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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.: 20CV1750-GPC-KSC

**STIPULATED FINAL JUDGMENT AND
ORDER**

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

DEFINITIONS

5. The following definitions apply to this Order:

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

b. **“Affected Consumers”** means the 14 consumers identified in Supplemental Appendix I provided to the Bureau on April 22, 2019 for which Encore made collection after an applicable “OALD Request.”

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

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

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

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

- i. as to written information, written in a type size and location sufficient for an ordinary Consumer to read and comprehend it, and disclosed in a manner that would be easily recognizable and understandable in language and syntax to an ordinary Consumer. If the information is contained in a multi-page print document, the disclosure appears on the first page and

1 ii. as to information presented orally, spoken and disclosed in a
2 volume, cadence, and syntax sufficient for an ordinary Consumer
3 to hear and comprehend.

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

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

11 i. “**Debt**” means any obligation or alleged obligation of a Consumer to pay
12 money arising out of a transaction in which the money, property,
13 insurance, or services that are the subject of the transaction are primarily
14 for personal, family, or household purposes, whether or not such
15 obligation has been reduced to judgment.

16 j. “**Defendants**” means Encore Capital Group, Inc.; Midland Funding,
17 LLC; Midland Credit Management, Inc.; and Asset Acceptance Capital
18 Corp., individually, collectively or in any combination, and any of their
19 successors and assigns.
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1 k. “**Effective Date**” means the date on which this Order is entered by the
2 Court.

3 l. “**Enforcement Director**” means the Assistant Director of the Office of
4 Enforcement for the Bureau of Consumer Financial Protection, or his or
5 her delegee.

6 m. “**Legal Collection**” means any collection efforts made by any internal
7 legal department or a third-party law firm to collect a Debt owed or
8 allegedly owed to Defendants, including but not limited to sending letters
9 on law firm letterhead and filing Debt-collection lawsuits, but does not
10 include any post-judgment collection efforts.

11 n. “**Original Account-Level Documentation**” or “**OALD**” means:

- 12 i. any documentation that a Creditor or that Creditor's agent (such as
13 a servicer) provided to a Consumer about a Debt;
- 14 ii. a complete transactional history of a Debt, created by a Creditor or
15 that Creditor's agent (such as a servicer); or
- 16 iii. a copy of a judgment, awarded to a Creditor or entered on or
17 before the Effective Date.

18 o. “**Related Consumer Action**” means a private action by or on behalf of
19 one or more Consumers or an enforcement action by another
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1 governmental agency brought against Defendants based on substantially
2 the same facts as described in the Complaint.

3 p. “**Time-Barred Debt**” is a debt that is beyond an applicable statute of
4 limitations for a Debt-collection lawsuit.

5 **CONDUCT RELIEF**

6 **I**

7 **IT IS ORDERED** that:

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

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

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

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

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

8 a. initiating a Legal Collection lawsuit unless in possession of the
9 following:

10 i. Original Account-Level Documentation reflecting, at a minimum:
11 the Consumer’s name; the last four digits of the account number
12 associated with the Debt at the time of Charge-off; and the claimed
13 amount, prior to any post Charge-off payments (unless the claimed
14 amount is higher than the Charge-off Balance, in which case
15 Defendants must possess (i) Original Account-Level
16 Documentation reflecting the Charge-off Balance and (ii) an
17 explanation of how the claimed amount was calculated and why
18 such increase is authorized by the agreement creating the Debt or
19 permitted by law);
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- 1 ii. if Defendants are suing under a breach of contract theory, the
- 2 contractual terms and conditions applicable to the Debt;
- 3 iii. a chronological listing of the names of all prior owners of the Debt
- 4 and the date of each transfer of ownership of the Debt, beginning
- 5 with the name of the Creditor at the time of Charge-off; and
- 6 iv. any one of the following:
 - 7 1. a document signed by the Consumer evidencing the opening
 - 8 of the account forming the basis for the Debt; or
 - 9 2. OALD reflecting a purchase, payment, or actual use of the
 - 10 account by the Consumer.

- 11 b. engaging in any Legal Collection without providing the Consumer with
- 12 certain information about the Debt, unless previously provided, including
- 13 but not limited to, the following information:
 - 14 i. the name of the Creditor at the time of Charge-off, including the
 - 15 name under which the Creditor did business with the Consumer;
 - 16 ii. the last four digits of the account number associated with the Debt
 - 17 at the time of the Consumer's last monthly account statement, or, if
 - 18 not available, at the time of Charge-off;
 - 19 iii. the Charge-off Balance;

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- 1 iv. Defendants’ method of calculating any amount claimed in excess
2 of the Charge-off Balance; and
- 3 v. a statement that, upon Defendants’ receipt of a written request, the
4 Consumer will be provided with copies of the documentation
5 referenced in Subsection (a) of this Paragraph. For any disclosure
6 made pursuant to this provision after the Effective Date,
7 Defendants must inform the Consumer that it will provide the
8 requested documentation “within 30 days” of a request and “at no
9 cost.” *Provided that*, Defendants have to provide such
10 documentation only once per year and that Defendants are not
11 required to provide such documentation in response to a request
12 made more than one year after Defendants have ceased collecting
13 the Debt.

