

ATTORNEY GENERAL OF THE STATE OF NEW YORK
BUREAU OF CONSUMER FRAUDS & PROTECTION

In the Matter of the

Assurance No. 14-238

Investigation by ERIC T. SCHNEIDERMAN,
Attorney General of New York, of

ENCORE CAPITAL GROUP, INC.

ASSURANCE OF DISCONTINUANCE

The Office of the Attorney General of the State of New York ("OAG") has conducted an investigation (the "Investigation"), pursuant to Executive Law § 63(12) and General Business Law Article 22-A, of the debt collection practices of Encore Capital Group, Inc. ("ECG").

This Assurance of Discontinuance ("Assurance") contains the findings of the OAG and the relief agreed to by the OAG and ECG (collectively, "the parties").

I. DEFINITIONS

1. For purposes of this Assurance, the following terms have the following meanings:
 - a. "ECG" shall mean Encore Capital Group, Inc. and any of its subsidiaries engaged in debt collection activities, including debt collection litigation, within New York State.
 - b. "Communication" shall mean any conversation, discussion, letter, email or other transmittal of information or message, whether transmitted in writing, orally, electronically or by any other means in connection with an attempt to collect a debt.
 - c. "Debt Collection Action" shall mean a judicial action or arbitration to collect on a debt assertedly owed by a consumer residing in New York State.
 - d. "Original Creditor" shall mean the company or entity that originally provided the credit or loan to the consumer or otherwise owned the debt at the time of default.

e. “Third-Party Debt Collector” shall mean any third party engaged in debt collection activities in New York State on behalf of ECG, including any attorneys who bring Debt Collection Actions on behalf of ECG.

f. “Time-Barred Action” shall mean a lawsuit to collect on a debt assertedly owed by a consumer residing in New York State that was commenced outside of the applicable statute of limitations for the causes of action asserted therein.

g. “Time-Barred Debt” shall mean a debt assertedly owed by a consumer residing in New York State that is outside of the applicable statute of limitations for a creditor to sue to collect on the debt.

II. FINDINGS OF THE ATTORNEY GENERAL

Parties and Background

2. ECG is a Delaware corporation with its principal executive offices at 3111 Camino Del Rio North, Suite 1300, San Diego, California 92108.

3. Certain ECG subsidiaries are engaged in the business of purchasing portfolios of delinquent or charged-off debts from other entities, such as the Original Creditor on the debt or another debt buyer, and then seeking to collect on some of those debts from consumers. ECG, as with other debt buyers, purchases these portfolios at often deeply discounted prices from the face value of the debt. The majority of the debt purchased by ECG is in the form of defaulted credit card debt. According to Encore, it does not currently re-sell any of the debt it has purchased to other entities, and has not re-sold any debt since at least October 2010.

4. ECG is one of the largest buyers of consumer debt in the nation. According to a recent SEC filing by the company, during the year ended December 31, 2013, ECG paid approximately \$1.2 billion to acquire portfolios, primarily charged-off credit card portfolios,

with a face value aggregating \$84.9 billion. (Purchases of charged-off credit card portfolios include \$942.4 million of portfolio acquired in conjunction with mergers and acquisitions during 2013.)¹ In 2012, the company paid more than \$562 million to purchase debts with a total face value of \$18.5 billion. Approximately 70% of the amount paid by ECG was directed toward the acquisition of charged-off credit card debts, while the rest was divided between the purchase of bankruptcy receivables and telecommunications-related obligations.²

5. ECG, through certain subsidiaries, is a “debt collector” under 15 U.S.C. § 1692a(6) of the federal Fair Debt Collection Practices Act and a “principal creditor” under Article 29-H of New York’s General Business Law. Several of ECG’s subsidiaries are licensed as “debt collection agencies” by the New York City Department of Consumer Affairs, including Midland Credit Management Inc., Midland Funding LLC, Midland Funding of Delaware LLC, Midland Funding of NCC-2 Corporation, and MRC Receivables Corporation.

ECG’s Non-Judicial Debt Collection Activities

6. After purchasing a portfolio of debt, ECG typically first attempts to collect on the debt through non-judicial methods, such as through collection calls and letters.

