

## Whaley v. Higher Educ. Loan Auth. of the State

**Court:** New York Supreme Court

**Writing**

**for the** Aaron D. Maslow, J.

**Court:**

**Citation:** Whaley v. Higher Educ. Loan Auth. of the State, 2026 NY Slip Op 26038, Index No. 529599/25 (N.Y. Sup. Ct. Mar 17, 2026)

**Docket**

**Number:** Index No. 529599/25

**Decision**

**Date:** 17 March 2026

**Parties:** Shartisha Shandele Whaley, Plaintiff, v. Higher Education Loan Authority of the State of Missouri d/b/a "MOHELA," LVNV FUNDING L.L.C., MIDLAND CREDIT MANAGEMENT, INC., EQUIFAX INFORMATION SERVICES L.L.C., EXPERIAN INFORMATION SOLUTIONS, INC., and TRANSUNION INTERACTIVE, INC., Defendants.

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2026 NY Slip Op 26038

Shartisha Shandele Whaley, Plaintiff,

v.

Higher Education Loan Authority of the State of Missouri d/b/a "MOHELA," LVNV FUNDING L.L.C., MIDLAND CREDIT MANAGEMENT, INC., EQUIFAX INFORMATION SERVICES L.L.C., EXPERIAN INFORMATION SOLUTIONS, INC., and TRANSUNION INTERACTIVE, INC., Defendants.

Index No. 529599/25

Supreme Court, Kings County

March 17, 2026

Aaron D. Maslow, J.

The following e-filed papers read herein: NYSCEF Doc Nos.:

Notice of Motion/Order to Show Cause/Petition/Cross Motion and Affidavits (Affirmations) Annexed  
13-14

Opposing Affidavits (Affirmations) 23

Affidavits/Affirmations in Reply

Memoranda of Law 16, 22, 28

Upon the foregoing papers, defendant Midland Credit Management, Inc. (Midland Credit) moves, pursuant to CPLR 3211 (a) (3) and (a) (7), for an order dismissing the complaint (motion sequence number 2).

The motion (motion sequence number 2) is granted and the action as dismissed as against Midland Credit. In addition, in light of this dismissal and in view of the so-ordered notice discontinuing the action as against defendant LVNV Funding L.L.C. (NY St Cts Elec Filing [NYSCEF] Doc Nos. 25 and 27 [so ordered]) and the stipulation discontinuing the action as against defendant Higher Education Loan Authority of the State of Missouri d/b/a "MOHELA" (NYSCEF Doc No. 32), the action is severed accordingly and caption is amended to read as follows:

**SHARTISHA SHANDELE WHALEY, Plaintiff,**

**against**

**EQUIFAX INFORMATION SERVICES L.L.C., EXPERIAN INFORMATION SOLUTIONS, INC.,  
and TRANSUNION INTERACTIVE, INC., Defendants.**

**Index No.: 529599/25**

The Clerk is ordered to amend the caption accordingly.

#### **BACKGROUND**

In this action, plaintiff Shartisha Shandele Whaley alleges that defendants are liable for various violations of the Fair Credit Reporting Act (FCRA) (15 USC § 1681 *et seq.*). With respect to Midland Credit, plaintiff alleges in the complaint that she opened an account with non-party Comenity Bank in 2017 and Comenity Bank extended funds on credit to her (Complaint at ¶ 35). This account with Comenity Bank allowed plaintiff to pay down the original balance by making payments over several months (*id.*). Although plaintiff made payments for several months, she ceased making payments in 2019 (*id.*). After this default, plaintiff asserts that Comenity Bank contracted with Midland Credit to begin collection efforts against her, and that Midland Credit properly reported to defendant Experian Information Solutions, Inc. (Experian), a consumer reporting agency, that plaintiff had stopped making payments and owes a balance (Complaint at ¶ 36). Midland Credit, however, "inaccurately reported to Experian that the account terms were '1 Month' and that the 'Original' Balance amount was the exact same amount as the Past Due Amount; and Midland Credit's inaccurate reporting about Ms. Whaley's account was parroted in Experian's credit report on Ms. Whaley. Midland Credit and Experian's information inaccurately conveys that the account terms required Ms. Whaley to pay the balance within the '1 Month' and that she failed to make any payments at all" (*id.*).

