

caused “fundamental” and “structural” changes to the arbitral process.¹²² Class-wide arbitration sacrifices much of the informality that bilateral arbitration allows. It requires an arbitrator to decide whether to certify a class and whether a plaintiff sufficiently represents the class. These decisions are time consuming and require specialized knowledge that an arbitrator may not have.¹²³ Like class litigation, class arbitration must follow many special procedural rules.¹²⁴ The extent to which these differences change the nature of arbitration frustrate the goals and purposes of the FAA.¹²⁵

This case is similar in some ways. By finding an arbitration agreement enforceable but refusing to enforce a waiver of public injunctive relief, this court is exposing Citi to the possibility of an adverse award to which it did not consent. But unlike imposing class-wide arbitration, this result does not fundamentally impede arbitration. Hudson will arbitrate as an individual party. Allowing an arbitrator to decide a private attorney general claim does not require the arbitrator to consider absent parties nor does the arbitrator have to follow class arbitration rules. Citi encourages Hudson to pursue her injunction claim on an individual

¹²² *Id.* (citations omitted).

¹²³ *Id.* at 1750–52.

¹²⁴ *Id.*

¹²⁵ *Id.* at 1753.

basis, which demonstrates Citi's faith that the arbitral forum is equipped to decide this issue. There is no reason that an arbitrator could not decide the issue and decide to enjoin and correct Citi's alleged unlawful behavior as to *all* consumers. Further, if the arbitrator awards Hudson relief, the court may take responsibility for enforcing the relief.¹²⁶

The *Concepcion* Court also considered that "class arbitration greatly increases risks to defendants" by exposing them to liability for damages to "tens of thousands of potential claimants" with less rigorous review than in a judicial forum.¹²⁷ Granted, the stakes here may be higher for Citi than they would be if the arbitral forum limited Hudson's possible relief to redress of her individual alleged wrongs.¹²⁸ But UTPA's private attorney general provision creates these higher stakes and companies doing business in Alaska are, or should be, aware that

¹²⁶ 9 U.S.C. § 13 (a court may enforce a judgment confirming an arbitral award "as if it had been rendered in an action in the court in which it is entered."); ALASKA STAT. §§ 09.43.490 (A person may request judicial confirmation of arbitral award), 09.43.520 (A court may enforce an order confirming an arbitration award "as any other judgment in a civil action.").

¹²⁷ *Id.* at 1752.

¹²⁸ The higher stakes result is not a foregone conclusion because if Hudson is successful on her claim individually, other similarly situated consumers who learn of the arbitral award may argue that the Hudson award collaterally estops Citi from arguing a position different from the Hudson award. *See State Farm Mut. Auto. Ins. Co. v. Dowdy*, 111 P.3d 337, 343 (Alaska 2005).

private citizens may hold them accountable in this manner and that UTPA makes this right non-waivable.

This case also differs from *Kilgore*. In *Kilgore*, the plaintiffs argued that an arbitration agreement's waiver of a private attorney general claim rendered the agreement *unenforceable*. The *Kilgore* plaintiffs invoked a state decisional rule that *prohibited arbitration* of public injunctive relief claims and required a judicial forum for those claims.¹²⁹ Here, the court finds that the UTPA does not prohibit arbitration of a private attorney general claim under the UTPA. It finds the Arbitration Agreement *enforceable*. Unlike the Ninth Circuit, this court believes that the arbitral forum is equipped to hear Hudson's private attorney general claim and award public injunctive relief if warranted.¹³⁰

A California Court of Appeal case supports this conclusion by distinguishing class action and private attorney general claims and finding that even post-*Concepcion* the FAA does not preempt the latter. In *Brown v. Ralph's Grocery Company*, a plaintiff employee brought a class action against her employers as well as a state Private Attorney General Act (PAGA) claim—despite

¹²⁹ *Kilgore*, 2012 WL 718344, at *10.

¹³⁰ *See id.* at *7 (expressing skepticism that the arbitral forum is equipped to handle public injunction relief).

waiving these claims per an arbitration agreement.¹³¹ The trial court denied the employer's motion to compel individual arbitration. On appeal, post-*Concepcion*, the California Court of Appeal found that *Concepcion* mandated reversal of the trial court's invalidation of the class action waiver but *not* the court's ruling on the PAGA waiver. The *Brown* court reasoned that while class actions primarily seek monetary damages, private attorney general claims allow an individual to act as a proxy for the state to reform illegal conduct.¹³² Though policy considerations are not material to FAA preemption, the court also explained that private attorney general claims are less procedurally demanding than class actions.¹³³

The *Brown* court found that *Concepcion* did not address private attorney general claims and that these claims do *not* frustrate the FAA. It resolved to maintain this position under California law “[u]ntil the United States Supreme Court rules otherwise.”¹³⁴ (The California Court of Appeal differs from the Ninth Circuit on this issue).¹³⁵ This court differs from the California Court of Appeal by

¹³¹ 197 Cal. App. 4th 489, 494 (Cal. Ct. App. 2011).

¹³² *Id.* at 499–500.

¹³³ *Brown*, 197 Cal. App. 4th at 499.

¹³⁴ *Id.* at 503.

¹³⁵ See *Kilgore*, 2012 WL 718344.

maintaining that public injunctive relief cases are arbitrable but that the *relief* is not waivable under state law.

Citi may hold Hudson to the parties' Arbitration Agreement. The arbitral forum, though, may not limit Hudson's rights and remedies unless *allowing* a right or remedy would fundamentally interfere with the arbitration. For reasons explained above, this case differs from the situation the *Concepcion* court confronted. Hudson's UPTA claim for public injunctive relief may proceed in arbitration.

b. The AAA Rules Give the Arbitrator Broad Discretion in Awarding Relief.

The Arbitration Agreement states that it follows the American Arbitration Association (AAA) rules and procedures.¹³⁶ The AAA rules further convince the court that arbitral forum is equipped to award public injunctive relief in this case if warranted. The Arbitration Agreement states that the arbitrator "will follow procedures and rules of the arbitration firm . . . unless those procedures and rules are inconsistent with this Agreement, in which case this Agreement will prevail." Because the Agreement is not enforceable to the extent that it attempts to extinguish Hudson's statutory rights, the court considers the AAA rules in full.

¹³⁶ The Agreement also lists JAMS and the National Arbitration Forum (NAF) as allowable arbitration firms, but in 2005 Citi removed JAMS as an option and NAF does not conduct consumer arbitration any longer. Consent Judgment, *Minnesota v. Nat'l Arbitration Forum*, No. 27-CV-09-18550 (Minn. Dist. Ct. July 17, 2009).

The AAA applies the Commercial Arbitration Rules and Mediation Procedures to consumer disputes such as the pending case.¹³⁷ It *also* applies the Supplementary Procedures for Consumer-Related Disputes to this type of case, at the arbitrator's discretion.¹³⁸ While the Supplementary Procedures are not *mandatory* in any particular case, the AAA applies these procedures to arbitration agreements "between individual consumers and businesses where the business has a standardized, systematic application of arbitration clauses with customers and where the terms and conditions of the purchase of standardized, consumable goods or services are non-negotiable or primarily non-negotiable in most or all of its terms, conditions, features, or choices."¹³⁹ This provision describes the agreement between Citi and Hudson. The court therefore considers whether an arbitrator could award public injunctive relief under the Commercial Arbitration Rules *and* the Supplementary Procedures.

The Commercial Arbitration Rules provide that an "arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of the agreement of the parties, including, but not limited to, specific

¹³⁷ See Consumer Arbitration, <http://adr.org/aaa/faces/aoe/gc/consumer>.

