CV 18- 7068

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Britney Rudler, *on behalf of herself and all others similarly situated,*

Plaintiff,

v.

Houslanger & Associates, PLLC, Todd Houslanger, Esq., and Bryan Bryks, Esq.,

Defendants.

COMPLAINT

Jury Trial Demanded

FEUERSTEIN, J.

SHIELDS, M.J.

Plaintiff Britney Rudler, on behalf of herself and all others similarly situated, for her complaint, alleges as follows:

NATURE OF ACTION

1. This class action seeks to vindicate the rights of consumers harmed, deceived, or otherwise pressured by blatantly false, deceptive, and unethical statements of New York law and legal ethics by the high-volume collection law firm of Houslanger and Associates, PLLC in New York state court consumer collection actions.

2. Specifically, Defendants have made a practice of making false representations to *pro se* litigants regarding the ethics of accepting or seeking help from attorney without a full, expensive engagement.

3. Such representations are, in fact, perfectly ethically acceptable and commonplace, and New York's ethics rules were amended in 2009 in a way that explicitly contemplates exactly what Defendants claim is unethical, untoward, or otherwise impermissible.

4. Defendants' stratagem is particularly pernicious—and particularly effective—because of the double bind it places upon the consumers they sue: the consumers are falsely told they may not seek legal help (except by risking spending more than they can afford) or seek to have an attorney assist them in small or discrete ways, but in order to unravel the deceptiveness of **that** false claim, the consumer would likely need to speak to an attorney.

5. Defendants' back up these false claims by citing cases that have long since been abrogated or otherwise made obsolete, knowing that non-attorneys will not necessarily know that when an attorney only cites a handful of cases from the 1970's, that authority is suspect.

6. Defendants' goal in engaging in this practice—and therefore the source of unjust gains they have reaped therefrom—is the manipulation and intimidation of non-attorney consumers into accepting unjust and unfair settlements, and to otherwise move through their caseload without allowing consumers process to which they are entitled.

7. Defendants' false and unfair misrepresentations violate the Fair Debt Collection Practice Act, codified at 15 U.S.C. §§ 1692, *et seq.* ("FDCPA"), which was designed to prohibit precisely these sorts of abusive, deceptive, and unfair debt-collection practices, as well as New York General Business Law § 349 ("NYGBL").

JURISDICTION AND VENUE

8. This Court has federal question jurisdiction under 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1331.

9. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and§ 2202.

10. The Court has ancillary jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367.

11. Venue is proper in this district pursuant to 28 U.S.C. § 1391, as Plaintiff lives in this district and the acts and transactions that give rise to this action occurred, in substantial part, in this district.

12. Venue is also proper in this district because Defendants conduct business in this district and the injury occurred in this District.

13. Venue is further proper in this district because Defendant Houslanger & Associates, PLLC, and individual defendants Todd E. Houslanger and Bryan Bryks have their principal place of business in this District and many of the wrongful acts alleged herein had their wrongful effect or otherwise caused harm in this District.

PARTIES

Named Plaintiff

14. Named Plaintiff Britney Rudler ("Ms. Rudler" or "Plaintiff') has at all relevant times been a resident of Queens County, New York, which county is in this District.

15. Ms. Rudler is a "consumer" as defined in 15 U.S.C. § 1692a(3).

16. Defendant Houslanger & Associates, PLLC (the "Houslanger Firm"), was and is a domestic professional service limited liability corporation authorized to do business in New York, with its principal place of business in Huntington, New York.

17. The Houslanger Firm is a high-volume debt collection law firm and, upon information and belief, collects upon thousands of judgments every year.

18. The Houslanger Firm's website, www.toddlaw.com, lists its two practice areas as "judgment enforcement" and "collections."

19. The Houslanger Firm regularly collects debts on behalf of others and the collection of debts is its principal business purpose.

20. The Houslanger Firm is a debt collector under FDCPA § 1692a(6).

21. Todd E. Houslanger is an attorney and has at all relevant times been a principal and owner of the Houslanger Firm.

22. Attorney Houslanger has final, supervisory over the Houslanger Firm's collections practice.

23. Attorney Houslanger's principal business endeavor is the collection of debts, and he regularly attempts to collect debts alleged to be due another.

24. Attorney Houslanger is a debt collector under FDCPA § 1692a(6).

25. Bryan Bryks is an attorney and has at all relevant times been an associate with the Houslanger Firm.

26. On information and belief, Attorney Bryks receives instruction and guidance in handling his legal matters from Attorney Houslanger.

