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September 13, 2021

Submitted via email to: regulations@dfpi.ca.gov, copy to [REDACTED]@dfpi.ca.gov

Department of Financial Protection and Innovation, Legal Division
Attn: Sandra Sandoval, Legal Assistant
300 S. Spring Street, Suite 15513
Los Angeles, CA 90013

Re: Invitation for Comments on Proposed Rulemaking Under the California Consumer Financial Protection Law: Consumer Complaints (PRO 03-21)

Dear Mr. Bae:

On behalf of Encore Capital Group, Inc. and its subsidiaries, including Midland Credit Management, Inc. (“MCM”) (collectively, “Encore” or the “Company”), we appreciate the opportunity to submit comments to the California Department of Financial Protection and Innovation (“DFPI”) on the above-referenced Invitation for Comments on Proposed Rulemaking Under the California Consumer Financial Protection Law (“CCFPL”) regarding consumer complaints and inquiries. We support the DFPI’s important efforts to ensure robust standards for our industry and safeguard consumer protections. In the rulemaking, we have three primary concerns on proposed language that we strongly urge the DFPI to consider changing.

Disclosure Language in Every Written Communication, in Addition to Being Posted on the Debt Collector’s Website, Would Create Redundancy and Confusion for Consumers

Under proposed Rule 90008.3(a)(2), all written communications must disclose procedures for filing complaints, and inform consumers in 12-point boldface font that they may submit complaints not resolved satisfactorily to the DFPI. While we understand the good intent behind this proposal, to inform consumers of their rights and responsibilities, we believe the proposed rule would require too many duplicative and potentially confusing disclosures to consumers.

As an initial matter, debt collectors must send consumers a validation notice under the Federal Fair Debt Collection Practices Act.¹ The validation notice must be sent to consumers within five days of the initial communication, and often times the validation

¹ 15 U.S.C. § 1692g.



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notice constitutes the debt collector's first communication with a consumer. Under federal law, and recent rules by the Consumer Financial Protection Bureau (CFPB) that will take effect on November 30, 2021, debt collectors must disclose a host of information in the validation notice that may be overshadowed by the DFPI's proposed language.

Under the CFPB's rule,² the validation notice must include the following validation information, in a clear and conspicuous format:

- Debt collector communication disclosure: A statement that indicates the communication is from a debt collector.
- The debt collector's name and mailing address, the name and mailing address of the consumer who owes the debt, the name of the creditor to whom the debt is currently owed, and the name of the creditor as of the itemization date.
- The account number (full or truncated) associated with the debt.
- An itemization of the current amount of the debt reflecting interest, fees, payments, and credits since the itemization date.
- Current amount of the debt: The amount of the debt as of when the validation information is provided.
- Information about consumer protections: Statements about the consumer's right to dispute the debt and request original-creditor information, and rights that apply if the consumer completes those actions. The statements must include the date the validation period (*i.e.*, the 30-day period during which the consumer's submission of disputes and requests for original-creditor information about the debt obligates the debt collector to respond before resuming collection of the debt) will end. Additionally, a statement directing the consumer to a page on the CFPB's website with more information regarding consumer protections in debt collection.
- Consumer-response information: Prepared statements and prompts that the consumer may use to take certain actions, such as disputing the debt.

Debt collectors may also include in the validation notice optional content, including a reference code the debt collector uses to identify the consumer or the particular debt, certain payment disclosures, certain electronic communication information, such the debt collector's website or email address, certain Spanish-language disclosures regarding how a consumer may request a Spanish-language validation notice, and disclosures specifically required under (or that provide safe harbor under) other applicable law.

In addition to the validation notice, debt collectors typically send consumers multiple letters – often times dozens of letters – throughout the life cycle of an account. This can include letters presenting payment options, privacy disclosures required under the

² 86 FR 5766 (Jan. 19, 2021).



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Gramm-Leach-Bliley Act³ and California Consumer Protection Act,⁴ payment receipts, payment reminders, payment confirmation letters, and pre-legal collection notices. There are also multiple disclosures debt collectors must provide to consumers under California's Fair Debt Buying Practices Act (FDBPA)⁵, including a separate prominent notice in the validation notice that consumers may request records on a host of account-related information, including a copy of the contract or other document evidencing the consumer's agreement to the debt as well as the names of all persons or entities that have purchased the debt.

To require the DFPI's disclosure in potentially many dozens of written communications on a single account is needlessly redundant and will overshadow the other important information we want our consumers to understand about their account status, options, and rights and responsibilities under federal law in addition to California law.

