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July 4, 2022

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

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

Re: Proposed Rulemaking Under the California Consumer Financial Protection Law: Consumer Complaints and Inquiries (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 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 ensure that consumers making complaints receive thorough and timely responses. However, in this rulemaking, we have several significant concerns. Chief among our concerns are the extremely short time frames being proposed – largely based on calendar days rather than business days – for providing a tracking number on the spot (for complaints submitted via phone) and for providing a written acknowledgment. As described further below, the time frames proposed would create extreme undue burdens for covered persons, without providing substantial benefits to complainants.

The Proposed Creation of a Tracking Number On the Spot for Complaints Submitted by Phone is Unreasonable and Would Provide Little Benefit to Complainants

The DFPI’s proposal would require that, should a complainant submit a complaint via the phone, the covered person’s representative would create and provide a tracking number for the complaint on the spot. That immediate response would be extremely burdensome to covered persons and provide little, if any, benefit to the complainant. We would ask for at least several business days to process a complaint and create a tracking number.



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At Encore, our team dedicated to intaking, investigating and responding to consumer complaints is careful, thorough and responsive. Complaints are inputted into a Sharepoint site, which then generates a unique tracking number. However, to require the creation of a tracking number on the spot when a complainant calls in would result in an extremely burdensome change to how we intake complaints and set up a complaint file. Such a shift would also likely necessitate the complainant holding on the phone line for some amount of time while the account representative works on creating a tracking number. Whether the complainant receives a tracking number on the spot or in two business days will make no difference to the overall timeliness, thoroughness or outcome of the complaint investigation and final response.

Time Frames to Provide Acknowledgements Should Be Based on Business Days, Not Calendar Days

We will work diligently to comply with the DFPI's new regulations, but the proposal to mandate that covered persons respond to complaints submitted via email or internet within one calendar day, and complaints via postal mail and telephone in seven calendar days, is unduly burdensome, provides little added benefit to complainants, and is unreasonable. Our hard-working employees work Monday through Friday, and should we receive a complaint on a Saturday, we would have to hire significant additional staff and/or pay significant amounts of overtime to current employees to ensure a response by Sunday. 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 one-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 switch to a business day standard, rather than a calendar day standard. It is too burdensome on covered persons with little, if any, added benefit to consumers.

More broadly, we believe that extremely short response times take away covered persons' resources from conducting a robust investigation with remediation, as appropriate. Rather than spending significant resources to provide an acknowledgement in an extremely short timeframe, covered persons should be given more leeway to devote the bulk of their resources on investigating the complaint, addressing any issues found, and providing a final, timely response to the complainant. We therefore urge the DFPI to modify the extremely burdensome acknowledgment timeframes being proposed.



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Having a Live Representative Respond Within 24 Hours – Including Weekends and Holidays – is Unreasonable and Would More Likely Serve to Bother Than Help Complainants

Under proposed Section 1072(a)(5), a covered person must have a live representative taking complaints during regular business hours, and if a live representative is unavailable, a complainant must be able to leave a voicemail and receive a call back within 24 hours. However, if the voicemail is received on a Friday, weekend, or holiday, it would be unduly burdensome to require a call from a live representative to be made on a weekend or holiday. It is unlikely that complainants would want to be bothered with a phone call on a weekend or holiday, and such a requirement would be extremely burdensome for covered persons to comply with. As stated above, we urge the DFPI to switch to a business day standard. Rather than 24 hours, the response should be within two business days.

There Should Be an Option to Submit Complaints Via a Web Portal, Rather than Via an Email Address

Under Proposed Section 1072(a)(4), the main page of the covered person's website shall prominently display instructions on how complainants may submit their oral and written complaints, including the e-mail address, telephone number, mailing address, and website for filing a complaint. With regard to accepting complaints via an e-mail address, we are concerned that the e-mail inbox would be flooded with not just complaints, but a host of disputes, comments and inquiries, and would be very difficult to manage. As an alternative to, an email inbox, we strongly prefer that complainants submit their complaints via a web portal. On our website today, we provide our consumers with a web portal option to submit disputes to our Chief Compliance Officer (located at <https://www.midlandcredit.com/help-center/disputes/>), and we would suggest a similar approach here. In addition to providing a fillable version of the complaint form on our website, we could provide a PDF of the complaint form if a complainant prefers to print, fill out and mail the form to us.

