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September 22, 2011

VIA ELECTRONIC DELIVERY

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Room TWA325
Washington, DC 20554

Re: Notice of *Ex Parte* Presentations
CG Docket No. 02-278

Dear Ms. Dortch:

On Tuesday, September 20, 2011, Andrew Asch, Director, Legal Affairs and Litigation, Midland Credit Management, Inc. ("Midland"), a subsidiary of Encore Capital Group, Inc. ("Encore"), along with Michele C. Farquhar and Mark W. Brennan of Hogan Lovells US LLP, counsel to Encore and Midland, met in separate meetings with Jessica Almond, Special Counsel to Chairman Genachowski; Christine Kurth, Policy Director and Counsel to Commissioner McDowell; Margaret McCarthy, Policy Advisor to Commissioner Copps; and Joel Gurin and Mike Jacobs of the Commission's Consumer and Governmental Affairs Bureau regarding the above-referenced "robocall" proceeding and related Telephone Consumer Protection Act ("TCPA") issues.

During the meetings, the Encore and Midland representatives discussed the benefits of predictive dialer use and encouraged the FCC to clarify that current-generation predictive dialers used by debt collectors and other non-telemarketing businesses are not "autodialers," as discussed in more detail in the attached presentation that was distributed at the meetings. Specifically, they explained the urgent need for the FCC to confirm expeditiously and publicly that it is examining whether predictive dialers should always be considered "automatic telephone dialing systems" or "autodialers" under the TCPA, given grave new threats to a variety of non-telemarketing businesses.

The representatives also explained that the circumstances regarding predictive dialer use have changed dramatically. The predictive dialers in use today provide significant benefits to businesses and consumers, such as:

- Protecting consumers from improper calls, including by restricting calls to certain numbers, certain individuals, certain hours, a certain number of times per telephone number, and a certain amount of time between calls;
- Allowing businesses with a legitimate need to contact a large number of specific consumers to do so accurately and efficiently;

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- Promoting compliance with other statutes and regulations;
- Avoiding the risk of human dialing error; and
- Reducing costs for consumers and businesses.

They do not have the capacity to randomly or sequentially generate telephone numbers without fundamentally changing the architecture of the hardware and software, and they are increasingly used for non-telemarketing purposes by Encore and other companies that have absolutely no need to dial random or sequential numbers (nor can they benefit from such dialing). Moreover, now that almost one-third of all households only have wireless telephones (with that number expected to continue rising), blanket restrictions on calls to those telephone numbers are significantly limiting the ability of companies to provide service to their customers and contact their accountholders.

In addition, the representatives highlighted the skyrocketing number of TCPA claims and class actions involving alleged autodialer use, adding that TCPA class actions are increasingly targeting predictive dialer use. Encore and other companies in a variety of industries are being hit hard by spiraling class actions, as demonstrated by the recent *Griffith* case, which is attached and was distributed at the meetings. Unless the FCC confirms that companies may use predictive dialers to place debt collection and other non-telemarketing calls to wireless telephone numbers, these class actions will become an even greater threat, placing jobs – and the viability of entire companies – at stake, increasing costs for debtors and other consumers, and hindering future consumer lending efforts.

As a possible long-term solution, the Commission could, for example, clarify that non-telemarketing calls made using a predictive dialer are not subject to the autodialer restriction in Section 64.1200(a)(1) of its TCPA rules by revising the definition of "automatic telephone dialing system" and "autodialer" in its rules and adding a new definition of "predictive dialer." The proposed new definitions could read as follows, with new text in bold:

> 47 C.F.R. § 64.1200(f):
>
> (1) The terms *automatic telephone dialing system* and *autodialer* mean equipment which has the capacity to store or produce telephone numbers to be called using a random or sequential number generator and to dial such numbers**, but such terms include predictive dialers only to the extent such a dialer is used for telemarketing.**[1]
>
> * * *
>
> **(15) The term *predictive dialer* includes equipment that dials telephone numbers in a manner that predicts the time when a consumer will answer the telephone and an agent of the caller will be available to take the call.**

[1] The FCC has defined the term "telemarketing" as "the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person." 47 C.F.R. § 64.1200(f)(10). As an alternative, the Commission could include predictive dialers in its autodialer definition only to the extent such a dialer is used to initiate "telephone solicitations" (as defined by 47 C.F.R. § 64.1200(f)(12)), or it could exempt predictive dialers that are used to initiate the categories of calls that are exempt from the residential line restriction in 47 C.F.R. § 64.1200(a)(2).

The Encore representatives also distributed the attached *ex parte* letter filed previously in this proceeding. Pursuant to Section 1.1206(b) of the Commission's rules, I am filing this notice electronically in the above-referenced dockets. Please contact me directly with any questions.

Respectfully submitted,

/s/ Michele C. Farquhar

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Joel Gurin
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Hogan Lovells

The Need to Reexamine the Regulation of Predictive Dialers under the TCPA

Encore Capital Group, Inc. and Midland Credit Management, Inc.

FCC Meetings
September 20, 2011

Summary

There is an urgent need for the FCC to formally confirm that it is examining whether predictive dialers should always be considered "automatic telephone dialing systems" ("autodialers") under the Telephone Consumer Protection Act ("TCPA"), given grave new threats to a variety of non-telemarketing businesses

Overview

- Background on the TCPA, autodialers, and predictive dialers
- There are a growing number of TCPA class actions involving autodialers, and these class actions are increasingly targeting predictive dialer use
- Circumstances have changed substantially since the FCC's 2003 and 2008 TCPA decisions on predictive dialers
- The FCC should review and adjust its approach to regulating the use of predictive dialers
  - *Short-term*: The FCC should confirm expeditiously and publicly that it is reviewing its predictive dialer regulatory framework.
  - *Long-term*: The FCC should clarify that predictive dialers are not considered autodialers under the TCPA unless they are used for telemarketing calls.

Background on the TCPA and Autodialers

- Congress enacted the TCPA to protect consumers against aggressive telemarketing practices
  - Using automatic dialing equipment to make hundreds of thousands of unsolicited calls to random or sequential telephone numbers
  - Calling sequential telephone numbers in a way that ties up a block of telephone numbers and creates public safety risks
  - Shifting telemarketing costs to consumers
- The TCPA defines an "automatic telephone dialing system" as "equipment which has the capacity (A) to store or produce telephone numbers to be called, using a random or sequential number generator; and (B) to dial such numbers."
- The TCPA restricts autodialed calls to wireless telephone numbers.

Background on Predictive Dialers

- A “predictive dialer” includes equipment that dials telephone numbers in a manner that predicts the time when a consumer will answer the telephone and an agent of the caller will be available to take the call.
- Predictive dialers are used for non-telemarketing purposes by a wide variety of companies to contact existing customers and accountholders.

Background on Predictive Dialers (cont'd)

- In 2003 and 2008, the FCC interpreted the definition of autodialers to include predictive dialers.
  - This has led to absurd and unintended results, including increased class action litigation, and the recent *Griffith* decision (Case No. 10-2697, N.D. Ill., Aug. 16, 2011).
  - As the *Griffith* decision demonstrates, the FCC's current interpretation potentially subjects companies to crippling liability for non-telemarketing calls, and for calls made using equipment that has no capacity to generate or call random or sequential numbers.

