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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

MARTIN STARACE, individually and ) on behalf of all others similarly situated, ) Plaintiff, ) vs. ) LEXINGTON LAW FIRM and DOES ) 1-10, ) Defendant(s). )	) Case No. ) ) <b><u>CLASS ACTION</u></b> ) ) <b>COMPLAINT FOR VIOLATIONS</b> ) <b>OF:</b> ) ) 1. VIOLATIONS OF ELECTRONIC FUNDS TRANSFER ACT [15 U.S.C. §1693 ET SEQ.] ) ) <b><u>DEMAND FOR JURY TRIAL</u></b> )
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Plaintiff MARTIN STARACE (“Plaintiff”), on behalf of himself and all others similarly situated, alleges the following against Defendant LEXINGTON LAW FIRM upon information and belief based upon personal knowledge:

**INTRODUCTION**

1. Plaintiff’s Class Action Complaint is brought pursuant to the Electronic Funds Transfer Act, 15 U.S.C. 1693 et seq. (“EFTA”).

2. Plaintiff, individually, and on behalf of all others similarly situated, brings this Complaint for damages, injunctive relief, and any other available legal

1 or equitable remedies, resulting from the illegal actions of Defendants debiting  
2 Plaintiff's and also the putative Class members' bank accounts on a recurring  
3 basis without obtaining a written authorization signed or similarly authenticated  
4 for preauthorized electronic fund transfers and/or after clear revocation of any  
5 authorization or similar authentication for preauthorized electronic fund transfers  
6 from Plaintiff's and also the putative Class members' accounts, thereby violating  
7 Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a), and Section 205.10(b) of  
8 Regulation E, 12 C.F.R. § 205.10(b). Plaintiff alleges as follows upon personal  
9 knowledge as to himself and his own acts and experiences, and, as to all other  
10 matters, upon information and belief, including investigation conducted by his  
11 attorneys.

### 12 **JURISDICTION AND VENUE**

13  
14 3. This Court has jurisdiction under 28 U.S.C. 1331, because this action  
15 is brought pursuant to the EFTA, 15 U.S.C. 1693 *et seq.*

16 4. Jurisdiction of this Court arises pursuant to 15 U.S.C. 1693(m),  
17 which states that, "without regard to the amount in controversy, any action under  
18 this section may be brought in any United States district court."

19 5. Venue and personal jurisdiction in this District are proper pursuant to  
20 28 U.S.C. 1391(b) because Plaintiff resides within this District and Defendant  
21 does or transact business within this District, and a material portion of the events  
22 at issue occurred in this District.

### 23 **PARTIES**

24 6. Plaintiff, MARTIN STARACE ("PLAINTIFF"), is a natural person  
25 residing in Tulare County in the state of California, and is a "consumer" as  
26 defined by 15 U.S.C. §1693a(6).

27 7. At all relevant times herein, DEFENDANT, LEXINGTON LAW  
28 FIRM ("DEFENDANT"), was a company engaged, by use of the mails and

1 telephone, in the business of collecting debts alleged to be due another.

2 8. The above named Defendant, and its subsidiaries and agents, are  
3 collectively referred to as “Defendants.” The true names and capacities of the  
4 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are  
5 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious  
6 names. Each of the Defendants designated herein as a DOE is legally  
7 responsible for the unlawful acts alleged herein. Plaintiff will seek leave of  
8 Court to amend the Complaint to reflect the true names and capacities of the  
9 DOE Defendants when such identities become known.

10 9. Plaintiff is informed and believes that at all relevant times, each and  
11 every Defendant was acting as an agent and/or employee of each of the other  
12 Defendants and was acting within the course and scope of said agency and/or  
13 employment with the full knowledge and consent of each of the other  
14 Defendants. Plaintiff is informed and believes that each of the acts and/or  
15 omissions complained of herein was made known to, and ratified by, each of the  
16 other Defendants.

17  
18 **FACTUAL ALLEGATIONS - EFTA**

19 10. In or around, 2018, Plaintiff contacted Defendant in an attempt to  
20 repair Plaintiff’s credit.

21 11. Defendant’s agent informed Plaintiff that he could initiate service  
22 with Defendant by providing his debt card information.