The Proposed Four-Year Time Limit to File a Complaint Is Excessively Long

We request that the new regulation aligns itself to federal law for our industry, which allows for a one-year time period to file a complaint. Under the Federal Fair Debt Collection Practices Act (FDCPA), an action "may be brought in any appropriate United States District Court . . . within one year from the date on which the violation occurs." 15 U.S.C. § 1692k(d). In addition, in 2019 the U.S. Supreme Court clarified that FDCPA's one-year statute of limitation generally runs from when the violation occurs,



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not when the consumer discovers the violation. *Rotkiske v Klemm*, 139 S. Ct. 1614 (2019).

It is unclear why an extremely long four-year time frame would be necessary to bring a claim. We ask that the DFPI align more closely with the federal standard.

The Definition of “Complainant” Should Be Clarified to Exclude Consumers in Other States

Many covered persons, including Encore, operate in other states, and may receive complaints from consumers in other states. While under the DFPI’s proposed definitions, a “covered person” is defined in part as “[a]ny person that engages in offering or providing a consumer financial product or serve to a resident of this state,” the definition of “complainant” does not expressly state that the complainant must be from California. To avoid a potential misconstruction of these regulations to apply to complaints not just from California consumers, but also from out-of-state consumers, we ask for clarification of the definition of complainant to reflect that a complainant must be a resident of California, either currently or during the operative time period of the complaint.

The Definition of “Written Communications” Should Be Clarified to Exclude Litigation-Related Documents

The proposed regulations include a host of requirements for written communications. For example, under Section 1072(a)(3), all written communications, except for several listed exceptions (iMessage, SMS and MMS), would need to be in at least 12-point font disclosing procedures for filing oral and written complaints. We support clear and transparent communications with consumers about the complaint process and consumers’ rights and responsibilities, and we assume that the proposed requirements do not apply to lawsuit-related correspondence for the small percentage of consumers covered persons may file suit against to for breach of contract or other causes of action. To address this, we ask that “written communications” be defined, to clarify that the term does *not* include court pleadings, motions, or other lawsuit-related documents.

The Definition of “Inquiry” Should Be Amended to Better Distinguish it From a “Complaint”

It is important that “inquiry” and “complaint” are distinctly defined, as they are very different consumer inputs and require different responses. The DFPI’s proposed definition of “inquiry” is “a question or request for information, interpretation, or clarification...*regarding a specific issue or problem* with a financial product or service.”



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The bolded language creates an assumption that there is an issue or problem connected to the inquiry, which makes it seem more like a complaint than an inquiry. We ask that the bolded language is removed to provide greater clarity on the difference between an inquiry (*i.e.*, a question or request for information, interpretation, or clarification, when there may be no issue or problem with the product or service) and a complaint (*i.e.*, an expression of dissatisfaction).

In addition, we ask for clarification that an inquiry does not include a request for validation, which under the Fair Debt Collection Practices Act consumers may request from debt collectors. 15 U.S. Code § 1692g. Federal law governs debt collectors' responses to consumers' requests for validation, and provides the specific information that must be provided in response.

We also seek clarification that the hundreds of consumer form letters we receive each week do not get captured under the term "inquiry." Such form letters include not just requests for validation, but also requests to cease communications, notice of attorney representation, and statements that the consumer does not accept responsibility for the debt. We have streamlined ways to respond to such letters, and ask for clarification by the DFPI that such letters do not get captured under "inquiry."

The DFPI's Public Reporting of Complaints and Inquiries Should Include Additional Information Consistent with the CFPB's Complaint Portal

The DFPI's proposal includes public reporting of all complaints and inquiries. Consistent with the CFPB's complaint portal, located at <https://www.consumerfinance.gov/data-research/consumer-complaints/>, information about whether a company responded and responded on time should be included. It is also critical to ensure that complaints and inquiries are listed separately and differentiated, as looking at the total number of complaints and inquiries would be highly misleading. Overall, it is important that publicly-available complaint and inquiry data is differentiated to reflect which are complaints, which are inquiries, whether a company responded, and whether the response was timely.

* * *

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 me at [REDACTED]



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Respectfully submitted,

/s/ Tamar Yudenfreund

Tamar Yudenfreund, Senior Director, Public Policy