ENCORE
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July 31, 2009

Federal Trade Commission
Office of the Secretary
Room H-135 (Annex A)
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

Re: Debt Collection Roundtable – Comment, Project No. P094806

Dear Federal Trade Commission:

Thank you for the opportunity to provide written comments in advance of the roundtable discussion regarding "Protecting Consumers in Debt Collection Litigation and Arbitration", scheduled for Chicago on August 5-6, 2009. Our companies, Encore Capital Group, Inc. (NASDAQ: ECPG), Midland Credit Management, Inc. ("MCM"), and three debt-buying entities, Midland Funding LLC, Midland Funding NCC-2 Corporation and MRC Receivables Corporation, take this topic seriously and appreciate the FTC's efforts to gather information from interested parties. Xenia Murphy, Senior Manager, will be present at the roundtable to represent our views and answer any questions.

We employ more than 1200 employees across five locations, and dedicate substantial resources to support our financial, compliance and legal outsourcing departments, and to manage our account portfolios in a responsible, ethical and profitable manner. Our efforts are directed at working with consumers to amicably and fairly resolve their delinquent accounts without a need for litigation, but legal enforcement of an underlying credit agreement is sometimes necessary to move an account toward payment.

We have been in the collection business for 55 years and started purchasing portfolios for our own account approximately 18 years ago. From our inception through June 30, 2009, we have invested approximately $1.3 billion to acquire 27 million consumer accounts with a face value of approximately $43 billion. The receivable portfolios we purchase consist primarily of unsecured, charged-off domestic consumer credit card, auto loan deficiency and telecom receivables purchased from national financial institutions, major retail credit corporations, telecom companies and resellers of such portfolios. After we purchase a portfolio, we continuously refine our analysis of the accounts to determine the best strategy for collection, including the use of a nationwide network of collection attorneys to pursue legal action where appropriate. We believe the use of the legal system is a necessary element of maintaining accountability in our financial system when repayment cannot be secured through the mail or by phone.

The roundtable agenda identifies four broad areas to which our comments are addressed below. We believe that these subjects are among the most important in the legal environment for the FTC to review and understand in advance of any supplemental reports or recommendations for changes to current practices.

Default Judgments and Service of Process

The processes by which any judgments, including default judgments, are entered across various jurisdictions differ greatly based upon such considerations as the amount of the debt, the documentation provided with the complaint, and the sufficiency of evidence regarding the proper service of process upon the defendant. Default judgments represent a significant percentage of the judgments obtained by our companies and others in this industry, as well as in all other cases filed in courts that must review and resolve increasingly large numbers of lawsuits. In our view, the rate of default judgments does not depend on the type of action but rather on the processes in place for a particular court or judge to make a decision in a case where the defendant has failed to file an appearance or responsive pleading, and has similarly failed to physically appear before the court. We would prefer that consumers appear so that we may discuss the account, their financial situation, and payment options, but they do not go to court, and that is the reason for the large numbers of default judgments.

While the number of cases filed to collect delinquent debts is substantial, we do not see the default judgment rate to be a reflection of certain types of debt or debt ownership, but as an indication that most defendants fail to respond to proper legal notice of a pending court action involving their interests. A reasonable default judgment process that examines both the service of process and the information and materials supporting the complaint is able to quickly resolve uncontested matters and remove them from a crowded court docket while limiting the time that local counsel must devote to such cases. In most jurisdictions, a defendant is notified of such a default judgment and provided another opportunity to appear before the court and raise available defenses to the claim. We believe that defendants are given sufficient opportunities, both before and during the litigation process, to raise defenses, ask questions, and reach a resolution to their delinquent account, and the default judgment process is important for companies such as ours to continue to collect debts in an efficient and cost-effective manner.

Statute of Limitations

A statute of limitations, which provides a deadline for the commencement of litigation, is defined is various ways across many states, with distinctions based on the nature of a contract, availability of supporting documentation, location of activity, and other factors that are reviewed and applied by courts at different jurisdictional levels. Our company uses litigation as only one of several methods to collect debts and, for those accounts that are past the statute of limitations, we do collect on such accounts through methods such as telephone calls and letters because there is no prohibition on such actions. We do not, however, knowingly pursue litigation against those consumers whose statute has expired. As you know, the FTC issued a Consumer Alert in October 2004 that specifically concluded that collection of debt for which a statute of limitations has run is not deceptive, misleading, or prohibited by law. With only a few exceptions, the expiration of the statute of limitations does not extinguish the debt or our right to continue collections, and we do collect such debts in the same general course of business that we collect all other debts.

Through court decisions, the statute of limitations for credit card accounts has been reduced in several states, and a number of state legislatures have also proposed a reduction in the time period for litigation. It is our view that shorter statutes will not have the intended effect and will lead to a significant increase in the number of lawsuits filed. Companies will be compelled to file lawsuits earlier in the collection process to protect their interests, and will no longer have the time and flexibility to work with consumers having financial difficulties. While shorter statutes may initially appear to be favorable for consumers, the result will likely not be beneficial to them because agencies will no longer be able to wait for individuals to financially recover. Additionally, the litigation costs and court activity will only add to the burden faced by such consumers.