¹³⁸ *Id.*

¹³⁹ AAA Consumer-Related Disputes Supplementary Procedures, Introduction.

performance of a contract.”¹⁴⁰ This broad discretion means that the arbitrator could award the injunctive relief Hudson requests. Though the rule limits the relief to “the scope of the agreement,” the court has already found that the Agreement cannot extinguish Hudson’s UTPA remedies.

The Supplementary Procedures, which the AAA crafted for specifically the type of arbitration agreement at issue here, state the arbitrator’s discretion even more broadly: “The arbitrator may grant any remedy, relief or outcome that the parties could have received in court.”¹⁴¹ This rule lacks the “scope of the agreement” caveat of the Commercial Arbitration Rules. Further, the AAA states that when the Commercial Dispute Resolution Procedures and the Supplementary Procedures conflict, the arbitrator should follow the Supplementary Procedures.¹⁴²

The AAA rules suggest that Hudson could effectively vindicate her private attorney general claim in an arbitral forum. If Hudson prevails in arbitration and the arbitrator awards public injunctive relief, this court could enforce the award.

c. Barnica v. Kenai Peninsula Borough School District.

Citi cites *Barnica v. Kenai Peninsula Borough School District* for the proposition that arbitration agreements generally “supersede statutory judicial

¹⁴⁰ Commercial Arbitration Rules and Mediation Procedures, at 37, R-47.

¹⁴¹ Supplemental Procedures, C-7 (Rules effective Sep. 15, 2005).

¹⁴² Supplemental Procedures, C-1(a).

remedies.”¹⁴³ The court agrees that *Barnica* does not preclude compelled arbitration of UTPA claims but notes that under *Barnica* an arbitral remedy must be an effective substitute for a judicial remedy.

Before *Barnica*, the Alaska Supreme Court held in *Public Safety Employees Ass’n v. State* (“*Public Safety*”) that when a statute expressly made its “rights and remedies” non-waivable, the court would not enforce an arbitration agreement under which a party could not obtain statutory remedies.¹⁴⁴ The *Public Safety* court addressed the Uniform Residential Landlord Tenant Act (URLTA). The URLTA stated that neither a tenant nor landlord could “agree[] to waive or to forego rights or remedies under [the URLTA]”¹⁴⁵ and provided substantial remedies (injunctive relief and special damages) that the arbitration agreement at issue would have foreclosed.

In *Barnica*, the court considered the *Public Safety* holding when it addressed whether a former school employee’s binding arbitration agreement precluded his statutory claim under Alaska’s Human Rights Act. Unlike the URLTA, the Human Rights Act did *not* contain a non-waiver provision.

¹⁴³ *Barnica v. Kenai Peninsula Borough School Dist.*, 46 P.3d 974, 979 (Alaska 2002).

¹⁴⁴ *Public Safety Employees Ass’n v. State*, 658 P.2d 769, 774–75 (Alaska 1983).

¹⁴⁵ ALASKA STAT. § 34.03.040(a).

The *Barnica* court explained that after the *Public Safety* decision, the U.S. Supreme Court had voiced a stronger arbitration-friendly stance.¹⁴⁶ In *Gilmer v. Interstate/Johnson Lane Corp.*, the Supreme decided that an arbitration agreement superseded a federal statute “unless Congress itself has evinced an intention to preclude a waiver of judicial remedies for the statutory rights at issue.”¹⁴⁷ The Alaska Supreme Court reasoned analogously. It considered that the Human Rights Act, like the statute at issue in *Gilmer* and *unlike* the URLTA, “provides both for administrative and judicial remedies” and seemed generally consistent with arbitral as well as judicial resolution.¹⁴⁸ The *Barnica* court concluded that “a claim subject to an agreement to arbitrate for which an independent statutory judicial remedy is also available must be arbitrated, unless the history and structure of the statute in question indicate that the legislature intended to preclude waiver of the judicial remedy in favor of the arbitral forum.”¹⁴⁹

The UTPA non-waiver clause differs slightly from the URLTA non-waiver clause. While the URLTA prohibits agreements that “waive or to forego rights or remedies” under the Act, the UTPA states that a consumer may not waive “the

¹⁴⁶ *Barnica*, 46 P.3d at 979–80.

¹⁴⁷ *Id.* at 979, quoting *Gilmer*, 500 U.S. at 26.

¹⁴⁸ *Id.* at 979.

¹⁴⁹ *Id.* at 977.

provisions” of the UTPA. The statements are similar but the UTPA phrasing is less specific and the *Barnica* and *Public Safety* courts made a point of noting that the URLTA’s non-waiver provision applies “not only to rights, but to remedies, under the act.”¹⁵⁰

The court notes that *if* UTPA’s non-waiver clause precluded arbitration of UTPA claims, then the FAA would supersede *Barnica* and preempt Hudson’s UTPA claim. As discussed in section IV.F.2, the fact that UTPA refers to the right to bring a “civil action” or “action”¹⁵¹ does not necessarily mean that the statute guarantees a right to litigate UTPA claims.¹⁵²

The court interprets UTPA’s non-waiver provision in a manner that attempts to give meaningful effect to the provision without contravening federal law. As discussed in section IVF, it finds that UTPA’s non-waiver clause does not preclude waiver of a judicial remedy but rather guarantees the ability to effectively vindicate UTPA’s provisions. Accordingly, Hudson must be able to pursue public injunctive relief in an arbitral forum. This conclusion is consistent with the *Barnica* court, which stated that when an arbitration agreement waives statutory

¹⁵⁰ *Id.* at 978, citing *Public Safety Employees Ass’n*, 658 P.2d at 774.

¹⁵¹ ALASKA STAT. §§ 45.50.531, .535.

¹⁵² *CompuCredit Corp.*, 132 S. Ct. at 670–72.

remedies, the “substitute remedies” must be “fair, reasonable, and efficacious.”¹⁵³

If the court enforced the Arbitration Agreement restrictions that limit Hudson to individual relief, Hudson would have no chance to “efficacious[ly]” resolve her private attorney general claim.

4. Justice Thomas’ Concurrence and FAA Application in State Court.

Justice Thomas’s separate concurrence in *Concepcion*, a 5-4 decision, suggested that he may have maintained his skepticism about whether the FAA applies in state court. If this were the case, Hudson argues, the Court would have decided *Concepcion* differently if the case had arisen in state rather than federal court. The court requested further briefing on this issue.¹⁵⁴

As Citi points out, the *Marmet Health Care* decision resolves this issue because it is a *per curiam* decision and begins, “State and federal courts must enforce the Federal Arbitration Act (FAA).”¹⁵⁵ In *Marmet*, the Court vacated a West Virginia Supreme Court of Appeals decision as inconsistent with *Concepcion*. Justice Thomas did not concur separately or dissent. Though Justice Thomas has not specifically revisited his earlier statements about the FAA’s

¹⁵³ *Barnica*, 46 P.3d at 981 (quotation omitted).

¹⁵⁴ Order, at 5–10 (March 1, 2012).

¹⁵⁵ 132 S.Ct 1201, 1202 (2012).

applicability in state court, the fact the Court's post-*Concepcion* decision on FAA preemption was unanimous convinces this court that it would not be useful to contemplate the hypothetical question of how the Court would treat Hudson's case differently in light of its state court roots.

