

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

IN RE MIDLAND FUNDING, LLC
INTEREST RATE LITIGATION

INDEX: 11-CV-8149 (LMS)

CLASS SETTLEMENT AGREEMENT

This Settlement Agreement is entered into by Plaintiffs Linda Taylor Gay, Marianne Norelli, Rocco Commisso and Galo Uribe (“Representative Plaintiffs” or “Plaintiffs”), acting individually and on behalf of the Settlement Class defined below, and Defendants Midland Funding, LLC and Midland Credit Management, Inc. (collectively, “Midland” or “Defendants”). This Settlement Agreement is subject to preliminary and final approval by the Court pursuant to Rule 23 of the Federal Rules of Civil Procedure.

I. RECITALS

1. On November 10, 2011, Representative Plaintiffs filed a putative class action Complaint in the United States District Court for the Southern District of New York, alleging that Midland violated the Fair Debt Collection Practices Act (“FDCPA”) 15 U.S.C. § 1692 *et seq.*, New York General Business Law § 349 (“NYGBL § 349”) and New York General Obligations Law § 5-501.

2. Since commencement of the action, over seven years ago, the matter has been litigated extensively including, *inter alia*, the filing of an amended complaint and second amended complaint, extensive paper discovery, multiple depositions, multiple motions for summary judgment, multiple motions for class certification, appellate practice before the Second Circuit and the U.S. Supreme Court, advocacy before the U.S. Solicitor General (from whom a brief was

requested by the U.S. Supreme Court with regard to whether *certiorari* should be granted), substitution of named plaintiffs, motion practice regarding multiple discovery disputes, innumerable meet and confers regarding a host of discovery and procedural issues, multiple appearances before the Hon. Cathy Seibel, and multiple appearances before the Hon. Lisa M. Smith.

3. Following extensive settlement-related correspondence between the parties, multiple proposals and counter proposals, multiple phone calls between counsel, and three separate settlement conferences before Magistrate Judge Smith, the Parties reached a class settlement, the terms of which were put on the record at the close of the third settlement conference, held on October 30, 2018. Minute Entry dated October 30, 2018.

4. Pursuant to the settlement-in-principle, the Parties have consented to referral of this matter to Magistrate Judge Smith for all purposes. ECF Doc. 205.

5. This Agreement formalizes the settlement-in-principle reached on October 30, 2018.

6. Midland has entered into this Agreement to resolve any and all controversies and disputes arising out of or relating to the allegations made in the Complaint, and to avoid the burden, risk and expense of further litigation. Midland does not in any way acknowledge, admit to or concede any of the allegations made in the Complaint, and expressly disclaims and denies any fault or liability, or any charges of wrongdoing that have been or could have been asserted in the Complaint, and maintains that it has a number of meritorious defenses to the claims.

7. Nevertheless, Midland recognizes the risks and uncertainties inherent in litigation, the significant expense associated with defending class actions, the costs of any additional appeals, and the disruption to its business operations arising out of this litigation. Accordingly, Midland

believes that settlement is in its best interests. Nothing contained in this Agreement shall be used or construed as an admission of liability.

8. Representative Plaintiffs have entered into this Agreement to recover on the class claims asserted in the Complaint, and to avoid the risk, delay, and uncertainty of continued litigation. Representative Plaintiffs do not in any way concede the claims alleged in the Complaint lack merit or are subject to any defenses.

9. This Agreement shall not be offered or received in evidence in any action or proceeding in any court or other forum as an admission or concession of liability or wrongdoing of any nature other than to enforce the terms of this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated into and are an integral part of this Agreement, and in consideration of the mutual promises below, the Parties agree that the Action and all claims of the Representative Plaintiffs and the proposed Settlement Class are settled, compromised, and dismissed on the merits and with prejudice as to Midland, subject to Court approval as required by Rule 23 of the Federal Rules of Civil Procedure, on the following terms and conditions:

II. TERMS OF THE SETTLEMENT

10. **Definitions:** As used in this Agreement, the following terms have the following meanings:

- (a) “Action” means and refers to the action styled *In re Midland Funding LLC Interest Rate Litigation*, Civil Action No. 11-cv-8149 (LMS) (S.D.N.Y.).
- (b) “Class Counsel” or “Plaintiffs’ Counsel” means Daniel Schlanger, Esq. of Schlanger Law Group LLP and Rand Bragg, Esq. of Horwitz Horwitz & Associates.

