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*Attorneys for Plaintiff*

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CHRISTINA SANTIAGO, on behalf  
of herself and all others similarly  
situated,

Plaintiff,

v.

MIDLAND CREDIT  
MANAGEMENT, INC.,

Defendant.

Case No. '18CV2331 MMAKSC

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

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Plaintiff Christina Santiago (“Plaintiff” or “Ms. Santiago”), individually and on behalf of all others similarly situated, alleges the following on information and belief against Defendant Midland Credit Management, Inc. (“Midland” or “Defendant”) regarding Defendant’s violations of the Telephone Consumer Protection Act (“TCPA”). Plaintiff brings this Complaint to: (1) stop Defendant’s practice of placing calls using an artificial or prerecorded voice and/or an “automatic telephone dialing system” (“ATDS”) to the cellular telephones of consumers nationwide without their prior express written consent; (2) enjoin Defendant from continuing to place calls using an artificial or prerecorded voice and/or ATDS to consumers who did not provide their prior express written consent to receive them, and (3) obtain redress for all persons injured by Defendant’s conduct.

**NATURE OF THE ACTION**

1. Midland called Ms. Santiago’s cellular telephone at least once using an artificial or prerecorded voice and/or an ATDS, including a call on September 13, 2018 from telephone number: (248) 216-1536.
2. There is no dispute that Midland owns the (248) 216-1536 number, as when the number is dialed back, an agent answers the phone and identifies himself or herself as an agent of Midland.
3. Plaintiff never provided express written consent to be called by Midland.
4. The unlawful September 13, 2018 call placed to Plaintiff is part of Midland’s pattern of practice of calling consumers on their cellular telephones using an

1 artificial or prerecorded voice and/or an ATDS who have no direct relationship with  
2 Midland, and as such have not provided express written consent to receive those  
3 calls.

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5 5. Defendant's calls were doubly violative of the TCPA because Defendant  
6 placed these calls with an artificial or prerecorded voice and an ATDS.

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8 6. Midland Credit conducted (and continues to conduct) a wide-scale campaign  
9 that features the repeated making of unwanted autodialed phone calls to consumers'  
10 cellular telephones without prior express written consent, all in violation of the  
11 Telephone Consumer Protection Act, 47 U.S.C. § 227 (the "TCPA"). Midland's  
12 campaign of unlawful conduct also includes the use of an artificial or prerecorded  
13 voice.  
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15  
16 7. By making these automated and autodialed calls, Midland caused Plaintiff and  
17 the members of the Class actual harm and cognizable legal injury. This includes the  
18 aggravation and nuisance and invasions of privacy that result from the receipt of  
19 such calls, in addition to the consumption of battery life, lost cellular minutes, loss  
20 of value realized for the monies consumers paid to their wireless carriers for the  
21 receipt of such calls, in the form of the diminished use, enjoyment, value, and utility  
22 of their cellular telephone plans.  
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25 8. Furthermore, Midland made the calls knowing they interfered with Plaintiff's  
26 and the other Class members' use and enjoyment of, and the ability to access their  
27 cellphones, including the related data, software, and hardware components.  
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9. Midland called Ms. Santiago’s cellular telephone at least once using an artificial or prerecorded voice and/or an automatic telephone dialing system, including a call on September 13, 2018 from telephone number: (248) 216-1536.

10. There is no dispute that Midland owns the (248) 216-1536 number, as when the number is dialed back, an agent answers the phone and identifies himself or herself as an agent of Midland.

11. When Plaintiff answered Defendant’s call, she heard a momentary pause before the representative or automated voice started speaking to her. This pause is a hallmark of a predictive dialer, which “has the capacity . . . (a) to store or produce telephone numbers to be called, using a random or sequential number generator; and (b) to dial such numbers.” 47 U.S.C. § 227(a)(1)..

12. Plaintiff did not give Defendant prior express written consent to make these calls.

13. Plaintiff brings this action for injunctive relief and statutory damages arising out of and relating to the conduct of Defendant in negligently, knowingly, and willfully contacting Plaintiff and class members on their telephones using an artificial or prerecorded voice and an ATDS without their prior express written consent within the meaning of the TCPA.

**PARTIES**

14. Plaintiff Christina Santiago is, and at all times mentioned herein was, a resident of Flanders, New York, and a citizen of the State of New York.

1 15. Defendant Midland Credit Management, Inc. is, upon information and belief,  
2 a corporation organized under the laws of Kansas with a principle place of business  
3 at 3111 Camino Del Rio N., Suite 103, San Diego, CA 92108.

