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

**IN RE: MIDLAND CREDIT  
MANAGEMENT, INC.,  
TELEPHONE CONSUMER  
PROTECTION ACT  
LITIGATION**

MDL No. 2286

**ORDER GRANTING PLAINTIFFS’  
MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT;**

[Doc. No. 281]

**SETTING FINAL APPROVAL  
HEARING**

Plaintiffs Christopher Robinson, Eduardo Tovar, and Dave Scardina, (collectively, “Plaintiffs”) move for preliminary approval of a proposed class action settlement and certification of a settlement class (hereinafter referred to as the “Preliminary Approval Motion”) in the above-captioned multidistrict litigation (the “Lawsuit”). Defendants Midland Funding, LLC, Midland Credit Management, Inc. (“MCM”), and Encore Capital Group, Inc. (collectively, “Defendants”) do not oppose the Preliminary Approval Motion. The parties appeared before the Court on December 8, 2015 for a hearing on the motion. The Court has reviewed and considered the Settlement Agreement (the “Agreement”), the Preliminary Approval Motion, as well as the record in this case, and determines that preliminary approval of the proposed settlement and certification of a settlement class is

1 appropriate. For the reasons stated on the record during the December 8, 2015 hearing  
2 and set forth below, the Court **GRANTS** Plaintiffs' motion. Accordingly,

3 **IT IS HEREBY ORDERED:**

4 I. JURISDICTION: The Court has jurisdiction over the subject matter of the Lawsuit  
5 and over all settling parties hereto. All capitalized terms used herein have the  
6 meanings defined herein and/or in the Agreement.

7 II. PRELIMINARY APPROVAL OF PROPOSED SETTLEMENT: The Court  
8 preliminarily finds that the Settlement of the Lawsuit, on the terms and conditions  
9 set forth in the Agreement and the exhibits thereto, is in all respects fundamentally  
10 fair, reasonable, adequate and in the best interests of the Class Members, taking into  
11 consideration the benefits to Class Members; the strength and weaknesses of  
12 Plaintiff's case; the complexity, expense and probable duration of further litigation;  
13 and the risk and delay inherent in possible appeals. The Court finds that notice of  
14 the Settlement should be given to persons in the Class and a full hearing should be  
15 held on approval of the Settlement. The provisions of the Settlement Agreement are  
16 preliminarily approved and the Parties shall comply with its terms.

17 III. CLAIMS ADMINISTRATOR: The Court approves the selection KCC to be the  
18 Claims Administrator. The Claims Administrator will administer the applicable  
19 provisions of the Agreement in accordance with the terms of the Agreement,  
20 including, but not limited to, distributing and providing the class notice, receiving  
21 and examining claims, calculating claims against the Settlement Fund consisting of  
22 the \$13,000,000 fund for debt credits and the \$2,000,000 cash fund, preparing and  
23 issuing or working with Defendants to issue all disbursements of the Settlement  
24 Fund to Approved Claimants, and handling inquiries about the calculation of the  
25 individual settlement amounts. All reasonable fees and costs of the Claims  
26 Administrator shall be paid by Defendants and shall not be deducted from the  
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1 Common Fund.

2 IV. In compliance with the Class Action Fairness Act, 28 U.S.C. § 1715, and as set  
3 forth in the Agreement, Defendants, themselves or through their designees, are  
4 ordered to serve written notice of the proposed settlement on the U.S. Attorney  
5 General and the appropriate state official of each state, unless such notice has  
6 already been served.

7 V. CLASS MEMBERS: Pursuant to Fed. R. Civ. P. 23(b)(3), the Lawsuit is hereby  
8 preliminarily and conditionally certified, for settlement purposes only, as a class  
9 action on behalf of the following class members:

10 All persons in the United States who were called on a cellular  
11 telephone by Defendants or their subsidiaries, affiliates or  
12 related companies (other than calls made by Asset Acceptance  
13 LLC, Atlantic Credit & Finance, Inc. or Propel Financial  
14 Services) using a dialer or by prerecorded voice message  
15 without prior express consent during the period from November  
16 2, 2006 through August 31, 2014, inclusive.

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

21 VI. CLASS REPRESENTATIVES AND CLASS COUNSEL APPOINTMENT: For  
22 purposes of the Court considering preliminary approval, the Court appoints  
23 Plaintiffs as the Class Representatives and Douglas J. Campion of The Law Offices  
24 of Douglas J. Campion, APC and James O. Lattuner of Edelman, Combs, Lattuner  
& Goodwin, LLC as Class Counsel.