Plaintiff has thereafter repeatedly disputed these inaccuracies in Midland Credit's reporting with Experian by explaining that the term of her account was not "1 Month," but rather allowed her to pay off the account over several months and that she did, in fact, pay down the original balance by making payments over several months (Complaint at ¶ 37). Despite these disputes, Midland Credit continues to report the same inaccurate information to Experian, which continues to include the same information in its credit report relating to plaintiff (*id.*).

Based upon these allegations relating to Midland Credit, plaintiff alleges that Midland Credit negligently or willfully violated 15 USC § 1681s-2 (b) (1) (A) by failing to conduct a reasonable investigation with respect to information about plaintiff that it reported to Experian (Complaint at ¶ 48). In the complaint's prayer for relief, plaintiff asks for her actual damages, statutory damages, attorney's fees, cost and punitive damages (Complaint at page 25). Plaintiff, in the complaint, however, does not identify any particular harm or damage that she has suffered as a result of Midland Credit's violation of the FCRA and plaintiff specifically states that she cannot bring this action in the United States District Court for the Eastern District of New York because threatened injuries and emotional harm are insufficient to demonstrate standing for purposes of the United States Constitution, Article III (Complaint at ¶¶ 5-7).

## DISCUSSION

The FCRA was enacted to ensure that fair and reasonable procedures are followed in the compiling of information contained in credit reports prepared by consumer reporting agencies such as defendants Equifax Information Services L.L.C. (Equifax), Experian, and TransUnion Interactive, Inc. (TransUnion) (*see* 15 USC §§ 1681, 1681a [f]). Among other things, the FCRA requires that "furnishers," such as banks, credit lenders, and collection agencies ensure that the information they provide to consumer reporting agencies is accurate (15 USC § 1681s-2 [a]; *Roberts v Carter-Young, Inc.*, 131 F.4th 241, 245 [4th Cir 2025]). A consumer who believes that the information in a report is inaccurate can dispute the accuracy of this information indirectly by notifying the consumer reporting agency and the consumer reporting agency is required to notify the furnisher of the dispute (15 USC §§ 1681i [a] [1], [2], 1681s-2 [b]; *Roberts*, 131 F.4th at 245). <sup>[1]</sup> Upon receiving a report of a dispute, a furnisher is required to conduct an investigation regarding the disputed information and report its findings back to the consumer reporting agency (15 USC § 1681s-2 [b] [1] [A], [B], [C]). If the information in dispute is found to be inaccurate, the furnisher must "modify," "delete," or "permanently block" the reporting of the information (15 USC § 1681s-2 [b] [1] [D], [E]). Consumers have a private right of action against furnishers for violations of these investigation requirements under 15 USC § 1681s-2 (b) that arise after the furnisher receives notice of a dispute (*see Holden v Holiday Inn Club Vacations Inc.*, 98 F.4th 1359, 1366-1367 [11th Cir 2024]; *see also Roberts*, 131 F.4th at 246; 15 USC §§ 1681n, 1681o).

For willful failures to comply with its requirements, the FCRA provides that a consumer may recover "any actual damages sustained... as a result of the failure or damages of not less than \$100 and not more than \$1,000" (15 USC § 1681n [a] [1] [A]) and, in the case of any "successful action," costs and reasonable attorney's fees (15 USC § 1681n [a] [1] [B] [3]). Based solely on this statutory language, plaintiffs can recover statutory damages for a willful violation even if they are unable to demonstrate any actual harm (*see Robins v Spokeo, Inc.*, 742 F.3d 409, 412 [9th Cir 2014], *reversed on other grounds* 578 U.S. 330 [2016]; *Beaudry v TeleCheck Services, Inc.*, 579 F.3d 702, 705-706 [6th Cir 2009], *cert denied* 559 U.S. 1092 [2010]; *Murray v GMAC Mortg. Corp.*, 434 F.3d 948, 953 [7th Cir 2006]). On the other hand, a consumer's recovery for a negligent failure to comply with FCRA's requirements is limited to "actual damages" and costs and attorneys' fees in the event of a successful action (15 USC § 1681o [a]).

