

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE MIDLAND FUNDING, LLC INTEREST
RATE LITIGATION

Civil Action No.: 11-cv-8149 (LMS)

FINAL ORDER AND JUDGMENT

This matter comes before the Court on the joint request of Plaintiffs Linda Taylor Gay, Marianne Norelli, Galo Uribe and Rocco Commisso and a class of persons similarly situated who have not opted out of the class (collectively, “Settlement Class Members”), and Defendants Midland Funding, LLC and Midland Credit Management, Inc. (collectively “Defendants”) for final approval of the Settlement Agreement dated (the “Settlement Agreement”).

The Fairness Hearing having been held before the Court on the 9th day of September, 2019 and due deliberation having been had thereon, and the Court, having read and considered (i) the Settlement Agreement and all the papers attached thereto filed by Class Counsel, (ii) the Memorandum and the declarations submitted in support of the application for entry of this Final Order and Judgment, (iii) the oral arguments of counsel presented to the Court, if any, and (iv) all papers filed and proceedings had herein; and for good cause appearing, the Court finds the following:

1. On April 30, 2019, the Court preliminarily approved the Settlement, certified this case as a class action for settlement purposes, appointed a Settlement Administrator, approved Plaintiffs as Settlement Class Representatives, and Plaintiffs’ attorneys as Class Counsel. Consistent with the Court’s Order dated February 27, 2017, the Settlement Class was defined as:

all persons residing in New York who were sent a letter by Defendants attempting to collect interest in excess of 25% per annum regarding debts incurred for personal, family, or household purposes, whose cardholder agreements: (i) purport to be governed

by the law of a state that, like Delaware's, provides for no usury cap; or (ii) select no law other than New York. This class comprises two subclasses: (a) for claims arising out of GBL violations from November 10, 2008 through February 27, 2017; and (b) for claims arising out of FDCPA violations from November 10, 2010 through February 27, 2017.

Excluded from the Settlement Class and all subclasses are any person whose Letter relates to a debt which was discharged pursuant to Chapter 7 of the United States Bankruptcy Code.

Preliminary Order dated April 30, 2019 (ECF Doc. 225) at ¶ 9.

2. In compliance with the Class Action Fairness Act of 2005, Pub. L. No. 109-2, 119 Stat. 4, Defendants' counsel served notices of the proposed settlement on the appropriate federal and state officials.

3. Pursuant to the Preliminary Order, notice was mailed to approximately 58,263 persons falling within the description of the Settlement Class in paragraph 1 above. Additionally, pursuant to the parties' Notice Plan as approved by the Court's Preliminary Order, the Class Administrator identified 29,948 Settlement Class Members' email addresses and subsequently sent them a supplemental notice via email. Supplemental email notice was sent on June 13, 2019.

4. Pursuant to the parties' Settlement Agreement, a second postcard notice was sent to the Settlement Class Members on June 21, 2019, excepting those Settlement Class Members who had already filed a claim or opt out request by that date.

5. Due to a brief technical issue with the website, the Court granted the parties' subsequent request to send a third postcard notice and to extend the claim, optout and objection deadline from July 29, 2019 to August 23, 2019. ECF Doc.227. This third postcard notice was sent on July 9, 2019.

6. Class Counsel and the Settlement Administrator have reported that 5 of the persons who received the notice chose to opt out of the Settlement Class, leaving 58,258 Settlement Class Members who are parties to this Settlement.

7. Class Counsel and the Settlement Administrator have further reported that 7633 Settlement Class Members have filed claims, including 6239 that have filed claims for monetary relief, and 1394 that have filed claims for balance adjustments. Of the 7633 claimants, 1560 were entitled to the Supplemental Fund.