G. Defendants Did Not Waive the Right to Arbitrate.

Citi did not waive its right to compel arbitration of the pending case. Hudson argues that by choosing to litigate its debt collection claim against her in Kenai District Court, Citi waived its right to compel arbitration of her subsequent claim that it overcharged her attorney fees for the litigation.¹⁵⁶ Citi does not appear to dispute that it waived arbitration on the debt collection claim it litigated.¹⁵⁷ Accordingly, Hudson contends that her claim is an extension of Citi's debt collection claim. Citi, she argues, demonstrated "direct, unequivocal conduct that indicated its purpose to abandon [its] right to demand arbitration" of issues directly related to Citi's prior claim.¹⁵⁸ Despite Citi's claim to the contrary, the court, not the arbitrator, should determine whether Citi waived arbitration.¹⁵⁹

¹⁵⁶ Pl.'s Memo., at 10–11.

¹⁵⁷ See Citi's Reply, at 19–20.

¹⁵⁸ Pl.'s Reply at 21, citing *Powers v. United Servs. Auto Ass'n*, 6 P.3d 294, 299 (Alaska 2000).

¹⁵⁹ Pl.'s Reply, at 23 n. 70; see also *Blood v. Kenneth A. Murray Ins., Inc.* 151 P.3d 428, 430 (Alaska 2006) (deciding a party's arbitration waiver argument).

The court will find that a party impliedly waived its right to arbitrate if the party's actions demonstrate "clear and unambiguous" intent to give up the right. This can occur through actions "inconsistent with any other intention than a waiver, or where neglect to insist upon the right results in prejudice to another party." However, if the court finds waiver based on prejudicial neglect, it must still find "conduct indicating a purpose to abandon the right."¹⁶⁰

Hudson argues that Citi waived its right to arbitrate because it sued her in state court and obtained a default judgment for her credit card debt.¹⁶¹ Though Citi waived its right to arbitrate the specific dispute—Hudson's debt—by litigating it,¹⁶² the more difficult question is whether Citi's decision to sue Hudson for her debt waived its right to arbitrate her *countersuit* based on a dispute *about* the debt collection claim.

A party may waive the right to arbitrate issues substantially related to those it litigated. For instance, Hudson cites a Seventh Circuit decision addressing a situation in which plaintiffs re-filed and moved to arbitrate the *same* substantive

¹⁶⁰ *Powers v. United Services Auto. Ass'n*, 6 P.3d 294, 299 (Alaska 2000).

¹⁶¹ Pl.'s Memo., at 10.

¹⁶² *E.g. Nicholas v. KBR, Inc.*, 565 F.3d 904, 907 (5th Cir. 2009) ("[W]aiver will be found when the party seeking arbitration substantially invokes the judicial process to the detriment or prejudice of the other party.") (citation omitted); *see also* Pl.'s Memo. at 11–12 n. 38 and cases therein.

claims that a court had already dismissed. The court explained that when a party has “litigate[d] substantial issues going to the merits of [its] current claims” it cannot “restly[e]” the claim and “present[] it for arbitration.”¹⁶³ But that is not the case here. Citi is not re-filing a claim against Hudson. Further, neither the parties nor the court substantively addressed the attorney fees issue in the debt collection case. Hudson points out that the arbitration agreement states that either party may elect arbitration of a claim “unless a trial has begun or a final judgment has been entered.”¹⁶⁴ Again, though, this supports her waiver argument only if her pending claim is *the same as* Citi’s claim against her. Citi points out that Hudson “waited until after [the Kenai case] was completed” to bring her claim, rather than appearing and contesting the fees during Citi’s case.¹⁶⁵ Had she raised this issue earlier, Hudson would have a stronger argument that Citi waived arbitration in this case.¹⁶⁶ As Citi says, it had no notice of the attorney fees issue during its debt collection litigation. Because Citi’s decision to address Hudson’s debt in court

¹⁶³ See *Grumhaus v. Comerica Securities, Inc.*, 223 F.3d 648, 652 (7th Cir. 2000).

¹⁶⁴ Pl.’s Reply at 23, citing Arbitration Agreement (Walters Aff., Exhibit, p. 2, column 2).

¹⁶⁵ Citi’s Reply, at 20–21.

¹⁶⁶ Hudson does cite one case that is more on point, but it is an unpublished opinion. See *Schonfeldt v. Blue Cross of California*, 2002 WL 4771, at *4 (Cal. Ct. App. 2d Dist. 2002).

was not inconsistent with the intent to arbitrate other issues, it did not waive its right to arbitrate future disputes.

H. The Court Grants ALO's Motion to Compel Arbitration and Stays Hudson's Claims against ALO.

ALO moves to join Citi's Motion to Compel Arbitration. The court grants ALO's motion because ALO is Citi's representative in relation to this claim. The Arbitration Agreement states that claims against Citi are subject to arbitration *as well as* "Claims made by or against anyone connected with [Citi] or [the cardholder] . . . such as . . . an employee, agent, representative . . ." ¹⁶⁷ ALO was acting as Citi's attorney, and therefore representative, in the debt collection claim against Hudson. The Agreement therefore encompasses a claim against ALO.

Hudson argues that the ALO is not a representative of Citi but instead an independent contractor. She argues that as a non-signatory to the Agreement and a non-representative, ALO cannot invoke the arbitration provision. ¹⁶⁸ Further, she argues that ALO's conduct—seeking the allegedly excessive attorney fees—is not related to Citi and Hudson's agreement. This argument is not persuasive. An

¹⁶⁷ Walters Aff., Exhibit 2.

¹⁶⁸ Pl.'s Memo. at 15.

attorney working as a debt collector for a credit card issuer is the issuer's representative.¹⁶⁹

Hudson further protests that Citi and ALO have produced no proof (e.g., an explicit contract) of their agency relationship.¹⁷⁰ That "proof" is not necessary. An attorney's representative role is inherent to the attorney-client relationship.¹⁷¹

Further, as ALO discusses in its supplemental brief, Hudson supports her argument on this issue with cases that address a non-signatory party's attempt to enforce an arbitration agreement on *estoppel* grounds.¹⁷² ALO does not, and does not *need* to, argue estoppel; the Arbitration Agreement expressly encompasses ALO. The court grants ALO's request for relief.

V. CONCLUSION

For the reasons explained above, the court grants Citi's Motion to Compel Arbitration and to Stay Action and denies Hudson's Cross-Motion for Summary Judgment. Citi validly added the Arbitration Agreement under South Dakota law

¹⁶⁹ ALO's Reply to Pl.'s Opp. to Mot. to Compel Arbitration & Opp. to Cross-Mot. P.S.J., at 2-3 (Oct. 25, 2011), *citing Hodson v. Javitch, Block & Rathbone, LLP*, 531 F. Supp. 2d 827, 831 (N.D. Ohio 2008), *Morrow v. Soeder*, 2006 WL 2855024 (E.D. Mo. Oct. 3, 2006).

¹⁷⁰ Pl.'s Reply, at 28.

¹⁷¹ *See* ALO's Supp. Brief, at 3 (Dec. 6, 2011); *see also* Aff. Clayton Walker ¶ 4 (Oct. 25, 2011).

¹⁷² *Id.* at 2.

and the Agreement encompasses Hudson's claims and is largely enforceable under Alaska law. However, the court grants Citi's motion with the important caveat that the Arbitration Agreement's restriction on Hudson's right to request public injunctive relief under AS 45.50.535 is unenforceable. Under Alaska law, Hudson cannot waive this right. Under *Concepcion*, though, the Arbitration Agreement's class action waiver is valid and Hudson must proceed in arbitration individually. Hudson also must arbitrate her claim for damages under AS 45.50.531(a).

