



January 20, 2023

Submitted via email to: [regulations@dfpi.ca.gov](mailto:regulations@dfpi.ca.gov), copy to [David.Bae@dfpi.ca.gov](mailto:David.Bae@dfpi.ca.gov)

Department of Financial Protection and Innovation, Legal Division  
Attn: Sandra Sandoval, Legal Assistant  
2101 Arena Blvd.  
Sacramento, CA 95834

**Re: Invitation for Comments on 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 Invitation for Comments on the California Consumer Financial Protection Law relating to consumer complaints and inquiries. We support the DFPI’s important efforts to ensure robust standards for our industry and create strong consumer protections, and we appreciate the proposed modifications the DFPI has issued in recognition of the concerns and suggestions made by commenters to date. We have several remaining concerns we would like to address and respectfully ask the DFPI to consider.

**The Proposed 15 Business Days to Respond in Writing to Written Complaints Is Still Extremely Short, and Should be Extended to the 30-Day Period Allowed Under Federal Law**

We appreciate that the DFPI modified its initial proposal from calendar days to business days for response times. However, a 15-business day time frame to respond to written complaints is still an extremely tight turnaround period for companies to thoroughly intake, investigate, and respond to complaints. Depending on the specifics of the complaint, companies like ours may need to speak with current servicers or prior creditors to obtain relevant information about the account or the circumstances surrounding the complaint. It then takes time for those third parties to conduct their own appropriate research and respond to us, and then additional time to follow up with any additional questions, consolidate the information and formulate a response back to the consumer that is complete and thorough as they should be entitled to receive. It’s because of this robust process that under federal law, companies have 30 days from



receipt to respond in writing to consumer submissions of disputed accuracy.<sup>1</sup> We appreciate the DFPI's proposal to allow for up to an additional 30 days to investigate if requested, but respectfully request that rather than requiring the development of a new process to facilitate that request, the DFPI continue to allow organizations the standard 30 days to investigate and respond maintaining consistency with both federal law and other individual states as well.

### **The 5-Day Written Acknowledgement Proposal Should Be Eliminated, As It Creates a High Burden for Companies With Little Value to Consumers**

The modified proposal would require companies to respond to consumer complaints twice within the aforementioned 15 business day timeline. First, companies would need to respond within 5 business days of receiving a complaint with a written acknowledgment, to let the consumer know their complaint was received and is being investigated, and that a response will be forthcoming. Next, companies would be required to respond a second time within 15 business days of receiving the complaint, with a final response. If more time is needed, the company would let the consumer know and would have up to an additional 30 days to provide the consumer with a final written response (in the form of a third letter).

We believe that requiring an initial acknowledgment letter in addition to a thorough response would provide little benefit to consumers and create an unnecessary burden for companies. In a worst case scenario, this multiple mailing requirement could also create a potentially confusing situation for consumers. As an example, if a company did not need to seek additional information from a third party in order to thoroughly respond to a consumer complaint, the company's time to respond in full may be much faster than 30 days. In such a situation it is possible that an acknowledgment letter could be sent by the company on day 5 and the company could complete its investigation in full on day 6. Due to normal fluctuations in postal service timelines in a situation like this one, a consumer could receive the final response letter prior to or concurrently with the acknowledgement letter – resulting in confusion from the multiple mailings.

In addition, in our experience when consumers receive written correspondence from us, it can prompt some consumers to call a company to obtain a status update on the investigation. Invariably, the response by phone to a consumer would be that an investigation is still underway and will be provided in writing. This would likely only increase consumers' frustration at not being able to obtain an immediate answer on the status of an investigation.

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<sup>1</sup> 15 U.S.C. Section 1681i.



We are unaware of any other state or federal requirement that companies should send an acknowledgment letter in addition to a formal response. Nationwide, under the Fair Credit Reporting Act,<sup>2</sup> companies are given 30 days to respond to consumers with the expectation that it's in the consumer's best interest for a company to have sufficient time to research the situation and respond appropriately. Because 30 days is still a relatively short time frame, it has never been required for consumers to also receive an additional mailing within that window. It may be of more value to consumers if companies agree to inform consumers that they will provide a response within a specified time period, so that consumers understand how much time an investigation and response to their complaints may take.

With the above concerns and suggestions in mind, we urge the DFPI to reconsider its proposal to require that companies send an additional acknowledgment letter in response to complaints received. Rather than facilitating a process to accommodate multiple communications, we believe doing a robust investigation and providing a final response are ultimately most critical for the consumer

**The Proposed Public Reporting of Complaint Data, Including Specific Information Such as Refund Amounts, Would Result in the Public Having Access to Out-of-Context Information**

In our prior comments, we had expressed our significant concerns regarding the DFPI's proposal to publicly report all complaints and inquiries. We still believe that public reporting can be misleading to consumers as it is only possible to publish partial information about each unique situation. Such public reporting wouldn't include specific details unique to a particular consumer's situation, or our response to their personal complaint, due to consumer privacy concerns. As such, anyone reviewing the limited public data available may interpret erroneously that what happened on one consumer's accounts is also applicable to their situation, creating later frustration. Publishing refunded dollars presents an important example of this potential confusion. A consumer may mail a duplicate payment that we later return showing as a refund but which has no impact on a different consumer's account or situation.

While we strongly prefer that complaint and inquiry data is not publicly reported, if the DFPI does decide to move forward with a public database, we would ask for certain considerations to provide appropriate context and perspective to the public. Consistent with the CFPB's complaint portal, located at <https://www.consumerfinance.gov/data-research/consumer-complaints/>, information about whether a company responded and

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<sup>2</sup> *Id.*



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. As a result, the information posted would fail to provide a complete picture of our investigation and response. This would in turn create a skewed perspective of consumer complaints and disputes, and would serve to fuel consumer attorney lawsuits based on incomplete information about companies' practices.

### **Form Letters Should Be Excluded from the Definition of Inquiries Requiring a Response in 10 Business Days**

In 2022 the California legislature enacted a law aimed at better regulating credit repair organizations (CROs) who charge consumers often substantial fees to represent them, and then leverage a strategy of inundating companies like ours with frivolous and duplicative form letters that are not unique to any particular consumer or specific inquiry.<sup>3</sup> These form letters fill our mailbox in large quantities and have to be sifted through in order to find the legitimate consumer complaints that we want to carefully read and address. Due to the unnecessary delays in processing time created by the influx of these form letters to companies like ours, and because of other consumer protection concerns related to CROs, the new law in California attempts to discourage CROs from continuing this activity.

With the above in context, we would ask that form letters are excluded from inquiries requiring a response within 10 business days. Should the DFPI proceed to adopt a 10-business day response requirement for inquiries, rather than stick with existing law's 30-day time period, we would ask that any new requirement be limited to inquiries submitted that are *not* simply form inquiry letters.

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Thank you for your efforts to solicit feedback on these important issues. We appreciate the modifications the DFPI has made to date, and urge you to consider the items outlined above as well. Should you have any questions about our comments, please don't hesitate to contact me at [REDACTED].

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<sup>3</sup> Assembly Bill 2424, sponsored by Assemblymember Blanca Rubio and enacted on September 30, 2022. Located at: [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220AB2424](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB2424).



Respectfully submitted,

/s/ Tamar Yudenfreund

Tamar Yudenfreund  
Senior Director, Public Policy