

07-516-CD
Midland Funding vs T. Novario

Midland Funding vs Thomas Novario
2007-516-CD

FILED *Atty pd. 85.00*
m/2:25/01
APR 02 2007 *ICC Sheriff*
William A. Shaw
Prothonotary/Clerk of Courts

Burton Neil & Associates, P.C.
By: Yale D. Weinstein, Esquire ID. NO. 89678
1060 Andrew Drive, Suite 170
West Chester, PA 19380
(610) 696-2120
Attorney for Plaintiff

MIDLAND FUNDING LLC
8875 Aero Drive, Suite 200, San Diego, CA
Plaintiff

v.

THOMAS NOVARIO
306 Quarry Avenue, Du Bois, PA
Defendant

: IN THE COURT OF COMMON PLEAS
:
: CLEARFIELD COUNTY, PENNSYLVANIA
:
: NO. *07-516-CD*
: CIVIL ACTION - LAW

Complaint - Notice

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claim set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

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LAWYER REFERENCE AND INFORMATION SERVICE

David S. Meholic
Court Administrator
Clearfield County Courthouse
Clearfield, PA 16830
Telephone No. 814-765-2641 Ext. 5982

Burton Neil & Associates, P.C.
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Attorney for Plaintiff

MIDLAND FUNDING LLC
8875 Aero Drive, Suite 200, San Diego, CA
Plaintiff

v.

THOMAS NOVARIO
306 Quarry Avenue, Du Bois, PA
Defendant

: IN THE COURT OF COMMON PLEAS
:
: CLEARFIELD COUNTY, PENNSYLVANIA
:
:
: NO.
:
: CIVIL ACTION - LAW

Complaint

1. The plaintiff is Midland Funding LLC with place of business located at 8875 Aero Drive, Suite 200, San Diego, California.
2. The defendant is Thomas Novario, who resides at 306 Quarry Avenue, Du Bois, Clearfield County, Pennsylvania.
3. Emerge Mastercard furnished consumer credit to defendant bearing account number 5181890002959140 hereinafter referred to as the credit card account.
4. The defendant made purchases, balance transfers and/or cash advances on the credit card account.
5. The balance due on the credit card account is \$2,153.57.
6. Defendant did not pay the balance due on the credit card account as required by the credit card agreement. As such, defendant is in default on the credit card account.
7. Plaintiff purchased the defendant's account from Emerge Mastercard and is now the holder and owner of the account.
8. Although demand has been made by plaintiff upon defendant to pay the sum of \$2,153.57, the defendant failed and refused to pay all or any part thereof.

Wherefore, plaintiff demands judgment against the defendant in the sum of \$2,153.57 and the costs of this action.

Burton Neil & Associates, P.C.

By: _____

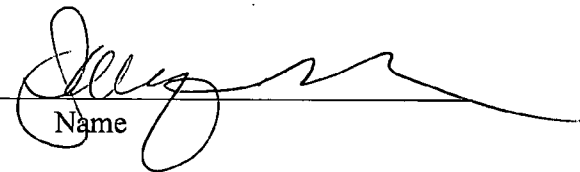
Yale D. Weinstein, Esquire
Attorney for Plaintiff

The law firm of Burton Neil & Associates, P. C. is a debt collector.

Verification

I, Jacquelyn Munsterman am an employee of Midland Credit Management, Inc. which is by contract the servicer for plaintiff Midland Funding LLC retained to collect delinquent debt. I am authorized to make this verification pursuant to a servicing agreement from plaintiff to Midland Credit Management, Inc. The foregoing averments of fact in the within pleading are true and correct to the best of my knowledge, information and belief. I understand that the statements made herein are subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to the authorities.

Date: 3/22/07

✓ 
Name

Thomas Novario
5181890002959140

M

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

MIDLAND FUNDING LLC,	:	No. 07 - 516 - C.D.
Plaintiff	:	
	:	
vs.	:	
	:	
THOMAS NOVARIO,	:	
Defendant	:	

PRELIMINARY OBJECITONS

AND NOW, comes the Defendant, THOMAS NOVARIO, by and through his undersigned Counsel, George D. Kulakowski, Esquire, and files the following Preliminary Objections:

GENERAL ALLEGATIONS AS TO ALL COUNTS

1. In Paragraph 1 of Plaintiff's Complaint MIDLAND FUNDING LLC is identified as the Plaintiff without identifying exactly what type of entity it is.
2. In Paragraph 3 of Plaintiff's Complaint Emerge MasterCard is identified as some type of entity without specifying what type of entity Emerge MasterCard is.
3. Plaintiff's Complaint contains no allegations which could substantiate the fact that Plaintiff is trading and doing business within the Commonwealth of Pennsylvania.
4. Plaintiff's Complaint makes certain allegations which seem to allege the existence of a contract.
5. If Plaintiff's Complaint does allege the existence of the contract there is no mention as to whether or not the contract is oral or written.

FILED
MAY 09 2007

William A. Shaw
Prothonotary/Clerk of Courts

cc
George D. Kulakowski
(EK)

6. If a contract does exist there is no information indicating when the contract was signed, what the relevant terms and conditions of the contract were, when any alleged debt was incurred and what any alleged terms and conditions of repayment of the debt were.

7. Plaintiff's Complaint contains no time frame relating to the occurrences serving as the basis of Plaintiff's Complaint and accordingly the Defendant has no idea as to whether or not any applicable statute of limitations might have run.

COUNT I

MOTION TO STRIKE

8. Paragraphs 1 through 7 are hereby incorporated by reference as though they were set forth in full.

9. Based upon the vague and imprecise pleadings of the Plaintiff, and failure to state a precise cause of action, and due to Plaintiff's failure to substantiate that they were trading and doing business within the Commonwealth of Pennsylvania, the Plaintiff's Complaint should be stricken with prejudice.

