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

9 Bureau of Consumer Financial
10 Protection,

11 Plaintiff,

12 v.

13 Encore Capital Group, Inc.; Midland
Funding, LLC; Midland Credit
14 Management, Inc.; and Asset
Acceptance Capital Corp.,

15 Defendants.
16

Case No.: '20CV1750 GPC KSC

**COMPLAINT FOR PERMANENT
INJUNCTION AND OTHER RELIEF**

17 The Bureau of Consumer Financial Protection brings this action against Encore
18 Capital Group, Inc.; Midland Funding, LLC; Midland Credit Management, Inc.; and
19 Asset Acceptance Capital Corp., under the Consumer Financial Protection Act of 2010
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1 (CFPA), 12 U.S.C. §§ 5531, 5536(a), 5564, 5565; and the Fair Debt Collection Practices
2 Act (FDCPA), 15 U.S.C. §§ 1692-1692p.

3 **INTRODUCTION**

4 1. This is the second enforcement action that the Bureau has brought against
5 Defendants. In the first action, the Bureau found that Defendants had violated multiple
6 provisions of Federal consumer financial law, including the CFPA and the FDCPA. The
7 Bureau agreed to resolve those findings without litigation through a consent order that
8 required Defendants to abide by certain conduct provisions. Because Defendants have
9 violated that order and, once again, the CFPA and the FDCPA, the Bureau files this
10 Complaint.

11 **JURISDICTION AND VENUE**

12 2. This Court has subject-matter jurisdiction over this action because it is
13 brought under “Federal consumer financial law,” 12 U.S.C. § 5565(a)(1), presents a
14 federal question, 28 U.S.C. § 1331, and is brought by an agency of the United States, 28
15 U.S.C. § 1345.

16 3. Venue is proper because Defendants are located, reside, or do business in
17 this district. 12 U.S.C. § 5564(f).

18 **PARTIES**

19 4. The Bureau is an independent agency of the United States created by the
20 CFPA. 12 U.S.C. § 5491(a). The Bureau has independent litigating authority and may

1 initiate civil actions in federal district court to secure appropriate relief for violations of
2 “Federal consumer financial law,” 12 U.S.C. § 5564(a)-(b), including the CFPB and the
3 FDCPA, 12 U.S.C. § 12(H), (14); *see also* 15 U.S.C. § 1692l(b)(6).

4 5. Encore Capital Group, Inc. (Encore Capital) is a limited-liability company
5 incorporated in Delaware. Its principal place of business is in San Diego, California. At
6 all times relevant to this Complaint, Encore Capital has transacted business in this
7 district.

8 6. Midland Funding, LLC (Midland) is a wholly owned subsidiary of Encore
9 Capital with its principal place of business in San Diego, California. At all times relevant
10 to this Complaint, Midland has transacted business in this district.

11 7. Midland Credit Management, Inc. (MCM) is a wholly owned subsidiary of
12 Encore Capital with its principal place of business in San Diego, California. At all times
13 relevant to this Complaint, MCM has transacted business in this district.

14 8. Midland and MCM operate in concert with one another and under the direct
15 supervision and control of Encore Capital to purchase and collect consumer debt.

16 9. Asset Acceptance Capital Corp. (Asset) is a wholly owned subsidiary of
17 Encore Capital with its principal place of business in San Diego, California. Asset
18 operates under the direct supervision and control of Encore Capital to purchase and
19 collect consumer debt. At all times relevant to this Complaint, Asset has transacted
20 business in this district.

1 consumers about the affiants' personal knowledge and the courts' presumption of the
2 debts' validity; misrepresenting that Encore had legally enforceable claims to debts
3 outside of the applicable statutes of limitations; misrepresenting to consumers that they
4 had the burden of proof in litigation; making excessive and inconvenient phone calls; and
5 failing to adequately investigate consumer-reporting disputes.

6 15. The Bureau found that these practices violated the CFPA, the FDCPA, and
7 the Fair Credit Reporting Act.

8 16. The Order required Encore to pay at least \$34 million in restitution to
9 consumers and a \$10 million civil penalty to the Bureau.

10 17. The Order also imposed conduct provisions that were primarily designed to
11 protect consumers from efforts to collect inaccurate or unsubstantiated debts, particularly
12 through litigation or threats of litigation. But Encore has not complied with those conduct
13 provisions.

14 ***Encore sued consumers without possessing required documentation.***

15 18. Paragraph 131(a) of the Order prohibits Encore from suing a consumer
16 without possessing certain Original Account-Level Documentation (OALD), a term
17 defined in ¶ 12 of the Order.

18 19. After ¶ 131's effective date, Encore filed at least hundreds of lawsuits
19 without possessing OALD, as required by ¶ 131(a) of the Order.

20

1 ***Encore engaged in Legal Collections without providing required disclosures.***

2 20. Paragraph 131(b) of the Order restricts Encore's use of Legal Collections,
3 which the Order defines, in relevant part, as "any collection efforts made by any internal
4 legal department or third-party law firm to collect a [d]ebt owed or allegedly owed to
5 Encore."