As an example, it would be odd to include in a letter to consumers confirming receipt of a payment or the establishment of a payment plan information about how they could submit a complaint. There is no such repetitive requirement under any other state or federal law, and such repeated verbiage on complaining may discourage consumers to make payments that will help them resolve their outstanding debt obligations, improve their credit, avoid litigation, and regain their financial footing.

We support posting the proposed disclosure on our company's website, but we would ask that the DFPI's proposed disclosures are required in only one written communication.

The Proposed Receipt Requirement Would Create an Extreme Burden for Our Industry, Without Providing Benefit to Consumers in Resolving Their Complaints

In Rule 90008.3(b), the DFPI has proposed a requirement that debt collectors provide a receipt of complaints in very short time periods. For emails complaints, receipts are to be sent within three calendar days; for postal mail complaints, receipts are to be sent within five calendar days. For complaints submitted by phone, a reasonable oral confirmation of receipt would be required.

We have significant concerns about our ability to provide a receipt within the three- or five-day windows proposed. For complaints received via postal mail, if we were to receive a complaint on a Friday, given the two-day weekend (or sometimes three-

³ 15 U.S.C. § 6801 *et seq.*

⁴ Cal. Civ. Code § 1798.100 *et seq.*

⁵ Cal. Civ. Code § 1788.50 *et seq.*



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day weekend, such as when our offices are closed for national holidays such as Memorial Day or Labor Day), providing a timely receipt will be extremely onerous. For longer holidays – such as when our offices may be closed for multiple weekdays such as during Thanksgiving and Christmas holidays – it would be impossible to comply with the time frames proposed.

The DPFI has also proposed that we respond to complaints quickly – within 15 calendar days of receipt, under Rule 90008.3(e). We are generally comfortable providing a final complaint response within 15 calendar days, but believe that the receipt requirement, in addition to the short 15-day response requirement, is unnecessary and going to be extremely burdensome, and in some cases impossible, to comply with.

We are unaware of any other regulators, either on the state or federal level, who have a requirement of systematically sending a receipt in addition to substantively responding to a complaint. We ask that the DFPI eliminate its proposal to require a receipt in addition to a substantive response, as a response within 15 calendar days is speedy and would provide consumers with the response necessary in a timely fashion. A three- or five-day receipt requirement is an additional burden that will provide little or no benefit to consumers in resolving their complaints, but will create significant burden for our industry.

The Proposed Three-Day Timeframe to Respond to Inquiries is Unreasonably Restrictive and in Conflict With Current Law

Under California's FDBPA, a debt buyer may respond to a consumer's written request for information regarding the debt or proof of the debt (*i.e.*, the consumer's inquiry) within 15 calendar days of receipt of the debtor's written request.⁶ As the FDBPA contemplated that in some cases a debt buyer would be unable to respond to complaints or inquiries within 15 days, if the time frame cannot be met, collections must stop until a response is provided.⁷ This provides a reasonable standard for our industry, and provides consumers an assurance that a response will be provided in a short time frame, or else collections will be ceased until a response is provided.

While we work hard to comply with the FDBPA, the DFPI's proposed Rule 90008.4(b) to mandate that debt collectors respond to all issues in an inquiry within three calendar days of receiving the inquiry is unduly burdensome and, frankly, unreasonable. Should we, for example, receive a consumer's inquiry on a Friday, we would have just

⁶ Cal. Civ. Code § 1788.52(c).

⁷ The FDBPA provides, "If the debt buyer cannot provide the information or documents within 15 calendar days, the debt buyer shall cease all collection of the debt until the debt buyer provides the debtor the information or documents described in subdivisions (a) and (b)." *Id.*



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one day to respond given that our offices are closed on the weekends. Should there be a long weekend (*e.g.*, Memorial Day or Labor Day closure on a Monday), we would fail to be in compliance with the three-calendar day requirement. Holidays in which our offices are closed for longer periods – such as Thanksgiving and Christmas – would also result in noncompliance and potential legal exposure as a result.

We urge the DFPI to avoid creating more restrictive time frames to respond to inquiries than is already in the FDBPA. 15 calendar days is a reasonable time frame that our industry is able to comply with. With 15 days, companies have the ability to do a thorough investigation and provide a full and timely response to consumers. Three days will result in rushed investigations and will create an impossible standard to consistently meet.

* * *

Thank you for your efforts to solicit feedback on these important issues under the CCFPL. Should you have any questions about our comments, please don't hesitate to contact us at tamar.yudenfrend@mcmcg.com.

Respectfully submitted,

/s/ Sheryl A. Wright

/s/ Tamar Yudenfrend

Sheryl A. Wright, Senior Vice President, Corporate & Government Affairs
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