WHEREFORE, the Defendant demands that this Honorable Court strike the Complaint of the Plaintiff, with prejudice.

COUNT II

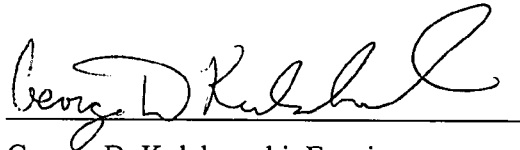
MOTION FOR MORE SPECIFIC PLEADING

10. Paragraphs 1 through 10 are hereby incorporated by reference as though they were set forth in full.

11. Based upon the vague and imprecise pleadings of the Plaintiff, Plaintiff should be compelled to file a more specific Complaint in compliance with all applicable law and the Rules of Civil Procedure.

WHEREFORE, the Defendant demands that this Honorable Court issue an Order directing to Plaintiff to file a more specific Complaint.

Respectfully submitted by,

A handwritten signature in cursive script, reading "George D. Kulakowski", written over a horizontal line.

George D. Kulakowski, Esquire
Attorney for Defendant

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

MIDLAND FUNDING LLC,

Plaintiff

vs.

THOMAS NOVARIO,

Defendant

No. 07 - 516 - C.D.

ORDER

AND NOW, this th14 day of MAY, 2007, it is hereby ORDERED
that argument on Defendant's Preliminary Objections is scheduled for the 2th day of
June, 2007, at 1:30 o'clock 0 m. before Judge Ammerman at the
Clearfield County Courthouse.

BY THE COURT

Judith Ammerman J.

FILED 100
9/3:15/07 Amy
MAY 14 2007 KulaKowski

William A. Shaw
Prothonotary/Clerk of Courts

CR

DATE: 5/14/07

☒ You are responsible for serving all appropriate parties.

____ The Probationary's office has provided service to the following parties:

____ Plaintiff(s) ____ Plaintiff(s) Attorney ____ Other

____ Defendant(s) ____ Defendant(s) Attorney

____ Special Instructions:

FILED

MAY 14 2007

William A. Shaw
Probationary/Clerk of Courts

FILED
MAY 29 2007
No CC
GR

William A. Shaw
Prothonotary/Clerk of Courts

Burton Neil & Associates, P.C.
By: Brit J. Suttell, Esquire ID. NO. 204140
1060 Andrew Drive, Suite 170
West Chester, PA 19380
(610) 696-2120

Attorney for Plaintiff

MIDLAND FUNDING LLC : IN THE COURT OF COMMON PLEAS
8875 Aero Drive Suite 200
San Diego, CA 92123
Plaintiff : CLEARFIELD COUNTY, PENNSYLVANIA
v.
THOMAS NOVARIO : NO. 07-516-CD
306 Quarry Avenue, Du Bois PA 15801
Defendant : CIVIL ACTION - LAW

Amended Complaint - Notice

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claim set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

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80367

BURTON NEIL & ASSOCIATES, P.C.
By: Brit J. Suttell, Esquire, ID No. 204140
1060 Andrew Drive, Suite 170
West Chester, PA 19380
610-696-2120
ATTORNEY FOR: Plaintiff

MIDLAND FUNDING L.L.C. :IN THE COURT OF COMMON PLEAS
8875 Aero Drive, Suite 200, San Diego CA
Plaintiff :CLEARFIELD COUNTY, PENNSYLVANIA

VS.

THOMAS NOVARIO : NO. 07-516-CD
306 Quarry Avenue, Du Bois, PA
Defendant : CIVIL ACTION - LAW

Amended Complaint

1. The plaintiff is Midland Funding L.L.C. with place of business located at 8875 Aero Drive, Suite 200, San Diego, California.
2. The defendant is Thomas Novario, who resides at 306 Quarry Avenue, Du Bois, Clearfield County, Pennsylvania.
3. Emerge Mastercard furnished consumer credit to defendant with a credit card bearing account number 518190002959140, hereinafter referred to as the credit card account.
4. The defendant made purchases, balance transfers and/or cash advances on the credit card account. Attached to and incorporated herein by reference is an account summary marked Exhibit A.

5. The balance due on the credit card account is \$2,153.57.

6. Defendant did not pay the balance due on the credit card account as required by the credit card agreement. Attached to and incorporated herein by reference is a true and correct copy of the terms and conditions governing the credit card account, marked Exhibit B.

7. As a result of defendant's failure to pay the balance due on the credit card account, defendant is in default on the credit card account.

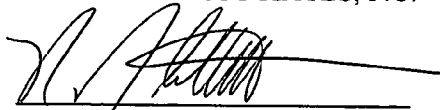
8. Plaintiff purchased the defendant's account and is now the holder and owner of the account.

9. Although demand has been made by plaintiff upon defendant to pay the sum of \$2,153.57, the defendant failed and refused to pay all or any part thereof.

Wherefore, plaintiff demands judgment against the defendant in the sum of \$2,153.57, plus the costs of this action.

BURTON NEIL & ASSOCIATES, P.C.

BY:



Brit J. Suttell, Esquire
Attorney for Plaintiff

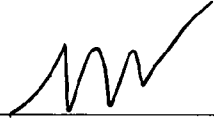
In making this communication, we advise our firm is a debt collector.

Verification

I, Nicole VanDerSchaaf, am an employee of Midland Credit Management, Inc. which is by contract the servicer for plaintiff, Midland Funding L.L.C., retained to collect delinquent debt. I am authorized to make this verification pursuant to a servicing agreement from plaintiff to Midland Credit Management, Inc. The foregoing averments of fact in the within pleading are true and correct to the best of my knowledge, information and belief. I understand that the statements made herein are subject to the penalties of 18 Pa. C. S. § 4904, relating to unsworn falsification to the authorities.