25 VII. NOTICE AND CLAIMS PROCESS: The Court approves the form, content and  
26 method of notice set forth in the Agreement. If they have not already done so,  
27 Defendants shall provide the Notice List and Cell Phone Number List to the  
28 Settlement Administrator within ten (10) days of this order granting preliminary

1 approval. No later than thirty-five (35) days after the date of this order, the Claims  
2 Administrator shall establish the Settlement Website. No later than thirty-five (35)  
3 days after the date of this order, the Claims Administrator shall send by regular mail  
4 the Postcard Notice to each person in the Notice List at their last known address as  
5 provided by Defendants or as updated by the Claims Administrator through the  
6 National Change of Address Database. Any Postcard Notices that are returned as  
7 non-deliverable with a forwarding address shall promptly be re-mailed by the  
8 Claims Administrator to such forwarding address. As for Class Members who are  
9 not identified in the Notice List, the Claims Administrator shall provide notice by  
10 publication and online as set forth in the Publication and Online Notice Plan  
11 attached as Exhibits D and E to the Agreement. The Claims Administrator shall  
12 initiate the publication of Publication Notice and Online Notice no later than forty  
13 (40) days after the date of this Order and complete the publication of Publication  
14 Notice and Online Notice no later than ninety (90) days after the date of this Order.  
15 The Postcard Notice, the Publication Notice and the Online Notice shall reference a  
16 website established for this Settlement, and that website shall contain the full details  
17 of the Settlement and permit the filing of claims on the website. The mailed and  
18 published notices shall also contain the Claims Administrator's toll free telephone  
19 number so that the Class Members can inquire about the Settlement and also make a  
20 claim over the telephone. If the mail attempts at notice are unsuccessful, and/or a  
21 Class Member otherwise fails to follow the procedures set forth in this Agreement  
22 for submitting a claim or requesting exclusion from the Class, the notice procedures  
23 for Class Members not identified in the Notice List shall be deemed to apply and  
24 the Class Member shall automatically be deemed a member of the Class whose  
25 rights and claims with respect to the issues raised in this action are determined by  
26 the Court's final Order approving the settlement of the class claim and this Action,  
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1 and the Judgment, and by the other rulings in the Action. At least fourteen (14)  
2 days prior to the Final Approval Hearing, the Claims Administrator shall file a  
3 declaration of compliance with the notice procedures set forth in the Agreement.  
4 The Court finds that the form, content and method of notice set forth in the  
5 Agreement satisfy the requirements of Fed. R. Civ. P. 23(c)(2), the Constitution of  
6 the United States, and any other applicable laws, and due process, and constitutes  
7 the best notice practicable under the circumstances. The forms of notice set in the  
8 Agreement and approved herein provide a means of notice reasonably calculated to  
9 apprise the Class Members of the pendency of the action and the proposed  
10 settlement, and thereby meet the requirements of Fed. R. Civ. P. 23(c)(2) of the  
11 Federal Rules of Civil Procedure, as well as due process under the United States  
12 Constitution, and any other applicable law, and shall constitute due and sufficient  
13 notice to all Class Members entitled thereto.  
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15 **VIII. SETTLEMENT AND CLAIMS PROCESS:** The Court preliminarily approves the  
16 \$15,000,000 Settlement Fund consisting of a \$2,000,000 cash component and a  
17 \$13,000,000 debt forgiveness component, as fair, reasonable and adequate for  
18 members of the Class. The Court preliminarily approves the process set forth in  
19 the Agreement for reviewing, approving and paying claims from the Common  
20 Fund. The Court also preliminarily approves the incentive payments that will be  
21 sought by Plaintiffs to be paid from the Common Fund.

22 **IX. CLASS CERTIFICATION:** The Court preliminarily finds that the Lawsuit satisfies  
23 the applicable prerequisites for class action treatment under Fed. R. Civ. P. 23, for  
24 purposes of settlement only.

25 **X. EXCLUSIONS:** Any Class Member may request to be excluded from the Class  
26 (*i.e.*, “opt out”) by mailing a letter or other writing, by first class mail, to the  
27 Claims Administrator containing the Class Member’s name and address, and  
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1 telephone number and a statement that he or she requests to be excluded from the  
2 Class. Any such request must be made in accordance with the terms set forth in  
3 the Class Notice and will be timely only if postmarked no later than one hundred  
4 thirty (135) days after the date of this order granting preliminary approval of this  
5 settlement and Agreement (the “Opt-Out Deadline”). The Claims Administrator  
6 shall provide the Parties with copies of all opt-out requests as they are received  
7 and, no later than five (5) days after the Opt-Out Deadline, the Claims  
8 Administrator shall provide defense counsel and Class Counsel with a list of the  
9 Class Members who have requested exclusion from the Class. Any Class Member  
10 who submits a valid and timely request for exclusion shall not be a member of the  
11 settlement Class, and shall not be bound by the Agreement or Settlement. If more  
12 than 7,500 persons request exclusion from the Class by the Opt-Out Deadline,  
13 Defendants shall have the option to terminate the Agreement and the settlement  
14 proceedings, and this Order shall be null and void and the settlement of no force  
15 and effect. Defendants shall give notice of such termination in writing to Class  
16 Counsel and the Claims Administrator no later than ten (10) days after the Opt-Out  
17 Deadline. The notice of termination shall then promptly be filed with the Court by  
18 Class Counsel.