4  
5 16. Midland conducts business in this District, the State of California, and  
6 throughout the United States.

7 **JURISDICTION AND VENUE**

8  
9 17. This Court has subject matter jurisdiction over this action pursuant to the Class  
10 Action Fairness Act of 2005, Pub. L. No. 109-2 Stat. 4 (“CAFA”), which, *inter alia*,  
11 amends 28 U.S.C. § 1332, at new subsection (d), conferring federal jurisdiction over  
12 class actions where, as here: (a) there are 100 or more members in the proposed  
13 class; (b) some members of the proposed class have a different citizenship from  
14 Defendant; and (c) the claims of the proposed class members exceed the sum or  
15 value of five million dollars (\$5,000,000) in aggregate. *See* 28 U.S.C. § 1332(d)(2)  
16 and (6).  
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19 18. This Court also has federal question jurisdiction pursuant to 28 U.S.C. § 1331  
20 because this action involves violations of a federal statute, the TCPA.  
21

22 19. This Court has personal jurisdiction over Defendant because Defendant has  
23 its principal place of business in this District, and therefore is subject to general  
24 jurisdiction in this District, because Defendant made and continues to make  
25 unwanted autodialed or prerecorded calls or calls with an artificial voice in this  
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1 District, and because the wrongful conduct giving rise to this case emanated from  
2 this District.

3 20. Venue is proper in this District under 28 U.S.C. § 1391(b) because Defendant  
4 has its principal place of business in this District, Defendant made and continues to  
5 make unwanted autodialed or prerecorded calls or calls with an artificial voice in  
6 this District, and because the wrongful conduct giving rise to this case emanated  
7 from this District.  
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10 **FACTS COMMON TO ALL CAUSES OF ACTION**

11 **A. The TCPA Of 1991**

12 21. In 1991, Congress enacted the TCPA in response to a growing number of  
13 consumer complaints regarding certain telemarketing practices.  
14

15 22. The TCPA regulates, among other things, the use of automated telephone  
16 equipment, or “autodialers,” defined as equipment which “has the capacity . . . (a)  
17 to store or produce telephone numbers to be called, using a random or sequential  
18 number generator; and (b) to dial such numbers.” 47 U.S.C. § 227(a)(1).  
19 Specifically, the plain language of section 227(b)(1)(A)(iii) prohibits the use of  
20 autodialers to make any call to a wireless number in the absence of an emergency or  
21 the prior express consent of the called party. The same section forbids making calls  
22 using an “artificial or prerecorded voice.” *Id.*  
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26 23. The FCC has issued rulings clarifying that in order to obtain an individual’s  
27 consent, a clear, unambiguous, and conspicuous written disclosure must be provided  
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1 by the individual. 2012 FCC Order, 27 FCC Rcd. at 1839 (“[R]equiring prior written  
2 consent will better protect consumer privacy because such consent requires  
3 conspicuous action by the consumer—providing permission in writing—to  
4 authorize autodialed or prerecorded telemarketing calls. . . .”).

6 **B. Midland’s Calls to Plaintiff and Class Members**

7 24. Plaintiff has never had any contact with Defendant. As such, the calls at issue  
8 were either dialed randomly, or, at best, Plaintiff was not the intended recipient of  
9 the calls.  
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11 25. Midland called Ms. Santiago’s cellular telephone at least once using an  
12 artificial or prerecorded voice and/or an ATDS, including a call on September 13,  
13 2018 from telephone number: (248) 216-1536.  
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15 26. Defendant owns the telephone number (248) 216-1536, as when the number  
16 is dialed back, an agent answers the phone and identifies himself or herself as an  
17 agent of Midland.  
18

19 27. Specifically, the hardware and software used by Defendant placed the calls at  
20 issue with a predictive dialer with “the capacity . . . (a) to store or produce telephone  
21 numbers to be called, using a random or sequential number generator; and (b) to dial  
22 such numbers,” 47 U.S.C. § 227(a)(1), *en masse*, in an automated fashion without  
23 human intervention.  
24

25 28. Defendant’s automated dialing equipment also is a predictive dialer, meaning  
26 that it is capable of making numerous phone calls simultaneously and automatically  
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1 connecting answered calls to then available callers and disconnecting the rest (all  
2 without human intervention).