23 12. Plaintiff provided Defendant’s agent with his debit card number.

24 13. However, without Plaintiff’s knowledge or consent, Defendant  
25 continued to deduct funds from Plaintiff’s account multiple times on a  
26 reoccurring basis, without providing Plaintiff a written authorization to do so.  
27 Plaintiff was only given an update on the disputes Defendant had filed for him.

28 14. Plaintiff never provided Defendant with any authorization to deduct

1 these sums of money on a regular recurring basis from Plaintiff's banking  
2 account.

3 15. Defendants did not provide to Plaintiff, nor did Plaintiff execute,  
4 any written or electronic writing memorializing or authorizing these recurring or  
5 automatic payments.

6 16. Plaintiff alleges such activity to be in violation of the Electronic  
7 Funds Transfer Act, 15 U.S.C. 1693 et seq. ("EFTA"), and its surrounding  
8 regulations, including, but not limited to, 12 C.F.R. §§1005.7, 1005.8, and  
9 1005.9.

10 **CLASS ACTION ALLEGATIONS**

11 17. Plaintiff brings this action on behalf of herself and all others  
12 similarly situated, as a member of the proposed class (hereafter "The Class")  
13 defined as follows:

14 All persons in the United States whose bank accounts  
15 were debited on a reoccurring basis by Defendants  
16 without Defendants obtaining a written authorization  
17 signed or similarly authenticated for preauthorized  
18 electronic fund transfers within the one year prior to the  
filing of this Complaint.

19 18. Plaintiff represents, and is a member of, The Class, consisting of all  
20 persons within the United States whose bank account was debited on a recurring  
21 basis by Defendants without Defendants obtaining a written authorization signed  
22 or similarly authenticated for preauthorized electronic fund transfers within the  
23 one year prior to the filing of this Complaint.

24 19. Plaintiff brings this action on behalf of herself and all others  
25 similarly situated, as a member of the proposed class (hereafter "The Revocation  
26 Class") defined as follows:

27 All persons in the United States whose bank accounts  
28 were debited on a reoccurring basis by Defendants after

1 that person revoked authorization for preauthorized  
2 electronic fund transfers within the one year prior to the  
3 filing of this Complaint.

4 20. Plaintiff represents, and is a member of, The Revocation Class,  
5 consisting of all persons in the United States whose bank accounts were debited  
6 on a reoccurring basis by Defendants after that person revoked authorization for  
7 preauthorized electronic fund transfers within the one year prior to the filing of  
8 this Complaint.

9 21. The Class and the Revocation Class shall collectively be referred to  
10 as "The Classes."

11 22. Defendants, their employees and agents are excluded from The  
12 Classes. Plaintiffs do not know the number of members in The Classes, but  
13 believe the Class members number in the hundreds, if not more. Thus, this  
14 matter should be certified as a Class Action to assist in the expeditious litigation  
15 of the matter.

16 23. The Classes are so numerous that the individual joinder of all of its  
17 members is impractical. While the exact number and identities of The Class  
18 members are unknown to Plaintiff at this time and can only be ascertained  
19 through appropriate discovery, Plaintiff is informed and believes and thereon  
20 alleges that The Classes includes hundreds, if not thousands, of members.  
21 Plaintiff alleges that The Class members may be ascertained by the records  
22 maintained by Defendants.

23 24. This suit is properly maintainable as a class action pursuant to Fed.  
24 R. Civ. P. 23(a) because the Classes are so numerous that joinder of the Class  
25 members is impractical and the disposition of their claims in the class action will  
26 provide substantial benefits both to the parties and to the Court.

27 25. There are questions of law and fact common to the Class affecting  
28

1 the parties to be represented. The questions of law and fact to the Class  
2 predominate over questions which may affect individual Class members and  
3 include, but are not necessarily limited to, the following:

4 a. The members of the Classes were not provided with, nor did they  
5 execute, written agreements memorializing the automatic or recurring electronic  
6 payments.

7 b. Defendants did not request, nor did it provide, Class members with  
8 written agreements memorializing the automatic or recurring electronic  
9 payments.

10 c. The members of the Class did not provide either a written (“wet”) or  
11 otherwise electronic signature authorizing the automatic or recurring electronic  
12 payments.