27. Attorney Bryks' principal business endeavor is the collection of debts, and he regularly attempts to collect debts alleged to be due another.

28. Attorney Bryks is a debt collector under FDCPA § 1692a(6).

29. Each and every Defendant herein uses multiple instrumentalities of interstate commerce, as well as the mails in connection with and in furtherance of Defendants' collection activities.

NAMED PLAINTIFF'S EXPERIENCE

30. In a New York State Court matter styled *Cyprus Fin. Recoveries v. Britney L. Rudler*, with Index No. 39584/2009 and brought in Tioga County Supreme Court (the "Debt Action"), the Houslanger Firm is the latest in a series of attorneys representing the nominal

plaintiff, Cyprus Financial Recoveries, whose place has been most recently taken by PALISADES COLLECTION, LLC.

31. In September of 2009, a Summons and Complaint were filed in the Debt Action but never served upon Britney Rudler.

32. The plaintiff moved for and received a default judgment in the Debt Action, and a default judgment was entered on April 26, 2010

33. Ms. Rudler did not receive notice of the default judgment until July of 2018, whereupon she moved *pro se* to have the judgment vacated.

34. In response to her motion, Attorney Bryks filed an Affirmation in Opposition, which included the following paragraph:

> "16. Upon information and belief, the Defendant's Affidavit in Support is ghostwritten. Upon information and belief, the basis being the service of the Second Stage Income Execution upon Martin Clearwater & Bell, a firm duly organized and containing attorneys licensed to practice law in the State of New York, the Defendant is employed by attorneys who may have helped her with her Order to Show Cause and supporting Documents. Without disclosing said ghostwriting to the court and opposing counsel, the practice of ghostwriting has been deemed unethical by both the New York State Bar Association and the Association of the Bar of the City of New York (*see* NY State Bar Assn Comm on Prof Ethics Op 613 [1990]; Assn of Bar of City of NY Op 1987-2 [1987]; as well as Federal Courts (see *Klein v. H.N. Whitney, Goadby & Co.,* 341 F Supp 699, 702 [US Dist Ct SD NY 1971]; *Klein v. Spear, Leads, & Kellogg,* 309 F Supp 341 343 [US Dist CT SD NY])."

Exhibit A (all formatting preserved).

35. The Tioga County court heard oral arguments from Ms. Rudler and Attorney Bryks, then sent the parties to discuss settlement.

36. During those settlement discussions, Attorney Bryks more than once orally told Ms. Rudler that it was "unethical" and "improper" for her to be consulting in any way with an attorney without a full engagement and appearance by that attorney in the case.

37. Attorney Bryks similarly represented that it was "unethical" and "improper" for Ms. Rudleer to be consulting in any way with an attorney without providing Attorney Bryks with that attorney's name and contact information.

38. During those discussions, upon information and belief, Attorney Bryks also made other substantial misrepresentations of law intended to be impenetrable or otherwise inscrutable to a non-attorney.

39. One such misrepresentation was as to the functioning of marshal's poundage under New York law (which was owed because the Houslanger Firm engaged the marshal at an unknown point in 2018 to collect on the default judgment it held against Ms. Rudler). Attorney Bryks represented that the settlement terms he had been proposing to Ms. Rudler included marshal's poundage because, in sum and substance, "poundage due is statutory and can't be waived."

40. In fact, under New York law, it is often the case that a creditor, rather than a debtor, is responsible for satisfying marshal's poundage where that creditor engaged the marshal's services. *See Cabrera v. Hirth*, 87 A.D. 3d 844, 849 (1st Dept 2011) ("[i]t has long been customary that where a sheriff levies against defendant's property and the matter is thereafter settled, **the judgment creditor** is liable to the sheriff for the payment of poundage fees as the party who invoked the Sheriff's service.") (emphasis added); *County of Westchester v. Riechers*, 6 Misc. 3d 584, 588 (Sup Ct, Westchester County 2004) (finding "the assertion that liability should be imposed upon a judgment debtor under circumstances where, as here, the only affirmative act of the debtor is his participation in the negotiation and execution of a settlement agreement [including vacatur of the judgment]" to be "unpersuasive.").