3 29. When Plaintiff answered Defendant’s call, she heard a momentary pause. This  
4 pause is a hallmark of a predictive dialer. According to the Federal Communications  
5 Commission, predictive dialers have the inherent present capacity to both (1) store  
6 and dial a list of telephone numbers without human intervention, and (2) generate  
7 random or sequential telephone numbers and to then dial those numbers.  
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10 30. Plaintiff’s situation is not unique because when placing these calls to  
11 consumers, Defendant fails to obtain prior express written consent as required by the  
12 TCPA from cellular telephone owners/users to make such calls.  
13

14 31. At all times material to this Complaint, Defendant was and is fully aware that  
15 unwanted autodialed telemarketing calls are being made to consumers’ cellular  
16 telephones through its own efforts and their agents.  
17

18 32. Defendant knowingly made (and continues to make) autodialed and/or  
19 prerecorded calls or calls with an artificial voice to cellular telephones without the  
20 prior express written consent of the call recipients. In so doing, Defendant not only  
21 invaded the personal privacy of Plaintiff and members of the putative Class, but also  
22 intentionally and repeatedly violated the TCPA.  
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25 33. Online consumer complaints regarding Defendant’s unsolicited phone calls  
26 from this same number are legion, and are further indicative of the use of a  
27 predictive dialer ATDS:  
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- 1 • “248-216-1536 has called my number many times. No voicemail. No answer  
2 when I call it back[.]”<sup>1</sup>
- 3 • “[N]o one on the line[.]”<sup>2</sup>
- 4 • “[N]o one on the line[.]”<sup>2</sup>
- 5 • “Was getting calls for someone not in our household from San Diego, CA  
6 since 3-28. Tell them he does not live here but they keep calling. Number from  
7 CA was 619-354-6305. Today got calls from the same man (could tell by the  
8 same foreign accent and incorrect way of pronouncing name) from Midland,  
9 MI per caller ID 248-216-1536 asking for same person. Total of 15 calls in 6  
10 days!”
- 11 • “Calls constantly even though [I] don[‘]t owe anybody.”<sup>3</sup>
- 12 • “Midland debt collector - collecting false debts[.]”
- 13 • “Call eve[r]y single day[.]”
- 14 • “Calls and hangs up.”
- 15 • “Constantly calls from different numbers and from different states. I don't  
16 answer and block every number, but these calls are very annoying!!!!”

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21 34. These complaints represent just a small sampling of voluminous customer  
22 complaints regarding Midland’s practices and clear violations of the TCPA.  
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26 <sup>1</sup> <https://800notes.com/Phone.aspx/1-248-216-1536> (last visited 10/1/18).

27 <sup>2</sup> Two consumers reported this identical complaint. The fact that the call was  
28 dropped is strongly indicative of the use of a predictive dialer.

<sup>3</sup> <https://www.411.com/phone/1-248-216-1536> (last visited 10/1/18)

**CLASS ACTION ALLEGATIONS**

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35. Plaintiff brings this action on behalf of herself and on behalf of all other persons similarly situated.

36. Plaintiff proposes the following Class definition:

All persons within the United States who (a) received a non-emergency telephone call; (b) on his or her cellular telephone; (c) made by or on behalf of Defendant; (d) for whom Defendant had no record of prior express written consent; (e) and such phone call was made with the use of an automatic telephone dialing system as defined under the TCPA and/or with an artificial or prerecorded voice; (f) at any time in the period that begins four years before the filing of the complaint in this action to the date that class notice is disseminated.

37. Plaintiff represents, and is a member of, this proposed class. Excluded from the Class is Defendant and any entities in which Defendant has a controlling interest, Defendant’s agents and employees, any Judge and/or Magistrate Judge to whom this action is assigned and any member of such Judges’ staffs and immediate families.

38. **Numerosity.** Plaintiff does not know the exact number of members in the proposed Class, but reasonably believes, based on the scale of Defendant’s business, that the class is so numerous that individual joinder would be impracticable.

39. **Existence and predominance of common questions of law and fact.** Plaintiff and all members of the proposed Class have been harmed by the acts of Defendant in the form of multiple involuntary telephone and electrical charges, the aggravation, nuisance, and invasion of privacy that necessarily accompanies the receipt of unsolicited and harassing telephone calls, and violations of their statutory rights.

1 40. The disposition of the claims in a class action will provide substantial benefit  
2 to the parties and the Court in avoiding a multiplicity of identical suits.