There are a Growing Number of TCPA Class Actions Involving Alleged Autodialer Use

- Encore and other non-telemarketing businesses are being threatened by skyrocketing TCPA class action litigation.
  - Conservative estimates of the number of TCPA class actions filed*:
    - 2008 – at least 13
    - 2009 – at least 34
    - 2010 – at least 59
    - 2011 – at least 70 <u>and growing</u>

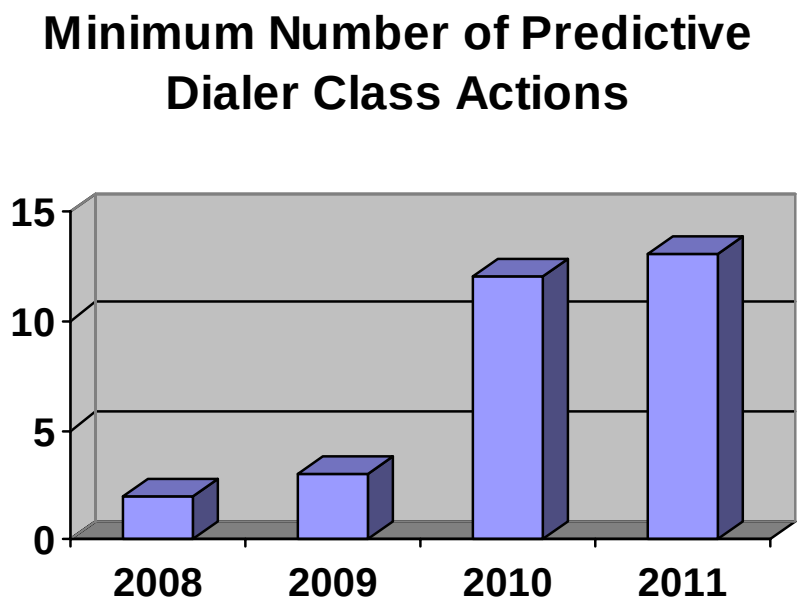
*These statistics exclude cases focused on the TCPA's fax restrictions. In addition, these statistics only include data from courts with records that are searchable online.

There are a Growing Number of TCPA Class Actions Involving Alleged Autodialer Use (cont'd)

- Overall, hundreds of TCPA cases (including non-class actions) have been filed since the FCC's 2008 decision.
- TCPA defendants include Encore/Midland and other debt purchasers and collectors, along with Wells Fargo Auto Finance, JPMorgan Chase, and other major financial services companies.
  - One San Diego plaintiffs' firm alone has filed 31 class action complaints since 2008.

TCPA Class Actions are Increasingly Targeting Predictive Dialer Use

- Many new TCPA class actions related to predictive dialers are being filed because of the FCC's 2003 and 2008 TCPA decisions.
- Conservative estimates*:
  - 2008 – at least 2
  - 2009 – at least 3
  - 2010 – at least 12
  - 2011 – at least 13



*These statistics only include data from courts with records that are searchable online. In addition, TCPA complaints that only reference “autodialers” have been excluded, even though they often involve the alleged use of predictive dialers.

TCPA Class Actions are Increasingly Targeting Predictive Dialer Use (cont'd)

- The TCPA provides for liability of up to $1,500 per call.
  - Class actions will have a significant detrimental impact on companies like Encore, even where there is no telemarketing activity involved.
  - For example, Encore's subsidiary Midland was merely trying to contact consumers to encourage them to resolve their debts without litigation.
- Legislators have already expressed concern.
  - Senator Blunt sent a letter to FCC Chairman Genachowski.
  - Other legislators are considering introducing legislation.

Circumstances Regarding Predictive Dialers Have Changed

- Predictive dialers are increasingly used for non-telemarketing purposes and are not used to dial random or sequential numbers.
  - Encore and other companies that use predictive dialers to reach consumers have absolutely no need to dial random or sequential numbers (nor can they benefit from such dialing).
- The current generation of predictive dialers are far more sophisticated devices than traditional autodialers and do not have the capacity to dial random or sequential numbers without fundamentally changing the equipment architecture.
  - Under the FCC's current approach, even a typical smartphone could be considered an "autodialer."
- Almost 1/3 of households are now wireless-only, and that number is expected to grow, further limiting the ability of Encore and other companies to provide service to their customers.

Circumstances Regarding Predictive Dialers Have Changed (cont'd)

- Today's predictive dialers provide significant benefits to businesses and consumers.
  - Predictive dialers promote help protect consumers from improper calls.
    - For example, in the debt collection context, they can be programmed to restrict calls to certain telephone numbers, certain times of the day, or a certain number of times per telephone number.
  - Predictive dialers increase productivity and lower costs for consumers.
    - Requiring callers to dial wireless phones manually increases collection costs that are ultimately borne by consumers and creates a risk of human error.

Circumstances Regarding Predictive Dialers Have Changed (cont'd)

- Encore and other companies are being hit hard by spiraling class actions, even though consumers typically want to receive these calls and settle their debts.
  - Litigation costs and potential judgments increase costs to debtors and other consumers.
  - These costs could also hinder future consumer lending efforts.
  - Jobs – and the viability of entire companies – are also at stake.
- Unless the FCC clarifies that companies may use predictive dialers to place debt collection and other non-telemarketing calls to wireless telephone numbers, these class actions will become an even greater threat.

FCC Action Needed Soon

- The FCC should reexamine its approach to regulating the use of predictive dialers.
  - *Short-term*: The FCC should confirm expeditiously and publicly that it is reviewing its predictive dialer regulatory framework.
    - Such action is even more critical in light of the recent *Griffith* decision, which is likely to lead to other suits and expedite other pending TCPA class action litigation.
  - *Long-term*: The FCC should clarify that predictive dialers are not considered autodialers under the TCPA unless they are used for telemarketing calls.

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10-2697.111-RSK August 16, 2011

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ROSLYN GRIFFITH and JERRET CAIN,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 10 C 2697
	)	
CONSUMER PORTFOLIO SERV., INC.,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION

Before the court is defendant Consumer Portfolio Services, Inc.'s ("CPS") motion for summary judgment. For the reasons explained below, we deny CPS's motion.

BACKGROUND

The named plaintiffs in this case, Roslyn Griffith and Jerret Cain, allege that they received unauthorized telephone calls and text messages on their cellular telephones from CPS, a sub-prime auto-finance lender. The sole question raised by CPS's motion for summary judgment is whether it employs an "automatic telephone dialing system," as that term is defined by the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227(a). The manner by which CPS places its debt-collection calls is largely undisputed. CPS stores customer information on its computer network chronologically (by loan date) in a file known as the "Customer Information File." (Def.'s Stmt. of Undisputed Material Facts in Support of its Mot.

for Summ. J. (hereinafter, Def.'s Stmt.) ¶¶ 5-6.) The Customer Information File is located in a portion of CPS's computer network known as the "Collections System." (Id. at ¶ 6.) In each of its offices CPS maintains a "dialer," manufactured by Castel, Inc., which automatically places calls to CPS customers "so that [CPS] does not have to manually dial every customer who falls behind on payments." (Id. at ¶ 7.) Each Castel dialer connects to: (1) CPS's computer network; and (2) a "private branch exchange," which connects the dialer to the customers it calls. (Id.) Using this equipment CPS conducts "dialing campaigns," calling multiple customers at a given time. (Id. at ¶ 8.)