7. ECG attempts to collect through non-judicial means both on debt that is within the applicable statute of limitations and on Time-Barred Debt. There is no prohibition in New York State against collecting on Time-Barred Debt through non-judicial means; however, in such circumstances, a debt collector must not lead the consumer to believe that the debt collector will sue on the debt should the consumer fail to pay.

¹ See Encore Capital Group, Inc., Annual Report (Form 10-K), at 47 (filed Feb. 25, 2014).

² See Encore Capital Group, Inc., Annual Report (Form 10-K), at 36 (filed Feb. 13, 2013).

8. Consumers who receive a collection call or letter from ECG regarding a Time-Barred Debt without having been informed by the company of the debt's legal status may not realize that the debt is outside of the applicable statute of limitations and may believe that they will be sued if they fail to pay the debt. It is possible that if consumers understood that they would not be sued on a Time-Barred Debt, at least some of these consumers would choose not to make a payment on the debt in response to ECG's collection letters and calls.

9. Since April 2010, the New York City Department of Consumer Affairs ("DCA") has required debt collectors to disclose in all communications with consumers who reside in New York City about a Time-Barred Debt, the fact that the debt is outside of the legal time limit to sue on the debt.³ Following DCA's implementation of this rule, ECG ceased attempting to collect on a Time-Barred Debt from consumers who reside in New York City. Additionally, since 2012, ECG has disclosed when it communicates in writing with consumers who reside in New York State, outside of New York City, about a Time-Barred Debt that, due to the age of the debt, ECG will not sue to collect on the debt. ECG has also disclosed since that time that it will not report the debt to a credit reporting agency when the debt is beyond the date for inclusion in consumer reports provided for in Section 605(a) of the Fair Credit Reporting Act.

ECG's Debt Collection Actions

10. In those instances when ECG's non-judicial debt collection measures prove unsuccessful, the company may commence a lawsuit against the consumer for the amount of the debt.

11. Each year, ECG brings thousands of debt collection lawsuits against consumers throughout New York State. According to a search of the electronic "eCourts" database of the

³ See Rules of the City of New York, tit. 6, ch. 2 § 2-191.

New York State Unified Court System, ECG, through its affiliate Midland Funding LLC, filed more than 239,000 debt collection actions in New York courts during the years 2007 through 2012 alone.⁴

12. Typically, ECG initiates these debt collection actions through standardized summonses and complaints prepared and filed by their counsel. The complaints usually assert causes of action for breach of contract and/or account stated.

13. Although the court rules have historically not required that complaints contain specific information relating to the timeliness of a claim (such as the date of last payment or of delinquency on the alleged debt, the jurisdiction in which the cause(s) of action accrued, or the statute of limitations of that jurisdiction), consumers who are sued by ECG may be unable to determine whether the claims are timely because the complaints may not always provide sufficient information to allow a reasonable consumer to determine whether ECG's claims are within the applicable statute of limitations

14. The majority of these debt collection lawsuits brought by ECG are not answered or otherwise responded to by consumers via court process and result in default judgments against the consumers, in which event a judgment is entered in favor of the company for the full value of the debt claimed to be owed.⁵ ECG typically submits an affidavit from an ECG employee in support of its application for a default judgment.

⁴ This total derives from aggregating the results of searches for the term "Midland Funding" within the "WebCivil Local" and "WebCivil Supreme" databases of the eCourts system.

⁵ Although estimates vary, well more than half of all debt collection lawsuits in New York State, and perhaps as much as 90% of such lawsuits, result in default judgments in favor of the plaintiff. See, e.g., Federal Trade Commission, *Repairing a Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration* (July 2010), at 7, available at <http://www.ftc.gov/os/2010/07/debtcollectionreport.pdf> (noting that panelists in FTC roundtable "estimated that sixty percent to ninety-five percent of consumer debt collection lawsuits result in defaults, with most panelists indicating that the rate in their jurisdictions was close to ninety percent"); New York City Bar Association, *Out of Service: A Call to Fix the Broken Process Service Industry* (April 2010), at 4, available at <http://www.nycbar.org/pdf/report/uploads/ProcessServiceReport4-10.pdf> (finding 79% of consumer

15. Certain ECG employees have testified in depositions that prior to 2009 they at times signed hundreds of affidavits during a business day without: (i) individually reviewing the affidavits or the exhibits attached to the affidavits, (ii) verifying that the sworn statements that they were making in their affidavits, which were prepared based on information in ECG's computer system reflecting data provided by the Original Creditor, were true, accurate, and well-founded; or (iii) possessing "personal knowledge", as alleged in the affidavits, about the claimed debts and the amounts allegedly owed. The employees also stated that at times they signed the affidavits outside of the presence of a notary and then subsequently had the affidavits notarized in bulk.