6 21. Specifically, ¶ 131(b) prohibits Encore from engaging in Legal Collections
7 without first providing the consumer with a "statement that Encore, or Encore's agent,
8 will, within 30 days of a written request, provide the [c]onsumer with copies of [certain
9 OALD] at no cost."

10 22. In more than 750,000 instances after ¶ 131's effective date, Encore engaged
11 in Legal Collections after it had omitted material elements of this required disclosure.

12 23. Specifically, more than 750,000 disclosures omitted that the OALD would
13 be provided at no cost.

14 24. More than 25,000 of the disclosures also omitted that the OALD would be
15 provided within 30 days of a request.

16 25. Encore has collected more than \$300 million through Legal Collections on
17 these accounts without providing all material aspects of the disclosure required by
18 ¶ 131(b) of the Order.

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1 ***Encore failed to provide OALD within 30 days of consumers’ requests.***

2 26. Paragraph 131(b) of the Order states that “Encore has to provide [the above-
3 referenced OALD] upon request.”

4 27. In more than 250 instances since ¶ 131’s effective date, Encore told
5 consumers that it would respond to a request for OALD within 30 days of receiving a
6 request, but Encore did not provide the OALD within 30 days of a request. In some
7 instances, Encore filed lawsuits against consumers even though Encore had not provided
8 the requested OALD.

9 28. Encore created a list of these consumers, as well as the dates of their
10 requests and Encore’s actions in response, which it provided to the Bureau on April 22,
11 2019, with the title “Supplemental Appendix I.”

12 29. The failure to provide these consumers with the OALD that they had
13 requested impeded the consumers’ ability to determine whether their debts were truly
14 owed. It was likely to affect the consumers’ decision-making about whether and how to
15 respond to allegedly outstanding debts.

16 ***Encore sued consumers on Time-Barred debts.***

17 30. Paragraph 133(a) of the Order prohibits Encore from “collecting or
18 attempting to collect any Time-Barred Debt through litigation or arbitration.” The Order
19 defines “Time-Barred Debt” as debt “that is beyond an applicable statute of limitations
20 for a [d]ebt collection lawsuit.”

1 “The law limits how long you can be sued on a debt. Because of the age of your
2 debt, we will not sue you for it.”

3 37. After ¶ 133’s effective date, Encore sent more than 425,000 letters to collect
4 Time-Barred debts without including the disclosure required by ¶ 133(b) of the Order. At
5 least 845 of these consumers made about \$125,000 in payments to Encore before Encore
6 gave them the required disclosure.

7 ***Encore failed to disclose that consumers might incur international-transaction fees.***

8 38. Beginning in mid-2016, Encore began using a payment processor based in a
9 foreign country to process consumers’ debit-card and credit-card payments to Encore.

10 39. Because the payment processor is based in a foreign country, some
11 consumers’ banks charged international-transaction fees for these payments.

12 40. Although Encore knew that some consumers would incur these fees, for a
13 period of about six months, Encore did not disclose to consumers that such a fee was
14 possible.

15 41. Thousands of consumers incurred tens of thousands of dollars in these fees
16 before Encore began disclosing that consumers may incur these fees.

17 42. Consumers have no control over how Encore processes payments and had no
18 reason to believe that their payments to Encore—a domestic company—could result in
19 international-transaction fees.

20

1 c. failing to provide OALD within 30 days of a consumer request, as
2 required by ¶ 131(b) of the Order;

3 d. suing consumers on Time-Barred debts, in violation of ¶ 133(a) of the
4 Order; and

5 e. collecting or attempting to collect Time-Barred debts without
6 providing the disclosure required by ¶ 133(b) of the Order.

7 49. By violating the Order’s requirements, Encore committed acts or omissions
8 that violated “Federal consumer financial law.” Accordingly, Encore violated
9 § 1036(a)(1)(A) of the CFPA. 12 U.S.C. § 5536(a)(1)(A).

10 **COUNT II: DECEPTIVE ACTS AND PRACTICES**

11 50. The Bureau incorporates the allegations set forth in ¶¶ 1-44 of this
12 Complaint.

13 51. Section 1036(a)(1)(B) of the CFPA prohibits covered persons, such as
14 Encore, from engaging in deceptive acts or practices. 12 U.S.C. § 5536(a)(1)(B). An act
15 or practice is deceptive if it involves a material misrepresentation or omission that is
16 likely to mislead consumers acting reasonably under the circumstances. Information is
17 material to consumers if it is likely to affect a consumer’s conduct regarding the product
18 or service. Express representations are presumptively material.

19 52. Encore’s representations that it would provide OALD were deceptive.
20

1 a. As described in ¶¶ 26-29 of this Complaint, in more than 250
2 instances, Encore expressly represented to consumers that if consumers requested
3 certain OALD within 30 days, Encore would provide it.