- (c) “Class List and Data Compilation” means the list of individuals who are within the Settlement Class, as defined below (and subject to the provisions below regarding confirmation of the list of individuals excluded from the list), including relevant account information that was compiled by Midland and provided to Class Counsel during discovery.
- (d) “Complaint” refers to the Second Amended Complaint filed in the Action. ECF Doc. 172.
- (e) “Court” means the United States District Court for the Southern District of New York.
- (f) “Effective Date” means the latest of (1) the date of Final Approval, if no Class Member objects to or intervenes in the Settlement; (2) thirty (30) days after the date of Final Approval, if a Class Member objects to the Settlement but no appeal by a Class Member is filed; (3) the date of the final affirmance on appeal, if a Class Member objects to the Settlement and an appeal is filed; or (4) the final dismissal of any appeal.
- (g) “Final Approval” means the order approving the Settlement and certifying the Settlement Class as final.
- (h) “Fairness Hearing” refers to the hearing at which the Court shall:
- (1) determine whether to grant final approval to this Settlement;
 - (2) consider any timely objections to this Settlement and all responses thereto; and
 - (3) consider requests for an incentive award to the Representative Plaintiffs, award of attorneys’ fees and expenses.
- (i) “Midland” means collectively Midland Funding, LLC and Midland Credit Management, Inc.
- (j) “Parties” means the Representative Plaintiffs and Midland.

- (k) “Preliminary Approval Date” means the date the Court enters the Preliminary Order approving the Settlement.
- (l) “Preliminary Order” means that certain order entered by the Court, preliminarily approving the Settlement, provisionally certifying the Settlement Class, and approving notice to Settlement Class Members.
- (m) “Released Claims” means and includes any and all charges, complaints, claims, debts, liabilities, damages (whether actual, compensatory, treble, punitive, exemplary, statutory or otherwise), demands, obligations, costs, expenses, actions, and causes of action of every nature, character, and description, whether known or unknown, asserted or unasserted, suspected or unsuspected, fixed or contingent, whether asserted in federal, state court, arbitration or otherwise, and whether triable before a judge or a jury or otherwise, pled in the Action or unpled in the Action, which Representative Plaintiffs and those Settlement Class Members who do not opt-out now have, own or hold against Midland based on a common nucleus of operative facts as the claims asserted in the Action. Notwithstanding the foregoing, this release shall not include any defense to any of the underlying state court actions and/or judgments taken against any Settlement Class Member.
- (n) “Released Persons” means Midland and its past and present agents, directors, officers, employees, shareholders, members, managers, insurers, representatives, attorneys, vendors, independent contractors, predecessors, successors and assigns, parents and subsidiaries, divisions, and affiliates and each of their respective past and present agents, directors, officers, employees, shareholders, insurers, representatives,

attorneys, vendors, independent contractors, predecessors, successors and assigns, parents and subsidiaries, divisions, and affiliates.

- (o) “Representative Plaintiffs” means Linda Taylor Gay, Marianne Norelli, Rocco Commisso and Galo Uribe.
- (p) “Settlement” refers to the settlement, release, and final dismissal of claims contemplated by this Settlement Agreement.
- (q) “Settlement Administrator” means KCC, LLC.
- (r) “Settlement Class”, “Class” and “Settlement Class Members” means only those persons included within the Settlement Class as defined below and who are not otherwise excluded.
- (s) “Settlement Fund” means the sum referred to in Paragraph 15(a) which is being paid by Midland as the “Monetary Relief” portion of this settlement.

11. **Settlement Class.**

(a) The Settlement Class:

Consistent with the Opinion & Order dated February 27, 2017 (ECF Doc. 133), granting Plaintiffs’ renewed Motion for Class Certification, the parties hereby stipulate and agree that the Settlement Class shall be defined as follows:

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 today’s date; and (b) for claims arising out of FDCPA violations from November 10, 2010 through [February 27, 2017].

(b) Exclusions:

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.

12. **Class Counsel.** The Parties agree that Daniel A. Schlanger, Esq. of Schlanger Law Group LLP and O. Randolph Bragg, Esq. of Horwitz, Horwitz & Associates are and shall continue to be Class Counsel in this Action.

13. **Class Member List.**

(a) The Settlement Class prior to confirmation of all exclusions as set forth below is comprised of fifty-eight thousand four hundred and seventy-nine (58,479) individual consumers who meet the Settlement Class definition, including 11,271 consumers who are members of the GBL Statutory Subclass but not the FDCPA Subclass and 47,208 consumers who are members of both the GBL Statutory Subclass and the FDCPA Subclass.