8. The Parties now jointly request final approval of the Settlement.

9. The Court has read and considered the Settlement Agreement, the Motion and Declarations submitted in support thereof, the accompanying documents, and the record.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. Granting of Motion for Final Approval. The Parties' Joint Motion for Final Approval of the proposed Settlement is GRANTED and the Parties are hereby ordered to consummate the Settlement according to the terms of the Settlement Agreement and as set forth in this Order.

2. Objections. There were no objections timely or otherwise to the Settlement Agreement.

3. Notice. The Court finds that the distribution of the notice (including a postage prepaid claim form), the supplemental postcard and email notices, and the long form notice made available on the class settlement website, as provided for in the Preliminary Order, accurately informed all persons within the definition of the Settlement Class of the material elements of the Settlement; fully complied with the Preliminary Order; constituted the best notice practicable under the circumstances to all persons within the definition of the Settlement Class; constituted valid, due and sufficient notice; and fully met the requirements of Federal Rule of Civil Procedure

23, any and all substantive and procedural due process rights guaranteed by the United States Constitution, and any other applicable law.

4. Final Approval. The Court finds that the Settlement is fair, reasonable, and adequate and satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure, and accordingly, the Court provides final approval of the Settlement and directs that the Parties implement it, as follows:

A. The parties are directed to implement the Settlement in accordance with its terms.

B. There being 58,258 Settlement Class Members as of the date of this Order, pursuant to the Settlement Agreement, the Court (subject to its reservation of continuing jurisdiction over the Settlement set forth below) hereby dismisses with prejudice the Action, all claims contained therein, and all Released Claims against Released Persons, not including the claims of those persons opted out of the Settlement.

5. Costs. The Parties are to bear their own costs, except as otherwise provided in the Settlement Agreement.

6. Settlement Amount to Representative Plaintiffs. For their efforts on behalf of the Settlement Class and to settle their individual claims, the Representative Plaintiffs, Linda Taylor Gay, Marianne Norelli, Galo Uribe and Rocco Commisso, are awarded \$5,000 each in accordance with the Settlement Agreement. Defendants will pay the amount in the manner and time set forth in the Settlement Agreement. In addition, and in acknowledgment of each Representative Plaintiff's efforts on behalf of the Settlement Class, each Representative Plaintiff's purported account balance shall be adjusted by Defendants to zero.

7. Settlement Payment. Pursuant to the Settlement Agreement, Defendants are to pay each member of the Settlement Class who did not opt out of the Settlement and who filed a claim

the amount they are entitled to according to the formula set forth in the Settlement Agreement, in the manner and time set forth in the Settlement Agreement.

8. Balance Adjustments. With regard to Settlement Class Members entitled to balance adjustments under the settlement terms, Defendants shall make the balance adjustments as detailed under the Settlement Agreement within 90 days of Defendants' receipt of a finalized list of claimants from the Settlement Administrator, including final amounts to be disbursed or credited for each claimant.

9. Attorneys' Fees. The Court, having reviewed Class Counsel's contemporaneous time records, disbursement records and supporting Declarations filed on March 4, 2019, and having considered the fact that Defendants do not oppose these fees and costs, hereby approves attorneys' fees and costs in the amount of \$550,000.

10. Cy Pres. The Court, having reviewed the Parties' submission on the issue, selects and approves Volunteer Lawyer For A Day as the recipient of any *cy pres* funds that may be available in the Settlement Fund after the expiration date of the last mailed settlement fund check, pursuant to the terms of the Settlement.

11. Release and Discharge. Upon entry of this Order and Final Approval of the Settlement, Representative Plaintiffs and each member of the Settlement Class will release claims as set forth in the Settlement Agreement.