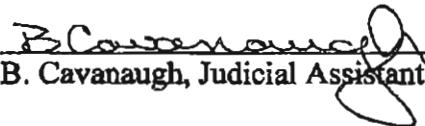
Regarding the parties' other arguments, the court finds that Citi did not waive its right to compel arbitration in this case because its debt collection action against Hudson in Kenai District Court was a separate action in which it had no notice of the claims Hudson now raises. Finally, the court grants ALO's request for relief. Hudson's claims against ALO are stayed and must proceed to arbitration in the Hudson/Citi arbitration.

Dated this 30th day of April, 2012, at Anchorage, Alaska.


FRANK A. PFIFFNER
Superior Court Judge

I certify that on 4-30-12 a copy
of the above was mailed to each of the
following at their address of record:

J. Davis
J. Dawson
M. Wilhelm


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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
 THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA
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 CLERK TRIAL COURTS
 BY: _____
 DEPUTY CLERK

CYNTHIA STEWART,)
 on behalf of herself)
 and all others similarly situated,)
)
 Plaintiffs,)
)
 v.)
)
 MIDLAND FUNDNG, LLC,)
 ALASKA LAW OFFICES, INC. and)
 CLAYTON WALKER,)
)
 Defendants.)

Case No. 3AN-11-12054 CI

FIRST AMENDED CLASS ACTION COMPLAINT

COMES NOW Cynthia Stewart, by and through counsel, the Northern Justice Project, LLC, and as her complaint against the defendants alleges and requests relief as follows:

INTRODUCTION

1. Defendants have a pattern and practice of seeking attorney's fees against defaulted consumers in debt collection cases that grossly exceed the amount allowed under the Alaska Rules of Civil Procedure. Defendants' practice violates Alaska's Unfair Trade Practices and Consumer Protection Act ("UTPA"), AS 45.50.471 *et seq.* This class action is brought to put an end to defendants' illegal practice.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to AS 22.10.020.
3. Venue is proper under AS 22.10.030 and Civil Rule 3(c).

PARTIES

4. Plaintiff Cynthia Stewart is a resident of Anchorage.
5. Defendant Midland Funding LLC ("Midland") is a "debt collector" under the UTPA and the federal Fair Debt Collection Practices Act ("FDCPA").

6. Alaska Law Offices, Inc. ("ALO") is an Anchorage law firm which regularly engages in the collection of debts. ALO is a "debt collector" under the UTPA and the federal Fair Debt Collection Practices Act ("FDCPA"). ALO regularly represents Midland in debt collection cases filed in Alaska's courts.

7. Clayton Walker is a lawyer in Anchorage, the owner of ALO, and a "debt collector" under the UTPA and the FDCPA. Walker regularly engages in the collection of debts.

FACTS AND GENERAL ALLEGATIONS

8. Defendants sued plaintiff for an alleged debt in 2010 in Anchorage District Court, Case No. 3AN-10-12555 CI. Defendants averred that plaintiff owed Midland \$3,655.37.

9. Plaintiff did not respond to the complaint and on or about December 30, 2010, defendants moved to default plaintiff. In moving to default plaintiff, defendants filed an Affidavit of Actual Attorney Fees (hereafter "Affidavit"). In their Affidavit,

defendants averred that their "actual attorney fees charged in this case are \$739.04." Defendants further averred that "\$739.04 exceed the Alaska Civil Rule 82 undisputed attorney's fees default rate of 10%. Accordingly, the attorney's fees under Alaska Rule 82 should be \$365.53."

10. Plaintiff is informed and believes and thereupon alleges that the \$739.04 in "actual attorney fees" averred by the defendants in the Affidavit was based upon a contingency fee agreement between the defendants.

11. Based on defendants' Affidavit, the court awarded defendants \$371.04 in attorney's fees against the plaintiff.

12. Under Alaska Civil Rule 82(b)(4), when judgment is entered by default, a plaintiff may recover "its reasonable actual fees which were necessarily incurred" or 10% of the judgment, *whichever is less*.

13. It is well settled under Alaska law that a contingency fee agreement is *not* a proper measure of the "reasonable actual fees" incurred by a party in a lawsuit. Rather, "reasonable actual fees" must be determined according to the number of hours actually worked on the case and the attorney's reasonable hourly rate.

14. Defendants' Affidavit injured plaintiff. By wrongfully basing the asserted "actual attorney fees" of \$739.04 on a contingency fee agreement, as opposed to the number of hours typically spent by debt collecting lawyers in prosecuting a consumer default, defendants obtained an inflated judgment against plaintiff.

15. Plaintiff is informed and believes that defendants have filed hundreds of similar affidavits in Alaska's courts over the past several years, injuring hundreds of other Alaskans in the same way that they injured plaintiff.

16. By seeking and collecting attorney's fees in excess of the amount permitted by law, defendants violated the UTPA.

CLASS ACTION ALLEGATIONS

17. Plaintiff brings this complaint on her own behalf and on behalf of all persons similarly situated, pursuant to Rule 23 of the Alaska Rules of Civil Procedure.

18. The class is defined as: All individuals against whom defendants obtained a default judgment including attorney's fees since November 9, 2009.

19. All requirements of Rule 23(a) are met in this case. Specifically,

a. The class is so numerous that joinder of all members is impracticable. The number of individuals in the above-defined class, although presently unknown, is believed to be in the hundreds.

b. There are questions of law or fact common to the class: Whether defendants violated the Alaska Rules of Civil Procedure and/or the UTPA by obtaining attorney fees against defaulted consumers in the aforesaid fashion.

c. The claims of the representative party are typical of those of the class.

d. The representative party will fairly and adequately represent the class.

Neither the representative plaintiff nor her counsel have interests which might cause them not to vigorously pursue this action.

20. Certification of a class under Alaska Civil Rule 23(b)(3) is appropriate because:

a. The questions of law or fact common to the members of the class predominate over any questions affecting only individual class members; and

b. A class action is superior to other available methods for the fair and efficient adjudication of this controversy since: (1) the class is readily definable and should be easily identified by examination of defendants' records; (2) prosecution of this case as a class action will eliminate the possibility of repetitious litigation and will provide redress for claims which otherwise would be too small to support the expense of individual litigation against defendants; (3) undersigned counsel are aware of no other pending class actions regarding the subject matter in this case; (4) it is desirable to concentrate the litigation of these claims in Anchorage because, upon information and belief, the majority of class members are in Anchorage; and (5) there are no problems which will make this case difficult to manage as a class action.

COUNT I: VIOLATION OF UTPCPA

21. Plaintiff repeats and incorporates by reference the allegations in each of the preceding paragraphs.

22. By seeking and collecting attorney's fees in excess of the amount permitted by law, defendants have violated the UTPA.

23. Plaintiff and the putative class members have been injured by defendants' unfair actions.

24. Plaintiff and the putative class members are entitled to actual and/or statutory damages.

25. Plaintiff and the putative class members also seek an injunction against defendants in accord with the UTPA whereby defendants are ordered to cease and desist from their illegal conduct; ordered to file corrected judgments; and ordered to disgorge to all class members any and all illegal fees that were obtained.