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20 XI. OBJECTIONS: Any Class Member may object to the terms of the Settlement,  
21 including, but not limited to, the benefits to be paid to the Class under the  
22 settlement, Class Counsel’s application for attorneys’ fees and litigation expenses  
23 and the Class Representative’s service payment by mailing a written objection to  
24 the Court. Any Class Member who wants to appear at the Final Approval Hearing,  
25 either personally or through counsel, must mail a notice of intention to appear to  
26 the Court. Written objections and/or notices of intention to appear must be mailed  
27 to the Court, and served upon Class Counsel, Defense Counsel, and the Settlement  
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1 Administrator, no later than one hundred and thirty (135) days after the date of  
2 this order granting preliminary approval of the settlement. The timeliness of  
3 objections and notices shall be determined the date of receipt by the Court. No  
4 later than two days before the Final Approval Hearing, the parties may file with  
5 the Court replies to any objections.

6 XII. Class Members who do not file their objections and/or notices of intention to appear  
7 in the manner set forth herein will be deemed to have waived all objections and  
8 will not be entitled to be heard at the final approval hearing.

9 XIII. Class Counsel shall file a motion for approval of Class Representatives' service  
10 payments and application for attorneys' fees and costs no later than thirty (30) days  
11 before the last date to file and serve Objections. Class Counsel shall file a motion  
12 for final approval of settlement no later than thirty (30) days before the Final  
13 Approval Hearing. The motion for final approval of settlement and motion for  
14 attorney's fees shall be posted on the website of the Claims Administrator so that  
15 they may be reviewed and printed out by any member of the Class or any other  
16 person.  
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18 XIV. FINAL APPROVAL HEARING: The Court shall conduct a hearing (hereinafter  
19 the "Final Approval Hearing") on **August 26, 2016 at 9:00 a.m.**, in Courtroom 3A  
20 (3rd Floor – Schwartz) of the United States District Court for the Southern District  
21 of California, 221 West Broadway, San Diego, CA, 92101. The Final Approval  
22 Hearing may be rescheduled or continued by the Court without further notice to the  
23 Class Members. At the hearing, the Court will consider the following issues:

24 A. Whether this action satisfies the applicable prerequisites for class action  
25 treatment for settlement purposes under Fed. R. Civ. P 23;

26 B. Whether the proposed settlement is fundamentally fair, reasonable, adequate,  
27 and in the best interest of the Class Members and should be approved by the Court;  
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1 C. Whether the order granting final approval of class action settlement and  
2 judgment, as provided under the Agreement, should be entered, dismissing the  
3 Lawsuit with prejudice and releasing the Released Claims against the Released  
4 Parties; and

5 D. Such other issues as the Court deems appropriate.

6 XV. Attendance at the Final Approval Hearing is not necessary. Class Members need not  
7 appear at the hearing or take any other action to indicate their approval of the  
8 proposed class action Settlement. However, Class Members wishing to be heard  
9 are required to submit a notice of intention to appear at the Final Approval Hearing.

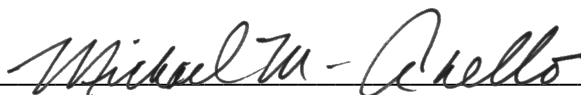
10 XVI. Pending the final determination of the fairness, reasonableness, and adequacy of the  
11 proposed Settlement, no Class Member may prosecute, institute, commence, or  
12 continue any lawsuit (individual action or class action) with respect to the Released  
13 Claims against any of the Defendants.

14 XVII. If the Agreement is not finally approved for any reason, then this order shall be  
15 vacated, the Agreement shall have no force and effect, and the Parties' rights and  
16 defenses shall be restored, without prejudice, to their respective positions as if the  
17 Agreement had never been executed and this order never entered.

18 XVIII. The Court retains continuing and exclusive jurisdiction over the action to consider  
19 all further matters arising out of or connected with the settlement, including the  
20 administration and enforcement of the Agreement.

21 **IT IS SO ORDERED.**

22 DATE: December 9, 2015

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25 HON. MICHAEL M. ANELLO  
26 United States District Judge  
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