Memorandum in Opposition

March 25, 2015

House Bill 2252

On behalf of Encore Capital Group, Inc., and its wholly-owned subsidiaries, including Midland Credit Management and Midland Funding (collectively, "Encore"), I submit this memo in opposition to House Bill 2252. Encore supports consumer protections that ensure responsible debt collection but, as drafted, House Bill 2252 is not reasonable. This legislation has very significant problems, and would have many unintended consequences that hurt both businesses and the very consumers it is intended to protect.

By way of background, Encore is a publicly traded company that, together with its debt purchaser and debt collector subsidiaries, has provided over 60 years of service to consumers. Purchasing primarily charged-off credit card receivables, we currently own an account for over 234,000 Oregon consumers, and partner with them by offering discounted payment plans, flexible repayment terms, and charging no interest or fees on new accounts. In 2013, we forgave over $4.95 million in debt to Oregon residents. Unfortunately, this bill would significantly reduce the discounts Encore could provide to Oregon consumers, as it would hamper our ability to collect on valid debt obligations.

Encore Supports Positive Change in the Industry

Encore supports efforts to improve our industry and the quality of interactions with consumers. In 2011, we proudly published an industry-leading *Consumer Bill of Rights* (a copy of which is enclosed), codifying our commitment to conduct business ethically, engage in respectful and constructive dialogue with consumers, and play a positive role in consumers' financial recovery.

The Federal Consumer Financial Protection Bureau (CFPB) has noted the importance of the debt collection industry in ensuring that credit remains accessible to consumers, a critical factor in improving the economy:

> Consumer debt collection plays an important role in the functioning of the consumer credit market. By collecting delinquent debt, collectors reduce creditors' losses from non-repayment and thereby may help to keep consumer credit available and more affordable to consumers. In some instances, by purchasing debt at discounted rates, debt buyers may be able to offer consumers settlements and payment plans that original creditors would be unlikely to offer, making it easier for

> consumers to pay off their debts. Available and affordable credit is vital to millions of consumers because it makes it possible for them to purchase goods and services that they could not afford if they had to pay the entire cost at the time of purchase.[1]

Further acknowledging the need to balance consumer protection with the important role this industry plays, the Federal Trade Commission (FTC) has repeatedly stated that positive change should not "unduly burden. . .legitimate debt collection."[2] Unfortunately, as currently drafted, House Bill 2252 would impose undue restrictions on the legitimate collection of valid debt.

House Bill 2252 Would Require Documents and Data That Do Not Exist

As introduced, HB 2252 would require documents and data that simply do not exist. Both the CFPB and FTC have publicly recognized that pre-charge-off account itemization is typically not provided to debt purchasers. Similarly, a copy of the original contract is often unavailable. This is largely because banks that originate credit card debt are, under federal law, not required to maintain this information longer than 24 months.[3] Beyond the federal document retention requirements, in many cases a contract may have never existed in the first place. Indeed, for an increasing number of credit card accounts opened by phone or online today, there is never a contract that the consumer signs.

Instead of requiring documents that may have never existed in the first place, Encore believes that a copy of the federally regulated charge-off statement, the statement provided to the consumer by the banks after 180 days of delinquency, is the best evidence of the existence of the account and the final account balance. Whether the issue is pre-charge-off itemization or a copy of a non-existent contract, legislation requiring debt purchasers to have information that simply does not exist does not make any sense. As drafted, the legislation's impossible requirements would in no uncertain terms eliminate the ability of the entire debt collection industry to do business in Oregon.

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[1] *Fair Debt Collection Practices Act CFPB Annual Report*. Consumer Financial Protection Bureau, March 20, 2013, page 9. Available at http://files.consumerfinance.gov/f/201303_cfpb_March_FDCPA_Report1.pdf.

[2] *Repairing a Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration*. Federal Trade Commission, July 2010, pages vi and 71. Available at http://www.ftc.gov/os/2010/07/debtcollectionreport.pdf.

[3] Truth in Lending Act, Regulation Z. 12 C.F.R. § 226.25.

The Legislation Would Expand the Statute of Limitations Beyond What It Was Intended To Do

The legislation would expand the statute of limitations beyond what it was intended to do – ensure that lawsuits are not filed on time-barred debt. In 47 states, the statute of limitations relates to when a legal action may be brought, but this legislation would expand the statute of limitations beyond what Oregon and 46 other states do. By applying the statute of limitations to collection activity unrelated to litigation, the legislation would have the exact opposite effect of what is intended: it would incentivize debt buyers to sue more so as to avoid losing the ability to collect once the statute of limitations runs. Instead of such a perverse incentive, the legislation should seek to promote dialogue and communication between debt buyers and consumers of delinquent debt, rather than create incentives for more litigation. Additionally, debt purchasers would not be allowed to contact or speak to consumers regarding a time-barred debt, even if the consumer was seeking to resolve the debt because it appeared on their credit report. Indeed, by banning all collection activity after the statute of limitations, many consumers would be left unaware that they could regain their financial footing by working with a company like Encore.

The Legislation Would Go Further Than Any Other State in Requiring Account-Level Affidavits to Obtain Judgment

The legislation would require account-level affidavits from previous creditors to obtain judgment – something not required by any other state. Indeed, late last year the NY State Office of Court Administration issued new affidavit rules for debt buyers and acknowledged that an account-level affidavit is not required. Rather, as in every other state, portfolio-level affidavits are sufficient. An account-level requirement wouldn't just be impractical, but it would be impossible to produce an account-level affidavit from original creditors for every account in every case. Banks sell tens of millions of accounts each year, and the legislation would essentially use debt purchasers as a vehicle to require banks to create an affidavit for every account they sell. This would be unreasonable for both debt purchasers and the banks and would make Oregon the first and only state to eliminate an entire industry's ability to file suit against consumers for valid debt. Such a result would be unconscionable.

House Bill 2252 Would Have a Retroactive Application

As drafted, the legislation would apply retroactively to accounts purchased prior to the effective date. Debt purchasers like Encore that have bought hundreds of thousands of Oregon consumer accounts would face significant difficulty obtaining documents required by this legislation (to the extent the documents even exist – as explained above, in many cases they do not). Documents are negotiated into our purchase of accounts, and we secure access to documents that are required by the current state law at the time of purchase. We ask that any legislation adopt

prospective language that applies to accounts first purchased on or after the effective date so that the additional documentation requirements can be included in our contracts and so that debt purchasers can comply with any new data requirements from the point in time when the account is first sold.

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Thank you for your attention on this important matter. Please feel free to contact me directly at (858) 309-6923 for any further information.

Sincerely,

Sonia Gibson
Encore Capital Group Government Affairs