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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BUREAU OF CONSUMER FINANCIAL
PROTECTION,

Plaintiff,

v.

ENCORE CAPITAL GROUP, INC.;
MIDLAND FUNDING, LLC; MIDLAND
CREDIT MANAGEMENT, INC.; and
ASSET ACCEPTANCE CAPITAL
CORP.,

Defendants.

Case No.: 20-cv-1750-GPC-KSC

**FINAL JUDGMENT AND ORDER
APPROVING JOINT MOTION FOR
ENTRY OF STIPULATION**

[ECF No. 5]

Plaintiff, the Bureau of Consumer Financial Protection (Bureau) commenced this civil action on September 8, 2020, to obtain injunctive and monetary relief and civil penalties from Encore Capital Group, Inc. (Encore Capital); Midland Funding, LLC (Midland); Midland Credit Management, Inc. (MCM); and Asset Acceptance Capital Corp. (Asset). The complaint alleges violations of the Consumer Financial Protection Act of 2010 (CFPA); 12 U.S.C. §§ 5531, 5536(a), 5564, 5565; and the Fair Debt Collection

1 Practices Act (FDCPA); 15 U.S.C. §§ 1692 to 1692p; in connection with Defendants’
2 debt-collection acts and practices.

3 The Bureau and Defendants agree to entry of this Final Judgment and Order
4 (Order), without adjudication of any issue of fact or law, to settle and resolve all matters
5 in dispute arising from the conduct alleged in the Complaint.

6 Therefore, **IT IS ORDERED:**

7 **FINDINGS**

8 1. This Court has jurisdiction over the parties and the subject matter of this
9 action.

10 2. Defendants neither admit nor deny the allegations in the Complaint, except
11 as specified in this Order. For purposes of this Order, Defendants admit the facts
12 necessary to establish the Court’s jurisdiction over them and the subject matter of this
13 action.

14 3. Defendants waive all rights to seek judicial review or otherwise challenge or
15 contest the validity of this Order and any claim they may have under the Equal Access to
16 Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action to the date of this
17 Order. Each Party agrees to bear its own costs and expenses, including, without
18 limitation, attorneys’ fees.

19 4. Entry of this Order is in the public interest.

20 **DEFINITIONS**

21 5. The following definitions apply to this Order:

22 a. **“2015 Order”** means the administrative order issued to Encore
23 Capital, Midland, MCM, and Asset, entitled *Encore Capital Group,*
24 *Inc.*, 2015-CFPB-0022 (Sept. 9, 2015).

25 b. **“Affected Consumers”** means the 14 consumers identified in
26 Supplemental Appendix I provided to the Bureau on April 22, 2019

1 for which Encore made collection after an applicable “OALD
2 Request.”

3 c. “**Board**” means Defendants’ duly-elected and acting Board of
4 Directors.

5 d. “**Charge-off**” means the treatment of a receivable balance by a
6 Creditor as a loss or expense because payment is unlikely.

7 e. “**Charge-off Balance**” means the amount alleged due on an account
8 receivable at the time of Charge-off.

9 f. “**Clearly and prominently**” means:

- 10 i. as to written information, written in a type size and location
11 sufficient for an ordinary Consumer to read and comprehend it,
12 and disclosed in a manner that would be easily recognizable and
13 understandable in language and syntax to an ordinary
14 Consumer. If the information is contained in a multi-page print
15 document, the disclosure appears on the first page and
16 ii. as to information presented orally, spoken and disclosed in a
17 volume, cadence, and syntax sufficient for an ordinary
18 Consumer to hear and comprehend.

19 g. “**Consumer**” means any natural person obligated or allegedly
20 obligated to pay any Debt.

21 h. “**Creditor**” means any person who offers or extends credit creating a
22 Debt or to whom a Debt is owed, but such term does not include any
23 person to the extent that that person receives an assignment or transfer
24 of a debt in default solely for the purpose of facilitating collection of
25 such Debt for another.