(b) Within fourteen (14) days after execution of this Agreement, Midland will update the Class List & Data Compilation previously provided to Class Counsel to identify any individuals who Midland believes, based on its records, have filed for Chapter 7 bankruptcy and are thus potentially excluded from the Settlement Class definition. Within 21 days of the parties' Motion for Preliminary Approval, Class Counsel will review public records, confirm which of those potentially excludable due to bankruptcy were discharged on or before the date of execution of this Agreement, and will amend the Class List and Data Compilation to exclude any such individuals. Class Counsel acknowledges that Plaintiffs conducted discovery, including multiple depositions, regarding the accuracy of the Class List and Data Compilation. As a result, Class Counsel is satisfied that the Class List and Data Compilation is materially accurate with regard to Settlement Class members' identities and with regard to collection details

relevant to this Settlement Agreement. Defendants hereby confirm that they believe the Class List and Data Compilation to be accurate.

- (c) The estates of deceased Settlement Class Members are eligible to share in the Settlement Fund upon submission to the Settlement Administrator of a death certificate. In the event that a Settlement Class Member entitled to a check is deceased, upon receipt of the copy of the death certificate, the Settlement Administrator shall send or cause to be sent, a check to the person(s) reasonably believed to be the person(s) entitled thereto, and the Release in Paragraph 24 of this Agreement shall be effective as to such Settlement Class Member, notwithstanding any failure to comply with laws relating to probate or marital property.

14. Right to Opt Out from or Object to Settlement.

- (a) Any Settlement Class Member may elect to be excluded from this Settlement and from the Settlement by opting out of the Settlement. Any Settlement Class Member who desires to be excluded from the Settlement must give written notice of the election to be excluded to the Settlement Administrator at the address listed in the Notice of Proposed Class Action Settlement, which must be received by the Settlement Administrator no later than the deadline set by the Court, which shall not be more than sixty (60) days after the date the Notice of Proposed Class Action Settlement is mailed to the Settlement Class, or as otherwise ordered by the Court. Requests for exclusion must be signed by the person requesting exclusion from the Settlement and must include the requestor's full name, current address, telephone number and a statement that the requestor seeking to be excluded from the Settlement Class wishes to opt-out of the Settlement.

- (b) In the event that more than six hundred (600) of the Settlement Class Members exclude themselves from the Settlement, Defendants shall have the right, in their sole discretion, to void this Agreement by filing with the Court a Notice of Withdrawal from Settlement within fifteen (15) days after the end of the Exclusion deadline. If such a Notice of Withdrawal from Settlement is filed, the parties shall be returned to their positions on October 29th, 2018, *i.e.* the day before they reached a settlement-in-principle.
- (c) **Right to Object to the Settlement.** Any Settlement Class Member shall have the right to object to the Settlement by filing a written objection with the Court at the address listed in the Notice of Proposed Class Action Settlement and by mailing a copy thereof to the Settlement Administrator, not later than the deadline established by the Court, which shall not be more than sixty (60) days after the date the Notice of Proposed Class Action Settlement is mailed to the Settlement Class, or as otherwise ordered by the Court. All Objections must be signed by the person(s) making the objection, or an attorney or legal guardian authorized to act on their behalf, and must set forth in detail each component of the Settlement to which they object, the reasons for each such objection, and any legal authority that they wish the Court to consider in support thereof. Objections must also include the objector's full name, current address, telephone number and whether he or she intends to appear at the Fairness Hearing, at which time their objections will be considered, if not previously withdrawn.
- (d) **Maintenance & Provision of Opt-Out Requests & Objections:** The Settlement Administrator shall maintain all opt-out requests and requests for exclusions mailed to the Settlement Administrator and shall promptly provide copies of such requests to Midland's Counsel and Class Counsel. The Settlement Administrator shall retain the

originals of all written objections and opt-out requests (including the envelopes with the postmarks).

15. **Class Relief.**

(a) Summary:

This Settlement Agreement provides for three forms of relief to the Class:

- Monetary Relief (total: \$555,000, as set forth below);
- Balance Reduction Relief (total: \$9,250,000 of credits available to class, as set forth below); and
- Confirmation Of Compliance of Midland Policies and Practices with Applicable Law (as set forth below).

(b) Specifics of Class Relief:

(1) FDCPA Subclass Relief: Settlement Class members who are members of the FDCPA Subclass members shall be entitled to submit a claim for either Monetary Relief or a Balance Reduction (whichever the consumer prefers), to be indicated by the consumer on the claim form. With regard to members of this subclass who submit a claim and opt for Monetary Relief, \$297,233 of the Settlement Fund shall be available for these payments. The funds shall be distributed pro-rata to those class members who file a claim and opt for Monetary Relief rather than a Balance Reduction. With regard to members of this subclass who submit a claim and opt for balance reduction, see “Balance Reduction Relief”, below.