COUNT II: DECLARATORY RELIEF

26. Plaintiff repeats and incorporates by reference the allegations in each of the preceding paragraphs.

27. Plaintiff contends that defendants' practices violate the Alaska Civil Rules and the UTPA. Defendants deny the same. This Court should enter declaratory and injunctive relief on the parties' dispute and should order defendants to cease and desist from their illegal conduct; order defendants to file corrected judgments; and order defendants to disgorge to all class members any and all illegal fees that were obtained.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays the Court to order a speedy hearing and advance this matter on the calendar, pursuant to Civil Rule 57(a), and award the following relief:

FIRST AMENDED CLASS ACTION COMPLAINT
Stewart, et al. v. Midland Funding LLC et al., Case No. 3AN-11-12054 CI
Page 6 of 8

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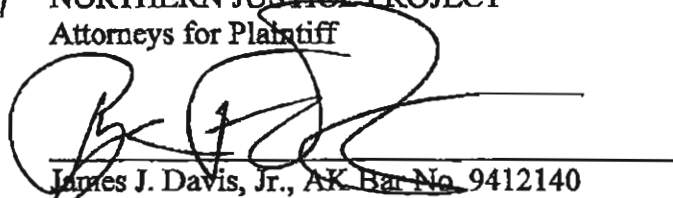
Anchorage, AK 99501

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- (1) Certification of the proposed class;
- (2) Declaratory and injunctive relief as prayed for above;
- (3) A judgment awarding plaintiff and the class members three times their actual damages or statutory damages, whichever is greater;
- (4) An award to the plaintiff of her costs and expenses of litigation;
- (5) An award to plaintiff of her full attorney's fees; and
- (6) Any such other and further relief as this Court may deem just under the circumstances.

DATED: Nov. 28, 2011

NORTHERN JUSTICE PROJECT
Attorneys for Plaintiff



James J. Davis, Jr., AK Bar No. 9412140

Goriune Dudukgian, AK Bar No. 0506051

Ryan Fortson, AK Bar 0211043

FIRST AMENDED CLASS ACTION COMPLAINT

Stewart, et al. v. Midland Funding LLC et al., Case No. 3AN-11-12054 CI

Page 7 of 8

Northern Justice Project, LLC

A Private Civil Rights Firm

310 K Street, Suite 200

Anchorage, AK 99501

Phone: (907) 264-6634 • Fax: (866) 813-8645

CERTIFICATE OF SERVICE

I hereby certify that on this date a true and correct copy of the foregoing was served via U.S. Mail on:

Alaska Law Offices Inc.
921 W. Sixth Avenue, Suite 200
Anchorage, AK 99501

Clayton Walker
921 W. Sixth Avenue, Suite 200
Anchorage, AK 99501

Midland Funding LLC
8875 Aero Dr., Suite 200
San Diego, CA 92193


Signature Date 11/26/11

FILED
STATE OF ALASKA
THIRD DISTRICT

2012 JAN 11 PM 4:05

CLERK TRIAL COURT

BY: DEPUTY CLERK

1 Jon S. Dawson
2 David M. Hymas
3 DAVIS WRIGHT TREMAINE LLP
4 701 West 8th Avenue, Suite 800
5 Anchorage, AK 99501
6 (907) 257-5300

Attorneys for Midland Funding, LLC

7 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
8 THIRD JUDICIAL DISTRICT AT ANCHORAGE

9 CYNTHIA STEWART,)
10 on behalf of herself)
11 and all others similarly situated,)

12 Plaintiffs,)

13 vs.)

14 MIDLAND FUNDING, LLC,)
15 ALASKA LAW OFFICES, INC,)
16 and CLAYTON WALKER,)

17 Defendants.)

Case No. 3AN-11-12054 CI

18 ANSWER TO FIRST AMENDED CLASS ACTION COMPLAINT

19 Defendant Midland Funding, LLC ("Midland") answers the First Amended
20 Complaint as follows:
21

22 1. Defendants have a pattern and practice of seeking attorney's fees against
23 defaulted consumers in debt collection cases that grossly exceed the amount allowed
24 under the Alaska Rules of Civil Procedure. Defendants' practice violates Alaska's Unfair
25 Trade Practices and Consumer Protection Act ("UTPA"), AS 45.50.471 *et seq.* This
26

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class action is brought to put an end to defendants' illegal practice.

ANSWER: Paragraph 1 states legal conclusions to which no answer is required. Insofar as paragraph 1 alleges facts to which an answer is required, those allegations are denied.

2. This court has jurisdiction over this action pursuant to AS 22.10.020.

ANSWER: Denied in that arbitration is the proper forum for this dispute.

3. Venue is proper under AS 22.10.030 and Civil Rule 3(c).

ANSWER: Denied in that arbitration is the proper forum for this dispute.

4. Plaintiff Cynthia Stewart is a resident of Anchorage.

ANSWER: Midland lacks information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 4 and on that basis denies them.

5. Defendant Midland Funding LLC ("Midland") is a "debt collector" under the UTPA and the federal Debt Collection Practices Act ("FDCPA").

ANSWER: Paragraph 5 states a legal conclusion to which no answer is required. Insofar as paragraph 5 alleges facts to which an answer is required, those allegations are denied.

6. Alaska Law Offices, Inc. ("ALO") is an Anchorage law firm which regularly engages in the collection of debts. ALO is a "debt collector" under the UTPA and the federal Debt Collection Practices Act ("FDCPA"). ALO regularly represents

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Midland in debt collection cases filed in Alaska's courts.

ANSWER: The allegations contained in Paragraph 6 are directed at defendants other than Midland and accordingly no answer from Midland is required. To the extent that an answer is required, Midland answers the first and third sentences of Paragraph 6 by admitting that ALO has represented Midland in a number of debt collection cases. All other allegations in those sentences are denied. The second sentence of Paragraph 6 states a legal conclusion to which no answer is required. Insofar as the second sentence alleges facts to which an answer is required, those allegations are denied.

7. Clayton Walker is a lawyer in Anchorage, the owner of ALO, and a "debt collector" under the UTPA and the FDCPA. Walker regularly engages in the collection of debts.

ANSWER: The allegations contained in Paragraph 7 are directed at defendants other than Midland and accordingly no answer from Midland is required. To the extent that an answer is required, Midland admits that Clayton Walker is an Anchorage attorney with ALO. The allegation that Clayton Walker is a "debt collector" under the UTPA and the FDCPA states a legal conclusion to which no answer is required, but insofar as this allegation contains facts to which an answer is required, the allegation is denied. Midland lacks information sufficient to

1 form a belief as to the truth or falsity of any other allegations contained in
2 Paragraph 7 and on that basis denies them.

3 8. Defendants sued plaintiff for an alleged debt in 2010 in Anchorage District
4 Court, Case No. 3AN-10-12555 CL. Defendants averred that plaintiff owed Midland
5 \$3655.37.
6

7 **ANSWER: Midland admits that suit was brought on behalf of Midland**
8 **Funding by ALO and that ALO filed a complaint alleging that Plaintiff owed**
9 **Midland \$3655.37. All other allegations in Paragraph 8 are denied.**
10

11 9. Plaintiff did not respond to the complaint and on or about December 30,
12 2010, defendants moved to default plaintiff. In moving to default plaintiff, defendants
13 filed an Affidavit of Actual Attorney's Fees (hereafter "Affidavit"). In their Affidavit,
14 defendants averred that their "actual attorney's fees charged in this case are \$739.04."
15 Defendants further averred that "739.04 exceeded the Alaska Civil Rule 82 undisputed
16 attorney's fees default rate of 10%. Accordingly, the attorney's fees under Alaska Rule
17 82 should be \$365.53."
18

19 **ANSWER: Midland admits the first sentence. Midland admits that ALO**
20 **filed the Affidavit. Midland admits that the Affidavit stated what the Affidavit**
21 **stated. All other allegations in Paragraph 9 are denied.**
22

23 10. Plaintiff is informed and believes and thereupon alleges that the \$739.04 in
24 "actual attorney's fees" averred by the defendants in the Affidavit was based upon a
25
26

1 contingency fee agreement between the defendants.