Date:

5/24/07


Name

Thomas Novario
5181890002959140

Transaction History

THOMAS P NOVARIO		EMERGE MASTERCARD		Acct# 5181890002959140
Date	Description	Reference	Sic Location	Amount
DEC 20, 2000	PILOT CORP #336	24455010355035660414208	5542 DUBOIS, PA	\$15.41
DEC 23, 2000	BATH&BODY 00001219	24399000360796121924662	5999 DUBOIS, PA	\$34.45
JAN 12, 2001	PAYMENT RECEIVED -- THANKYOU	74168511012551013372237		-\$50.00
JAN 19, 2001	PURCHASE *FINANCE CHARGE*			\$16.75
JAN 22, 2001	PILOT CORP #336	24455011022102360324888	5542 DUBOIS, PA	\$14.00
JAN 24, 2001	ALVIO CORP	24072801024200649179019	5964 216-663-5880, OH	\$41.75
JAN 25, 2001	BEYOND COMPUTER INC	24236271026400250010829	5734 NEW YORK, NY	\$116.03
JAN 30, 2001	WAL MART	24226381031324828739333	5310 DU BOIS, PA	\$28.37
FEB 13, 2001	PAYMENT RECEIVED -- THANKYOU	74168511044551018815422		-\$400.00
FEB 13, 2001	WAL MART	24226381045324072533600	5310 DU BOIS, PA	\$15.27
FEB 20, 2001	PURCHASE *FINANCE CHARGE*			\$19.00
FEB 25, 2001	WAL MART	24226381057324281697670	5310 DU BOIS, PA	\$17.32
MAR 01, 2001	EMS COMPUTING, INC.	24301331061118000159211	5045 352-3748400, FL	\$67.95
MAR 12, 2001	PAYMENT RECEIVED -- THANKYOU	74168511071551024619939		-\$400.00
MAR 18, 2001	SHEETZ #204	24455011077107873764078	5542 MURRYSVILLE, PA	\$14.06
MAR 20, 2001	ESSENTIAL COMPUTE00 OF 00	24236271080400790010753	4816 718-3535157, NY	\$188.00
MAR 21, 2001	PURCHASE *FINANCE CHARGE*			\$11.28
APR 13, 2001	SHEETZ #149	24455011103110474319274	5542 DUBOIS, PA	\$15.09
APR 19, 2001	LATE PAYMENT CHARGE			\$29.00
APR 19, 2001	PURCHASE *FINANCE CHARGE*			\$11.02
APR 23, 2001	PAYMENT RECEIVED -- THANKYOU	74168511113551034654801		-\$300.00
MAY 03, 2001	MURRAY'S FORD INC	24661001125120123010047	5511 DUBOIS, PA	\$38.70
MAY 13, 2001	WAL MART	24226381133324762167613	5310 DU BOIS, PA	\$206.64
MAY 21, 2001	PURCHASE *FINANCE CHARGE*			\$8.87
JUN 03, 2001	WAL MART	24226381154323202004711	5310 DU BOIS, PA	\$110.34
JUN 11, 2001	PAYMENT RECEIVED -- THANKYOU	74168511162551048425015		-\$100.00
JUN 14, 2001	SHEETZ #701	24455011165116675113742	5542 MT. JACKSON, VA	\$15.70
JUN 15, 2001	AMOCO 08123762	24164071167799166150135	5542 GREENVILLE, VA	\$13.60

Transaction History

THOMAS P NOVARIO		EMERGE MASTERCARD		Acct# 5181890002959140	
Date	Description	Reference	Sic Location	Amount	
JUN 19, 2001	PURCHASE *FINANCE CHARGE*			\$11.63	
JUN 26, 2001	KMART 00009733	24399001178909733177039	5311 DUBOIS, PA	\$235.82	
JUN 27, 2001	AMES DEPT STOR00005371	24164071179567053700361	5311 DU BOIS, PA	\$29.62	
JUL 06, 2001	AMES DEPT STOR00005371	24164071188567053700360	5311 DU BOIS, PA	\$15.98	
JUL 12, 2001	PAYMENT RECEIVED -- THANKYOU	74168511193551058030311		-\$100.00	
JUL 15, 2001	WAL MART	24226381197323126456640	5310 DU BOIS, PA	\$61.32	
JUL 19, 2001	PURCHASE *FINANCE CHARGE*			\$16.30	
JUL 29, 2001	WAL MART	24226381210323418497825	5310 DU BOIS, PA	\$14.23	
AUG 10, 2001	PAYMENT RECEIVED -- THANKYOU	74168511222551067392384		-\$50.00	
AUG 20, 2001	PURCHASE *FINANCE CHARGE*			\$18.46	
AUG 27, 2001	#BUYSMART FEE	74168511239106239005538		\$119.00	
SEP 13, 2001	PAYMENT RECEIVED -- THANKYOU	74168511256551078663053		-\$50.00	
SEP 18, 2001	PURCHASE *FINANCE CHARGE*			\$18.13	
SEP 26, 2001	ANNUAL FEE			\$59.00	
OCT 01, 2001	WAL MART	24226381275323807442591	5310 DU BOIS, PA	\$90.45	
OCT 02, 2001	WAL MART	24226381275324822563270	5310 DU BOIS, PA	\$22.00	
OCT 02, 2001	YAHOO *SPORTS	24692161275000129087319	4816 408-349-5151, CA	\$7.95	
OCT 03, 2001	WAL MART	24226381277323846678807	5310 DU BOIS, PA	\$90.04	
OCT 03, 2001	WAL MART	74226381277323846678794	5310 DU BOIS, PA	-\$84.76	
OCT 12, 2001	PAYMENT RECEIVED -- THANKYOU	74168511285551093260617		-\$50.00	
OCT 18, 2001	STUDENT ACCOUNTING	24435651291200148093247	8220 PITTSBURGH, PA	\$800.00	
OCT 19, 2001	PURCHASE *FINANCE CHARGE*			\$22.08	
NOV 13, 2001	PAYMENT RECEIVED -- THANKYOU	74168511317551004589049		-\$60.00	
NOV 20, 2001	PURCHASE *FINANCE CHARGE*			\$39.67	
DEC 18, 2001	PAYMENT RECEIVED -- THANKYOU	74168511352551019284805		-\$60.00	
DEC 20, 2001	PURCHASE *FINANCE CHARGE*			\$37.35	
DEC 20, 2001	LATE PAYMENT CHARGE			\$29.00	
JAN 14, 2002	PAYMENT RECEIVED -- THANKYOU	74168512014551029106005		-\$60.00	