(2) GBL Subclass Relief: Settlement Class members who are members of the GBL Subclass members but not the FDCPA Subclass shall be entitled to

submit a claim for either Monetary Relief or a Balance Reduction (whichever the consumer prefers). With regard to members of this subclass who submit a claim opting for Monetary Relief, \$118,392 of the Settlement Fund shall be available for these payments. The funds shall be distributed pro-rata to those class members who file a claim and opt for Monetary Relief rather than a Balance Reduction. Payments to Settlement Class members who are members of the GBL Subclass members but not the FDCPA Subclass made under this subprovision are capped at \$50.00 per person. If, based on the claims rate and per person cap, the total amount payable under this provision is less than \$118,392, the excess shall “spill over” to the Supplemental Fund For Settlement Class Members Who Paid In Excess Of 25% Interest, and be added to the \$139,375 available to those qualifying for a supplemental payment, as set forth below. With regard to members of this subclass who submit a claim and opt for balance reduction, see “Balance Reduction Relief”, below.

- (3) Supplemental Fund For Settlement Class Members Who Paid In Excess Of 25% Interest (“Supplemental Fund”): In addition to all other relief set forth in this Settlement Agreement, Settlement Class Members who paid Midland interest in excess of 25% per annum, as reflected in the Class List, and who submit a claim shall also receive a pro rata share of a fund consisting of \$139,375 (absent any spillover from other funds as set forth herein), capped at \$320 per Settlement Class Member. If, based on the claims rate and per person cap, the total amount payable under this provision is less than

\$139,375 (plus any “spill over” from the GBL fund), the excess shall be added to the amount available to FDCPA Subclass members pursuant to 15(b)(1), *supra*.

(4) Balance Adjustment Relief:

- i. Defendants shall establish a credit pool of \$9,250,000 (\$9.25M) for the benefit of the Class. These credits shall be available to reduce the balances of those class members who file a claim and opt for Balance Adjustment Relief. Credits shall be allocated pro-rata up to the amount of each class member’s individual account balance. No refunds shall be issued to any Settlement Class Member whose balances are exhausted by the application of the credit pool.
- ii. To the extent those claimants opting for balance adjustments do not exhaust the balance credit pool of \$9.25M, any remaining balance credits in the pool shall be applied pro rata to the balances of the class members who filed a claim for monetary relief.
- iii. Regarding Settlement Class Members With Current Purported Balances of \$100 or less: In addition to the credit pool of \$9.25M, Midland shall adjust the balance of any Settlement Class Member who is alleged to owe \$100 or less to reflect a zero balance.
- iv. No consumer who has a balance of zero, pursuant to paragraph 16(b)(4)(iii) or otherwise, shall be offered the option of a balance

adjustment in lieu of monetary relief. No refunds shall be issued to Settlement Class Members that have zero balances.

- v. To the extent that the credit pool of \$9.25M is not exhausted using the methodology described above, any remaining balance shall be credited pro rata to the Settlement Class as a whole. No refunds shall be issued to Settlement Class Members that have zero balances.

(c) Compliance of Midland Policies and Practices with Applicable Law regarding collection of interest on settlement class member accounts: Defendants warrant and represent that that they will comply with all laws, regulations and case law regarding the collection of interest, including those related to the application and or attempted collection of usurious interest, on class member accounts, and all accounts of New York residents more generally. Defendants confirm that they will comply with all binding precedent, and will monitor the law for changes in the relevant New York/federal statutes and case law. Nothing herein shall be construed to constitute a consent decree.

III. PROCEDURES FOR EFFECTUATING SETTLEMENT

16. **Cooperation.** Midland and Class Counsel shall reasonably cooperate with each other to implement and monitor all aspects of this Settlement Agreement.

17. **The Motion for Preliminary Approval.** The parties shall move the Court for an order preliminarily approving the settlement and providing notice of the Settlement through a Court-approved notice plan which shall include the mailing of the Notice of Proposed Class Action Settlement to the members of the Settlement Class. With regard to the motion for preliminary approval, the Parties shall submit, *inter alia*, the proposed preliminary order attached hereto as **Exhibit A**, the Proposed Postcard Notice of Proposed Class Action Settlement and Claim Form

attached hereto as **Exhibit B**, the Proposed Long Form Notice of Proposed Class Action Settlement attached hereto as **Exhibit C**, the Proposed Reminder Notice Regarding Claim Submission Deadline attached hereto as **Exhibit D**, and the proposed Final Order attached hereto as **Exhibit E**. Mailing of the Proposed Postcard Notice of Proposed Class Action Settlement (**Exhibit A**) shall be accomplished no later than thirty days (30) days after the Preliminary Approval Date.