12. Defendants' Denial of Liability. The Court notes that Defendants deny any liability to Representative Plaintiffs or to any Settlement Class Member for any matter whatsoever. Neither the Final Judgment nor Settlement Agreement shall constitute an admission of liability by the Defendants of any liability or wrongdoing. Without conceding any infirmity in their defenses, and while continuing to deny all allegations of liability, Defendants consider it desirable that the Action be dismissed and that the claims against Defendants be released, on the terms set forth in the

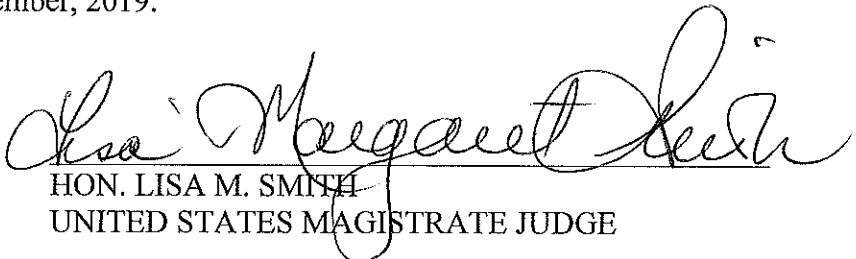
Settlement Agreement and ¶ 11, above, in order to avoid further expense, dispose of burdensome and protracted litigation and put to rest all claims which have or could have been asserted against Defendants arising from “a common nucleus of operative fact as the claims asserted in [this] Action”. ECF Doc. 224 ¶ 10(m). Pursuant to the Settlement Agreement, “this release shall not include any defense to any of the underlying state court actions and/or judgments taken against any Settlement Class Member.” *Id.*

13. Dismissal of Complaint. Subject to the reservation of jurisdiction for matters set forth below, the Complaint is hereby dismissed with prejudice.

14. Jurisdiction. The Court shall retain exclusive and continuing jurisdiction over the Action, Representative Plaintiffs, Defendants and all Settlement Class Members to interpret and enforce the terms, conditions and obligations of this Settlement Agreement, including among other things: (i) supervising the implementation, enforcement, construction and interpretation of the Settlement Agreement, the Preliminary Order, and the Final Judgment; (ii) supervising the administration and distribution of the relief to the Settlement Class Members and resolving any disputes that may arise with regard to any of the foregoing.

15. Entry of Judgment. In accordance with Rule 54(b) of the Federal Rules of Civil Procedure, the Court finds there is no just reason to delay entry of this Judgment and the Clerk of the Court is ordered to enter Final Judgment forthwith.

So Ordered this 10th day of September, 2019.


HON. LISA M. SMITH
UNITED STATES MAGISTRATE JUDGE



**United States District Court
Southern District of New York**

Ruby J. Krajick
Clerk of Court

Dear Litigant:

Enclosed is a copy of the judgment entered in your case. If you disagree with a judgment or final order of the district court, you may appeal to the United States Court of Appeals for the Second Circuit. To start this process, file a "Notice of Appeal" with this Court's Pro Se Intake Unit.

You must file your notice of appeal in this Court within 30 days after the judgment or order that you wish to appeal is entered on the Court's docket, or, if the United States or its officer or agency is a party, within 60 days after entry of the judgment or order. If you are unable to file your notice of appeal within the required time, you may make a motion for extension of time, but you must do so within 60 days from the date of entry of the judgment, or within 90 days if the United States or its officer or agency is a party, and you must show excusable neglect or good cause for your inability to file the notice of appeal by the deadline.

Please note that the notice of appeal is a *one-page* document containing your name, a description of the final order or judgment (or part thereof) being appealed, and the name of the court to which the appeal is taken (the Second Circuit) – *it does not* include your reasons or grounds for the appeal. Once your appeal is processed by the district court, your notice of appeal will be sent to the Court of Appeals and a Court of Appeals docket number will be assigned to your case. At that point, all further questions regarding your appeal must be directed to that court.