41. Attorney Bryks made numerous requests to communicate via telephone, which Ms. Rudler was not comfortable with.

42. When Ms. Rudler explicitly requested that all communication proceed in writing, Attorney Bryks replied via an email dated October 29, 2018 that read:

> "I'll be glad to send you a revised agreement in writing but many of your requested changes can result in a compromise when discussed if I know your concerns. I've always been fair and have been doing my best to work with you. To illustrate that point I've already received approval to lower the settlement amount to reach the number you wrote in since the poundage due is statutory and can't be waived.
>
> Please note that you have every right to hire an attorney at anytime but as indicated in our opposition papers **it is improper for an attorney to act through you undisclosed**.
>
> I am not in the office right now so will email you amended agreement tomorrow."

Exhibit B (emphasis added).

43. Contrary to Attorney Bryks and the Houslanger Firm's assertions, New York State's ethics rules in fact explicitly approve of both ghostwriting and undisclosed, limited purpose engagements related to active litigation matters.

44. New York revised the applicable ethics rule in 2009 (as part of a wholesale overhaul of the New York's code of ethics), abrogating interpretation of prior rules.

45. In the time since the cases cited by the Houslanger Firm in their papers, as mentioned *supra* ¶ 34, the American bar generally has changed its attitude towards ghostwriting and limited purpose representation.

46. In a 2006 Formal Opinion, the ABA Stating Committee on Ethics wrote: "there is **no reasonable concern** that a litigant appearing pro se will receive an unfair benefit from a tribunal as a result of behind-the-scenes legal assistance, the nature or extent of such assistance is immaterial and need not be disclosed." ABA Formal Opinion 07-446 at 3 (superseding prior

ABA Informal Opinion 1414, which in the Committee's words, "took a middle ground" on ghostwriting) (emphasis added).

47. Similarly, following New York's passage of new rules in 2009, the NYCLA Committee on Professional Ethics wrote in 2010: "we believe that **ghostwriting is not an ethical violation** in light of the plain language of New York's newly adopted Rule 1.2(c)." NYCLA Opinion 742 (emphasis added).

48. Indeed, now-Rule 1.2(c) adopted and adapted ABA model Rule 1.2(c) (which had no equivalent under the old New York rules), adding the bolded text below:

> ABA Rule 1.2(c): A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.
>
> NYRPC Rule 1.2(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances, the client gives informed consent and **where necessary notice is provided to the tribunal and/or opposing counsel**.

49. Model Rule 1.2(c) was already understood to permit ghostwriting, and NYRPC Rule 1.2(c)'s addition of the "where necessary" clause has been interpreted to only require disclosure when explicitly required by law or court rules.

50. Upon information and belief, to the extent the Houslanger Firm's practice of asserting to *pro se* litigants that limited purpose representation is unethical predated the 2009 revision, the Houslanger Firm now either has actual knowledge of the change, or is subject to professional duties such that its members are required to be aware of the change.

51. A Google search for the terms "attorney," "ghostwriting," and "New York" returns a full page entirely of recent guidance from ethics committees, Federal Courts (including the Second Circuit, thus overruling anything that was left of 1970's SDNY cases Attorney Bryks cites), and various legal analysts, all noting that the law and rules have changed dramatically since the 1990 opinion ethics opinion and 1970's cases cited in the Houslanger Firm Affirmation *supra* paragraph 34.

52. Upon information and belief, Attorney Bryks and Attorney Houslanger both have affirmative duties as officers of the Court not make misrepresentations of law to courts and *pro se* opponents alike.

53. Upon information and belief, the Houslanger Firm makes deceptive and misleading representations about the ethical rules concerning ghostwriting and other limited representation or advice because such representations are effective; the representations create easier and more favorable settlements for the firm and its clients, and more compliant litigation opponents for its lawyers.

54. More generally, but with regard in particular to situations with *pro se* litigants, Courts rely upon the attorneys opposing those litigants not to intentionally misstate the law, or at least to make clear when they are arguing for an extension or change of the law.

55. Defendants' false, deceptive, and misleading statements may influence the least sophisticated consumer's decision on ability to challenge a debt; and might reasonably prompt such a consumer to settle rather than litigate, or to settle on less favorable terms than he or she would otherwise accept.

CLASS ALLEGATIONS

56. The plaintiff, Britney Rudler, brings this action on behalf of herself and also on behalf of a class of all other persons similarly situated, pursuant to Fed. R. Civ. P. Rule 23.