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- 1 i. **“Debt”** means any obligation or alleged obligation of a Consumer to
2 pay money arising out of a transaction in which the money, property,
3 insurance, or services that are the subject of the transaction are
4 primarily for personal, family, or household purposes, whether or not
5 such obligation has been reduced to judgment.
- 6 j. **“Defendants”** means Encore Capital Group, Inc.; Midland Funding,
7 LLC; Midland Credit Management, Inc.; and Asset Acceptance
8 Capital Corp., individually, collectively or in any combination, and
9 any of their successors and assigns.
- 10 k. **“Effective Date”** means the date on which this Order is entered by the
11 Court.
- 12 l. **“Enforcement Director”** means the Assistant Director of the Office
13 of Enforcement for the Bureau of Consumer Financial Protection, or
14 his or her delegee.
- 15 m. **“Legal Collection”** means any collection efforts made by any internal
16 legal department or a third-party law firm to collect a Debt owed or
17 allegedly owed to Defendants, including but not limited to sending
18 letters on law firm letterhead and filing Debt-collection lawsuits, but
19 does not include any post-judgment collection efforts.
- 20 n. **“Original Account-Level Documentation”** or **“OALD”** means:
21 i. any documentation that a Creditor or that Creditor's agent (such
22 as a servicer) provided to a Consumer about a Debt;
23 ii. a complete transactional history of a Debt, created by a Creditor
24 or that Creditor's agent (such as a servicer); or
25 iii. a copy of a judgment, awarded to a Creditor or entered on or
26 before the Effective Date.

- 1 o. **“Related Consumer Action”** means a private action by or on behalf
2 of one or more Consumers or an enforcement action by another
3 governmental agency brought against Defendants based on
4 substantially the same facts as described in the Complaint.
- 5 p. **“Time-Barred Debt”** is a debt that is beyond an applicable statute of
6 limitations for a Debt-collection lawsuit.

7 **CONDUCT RELIEF**

8 **I.**

9 **IT IS ORDERED** that:

10 6. Defendants and their officers, agents, servants, employees, and attorneys,
11 and all other persons in active concert or participation with them who have actual notice
12 of this Order, whether acting directly or indirectly, may not violate §§ 1031 and 1036 of
13 the CFPA, 12 U.S.C. §§ 5531 and 5536, or § 807, 807(2)(A), 807(5), and 807(1) of the
14 FDCPA, 15 U.S.C. § 1692e, 1692e(2)(A), (5), (10).

15 **Prohibition on Failing to Disclose Known Possible Fees**

16 7. For 5 years after the Effective Date, Defendants and their officers, agents,
17 servants, employees, and attorneys, and all other persons in active concert or participation
18 with them who have actual notice of this Order, whether acting directly or indirectly, may
19 not violate § 1036(a)(1)(B) of the CFPA, 12 U.S.C. §§ 5536(a)(1)(B), by knowingly or
20 recklessly using a payment processor that processes Consumers’ payments in another
21 country without disclosing to Consumers the potential that Consumers may be subject to
22 fees as a result and that Consumers can avoid those fees by using alternative payment
23 methods.

24 **Extension of Certain of the 2015 Order’s Conduct Provisions**

25 8. For 5 years after the Effective Date, Defendants and their officers, agents,
26 servants, employees, and attorneys, and all other persons in active concert or participation
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1 with them, who have actual notice of this Order, whether acting directly or indirectly, are
2 hereby restrained and enjoined from:

3 a. initiating a Legal Collection lawsuit unless in possession of the
4 following:

5 i. Original Account-Level Documentation reflecting, at a
6 minimum: the Consumer's name; the last four digits of the
7 account number associated with the Debt at the time of Charge-
8 off; and the claimed amount, prior to any post Charge-off
9 payments (unless the claimed amount is higher than the Charge-
10 off Balance, in which case Defendants must possess (i) Original
11 Account-Level Documentation reflecting the Charge-off
12 Balance and (ii) an explanation of how the claimed amount was
13 calculated and why such increase is authorized by the
14 agreement creating the Debt or permitted by law);

15 ii. if Defendants are suing under a breach of contract theory, the
16 contractual terms and conditions applicable to the Debt;

17 iii. a chronological listing of the names of all prior owners of the
18 Debt and the date of each transfer of ownership of the Debt,
19 beginning with the name of the Creditor at the time of Charge-
20 off; and

21 iv. any one of the following:

- 22 1. a document signed by the Consumer evidencing the
23 opening of the account forming the basis for the Debt; or
24 2. OALD reflecting a purchase, payment, or actual use of
25 the account by the Consumer.

