

EXHIBIT “E”

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ELLEN ANNETE GOLD, on behalf of)
herself and all others similarly)
situated,)
)
Plaintiffs,)
)
vs.) Case No.:
) 3:13-CV 02019
) WHO
MIDLAND CREDIT MANAGEMENT, INC.,)
a Kansas corporation; and MIDLAND)
FUNDING, LLC, a Delaware limited)
liability company,)
)
Defendants.)
_____)

CONFIDENTIAL TRANSCRIPT

VOLUME I

30(b)(6) DEPOSITION OF ANGELIQUE ROSS

SAN DIEGO, CALIFORNIA

APRIL 28, 2014

REPORTED BY:
JULIE A. MCKAY, CSR NO. 9059

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liability company,)
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Defendants.)
_____)

Case No.:
3:13-CV-02019
WHO

DEPOSITION OF ANGELIQUE ROSS,
taken by the Plaintiffs, commencing at the hour of
8:57 a.m. on Monday, April 28, 2014, at 530 "B" Street,
Suite 350, San Diego, California, before Julie A. McKay,
Certified Shorthand Reporter in and for the State of
California.

1 APPEARANCES:

2

For the Plaintiffs:

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I N D E X

WITNESS: ANGELIQUE ROSS

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1 SAN DIEGO, CALIFORNIA, MONDAY

2 APRIL 28, 2014, 8:57 A.M.

3

4 ANGELIQUE ROSS,

5 having been first duly sworn, testified as follows:

6

7 EXAMINATION

8 BY MR. SCHWINN:

9 Q. Would you please state your full name for the
10 record.

11 A. Angelique Danielle Ross.

12 Q. Could you spell your first name, please.

13 A. A-n-g-e-l-i-q-u-e.

14 Q. What's your address?

15 A. My home address or --

16 Q. Right.

17 A. -- my business address?

18 It's 2045 Sweetwater Road, Suite B, as in boy,
19 Spring Valley, California 91977.

20 Q. That's your home address?

21 A. My home address, yes.

22 Q. What's the name of your employer?

23 A. Midland Credit Management.

24 Q. And what's your title at Midland Credit
25 Management?

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1 MR. NARITA: I was going to interpose an
2 objection.

3 MR. SCHWINN: Twenty-one topics.

4 BY MR. SCHWINN:

5 Q. Are you the person designated by Midland Credit
6 Management with regard to these 21 topics?

7 A. Yes.

8 Q. Are there any of these 21 topics for which you
9 will not be able to testify here today? If you want to
10 take a moment to look at them, that would be fine.

11 A. I would say Number 5, I could speak to some
12 part of the specific use for the account notes, but not
13 all of that section.

14 Q. Okay.

15 MR. NARITA: Off the record.

16 (Discussion was held off the record.)

17 MR. SCHWINN: Back on the record.

18 BY MR. SCHWINN:

19 Q. So with regard to Topic Number 5, "Creation,
20 modification, programming and use of computer software."
21 So is it fair to say the creation, modification,
22 programming you're not going to have knowledge of, but
23 the use of the computers you would?

24 A. Yes.

25 Q. What other topics on this list do you believe

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1 you're not qualified to talk about?

2 A. I would say Number 11 and 12 I can give general
3 understanding but would not have specific information
4 around design.

5 Q. Design, use or efficacy, which would you not
6 have knowledge of?

7 A. I would say probably all of those. I
8 understand general process of that, but not specific
9 design, use or efficacy of notices.

10 Q. Who at Midland Credit Management would have
11 knowledge of the topics in Number 11?

12 MR. NARITA: If you know.

13 THE WITNESS: That would likely be someone in
14 the marketing department.

15 MR. SCHWINN: Counsel, you're not going to put
16 up a witness for Number 11?

17 MR. NARITA: We don't have a witness for you
18 today that has any more specific knowledge other than
19 Ms. Ross. Again, you could ask her general questions
20 about that topic, but -- I don't want to speak for her,
21 but I don't anticipate that she would have knowledge of
22 this particular letter and this particular brochure that
23 your client is suing over.

24 Is that a fair characterization, Ms. Ross?

25 THE WITNESS: Yes.

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1 MR. SCHWINN: It's not your intent to put up a
2 witness with regard to Topic 11 today?

3 MR. NARITA: Not beyond Ms. Ross's knowledge,
4 no.

5 And without taking up too much of your time,
6 we're incorporating by reference of the objections that
7 we served, which you've been kind enough to mark.

8 BY MR. SCHWINN:

9 Q. What other topics would you not be qualified to
10 talk about?

11 MR. NARITA: Twelve is related to 11, correct?

12 THE WITNESS: Yeah. Twelve is related to 11.

13 I would say 13 is general -- I generally could
14 give information on that.

15 Fourteen, I don't know that, either.

16 BY MR. SCHWINN:

17 Q. Who would know Number 14?

18 A. Maybe someone in the marketing department.

19 MR. NARITA: Just so we have a clear record,
20 14, we have previously provided to you the number of
21 persons with California addresses.