2 **ANSWER: Midland admits that it had a contingency fee agreement with**
3 **defendant Alaska Law Offices. Midland admits that the Affidavit stated what the**
4 **Affidavit stated. Midland denies the remaining allegations in Paragraph 10.**

5
6 11. Based on defendants' Affidavit, the court awarded defendants \$371.04 in
7 attorney's fees against the plaintiff.

8 **ANSWER: Midland admits that court awarded \$371.04 in attorney fees**
9 **against the Plaintiff. Midland denies the remaining allegations in Paragraph 10.**

10
11 12. Under Alaska Civil Rule 82(b)(4), when judgment is entered by default, a
12 plaintiff may recover "its reasonable actual fees which were necessarily incurred" or 10%
13 of the judgment, *whichever is less*.

14 **ANSWER: Paragraph 12 states a legal conclusion to which no answer is**
15 **required.**

16
17 13. It is well settled under Alaska law that a contingency fee agreement is *not* a
18 proper measure of the "reasonable actual fees" incurred by a party in a lawsuit. Rather,
19 "reasonable actual fees" must be determined according to the number of hours actually
20 worked on the case and the attorney's reasonable hourly rate.

21 **ANSWER: Paragraph 13 states a legal conclusion to which no answer is**
22 **required.**

23
24 14. Defendants' Affidavit injured plaintiff. By wrongfully basing the "actual
25

26

1 attorney fees” of \$739.04 on a contingency fee agreement, as opposed to the number of
2 hours typically spent by debt collecting lawyers in prosecuting a consumer default,
3 defendants obtained an inflated judgment against plaintiff.

4
5 **ANSWER: Midland denies the first sentence of Paragraph 14. The balance**
6 **of Paragraph 14 states a legal conclusion to which no answer is required. To the**
7 **extent that a response is required, Midland lacks information sufficient to form a**
8 **belief as to the truth or falsity of the allegations contained in Paragraph 14 and on**
9 **that basis denies them.**

10
11 15. Plaintiff is informed and believes that defendants have filed hundreds of
12 similar affidavits in Alaska’s courts over the past several years, injuring hundreds of
13 other Alaskans in the same way that they injured plaintiff.

14
15 **ANSWER: Denied.**

16 16. By seeking and collecting attorney’s fees in excess of the amount permitted
17 by law, defendants violated the UTPA.

18
19 **ANSWER: Paragraph 16 states a legal conclusion to which no answer is**
20 **required. To the extent a response is required, Midland denies the allegations.**

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CLASS ACTION ALLEGATIONS

17. Plaintiff brings this complaint on her own behalf and on behalf of all person's similarly situated, pursuant to Rule 23 of the Alaska Rules of Civil Procedure.

ANSWER: Midland admits that Plaintiff has brought this suit on her behalf. Midland denies that this matter should be treated as a class action and denies that Plaintiff is a proper representative of the purported class.

18. The class is defined as: All individuals against whom defendants obtained a judgment including attorney's fees since November 9, 2009.

ANSWER: Midland denies that this matter should be treated as a class action and that class certification is appropriate.

19. All requirements of Rule 23(a) are met in this case. Specifically,

a. The class is so numerous that the joinder of all members is impracticable. The number of individuals in the above-defined class, although presently unknown, is believed to be in the hundreds.

b. There are questions of law or fact common to the class: Whether defendants violated the Alaska Rules of Civil Procedure and/or the UTPA by obtaining attorney fees against defaulted customers in the aforesaid fashion.

c. The claims of the representative party will fairly and adequately represent the class.

d. The representative party will fairly and adequately represent the

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class. Neither the representative plaintiff nor her counsel have interests which might cause them to not vigorously pursue this action.

ANSWER: Paragraph 19 states legal conclusions to which no answer is required. To the extent that Paragraph 19 alleges facts to which an answer is required, those allegations are denied. Without limiting the preceding denial, Midland denies that this matter should be treated as a class action and that class certification is appropriate.

20. Certification of a class under Alaska Civil Rule 23(b)(3) is appropriate because:

a. The questions of law or fact common to the members of the class predominate over any questions affecting only individual class members; and

b. A class action is superior to other available methods for the fair and efficient adjudication of this controversy since: (1) the class is readily definable and should be easily identified by examination of defendants' records; (2) prosecution of this case as a class action will eliminate the possibility of repetitious litigation and will provide redress for claims which otherwise would be too small to support the expense of individual litigation against defendants; (3) undersigned counsel are aware of no other pending class actions regarding the subject matter in this case; (4) it is desirable to concentrate the litigation of these claims in Anchorage because, upon information and belief, the majority of class

1 members are in Anchorage; and (5) there are no problems which will make this
2 case difficult to manage as a class action.

3 **ANSWER: Paragraph 20 states legal conclusions to which no answer is**
4 **required. To the extent that Paragraph 20 alleges facts to which an answer is**
5 **required, those allegations are denied. Without limiting the preceding denial,**
6 **Midland denies that this matter should be treated as a class action and that class**
7 **certification is appropriate.**

9 **The remaining paragraphs in the First Amended Complaint consist of**
10 **Plaintiff's demands in her prayer for relief. Midland denies that Plaintiff is entitled**
11 **to any relief. Insofar as her prayer for relief is construed to allege facts for which an**
12 **answer is required, those allegations are denied. Except as specifically admitted**
13 **above, all other allegations in the First Amended Complaint are denied.**

14 **AFFIRMATIVE AND OTHER DEFENSES**

- 15
- 16 1. The First Amended Complaint fails to state a claim, in whole or in part, for
17 which relief may be granted.
 - 18 2. Plaintiff's claims are barred by her lack of ascertainable loss of money or
19 property under AS 45.50.531.
 - 20 3. AS 45.50.471 does not apply because of the exemption under AS
21 45.50.481.
 - 22 4. Midland has not provided goods or services as required by the UTPA.
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5. Plaintiff's claims are barred by waiver and estoppel.

6. To the extent that Plaintiff has suffered any damages, she has failed to mitigate those damages.

7. Plaintiff's claims are barred by res judicata.

8. Plaintiff's claims are barred by lack of subject matter jurisdiction.

9. Plaintiff's claims are subject to arbitration, and the proper forum for resolution of this dispute is arbitration.

10. Any damages alleged to have been suffered by Plaintiff were directly and proximately caused, in whole or in part, by the acts or omissions of Plaintiff or others not under Midland's control. As a result, Plaintiff's damages must be reduced in whole or in part under the doctrine of comparative fault.

11. Plaintiff's damages, if any, were proximately caused by her negligence in exercising reasonable care for her financial obligations.

12. Plaintiff's damages, if any, are a direct result of Plaintiff's breach of contract.

13. Plaintiff's claims are barred by the doctrine of unclean hands.

14. Plaintiff's injuries, if any, were proximately caused by the acts or omissions of third parties.

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15. Any damages suffered by Plaintiff and members of the putative class resulted from acts or omissions by parties other than Midland, for which Midland is not responsible.

16. Some or all of Plaintiff's claims made individually or on behalf of the putative class are subject to Midland's rights of set off, offset, or recoupment. Plaintiff and members of the putative class owe money to Midland as a result of debts that are unpaid or otherwise in default.