16. ECG has obtained default judgments predicated on such affidavits in thousands of Debt Collection Actions throughout New York State.

17. According to ECG, on or about October 2009, it revised its policies to require its employees to review and confirm the accuracy of the contents of their affidavits prior to execution, to refrain from claiming to have personal knowledge about the consumer and the debt, and to execute the affidavits in the presence of a notary.

ECG's Filing of Time-Barred Actions

18. The applicable statute of limitations in debt collection actions filed in New York is governed by New York's "borrowing statute," Section 202 of the Civil Practice Law and Rules ("CPLR"). This statute is designed to prevent plaintiffs from forum shopping for a favorable

credit cases filed in New York City Civil Court in 2008 resulted in default judgments against the defendant); The Urban Justice Center, *Debt Weight: The Consumer Credit Crisis in New York City and Its Impact on the Working Poor* (October 2007), at 17-18, available at http://www.urbanjustice.org/pdf/publications/CDP_Debt_Weight.pdf (finding that 80% of cases within randomly selected sample of New York City Civil Court debt collection actions resulted in a final default judgment against the defendant).

statute of limitations.⁶ It requires that a cause of action against a defendant that accrued outside of New York State be timely filed under both New York's statute of limitations and the statute of limitations of the jurisdiction in which the cause of action accrued:

An action based upon a cause of action accruing without the state cannot be commenced after the expiration of the time limited by the laws of either the state or the place without the state where the cause of action accrued, except that where the cause of action accrued in favor of a resident of the state the time limited by the laws of the state shall apply.

CPLR § 202. The statute is of general applicability, governing any New York action that accrued outside of the state, and is "substantially unchanged since 1902."⁷

19. In New York, the statute of limitations for a cause of action to collect on a debt owed to a creditor is generally six years. See CPLR § 213(2) (six-year statute of limitations for "an action upon a contractual obligation or liability, express or implied"). Many states outside of New York have shorter statutes of limitations that govern debt collection claims accruing in those jurisdictions. For example, many creditors are incorporated or have their principal place of business in Delaware, which has a three-year statute of limitations. See Del. Code Ann. Tit. 10, § 8106.⁸

20. In April 2010, the New York Court of Appeals issued its decision in *Portfolio Recovery Assocs., LLC v. King*, 14 N.Y.3d 410, 416 (2010), holding that, in order for an economic cause of action to be timely, it must be commenced within the statutes of limitations of

⁶ See *Global Fin. Corp. v. Triarc Corp.*, 93 N.Y.2d 525, 528 (1999).

⁷ *Triarc*, 93 N.Y.2d at 528.

⁸ Several other states have statutes of limitations of three or four years. See, e.g., Cal Code Civ. Proc. § 337 (four-year statute of limitations for breach of written contract and account stated causes of action in California); Kan. Stat. Ann. § 60-512 (three-year statute of limitations in Kansas); Md. Code Ann. Cts. & Jud. Proc. § 5-101 (three-year statute of limitations for breach of contract and account stated causes of action in Maryland); N.C. Civ. Proc. § 1-52.1 (three-year statute of limitations in North Carolina); N.H. Rev. Stat. Ann. § 508.4 (three-year statute of limitations in New Hampshire); 42 Pa. Cons. Stat. § 5525 (four-year statute of limitations in Pennsylvania); Tex. Civ. Prac. & Rem. Code Ann. § 16.004 (four-year statute of limitations in Texas).

both New York and the jurisdiction where the cause of action accrued.⁹ Courts in subsequent cases have held that the Court of Appeals' decision in *King* did not change the law governing what is required by CPLR § 202 to bring a timely action in New York.¹⁰

21. Prior to the Court of Appeals' decision in *King*, ECG, like many other plaintiffs in consumer credit actions, used New York's six-year statute of limitations when filing Debt Collection Actions in New York courts, regardless of where the underlying cause of action accrued. Prior to *King*, many litigants, and even some courts, failed to apply CPLR § 202, and instead focused solely on the jurisdiction where the consumer resides, when determining the applicable statutes of limitations in Debt Collection Actions. This resulted in ECG obtaining judgments, including but not limited to those in which consumers defaulted and thus did not raise statute of limitations defenses, in thousands of Time-Barred Actions where the jurisdictions in which the causes of action accrued had statutes of limitations shorter than six years.