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- 1 b. engaging in any Legal Collection without providing the Consumer
2 with certain information about the Debt, unless previously provided,
3 including but not limited to, the following information:
- 4 i. the name of the Creditor at the time of Charge-off, including the
5 name under which the Creditor did business with the
6 Consumer;
- 7 ii. the last four digits of the account number associated with the
8 Debt at the time of the Consumer’s last monthly account
9 statement, or, if not available, at the time of Charge-off;
- 10 iii. the Charge-off Balance;
- 11 iv. Defendants’ method of calculating any amount claimed in
12 excess of the Charge-off Balance; and
- 13 v. a statement that, upon Defendants’ receipt of a written request,
14 the Consumer will be provided with copies of the
15 documentation referenced in Subsection (a) of this Paragraph.
16 For any disclosure made pursuant to this provision after the
17 Effective Date, Defendants must inform the Consumer that it
18 will provide the requested documentation “within 30 days” of a
19 request and “at no cost.” *Provided that*, Defendants have to
20 provide such documentation only once per year and that
21 Defendants are not required to provide such documentation in
22 response to a request made more than one year after Defendants
23 have ceased collecting the Debt.

24 9. For 5 years after the Effective Date, Defendants and their officers, agents,
25 servants, employees, and attorneys, and all other persons in active concert or participation
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1 with them who have actual notice of this Order, whether acting directly or indirectly, are
2 hereby restrained and enjoined from:

- 3 a. collecting or attempting to collect any Time-Barred Debt through
4 litigation or arbitration;
- 5 b. collecting or attempting to collect any Time-Barred Debt through any
6 means, including but not limited to telephone calls and written
7 communications, without clearly and prominently disclosing to the
8 Consumer:
- 9 i. for those Consumer accounts where the Debt is Time-Barred
10 and generally cannot be included in a Consumer report under
11 the provisions of the Fair Credit Reporting Act, 15 U.S.C. §
12 1681c(a), but can be collected through other means pursuant to
13 applicable state law, Defendants will include the following
14 statement: “The law limits how long you can be sued on a debt
15 and how long a debt can appear on your credit report. Due to
16 the age of this debt, we will not sue you for it or report payment
17 or non-payment of it to a credit bureau”; and
- 18 ii. for those Consumer accounts where the Debt is Time-Barred
19 but can be collected through other means pursuant to applicable
20 state law and may be included in a Consumer report under the
21 provisions of the Fair Credit Reporting Act, 15 U.S.C. §
22 1681c(a), Defendants will include the following statement:
23 “The law limits how long you can be sued on a debt. Because
24 of the age of your debt, we will not sue you for it.”

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1 Provided, however, that with regard to telephonic communications,
2 Defendants are not required to make either disclosure to any
3 individual person more than once per 30-day period; or

4 c. making any representation or statement, or taking any other action
5 that interferes with, detracts from, contradicts, or otherwise
6 undermines the disclosures required by ¶ 9(b).

7 d. Defendants will be deemed to have complied with the disclosure
8 requirements of ¶¶ 9(b) and (c) if they make a disclosure to
9 Consumers using the relevant language from a model form approved
10 by the Bureau in any final rule issued by the Bureau under the
11 FDCPA or a disclosure that:

- 12 i. is required by the laws or regulations of a specific jurisdiction;
13 ii. complies with those laws or regulations; and
14 iii. is substantially similar to the disclosure required by ¶ 9(b).

15 II.

16 Role of the Board

17 **IT IS FURTHER ORDERED** that:

18 10. The Board must review all submissions (including plans, reports, programs,
19 policies, and procedures) required by this Order prior to submission to the Bureau.

20 11. The Board will have the ultimate responsibility for proper and sound
21 management of Defendants and for ensuring that Defendants comply with the laws that
22 the Bureau enforces, including Federal consumer-financial laws and this Order.

23 12. In each instance that this Order requires the Board to ensure adherence to, or
24 perform certain obligations of Defendants, the Board must:

- 25 a. authorize whatever actions are necessary for Defendants to fully
26 comply with this Order;

- b. require timely reporting by management to the Board on the status of compliance obligations; and
- c. require timely and appropriate corrective action to remedy any material non-compliance with any failures to comply with Board directives related to this Section.

MONETARY PROVISIONS

III.

Order to Pay Redress

IT IS FURTHER ORDERED that:

13. A judgment for monetary relief is entered in favor of the Bureau and against Defendants in the amount of \$78,308.81, which includes:

- a. \$69,377 in redress that Defendants already voluntarily provided; and
- b. \$8,931.81 in redress that Defendants must pay to any Affected Consumers in the amount collected from an Affected Consumer after that Affected Consumer requested OALD but before Defendants provided OALD.