18. **Creation of Settlement Fund:** Subject to the approval and further order of the Court, Midland shall pay the sum of Five Hundred Fifty-Five Thousand Dollars (\$555,000) (the “Settlement Fund”) for the benefit of Payments to Class Members.

(a) **Deposit of Settlement Fund.** Midland shall transfer the Settlement Fund to the Settlement Administrator to be held in an interest-bearing escrow account within fifteen (15) days after the Effective Date.

(b) **Distribution of Settlement Fund.** The Settlement Fund shall be distributed as set forth in paragraph 15, *supra*.

(c) **Method of Distribution.** Payment to each member of the Settlement Class who files a claim for monetary relief shall be in the form of a check drawn on an account maintained by the Settlement Administrator in which the Settlement Fund is deposited, which shall be made payable to “[Name of Class Member(s)]” within forty-five (45) days after the Effective Date.

(d) **Negotiation of Checks.** Each check issued pursuant to this Settlement Agreement shall be void if not negotiated within ninety (90) days after its date of issue, and shall contain a legend to such effect. Checks that are not negotiated within ninety (90) days after their date of issue shall not be reissued.

- (e) **Unclaimed Checks.** All payments that are unclaimed by Settlement Class Members, including all returned checks and all checks not cashed within ninety (90) days after the date of issue, shall revert to the Settlement Fund and be paid to a *cy pres* recipient as set forth below.

19. **Settlement Administrator.**

- (a) The Settlement Administrator, Defendants and Class Counsel have executed a retainer agreement providing, among other things, that the Settlement Administrator shall be bound by and shall perform the obligations imposed on it under the terms of this Agreement.
- (b) The Settlement Administrator shall be subject to the jurisdiction of the Court with respect to the administration of this Agreement.
- (c) The Settlement Administrator shall keep all information regarding Class Members confidential except as otherwise provided herein.
- (d) The Settlement Administrator will be responsible for administering the Settlement including, *inter alia*:
- (1) effecting notice to the Settlement Class in a form and manner proposed by the parties, subject to Court approval;
 - (2) conducting appropriate research, with the United States Postal Service Change of Address Database and/or a recognized credit bureau to ensure that any mailed notice which is returned for the reason that the address is incorrect will be corrected and a second notice sent;
 - (3) performing a search for each Settlement Class Member's email address based on the information available in the Class List & Data Compilation;

- (4) Sending, in addition to mailed postcard notice with claim form set forth as **Exhibit A**, an electronic notice in the form set forth as **Exhibit F** to all Settlement Class Members whose emails can be determined;
- (5) Sending a reminder postcard notice in the form set forth as **Exhibit E**, 40 days prior to the end of the claims period, but only in the event that the number of claims filed as of 50 days prior to the end of the claims period is less than 5% of the total number of Settlement Class Members.
- (6) opening an account at a bank with accounts insured by the FDIC for the deposit of the Settlement Fund and for disbursing all funds from the Settlement Fund in accordance with this Agreement;
- (7) maintaining a post office box address to receive inquiries with respect to the Settlement for a period of two hundred seventy days (270) after the Preliminary Approval Date or one hundred eighty (180) days from the Effective Date, whichever is longer;
- (8) preparing reports regarding the mailed notices, as directed by the Parties' counsel and the Court;
- (9) receiving, tracking and processing all submitted claims;
- (10) accepting and reporting on written notice(s) to opt-out of the Settlement;
- (11) creating and maintaining a website regarding the Settlement including basic information regarding the Settlement and links to, *inter alia*, the Settlement Agreement, Preliminary Order, Final Order and Class Notice;
- (12) creating and maintaining an automated toll-free line providing basic information regarding the Settlement and instructions for obtaining relevant

documents (e.g. copies of the Settlement Agreement, Preliminary Order, Final Order and Class Notice.);

20. **Cost of Notice and Administration of Settlement.** The Settlement Administrator has agreed to provide the Settlement Administration services set forth herein for a fee of \$76,500 (the “Settlement Administration Fee”). Midland is responsible for payment of the Settlement Administration Fee up to \$76,500. Midland’s payment of these costs shall be in addition to its payment of the Settlement Fund, incentive awards and attorneys’ fees and costs agreed to herein.