57. Plaintiff seeks to represent the Class (hereafter, "the Class") defined as follows:

1. natural persons;
2. who were sued in a New York state court consumer collection action;
3. and appeared *pro se*;
4. in any case where the Houslanger Firm was counsel at any point; and
5. the Houslanger Firm, on behalf of a client or themselves, demanded and/or collected payment from the consumer (whether by means of garnishment, restraint, or any other communication) or otherwise attempted to collect; and
6. in which, at any time after 2009, the Houslanger Firm represented that that it was unethical, untoward, or otherwise improper for the consumer to receive legal help in the form of "ghostwriting" or other limited purpose legal representation.

58. The Class consists of three Subclasses, defined as follows:

1. The FDCPA Subclass: all those who meet the class definition set forth above and with regard to whom the most recent representation of the kind referenced in Paragraph 57(6) *supra* occurred within one year of the filing of the instant Complaint;
2. The NYGBL Subclass: all those who meet the class definition set forth above and with regard to the most recent representation of the kind

referenced in Paragraph 57(6) *supra* occurred within one year of the filing of the instant Complaint; three years of the filing of the instant Complaint; and

3. The Self-Concealment Subclass: all those who meet the class definition set forth above, and who, owing to the self-concealing nature of Defendants' misrepresentations of New York law, did not learn of the existence of the FDCPA or GBL § 349 claims until now.

59. All members of the Class are also members of one or more of the subclasses.

60. Excluded from the Class and subclasses are:

1. anyone employed by counsel for Defendants in this action; and
2. any Judge to whom this case is assigned, as well as their immediate family and staff.

Numerosity

61. The Class and subclasses potentially include hundreds of members and are sufficiently numerous that joinder of all members is impractical.

62. Although the exact number of Class members are unknown to Plaintiff, they are readily ascendable from Defendants' records.

63. Indeed, a simple electronic document search—and a brief review to exclude otherwise privileged materials—using search terms like "ghostwrit*", "disclose /10 opposing counsel", and the names and reporter citations of the cases Defendants cite in their litigation materials (see *infra* ¶ 34) would quickly and practically produce a list of cases where the defendants would be members of the class, along with addresses and other contact information for the defendant members of the Class in those cases.

Existence and Predominance of Common Questions

64. Common questions of law and fact exist as to Plaintiff and all members of the Class and predominate over questions affecting only individual Class members.

65. These common questions include, *inter alia*:

1. whether The Houslanger Firm had a practice or policy of representing to *pro se* opponents that seeking limited purpose legal representation, in the form of ghostwriting or otherwise, was unethical;
2. whether such false, misleading, and deceptive representations were materials in nature;
3. whether Defendants violated the FDCPA;
4. whether Defendants violated GBL § 249;
5. whether Plaintiff and other class members are entitled to statutory damages, costs, and attorney's fees under the FDCPA;
6. whether Plaintiff and other Class members are entitled to damages, costs, and attorney's fees under NYGBL § 349.

Typicality

66. Plaintiff Rudler's claims are typical of the claims of the Class because, among other things, Plaintiff is:

1. a natural person;
2. who was sued in a New York state court consumer collection action;
3. and appeared *pro se*;
4. in a case where the Houslanger Firm was counsel; and

5. the Houslanger Firm, on behalf of a client or themselves, demanded and/or collected payment from Plaintiff (by means of garnishment and or any other communication) or otherwise attempted to collect; and
6. in which, after 2009, the Houslanger Firm repeatedly represented that that it was unethical, untoward, or otherwise improper for Plaintiff to receive legal help in the form of "ghostwriting" and other limited purpose legal representation.

67. Thus, Plaintiff's claims—based on the same acts and/or omissions as the claims of all other class members—are typical of the claims of the class.

68. In other words, all of the claims are based on the same factual and legal theories and the Plaintiff, together with each class member, has been subjected the same false, deceptive and unfair communications and acts by Defendants.

Adequacy

69. Plaintiff will fairly and adequately represent the interests of the class members. Her interests do not conflict with the interests of the members of the Class she seeks to represent.

70. Plaintiff has retained counsel with experience in prosecuting individual-against-large-entity litigation and with class actions. There is no reason why this Plaintiff and her counsel will not vigorously pursue this matter.

Superiority

71. The class action is superior to other available means for the fair and efficient adjudication of the claims at issue herein.

72. The damages suffered by each individual Class member may be limited. Damages of such magnitude are small given the burden and expense of individual prosecution of the complex and extensive litigation necessitated by Defendant's conduct.

73. Further, it would be virtually impossible for the members of the Class effectively to individually redress the wrongs done to them. Even if the members of the Class themselves could afford such individual litigation, the court system could not.