Transaction History

THOMAS P NOVARIO		EMERGE MASTERCARD		Acct# 5181890002959140
Date	Description	Reference	Sic Location	Amount
JAN 15, 2002	LATE FEE REVERSAL	74168512015685015001413	TILTON, NH	-\$29.00
JAN 18, 2002	PURCHASE *FINANCE CHARGE*			\$35.59
FEB 07, 2002	PAYMENT RECEIVED -- THANKYOU	74168512038551040636248		-\$60.00
FEB 19, 2002	PURCHASE *FINANCE CHARGE*			\$38.47
MAR 15, 2002	PAYMENT RECEIVED -- THANKYOU	74168512074551058061300		-\$60.00
MAR 20, 2002	PURCHASE *FINANCE CHARGE*			\$34.65
APR 09, 2002	PAYMENT RECEIVED -- THANKYOU	74168512099551069408293		-\$60.00
APR 19, 2002	PURCHASE *FINANCE CHARGE*			\$35.16
MAY 13, 2002	PAYMENT RECEIVED -- THANKYOU	74168512133552086715072		-\$60.00
MAY 20, 2002	PURCHASE *FINANCE CHARGE*			\$35.97
JUN 13, 2002	PAYMENT RECEIVED -- THANKYOU	74168512164552003989141		-\$52.00
JUN 18, 2002	PURCHASE *FINANCE CHARGE*			\$33.25
JUL 12, 2002	PAYMENT RECEIVED -- THANKYOU	74168512193552019559635		-\$52.00
JUL 18, 2002	PURCHASE *FINANCE CHARGE*			\$34.01
AUG 13, 2002	PAYMENT RECEIVED -- THANKYOU	74168512225552036396899		-\$51.00
AUG 19, 2002	PURCHASE *FINANCE CHARGE*			\$35.94
SEP 13, 2002	PAYMENT RECEIVED -- THANKYOU	74168512256552052218078		-\$51.00
SEP 18, 2002	PURCHASE *FINANCE CHARGE*			\$41.84
SEP 26, 2002	ANNUAL FEE			\$59.00
OCT 18, 2002	PURCHASE *FINANCE CHARGE*			\$32.96
OCT 29, 2002	PAYMENT RECEIVED -- THANKYOU	75182852302000000013111		-\$103.00
NOV 04, 2002	ANNUAL FEE WAIVER	75182852308000000106901		-\$59.00
NOV 18, 2002	PURCHASE *FINANCE CHARGE*			\$33.43
NOV 26, 2002	CREDIT TO PURCHASE FINANC	75182852336000000076183	ATLANTAE, GA	-\$8.37
DEC 16, 2002	PAYMENT RECEIVED -- THANKYOU	75182852350000000037905		-\$49.00
DEC 16, 2002	PHONE PAYMENT FEE	75182852350000000034118		\$9.95
DEC 18, 2002	PURCHASE *FINANCE CHARGE*			\$32.04
JAN 21, 2003	PURCHASE *FINANCE CHARGE*			\$36.20

Transaction History

THOMAS P NOVARIO		EMERGE MASTERCARD		Acct# 5181890002959140	
Date	Description	Reference	Sic Location	Amount	
JAN 21, 2003	LATE PAYMENT CHARGE			\$35.00	
JAN 22, 2003	PAYMENT RECEIVED -- THANKYOU	75182853022000000037828		-\$100.00	
JAN 22, 2003	PHONE PAYMENT FEE	75182853022000000036960		\$9.95	
JAN 23, 2003	PHONE PAYMENT FEE	75182853023023000143684		-\$9.95	
FEB 18, 2003	PURCHASE *FINANCE CHARGE*			\$29.22	
MAR 13, 2003	PAYMENT RECEIVED -- THANKYOU	75182853072000029000038		-\$49.00	
MAR 18, 2003	PURCHASE *FINANCE CHARGE*			\$29.58	
APR 18, 2003	PURCHASE *FINANCE CHARGE*			\$32.59	
APR 18, 2003	PAYMENT RECEIVED -- THANKYOU	75182853108000027000772		-\$50.00	
MAY 15, 2003	PAYMENT RECEIVED -- THANKYOU	75182853135000028005652		-\$50.00	
MAY 19, 2003	PURCHASE *FINANCE CHARGE*			\$32.10	
JUN 16, 2003	PAYMENT RECEIVED -- THANKYOU	75182853166000068000854		-\$50.00	
JUN 18, 2003	PURCHASE *FINANCE CHARGE*			\$30.78	
JUL 14, 2003	PAYMENT RECEIVED -- THANKYOU	75182853195000074005793		-\$50.00	
JUL 18, 2003	PURCHASE *FINANCE CHARGE*			\$30.62	
AUG 18, 2003	LATE PAYMENT CHARGE			\$35.00	
AUG 18, 2003	PURCHASE *FINANCE CHARGE*			\$31.43	
AUG 19, 2003	PAYMENT RECEIVED -- THANKYOU	75182853231000090001632		-\$50.00	
SEP 15, 2003	PAYMENT RECEIVED -- THANKYOU	75182853258000064001111		-\$50.00	
SEP 18, 2003	PURCHASE *FINANCE CHARGE*			\$31.01	
OCT 20, 2003	PURCHASE *FINANCE CHARGE*			\$32.36	
OCT 20, 2003	PAYMENT RECEIVED -- THANKYOU	75182853292000039000592		-\$50.00	
NOV 18, 2003	LATE PAYMENT CHARGE			\$35.00	
NOV 18, 2003	PURCHASE *FINANCE CHARGE*			\$28.99	
DEC 08, 2003	PAYMENT RECEIVED -- THANKYOU	75182853342000129003399		-\$100.00	
DEC 18, 2003	PURCHASE *FINANCE CHARGE*			\$30.10	
DEC 18, 2003	PAYMENT PROMOTION	75182853352000000001245	ATLANTA, GA	-\$5.00	
JAN 15, 2004	PAYMENT RECEIVED -- THANKYOU	75182854015000002003675		-\$50.00	