21. **Cy Pres.** A *Cy Pres* fund will be created which includes any residue of the Settlement Fund remaining for any reason, including checks that are not negotiated or are returned and remain undeliverable after ninety (90) days following the mailing of the checks to Class Members. Subject to Court approval, the *Cy Pres* fund shall be donated to the Volunteer Lawyer For A Day (“VLFD”), run jointly by the New York State Access to Justice Program and New York Legal Assistance Group (“NYLAG”) by paying those funds to NYLAG (designated for VLFD use, only). The *Cy Pres* funds shall be remitted by the Settlement Administrator to Class Counsel within one hundred and twenty (120) days after the checks are mailed to the Class Members and Class Counsel shall then remit the funds to the *Cy Pres* recipient on behalf of the Settlement Class and provide proof of such payment to Midland’s counsel.

22. **Full and Final Settlement.** Each Party agrees that the Action is being voluntarily settled after consultation with experienced legal counsel of their own choosing and that terms of the Settlement Agreement were negotiated at arm’s length and in good faith. It is the intent and purpose of this Settlement Agreement to achieve a full and final settlement of the Released Claims. In order to effectuate that purpose, the Parties agree to cooperate with one another and with the

Settlement Administrator and use their best efforts to obtain Court approval of the Settlement and this Settlement Agreement.

23. **Incentive Payment.** Within fifteen (15) days after the Effective Date, Midland shall pay the Representative Plaintiffs the sum of Five Thousand Dollars (\$5,000) each as an incentive payment. This payment by Midland shall be in addition to its payment of all other amounts set forth in this Agreement (*i.e.* the Settlement Fund, the Settlement Administration Fee, Class Counsel's Attorney's Fees and Costs, etc.). Payment shall be by check payable to "Schlanger Law Group, LLP as attorneys" and the check shall be delivered to Class Counsel. In addition, and in acknowledgment of each Representative Plaintiffs' efforts on behalf of the class, each Representative Plaintiffs' purported account balance shall be adjusted to zero.

24. **Releases.** Upon the Effective Date and without any further action by the Court or by any Party to this Settlement Agreement, Representative Plaintiffs, on behalf of themselves and all of their respective past, present and future predecessors, successors, assigns, devisees, relatives, heirs, legatees, and agents, and each of the Settlement Class Members, who do not opt-out of the Settlement, including their respective past, present and future predecessors, successors, assigns, devisees, relatives, heirs, legatees, insurers and agents, shall be deemed to, and shall in fact, have released and forever discharged any and all Released Claims, which they, or any of them, had or has or may in the future have or claim to have against the Released Persons.

IV. CONDITIONS OF SETTLEMENT

25. **Approval of the Court.** This Agreement is subject to final approval by the Court. In connection with the Plaintiffs' motion for final approval, the Plaintiffs shall submit the proposed final approval order attached hereto as **Exhibit E**. If the Court does not approve this Settlement Agreement or enter the Orders requested herein (or materially similar orders), or if the Court enters

the judgment provided for herein but either the judgment is materially modified or reversed upon appellate review, then this Settlement Agreement shall be canceled and terminated, unless counsel for both sides, within fourteen (14) days from the receipt of a ruling or written notice of circumstances giving rise to termination, agree in writing to proceed with this Settlement Agreement.

26. **Termination of Agreement.** This Settlement Agreement shall terminate:

(a) Automatically if the Court fails to approve the Settlement Agreement;

(b) At the option of either Representative Plaintiffs or Midland if the Court or any other court materially modifies this Settlement Agreement as a condition to approval of the Settlement. A change shall be deemed to be a material modification if it materially affects, to the detriment of the party seeking termination (i) the monetary payments such party is to pay or to receive, (ii) the scope of the release to be granted, (iii) the definition of the Class or Class Members subject to the Agreement and final judgement or order, or (iv) a provision expressly noted as material in this Agreement. A change shall not be deemed to substantively change the obligation of a party if it merely alters the wording or appearance of any notice or order or it reasonably modifies the timing of any contemplated event.

27. **Effect of Termination of Agreement.** If this Settlement Agreement is terminated or canceled as set forth, the Parties shall be deemed to have reverted to their respective status as of October 29, 2018 (the day before settlement-in-principle was reached), and they may proceed in all respects as if this Agreement had not been executed and the related orders had not been entered, preserving in that event all of their respective claims and defenses in this case.

V. APPLICATION FOR ATTORNEY'S FEES, COSTS AND DISBURSEMENTS

28. **Class Counsel Attorneys' Fees and Costs.**

Midland shall not oppose or comment negatively to a request by Class Counsel for reimbursement of costs actually incurred or expected to be incurred and reasonable attorney's fees and disbursements, in an amount not to exceed \$550,000. All Court-approved attorney's fees, costs and disbursements on behalf of or by Class Counsel shall be paid by Midland in addition to all other amounts set forth herein including, the Settlement Fund; Settlement Administration Fee, and incentive payments to Representative Plaintiffs. Midland shall not be liable for any fees, costs or disbursements of Class Counsel apart from what is paid pursuant to this Agreement. On or before the Effective Date, Class Counsel will transmit instructions to Midland as to how the Court's award of Attorneys' Fees and costs will be paid and any necessary tax information as well as a w-9 for Schlanger Law Group LLP. Any award of Attorneys' Fees and Costs, up to \$550,000 will be paid within thirty (30) business days after the Effective Date.