14. Defendants may not condition the payment of any redress to any Affected Consumer under this Order on that Affected Consumer waiving any right.

IV.

Order to Pay Civil Money Penalty

IT IS FURTHER ORDERED that:

15. Under § 1055(c) of the CFPA, 12 U.S.C. § 5565(c), by reason of the violations of law alleged in the Complaint and continuing until the Effective Date and taking into account the factors in 12 U.S.C. § 5565(c)(3), Defendants must pay a civil money penalty of \$15 million to the Bureau.

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1 this Order, or in any subsequent civil litigation by or on behalf of the Bureau in a
2 proceeding to enforce its rights to any payment or monetary judgment under this Order,
3 such as a nondischargeability complaint in any bankruptcy case.

4 22. The facts alleged in the Complaint establish all elements necessary to sustain
5 an action by the Bureau under to § 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. §
6 523(a)(2)(A), and for such purposes this Order will have collateral estoppel effect against
7 each Defendant, even in such Defendant's capacity as debtor-in-possession.

8 23. Under 31 U.S.C. § 7701, Defendants, unless they already have done so, must
9 furnish to the Bureau their taxpayer-identification numbers, which may be used for
10 purposes of collecting and reporting on any delinquent amount arising out of this Order.

11 24. Within 30 days of the entry of a final judgment, order, or settlement in a
12 Related Consumer Action under this Order, Defendants must notify the Enforcement
13 Director of the final judgment, order, or settlement in writing. That notification must
14 indicate the amount of redress, if any, that Defendants paid or are required to pay to
15 Consumers and describe the Consumers or classes of Consumers to whom that redress
16 has been or will be paid. To preserve the deterrent effect of the civil money penalty in
17 any Related Consumer Action, Defendants may not argue that Defendants are entitled to,
18 nor may Defendants benefit by, any offset or reduction of any monetary remedies
19 imposed in the Related Consumer Action because of the civil money penalty paid in this
20 action or because of any payment that the Bureau makes from the Civil Penalty Fund. If
21 the court in any Related Consumer Action offsets or otherwise reduces the amount of
22 compensatory monetary remedies imposed against Defendants based on the civil money
23 penalty paid in this action or based on any payment that the Bureau makes from the Civil
24 Penalty Fund, Defendants must, within 30 days after entry of a final order granting such
25 offset or reduction, notify the Bureau and pay the amount of the offset or reduction to the
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1 U.S. Treasury. Such a payment will not be considered an additional civil money penalty
2 and will not change the amount of the civil money penalty imposed in this action.

3 **COMPLIANCE PROVISIONS**

4 **VI.**

5 **Reporting Requirements**

6 **IT IS FURTHER ORDERED** that:

7 25. Defendants must notify the Bureau of any development that may affect
8 compliance obligations arising under this Order, including but not limited to, a
9 dissolution, assignment, sale, merger, or other action that would result in the emergence
10 of a successor company; the creation or dissolution of a subsidiary, parent, or affiliate
11 that engages in any acts or practices subject to this Order; the filing of any bankruptcy or
12 insolvency proceeding by or against any Defendants; or a change in any Defendants'
13 name or address. Defendants must provide this notice, if practicable, at least 30 days
14 before the development, but in any case no later than 14 days after the development.

15 26. Within 7 days of the Effective Date, each Defendant must:

- 16 a. designate to the Bureau at least one telephone number and email,
17 physical, and postal address as points of contact, which the Bureau
18 may use to communicate with Defendant;
- 19 b. identify to the Bureau all businesses that do business in the United
20 States for which any Defendant is the majority owner, or that any
21 Defendant directly or indirectly controls, by all of their names,
22 telephone numbers, and physical, postal, email, and Internet
23 addresses; and
- 24 c. describe to the Bureau the activities of each such business, including
25 the products and services offered, and the means of advertising,
26 marketing, and sales.

1 27. Defendants must report to the Bureau any change in the information required
2 to be submitted under ¶ 26 at least 30 days before the change or as soon as practicable
3 after learning about the change, whichever is sooner.