Transaction History

THOMAS P NOVARIO		EMERGE MASTERCARD		Acct# 5181890002959140
Date	Description	Reference	Sic Location	Amount
JAN 20, 2004	PURCHASE *FINANCE CHARGE*			\$32.60
FEB 16, 2004	PAYMENT RECEIVED -- THANKYOU	75182854047000027004131		-\$50.00
FEB 18, 2004	PURCHASE *FINANCE CHARGE*			\$28.35
MAR 18, 2004	PURCHASE *FINANCE CHARGE*			\$28.00
MAR 18, 2004	PAYMENT RECEIVED -- THANKYOU	75182854078000014001910		-\$50.00
APR 19, 2004	PURCHASE *FINANCE CHARGE*			\$30.47
APR 19, 2004	PAYMENT RECEIVED -- THANKYOU	75182854109000012000156		-\$50.00
MAY 17, 2004	WEB PAYMENT RECEIVEDTHANK YOU	75182854138413800015341		-\$50.00
MAY 17, 2004	WEB PAYMENT FEE	75182854138000000176112		\$9.95
MAY 18, 2004	PURCHASE *FINANCE CHARGE*			\$27.19
JUN 18, 2004	LATE PAYMENT CHARGE			\$35.00
JUN 18, 2004	PURCHASE *FINANCE CHARGE*			\$28.87
JUL 19, 2004	PURCHASE *FINANCE CHARGE*			\$29.47
JUL 19, 2004	LATE PAYMENT CHARGE			\$35.00
AUG 18, 2004	PURCHASE *FINANCE CHARGE*			\$29.09
AUG 18, 2004	LATE PAYMENT CHARGE			\$35.00
SEP 20, 2004	LATE PAYMENT CHARGE			\$35.00
SEP 20, 2004	PURCHASE *FINANCE CHARGE*			\$32.67
OCT 18, 2004	LATE PAYMENT CHARGE			\$35.00
OCT 18, 2004	PURCHASE *FINANCE CHARGE*			\$28.27
NOV 18, 2004	LATE PAYMENT CHARGE			\$35.00
NOV 18, 2004	PURCHASE *FINANCE CHARGE*			\$31.92
DEC 15, 2004	PAYMENT RECEIVED -- THANKYOU	75182854350435000006490		-\$51.00
FEB 18, 2005	LATE PAYMENT CHARGE			\$35.00
FEB 18, 2005	PURCHASE *FINANCE CHARGE*			\$31.52
FEB 21, 2005	LATE PAYMENT CHARGE			\$35.00
APR 18, 2005	PURCHASE *FINANCE CHARGE*			\$32.17
APR 18, 2005	LATE PAYMENT CHARGE			\$35.00

Transaction History

THOMAS P NOVARIO

EMERGE MASTERCARD

Acct# 5181890002959140

Date	Description	Reference	Sic Location	Amount
MAY 18, 2005	PURCHASE *FINANCE CHARGE*			\$31.76
MAY 18, 2005	LATE PAYMENT CHARGE			\$35.00
JUN 22, 2005	LATE PAYMENT CHARGE			\$35.00
JUN 22, 2005	PURCHASE *FINANCE CHARGE*			\$37.85
JUL 22, 2005	LATE PAYMENT CHARGE			\$35.00
JUL 22, 2005	PURCHASE *FINANCE CHARGE*			\$33.14
JUL 22, 2005	OVERLIMIT FEE			\$29.00

January 2005

**Please read this Notice carefully
and retain it for your records**

**This notice contains two sections:
Part I, Notice of Transfer and Account
Replacement, and Part II, Terms and
Conditions Governing Your FNBO
Emerge MasterCard Account.**

571834 (2005)

The Admissions Provision in permits any use of your Admissions for any purpose relating to, or made pursuant to, a transaction involving interstate commerce. The Admissions Provision is governed by the Federal Arbitration Act (FAA), 9 U.S.C. §§ 1 et seq., and will be enforced by the Federal Arbitration Act provisions in 28 U.S.C. § 1292. Any attempt to avoid, nullify, modify any choice-of-law provision in this Agreement, including any attempt to apply a law to a substantive law can be deemed to be in violation of the FAA and applicable statutes of the United States and will constitute a violation of the law. Judgment upon any arbitration award shall be entered and enforced, including without limitation by garnishment, attachment, foreclosure or other remedies available, in any court having jurisdiction. The arbitrator's decision shall be final and binding on the parties.