22. Based on data produced by ECG, the OAG has determined that ECG obtained, and in some instances continues to collect on, judgments in over 4500 Time-Barred Actions between November 1, 2008 and June 2014. At least 945 of the Time-Barred Actions were filed after the Court of Appeals' decision in *King*.

23. On May 13, 2009, the Chief Clerk for the Civil Court of the City of New York issued directive CCM-186 requiring that all requests for default judgments entered by the Clerk be accompanied by an affidavit from the plaintiff attesting that, after reasonable inquiry, the

⁹ See *Triarc*, 93 N.Y.2d at 529.

¹⁰ See *Windsearch, Inc. v. Delafrange*, 90 A.D.3d 1223, 1224 (3d Dep't 2011) ("We do not agree with plaintiff that the holding in *Portfolio* represents a new rule of law that must be applied prospectively."); *Diaz v. Portfolio Recovery Assocs., LLC*, No. 10 CV 3920 (MKB) (CLP), 2012 U.S. Dist. LEXIS 72724, at *9 (E.D.N.Y. May 24, 2012) ("The analysis in *King* is straightforward, relying on existing New York precedent, and does not note any contrary prior decisions by any New York court.").

¹¹ In connection with debt purchased after September 1, 2009, ECG shall comply with DRP-182 of the Directives and Procedures of the Civil Court of the City of New York, and attest to the full chain of title.

plaintiff (or its attorney) has reason to believe that the applicable statute of limitations on plaintiff's claim had not expired at the time the action was commenced. On June 1, 2010, the directive was amended to require that the affidavit also identify the jurisdiction in which the plaintiff's cause of action accrued and the statute of limitations of that jurisdiction, if other than New York.

24. Since May 2009, ECG, when applying for a default judgment in New York City civil courts, has filed an affidavit through its counsel attesting that its cause(s) of action was filed within the applicable statute of limitations. Prior to this time, the company did not include such an affidavit with its applications for default judgments. The company does not currently require that its applications for default judgments elsewhere in the state, outside of New York City, include an affidavit addressing the statute of limitations.

25. By reason of the foregoing, the OAG believes that ECG has engaged in conduct violative of New York Executive Law § 63(12), New York General Business Law ("GBL") §§ 349 and 601, and the federal Fair Debt Collection Practices Act ("FDCPA").

26. Executive Law § 63(12) authorizes the OAG to bring an enforcement action when a person or business entity engages in repeated fraudulent or illegal acts or otherwise demonstrates persistent fraud or illegality in the carrying on, conducting, or transaction of business.

27. GBL § 349 prohibits deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this State.

28. GBL § 601 prohibits a principal creditor or its agent from claiming, or attempting or threatening to enforce a right with knowledge or reason to know that the right does not exist. The statute defines a principal creditor to include any person, firm, corporation or organization to

which a consumer claim is owed, due or asserted to be due or owed, or any assignee for value of such person, firm, corporation, or organization.

29. The FDCPA prohibits debt collectors from using any false, deceptive, or misleading representations or means in connection with the collection of a debt, including falsely representing the character, amount, or legal status of a debt, threatening to take any action that cannot legally be taken, or using any false representation or deceptive means to collect or to attempt to collect a debt. (15 U.S.C. § 1692e.) In addition, the FDCPA prohibits debt collectors from using unfair or unconscionable means to collect or attempt to collect a debt. (15 U.S.C. § 1692f.)

III. PROSPECTIVE RELIEF

WHEREAS, the OAG is willing to accept the terms of this Assurance pursuant to New York Executive Law § 63(15) and to discontinue its investigation of ECG subject to the terms of this Assurance;

WHEREAS, without admitting or denying any of the above allegations, ECG is entering into this Assurance in order to settle and resolve the OAG's investigation; and

WHEREAS, each of the parties believes that this Assurance is a prudent and appropriate way to resolve this dispute;

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the parties that:

1. ECG shall fully comply with New York Executive Law § 63(12), GBL §§ 349 and 601, and the FDCPA.

Prohibited Practices

2. ECG will not make any material misrepresentation to collect or attempt to collect a debt from a consumer residing in New York State.