In moving for dismissal, Midland Credit initially contends that the complaint should be dismissed because plaintiff has failed to allege that she suffered an injury-in-fact and thus has failed to demonstrate that she has standing to bring her FCRA cause of action. As plaintiff acknowledges in her complaint, the injury-in-fact element of the case and controversy requirements of the United States Constitution, Article III, would bar her from commencing this action in the United States District Court for the Eastern District. In this respect, the United States Supreme Court has emphasized that a plaintiff does not satisfy the injury-in-fact element whenever congress grants a person a statutory right and authorizes that person to sue to vindicate that right (*see Spokeo, Inc. v Robins*, 578 U.S. 330, 342-343 [2016]). The Supreme Court has thus held that a procedural violation of FCRA which may entitle a plaintiff to statutory damages may be, in and of itself, insufficient to work any concrete harm. Moreover, the Supreme Court, in *TransUnion LLC v Ramirez* (594 U.S. 413 [2021]) went one step further and held that, in the context of a FCRA claim, the fact that an internal credit file contains misleading information, but which has not been released to third parties, is insufficient to make out concrete harm and is thus insufficient to establish standing for a FCRA claim for Article III purposes (*id.* at 435). Although the Court recognized that the risk of future harm may justify standing for purposes of injunctive relief, it concluded that the risk of future harm did not make out concrete harm for purposes of an action for damages (*id.* at 435-436).

Standing requirements in Federal actions derive from the jurisdictional case and controversy requirement of Article III of the United States Constitution (*see TransUnion LLC*, 594 U.S. at 423; *Spokeo*,

*Inc.*, 578 U.S. at 337-338). New York courts, however, are not bound by Federal Article III standing requirements even when addressing a federal statute (see *ASARCO Inc. v Kadish*, 490 U.S. 605, 617 [1989]; see also *TransUnion LLC*, 594 U.S. at 459 n 9 [Thomas, J., dissenting]).<sup>[2]</sup> While New York has no constitutional requirement akin to the Federal case and controversy requirements, New York has standing rules that have developed from the common-law and from judicial rules of "self restraint" (*Society of Plastics Indus. v County of Suffolk*, 77 N.Y.2d 761, 772-773 [1991]; see also *U.S. Bank N.A. v Nelson*, 36 N.Y.3d 998, 1003 n 4 [2020, Wilson, J., concurring]).<sup>[3]</sup> Under the common-law rule so developed, "[a] plaintiff has standing to maintain an action upon alleging an injury in fact that falls within his or her zone of interest" (*Gregg v SN Servicing Corp.*, 242 A.D.3d 962, 964 [2d Dept 2025]; see *Matter of Mental Hygiene Legal Serv. v Daniels*, 33 N.Y.3d 44, 50 [2019]; *New York State Assn. of Nurse Anesthetists v Novello*, 2 N.Y.3d 207, 211 [2004]). "The injury-in-fact requirement necessitates a showing that the party has an actual legal stake in the matter being adjudicated and has suffered a cognizable harm that is not tenuous, ephemeral, or conjectural but is sufficiently concrete and particularized to warrant judicial intervention" (*Matter of Festa v Town of Oyster Bay*, 210 A.D.3d 678, 679-680 [2d Dept 2022] [internal quotation marks omitted]; see *Matter of Mental Hygiene Legal Serv.*, 33 N.Y.3d at 50; *Gregg*, 242 A.D.3d at 964).