22 THE WITNESS: That's different.

23 MR. NARITA: Okay. So I withdraw my comment.
24 I'm sorry. I was not reading it close enough.

25 THE WITNESS: Same thing, 15, I don't know,

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1 either.

2 BY MR. SCHWINN:

3 Q. Who at Midland Credit Management would be
4 qualified to talk about Topic Number 15?

5 A. Someone in the marketing department.

6 MR. NARITA: Now my comment does apply.

7 Number 15 asks for the number of notices and
8 brochures that were sent. And we have provided to you
9 previously in a discovery response the number of
10 California residents who got -- who were sent the notice
11 during the class period. So we have previously provided
12 that number to you.

13 MR. SCHWINN: Okay. The number we've been
14 previously provided is the number of letters sent to
15 California addresses and for which HSBC was the original
16 creditor. And I believe that number is just short of
17 43,000 or something.

18 MR. NARITA: Something in that range.

19 BY MR. SCHWINN:

20 Q. Okay. I'm also wanting to know the total
21 number of letters sent to California addresses without
22 regard to who the original creditor is.

23 Would you know that number?

24 A. No.

25 Q. And I also want to know the total number of

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1 letters sent to any address with regard to any original
2 creditor. Total number of letters.

3 Would you know that number?

4 A. No.

5 Q. Who at Midland Credit would know those two
6 numbers? Somebody in the marketing department?

7 A. I believe so.

8 Q. With regard to Number 16, are you qualified to
9 speak to that topic?

10 A. No.

11 Q. And, again, would that be someone in the
12 marketing department who could speak to that?

13 A. I believe so.

14 Q. Number 17, do you know the date on which
15 Midland Credit Management began using the subject
16 collection letter?

17 A. No, I do not.

18 Q. And, again, would that be someone in the
19 marketing department?

20 A. I believe so.

21 Q. Topic Number 18 asks for the date that Midland
22 Credit Management ceased using the collection letter.

23 Do you know what that date is?

24 A. No.

25 Q. And, again, someone in the marketing department

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1 would know?

2 A. I believe so.

3 Q. And beginning on page 4 of the deposition
4 notice there and ending at the top of page 5, there is a
5 list of documents that were requested for today's
6 deposition.

7 Are there any additional documents that Midland
8 will produce at this time?

9 MR. NARITA: I can answer that one. We're not
10 producing any additional documents today in connection
11 with the deposition notice. We have served some
12 objections that you've marked as Exhibit 2, I believe.

13 BY MR. SCHWINN:

14 Q. Okay. With regard to documents in Number 13,
15 Request Number 13 --

16 MR. NARITA: Document Request Number 13?

17 MR. SCHWINN: Yes, Document Request Number 13.

18 BY MR. SCHWINN:

19 Q. This question is for the witness. Can you,
20 perhaps, read that. And then the question is going to
21 be: Who at Midland Credit Management do you believe
22 would be in possession of documents described in
23 Document Request Number 13?

24 A. The document request says, "All documents that
25 show the metrics used to determine and evaluate the

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1 materiality argument with regard to this letter?

2 MR. NARITA: We do.

3 MR. SCHWINN: Okay. And with regard to
4 materiality, is it going to be Midland's position that
5 the least sophisticated consumer reading this letter
6 wouldn't change their behavior? Is that the gist of the
7 materiality?

8 MR. NARITA: The gist is the Donahue case, the
9 9th Circuit decision in Donahue.

10 MR. SCHWINN: And that means the hypothetical
11 least sophisticated consumer who receives this letter
12 wouldn't modify or change their behavior in any way.

13 MR. NARITA: Well, that's not exactly the way I
14 read Donahue. I think that the way I read Donahue is
15 the wording of the letter would not impact or frustrate
16 the least sophisticated debtor's ability to choose an
17 intelligent response.

18 So whatever the intelligent responses are to
19 the letter, there's nothing that's stated in the letter
20 nor is there anything omitted from the letter that would
21 frustrate the consumer's ability to choose that amongst
22 the responses.

23 MR. SCHWINN: So Midland -- the Midland
24 entities intend to effect some kind of response with
25 this letter and that's why they sent it. And so whether

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1 or not people responded differently to this letter than
2 other letters, whether more people called, whether more
3 money was collected, whatever the metrics that are used
4 to evaluate letters, Midland is a big company. They're
5 not sending out thousands of letters unless they have
6 some belief that they're going to be effective. And
7 they track that stuff.

8 And if it's your intent to say that -- to base
9 a defense on the response of debtors who receive this
10 letter, I think it's valid for us to ask about
11 Topics 11, 12, 15, 16, 17, 18 with regard to when the
12 letter began being used, when the letter stopped being
13 used, how Midland tracks the effectiveness of collection
14 letters, and how this letter compares with other
15 letters. And we believe that that information is
16 relevant to a materiality defense.