29. **Costs.** Except as otherwise provided in this Settlement Agreement, each Party shall bear its own costs.

VI. MISCELLANEOUS PROVISIONS

30. **CAFA Notice.** Midland shall be responsible for serving the requisite CAFA Notice within ten (10) days after the filing of the motion to preliminarily approve the Settlement.

31. **No Admission of Liability.** This Settlement Agreement, whether or not approved, or whether or not a final judgment is entered, and any and all negotiations, documents, and discussions associated with it, shall not be deemed or construed to be an admission or evidence of any violation of any statute or law, or of any liability or wrongdoing by Midland, or of the truth of any of the claims or allegations made in the Action. Neither this Settlement Agreement, nor any of its terms, nor any of the negotiations or proceedings connected with it, shall be offered as

evidence or received in evidence in any pending or future action or proceeding of any type whatsoever to establish any liability or admission by Midland.

32. **Confidential Material and Disclosure Material.** The Parties shall continue to abide by the Consent Protective Order agreed to and filed in this Action on July 17, 2017 s it relates to the use, maintenance and destruction of material produced subject to the Consent Protective Order. *See* ECF Doc. 157.

33. **Publicity.** Neither the Parties nor Class Counsel will initiate any public statement intended to be disseminated through the press, television, radio, internet, or other media that includes an opinion or editorial comment about the merit of any adverse Party's position in the Action, nor that expresses a derogatory opinion about any Party.

34. **No Assignment.** Representative Plaintiffs hereby represent that they have not assigned to any person or corporation any of the claims, demands, actions and/or causes of action of any kind or nature referred to herein.

35. **Amendments.** This Settlement Agreement may be amended or modified by the parties only by a written instrument signed by Class Counsel and Midland or its attorneys and approved by the Court.

36. **Entire Agreement.** This Settlement Agreement constitutes the entire agreement among the Parties with respect to the subject matter of this Settlement Agreement and supersedes all prior negotiations, communications, and agreements between the Parties. No Party has entered into this Settlement Agreement in reliance upon any representations, warranties or inducements outside this Settlement Agreement or its exhibits other than the representations, warranties, and covenants contained and memorialized in such documents.

37. **Extensions of Time.** The Parties may request that the Court allow reasonable extensions of time to carry out any of the provisions of the Settlement Agreement.

38. **The Representative Plaintiffs' Authority.** Class Counsel, on behalf of the Representative Plaintiffs, is expressly authorized to take all appropriate actions required or permitted to be taken by the Settlement Class pursuant to this Settlement Agreement to effectuate its terms, and is also expressly authorized to enter into any modifications or amendments to this Settlement Agreement on behalf of the Settlement Class.

39. **Counterparts and Facsimiles.** This Settlement Agreement may be executed in one or more counterparts and facsimile signatures shall be deemed to operate as original signatures. A full, executed copy of this Settlement Agreement, including all Exhibits shall be filed with the Court as an Exhibit to the motion for preliminary approval.

40. **Binding Nature.** This Settlement Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties.

41. **Construing the Agreement.** This Agreement shall not be construed more strictly against one Party than another merely by virtue of the fact that it may have been drafted initially by counsel for one of the Parties. It is acknowledged that all Parties have contributed substantially to the preparation of this Settlement Agreement.

42. **Applicable Law.** All the terms of this Settlement Agreement shall be governed by and interpreted in accordance with the laws of the State of New York, exclusive of choice of law principles, and applicable federal law.

43. **Headings.** The captions and paragraph headings employed in this Settlement Agreement are for convenience only, are not part of the Settlement Agreement, and shall not be used in construing or interpreting the Agreement.

44. **Jurisdiction.** The Parties submit to the jurisdiction of the United States District Court for the Southern District of New York for the purpose of implementing this Settlement Agreement and further consent and submit to the jurisdiction of this Court following the Effective Date over any disputes which later arise in connection with this Settlement Agreement or actions taken pursuant to the Settlement Agreement.