The night before a dialing campaign begins, a computer program reviews account information for every CPS customer listed in the Customer Information File and identifies customers eligible for the dialing campaign using criteria selected by CPS. (Id. at ¶ 9; see also Gallagher Decl. ¶ 8 (stating that as a first cut CPS might, for example, use the program to identify all customers who are less than 60 days in arrears).) This same program then copies the account and telephone numbers of each eligible customer into a new temporary computer file called the "Dialer File." (Def.'s Stmt. ¶ 10.) On the day of the campaign, a supervisor in CPS's collections department inputs additional criteria for the dialing campaign into CPS's Collections System, "effectively telling the CPS Collection System which numbers the dialer should call." (Id. at ¶ 11; see

also Clewell Decl. ¶ 7 ("The supervisor might decide, for example, that Illinois customers who owe $500 or more and are 21 to 30 days behind should be called during the campaign.").) The program then reviews the Dialer File for accounts that satisfy the criteria and copies those accounts and associated telephone numbers into a new file called the "Logical View File." (Def.'s Stmt. ¶ 13.) At the same time, the supervisor assigns certain CPS employees ("collectors") to the campaign, who then use the program to "'sign on' to the campaign so that they can 'answer' the calls made by the Castel dialer that actually connect to consumers." (Id. at ¶ 14.) Once the dialing campaign begins, the Castel dialer "reads" the telephone numbers at the "predictive dialing rate" set by the supervisor. (Id. at ¶ 15.) ("Predictive dialing" software on the Collections System regulates the dialer's call rate to improve efficiency. (Gallagher Decl. ¶ 10; see also Def.'s Stmt. ¶ 12.)) The dialer determines whether a call is answered by a customer, and if so, routes the call back to CPS's computer system, which forwards the call to an available collector. (Def.'s Stmt. ¶ 16.) The customer's account information appears on the collector's computer screen as he or she receives the call. (Id.) While speaking with the customer, the collector enters data into the Customer Information File in the Collections System. (Id. at ¶ 17.) After the dialing campaign is completed, the Collections

System prepares reports on the results of the dialing campaign. (Id.)

DISCUSSION

A. Legal Standard

"The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). In considering such a motion, the court construes the evidence and all inferences that reasonably can be drawn therefrom in the light most favorable to the nonmoving party. See Pitasi v. Gartner Group, Inc., 184 F.3d 709, 714 (7th Cir. 1999). "The court need consider only the cited materials, but it may consider other materials in the record." Fed. R. Civ. P. 56(c)(3). "Summary judgment should be denied if the dispute is 'genuine': 'if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.'" Talanda v. KFC Nat'l Mgmt. Co., 140 F.3d 1090, 1095 (7th Cir. 1998) (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986)). The court will enter summary judgment against a party who does not "come forward with evidence that would reasonably permit the finder of fact to find in [its] favor on a material question." McGrath v. Gillis, 44 F.3d 567, 569 (7th Cir. 1995).

B. "Automatic Telephone Dialing System"

The TCPA prohibits calls to certain telephone numbers, including cellular telephone numbers, using an "automatic telephone dialing system," except in an emergency or with the recipient's "prior express consent." 47 U.S.C. § 227 (b)(1). As defined in the statute, an "automatic telephone dialing system" means "equipment that has the capacity — (A) to store or produce telephone numbers to be called, using a random or sequential number generator; and (B) to dial such numbers." 47 U.S.C. § 227 (a)(1). The phrase "random or sequential number generator" is not defined. As we understand these terms, "random number generation" means random sequences of 10 digits, and "sequential number generation" means (for example) (111) 111-1111, (111) 111-1112, and so on. CPS's expert states that early dialers operated in this fashion, calling every conceivable telephone number. (Cutler Decl. ¶ 15.) More recently, companies like Castel have developed dialers that call lists of known telephone numbers — in this case, the telephone numbers of CPS's customers. (Id. at ¶ 16.)

In 2002, the FCC solicited comments concerning the TCPA's definition of an "automatic telephone dialing system." See In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, 17 FCC Rcd 17459, 17473-476 (September 18, 2002). The FCC acknowledged that autodialing technology had advanced. See id. at 17474 ("More sophisticated dialing systems,

such as predictive dialers and other electronic hardware and software containing databases of telephone numbers, are now widely used by telemarketers to increase productivity and lower costs.”). In light of that fact, it sought comments concerning “whether Congress intended the definition of ‘automatic telephone dialing system’ to be broad enough to include any equipment that dials numbers automatically, either by producing 10-digit telephone numbers arbitrarily or generating them from a database of existing telephone numbers.” Id. “Specifically, we ask whether a predictive dialer that dials telephone numbers using a computer database of numbers falls under the TCPA’s restrictions on the use of autodialers.” Id. at 17475. As CPS points out, several companies argued that predictive dialers fell outside the TCPA’s scope because a list or database of actual customer telephone numbers is, by definition, not randomly or sequentially generated. See, e.g., Comments of the American Teleservices Ass’n, attached as Ex. C to Stone Decl., at 113 (“Predictive dialers do not generate ‘random’ or ‘sequential’ telephone numbers. Instead, they rely on telephone numbers from lists provided by the equipment operator. These lists are anything but ‘random’ or ‘sequential.’”). The thrust of these comments was that Congress, in enacting the TCPA, intended to regulate an especially vexatious type of autodialing, not autodialing generally. (See, e.g., Comments of Mastercard Int’l Inc., attached as Ex. B to Stone Decl., at 6 (“[P]redictive

dialers are generally used to dial numbers the telemarketer *intends* to call, not those randomly generated which may include hospital rooms, etc.") (emphasis in original).)

The FCC effectively rejected these comments, concluding that "a predictive dialer falls within the meaning and statutory definition of 'automatic telephone dialing equipment' and the intent of Congress." In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, 18 FCC Rcd 14014, 14093 (July 3, 2003). The technology had changed, but the basic function of such equipment — "the *capacity* to dial numbers without human intervention" — had not. Id. at 14092 (emphasis in original). The FCC went on to conclude that,

> [T]o exclude from [the restrictions on automated and prerecorded calls] equipment that use [sic] predictive dialing software from the definition of "automated telephone dialing equipment" simply because it relies on a given set of numbers would lead to an unintended result. Calls to emergency numbers, health care facilities, and wireless numbers would be permissible when the dialing equipment is paired with predictive dialing software and a database of numbers, but prohibited when the equipment operates independently of such lists and software packages. We believe the purpose of the requirement that equipment have the 'capacity to store or produce telephone numbers to be called' is to ensure that the prohibition on autodialed calls not be circumvented.