74. Individualized litigation presents a potential for inconsistent or contradictory judgments. Individualized litigation increases the delay and expense to all parties and the court system presented by the complex legal and factual issues of the case.

75. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

76. In the alternative, the Class may be certified because:

1. The prosecution of separate actions by the individual members of the Class would create a risk of inconsistent or varying adjudication with respect to individual Class members which would establish incompatible standards of conduct for Defendant;
2. the prosecution of separate actions by individual Class members would create a risk of adjudications with respect to them which would, as a practical matter, be dispositive of the interests of other Class members not parties to the adjudications, or substantially impair or impede their ability to protect their interests; and

3. Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final and injunctive relief with respect to the members of the Class as a whole.

COUNT I
(Violation of the FDCPA)

77. Plaintiff hereby restates, realleges, and incorporates by reference all foregoing paragraphs.

78. Congress enacted the FDCPA to stop "the use of abusive, deceptive, and unfair debt collection practices by many debt collectors." 15 U.S.C. § 1692(a).

79. By undertaking the above referenced collection activities. Defendants violated 15 U.S.C. § 1692 *et seq*.

80. Specifically, and without limitation, Defendants violated the FDCPA (specifically, 1692e) through a variety of false, deceptive, misleading, and unfair conduct in the collection of alleged debts, including without limitation:

1. falsely, deceptively and misleadingly representing the ethics and/or propriety of ghostwriting and other limited purpose legal assistance to members of the Class (§1692e(10));
2. threatening, implicitly or explicitly, to seek legal redress for the purported ethical violations in accepting ghostwriting or other limited purpose legal assistance (15 U.S.C. § 1692e(5));
3. using the above violations to make other false, deceptive, or misleading statements more effective and/or less likely to been discovered (by virtue of the consumer's fear of consequences for obtaining legal help), including independently false representations of

the legal status of debts (15 U.S.C. § 1692e(2)(A) and (B), *see e.g., supra* ¶¶ 38-39);

81. As a result of these violations, Plaintiff and all others similarly situated have suffered actual damages, including:

1. attorney's fees and costs;
2. aggravation, nervousness, emotional distress, fear, loss of concertation, indignation, and pain and suffering (including especially but not exclusively, in connection with the false prospect of legal action or consequence for the purportedly unethical and improper acceptance of legal assistance).

82. As a result of these violations, Defendants are liable for statutory damages of up to $1,000 each, actual damages, and attorneys' fees and costs pursuant to 15 U.S.C. § 1692k.

COUNT II
(Violation of NYGBL §349)

83. Plaintiff hereby repeats, re-alleges, and incorporates by reference all foregoing paragraphs.

84. Each of the deceptive acts and practices set forth above, constitute violations of NYGBL § 349 independent of whether these acts and practices constitute violations of any other law.

85. These deceptive acts and practices were committed in conduct of business, trade, commerce, or the furnishing of a service in this state.

86. Specifically, the deceptive acts and practices occurred in the course of Defendants' attempts to collect a purported consumer debt that Defendants alleged had been reduced to a New York state court judgment, and took place largely in New York.

87. Defendants' deceptive acts and practices were consumer-orientated.

88. Defendants' conduct was not a unique, one-time occurrence without possibility of replication or recurrence and without implication for the broader consuming public, but rather involve misleading and deceptive representations of the law regarding the propriety and availability of certain, lower-cost forms of legal help, and involved communications sent by a high-volume debt collector to a consumer.

89. Defendants' willfully and knowingly engaged in the deceptive tactics set forth herein in bad faith and, on information and belief, do so on a regular and recurring basis.

90. Defendants' statements and conduct, as set forth herein and in the attached Exhibits, were materially misleading.

91. As a result of these violations of NYGBL § 349, Plaintiff suffered, *inter alia*, actual damages, as set forth above at paragraph 81.

92. For these and all the reasons set forth herein, Plaintiff is entitled to actual damages, declaratory judgment, an injunction of the deceptive practices set forth herein, three times actual damages up to $1000, punitive damages, costs and reasonable attorneys' fees.

WHEREFORE, the Plaintiff respectfully requests that this Court award:

(a) Declaratory Judgment that Defendants' conduct violated the FDCPA and NYGBL § 349;

(b) Injunctive relief pursuant to NYGBL § 349;

(c) Actual damages;

(d) Statutory damages;

(e) Costs and reasonable attorneys' fees;

(f) Such other and further relief as law or equity may provide.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 39, Plaintiff hereby demands a trial by jury as to all issues so triable.