17 And I want you to, perhaps, speak to your
18 clients and consider providing us this information;
19 because I mean, we're going to, you know, defend against
20 your defense based on the fact that you won't respond to
21 discovery.

22 So if there's going to be a materiality
23 defense, I would like to hear your position on why you
24 don't think you have to give us this stuff.

25 MR. NARITA: Sure. And I think I understand

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1 your argument. I don't think, though, that you've
2 correctly characterized how we intend to defend the
3 case.

4 So really what our position is, is there's only
5 maybe one or two intelligent responses to any given
6 collection letter: You can pay the amount that's
7 requested. You can --

8 MR. SCHWINN: Call.

9 MR. NARITA: You can call in response. Or you
10 can read it and discard it.

11 I can't think of any other intelligent
12 responses, although there may be other ones.

13 But however many there are, there's nothing
14 stated in the letter that would impact the ability of
15 the hypothetical least sophisticated debtor to select
16 amongst those intelligent responses.

17 And so, therefore, the actual response rates
18 or, you know, whatever metrics Midland might use if it
19 does use to track, really don't matter. Those would be
20 individualized issues that would turn on different
21 things that each individual debtor might be
22 experiencing.

23 Like they might not have a job and that's why
24 they're not responding or they might have come into some
25 money and so now they have the financial ability to pay.

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1 There could be all kinds of individual reasons why they
2 actually did or didn't respond.

3 But the question, I think, for the Court is
4 would this hypothetical least sophisticated consumer be
5 frustrated in their ability to respond to a letter in
6 some way.

7 MR. SCHWINN: I understand your position. And
8 I think you understand mine. But if the argument or the
9 theory that you propose to advance is that among these
10 three or so rational choices that a least sophisticated
11 consumer would make, that this letter doesn't change
12 that, then I think it would be relevant to apply some
13 empirical facts to this theory to see whether or not, in
14 fact, it's true that they don't -- debtors who receive
15 this letter don't pay with any more frequency than
16 debtors that receive other letters. Debtors that
17 receive this letter don't call with any more frequency
18 than debtors that receive other letters. Debtors ignore
19 this letter at the same rate they ignore other letters.

20 I believe all of those inquiries are relevant
21 if you're going to base a defense on a theory that the
22 hypothetical least sophisticated consumer who receives
23 this letter would not change their behavior because of
24 the contents of the letter.

25 And I think I've explained it fully. I think

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1 you understand that.

2 MR. NARITA: Yeah.

3 MR. SCHWINN: I want you to go back and,
4 perhaps, talk to your client. You're going to do
5 whatever you're going to do. Our discovery cut-off is
6 this Wednesday. Local rule requires we move to compel
7 within seven days. It's our intent to do so. I
8 consider this our in-person meet and confer.

9 MR. NARITA: That's fine, yeah.

10 MR. SCHWINN: And so by the end of this week,
11 we're going to be sending you a joint letter or
12 something. So in the next couple of days if you could,
13 perhaps, tell me if you guys will agree. I don't want
14 to have to come down here again to do this.

15 I think that we've asked interrogatory
16 responses, interrogatories which give us this
17 information. I'm not sure. I would have to check.

18 But if we could get perhaps verified discovery
19 responses or something, we could avoid having to do this
20 again.

21 MR. NARITA: Okay. I appreciate that. I'm
22 glad we talked about it. I understand where you're
23 coming from. And I'll talk to the client right away and
24 hopefully we can come up with something to avoid a
25 dispute.

1 STATE OF CALIFORNIA)

: ss.

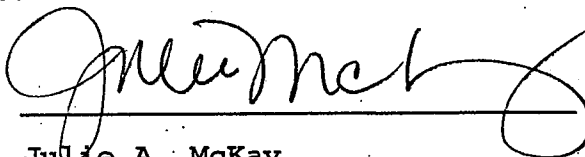
2 COUNTY OF SAN DIEGO)

3 I, Julie A. McKay, Certified Shorthand Reporter in
4 and for the State of California, Certificate No. 9059,
5 do hereby certify:

6 That the witness in the foregoing deposition was by
7 me first duly sworn to testify the truth, the whole
8 truth, and nothing but the truth in the foregoing cause;
9 that the deposition was taken before me at the time and
0 place herein named; that said deposition was reported by
1 me in shorthand and transcribed, through computer-aided
transcription, under my direction; and that the
foregoing transcript is a true record of the testimony
elicited at proceedings had at said deposition.

I do further certify that I am a disinterested
person and am in no way interested in the outcome of
this action or connected with or related to any of the
parties in this action or to their respective counsel.

In witness whereof, I have hereunto set my hand
this 12th day of May, 2014.



Julie A. McKay

CSR No. 9059