Id. at 14092-93. In 2008, in response to a request for clarification, the FCC "affirm[ed] that a predictive dialer constitutes an automatic telephone dialing system and is subject to the TCPA's restrictions on the use of autodialers." In the Matter

of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, 23 FCC Rcd 559, 566 (Jan. 4, 2008). The petitioner requesting clarification argued that "a predictive dialer meets the definition of autodialer only when it randomly or sequentially generates telephone numbers, not when it dials numbers from customer telephone lists." Id. The FCC rejected this interpretation, citing the policy considerations that guided its 2003 ruling. Id. at 566-67.

CPS acknowledges that the FCC's final orders are binding on this court under the Hobbs Act. See 28 U.S.C. § 2342(1); 47 U.S.C. § 402(a); CE Design Ltd. v. Prism Bus. Media, Inc., 606 F.3d 443, 446-50 (7th Cir. 2010); (Def.'s Mem. at 10 n.4). But it argues that the FCC's 2003 and 2008 orders are really quite narrow. According to CPS, to fall within the FCC's interpretation of an "automatic telephone dialing system" the equipment in question must have the technical ability to perform the now obsolete functions performed by dialers when Congress originally passed the TCPA. That is, it must be able to "store or produce numbers using a random or sequential number generator" and "dial numbers randomly or sequentially." (Def.'s Mem. at 10.) According to CPS's witnesses, the Castel dialer cannot perform these functions. (Cutler Decl. ¶¶ 19-20; Gallagher Decl. ¶ 16.) CPS's interpretation of the FCC's orders, which it supports by quoting portions of those orders out of context, is a transparent attempt to win through litigation a battle that other companies lost before

the FCC.[1] After straining to avoid the clear implications of the FCC's orders, CPS finally resorts to the argument that the FCC cannot have meant what it said because it is inconsistent with the TCPA. (Def.'s Reply at 4.) This is not the appropriate forum to challenge the validity of the FCC's orders. See CE Design Ltd., 606 F.3d at 450. Our role is to apply the FCC's orders to the facts. Id. at 446 n.3. The FCC concluded that predictive dialers are governed by the TCPA because, like earlier autodialers, they have the capacity to dial numbers "without human intervention."[2] In doing so, it interpreted "automatic telephone dialing system" to include equipment that utilizes lists or databases of known, nonrandom telephone numbers. That is precisely how CPS's equipment operates: the dialer automatically dials numbers stored in the Logical View File and routes answered calls to available collectors. Even assuming that CPS's equipment can only function in this way, and cannot generate and dial random or sequential

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[1/] Even if we accepted CPS's interpretation, we would not award it summary judgment based upon the conclusory testimony of its witnesses. See, e.g., Bourne v. Marty Gilman, Inc., 452 F.3d 632, 638 (7th Cir. 2006) ("[A]n expert's conclusory assertions are of no evidentiary value."). The dialer dials the numbers it is "told" to dial. (Pl.'s Stmt. ¶ 11.) Gallagher and Cutler do not explain why they believe that the Castel dialer cannot be "told" — i.e., programed — to dial numbers randomly or sequentially. They simply conclude without any explanation or analysis that it cannot perform these functions.

[2/] Gallagher's insistence that the Castel dialer "cannot dial numbers automatically" is disingenuous. (Gallagher Decl. ¶ 16.) CPS's collectors do not dial the numbers, the dialer does. (Def.'s Stmt. ¶ 7 ("CPS maintains a Castel Dialer in each of its offices so that it does not have to manually dial every customer who falls behind on payments.").) This is "automated dialing" under any reasonable interpretation of that phrase. The fact that it is more efficient than manual dialing is one of the reasons that it is regulated. See In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, 18 FCC Rcd at 14092 (calls from autodialers to restricted categories of telephone numbers are "particularly troublesome" because "autodialers can dial thousands of numbers in a short period of time.").

numbers (cf. supra n. 1), it is still an "automatic telephone dialing system."[3] Likewise, we find no support in the statute or the FCC's rulings for CPS's argument that the dialer itself must "store" telephone numbers and/or predictive dialing software. (Def.'s Mem. at 11.) The statute regulates "equipment," not "dialers," so it is irrelevant for our purposes that the Castel dialer works in tandem with CPS's Collections System. (Cf. id.) Indeed, the FCC plainly intended to prevent companies from circumventing the statute in this fashion. In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, 18 FCC Rcd at 14092-93. Plaintiffs ask us both to deny CPS's motion and to hold for plaintiffs as a matter of law on the same issue. (Pls.' Mem. at 2.) We will grant the request. For the reasons we have just explained, we conclude as a matter of law that CPS employs an "automatic telephone dialing system" to call its customers.

Finally, we reject CPS's argument that the TCPA only applies to telemarketing, not debt collection. (Def.'s Mem. at 12; Def.'s Reply at 8-10.) Certain TCPA provisions apply only to "telephone solicitations," and consequently those provisions do not apply to debt-collection calls. In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, 23 FCC

[3/] Insofar as Satterfield v. Simon & Schuster, Inc., 569 F.3d 946, 950-51 (9th Cir. 2009) can be read to support a different result, we reject it. The Satterfield court did not analyze or even cite the relevant provisions of the FCC's 2003 and 2008 orders.

Rcd at 565. But § 227(b)(1)(A)(iii) — the provision that plaintiffs allege CPS violated — "prohibits the use of autodialers to make any call to a wireless number in the absence of an emergency or the prior express consent of the called party. . . . [T]his prohibition applies regardless of the content of the call, and is not limited only to calls that constitute 'telephone solicitations.'" Id.

CONCLUSION

CPS's motion for summary judgment (24) is denied. CPS's motion to strike the declaration of Randall Snyder (61) is denied as moot. We hold, as a matter of law, that CPS employs an "automatic telephone dialing system" to call its customers.

DATE: August 16, 2011

ENTER: _____

John F. Grady, United States District Judge

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May 5, 2011

VIA ELECTRONIC DELIVERY

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Room TWA325
Washington, DC 20554

Re: Notice of *Ex Parte* Presentations
CG Docket No. 02-278

Dear Ms. Dortch:

Yesterday, Ronald E. Naves, Jr., Senior Vice President and General Counsel, Encore Capital Group, Inc. ("Encore"), along with Michele C. Farquhar and Mark W. Brennan of Hogan Lovells US LLP, counsel to Encore, met with Joel Gurin, Rachel Kazan, William Freedman, and Kurt Schroeder of the Commission's Consumer and Governmental Affairs Bureau; Christine Kurth, Policy Director and Counsel to Commissioner McDowell; Angela Kronenberg, Legal Advisor to Commissioner Clyburn; and Jennifer Tatel, Legal Advisor to Commissioner Baker regarding the above-referenced "robocall" proceeding and related Telephone Consumer Protection Act ("TCPA") issues.