[SIGNATURE ON FOLLOWING PAGE]

Dated: December 11, 2018.

Respectfully Submitted,

/s/
J. REMY GREEN[1]

Cohen&Green P.L.L.C.
1639 Centre Street, Suite 216
Ridgewood, NY 11385
(929) 888.9480 (telephone)
(929) 888.9457 (facsimile)
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[1] Application for admission *pro hac vice* submitted contemporaneously with filing.

Exhibit A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF TIOGA

EXHIBIT A: 001

CYPRESS FINANCIAL RECOVERIES, LLC,

Plaintiff,

-against-

BRITNEY L. RUDLER,

Defendant.

Index No.: 39584/2009

AFFIRMATION IN OPPOSITION TO ORDER TO SHOW CAUSE

Return Date: September 28, 2018
2:30 PM
Hon. Eugene D. Faugnan

BRYAN C. BRYKS, ESQ., an attorney admitted to practice before the Courts of the State of New York, hereby affirms the following under penalty of perjury and pursuant to CPLR § 2106:

1. I am an attorney with the firm Houslanger & Associates, PLLC, the attorneys for the Current Judgment Creditor CDR Equities, LLC, successor to Cypress Financial Recoveries, LLC, the Plaintiff in the above-referenced matter. We are not the original attorneys of record. This matter has been referred to our firm for post-judgment execution (See "Consent to Change Attorney" annexed hereto as **Exhibit "A"**).

2. This Affirmation is submitted in opposition to the Defendant's Order to Show Cause, dated July 24, 2018. The Court should note that the Defendant's Affidavit in Support of Order to Show Cause is not signed or notarized.

3. The debt in question is owed with respect to a Bank of America account, number xxxxxxxxxxxx2242 (All but the last four numbers of the account number have been redacted by Administrative Order of the Chief Administrative Judge effective January 1, 2015, pursuant to §202.5(e) of the Uniform Civil Rules of the Supreme and County Courts). The Defendant does not deny this debt, in fact, in ¶31 of her Affidavit in Support, she alleges *"I believe the amount I owe Plaintiff is less than the amount of the default judgment they were awarded."*

4. This matter was properly commenced against Defendant by service of a Summons and Complaint, upon a person of suitable age and discretion. Upon information and belief, Mary Rudler – Defendant's co-tenant was served on or about September 19, 2009 at 3:31PM at 517 Kellam Road, Apalachin, NY 13732. On or about September 24, 2009, an additional copy of the Summons and Complaint was also mailed to the Defendant at the same (and her last known) address (See "Summons and Complaint" and "Affidavit of Service" annexed hereto as **Exhibit "B"**).

5. Service was complete. Proper Affidavits and Verifications were provided to Clerk of the Supreme Court of the State of New York, County of Tioga. A Judgment was accordingly entered in this matter on April 26, 2010, by the Clerk of the Supreme Court of the State of New York, County of Tioga, in the amount of $8,289.02 (See "the Judgment" annexed hereto as **Exhibit "C"**).

6. To date, the Judgment, together with accrued interest at the New York State statutory rate of 9% per annum in the amount of $6,286.94, now has a current total amount due and owing of $14,575.96.

7. In pursuit of the Judgment, and based upon Defendant's continued default, the Plaintiff sought execution upon the Judgment via an Income Execution that was filed with the New York City Marshal Bienstock under docket number B299705 on or about June 28, 2018. The New York City Bienstock is now entitled, by law, to statutory poundage of 5% of the proceeds recovered. To date, the Marshal has served First Stage upon the Defendant, and Second Stage upon the Defendant's employer, and no monies have been remitted to the Marshal.

8. Any and all restraints of bank accounts on property, or garnishment of wages, resulted from the proper execution of a judgment of this Court, lawfully obtained and issued therefrom.

9. There is a presumption of regularity that accompanies the filing of documents that are accepted by the Clerk, the Clerk's review thereof and issuance of a judgment.

10. In order to obtain relief by Order to Show Cause to vacate a default judgment, the movant must indicate either a lack of service, a reasonable basis for a delay and/or a meritorious defense. The Defendant has not moved timely. The Judgment is eight (8) years old and witnesses may have departed. The Debtor's bringing of this Order to Show Cause at such a late stage, after legal files may have been disposed of, severely prejudices the Judgment Creditor and is in contradiction of CPLR §317.