EXHIBIT

P

Please Note that we are unable to process requests without an Account Number.

The Service & Nonrelated third party may perform for us may include working customer accounts and marketing our own products or services. In addition we may

Nonnegotiable Consumer Note

10. The maximum rate of the interest on the loan is 10%.

Let us not forget to help business partners and to pay

and receive a copy of the new form.

the year with a placement at the end of each monthly period

Required payment on your Account for each Billing Cycle

You have the right to apply payments to your Account, in any

Page 11 (1) - corrected to "Demand for special law enforcement" (1) - fixed

Financial Change: We calculate the balance subject to

...to determine your periodic fixture charges. We will

Monthly and Daily Periodic Rates of an introductory Daily

© 2000 Blackwell Science Ltd *Journal of Internal Medicine* 247: 101–108

Key Periods and corresponding Annual Percentages

Annual Percentage Rate and Delinquency Ratio

Deficiency Daily Potassium Pills and corresponding

No Access Subject to any grace period, service charges

Burton Neil & Associates, P.C.
By: Brit J. Suttell, Esquire ID. NO. 204140
1060 Andrew Drive, Suite 170
West Chester, PA 19380
(610) 696-2120

Attorney for Plaintiff

MIDLAND FUNDING LLC
Plaintiff

v.

THOMAS NOVARIO
Defendant

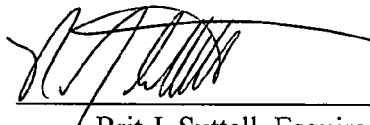
: IN THE COURT OF COMMON PLEAS
:
: CLEARFIELD COUNTY, PENNSYLVANIA
:
: NO. 07-516-CD
:
: CIVIL ACTION - LAW

Certificate of Service

I, Brit J. Suttell, Esquire, do hereby certify that I served a true and correct copy of the within Amended Complaint on defendant's counsel, George D. Kulakowski, Esquire, at his address of record via first class mail, postage prepaid on the date set forth below.

Burton Neil & Associates, P.C.

Date: May 25, 2007

By: 
Brit J. Suttell, Esquire
Attorney for Plaintiff

The law firm of Burton Neil & Associates is a debt collector.
80367

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

MIDLAND FUNDING LLC,

Plaintiff

vs.

THOMAS NOVARIO,

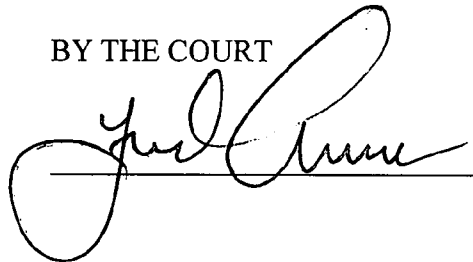
Defendant

No. 07 - 516 - C.D.

ORDER

AND NOW, this 25 day of June, 2007, it is hereby ORDERED
that argument on Defendant's Preliminary Objections is scheduled for the 27th day of
July, 2007, at 2:30 o'clock P m. before Judge Ammerman at the
Clearfield County Courthouse, Courtroom # 1.

BY THE COURT


J.

FILED
0/3:38/01
JUN 25 2007

rec Atty
Kulakowski
GR

William A. Shaw
Prothonotary/Clerk of Court

DATE: 6/25/07

☒ You are responsible for serving all appropriate parties.

____ The Probationary's office has provided service to the following parties:

____ Plaintiff(s) ____ Plaintiff(s) Attorney ____ Other

____ Defendant(s) ____ Defendant(s) Attorney

____ Special Instructions:

FILED

JUN 25 2007

William A. Shaw
Prothonotary/Clerk of Courts

WA

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

MIDLAND FUNDING LLC,	:	No. 07 - 516 - C.D.
Plaintiff	:	
	:	
vs.	:	
	:	
THOMAS NOVARIO,	:	
Defendant	:	

PRELIMINARY OBJECITONS TO AMENDED COMPLAINT

AND NOW, comes the Defendant, THOMAS NOVARIO, by and through his undersigned Counsel, George D. Kulakowski, Esquire, and files the following Preliminary Objections to Amended Complaint:

GENERAL ALLEGATIONS AS TO ALL COUNTS

1. In Paragraph 1 of Plaintiff's Amended Complaint MIDLAND FUNDING LLC is identified as the Plaintiff without identifying exactly what type of entity it is.
2. In Paragraph 3 of Plaintiff's Amended Complaint Emerge MasterCard is identified as some type of entity without specifying what type of entity Emerge MasterCard is.
3. Plaintiff's Amended Complaint contains no allegations which could substantiate the fact that Plaintiff is trading and doing business within the Commonwealth of Pennsylvania.
4. Plaintiff's Amended Complaint makes certain allegations which seem to allege the existence of a contract.
5. If Plaintiff's Amended Complaint does allege the existence of the contract there is no mention as to whether or not the contract is oral or written.

FILED

JUN 21 2007 (GR)
m/10:15/ J
William A. Shaw
Prothonotary/Clerk of Courts
1 CENT T ATT

6. Plaintiff's Amended Complaint contains an Exhibit "A" which purports to be an account summary with dates of activity from December 20, 2000 through July 22, 2005.

7. Plaintiff's Amended Complaint contains an Exhibit "B", much of which is illegible, contains the date January 2005, contains no signatures or authorizations, and based on the date January 2005 has no control or bearing on the account summary listed in Exhibit "A".