45. **Notification.** Any notice to be given to Class Counsel and/or Representative Plaintiffs shall be sent by either first class mail, postage prepaid, or email as follows:


Daniel A. Schlanger, Esq.
Schlanger Law Group LLP
9 East 40th Street, Suite 1300
New York, New York 10016
dschlanger@consumerprotection.net

Any notice to be given to Midland under the terms of this Agreement shall be sent by either first class mail, postage prepaid, or email:

Thomas A. Leghorn, Esq.
London Fischer
59 Maiden Lane
New York, NY 10038
tleghorn@londonfischer.com

IN WITNESS WHEREOF, the Parties have caused this Settlement Agreement to be executed by authorized individuals.

FOR REPRESENTATIVE PLAINTIFFS:

By: 
Linda Taylor-Gay (Feb 18, 2019)
Linda Taylor Gay
Date: Feb 18, 2019

By: _____
Rocco Commisso
Date: _____

44. **Jurisdiction.** The Parties submit to the jurisdiction of the United States District Court for the Southern District of New York for the purpose of implementing this Settlement Agreement and further consent and submit to the jurisdiction of this Court following the Effective Date over any disputes which later arise in connection with this Settlement Agreement or actions taken pursuant to the Settlement Agreement.

45. **Notification.** Any notice to be given to Class Counsel and/or Representative Plaintiffs shall be sent by either first class mail, postage prepaid, or email as follows:

Daniel A. Schlanger, Esq.
Schlanger Law Group LLP
9 East 40th Street, Suite 1300
New York, New York 10016
dschlanger@consumerprotection.net

Any notice to be given to Midland under the terms of this Agreement shall be sent by either first class mail, postage prepaid, or email:

Thomas A. Leghorn, Esq.
London Fischer
59 Maiden Lane
New York, NY 10038
tleghorn@londonfischer.com

IN WITNESS WHEREOF, the Parties have caused this Settlement Agreement to be executed by authorized individuals.

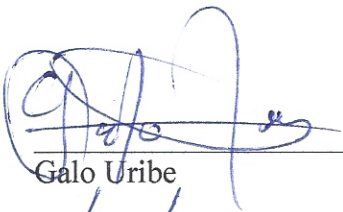
FOR REPRESENTATIVE PLAINTIFFS:

By: _____
Linda Taylor Gay

Date: _____

By: 
Rocco Commisso

Date: 2/15/19

By:  _____
Galo Uribe

Date: 2/18/19

By: _____
Marianne Norelli

Date: _____

SCHLANGER LAW GROUP LLP

By: _____
Daniel A. Schlanger

Date: _____

DEFENDANT MIDLAND FUNDING, LLC AND MIDLAND CREDIT MANAGEMENT, INC.

Print Name

Position

Date: _____

LONDON FISCHER

By: _____
Thomas A. Leghorn

Date: _____

By: _____
Galo Uribe

By: Marianne Norelli
Marianne Norelli

Date: _____

Date: 2/18/19

SCHLANGER LAW GROUP LLP

By: _____
Daniel A. Schlanger

Date: _____

DEFENDANT MIDLAND FUNDING, LLC AND MIDLAND CREDIT MANAGEMENT, INC.

Print Name

Position

Date: _____

LONDON FISCHER

By: _____
Thomas A. Leghorn

Date: _____

By: _____
Galo Uribe

By: _____
Marianne Norelli

Date: _____

Date: _____

SCHLANGER LAW GROUP LLP

By: 
Daniel A. Schlanger

Date: 2/19/19

DEFENDANT MIDLAND FUNDING, LLC AND MIDLAND CREDIT MANAGEMENT, INC.

Print Name

Position

Date: _____

LONDON FISCHER

By: _____
Thomas A. Leghorn

Date: _____

By: _____
Galo Uribe

By: _____
Marianne Norelli

Date: _____

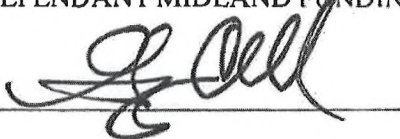
Date: _____

SCHLANGER LAW GROUP LLP

By: 
Daniel A. Schlanger

Date: 2/19/19

DEFENDANT MIDLAND FUNDING, LLC AND MIDLAND CREDIT MANAGEMENT, INC.

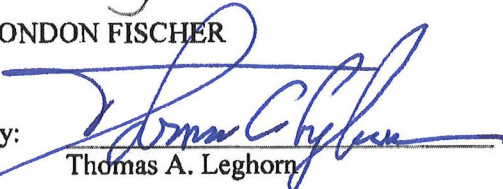


Gregory Call
Print Name

EVP, Corporate Secretary, MCM
Position
secretary, MF

Date: 2/22/19

LONDON FISCHER

By: 
Thomas A. Leghorn

Date: February 22, 2019