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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

<p>IN RE: MIDLAND CREDIT MANAGEMENT, INC., TELEPHONE CONSUMER PROTECTION ACT LITIGATION</p>	<p>Case No. 11-md-2286-MMA (MDD) Member cases: 10-cv-02261 10-cv-02600 10-cv-02368 10-cv-02370</p> <p><u>CLASS ACTION</u> DECLARATION OF DOUGLAS J. CAMPION IN SUPPORT OF FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND CERTIFICATION OF SETTLEMENT CLASS</p> <p>Date: August 26, 2016 Time: 9:00 a.m. Courtroom: 3A Judge Michael M. Anello</p>
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1. I, Douglas J. Campion, hereby declare I am one of the attorneys for the Plaintiffs in this action, and named as Co-Lead Class Counsel for the Settlement Class in the Court's December 9, 2015 (ECF No. 291) Order preliminarily approving the settlement. I submit this declaration in support of the Plaintiffs' Motion for Final Approval of the Class Action Settlement. I am licensed to practice law before this court and all California state courts and all federal courts located in the State of California. If called as a witness, I would competently testify to the matters herein from personal knowledge.
 2. I am the owner of the Law Offices of Douglas J. Campion, APC. I am admitted to this Court and have been a member in good standing of the State Bar of California for the past 39 years, since 1977.

SETTLEMENT SUMMARY

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3. I have been involved in every aspect of this case from inception through the present. I submit this declaration in support of the Plaintiffs' Motion for Final Approval of Class Action Settlement in which Plaintiffs seeks to have the Court approve the agreed-upon settlement. As set forth in the Preliminary Approval papers, the Settlement provides the following benefit to the Class to be paid by Defendants:
 - a. \$13,000,000 Credit Component, with pro rata credits to be credited to the Approved Claimants' accounts held by Defendants.
 - b. \$2,000,000 Cash Component, with pro rata cash payments to be paid to the Approved Claimants that do not have existing accounts with Defendants.
 - c. All costs of Notice and Claims Administration presently estimated to be between \$3,098,608 and \$3,352,407. The actual amount that will be incurred for KCC's services throughout the entire case will be submitted in a declaration by KCC prior to the Final Approval hearing.

1 d. Attorneys' fees and costs of litigation to be paid to Plaintiffs' counsel,
2 subject to Court approval, in the amount of \$2,400,000.

3 Thus, the Settlement has a value of at least \$20,498,608.00. The Settlement
4 Agreement has been filed in support of Preliminary Approval, Exhibit A to
5 my declaration in support of that motion, ECF No. 281-2.

6 4. As of the date of filing this motion for final approval, the claims period has
7 expired and the deadlines for requests for exclusions and for filing objections
8 has also passed. Based on the information we have, we can give a close
9 approximation of the amount to be either credited or paid to the claimants.
10 However, we do not quite know the final exact amounts until we know what
11 fees will be incurred by the Special Master (paid from the Cash Component)
12 and the exact number and category of Approved Claims. At this time, we do
13 not know the exact final number of Approved Claims for several reasons: 1)
14 because there are still claimants responding to the Notice of Deficiency
15 letters; 2) the final computation of the breakdown of claimants into the two
16 groups, the Cash Component group and the Credit group; and 3) there were a
17 number of late-filed claims that we will ask the Court to include in the
18 disbursement and if included, that fact will slightly alter the final distribution
19 amounts. However, as detailed below, based on the information we have to
20 date, and based on 329,755 claims submitted, we can give an approximation
21 of the amounts each group member will receive. Dividing \$13,000,000 by
22 220,912, the number of Credit claimants, will provide each a credit to their
23 Midland account(s) of approximately \$58.84. Dividing \$2,000,000 by the
24 number of Cash Component claimants will provide each a cash payment of
25 approximately \$23.49.

26 5. As explained in the previously filed motion for fees, costs of litigation and
27 incentive payments (ECF No. 318), Class Counsel are seeking attorneys' fees
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1 of \$2,400,000 that will not be deducted from any of the Settlement Fund but
2 instead paid separately by Defendants. Similarly, KCC, the claims
3 administrator, will request that the Court confirm payment of their fees and
4 costs in an amount to be paid directly by Defendants, and not from the
5 Settlement Fund. Their estimate for handling this matter was between
6 \$3,098,608 and \$3,352,407, depending on the claims rate. However, their
7 updated bills for fees and costs as of the date of the Final Approval hearing
8 will be submitted by KCC prior to the hearing date. A total of \$7,500 in
9 incentive payments is also sought for the three Class Representatives, at
10 \$2,500 each. That amount will be paid from the Cash Component of the
11 Settlement Fund.