13 d. Despite not providing written or electronic authorization for  
14 payments to be drawn from their accounts, Defendants took unauthorized  
15 payments from Class members’ accounts.

16  
17 26. There are questions of law and fact common to the Revocation Class  
18 affecting the parties to be represented. The questions of law and fact to the  
19 Revocation Class predominate over questions which may affect individual  
20 Revocation Class members and include, but are not necessarily limited to, the  
21 following:

22 a. The members of the Revocation Class revoked any authorization for  
23 the automatic or recurring electronic payments.

24 b. Despite having revoked authorization for payments to be drawn  
25 from their accounts, Defendant took unauthorized payments from Revocation  
26 Class members’ accounts.

27 27. As someone whose bank account was debited on a reoccurring basis  
28 by Defendant without Defendant obtaining a written authorization signed or

1 similarly authenticated for preauthorized electronic fund transfers and had  
2 revoked any authorization that Defendant may have had, Plaintiff is asserting  
3 claims that are typical of The Classes.

4 28. Plaintiff will fairly and adequately protect the interests of the  
5 members of The Classes. Plaintiff has retained attorneys experienced in the  
6 prosecution of class actions.

7 29. A class action is superior to other available methods of fair and  
8 efficient adjudication of this controversy, since individual litigation of the claims  
9 of all Class members is impracticable. Even if every Class member could afford  
10 individual litigation, the court system could not. It would be unduly burdensome  
11 to the courts in which individual litigation of numerous issues would proceed.  
12 Individualized litigation would also present the potential for varying, inconsistent,  
13 or contradictory judgments and would magnify the delay and expense to all  
14 parties and to the court system resulting from multiple trials of the same complex  
15 factual issues. By contrast, the conduct of this action as a class action presents  
16 fewer management difficulties, conserves the resources of the parties and of the  
17 court system, and protects the rights of each Class member.

18 30. The prosecution of separate actions by individual Class members  
19 would create a risk of adjudications with respect to them that would, as a practical  
20 matter, be dispositive of the interests of the other Class members not parties to  
21 such adjudications or that would substantially impair or impede the ability of such  
22 non-party Class members to protect their interests.

23 31. Defendants have acted or refused to act in respects generally  
24 applicable to The Class, thereby making appropriate final and injunctive relief  
25 with regard to the members of the Class as a whole.

26 32. Defendants failed to comply with the writing and notice  
27 requirements of § 907(a) of the EFTA, 15 U.S.C. § 1693e(a) as to the Class  
28

1 members with respect to the above alleged transactions.

2 33. Section 907(a) of the EFTA, 15 U.S.C. §1693e(a), provides that a  
3 “preauthorized electronic fund transfer from a consumer’s account may be  
4 authorized by the consumer only in writing, and a copy of such authorization  
5 shall be provided to the consumer when made.”

6 34. Section 903(9) of the EFTA, 15 U.S.C. § 1693a(9), provides that the  
7 term “preauthorized electronic fund transfer” means “an electronic fund transfer  
8 authorized in advance to recur at substantially regular intervals.”

9 35. Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b), provides  
10 that “[p]reauthorized electronic fund transfers from a consumer’s account may be  
11 authorized only by a writing signed or similarly authenticated by the consumer.  
12 The person that obtains the authorization shall provide a copy to the consumer.”

13 36. Section 205.10(b) of the Federal Reserve Board's Official Staff  
14 Commentary to Regulation E, 12 C.F.R. § 205.10(b), Supp. I, provides that “[t]he  
15 authorization process should evidence the consumer’s identity and assent to the  
16 authorization.” *Id.* at ¶10(b), comment 5. The Official Staff Commentary further  
17 provides that “[a]n authorization is valid if it is readily identifiable as such and  
18 the terms of the preauthorized transfer are clear and readily understandable.” *Id.*  
19 at ¶10(b), comment 6.

20 37. In multiple instances, Defendant debited bank accounts of the Class  
21 members on a recurring basis without obtaining a written authorization signed or  
22 similarly authenticated by the respective Class members for preauthorized  
23 electronic fund transfers from the accounts of the respective Class members,  
24 thereby violating § 907(a) of the EFTA, 15 U.S.C. § 1693e(a), and Section  
25 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b).  
26

27 38. In multiple instances, Defendant debited Class members’ bank  
28 accounts on a recurring basis without providing a copy of a written authorization



signed or similarly authenticated by the respective Class members for preauthorized electronic funds transfers, thereby violating Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a), and Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b).