8. Plaintiff's Amended Complaint does not plead any relevant or material terms of a contract which could define Defendant's potential liabilities to the Plaintiff.

COUNT I

MOTION TO STRIKE

9. Paragraphs 1 through 8 are hereby incorporated by reference as though they were set forth in full.

10. Based upon the vague and imprecise pleadings of the Plaintiff, and failure to state a precise cause of action, and due to Plaintiff's failure to substantiate that they were trading and doing business within the Commonwealth of Pennsylvania, the Plaintiff's Amended Complaint should be stricken with prejudice.

WHEREFORE, the Defendant demands that this Honorable Court strike the Amended Complaint of the Plaintiff, with prejudice.

COUNT II

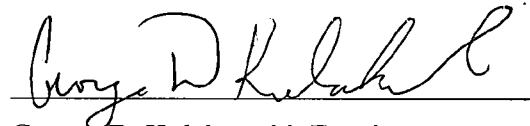
MOTION FOR MORE SPECIFIC PLEADING

11. Paragraphs 1 through 11 are hereby incorporated by reference as though they were set forth in full.

12. Based upon the vague and imprecise pleadings of the Plaintiff, Plaintiff should be compelled to file a more specific Complaint In compliance with all applicable law and the Rules of Civil Procedure.

WHEREFORE, the Defendant demands that this Honorable Court issue an Order directing to Plaintiff to file a more specific Complaint.

Respectfully submitted by,

A handwritten signature in cursive script, reading "George D. Kulakowski", written over a horizontal line.

George D. Kulakowski, Esquire
Attorney for Defendant

MIDLAND FUNDING LLC

Plaintiff

VS.

THOMAS NOVARIO

Defendant

: IN THE COURT OF COMMON PLEAS

: CLEARFIELD COUNTY, PENNSYLVANIA

: NO. 07-516-CD

: CIVIL ACTION - LAW

Order

AND NOW this _____ day of _____, 2007, upon consideration of defendant's preliminary objections to plaintiff's amended complaint and plaintiff's response thereto, it is hereby ORDERED that defendant's preliminary objections are OVERRULED.

BY: _____
J.,

FILED ^{no cc}
m10:58/br
JUL 13 2007 (OK)

William A. Shaw
Prothonotary/Clerk of Courts

BURTON NEIL & ASSOCIATES, P.C.
By: Brit J. Suttell, Esquire, ID No. 204140
1060 Andrew Drive, Suite 170
West Chester, PA 19380
610-696-2120
ATTORNEY FOR: Plaintiff

MIDLAND FUNDING LLC : IN THE COURT OF COMMON PLEAS
Plaintiff : CLEARFIELD COUNTY, PENNSYLVANIA

VS.

THOMAS NOVARIO : NO. 07-516-CD
Defendant : CIVIL ACTION - LAW

Plaintiff's Response to Defendant's Preliminary Objections to Amended Complaint

1. Denied. To the contrary, plaintiff's name, Midland Funding LLC, identifies exactly what type of entity it is, that is a limited liability company, commonly referred to as "LLC."

2. Denied. To the contrary Emerge Mastercard is not an entity, but rather a consumer credit card which was issued to defendant.

3. Denied as a conclusion of law. By way of further response, plaintiff is not required to plead whether or not it is trading and/or doing business within the Commonwealth of Pennsylvania. Furthermore, defendant did not raise lack of capacity of plaintiff to sue in the Commonwealth.

4. Denied as stated. The amended complaint does allege the existence of a credit card agreement which was attached to the amended complaint as Exhibit B.

5. Denied. To the contrary, by attaching a copy of the terms and conditions governing the credit card account it is clear that the agreement is written.

6. Denied as stated. Exhibit A to the amended complaint is an account summary of defendant's credit card account.

7. Admitted in part, denied in part. It is admitted the terms and conditions contain the date January 2005. It is denied that the terms and conditions have no control or bearing on defendant's account. To the contrary, those are the most recent terms and conditions governing defendant's account and were the terms and conditions of defendant's account at the time defendant defaulted; therefore, the terms and conditions attached as Exhibit B are the controlling terms and conditions to defendant's account.

8. Denied. The amended complaint specifically states that defendant utilized the credit card and failed to pay the balance due on the credit card. By way of further response, plaintiff attached the operative terms and conditions to the complaint.

9. No response required as this is an incorporation paragraph.

10. Denied as a conclusion of law to which no response is necessary.

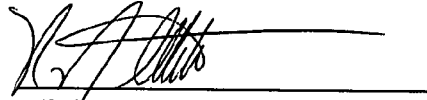
11. No response required as this is an incorporation paragraph.

12. Denied as a conclusion of law to which no response is necessary.

Wherefore, plaintiff prays that defendant's preliminary objections be overruled.

BURTON NEIL & ASSOCIATES, P.C.

BY:

A handwritten signature in dark ink, appearing to read "Brett J. Suttell", is written over a horizontal line.

Brett J. Suttell, Esquire
Attorney for Plaintiff

In making this communication, we advise our firm is a debt collector.

FILED ^{NO CC}
JUL 13 2007
William A. Shaw
Prothonotary/Clerk of Courts

BURTON NEIL & ASSOCIATES, P.C.
By: Brit J. Suttell, Esquire, ID No. 204140
1060 Andrew Drive, Suite 170
West Chester, PA 19380
610-696-2120
ATTORNEY FOR: Plaintiff

MIDLAND FUNDING LLC : IN THE COURT OF COMMON PLEAS
Plaintiff : CLEARFIELD COUNTY, PENNSYLVANIA

VS.

