

# PUBLICATION

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## CFPB Cracks Down on Major Debt Collection Companies for Due Diligence and Deceptive Practices Infractions

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Last week the Consumer Finance Protection Bureau (CFPB) took action against the nation's two largest debt collection companies for lack of due diligence when buying portfolios of debt, and deceptive practices in collecting on the individual debt obligations. Encore Capital Group, Inc. (including subsidiaries Midland Funding LLC, Midland Credit Management and Asset Acceptance Capital Corp.) and Portfolio Recovery Associates had purchased the rights to collect more than \$200 billion in defaulted consumer debts on credit cards, phone bills and other accounts.

Specifically, the CFPB found that both Encore and Portfolio Recovery Associates purchased large portfolios of consumer debt despite representations by the portfolio sellers that 1) some of the consumer debt balances were "approximate" or may not reflect the most recent consumer payments, and 2) that documents were not available to support the accounts or the balances. Despite these representations, the companies purchased the portfolios and did not sufficiently investigate whether the individual debts were accurate and enforceable before collecting on them.

The CFPB found that Encore and Portfolio Recovery Associates filed state court suits across the country to collect on the consumer debt balances without ever intending to prove the debts because many of the accounts lacked documentation. Nevertheless, both companies submitted affidavits that misrepresented that the affiants reviewed original account-level documentation confirming the consumers' debts (they had not) as well as submitted affidavits with documents purporting to be the specific account contracts and records (but were not). The CFPB found that these companies were relying on the likelihood that the consumer would not show up to court and raise a defense.

Apart from the filing of collection suits, the Bureau also discovered that both companies used the vocabulary and threat of litigation improperly in order to collect debts. For example, Encore and Portfolio Recovery Associates sent thousands of letters to consumers offering a time-limited opportunity to "settle" without revealing that the debt was too old for litigation. Also, some of Portfolio Recovery Associates' collectors identified themselves as being from the "Litigation Department," and stated that an attorney reviewed the "file" and that litigation to collect was planned, imminent or underway. In fact, in many cases, an attorney had not reviewed the account and the company had not decided whether to file suit.

The Bureau also took issue with how Encore misrepresented that consumers had the burden of proof to disprove a debt. In representations to consumers and in sworn affidavits to courts, Encore falsely stated that the debt should be assumed to be valid because the consumer had not disputed it within a certain time period. In fact, Encore had the burden to first prove the debt was owed and accurate before the consumer had to challenge it.

Finally, the CFPB found that the companies' procedures for handling consumers' dispute correspondence and using auto-dialer technology were in violation of the consumers' rights. The Bureau alleges that Encore disregarded or failed to adequately investigate consumers' disputes if the correspondence arrived more than 45 days after collection began. Encore would require the consumer to produce specific documents or other "proof" to support their dispute prior to conducting its investigation of the issues raised by the consumer. Also,

Encore's subsidiary Asset Acceptance made thousands of calls to consumers before 8 a.m. or after 9 p.m. and called hundreds of consumers more than 20 times in a two-day period. Meanwhile, Portfolio Recovery Associates misled consumers into consenting to receive auto-dialed cell phone calls for almost a year.

Both Encore and Portfolio Recovery Associates have reached settlement with the CFPB, and in addition to broad injunctions, Encore Capital Group must pay up to \$42 million in consumer refunds and a \$10 million penalty, and stop collection on more than \$125 million worth of debts. Portfolio Recovery Associates must pay \$19 million in consumer refunds and an \$8 million penalty, and stop collecting on more than \$3 million worth of debts.

A central takeaway from the CFPB's enforcement action is the importance of up-front due diligence. Baker Donelson's attorneys have experience advising clients on what information and documentation should be provided as part of the purchase and servicing of assets. For more information please reach out to the Baker Donelson attorney with whom you regularly work, or one of our CFPB team members.