During the meetings, the Encore representatives encouraged the FCC to: (1) clarify that current-generation predictive dialers used by debt collectors and other non-telemarketing businesses are not "autodialers," and (2) refrain from imposing new prior express written consent requirements on debt collection and other non-telemarketing calls to wireless telephone numbers, as discussed in more detail in the attached two-page summary that was distributed at the meeting. The Commission could, for example, clarify that non-telemarketing calls made using a predictive dialer are not subject to the autodialer restriction in Section 64.1200(a)(1) of its TCPA rules by revising the definition of "automatic telephone dialing system" and "autodialer" in its rules and adding a new definition of "predictive dialer." The proposed new definitions could read as follows, with new text in bold:

> 47 C.F.R. § 64.1200(f):
>
> (1) The terms *automatic telephone dialing system* and *autodialer* mean equipment which has the capacity to store or produce telephone numbers to be called using a random or sequential number generator and to dial such numbers**, but such terms include predictive dialers only to the extent such a dialer is used for telemarketing.**[1]

[1] The FCC has defined the term "telemarketing" as "the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is

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* * *

(15) The term *predictive dialer* includes equipment that dials telephone numbers in a manner that predicts the time when a consumer will answer the telephone and an agent of the caller will be available to take the call.

These revisions are warranted in light of recent developments, including the increased use of predictive dialers for non-telemarketing purposes and the significant growth of wireless-only households. The predictive dialers in use today do not have the capacity to randomly or sequentially generate telephone numbers without fundamentally changing the architecture of the hardware and software. These predictive dialers allow debt collectors and other businesses with a legitimate need to contact large numbers of specific consumers to do so accurately and efficiently, facilitating compliance with other government regulations. Finally, the revisions will help reign in the skyrocketing class action litigation of the past two years stemming from the Commission's rules implementing the TCPA.

The Encore representatives also distributed the attached ex parte letter filed previously in this proceeding, the Encore Consumer Bill of Rights, and a list of laws and agencies that regulate the debt collection industry.

Pursuant to Section 1.1206(b) of the Commission's rules, I am filing this notice electronically in the above-referenced dockets. Please contact me directly with any questions.

Respectfully submitted,

/s/ Michele C. Farquhar

Michele C. Farquhar
Counsel to Encore Capital Group, Inc.

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Rachel Kazan
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Kurt Schroeder
Christine Kurth
Angela Kronenberg
Jennifer Tatel

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transmitted to any person." 47 C.F.R. § 64.1200(f)(10). As an alternative, the Commission could include predictive dialers in its autodialer definition only to the extent such a dialer is used to initiate "telephone solicitations" (as defined by 47 C.F.R. § 64.1200(f)(12)), or it could exempt predictive dialers that are used to initiate the categories of calls that are exempt from the residential line restriction in 47 C.F.R. § 64.1200(a)(2).

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RULES AND REGULATIONS IMPLEMENTING THE TELEPHONE CONSUMER PROTECTION ACT OF 1991
CG DOCKET NO. 02-278

THE FCC SHOULD CLARIFY THAT THE PREDICTIVE DIALERS USED BY DEBT COLLECTORS AND OTHER NON-TELEMARKETING BUSINESSES ARE NOT "AUTODIALERS."

- **The TCPA was enacted to prevent telemarketers from using machines to generate random telephone numbers and bombard them with pre-recorded telemarketing calls.**
  - Debt collection calls do not implicate this concern: Debt collectors place calls to specific debtors about specific debts. Debt collectors have no incentive to call random numbers.
  - When it enacted the TCPA, Congress recognized that it should not be interpreted to restrict debt collection calls.
- **The FCC's 2003 interpretation of "autodialer" has led to absurd and unintended results, including skyrocketing class action litigation against a variety of companies and industries.**
  - The FCC's 2003 Ruling expanded the definition of autodialer to include any dialer with the capacity to generate a random number, whether it actually does so or not.
  - This expanded definition has resulted in potentially catastrophic class action exposure for any business that uses automatic dialing technology to accurately and efficiently call consumers with whom it has existing business relationships.
  - Plaintiffs' attorneys have recently begun using the FCC's overly-broad definition of "autodialer" to target major financial service companies. Over the past six months, JP Morgan Chase, American Express, Wells Fargo, and Discover have all been hit with TCPA class action lawsuits seeking penalties of up to $1500 per call.
  - Further demonstrating the overbreadth of the FCC's interpretation of the TCPA, Plaintiffs' attorneys have even sued telephone operator services that use automatic dialing to connect collect calls placed by others.
- **The predictive dialers used by debt collectors and other non-telemarketing businesses should not be restricted under the TCPA.**
  - The current generation of predictive dialers do not raise any concerns about calling random numbers – the practice that Congress intended to prevent when it enacted the TCPA. Predictive dialers in use today do not have the capacity to randomly or sequentially generate telephone numbers without fundamentally changing the architecture of the hardware and software.
  - Predictive dialers are beneficial to businesses and consumers. They allow debt collectors and other businesses with a legitimate need to contact large numbers of consumers to do so accurately and efficiently.
  - In the debt collection context, predictive dialers perform a critical regulatory compliance function. They can be programmed to restrict calls to certain numbers, certain individuals, certain hours, or a certain number of times per telephone number, thus ensuring compliance with the Fair Debt Collection Practices Act ("FDCPA") and myriad other state and federal regulations that govern debt collectors' contacts with consumers.

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- Limiting debt collectors' ability to rely on predictive dialing technology means that debt collection calls have to be dialed manually. This creates a risk of human error, which harms both consumers who may receive improper calls, and debt collectors who face strict liability for such calls under the FDCPA and other statutes and regulations.
- Requiring debt collectors to manually call cell phones increases collection costs, which are ultimately borne by the consumer.

- **<u>Solution</u>: Clarify that predictive dialers that are not used to dial random or sequential numbers are not "autodialers" under the TCPA**.

THE COMMISSION SHOULD NOT IMPOSE ANY NEW PRIOR EXPRESS WRITTEN CONSENT REQUIREMENTS ON DEBT COLLECTION CALLS OR OTHER NON-TELEMARKETING CALLS TO WIRELESS NUMBERS

- **Requiring express written consent for debt collection calls to cell phones would make it more difficult for consumers to resolve their outstanding debts, increasing debt collection litigation.**
  - Recent reports show that one in four American households are wireless only, and the percentage is higher for low income groups. Requiring express written consent for debt collection calls to cellular phones will leave debt collectors with no effective way to contact these consumers and assist them in resolving their debts.
  - Placing additional restrictions on debt collectors' ability to contact consumers and work out payment arrangements means that debt collectors will be forced to sue consumers who might otherwise have been willing to resolve their debts without litigation – if only someone had called them to discuss their options.
- **Express written consent is unnecessary in the debt collection context, since consumers already have the right to opt out of debt collection calls.**
  - Debt collection communications with consumers are strictly and extensively regulated by the FDCPA, Fair Credit Reporting Act, and other state and federal laws. For example, the FDCPA obligates debt collectors to stop calling consumers at the consumer's request.
- **Requiring express written consent for debt collection calls would contravene the FCC's goal of harmonizing its TCPA rules with the FTC's Telemarketing Sales Rule ("TSR").**
  - The TSR's restrictions are limited to telemarketing calls. The FCC has already recognized the significant difference between telemarketing calls and non-telemarketing calls, subjecting them to different regulatory requirements.
- **Imposing a new burdensome and unnecessary written consent rule is contrary to the Obama Administration's express regulatory policy.**
  - In his January 18, 2011 Executive Order, President Obama instructed that agencies should use the "least burdensome" tools to achieve regulatory ends, and adopt regulations only upon a reasoned determination that the benefits justify the costs.
  - A rule requiring express written consent for debt collection calls to wireless phones would be highly burdensome, would serve no valid regulatory goal, and would harm businesses and consumers alike.
- **<u>Solution</u>: If the proposed new consent rule is adopted, its application should be limited to telemarketers.**