3. ECG will not execute any affidavit, declaration, or other sworn statement in connection with a Debt Collection Action unless the affiant has first reviewed the affidavit, declaration, or other sworn statement to confirm that the information and statements contained therein are truthful, accurate, and complete.

4. ECG will not execute any affidavit, declaration, or other sworn statement in connection with a Debt Collection Action unless the affidavit, declaration, or other sworn statement is based on the affiant's own personal knowledge or upon business records of ECG that the affiant has personally reviewed.

5. ECG will not file any affidavit, declaration, or other sworn statement in a Debt Collection Action that has been notarized in a manner inconsistent with the requirements of applicable law for the proper notarization of documents.

6. ECG will not represent, directly or indirectly, that it has the right to sue on Time-Barred Debt.

7. ECG will not commence or cause to be commenced any lawsuits to collect on any Time-Barred Debt.

8. ECG will not commence or cause to be commenced a Debt Collection Action unless ECG or its counsel reasonably believes that the causes of action asserted therein are within the applicable statute(s) of limitations of both New York and the jurisdiction in which the cause of action accrued, if other than New York.

9. ECG will not bring suit in instances in which ECG's right to sue on a formerly Time-Barred Debt is reactivated due to a consumer's making a partial payment on his or her debt.

Affidavits, Declarations, and Other Sworn Statements

10. ECG shall ensure that all affidavits, declarations, or other sworn statements of employees of ECG filed by or on behalf of ECG in a Debt Collection Action and any attachments to such sworn statements are: (a) reviewed by the affiant prior to execution to confirm that the contents of the affidavits, declarations, or other sworn statements are accurate and to confirm that the correct documents have been attached and that these documents are true and accurate copies of documents contained in ECG's records; (b) based on the affiant's personal knowledge or upon business records of ECG that the affiant has personally reviewed; and (c) believed at the time of execution to be accurate and true in all material respects.

11. ECG shall ensure that any affidavit or other sworn statement of an ECG employee filed by or on behalf of ECG in a Debt Collection Action that requires a notarized signature is signed in the presence of a licensed notary, who acknowledged the signature in a manner consistent with the requirements of applicable law.

Sale of Time-Barred Debts

12. In the event that ECG sells, transfers, or assigns a Time-Barred Debt to another entity, ECG will include in all of its contracts to sell, transfer, or assign a Time-Barred Debt a covenant stating that the buyer, transferee, or assignee will not bring suit on any Time-Barred Debt acquired in the transaction at issue.

Collection Calls and Letters

13. ECG will include the following information in any written Communication seeking to collect on a debt allegedly owed by a consumer residing in New York State:

- (a) The name of the Original Creditor of the debt;
- (b) The last four numbers of the Original Creditor account number or other Original Creditor account identifier; and

- (c) The date of the consumer's last payment on the debt, if any, or if not applicable, the date the balance became due or the date of default.

14. ECG will continue to disclose in all written Communications seeking to collect on a Time-Barred Debt, and will henceforth disclose in oral Communications seeking to collect on a Time-Barred Debt, that the legal time limit to sue on the debt has expired and thus ECG will not sue the consumer to collect on the debt. For any debt that is beyond the date for exclusion from consumer reports provided for in Section 605(a) of the Fair Credit Reporting Act, 15 U.S.C. § 1681c(a)(2) or Section 380-j(f)(1)(ii) of the New York General Business Law, ECG will disclose in all written and oral Communications about the debt with a consumer residing in New York State that, because of the age of the debt, ECG will not report the debt to any credit reporting agency.

15. For written Communications, the disclosures required in Paragraph 14 above shall be in at least 12 point type that is prominent, and shall be placed adjacent to the information in the Communication about the amount claimed to be due or owed on the debt.

16. ECG shall not make any representation or statement, or take any other action that interferes with, contradicts, or otherwise undermines the disclosures required in Paragraph 14 above.

17. ECG shall make the disclosures required by Paragraph 14 above in all of its oral Communications within sixty (60) days of the Effective Date of this Assurance. ECG shall promptly begin modifying its written Communications to incorporate the disclosures required by Paragraphs 13 and 14 and shall include the disclosures in all of its written Communications within ninety (90) days of the Effective Date of the Assurance.