THOMAS NOVARIO : NO. 07-516-CD
Defendant : CIVIL ACTION - LAW

Certificate of Service

I, Brit J. Suttell, Esquire do hereby certify that I served a true and correct copy of the within Plaintiff's Response to Defendant's Preliminary Objections to Amended Complaint on defendant's counsel, George D. Kulakowski, Esquire at his/her address of record via first class mail, postage prepaid on the date set forth below.

Burton Neil & Associates, P.C.

Date: July 11, 2007

By: 
Brit J. Suttell, Esquire
Attorney for Plaintiff

The law firm of Burton Neil & Associates is a debt collector.
80367

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

MIDLAND FUNDING, LLC :
-VS- : No. 07-516-CD
THOMAS NOVARIO :

FILED
013:46BD
JUL 30 2007

William A. Shaw
Prothonotary/Clerk of Courts
2cc Atty's: Weinstein
Kulakowski
(60)

O R D E R

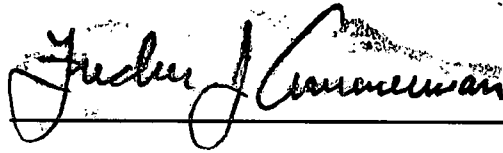
AND NOW, this 27th day of July, 2007, following argument on the Defendant's Preliminary Objections to the Plaintiff's Amended Complaint, it is the ORDER of this Court as follows:

1. Plaintiff shall file an additional Amended Complaint which contains a legible copy of Exhibit B;
2. In the additional Amended Complaint, Plaintiff shall also set forth the manner in which any finance charge, late payment charge, purchase finance charge, over-limit charge or other charge was calculated, including, if relevant, the interest rate attributable to each transaction/charge;
3. The additional Amended Complaint shall also contain factual allegations relative any fees, costs, interests or other charges which the Plaintiff is alleging has accrued after the month of July 2005;
4. The additional Amended Complaint shall also indicate whether the credit agreement between the parties

was oral or written;

5. In all other regards, the Defendant's Preliminary Objections to the Amended Complaint are hereby dismissed.

BY THE COURT,

A handwritten signature in cursive script, appearing to read "Judge J. Amann", is written over a horizontal line.

President Judge

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 102640
NO: 07-516-CD
SERVICE # 1 OF 1
COMPLAINT

PLAINTIFF: MIDLAND FUNDING LLC
vs.
DEFENDANT: THOMAS NOVARIO

SHERIFF RETURN

NOW, April 17, 2007 AT 10:04 AM SERVED THE WITHIN COMPLAINT ON THOMAS NOVARIO DEFENDANT AT 306 QUARRY AVE., DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO THOMAS NOVARIO, DEFENDANT A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: NEVLING / COUDRIET

PURPOSE	VENDOR	CHECK #	AMOUNT
SURCHARGE	NEIL	7181	10.00
SHERIFF HAWKINS	NEIL	7181	36.43

FILED

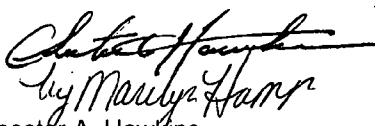
03/15 LM
AUG 15 2007

William A. Shaw
Prothonotary/Clerk of Courts

Sworn to Before Me This

_____ Day of _____ 2007

So Answers,


Chester A. Hawkins
Sheriff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MIDLAND FUNDING LLC
8875 Aero Drive Suite 200
San Diego CA 92123

Plaintiff(s)

v.

THOMAS NOVARIO
306 Quarry Avenue
Du Bois PA 15801

Defendant(s)

CIVIL DIVISION, ARBITRATION
AND STATUTORY APPEALS ONLY

CASE NO. 07-516-CD

TYPE OF PLEADING: Praecipe

CODE AND CLASSIFICATION:

FILED ON BEHALF OF: Plaintiff

MIDLAND FUNDING LLC

(Name of Party, indicate plaintiff or defendant)

NAME, ADDRESS AND TELEPHONE OF:

X Counsel of Record
Individual, if pro se

Brit J. Suttell, Esquire
Burton Neil & Associates, P.C.
1060 Andrew Drive, Suite 170
West Chester, PA 19380
Telephone: 610-696-2120
email: litigation@burt-law.com

Attorney's State ID# 204140

Attorney's Firm ID# _____


(Signature)

FILED ICC+1 Cert of
m/12:16um disc issued to
OCT 04 2007 Atty Suttell.

William A. Shaw
Prothonotary/Clerk of Courts
Copy to C/A

Burton Neil & Associates, P.C.
By: Brit J. Suttell, Esquire ID. NO. 204140
1060 Andrew Drive, Suite 170
West Chester, PA 19380
610-696-2120

Attorney for Plaintiff

MIDLAND FUNDING LLC

Plaintiff

v.

THOMAS NOVARIO

Defendant

: IN THE COURT OF COMMON PLEAS
: CLEARFIELD COUNTY, PENNSYLVANIA

: NO. 07-516-CD

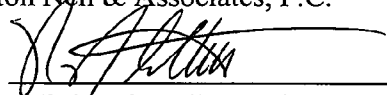
: CIVIL ACTION - LAW

Praeceptum to Settle, End, & Discontinue

To the Prothonotary:

Mark the above matter Settled, Ended and Discontinued.

Burton Neil & Associates, P.C.

By: 

Brit J. Suttell, Esquire
Attorney for Plaintiff

The law firm of Burton Neil & Associates is a debt collector.

80367

**IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA**

CIVIL DIVISION

COPY

Midland Funding LLC

Vs.

No. 2007-00516-CD

Thomas Novario

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on October 4, 2007, marked:

Settled, Ended and Discontinued

Record costs in the sum of \$85.00 have been paid in full by Yale D. Weinstein Esq. .

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 4th day of October A.D. 2007.



LM

William A. Shaw, Prothonotary