17. Midland reserves the right to assert any additional affirmative defenses that may be discovered during the course of additional investigation and discovery.

PRAYER FOR RELIEF

WHEREFORE, Midland asks for the following relief:

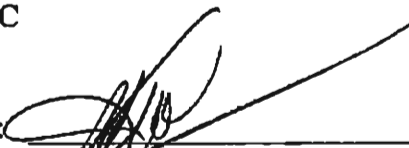
- A. For an order dismissing the First Amended Complaint in its entirety with prejudice, and that Plaintiff take nothing;
- B. For an award of Midland's attorney fees and costs; and
- C. For such other and further relief as this Court deems just and equitable.


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DATED this 11th day of January, 2012.

DAVIS WRIGHT TREMAINE LLP
Attorneys for Defendant Midland Funding,
LLC

By: 
Jon S. Dawson
Alaska Bar No. 8406022

By: 
David M. Hymas
Alaska Bar No. 1005011

Certificate of Service

On the ____ day of January, 2012, a true and correct copy of the foregoing document was sent by U.S. Mail, postage paid, to the following party:

James J. Davis, Jr.
Northern Justice Project
310 K Street, Suite 200
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Marc Wilhelm
Richmond & Quim
360 K Street, Suite 200
Anchorage, AK 99501

By: _____
Karina Chambers

Davis Wright Tremaine LLP
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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

2012 JAN 11 PM 1:07
CLERK TRIAL COURT
STATE OF ALASKA
THIRD JUDICIAL DISTRICT
ANCHORAGE

CYNTHIA STEWART, on behalf of)
herself and all others similarly situated,)

Plaintiff,)

v.)

MIDLAND FUNDING, LLC, ALASKA)
LAW OFFICES, INC., and CLAYTON)
WALKER,)

Defendants.)

Case No. 3AN-11-12054 CI

ANSWER TO FIRST AMENDED COMPLAINT

COME NOW defendants, ALASKA LAW OFFICES, INC. ("ALO") and CLAYTON WALKER, by and through counsel, RICHMOND & QUINN, and for answer to plaintiff's First Amended Complaint, admit, deny and allege as follows:

1. With regard to paragraph 1 of plaintiff's complaint, answering defendants deny the allegations contained therein.
2. With regard to paragraph 2 of plaintiff's complaint, answering defendants deny the allegations contained therein, for the reason that this action is subject to arbitration.
3. With regard to paragraph 3 of plaintiff's complaint, answering defendants admit the allegations contained herein.

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4. With regard to paragraph 4 of plaintiff's complaint, answering defendants admit the allegations contained herein.

5. With regard to paragraph 5 of plaintiff's complaint, answering defendants state that the allegations contained therein are directed at defendants other than answering defendants and accordingly no answer is required.

6. With regard to paragraph 6 of plaintiff's complaint, answering defendants admit that ALO regularly engages in the collection of debts and is a "debt collector" under the FDCPA. They also admit that ALO regularly represents Midland in debt collection cases filed in Alaska's courts. Defendants deny the remaining allegations in this paragraph because "debt collector" is not a defined term under the UTPA.

7. With regard to paragraph 7 of plaintiff's complaint, answering defendants admit the allegations contained in this paragraph, except they deny that Walker is a "debt collector" under the UTPA because "debt collector" is not a defined term under the UTPA.

8. With regard to paragraph 8 of plaintiff's complaint, answering defendants admit the allegations contained therein.

9. With regard to paragraph 9 of plaintiff's complaint, answering defendants admit the allegations contained therein.

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10. With regard to paragraph 10 of plaintiff's complaint, answering defendants admit that the statements regarding "actual attorney's fees" in the Affidavit were based upon ALO's contingency fee agreement with Midland.

11. With regard to paragraph 11 of plaintiff's complaint, answering defendants admit the court awarded Midland \$371.04 in attorney's fees against plaintiff, but is without sufficient knowledge and information with respect to whether the court based or limited its ruling on the affidavit, and accordingly denies the same.

12. With regard to paragraph 12 of plaintiff's complaint, answering defendants admit the allegations contained herein.

13. With regard to paragraph 13 of plaintiff's complaint, answering defendants deny the allegations contained herein.

14. With regard to paragraph 14 of plaintiff's complaint, the allegations state a legal conclusion, to which no response is required.

15. With regard to paragraph 15 of plaintiff's complaint, answering defendants admit that answering defendants have filed similar affidavits requesting a 10% fee award over the past several years, and this amount would have exceeded one hundred. The allegations in this paragraph are otherwise denied.

16. With regard to paragraph 16 of plaintiff's complaint, answering defendants deny the allegations contained herein.

CLASS ACTION ALLEGATIONS

17. With regard to paragraph 17 of plaintiff's complaint, no response is required.

18. With regard to paragraph 18 of plaintiff's complaint, no response is required. Defendants deny that class certification is appropriate.

19. With regard to paragraph 19 of plaintiff's complaint, answering defendants deny the allegations contained herein.

20. With regard to paragraph 20 of plaintiff's complaint, answering defendants deny the allegations contained herein.

COUNT I: VIOLATION OF UTPCPA

21. With regard to paragraph 21 of plaintiff's complaint, answering defendants incorporate by reference paragraphs 1-20 of this answer.

22. With regard to paragraph 22 of plaintiff's complaint, answering defendants deny the allegations contained herein.

23. With regard to paragraph 23 of plaintiff's complaint, answering defendants deny the allegations contained herein.

24. With regard to paragraph 24 of plaintiff's complaint, answering defendants deny the allegations contained herein.

25. With regard to paragraph 25 of plaintiff's complaint, answering defendants deny the allegations set forth therein to the extent plaintiff asserts culpable

ANSWER TO FIRST AMENDED COMPLAINT

Stewart vs. Alaska Law Offices, Inc., et al.; Case No. 3AN-11-12054 CI

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conduct on the part of defendant, and deny that plaintiff and putative class members are entitled to injunctive relief.

COUNT II: DECLARATORY RELIEF

26. With regard to paragraph 26 of plaintiff's complaint, answering defendants incorporate by reference paragraphs 1-25 of this answer.

27. With regard to paragraph 27 of plaintiff's complaint, answering defendants state that their practices follow the Alaska Civil Rules and do not violate the UTPA. The allegations in this paragraph are otherwise denied.

AFFIRMATIVE AND ADDITIONAL DEFENSES

By way of further answer and by way of:

FIRST AFFIRMATIVE DEFENSE

Plaintiff's complaint fails to state a claim for relief.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's own conduct was comparatively negligent and such conduct should serve to reduce the plaintiff's damages, if any.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by her lack of ascertainable loss of money or property under AS 45.50.531.

FOURTH AFFIRMATIVE DEFENSE

AS 45.50.471 does not apply because of the exemption under AS 45.50.481.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff has failed to mitigate her damages, if any.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by waiver and estoppel.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by res judicata.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by lack of subject matter jurisdiction.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's claims are subject to arbitration, and the proper forum for resolution of this dispute is arbitration.

FURTHER AFFIRMATIVE DEFENSES

Answering defendants reserve the right to assert whatever other affirmative defenses and/or counterclaims may become available as discovery progresses.

WHEREFORE, having answered the plaintiff's complaint, answering defendants pray that plaintiff's complaint be dismissed with prejudice; that plaintiff take nothing from answering defendants; that answering defendants be awarded their costs and attorney's fees incurred in defending this action; and for such other and further relief as this court deems just and equitable.

DATED this 11th day of January, 2012, at Anchorage, Alaska.

