Treble damages;
- iv. Appropriate injunctive relief;
- v. Attorney's fees, litigation expenses and costs of suit;
- vi. Such other or further relief as is proper.

Dated: June\_ , 2020

**DEMAND FOR JURY TRIAL**

Plaintiff demands a trial by Jury.

Respectfully submitted,

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*/s/Tiffany N. Hardy*

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