12 6. Taking into account the burdens, uncertainty and risks inherent in this
13 litigation, the Parties have concluded that further prosecution and defense of
14 this action could be protracted, unduly burdensome, and expensive, and that it
15 is desirable, fair, and beneficial to the class that the action now be fully and
16 finally compromised, settled and terminated in the manner and upon the terms
17 and conditions set forth in the Settlement Agreement.

18 7. The Named Plaintiffs and all of their counsel believe that the claims asserted
19 in the Action have merit. However, taking into account the risks of continued
20 litigation, as well as the delays and uncertainties inherent in such litigation
21 and any subsequent appeal, we believe that it is desirable that the Action be
22 fully and finally compromised, settled and terminated now with prejudice,
23 and forever barred pursuant to the terms and conditions set forth in this
24 Settlement Agreement. We have concluded that the terms and conditions of
25 this Settlement Agreement are fair, reasonable and adequate to the proposed
26 class, and that it is in the best interests of the proposed class to settle the
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Action. I strongly believe, as does each Plaintiff’s attorney, that the Settlement should be given final approval.

8. Therefore, Class Counsel is requesting that the Court grant Final Approval of the Settlement.

SUMMARY OF CASE HISTORY

9. As set forth in my declaration in support of Preliminary Approval, on November 2, 2010, counsel for Plaintiff Robinson, including my office, the Law Offices of Douglas J. Campion, filed an action in this Court against Defendants. On December 17, 2010, counsel for Plaintiff Eduardo Tovar, including liaison counsel, Law Offices of David Schafer, PLLC, filed an action against Defendants in this Court. Finally, on May 11 2011, counsel for Plaintiff Scardina, including Edelman, Combs, Lattuner & Goodwin LLC, filed an action against Defendants in the United States District Court for the Northern District of Illinois. The complaints in all three actions alleged that Defendants violated the Telephone Consumer Protection Act (“TCPA”) by using an automatic telephone dialing system or an artificial or prerecorded voice to call cell phones without the prior express consent of the call recipients.

10. On October 11, 2011, Plaintiffs’ actions were transferred to this Court for coordinated or consolidated pretrial proceedings. (Dkt. No. 1.) On March 13, 2012, the Court appointed as Interim Co-Lead Counsel my firm and the Edelman firm. Liaison Counsel was also appointed. (Dkt. No. 21.) On July 11, 2013, Plaintiffs filed a Consolidated Complaint (Dkt. No. 23) which Defendants answered on August 17, 2012. (Dkt. No. 27.) On December 3, 2012, Defendants filed a Motion to Stay on Primary Jurisdiction Grounds (Dkt. No. 40) which, after briefing and oral argument, the Court denied on January 7, 2013. (Dkt. No. 45.) Subsequent to that ruling, the Parties began

1 protracted settlement discussions with the assistance of mediator Judge
2 Herbert B. Hoffman (Ret.) of Judicate West, and continued settlement
3 discussions about the details of the settlement on their own for many months
4 as well, resulting in a settlement, approximately thirty months later. Those
5 discussions included many negotiations over many details, including the
6 determination of the Class Members and their identities, how claims would be
7 made and paid, whether in credits or cash, notice issues and funding issues.

8 11. Class Counsel prepared and served confirmatory discovery. Class Counsel
9 also took a confirmatory discovery deposition of Defendants' Rule 30(b)(6)
10 deponent. The confirmatory discovery responses and the deposition
11 satisfactorily confirmed the parameters of the Class, the damages agreed
12 upon, and other information informally exchanged prior to, during and
13 following the mediation process. Class Counsel was able to reaffirm the
14 adequacy, appropriateness, and reasonableness of the settlement.

15 12. The Plaintiffs filed their Unopposed Motion for Preliminary Approval of
16 Class Action Settlement on November 6, 2015. The Court held a Preliminary
17 Approval hearing on December 8, 2015 and entered an Order granting
18 Preliminary Approval on December 9, 2016. (ECF No. 291.)

19 13. Class Counsel has previously filed a motion (ECF No. 318) to be heard at the
20 same time as the Final Approval hearing for an award of reasonable attorney's
21 fees and costs, in an amount of \$2,400,000, other than the KCC costs.