Finally, consumers are currently provided with detailed information about their debt and numerous notices regarding their rights, and it is our view that informing consumers about the legal status of their account is problematic. Consumers receive a validation letter each time that an account is transferred to a new servicer, and consumers have also already likely received many letters and notices from the original creditor and prior owners and servicers, so we believe that sufficient disclosures have been made to consumers and that requiring an additional notice will result in legal questions and other issues that collection agencies should not be required to address. Letters to consumers should be concise, informative and provide details regarding the subject account and payment options, but should not be complicated with legal advice related to the statute of limitations, tax consequences, or other similar issues, which will complicate letters and make them less effective and more difficult for consumers to read and understand.

Evidence of Indebtedness

As noted previously, our company purchases account portfolios from national financial institutions, major retail credit corporations, and telecom companies, as well as resellers of such portfolios, and each purchase is the subject of a comprehensive written agreement that addresses all aspects of the transaction between our company and the selling entity. Our agreements not only require representations and warranties from a seller that all consumer and account information is accurate and current, but also often provide for post-purchase support from sellers regarding additional information or documents that may be needed to address consumer or court inquiries. The electronic data obtained from sellers includes a consumer's name, address, Social Security Number, telephone number and other details that are used to confirm identity, as well as specific account information regarding the charge-off and current balance, last payment date and amount, and other account activity. All of this is provided to our law firms at the time we place an account for litigation. We intend and expect that all relevant and required information is referenced in the complaint or provided to the court and the consumer in the form of an affidavit or other exhibit.

One major concern for our company and the industry has been the elevated evidentiary standards being proposed by state legislatures and independently developed by local courts. The standards appear to be applicable only to debt collection cases and often include documentation and information requirements that are burdensome and unrealistic in a time when such physical materials are often unavailable or non-existent. Many accounts are opened, accessed, managed and transferred without any hardcopy documents, so an evidentiary standard that sets minimum filing or judgment requirements that demand the production of an original application, complete set of account statements, copies of payments and other written materials is, in our opinion, an unreasonable expectation. The burden of proof should not be higher for debt collection matters, and we meet our burden of proof using electronic information and certain documents provided to us by the sellers and warranted by contract to be true and correct.

Post-Judgment Remedies

As with the other categories, post-judgment remedies, which may include garnishments, bank levies, property liens, and other permitted activities, are governed by state laws and differ widely across jurisdictions. We rely upon our nationwide network of law firms to be familiar with local regulations and to make appropriate decisions regarding the effectiveness and benefits of the remedies available for collection of judgment balances. States impose limits on each type of remedy, ranging from the percentage of wages available to creditors to the amounts exempted from action against a consumer's bank account. We do not instruct or expect our firms to seize exempt funds, including federal benefits, but processes are available to defendants to notify firms and courts regarding exempt funds, and such amounts are quickly released from any bank freeze. We receive no benefit when our law firms seize funds that cannot be applied to a judgment, and we bear the direct cost for the filing and release of such bank garnishments, but there is no means available to indicate the presence of exempt funds in an account which contains other funds that are subject to creditor actions. It is our view that the current process is sufficient and that there is no need for additional restrictions or regulation regarding this subject.

Productive Change and Best Practices

As a publicly-traded company, and as a member of ACA International, DBA, NARCA, and other industry organizations, as well as the Better Business Bureau, we are governed by a number of entities with whom we regularly meet, solicit feedback from and comply regarding best practices and internal processes aimed at collecting debts in a responsible and productive manner. It concerns us that certain state and city legislative actions have targeted the debt collection industry for heightened scrutiny and litigation standards, and we are similarly distressed by the unpredictable nature of the local courts, where evidentiary requirements are often imposed without due consideration for the costs and reasonableness of such demands.

We believe that it is in the best interests of this industry and the consumers for there to be consistent and reasonable expectations from the courts and consumer attorneys regarding the type, form and content of the information and evidence offered in support of collection litigation, and we appreciate the FTC's leadership on these issues. It is important to note that we make great efforts and dedicate significant resources to contact and work with consumers to resolve their delinquent accounts prior to litigation. Our enforcement of a valid contract through the legal process is an expensive but necessary component of collections, and it is our hope that the roundtable discussions will provide the information needed to preserve the litigation process and protect both consumers and collection agencies against regulations that curtail the flexibility and predictability that allow us to best work with our customers to find mutually-beneficial solutions.

Thank you again for this opportunity to comment. Please feel free to speak with Xenia Murphy at the upcoming discussion and to contact me directly if I can answer any questions or provide you with additional information in the future.

Sincerely,

Lance S. Martin
Vice President, Compliance and Regulatory Affairs