39. In multiple instances, Defendant debited Class members' bank accounts on a recurring basis after Class members revoked consent to such debits, thereby violating Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a), and Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b).

40. The size and definition of the Classes can be identified through Defendant's records and/or Defendant's agents' records.

**COUNT I:**  
**DEFENDANTS VIOLATED THE ELECTRONIC FUNDS TRANSFER**  
**ACT**  
**(On Behalf of Plaintiff and the Class)**

41. Plaintiff reincorporates by reference all of the preceding paragraphs.

42. Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a), provides that a "preauthorized electronic fund transfer from a consumer's account may be authorized by the consumer only in writing, and a copy of such authorization shall be provided to the consumer when made."

43. Section 903(9) of the EFTA, 15 U.S.C. § 1693a(9), provides that the term "preauthorized electronic fund transfer" means "an electronic fund transfer authorized in advance to recur at substantially regular intervals."

44. Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b), provides that "[p]reauthorized electronic fund transfers from a consumer's account may be authorized only by a writing signed or similarly authenticated by the consumer. The person that obtains the authorization shall provide a copy to the consumer."

45. Section 205.10(b) of the Federal Reserve Board's Official Staff Commentary to Regulation E, 12 C.F.R. § 205.10(b), Supp. I, provides that "[t]he

1 authorization process should evidence the consumer's identity and assent to the  
2 authorization." *Id.* at ¶10(b), comment 5. The Official Staff Commentary further  
3 provides that "[a]n authorization is valid if it is readily identifiable as such and  
4 the terms of the preauthorized transfer are clear and readily understandable." *Id.*  
5 at ¶10(b), comment 6.

6 46. In multiple instances, Defendant has debited Plaintiff's and also the  
7 putative Class members' bank accounts on a recurring basis without obtaining a  
8 written authorization signed or similarly authenticated for preauthorized  
9 electronic fund transfers from Plaintiff's and also the putative Class members'  
10 accounts, thereby violating Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a),  
11 and Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b).

12 47. In multiple instances, Defendant has debited Plaintiff's and also the  
13 putative Class members' bank accounts on a recurring basis without providing a  
14 copy of a written authorization signed or similarly authenticated by Plaintiff or  
15 the putative Class members for preauthorized electronic fund transfers, thereby  
16 violating Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a), and Section  
17 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b).

18 48. In multiple instances, Defendant has debited Class members' bank  
19 accounts on a recurring basis after Class members revoked consent to such debits,  
20 thereby violating Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a), and Section  
21 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b).

22  
23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff, MARTIN STARACE, individually, and on  
25 behalf of all others similarly situated, respectfully requests judgment be entered  
26 against Defendant, LEXINGTON LAW FIRM, for the following:

27 49. That this action be certified as a class action on behalf of The Class  
28 and Plaintiff be appointed as the representative of The Class;

1       50. Statutory damages of \$1,000.00, per Class Member, pursuant to the  
2 Electronic Fund Transfer Act, §916(a)(2)(A);

3       51. Actual damages;

4       52. Costs and reasonable attorneys' fees pursuant to the Electronic Fund  
5 Transfer Act, §916(a)(3);

6       53. For prejudgment interest at the legal rate; and

7       54. Any other relief this Honorable Court deems appropriate.

8                               **TRIAL BY JURY**

9       55. Pursuant to the seventh amendment to the Constitution of the United  
10 States of America, Plaintiff is entitled to, and demands, a trial by jury.

11  
12                       Respectfully submitted this 19<sup>th</sup> day of November, 2018.

13  
14                               LAW OFFICES OF TODD M. FRIEDMAN, P.C.

15  
16                       By: /s/ Todd M. Friedman  
17                               Todd M. Friedman  
18                               Law Offices of Todd M. Friedman  
19                               Attorney for Plaintiff  
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# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lexington Law Firm Deducted Automatic Payments Without Authorization, Consumer Alleges](#)

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