4 28. Within 90 days of the Effective Date, again one year after the Effective
5 Date, and annually for 4 years thereafter, Defendants must submit to the Bureau’s
6 Enforcement Director an accurate written compliance progress report sworn to under
7 penalty of perjury (Compliance Report) that has been approved by the Board, sworn to
8 under the penalty of perjury, which, at a minimum:

- 9 a. lists each applicable paragraph and subparagraph of the Order and
10 describes in detail the manner and form in which Defendants have
11 complied with each such paragraph and subparagraph of this Order;
- 12 b. provides proof of the provision of full redress to Affected Consumers,
13 unless previously submitted to the Bureau; and
- 14 c. attaches a copy of each Order Acknowledgment obtained under § VII,
15 unless previously submitted to the Bureau.

16 **VII.**

17 **Order Distribution and Acknowledgement**

18 **IT IS FURTHER ORDERED** that:

19 29. Within 7 days of the Effective Date, each Defendant must submit to the
20 Bureau’s Enforcement Director an acknowledgment of receipt of this Order, sworn under
21 penalty of perjury.

22 30. Within 30 days of the Effective Date, Defendants must deliver a copy of this
23 Order to each of its Board members and executive officers, as well as to any managers,
24 employees, service providers, or other agents and representatives who have
25 responsibilities related to the subject matter of the Order.

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1 **IX.**

2 **Notices**

3 **IT IS FURTHER ORDERED** that:

4 35. Unless otherwise directed in writing by the Bureau, Defendants must
5 provide all submissions, requests, communications, or other documents relating to this
6 Order in writing, with the subject line, “BCFP v. Encore Capital Group, Inc., et al.; Case
7 No. 20-cv-1750,” and send them by overnight courier or first-class mail to the below
8 address and contemporaneously by email to Enforcement_Compliance@cfpb.gov:

9 Assistant Director for Enforcement
10 Bureau of Consumer Financial Protection
11 ATTENTION: Office of Enforcement
12 1700 G Street, N.W.
13 Washington D.C. 20552

14 36. Encore may seek a modification to non-material requirements of this Order
15 (*e.g.*, reasonable extensions of time and changes to reporting requirements) by submitting
16 a written request to the Enforcement Director. The Enforcement Director may, in his or
17 her discretion, modify any non-material requirements of this Order (*e.g.*, reasonable
18 extensions of time and changes to reporting requirements) if he or she determines good
19 cause justifies the modification. Any such modification by the Enforcement Director
20 must be in writing.

21 **X.**

22 **Compliance Monitoring**

23 **IT IS FURTHER ORDERED** that, to monitor Defendants’ compliance with this Order:

24 37. Within 14 days of receipt of a written request from the Bureau, Defendants
25 must submit additional compliance reports or other requested non-privileged information
26 related to the requirements of this Order, which must be sworn under penalty of perjury;
27 provide sworn testimony related to the requirements of this Order and Defendants’
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1 compliance with those requirements; or produce non-privileged documents related to the
2 requirements of this Order and Defendants' compliance with those requirements.

3 38. Defendants must permit Bureau representatives to interview about the
4 requirements of this Order and Defendants' compliance with those requirements any
5 employee or other person affiliated with Defendants who has agreed to such an interview.
6 The person interviewed may have counsel present.

7 39. Nothing in this Order will limit the Bureau's lawful use of civil investigative
8 demands under 12 C.F.R. § 1080.6 or other compulsory process.

9 **XI.**

10 **Release**

11 40. The Bureau releases and discharges Defendants from all potential liability
12 for violations of law that the Bureau has or might have asserted based on the practices
13 described in the Complaint, to the extent such conduct occurred before the Effective Date
14 and the Bureau knows about it as of the Effective Date. The Bureau may use the practices
15 described in the Complaint in future enforcement actions against Defendants and their
16 affiliates, including, without limitation, to establish a pattern or practice of violations or
17 the continuation of a pattern or practice of violations or to calculate the amount of any
18 penalty. This release does not preclude or affect any right of the Bureau to determine and
19 ensure compliance with this Order, or to seek penalties for any violations of this Order.

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XII.

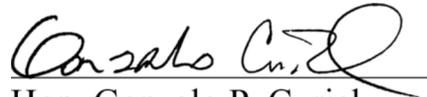
Retention of Jurisdiction

IT IS FURTHER ORDERED that:

41. The Court will retain jurisdiction of this matter for the purposes of construction, modification (including any request by any party to modify the conduct prohibitions), and enforcement of this Order.

IT IS SO ORDERED.

Dated: October 15, 2020


Hon. Gonzalo P. Curiel
United States District Judge

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