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

- 18 a. collecting or attempting to collect any Time-Barred Debt through
19 litigation or arbitration;
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1 b. collecting or attempting to collect any Time-Barred Debt through any
2 means, including but not limited to telephone calls and written
3 communications, without clearly and prominently disclosing to the
4 Consumer:

5 i. for those Consumer accounts where the Debt is Time-Barred and
6 generally cannot be included in a Consumer report under the
7 provisions of the Fair Credit Reporting Act, 15 U.S.C. § 1681c(a),
8 but can be collected through other means pursuant to applicable
9 state law, Defendants will include the following statement: “The
10 law limits how long you can be sued on a debt and how long a debt
11 can appear on your credit report. Due to the age of this debt, we
12 will not sue you for it or report payment or non-payment of it to a
13 credit bureau”; and

14 ii. for those Consumer accounts where the Debt is Time-Barred but
15 can be collected through other means pursuant to applicable state
16 law and may be included in a Consumer report under the
17 provisions of the Fair Credit Reporting Act, 15 U.S.C. § 1681c(a),
18 Defendants will include the following statement: “The law limits
19 how long you can be sued on a debt. Because of the age of your
20 debt, we will not sue you for it.”

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

4 c. making any representation or statement, or taking any other action that
5 interferes with, detracts from, contradicts, or otherwise undermines the
6 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 Consumers
9 using the relevant language from a model form approved by the Bureau
10 in any final rule issued by the Bureau under the FDCPA or a disclosure
11 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.
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1 21. The facts alleged in the Complaint will be taken as true and be given
2 collateral estoppel effect, without further proof, in any proceeding based on the entry of
3 this Order, or in any subsequent civil litigation by or on behalf of the Bureau in a
4 proceeding to enforce its rights to any payment or monetary judgment under this Order,
5 such as a nondischargeability complaint in any bankruptcy case.

6 22. The facts alleged in the Complaint establish all elements necessary to sustain
7 an action by the Bureau under to § 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C.
8 § 523(a)(2)(A), and for such purposes this Order will have collateral estoppel effect
9 against each Defendant, even in such Defendant's capacity as debtor-in-possession.

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

13 24. Within 30 days of the entry of a final judgment, order, or settlement in a
14 Related Consumer Action under this Order, Defendants must notify the Enforcement
15 Director of the final judgment, order, or settlement in writing. That notification must
16 indicate the amount of redress, if any, that Defendants paid or are required to pay to
17 Consumers and describe the Consumers or classes of Consumers to whom that redress
18 has been or will be paid. To preserve the deterrent effect of the civil money penalty in
19 any Related Consumer Action, Defendants may not argue that Defendants are entitled to,
20 nor may Defendants benefit by, any offset or reduction of any monetary remedies

1 imposed in the Related Consumer Action because of the civil money penalty paid in this
2 action or because of any payment that the Bureau makes from the Civil Penalty Fund. If
3 the court in any Related Consumer Action offsets or otherwise reduces the amount of
4 compensatory monetary remedies imposed against Defendants based on the civil money
5 penalty paid in this action or based on any payment that the Bureau makes from the Civil
6 Penalty Fund, Defendants must, within 30 days after entry of a final order granting such
7 offset or reduction, notify the Bureau and pay the amount of the offset or reduction to the
8 U.S. Treasury. Such a payment will not be considered an additional civil money penalty
9 and will not change the amount of the civil money penalty imposed in this action.

10 **COMPLIANCE PROVISIONS**

11 **VI**

12 **Reporting Requirements**

13 **IT IS FURTHER ORDERED** that:

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

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

- 4 a. designate to the Bureau at least one telephone number and email,
5 physical, and postal address as points of contact, which the Bureau may
6 use to communicate with Defendant;
- 7 b. identify to the Bureau all businesses that do business in the United States
8 for which any Defendant is the majority owner, or that any Defendant
9 directly or indirectly controls, by all of their names, telephone numbers,
10 and physical, postal, email, and Internet addresses; and
- 11 c. describe to the Bureau the activities of each such business, including the
12 products and services offered, and the means of advertising, marketing,
13 and sales.

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

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

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

10 **VII**

11 **Order Distribution and Acknowledgment**

12 **IT IS FURTHER ORDERED** that:

13 29. Within 7 days of the Effective Date, each Defendant must submit to the
14 Bureau's Enforcement Director an acknowledgment of receipt of this Order, sworn under
15 penalty of perjury.

16 30. Within 30 days of the Effective Date, Defendants must deliver a copy of this
17 Order to each of its Board members and executive officers, as well as to any managers,
18 employees, service providers, or other agents and representatives who have
19 responsibilities related to the subject matter of the Order.
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1 cause justifies the modification. Any such modification by the Enforcement Director
2 must be in writing.

3 **X**

4 **Compliance Monitoring**

5 **IT IS FURTHER ORDERED** that, to monitor Defendants' compliance with this Order:

6 37. Within 14 days of receipt of a written request from the Bureau, Defendants
7 must submit additional compliance reports or other requested non-privileged information
8 related to the requirements of this Order, which must be sworn under penalty of perjury;
9 provide sworn testimony related to the requirements of this Order and Defendants'
10 compliance with those requirements; or produce non-privileged documents related to the
11 requirements of this Order and Defendants' compliance with those requirements.

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

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

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1 **XI**

2 **Release**

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

12 **XII**

13 **Retention of Jurisdiction**

14 **IT IS FURTHER ORDERED** that:

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

1 **IT IS SO ORDERED.**

2 DATED this ____ day of _____, 2020.

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United States District Court Judge

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