4 b. These representations were what Encore intended to convey, and it
5 was reasonable under the circumstances for consumers to interpret the
6 representations literally.

7 c. These representations misled or were likely to mislead consumers
8 because they were untrue—Encore did not provide the OALD within 30 days of
9 the consumers’ requests.

10 d. These representations were presumptively material because they were
11 express. They were also material because they were likely to affect consumers’
12 behavior: Encore’s failure to provide OALD within the time that it said it would
13 was likely to or did impede consumers’ ability to assess Encore’s claims that the
14 debts were properly owed. This was likely to affect how consumers responded to
15 Encore’s collection attempts.

16 53. Encore’s lawsuits on Time-Barred debts were deceptive.

17 a. As described in ¶¶ 30-35 of this Complaint, Encore sued more than
18 100 consumers on Time-Barred debts.

19 b. These lawsuits represented implicitly or explicitly, directly or by
20 implication, that consumers had legally enforceable obligations to pay these debts.

1 c. These representations were material because they were likely to affect
2 consumers' choices about whether and how to respond to the allegedly outstanding
3 debts. A consumer, especially one with limited resources, is more likely to pay an
4 obligation that is legally enforceable than one that is not because the consequences
5 of failing to repay the former are more severe than for the latter.

6 d. These representations were likely to mislead consumers because they
7 were untrue; as these debts had passed the applicable statutes of limitations, the
8 consumers did not have legally enforceable obligations to pay these debts.

9 54. Encore therefore engaged in deceptive acts or practices that violated
10 §§ 1031(a) and 1036(a)(1)(B) of the CFPA. 12 U.S.C. §§ 5531(a); 5536(a)(1)(B).

11 **COUNT III: VIOLATIONS OF THE FDCPA**

12 55. The Bureau incorporates the allegations set forth in ¶¶ 1-44 of this
13 Complaint.

14 56. Section 807 of the FDCPA prohibits debt collectors, such as Encore, from
15 using any false, deceptive, or misleading representation or means in connection with the
16 collection of any debt. 15 U.S.C. § 1692e. Specifically, § 807(2)(A) prohibits false
17 representations of the legal status of a debt, § 807(5) prohibits threats to take action that
18 cannot legally be taken or that is not intended to be taken, and § 807(10) prohibits false
19 representations or deceptive means to collect or attempt to collect any debt. 15 U.S.C.
20 § 1692e(2)(A), (5), (10).

1 57. Encore’s representations that it would provide OALD were false or
2 misleading, in violation of § 807 and 807(10) of the FDCPA.

3 a. As described in ¶¶ 26-29 of this Complaint, in more than 250
4 instances, Encore expressly represented to consumers that if consumers requested
5 certain OALD within 30 days, Encore would provide it.

6 b. These express representations were made in letters or phone calls in
7 which Encore attempted to collect debt and were therefore “in connection with the
8 collection of any debt” within the meaning of the FDCPA. 15 U.S.C. § 1692e.

9 c. These representations were false or misleading because they were
10 untrue—Encore did not provide the OALD within 30 days of the consumers’
11 requests.

12 58. Encore’s lawsuits on Time-Barred debts were false or misleading under
13 § 807, 807(2)(A), 807(5), and 807(10) of the FDCPA.

14 a. As described in ¶¶ 30-35 of this Complaint, Encore sued more than
15 100 consumers on Time-Barred debts.

16 b. Because the lawsuits were intended to collect debt, they were “in
17 connection with the collection of any debt” within the meaning of the FDCPA. 15
18 U.S.C. § 1692e.

1 c. The reasonable interpretation of these lawsuits, implicitly or
2 explicitly, directly or by implication, was that consumers had legally enforceable
3 obligations to pay these debts.

4 d. These representations were false or misleading because they were
5 untrue; as these debts had passed the applicable statutes of limitations, the
6 consumers did not have legally enforceable obligations to pay these debts.

7 e. Whether a debt is legally enforceable concerns the character or legal
8 status of a debt.

9 59. Encore therefore used false, misleading, or deceptive representations or
10 means in connection with the collection of debts, in violation of § 807, 807(2)(A), 807(5),
11 and 807(10) of the FDCPA. 15 U.S.C. § 1692e, 1692e(2)(A), (5), (10).

12 **COUNT IV: VIOLATING THE CFPA BY VIOLATING THE FDCPA**

13 60. The Bureau incorporates the allegations set forth in ¶¶ 1-44 of this
14 Complaint.

15 61. Section 1036(a)(1)(A) of the CFPA makes it unlawful for covered persons,
16 such as Encore, to “commit any act or omission in violation of a Federal consumer
17 financial law.” 12 U.S.C. § 5536(a)(1)(A).

18 62. The FDCPA is a “Federal consumer financial law.” 12 U.S.C.
19 § 5481(12)(H), (14).

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Respectfully submitted,

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