11. The Defendant, in her Order to Show Cause, is challenging service. There was, however, no change of address filed, either at the time of service or at the time Judgment was entered. The *public record Accurint* shows 517 Kellam Rd, Apalachin, NY 13732 as Defendant's address and her legal residence, from March 2003 to June 2010 (See *public record Accurint* profile, annexed hereto as **Exhibit "D"**). The Court's attention is drawn to Defendant's Social Security number (The Social Security number has been redacted to protect the Defendant's personal financial data).

12. The process server's affidavit is *prima facie* evidence of service, and rebuttal requires much more than an unsupported denial. *Francis v. Francis,* 48 A.D.3d 512, 852 N.Y.S.2d 259 (2nd Dept. 2008). See, *Scarano v. Scarano,* 63 A.D. 3d 716, 880 N.Y.S.2d 682 (2nd Dept. 2009) (Defendant's affidavit must deny specific facts in server's affidavit); *Geico v. Roth,* 56 A.D.3d 1244, 867 N.Y.S.2d 622 (4th Dept. 2008) (See "Affidavit of Service" annexed within **Exhibit "B"**).

13. Arguably, even if the Defendant moved, her mail and the additional mailing of the Summons and Verified Complaint would have been forwarded to her. Thus, the Defendant may have been well aware of this lawsuit and the Judgment, but failed to act expeditiously, which prejudiced the Plaintiff, as discussed above.

14. Ms. Rudler was in fact registered to vote at 517 Kellam Rd, Apalachin, NY 13732 as recently as 2004, despite the fact that the Defendant alleges to have moved from that address in 2003. New York State Election law provides that the address on record with the Board of Elections, as specified on a voter registration form shall be the one on file with the New York State Department of Motor Vehicles, and is done so under penalty of perjury. There are numerous subsequent voter registration address changes, however the Defendant never changed her address to the one she alleged to have lived at during the time of service (321 West Hill Circle, Apt 1, Ithaca, NY 14850).

15. In support of her claim alleging to have lived at 321 West Hill Circle, Apt 1, Ithaca, NY 14850 during the time of service, the Defendant annexes a letter from the Ithaca Town Court, dated April 3, 2009, addressed to her at an address of 321 West Hill Circle, Apt 1, Ithaca, NY 14850. Said letter predates service by five (5) months and presumably would have been sent to an address specified for that purpose by the Defendant. Said address does not definitively prove her residence at the time of service nor does it prove what address was listed on file with the United States Postal Service, such as an official change of address record.

16. Upon information and belief, the Defendant's Affidavit in Support is ghostwritten. Upon information and belief, the basis being the service of the Second Stage Income Execution upon Martin Clearwater & Bell, a firm duly organized and containing attorneys licensed to practice law in the State of New York, the Defendant is employed by attorneys who may have helped her with her Order to Show Cause and supporting documents. Without disclosing said ghostwriting to the court and opposing counsel, the practice of ghostwriting has been deemed unethical by both the New York State Bar Association and the Association of the Bar of the City of New York (*see* NY State Bar Assn Comm on Prof Ethics Op 613 [1990]; Assn of Bar of City of NY Op 1987-2 [1987];) as well as Federal Courts (see *Klein v. H.N. Whitney, Goadby & Co.*, 341 F Supp 699, 702 [US Dist Ct, SD NY 1971]; *Klein v. Spear, Leads, & Kellogg*, 309 F Supp 341, 343 [US Dist CT, SD NY 1970]).

17. It is extremely prejudicial for the Court to vacate a Judgment entered eight (8) years ago, based solely on an uncorroborated statement of the Judgment Debtor. The Statute of Limitations on a judgment is 20 years. To vacate a judgment based on scant evidence would leave the Creditor without legal redress or any redress at law as files have been disposed of, as aforesaid. The granting of same would abrogate our judicial system entirely and would be against public policy. To insure against this, the assembly passed the law set forth in CPLR §317. This statute secures fairness to all parties. The Defendant sets forth no reasonable basis for a delay.

18. By reason of the foregoing, the movant's papers are defective for failure to contain a reasonable basis for delay or meritorious defense and should be marked off the calendar.

[REST OF THIS PAGE INTENTIONALLY LEFT BLANK – PLEASE SEE FOLLOWING PAGE FOR SIGNATURE LINE]

WHEREFORE, the undersigned respectfully requests that the Court deny the Order to Show Cause, with costs thereof, and allow enforcement of the Judgment.