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April 28, 2011

Via Electronic Filing

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Written *Ex Parte* Communication, CG Docket No. 02-278

Dear Ms. Dortch:

Encore Capital Group, Inc. ("Encore"), through its wholly owned subsidiary, Midland Credit Management, Inc., has been in the collection and financial services business for 56 years, has been publicly traded for more than a decade, and currently employs more than 1,900 people. In addition, Encore is the nation's largest publicly-traded debt buyer by revenue and has enabled two million consumers to retire a portion of their outstanding debt as those consumers work toward improving their financial health. As a recognized leader in the debt collection industry, Midland Credit Management, Inc. recently launched the industry's first Consumer Bill of Rights.[1] Some of the key tenets of the Bill of Rights involve contacting consumers in a timely and effective manner, resolving accounts quickly and honestly, and ensuring collection practices that promote settlement and preserve dignity.[2]

The Commission's current regulatory position with respect to the applicability of the Telephone Consumer Protection Act ("TCPA") to the predictive dialers used by debt collectors and others within the financial services industry is harmful to businesses and consumers. And the Commission's proposed new rule requiring express written consent for automated phone calls to wireless telephone numbers would only exacerbate these harms. Accordingly, Encore submits this letter to encourage the Commission to consider the burdens on businesses and consumers that result from heavy-handed regulation under the TCPA. Specifically, Encore urges the Commission to without delay: 1) clarify that the current generation of "predictive dialer"

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[1] *See Encore Capital Group Launches Industry-First Consumer Bill of Rights: Enactment Defines Higher Standards for Industry*, Press Release, Encore Capital Group, Inc. (Mar. 21, 2011), *at* http://phx.corporate-ir.net/phoenix.zhtml?c=115920&p=irol-newsArticle&ID=1541066&highlight=.

[2] *See* Consumer Bill of Rights *at* http://www.encorecapital.com/wp-content/uploads/2011/03/Consumer-Bill-of-Rights.pdf.

devices are not "autodialers"; and 2) refrain from imposing new prior express written consent requirements on debt collection and other non-telemarketing calls to wireless telephone numbers.

In light of the benefits to consumers and businesses, the Commission should clarify that current-generation predictive dialers are not autodialers. The TCPA was enacted to protect consumers from aggressive telemarketing practices – particularly, the use of automatic dialing equipment to make hundreds of thousands of unsolicited calls to random telephone numbers. In the debt collection context, protection from random, unsolicited calls is unnecessary. Debt collectors do not dial random numbers, they call specific debtors; and the Fair Debt Collection Practices Act ("FDCPA") gives debtors the right to stop all debt collection phone calls by making a simple request that the calls cease.[3] The FDCPA also imposes a strict liability standard on collectors, presumes significant statutory damages in lieu of actual damages, and makes attorneys' fees available to debtors for violations.[4]

However, in 2003, the FCC decided that predictive dialers – which dial preprogrammed numbers, not random or sequential numbers – fall within the TCPA's definition of "automatic telephone dialing system" and therefore are subject to the TCPA's restrictions on automated calls.[5] Predictive dialers are used by debt collectors and other non-telemarketing businesses to call consumers with whom they have pre-existing relationships. For example, debt collectors use predictive dialers to notify consumers about outstanding debts and encourage them to make payment arrangements so as to avoid the expense and embarrassment of collection litigation. Debt collectors also use predictive dialers to ensure compliance with the FDCPA and other federal and state consumer protection laws that place strict restrictions on the time, place, and manner in which debtors can be called.

Subjecting predictive dialers to the TCPA has produced an array of unintended consequences that harm business and consumers alike, including increased collection litigation against consumers, conflicts with the FDCPA and other laws regulating debt collectors, and the threat of staggering penalties of up to $1500 per call for non-compliance. Indeed, TCPA litigation against financial services companies has exploded over the past several years. TCPA claims rose a staggering 738% in 2010, and in the last several months TCPA class action lawsuits have been filed against such industry giants as J.P. Morgan Chase, American Express, Discover, and Wells Fargo. As a result of the current regulatory environment, almost every major financial institution is or soon will be a defendant in TCPA litigation.

Predictive dialers are accurate and efficient equipment that enhance compliance capabilities and eliminate human error. For example, they can restrict calls to certain numbers, certain individuals, certain hours, or to a certain number of times per telephone number, thus ensuring compliance with the myriad of state and federal regulations that govern debt collectors' contacts with consumers. The Commission's current interpretation of "autodialer" as

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[3] 15 U.S.C. § 1692c(c).

[4] 15 U.S.C. § 1692k

[5] *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 18 FCC Rcd 14014 ¶¶ 131-33 (2003).

encompassing predictive dialers is vastly overbroad, significantly hindering the industry's ability to contact consumers to work with them to resolve their debts in a fair manner.[6]

Although the Commission has focused on the dormant ability of predictive dialers to randomly or sequentially generate telephone numbers, today's predictive dialers do not have the capacity to randomly or sequentially generate telephone numbers without fundamentally changing the architecture of the hardware and software. Modifying predictive dialers with software to generate random or sequential numbers is a practice long since abandoned. As a practical matter, Encore and other debt collectors have absolutely no incentive to dial random numbers or contact anyone other than the specific debtor, since the purpose of the call is to encourage the debtor to pay the debt. Further illustrating the overbreadth of the Commission's current expansive interpretation of "autodialer," all current electronic devices with calling functionality (*e.g.*, mobile phones, smart phones, tablet PCs) could be considered "autodialers" because they can be modified to randomly or sequentially generate telephone numbers.

The availability of significant monetary fines that can be imposed for violating this statute, and the FCC's broad interpretation of the term "autodialer," have caused an alarming increase in litigation against financial services companies who are simply trying to contact their customers, either directly or through third parties, to resolve their outstanding debts. In the last several months alone, at least three dozen TCPA class action lawsuits have been filed against financial service companies, including Wells Fargo, Chase, American Express, and Discover. The FCC's interpretation, which no longer provides any significant benefit to consumers that is not already provided for by the FDCPA and numerous other state statues, has also likely caused a chilling effect on precisely the type of communication that should be encouraged with consumers – the attempt to resolve their disputes prior to resorting to litigation. Accordingly, the Commission should refine its interpretation and find that predictive dialers must actually use a random or sequential number generator (not merely have the capability to do so) to qualify as an "autodialer." This would provide a quick and equitable resolution to a costly problem which is currently skyrocketing out of control.

In addition, the Commission should not impose any new prior express written consent requirements on debt collection calls or other non-telemarketing calls to wireless numbers. As Encore and numerous other parties commented in this proceeding, extending new requirements to debt collection calls to wireless numbers would be unnecessary as well as unduly burdensome and detrimental to consumers. Moreover, such requirements would amplify mounting litigation risks for legitimate debt collectors such as Encore. If the Commission adopts any new written consent requirements for prerecorded or autodialed calls to wireless telephone numbers, such requirements should apply only to *telemarketing* calls.