Pleadings in Debt Collection Actions

18. ECG will include, and will instruct its outside counsel to include, the following allegations in any complaint it files in a Debt Collection Action:

- (a) The name of the Original Creditor of the debt;
- (b) Identification of the complete chain of title of the debt;¹¹
- (c) The last four numbers of the Original Creditor account number or other Original Creditor account identifier;
- (d) The date of the consumer's last payment on the debt, if any, or if not applicable, the date the balance became due or the date of default.
- (e) An allegation that the causes of action asserted therein are not outside of the applicable statute of limitations for enforcing the debt.

ECG will ensure that the disclosures in this paragraph are made within ninety (90) days of the Effective Date of this Assurance.

Applications for Default Judgment

19. ECG will submit an affidavit with any application for a default judgment in a Debt Collection Action attesting that the action was commenced within the applicable statute(s) of limitations. The affidavit, which may be from ECG's attorney, shall include the following information:

- (a) The name of the Original Creditor of the debt;
- (b) The jurisdiction where the cause of action accrued;
- (c) The statute of limitations for the jurisdiction where the cause of action accrued;

¹¹ In connection with debt purchased after September 1, 2009, ECG shall comply with DRP-182 of the Directives and Procedures of the Civil Court of the City of New York, and attest to the full chain of title.

- (d) The date of the consumer's last payment on the debt, if any, or if not applicable, the date the balance became due or the date of default.
- (e) A statement that after reasonable inquiry, ECG or its counsel has reason to believe that the applicable statute(s) of limitations has/have not expired.

ECG shall ensure that the disclosures in this paragraph are made within ninety (90) days of the Effective Date of this Assurance.

Training and Certification Requirements

20. Within fifteen (15) days of the Effective Date of this Assurance, ECG shall provide a copy of this Assurance to all individuals at ECG who have supervisory responsibilities for collection activities in New York.

21. ECG shall draft training materials summarizing the requirements of this Assurance within sixty (60) days of the Effective Date of this Assurance. ECG shall provide a copy of the final version of these training materials to the OAG upon their completion. Within ninety (90) days of the Effective Date of this Assurance, ECG shall provide training on the requirements of this Assurance to all of its employees with responsibility for debt collection activities within New York State. ECG shall also provide training on the requirements of this Assurance to all newly-hired employees with responsibility for debt collection activities within New York State within thirty (30) days of their hiring date.

22. In addition to the foregoing, ECG shall draft training materials summarizing the proper procedures for the preparation and execution of affidavits, declarations, and other sworn statements within sixty (60) days of the Effective Date of this Assurance. ECG shall provide a copy of the final version of these training materials to the OAG upon their completion. Within ninety (90) days of the Effective Date of this Assurance, ECG shall provide training on these

procedures to all of its employees who are responsible for the preparation or execution of affidavits, declarations, or other sworn statements in connection with Debt Collection Actions. ECG shall also provide training on these procedures to all newly-hired employees responsible for the preparation or execution of affidavits, declarations, or other sworn statements in connection with Debt Collection Actions within thirty (30) days of their hiring date.

23. ECG shall maintain written records confirming that all covered employees have completed the training required by this Assurance and shall promptly provide such records to the OAG upon OAG's written request.

24. Within fifteen (15) days of the Effective Date of this Assurance, ECG shall provide a copy of this Assurance or a summary thereof to all of its Third-Party Debt Collectors. ECG shall require that each such Third-Party Debt Collector return a written certification ("Certification") within thirty (30) days of the Effective Date of this Assurance, certifying that the Third-Party Debt Collector has reviewed and will abide by the terms of this Assurance. If the Third-Party Debt Collector declines to return a completed Certification to ECG, ECG will cease employing such Third-Party Debt Collector for any future debt collection activities within New York State. ECG shall promptly provide a copy of all completed Certifications to the OAG upon the OAG's written request.

IV. RELIEF TO CONSUMERS

25. The OAG has provided to ECG a list of cases filed by ECG between October 29, 2008 and the Effective Date of the Assurance for which the OAG believes ECG obtained a default judgment against a consumer in a Time-Barred Action. Each case on this list shall be designated an "ECG Time-Barred Action" for the purpose of this Assurance.