RICHMOND & QUINN
Attorneys for Defendants
Alaska Law Offices, Inc., and
Clayton Walker

By:

Allison Gordon
Allison E. Gordon
Alaska Bar No. 1005020

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct
copy of the foregoing was served by mail this
11th day of January, 2012 on:

James J. Davis, Jr.
Goriune Dudukgian
Ryan H. Fortson
Northern Justice Project
310 K Street, Suite 200
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David M. Hymas
Davis Wright Tremaine
701 W. 8th Avenue, Suite 800
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GA Blaschke
RICHMOND & QUINN

2331.003\Pld\Answer-1st Amended Complaint

ANSWER TO FIRST AMENDED COMPLAINT
Stewart vs. Alaska Law Offices, Inc., et al.; Case No. 3AN-11-12054 CI
Page 7 of 7 295

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Filed in the Trial Courts
STATE OF ALASKA, THIRD DISTRICT
APR - 8 2012
By _____
Clerk of the Trial Courts
Deputy

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2 David M. Hymas
3 DAVIS WRIGHT TREMAINE LLP
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7 Attorneys for Midland Funding, LLC

8 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
9 THIRD JUDICIAL DISTRICT AT ANCHORAGE

10 CYNTHIA STEWART,)
11 on behalf of herself)
12 and all others similarly situated,)

13 Plaintiffs,)

14 vs.)

15 MIDLAND FUNDING, LLC,)
16 ALASKA LAW OFFICES, INC,)
17 and CLAYTON WALKER,)

18 Defendants.)

19 Case No. 3AN-11-12054 CI

20 **MOTION TO COMPEL ARBITRATION AND STAY ACTION**

21 Defendant Midland Funding, LLC ("Midland"), moves pursuant to the Federal
22 Arbitration Act, 9 U.S.C. §§1, et seq., and AS 09.43.330 and 09.43.340, for an Order
23 compelling Plaintiff Cynthia Stewart ("Plaintiff") to arbitrate her claims in this action on
24 an individual (i.e., non-class, non-consolidated) basis, and to stay the instant action
25 pending the outcome of the arbitration, on the ground that all of Plaintiff's claims are
26 subject to an arbitration agreement between Plaintiff and Midland.

2

1 This motion is supported by the Memorandum in Support, the Affidavit of Kyle
2 Hannan, the Declaration for Records of Regularly Conducted Business Activity and
3 documents produced with that Declaration, the Affidavit of Jon S. Dawson, and by the
4 pleadings and record herein.
5

6 DATED this 9th day of April, 2012.

7 DAVIS WRIGHT TREMAINE LLP
8 Attorneys for Midland Funding, LLC

9
10 By: 

11 Jon S. Dawson
12 Alaska Bar No. 8406022

13
14 Certificate of Service

15 On the 9th day April, 2012, a
16 true and correct copy of the foregoing
17 document was sent by U.S. Mail,
18 postage paid, to the following parties:

19 James J. Davis, Jr.
20 Northern Justice Project, LLC
21 310 K St., Suite 200
22 Anchorage, AK 99501

23 Marc Wilhelm
24 Richmond & Quinn
25 360 K Street, Suite 200
26 Anchorage, AK 99501

By: Karina Chambers

Karina Chambers

MOT. TO COMPEL ARBITRATION - Page 2 of 2
Stewart v. Midland Funding et al., Case No. 3AN-11-12054 CI

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Attorneys for Midland Funding, LLC

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

CYNTHIA STEWART,)
on behalf of herself and all)
others similarly situated,)
)
Plaintiffs,)
)
vs.)
)
MIDLAND FUNDING, LLC,)
ALASKA LAW OFFICES, INC, and)
CLAYTON WALKER,)
)
Defendants.)

Case No. 3AN-11-12054 CI

**NOTICE OF FILING OF DECLARATION OF REGULARLY CONDUCTED
BUSINESS ACTIVITY**

Defendant Midland Funding, LLC, gives notice that it is filing the Declaration for
Records of Regularly Conducted Business Activity executed by Mariya A. Kharlamova,
and certain documents produced therewith (Bates numbers MID0007, MID0047,

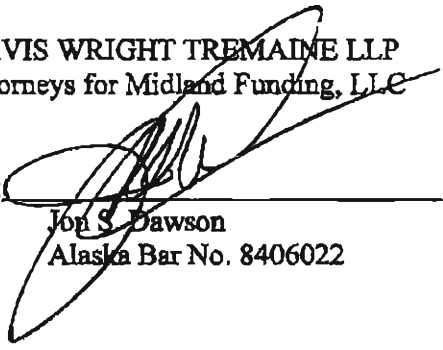
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Anchorage, Alaska 99501
(907) 257-5300 • Fax: (907) 257-5399

D

1 MID0051-68, MID0088-0110) in support of its Motion to Compel Arbitration and Stay
2 Action.

3 DATED this 9th day of April, 2012.

4
5 DAVIS WRIGHT TREMAINE LLP
6 Attorneys for Midland Funding, LLC

7 By: 
8 Jon S. Dawson
9 Alaska Bar No. 8406022

10 Certificate of Service

11 On the 9th day April, 2012, a
12 true and correct copy of the foregoing
13 document was sent by U.S. Mail,
14 postage paid, to the following parties:

15 James J. Davis, Jr.
16 Northern Justice Project, LLC
17 310 K St., Suite 200
18 Anchorage, AK 99501

19 Marc Wilhelm
20 Richmond & Quinn
21 360 K Street, Suite 200
22 Anchorage, AK 99501

23 By: 
24 Karina Chambers

25
26
Davis Wright Tremaine LLP
LAW OFFICES
Suite 800 - 701 West 8th Avenue
Anchorage, Alaska 99501
(907) 257-5300 - Fax: (907) 257-5399

DECLARATION FOR RECORDS OF REGULARLY CONDUCTED BUSINESS ACTIVITY

Re: Notice of Records Depositions, and Subpoena for Taking Deposition and Exh. A thereto, in *Stewart v. Midland Funding LLC, et al.*, Case No. 3AN-11-12054 Civil (Alaska Superior Ct.)

Account Holder: Cynthia Stewart
Account Number: [REDACTED] 3235

I, Mariya Kharlamova, declare that I am employed by CitiGroup Management Corp. (the "Bank") in the Legal Department and am the Bank's designated duly authorized Custodian of Records for documents and/or information produced under the above referenced legal order. The Bank reserves its right to designate another Custodian as it deems appropriate in the event an actual appearance is required concerning the records produced herein.

The records produced herewith are true and correct copies of all of the Bank's documents that are responsive to the above-referenced Notice of Records Deposition and Subpoena served pursuant to the above referenced case. I certify the authenticity of the records and that they were:

- A. Made at or near the time of the occurrence, condition, or event of the matters set forth by, or from information transmitted by, a person with knowledge of these matters.
- B. Kept in the course of regularly conducted activity.
- C. Made by the regularly conducted activity as a regular practice, by the personnel of the business.

I declare under penalty of perjury under the law(s) of the State of South Dakota that the foregoing is true and correct.

Executed on this 9 day of March, 2012.

Gina Steineke
Custodian of Records

GINA J. STEINEKE
Notary Public
State of South Dakota Minnehaha County
My Commission Expires: March 27, 2015

M. Kharlamova
Mariya Kharlamova
Legal Support Specialist
Citigroup Management Corp.
Citi Consumer Subpoena Compliance Unit
701 E. 60th St. N./MC1251
Sioux Falls, SD 57117
Phone (605) 731-3714