The Commission's stated goal in this proceeding is to harmonize its TCPA rules with the Telemarketing Sales Rule ("TSR") of the Federal Trade Commission ("FTC"), and the TSR's restrictions are limited to telemarketing calls. Moreover, the Commission has already recognized the significant difference between telemarketing calls and non-telemarketing calls such as debt

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[6] The Commission's interpretation is also more restrictive than the FTC's TSR.

collection calls (as has the FTC), subjecting them to different regulatory requirements.[7] In addition, the Commission's proposed rules are inconsistent with the intent of the TCPA, which was developed to address aggressive telemarketing practices and the use of random number dialing to make unsolicited calls to non-customers.

Any new TCPA regulations should protect the rights and interests of consumers and businesses and allow for the collection of legitimate debts. Unfortunately, the Commission's proposed rules do not help consumers *or* businesses and would instead severely restrict communications between debt collectors and consumers that use mobile phones, making it more difficult for consumers to resolve their outstanding debts. Specifically, the proposed rules would:

- Prevent businesses and their debt collectors from using the most efficient and accurate calling methods to contact customers on their wireless phones, which would increase collection costs that ultimately are borne by consumers;
- Force creditors to file lawsuits against consumers who have legitimate debts but cannot be contacted by phone (*e.g.*, if the creditor has only a wireless telephone number for the debtor), which would hit low income communities the hardest, since the percentage of wireless-only households is higher among low income groups;[8]
- Expose debt collectors to potentially catastrophic economic risk from class action attorneys;
- Threaten debt service industry jobs.

New prior express written consent requirements are also unnecessary because debt collection communications with consumers are strictly and extensively regulated by the FDCPA, the Fair Credit Reporting Act, and numerous other federal and state consumer protection laws, which protect consumers and encourage litigation by allowing for the recovery of attorneys fees by consumers. In addition, many states or local jurisdictions require debt collectors to be licensed and can impose fines, penalties and/or suspend or revoke licenses, which prohibit collection activities in violation of debt collection laws, rules and regulations. By adopting new requirements, therefore, the Commission would be acting contrary to the spirit of President Obama's January 18, 2011 Executive Order, which seeks to eliminate unnecessary regulations.[9] For example, the FDCPA already obligates debt collectors to stop calling consumers, or initiating any contact, at the consumer's simple request, and this provision has teeth because it is a strict liability statute that provides for penalties and attorneys fees in the event of a violation.

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[7] For example, the Commission has exempted non-telemarketing calls from the ban on the delivery of artificial or prerecorded messages to residential phones.

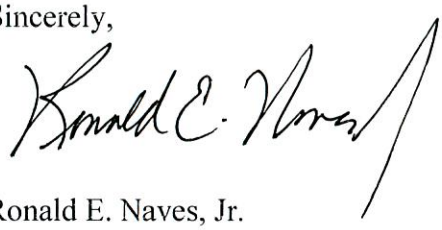
[8] *1 in 4 Homes Have Cell Phone, No Landline*, CBS News, May 12, 2010, *at* http://www.cbsnews.com/stories/2010/05/12/tech/main6476743.shtml.

[9] The Commission is not required to follow this Executive Order because it is an independent agency, but the Chairman has reportedly asked staff to perform their responsibilities consistent with the principles contained therein.

The TCPA was intended to stop telemarketers whose calls were persistent and intrusive, and who were under no obligation to stop calling. Applying stringent consent rules to debt collection calls unnecessarily interferes with a consumer's ability to learn of collection activities at an early stage (*e.g.*, prior to litigation) and respond as desired, either resolving the debt, requesting more information, or stopping further contact, all in accordance with rights provided by the FDCPA. Because consumers have a right to stop calls, or even to designate a convenient time for such calls, the TCPA provides no additional meaningful protection. Perhaps for this reason, a number of members of Congress have recognized that the proposed new rules "are unnecessary to protect consumers from unsolicited telemarketing calls and would thwart compliance with multiple federal and state laws."[10]

Pursuant to Section 1.1206 of the Commission's Rules, this letter is being electronically filed with your office. If you have any questions regarding this submission, please contact the undersigned.

Sincerely,



Ronald E. Naves, Jr.
Senior Vice President & General Counsel

cc: Brandon Black
Chief Executive Officer & President

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[10] December 3, 2010 letter to Chairman Genachowski from eleven members of Congress.

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mcm
midland credit management, inc.

CONSUMER BILL OF RIGHTS

In all that we do, we strive to treat consumers with respect and integrity. We are committed to engaging in dialogue that is respectful and constructive, creating solutions for our consumers that resolve their debt, and ensuring that those who work on our behalf adhere to these same standards. We operate in compliance with the laws that regulate our industry, and we hope to play an important and productive role in people's lives.

Article 1: Contacting Consumers in a Timely and Effective Manner

a. At the outset of collection activity, we will send a debt validation notice informing the consumer that their account has been purchased, identifying the creditor that held the debt at default, clearly stating the balance owed, and giving the consumer an opportunity to both request further information and resolve the debt.

b. Before sending the debt validation notice, we will use reasonable efforts to verify the consumer's current address.

c. If any debt validation notice to a consumer is returned, we will disable that address, use reasonable efforts to verify the consumer's current address, and, if found, send another validation letter to the new address.

d. All collection letters we mail to a consumer will identify the creditor that held the debt at default, the creditor's account number, and the current balance owed, along with other identifying information, as appropriate.

Article 2: Resolving Accounts Quickly and Honestly

a. Our employees who interact with consumers will be trained on, and expected to comply with, applicable federal, state and local laws and regulations concerning fair and ethical collection practices. Employees' conduct in this regard will be monitored for compliance.

b. When interacting with consumers, our employees will listen and work hard to understand their consumers' needs.

c. Our employees will strive to develop and present innovative payment options that allow for the effective repayment of the obligation and accommodate the consumer's financial situation. Payment options will be discussed with the consumer in plain and simple language.

d. Any payment arrangement agreed to between a consumer and our company over the telephone will be confirmed in a letter and promptly mailed to the consumer's address.

e. If we make a mistake, we will devote time, attention, and effort to resolve it promptly and appropriately. We will work hard to learn from our mistakes, and to use what we've learned to improve our consumers' overall experience when interacting with us.

Article 3: Forgiveness and Hardship Guidelines

a. We will cease collection activities when a consumer's account is proven to be the result of identity theft, and will instruct credit reporting agencies to delete any references we have reported for the account from the consumer's credit reports.

b. We will cease collection activities when we receive documentation indicating that the consumer's only source of income is from exempt sources, such as Social Security or Supplemental Security Income benefits, and that the consumer has access to no other assets.

c. We will suspend collection activities when a consumer demonstrates that they are experiencing significant financial hardship due to medical issues.

d. We will suspend collection activities when a consumer is a direct victim of a natural or other catastrophic disaster.

e. We will strive to offer consumers who have entered into a settlement agreement with us a reasonable grace period when they encounter unforeseen circumstances, such as job loss.