26. ECG has agreed to cease its collection activities with respect to the judgments it

obtained in connection with ECG Time-Barred Actions. Within sixty (60) days of the Effective Date of this Assurance, ECG will: (1) direct that any pending garnishments, levies, liens, restraining notices, or attachments relating to such judgments be released; and (2) seek to vacate the judgments with the court. Thereafter, ECG will not attempt to collect on the debt underlying the judgments, and will not report the debt to the credit reporting agencies Equifax, Experian, and TransUnion.

27. Any New York consumer who is or was a defendant in an action brought by ECG that is not so designated as an ECG Time-Barred Action may notify the OAG in writing within ninety (90) days of the Effective Date of this Assurance that ECG obtained a default judgment against such consumer in a Time-Barred Action. The consumer shall provide any documentation to the OAG that he or she possesses in support of this claim. The OAG shall then make an initial determination as to whether the subject judgment was predicated on a Time-Barred Action and will promptly notify ECG of such determination. ECG shall then have thirty (30) days to review and, if applicable, dispute the OAG's initial determination. If ECG disputes the OAG's initial determination, ECG shall provide the OAG with a written summary of its reasons therefore, including any supporting documentation. If, after consultation between ECG and the OAG, the OAG determines that such judgment was predicated on a Time-Barred Action, then within thirty (30) days of ECG's receipt of the OAG's final determination, ECG shall afford such judgments the same relief as is provided to ECG Time-Barred Actions, as set forth above in paragraph 25 of this Agreement.

28. Nothing in this Assurance shall deprive a consumer from asserting any legal or equitable right he or she may have, including, but not limited to, any right to seek relief on the grounds that the debt owed by the consumer is a Time-Barred Debt, that the lawsuit brought by

ECG was a Time-Barred Action, or that the judgment entered against the consumer was predicated on an improper affidavit, except insofar as the relief sought by such consumer is provided in this Assurance.

V. PAYMENT TO THE STATE

29. In consideration of the making and execution of this Assurance, and within three (3) business days of the Effective Date of this Assurance, ECG shall pay by wire transfer, certified or bank check payable to the State of New York \$675,000 as costs, penalties, and fees. If payment is made by check, it shall be payable to the State of New York and delivered to the State of New York Office of the Attorney General, Bureau of Consumer Frauds and Protection, Attention: Carolyn Fast, Special Counsel, 120 Broadway, 3rd Floor, New York, New York, 10271.

VI. COMPLIANCE

30. ECG shall monitor Third-Party Debt Collectors for compliance with the terms of this Assurance and take appropriate corrective action against non-compliant Third-Party Debt Collectors, including terminating ECG's relationship with such entities, when the Third-Party Debt Collector engages in conduct in violation of the terms of this Assurance.

31. ECG shall promptly and thoroughly investigate consumer complaints and designate a person or entity to act as a direct contact for the Attorney General for resolution of consumer complaints. Within thirty (30) days of the Effective Date of this Assurance, ECG shall provide the OAG with the name and address of the direct contact designated to handle consumer complaints filed with the OAG.

32. Within one hundred and eighty (180) days of the Effective Date of this Assurance, ECG shall file with the Attorney General a report, in writing, setting forth in detail the manner

and form in which it has complied with this Assurance.

33. ECG shall, as requested by the Attorney General, provide the Attorney General with copies of the records and documents sufficient to demonstrate ECG's compliance with the requirements of this Assurance.

VII. MISCELLANEOUS

34. The OAG has agreed to the terms of this Assurance based on the OAG's own Investigation as set forth in the Findings in Section II above and the representations that ECG has made to the OAG. To the extent that any material representations are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.

35. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by ECG in agreeing to this Assurance.

36. This Assurance resolves and releases all claims relating to the subject of this Assurance, provided, however, that nothing in this Assurance shall be deemed to preclude the OAG's review of acts, practices, or courses of conduct that occur after the Effective Date of this Assurance.

37. ECG represents and warrants, through the signatures below, that the terms and conditions of Sections III through VI of this Assurance are duly approved, and execution of this Assurance is duly authorized. ECG shall not take any action or make any statement denying, directly or indirectly, the propriety of this Assurance, or expressing the view that this Assurance is without factual basis, but shall be permitted to state that they do not admit or deny the findings set forth in this Assurance. Nothing in this paragraph affects ECG's (i) testimonial obligations or (ii) right to take legal or factual positions in defense of litigation or other legal proceeding to

which the OAG is not a party.