22 THE CLASS DEFINITION

23 14. The Class definition as approved in the Preliminary Approval Order is as
24 follows:

25 All persons in the United States who were called on a cellular
26 telephone by Defendants or their subsidiaries, affiliates or
27 related companies (other than calls made by Asset Acceptance
28 LLC, Atlantic Credit & Finance, Inc. or Propel Financial
Services) using a dialer or by prerecorded voice message

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without prior express consent during the period from November 2, 2006 through August 31, 2014, inclusive.

Excluded from the Class are the Judges to whom the Action is assigned and any member of the Judges’ staffs and immediate families, as well as all persons who validly request exclusion from the Settlement Class.

Preliminary Approval Order at 3. (ECF No. 291.)

NOTICE GIVEN

15. For the details involved in giving the notice, and administering the claims procedure, and the claims received, see the Declaration of Daniel Burke Re Implementation of Settlement Notice Plan (“Burke Decl.”), filed herewith. (Mr. Burke works for the claims administrator Kurtzman Carson Consultants (“KCC”).)
16. The postcard notices were mailed out originally to 6,266,704 Class members for whom there were names and addresses in Defendants’ records. After returns and re-mails, there were 6,034,167 persons that are believed to have received the notice postcards, presumptively about 96% of those Class members with names and addresses in Defendants’ records. The total number of cellphone numbers belonging to persons making up the Settlement Class is approximately 41,435,915. The remaining 35,169,211 Class members for whom there were no names and addresses in Defendants’ records received notice as set forth in the Preliminary Approval Order, by publication, internet banner ads and the notice posted on the settlement website, allowing anyone searching for the settlement on the internet to easily find the settlement website.
17. In accordance with the Preliminary Approval Order, the Claims Administrator established a settlement website, www.MidlandtcpaSettlement.com. That Settlement Website was easily located by anyone searching the internet for

1 settlement. The website also contained a detailed and full notice explaining
2 the case, proposed settlement, and each Class Member's options. It also
3 contained a "Frequently Asked Questions" section, the Settlement
4 Agreement, the Preliminary Approval Order, the direct mail notice and all the
5 papers supporting Class Counsel's motion for fees and costs.

- 6 18. Also in compliance with the Preliminary Approval Order, Defendants served
7 the requisite CAFA notice on the Attorneys General of all the states and the
8 U.S. Attorney General. *See* Notice and Declaration of Service, ECF No. 306.

9 **CLAIMS PROCEDURE:**

- 10 19. The Claims Administrator put in place a simple, easily followed claims
11 procedure agreed upon in the Settlement Agreement that permitted the Class
12 Member to easily file a claim by calling a toll-free 800 telephone number, or
13 file online, without the necessity of mailing a claim form. The intent was to
14 make submitting a claim as easy as possible to encourage the filing of claims.
15 If the claimant so desired, they also had the option of filing a claim form by
16 mail. As explained on the settlement website, if a person wanted to instead
17 file a claim form by mail, they could mail in such a claim form after either
18 having downloaded a claim form from the Settlement Website or they could
19 request that a claim form be mailed to them by calling the toll-free
20 information number. Class Counsel worked in close consultation with the
21 Settlement Administrator throughout this process, which included preparing
22 and mailing Notice to Class Members, creating the settlement website, and
23 reviewing any submitted claims. I also spoke to on the telephone and
24 communicated through email with many potential claimants who contacted
25 me about the claims process and the notices.

- 26 20. The group of phone numbers called for which Defendants did not retain any
27 identifying information received notice through the other methods of notice
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1 set forth above. Therefore, in order to also include such persons and permit
2 them to file claims, the Settlement Agreement required that if any person who
3 believed they might have been called by Defendants during the Class period
4 and believed they were a member of the Class, they needed to only provide
5 their cell phone number to the Claims Administrator. If that number matched
6 any of the list of unidentified numbers, that person was permitted to file a
7 claim.