While no New York state court has addressed a plaintiff's standing to bring a FCRA claim, the Appellate Division, Second Department in *Gregg v SN Servicing Corp.* (242 A.D.3d 962 [2d Dept 2025]), *Kraus v Credit Control Servs., Inc.* (237 A.D.3d 1083 [2d Dept 2025]) and *Green v Forster & Garbus, LLP* (237 A.D.3d 1059 [2d Dept 2025]) addressed standing to sue in New York under the similar Fair Debt Collection Practices Act (FDCPA) (15 USC § 1692 *et seq.*) (see *Gregg*, 242 A.D.3d at 964-965; *Kraus*, 237 A.D.3d at 1084-1085; *Green*, 237 A.D.3d at 1060-1061). The FDCPA creates a private right of action for debtors against debt collectors when the debtors are harmed by, among other things, any "false, deceptive, or misleading representation or means in connection with a debt" (15 USC 1692e; see *Benzemann v Citibank N.A.*, 806 F.3d 98, 100 [2d Cir 2015], *cert denied* 580 U.S. 1047 [2017]; 15 USC § 1692k [a] [1], [2] [A]). Just as under the FCRA, the FDCPA allows a plaintiff to recover actual damages or statutory damages as well as costs and attorneys' fees (15 USC § 1692k [a] [1], [2] [A]). As such, the FDCPA allows a plaintiff to recover statutory damages for such deceptive acts even if a plaintiff cannot show actual damages (see *Willis v Portfolio Recovery Assocs., L.L.C.*, 803 Fed.Appx 761 [5th Cir 2020]). Relying on the Supreme Court's determinations in *TransUnion LLC* (594 U.S. 413) and *Spokeo, Inc.* (578 U.S. 330) regarding the FCRA, federal courts have held that a FDCPA plaintiff must likewise demonstrate some actual harm for purposes of Article III standing (see *Huber v Simon's Agency, Inc.*, 84 F4th 132, 147-149 [3d Cir 2023]; *Hagy v Demers & Adams*, 882 F.3d 616, 622-623 [6th Cir 2018]). The Second Department, in *Gregg*, *Kraus*, and *Green*, found that the plaintiffs' allegations of deceptive conduct made without allegations of reliance on the deceptive conduct and without allegations of any harm or injury were insufficient to establish standing under New York's common-law standard (see *Gregg*, 242 A.D.3d at 964-965; *Kraus*, 237 A.D.3d at 1084-1085; *Green*, 237 A.D.3d at 1061-1062; see also *Terkeltaub v Credit Control Servs., Inc.*, 243 A.D.3d 833, 834 [2d Dept 2025]). The court in *Gregg* - citing to *TransUnion LLC* (594 U.S. 413), *Matter of Harkenrider v Hochul* (38 N.Y.3d 494, 508 [2022]), and *Matter of Association for a Better Long Is., Inc. v New York State Dept. of Env'tl. Conservation* (23 N.Y.3d 1 [2014]) - additionally concluded that plaintiff did not have statutory standing under the FDCPA.<sup>[4]</sup>

In view of the holdings in *Gregg*, *Kraus*, and *Green*, Midland Credit has established, prima facie, that plaintiff lacks common-law standing as the complaint herein contains no allegation that plaintiff suffered an actual harm or injury as a result of Midland Credit's alleged inadequate investigation of the information it provided to Experian (see *Gregg*, 242 A.D.3d at 964-965; *Kraus*, 237 A.D.3d at 1084-1085; *Green*, 237 A.D.3d at 1061-1062). Plaintiff, in opposition, has failed to demonstrate a factual issue with respect to standing.