38. This Assurance is not intended for use by any third party in any other proceeding and is not intended, and should not be construed, as an admission of wrongdoing or liability by ECG or any of its subsidiaries. The parties agree that nothing in this Assurance shall create any private rights, causes of action, third party rights or remedies of any other individual or entity against ECG or any of its subsidiaries.

39. This Assurance may not be amended except by an instrument in writing signed on behalf of all the parties to this Assurance.

40. This Assurance shall be binding on and inure to the benefit of the parties to this Assurance and their respective successors and assigns, provided that no party, other than the OAG, may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of the OAG, except to a successor in interest.

41. It is understood and agreed that this Assurance shall apply to ECG, whether acting through its respective directors, officers, employees, representatives, agents, assigns, successors, affiliates, subsidiaries or other business persons or business entities whose acts, practices, policies are directed, formulated or controlled by ECG.

42. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the OAG, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

43. Acceptance of this Assurance by the OAG shall not be deemed approval by the OAG of any of the practices or procedures referenced herein, and ECG shall make no representation to the contrary.

44. Pursuant to Executive Law § 63(15), any violation of the terms of this Assurance shall constitute *prima facie* proof of violation of General Business Law §§ 349 and 601 and/or Executive Law § 63(12) in any civil action or proceeding thereafter commenced by the OAG against ECG.

45. If a court of competent jurisdiction determines that ECG has breached this Assurance, ECG shall pay to the OAG the reasonable cost, if any, of such determination and of enforcing this Assurance, including without limitation reasonable legal fees, expenses, and court costs.

46. Nothing contained herein shall be construed to deprive any person of any private right under the law.

47. This Assurance constitutes the entire agreement between the OAG and ECG and supersedes any prior communication, understanding or agreement, whether written or oral, concerning the subject matter of this Assurance.

48. Any notices, reports or other written documents required by this Assurance shall be provided by first-class mail and/or email to the intended recipient at the addresses set forth below, unless a different address is specified in writing by the party changing such address:

For the People of the State of New York, to

Carolyn Fast
Special Counsel
Office of the New York State Attorney General
Bureau of Consumer Frauds and Protection
120 Broadway, 3rd Floor
New York, New York 10271
Tel. (212) 416-6250
Fax. (212) 416-6003
Carolyn.Fast@ag.ny.gov

For ECG:

Christopher E. Duffy
Boies, Schiller & Flexner LLP
575 Lexington Avenue
New York, New York 10022
Tel. (212) 446-2366
Fax (212) 446-2350
CDuffy@BSFLLP.com

and

General Counsel
Encore Capital Group, Inc.
3111 Camino Del Rio North
San Diego, California 92108

Such notices, statements and documents shall be deemed to have been given upon mailing.

49. ECG shall provide written notice to the OAG of any change in address within ten days of such change.

50. The OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. The OAG is willing to accept this Assurance pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

51. Notwithstanding anything else in this Assurance, if compliance with any provision of this Assurance would render compliance with any existing or future provision of New York or federal laws or regulations relating the same subject matter impossible, then compliance with such provision of state or federal law or regulation shall be deemed compliance with the relevant provision of the Assurance. ECG shall provide written notice to the OAG within fifteen (15) days of its determination that compliance with a provision of this Assurance is rendered impossible by state or federal law or regulation.

52. This Assurance may be executed in multiple counterparts.

53. The Effective Date of this Assurance shall be the date upon which it has been fully executed by all of the signatories hereto.

WHEREFORE, THE SIGNATURES EVIDENCING ASSENT TO THIS Assurance have been affixed hereto on the dates set forth below.


Dated: ^{January} December 6, 2014
New York, New York

Dated: December 22, 2014
San Diego, California

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York

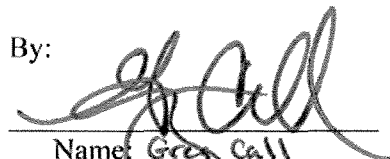
ENCORE CAPITAL GROUP, INC.

By:

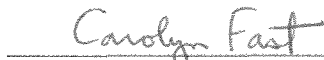


JANE M. AZIA
Bureau Chief
Bureau of Consumer Frauds and Protection

By:



Name: Greg Call
Title: SVP General Counsel and Secretary



CAROLYN FAST
Special Counsel