The filing fee for a notice of appeal is \$505 payable in cash, by bank check, certified check, or money order, to "Clerk of Court, S.D.N.Y." *No personal checks are accepted.* If you are unable to pay the \$505 filing fee, complete the "Motion to Proceed *in Forma Pauperis* on Appeal" form and submit it with your notice of appeal to the Pro Se Intake Unit. If the district court denies your motion to proceed *in forma pauperis* on appeal, or has certified under 28 U.S.C. § 1915(a)(3) that an appeal would not be taken in good faith, you may file a motion in the Court of Appeals for leave to appeal *in forma pauperis*, but you must do so within 30 days after service of the district court order that stated that you could not proceed *in forma pauperis* on appeal.

For additional issues regarding the time for filing a notice of appeal, see Federal Rule of Appellate Procedure 4(a). There are many other steps to beginning and proceeding with your appeal, but they are governed by the rules of the Second Circuit Court of Appeals and the Federal Rules of Appellate Procedure. For more information, visit the Second Circuit Court of Appeals website at <http://www.ca2.uscourts.gov/>.

**THE DANIEL PATRICK MOYNIHAN
UNITED STATES COURTHOUSE
500 PEARL STREET
NEW YORK, NY 10007-1312**

**THE CHARLES L. BRIEANT, JR.
UNITED STATES COURTHOUSE
300 QUARROPAS STREET
WHITE PLAINS, NY 10601-4150**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

(List the full name(s) of the plaintiff(s)/petitioner(s).)

____CV____ () ()

-against-

NOTICE OF APPEAL

(List the full name(s) of the defendant(s)/respondent(s).)

Notice is hereby given that the following parties: _____

(list the names of all parties who are filing an appeal)

in the above-named case appeal to the United States Court of Appeals for the Second Circuit

from the ☐ judgment ☐ order entered on: _____
(date that judgment or order was entered on docket)

that: _____

(If the appeal is from an order, provide a brief description above of the decision in the order.)

Dated _____

Signature* _____

Name (Last, First, MI) _____

Address _____

City _____

State _____

Zip Code _____

Telephone Number _____

E-mail Address (if available) _____

* Each party filing the appeal must date and sign the Notice of Appeal and provide his or her mailing address and telephone number, EXCEPT that a signer of a pro se notice of appeal may sign for his or her spouse and minor children if they are parties to the case. Fed. R. App. P. 3(c)(2). Attach additional sheets of paper as necessary.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

(List the full name(s) of the plaintiff(s)/petitioner(s).)

-against-

____ CV _____ ()()

**MOTION FOR EXTENSION
OF TIME TO FILE NOTICE
OF APPEAL**

(List the full name(s) of the defendant(s)/respondent(s).)

I move under Rule 4(a)(5) of the Federal Rules of Appellate Procedure for an extension of time to file a notice of appeal in this action. I would like to appeal the judgment entered in this action on _____ but did not file a notice of appeal within the required
date
time period because:

(Explain here the excusable neglect or good cause that led to your failure to file a timely notice of appeal.)

Dated:

Signature

Name (Last, First, MI)

Address

City

State

Zip Code

Telephone Number

E-mail Address (if available)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

(List the full name(s) of the plaintiff(s)/petitioner(s).)

-against-

(List the full name(s) of the defendant(s)/respondent(s).)

____CV____ () ()

**MOTION FOR LEAVE TO
PROCEED IN FORMA
PAUPERIS ON APPEAL**

I move under Federal Rule of Appellate Procedure 24(a)(1) for leave to proceed *in forma pauperis* on appeal. This motion is supported by the attached affidavit.

Dated

Signature

Name (Last, First, MI)

Address

City

State

Zip Code

Telephone Number

E-mail Address (if available)

Application to Appeal In Forma Pauperis

_____ v. _____ Appeal No. _____

District Court or Agency No. _____

<p>Affidavit in Support of Motion</p> <p>I swear or affirm under penalty of perjury that, because of my poverty, I cannot prepay the docket fees of my appeal or post a bond for them. I believe I am entitled to redress. I swear or affirm under penalty of perjury under United States laws that my answers on this form are true and correct. (28 U.S.C. § 1746; 18 U.S.C. § 1621.)</p> <p>Signed: _____</p>	<p>Instructions</p> <p>Complete all questions in this application and then sign it. Do not leave any blanks: if the answer to a question is "0," "none," or "not applicable (N/A)," write that response. If you need more space to answer a question or to explain your answer, attach a separate sheet of paper identified with your name, your case's docket number, and the question number.</p> <p>Date: _____</p>
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My issues on appeal are: (required):