Article 4: Collection Practices that Promote Settlement and Preserve Dignity

a. When interacting with consumers, our employees will engage in dialogue that is respectful, honorable and constructive.

b. We will offer discounts and payment plans to consumers in an effort to establish a mutually beneficial resolution that the consumer can afford.

c. To protect the privacy of the consumer, we will not systematically leave unsolicited messages on a consumer's voice mail.

d. To help facilitate the repayment of an account, we will not assess fees or interest to a consumer's balance throughout the period of active repayment unless third-party firms handle the account. Missed payments will invalidate this policy.

e. When we receive official confirmation of a bankruptcy proceeding for a particular account, we will stop collection efforts unless the case is dismissed.

Article 5: Safeguarding Consumer Information

a. When reporting to credit reporting agencies, we will provide timely and accurate updates and will conduct a reasonable investigation of any disputes based on the information provided. When information is found to be incorrect or outdated, we will instruct the agencies to correct or delete the information.

b. In accordance with applicable law, we will employ safeguards to ensure that the existence or amount of a consumer's debt and any confidential consumer information, including Social Security Numbers, are not disclosed in any contact with third parties unless the consumer has previously provided permission.

c. We will take all reasonable steps necessary to protect the security and confidentiality of consumer information, defend against anticipated threats, and prevent unauthorized use of that information.

d. We will maintain all necessary permits, licenses or other authorizations required to purchase and service consumer receivables and will make efforts to ensure that third parties acting on our behalf also have appropriate authorizations.

e. We will maintain records documenting the collection activities undertaken on our accounts and will maintain those records for a reasonable period of time.

f. We will maintain a training program for newly hired collection representatives that covers state and federal laws and interpersonal skills. The training program will require collection representatives to pass a comprehensive examination that includes information on the federal Fair Debt Collection Practices Act before they are assigned to permanent duties and an annual re-examination to ensure continued mastery of important concepts.

g. We will conduct background checks on all prospective employees.

h. We will maintain a dedicated quality control effort under the supervision of our legal counsel, compliance officer, or other senior manager responsible for compliance oversight. Our quality control effort will include measures such as peer reviews, in-person monitoring, observation of collection system entries, and call monitoring and recording, both to ensure proper monitoring of collection practices and procedures and to identify deficiencies.

i. We will not resell accounts to third parties in the ordinary course of our business. In the future, if we have an occasional instance when we do resell accounts, we will only do so when we can provide the purchaser with documentation evidencing the amount owed on the account and clear title of ownership.

Article 6: The Fair and Reasonable Use of Litigation to Resolve an Outstanding Obligation

a. Prior to pursuing a collection strategy that may include litigation, we will attempt to contact the consumer to let them know that the next step in the collection process will be their referral to a law firm.

b. We will engage law firms that litigate in good faith and treat consumers with respect.

c. Prior to signing affidavits, our authorized representatives will read, understand, and fully verify document contents as appropriate to ensure accuracy. All notarized documents will be signed in the presence of a certified notary who is acknowledging the signature.

d. Prior to pursuing litigation, our attorneys and law firms will confirm that the applicable statute of limitations on the debt has not expired.

e. We will not pursue litigation or otherwise collect on accounts where we are not the rightful owner, and we will require our attorneys and law firms to provide proof of such ownership when requested by a court.

f. We will instruct our law firms to engage process servers who are reputable, licensed, in good standing with applicable regulatory agencies and trade associations, and who both conform to all legal requirements concerning the service of process, and employ systematic checks to validate effective service (e.g., the appropriate use of technology, digital pictures, compliance audits, etc.).

g. We will instruct our law firms to include, where permitted by court rules, the name of the creditor that held the debt at default, reference to the creditor's account number, and other information to help the consumer identify the origin of the debt.

h. We will instruct our law firms to never ask courts to issue bench warrants or other forms of body attachment which compel a defendant's appearance in court, except in those rare instances when the defendant fails to respond to a direct order from the court after we obtain a judgment.

i. Unless required by contract or law, we will not unilaterally initiate an arbitration hearing on a consumer's account.

The use of the words "we," "us," or "our" is meant to apply to Encore Capital Group, Inc., Midland Credit Management, Inc., our affiliated corporate entities, and their employees, as required by the context. We will also strive to ensure that our third party service providers, agents, and attorneys adhere to these, or similar, principles when representing us. Please understand that Midland Credit Management is a debt collector. This is an attempt to collect a debt. Any information obtained will be used for that purpose.

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THE DEBT COLLECTION INDUSTRY IS REGULATED BY THE FOLLOWING LAWS AND AGENCIES

Federal laws
The Fair Debt Collection Practices Act (FDCPA)
The Fair Credit Reporting Act (FCRA)
The Fair and Accurate Credit Transaction Act of 2003 (FACT Act)
The Gramm-Leach-Bliley Act (GLB)
The Telephone Consumer Protection Act (TCPA)

Federal agencies
Federal Trade Commission
Federal Communications Commission
Consumer Financial Protection Bureau, beginning this summer

States with laws stricter than the FDCPA

Arizona	Arkansas	California	Connecticut
District of Columbia	Florida	Hawaii	Illinois
Iowa	Kansas	Maine	Maryland
Massachusetts	Michigan	Minnesota	Nevada
New Hampshire	New Mexico	North Carolina	Oregon
South Carolina	Tennessee	Texas	Utah
Vermont	Washington	West Virginia	Wisconsin
Wyoming			

State agencies
Arizona Department of Financial Institutions
Arkansas State Board of Collection Agencies
Colorado Collection Agency Board
State of Connecticut Department of Banking
State of Florida Office of Financial Regulation
Hawaii Department of Commerce and Consumer Affairs
Idaho Department of Finance
Illinois Department of Financial & Professional Regulation
Indiana Securities Division
Iowa Consumer Protection Division
Kansas Office of the State Bank Commissioner
Louisiana Commissioner of Financial Institutions
Maine Department of Professional and Financial Regulation
Maryland Department of Labor, Licensing and Regulation
Massachusetts Division of Banks
Michigan Collection Practices Board
Minnesota Department of Commerce

State agencies, cont.
Nebraska Collection Agency Board
Nevada Department of Business and Industry, Financial Institutions Division
New Jersey Department of the Treasury, Division of Revenue
New Mexico Regulation and Licensing Dept., Financial Institutions Division
City of Buffalo Department of Economic Development, Permit & Inspection Services
New York City Department of Consumer Affairs
North Carolina Department of Insurance
North Dakota Department of Financial Institutions
Oklahoma Department of Consumer Credit
Oregon Finance & Corporate Securities Division - Licenses
Pennsylvania Department of Banking
Rhode Island Department of Business Regulation, Division of Banking
Tennessee Collection Service Board
Texas Secretary of State
Public Utilities Commission of Texas
Utah Department of Commerce, Division of Corporations and Commercial Code
Utah Department of Financial Institutions
Washington Department of Licensing
Washington, D.C. Department of Consumer and Regulatory Affairs
West Virginia State Tax Department
Wisconsin Department of Financial Institutions
Wyoming Division of Banking, Collection Agency Board

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