Although plaintiff, in her opposition papers, tries to distinguish *Gregg*, *Kraus*, and *Green* by downplaying the seriousness of the FDCPA violations at issue in those cases, she has failed to show that she has more than a technical violation under the FCRA. While plaintiff asserts that she had made some payments, she does not deny that she ultimately defaulted on the payments. Without an allegation that plaintiff's Experian credit report was released to a third-party, an allegation detailing the amount of payments made, or an allegation that the incorrect information regarding her payments would make a difference in her credit score or have an actual impact on her ability to get a loan or take other like action, plaintiff's claim here is indistinguishable from the FDCPA claims in *Gregg*, *Kraus*, and *Green*. In addition, the New York cases relied upon by plaintiff in opposition are distinguishable as they do not involve private actions for damages under a Federal statute. Rather, they involve a challenge to administrative regulations (see *Matter of Stevens v New York State Div. of Criminal Justice Servs.*, 40 N.Y.3d 505, 515-516 [2023]), a challenge to the constitutionality of Education Law statutes (see *Dauids v State of New York*, 159 A.D.3d 987, 992 [2d Dept 2018]), and a request for injunctive relief requiring sealing of plaintiff's arrest record under CPL 160.50 (see *Lino v City of New York*, 101 A.D.3d 552, 555-556 [1st Dept 2012]). As noted above, even the Supreme Court has been willing to consider the risk of future harm rather than actual harm where the plaintiff seeks injunctive relief as opposed to retrospective damages (see *TransUnion LLC*, 594 U.S. at 435-436).

In sum, as plaintiff has failed to demonstrate factual issues with respect to standing, Midland is entitled to dismissal of the complaint against it pursuant to CPLR 3211 (a) (3).

This constitutes the decision and order of the court.

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Notes:

[1] A consumer may also dispute the accuracy of the information directly with the furnisher (*see* 15 USC 1681s-2 [a] [8]).

[2] As stated by the Supreme Court, "the constraints of Article III do not apply to state courts, and accordingly the state courts are not bound by the limitations of a case or controversy or other federal rules of justiciability even when they address issues of federal law, as when they are called upon to interpret the Constitution or, in this case, a federal statute" (*ASARCO Inc.*, 490 U.S. at 617).

[3] New York's non-constitutional standing rules are also referred to as "prudential standing" (*US Bank, N.A.*, 36 N.Y.3d at 1003 [Wilson, J., concurring]).

[4] Given that, as noted above, federal standing principles are not binding on state courts, a state court could come to a different conclusion under its own standing rules. For the reasons discussed by the Court of Appeals for the Ninth Circuit in its decision that was reversed by the Supreme Court in *Spokeo*, a state court could find that FCRA's limiting claims to plaintiffs whose own credit reports are at issue and limiting statutory damages (as opposed to actual damages) to willful violations ensures that a plaintiff's claims thereunder are sufficiently individualized, concrete and particularized for purposes of a state's standing requirements even in the absence of an actual injury (*see Robins v Spokeo, Inc.*, 742 F.3d 409, 412-414 [9th Cir 2014], *reversed* 578 U.S. 330 [2016]). This was essentially what the court found in *Kenn v Eascare, LLC* (103 Mass. App Ct 643, 651-652, 226 N.E.2d 318, 326 [Mass App Ct 2024]), where the court held that plaintiff had standing because the alleged willful violation of her legal rights under the FCRA, while it did not involve assertions of a concrete injury within the meaning of federal Article III jurisprudence, was not "speculative, remote and indirect" as a matter of Massachusetts law. Other state courts, however, have found that the absence of allegations of an actual injury preclude a finding of standing under the FCRA (*see Fausett v Walgreen Co.*, 2025 IL 131444, ¶ 50, - N.E.3d - [2025]; *Muha v Experian Information Solutions, Inc.*, 106 Cal App 5th 199, 209-210, 326 Cal.Rptr 3d 622, 629-630 [Cal Ct App 2024]; *Southam v Red Wing Shoe Co., Inc.*, 343 So.3d 106, 112-113 [Fl Dist Ct App 2022] [addressing claim under the related Fair and Accurate Credit Transactions Act], *review denied* 2022 WL 16848677 [Fla 2022]).

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