1. *For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.*

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	<u>Spouse</u>	You	<u>Spouse</u>
Employment	\$	\$	\$	\$
Self-employment	\$	\$	\$	\$
Income from real property (such as rental income)	\$	\$	\$	\$

Interest and dividends	\$	\$	\$	\$
Gifts	\$	\$	\$	\$
Alimony	\$	\$	\$	\$
Child support	\$	\$	\$	\$
Retirement (such as social security, pensions, annuities, insurance)	\$	\$	\$	\$
Disability (such as social security, insurance payments)	\$	\$	\$	\$
Unemployment payments	\$	\$	\$	\$
Public-assistance (such as welfare)	\$	\$	\$	\$
Other (specify):	\$	\$	\$	\$
Total monthly income:	\$	\$	\$	\$

2. *List your employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)*

Employer	Address	Dates of employment	Gross monthly pay
			\$
			\$
			\$

3. *List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)*

Employer	Address	Dates of employment	Gross monthly pay
			\$
			\$
			\$

4. *How much cash do you and your spouse have? \$_____*

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial Institution	Type of Account	Amount you have	Amount your spouse has
		\$	\$
		\$	\$
		\$	\$

If you are a prisoner seeking to appeal a judgment in a civil action or proceeding, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.

5. *List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.*

Home	Other real estate	Motor vehicle #1
(Value) \$	(Value) \$	(Value) \$
		Make and year:
		Model:
		Registration #:

Motor vehicle #2	Other assets	Other assets
(Value) \$	(Value) \$	(Value) \$
Make and year:		
Model:		
Registration #:		

6. *State every person, business, or organization owing you or your spouse money, and the amount owed.*

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
	\$	\$
	\$	\$
	\$	\$
	\$	\$

7. *State the persons who rely on you or your spouse for support.*

Name [or, if a minor (i.e., underage), initials only]	Relationship	Age

8. *Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.*

	You	Your Spouse
Rent or home-mortgage payment (including lot rented for mobile home) Are real estate taxes included? [] Yes [] No Is property insurance included? [] Yes [] No	\$	\$
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$	\$
Home maintenance (repairs and upkeep)	\$	\$
Food	\$	\$
Clothing	\$	\$
Laundry and dry-cleaning	\$	\$
Medical and dental expenses	\$	\$

Transportation (not including motor vehicle payments)	\$	\$
Recreation, entertainment, newspapers, magazines, etc.	\$	\$
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's:	\$	\$
Life:	\$	\$
Health:	\$	\$
Motor vehicle:	\$	\$
Other:	\$	\$
Taxes (not deducted from wages or included in mortgage payments) (specify):	\$	\$
Installment payments		
Motor Vehicle:	\$	\$
Credit card (name):	\$	\$
Department store (name):	\$	\$
Other:	\$	\$
Alimony, maintenance, and support paid to others	\$	\$
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$	\$
Other (specify):	\$	\$
Total monthly expenses:	\$	\$

9. *Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?*

☐ Yes ☐ No If yes, describe on an attached sheet.

10. *Have you spent — or will you be spending — any money for expenses or attorney fees in connection with this lawsuit?* ☐ Yes ☐ No

If yes, how much? \$ _____

11. *Provide any other information that will help explain why you cannot pay the docket fees for your appeal.*

12. *Identify the city and state of your legal residence.*

City _____ State _____

Your daytime phone number: _____

Your age: _____ Your years of schooling: _____

Last four digits of your social-security number: _____