3 41. The proposed class can be identified easily through records maintained by  
4 Defendant.  
5

6 42. There are well defined, nearly identical, questions of law and fact affecting all  
7 parties. The questions of law and fact involving the class claims predominate over  
8 questions which may affect individual members of the proposed class. Those  
9 common question of law and fact include, but are not limited to, the following:  
10

- 11 a. Whether Defendant made telephone calls to Plaintiff and class members  
12 using an ATDS without their prior express written consent;
- 13 b. Whether Defendant made telephone calls to Plaintiff and class members  
14 using an artificial or prerecorded voice without their prior express written  
15 consent;
- 16 c. Whether Defendant's conduct was knowing and/or willful;
- 17 d. Whether Defendant is liable for damages, and the amount of such  
18 damages, and
- 19 e. Whether Defendant should be enjoined from engaging in such conduct in  
20 the future.  
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22 43. **Typicality.** Plaintiff asserts claims that are typical of each member of the  
23 class because they are all persons who received calls on their telephones using an  
24 ATDS and/or an artificial or prerecorded voice without their prior express written  
25 consent. Plaintiff will fairly and adequately represent and protect the interests of the  
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1 proposed class, and has no interests which are antagonistic to any member of the  
2 proposed class.

3 44. **Adequacy of Representation.** Plaintiff will fairly and adequately represent  
4 and protect the interests of the proposed class, and has no interests which are  
5 antagonistic to any member of the proposed class.  
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7 45. Plaintiff has retained counsel experienced in handling class action claims  
8 involving violations of federal and state consumer protection statutes.  
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10 46. **Superiority.** A class action is the superior method for the fair and efficient  
11 adjudication of this controversy.  
12

13 47. Class wide relief is essential to compel Defendant to comply with the TCPA.

14 48. The interest of the members of the proposed class in individually controlling  
15 the prosecution of separate claims against Defendant is small because the statutory  
16 damages in an individual action for violation of the TCPA are relatively small.  
17

18 49. Management of these claims is likely to present significantly fewer difficulties  
19 than are presented in many class claims because the calls at issue are all automated  
20 and the members of the class, by definition, did not provide the prior express consent  
21 required under the statute to authorize calls to their telephones.  
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23 50. Defendant has acted on grounds generally applicable to the proposed class,  
24 thereby making final injunctive relief and corresponding declaratory relief with  
25 respect to the proposed class as a whole appropriate.  
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1 51. Moreover, on information and belief, Plaintiff alleges that the TCPA  
2 violations complained of herein are substantially likely to continue in the future if  
3 an injunction is not entered.  
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5 **FIRST CAUSE OF ACTION**  
6 **KNOWING AND/OR WILLFUL VIOLATIONS OF THE TELEPHONE**  
7 **CONSUMER PROTECTION ACT, 47 U.S.C. § 227, *et seq.***

8 52. Plaintiff incorporates by reference the foregoing paragraphs of this Complaint  
9 as if fully stated herein.

10 53. The foregoing acts and omissions of Defendant constitute numerous and  
11 multiple knowing and/or willful violations of the TCPA, including but not limited  
12 to each of the above-cited provisions of 47 U.S.C. § 227 *et seq.*

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14 54. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. §  
15 227 *et seq.*, Plaintiff and members of the proposed class are entitled to treble  
16 damages of up to \$1,500.00 for each and every call made in violation of the statute,  
17 pursuant to 47 U.S.C. § 227(b)(3)(C).  
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19 55. Plaintiff and members of the proposed class are also entitled to and do seek  
20 injunctive relief prohibiting such conduct violating the TCPA by Defendant in the  
21 future.  
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23 56. Plaintiff and members of the proposed class are also entitled to an award of  
24 attorneys' fees and costs.  
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Dated: October 9, 2018

Respectfully submitted,

**BURSOR & FISHER, P.A.**

By:           /s/ L. Timothy Fisher            
L. Timothy Fisher

L. Timothy Fisher (State Bar No. 191626)  
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*Attorneys for Plaintiff*



CIVIL COVER SHEET

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

Christina Santiago, on behalf of herself and all others similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number)

Bursor & Fisher, P.A. 1990 North California Blvd., Suite 940, Walnut Creek, CA 94596 (925) 300-4455

DEFENDANTS

Midland Credit Management, Inc.

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

18CV2331 MMAKSC

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

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

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation).

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

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, TORTS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER 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 - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Telephone Consumer Protection Act, 47 U.S.C. Section 227. Brief description of cause: Defendant made calls to Plaintiff and the Class in violation of the Telephone Consumer Protection Act.

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 10/09/2018 SIGNATURE OF ATTORNEY OF RECORD s/ L. Timothy Fisher

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit Filed Against Midland Credit Management Over Alleged TCPA Violations](#)

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