8 CLAIMS FILED AND PAYMENT TO BE MADE

- 9 21. Because of the simple procedures put in place, and consistent with other
10 consumer class actions, 329,755 Class members filed claims, including 1,006
11 late-filed claims for which we will seek to have the Court approve payment.
12 *See* Burke Decl. Decl. Based on the 6,034,167 persons believed to have
13 received the notice postcards, the response rate based on the postcards
14 received by the Class resulted in a relatively high rate of response for
15 consumer class actions, 5.4%. That is at the high end of the typical range of
16 response rates in consumer class actions which, based upon my experience,
17 do not usually generate a high claims rate, with 1% to 3% common response
18 rates. (Based on the 41,435,915 total number of Class members, the response
19 rate is of course much lower.) Of the 329,755 filed claims, 237,500 were
20 determined by to have accounts still open with Defendants, which means they
21 will receive pro rata credits from the \$13,000,000 Credit Component. 70,322
22 of the claimants had no such accounts with Defendants so they will also be
23 added to the Cash Component group. Each will receive pro rata payments
24 from the \$2,000,000 Cash Component (after deducting incentive payments
25 and the Special Master's fees).
- 26 22. Part of the claims process as agreed upon in the Settlement Agreement
27 allowed the claimants that Defendants claimed owed money to contest that
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1 conclusion by having the Claims Administrator mail each of them a separate
2 letter advising them that they can contest that they owe Defendants money by
3 calling, responding online or mailing a form stating they did not owe Midland
4 money. Each such person responding will be assigned to the Cash Component
5 group instead of receiving a credit to an account they contested. To date, we
6 do not have the final numbers from that group but as of the July 20, 2016
7 submission deadline (excluding any mailed in responses not received) there
8 are 14,788 persons contesting they owe Defendants any money. Thus, an
9 additional 14,788 will be added to the existing 70,322 in the Cash Component
10 Group, for a total to date of 85,110. That same number will be subtracted
11 from the number of open accounts receiving credits, leaving 220,912 to
12 receive credits.

- 13 23. Therefore, dividing \$13,000,000 by 220,912, the number of Credit Claimants,
14 will provide each a credit to their Midland account(s) of approximately
15 \$58.84. Dividing \$2,000,000 by the number of Cash Component claimants
16 will provide each a cash payment of approximately \$23.49. In addition, there
17 are deficient claims that may or may not be corrected, and if so, will result in
18 an adjustment of the total valid claims. That would have a minimal effect but
19 would increase or decrease the *pro rata* amount each claimant would receive.

20 OPT OUTS

- 21 24. There have been to date only 435 timely and 11 late-filed requests for
22 exclusion from the settlement (“opt-outs”). Those persons will be named in
23 the KCC declaration to be filed prior to the Final Approval hearing to be filed
24 no later than fourteen days prior to the Final Approval hearing, as per the
25 Preliminary Approval Order based on the number of notice postcards
26 received, the opt out number is very small, indicating overall acceptance of
27 the settlement by the vast majority of the Settlement Class.
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OBJECTIONS

25. The small number of number of objections is likewise indicative of an overall approval of the settlement as well. Depending on how they are characterized (complaints, comments, or formal objections), there have been 32 persons writing to give comments or to object to the settlement. The number of true objections is less than 20, with the substantive objections numbering closer to 12. The Special Master has scheduled a hearing on the objections on August 17, 2016, prior to the Final Approval hearing.

ADEQUACY OF SETTLEMENT

26. This is a statutory damages case. No Class member has lost any money as a result of the Defendant’s actions, other than their carrier’s billing them for the cost of any calls made to them. Therefore, the deterrent effect of statutory damages has been met, and the proceeds will be divided among the persons called. In other words, the Class members are not getting back a percentage of money they have expended; the TCPA requires statutory damages; the class members are receiving either a credit or cash for the cellphone calls made. Therefore, the settlement obtained for the Class to divide is an exemplary settlement. Each of the 329,755 claimants will get either approximately \$23.49 in cash or approximately \$58.84 in credit against any amount they owe Defendants. As a result, in my opinion, based upon my thirty-nine years of experience in civil litigation and twenty-seven years of experience in litigating class actions, and based upon the facts of this case, the number of class members, and the other circumstances, I believe this settlement is fair and reasonable. Therefore, I believe the settlement merits Court approval.

CLASS COUNSEL’S EXPERIENCE

27. I have outlined my experience in the Declaration of Douglas J. Champion in Support of Motion for Award of Attorney’s Fees and Costs to be heard at the

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same time as this motion, and I am not repeating it here, for sake of brevity, if the Court is inclined to review my credentials relating to the Final Approval issues.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 22, 2016 at San Diego, California, pursuant to the laws of the United States.

/s/ Douglas J. Champion
Douglas J. Champion

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