Dated: September 27, 2018
Huntington, New York

Bryan C. Bryks, Esq.
HOUSLANGER & ASSOCIATES, PLLC
Attorneys for Current Judgment Creditor/Plaintiff
PALISADES COLLECTION, LLC
372 New York Avenue
Huntington, NY 11743
(631) 427-1140
(631) 427-1143 Fax
Our File No.: 411878

TO: **BRITNEY RUDLER**
10836 154TH ST, APT 2
JAMAICA, NY 11433

Exhibit B

EXHIBIT B: 001

[redacted]

From: "Bryan C. Bryks, Esq." <bryan@toddlaw.com>
Date: October 29, 2018 at 11:09:15 PM EDT
To: Britney Rudler <britney.rudler@gmail.com>
Subject: Re: Changes on agreement

I'll be glad to send you a revised agreement in writing but many of your requested changes can result in a compromise when discussed if I know your concerns. I've always been fair and have been doing my best to work with you. To illustrate that point I've already received approval to lower the settlement amount to reach the number you wrote in since the poundage due is statutory and can't be waived.

Please note that you have every right to hire an attorney at anytime but as indicated in our opposition papers it is improper for an attorney to act through you undisclosed.

I am not in the office right now so will email you amended agreement tomorrow.

Bryan C. Bryks, Esq.

Houslanger & Associates, PLLC

372 New York Avenue
Huntington, NY 11743
631-427-1140 P
631-427-1143 F

Bryan@Toddlaw.com

Federal law requires that I inform you this correspondence is from a debt collector. Any information obtained will be used for the purposes of collecting a debt.

CONFIDENTIALITY NOTICE: The information and all attachments contained in this electronic communication are legally privileged and confidential information, subject to the attorney-client privilege and intended only for the use of intended recipients. If the reader of this message is not an intended recipient, you are hereby notified that any review, use, dissemination, distribution or copying of this communication is strictly prohibited. If you have received thiscommunication in error, please notify us immediately of the error by return e-mail and please permanently remove any copies of this message from your system and do not retain any copies, whether in electronic or physical form or otherwise

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From: Britney Rudler <britney.rudler@gmail.com>
Sent: Monday, October 29, 2018 7:16:11 PM
To: Bryan C. Bryks, Esq.
Subject: Re: Changes on agreement

Can you response via email. I cannot talk on the phone and would prefer to have it in writing. Thanks

Sent from my iPhone
[Quoted text hidden]

JS 44 (Rev. 11/15)

CIVIL COVER SHEET

CV 18- 7068

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS
Britney Rudler, on behalf of herself and all others similar situated

DEFENDANTS
Houslanger & Associates, PLLC, Todd Houslanger, Esq., and Bryan Bryks, Esq.,

(b) County of Residence of First Listed Plaintiff KINGS
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant SUFFOLK
(IN U.S. PLAINTIFF CASES ONLY)
IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

FEUERSTEIN, J.

FILED
IN CLERK'S OFFICE
US DISTRICT COURT E.D.N.Y.
★ DEC 12 2018 ★
BROOKLYN OFFICE

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
COHEN&GREEN
1639 Centre Street, Ridgewood, NY 113[illegible]
929.888.9480

torneys *(If Known)*

SHIELDS, M.J.

SUMMONS ISSUED

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff (For Diversity Cases Only) and One Box for Defendant)*

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☒ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
14 U.S.C. §§ 1692 et seq.
Brief description of cause:
FDCPA claim for damages and other relief

VII. REQUESTED IN COMPLAINT:
☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.
DEMAND $
CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY *(See instructions)*:
JUDGE _____ DOCKET NUMBER _____

DATE
12/12/2018

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

4653135194

CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.10 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of $150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

Case is Eligible for Arbitration ☐

I, J. REMY GREEN, counsel for Plaintiff(s), do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

☐ monetary damages sought are in excess of $150,000, exclusive of interest and costs,

☑ the complaint seeks injunctive relief,

☐ the matter is otherwise ineligible for the following reason

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more or its stocks:

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that " A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)

1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? ☐ Yes ☑ No

2.) If you answered "no" above:

a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? ☑ Yes ☐ No

b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? ☑ Yes ☐ No

c) If this is a Fair Debt Collection Practice Act case, specify the County in which the offending communication was received: Kings County

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? ☐ Yes ☐ No

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

☐ Yes ☑ No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

☐ Yes (If yes, please explain ☑ No

I certify the accuracy of all information provided above.

Signature: _____

Last Modified: 11/27/2017