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8 Counsel for Plaintiff

9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 _____, Individually and on behalf of all others
12 similarly situated,

13 Plaintiff,

14 v.

15 ENCORE CAPITAL GROUP, INC., ASHISH
16 MASIH, KENNETH A. VECCHIONE, and
17 JONATHAN C. CLARK,

18 Defendants.

Case No:

**CLASS ACTION COMPLAINT FOR
VIOLATIONS OF THE FEDERAL
SECURITIES LAWS**

JURY TRIAL DEMANDED

19 Plaintiff _____ (“Plaintiff”), individually and on behalf of all other persons similarly
20 situated, by Plaintiff’s undersigned attorneys, for Plaintiff’s complaint against Defendants (defined
21 below), alleges the following based upon personal knowledge as to Plaintiff and Plaintiff’s own
22 acts, and information and belief as to all other matters, based upon, inter alia, the investigation
23 conducted by and through Plaintiff’s attorneys, which included, among other things, a review of
24 the defendants’ public documents, conference calls and announcements made by defendants,
25 United States Securities and Exchange Commission (“SEC”) filings, wire and press releases
26 published by and regarding Encore Capital Group, Inc. (“Encore” or the “Company”), analysts’
27 reports and advisories about the Company, and information readily obtainable on the Internet.

1 Plaintiff believes that substantial evidentiary support will exist for the allegations set forth herein
2 after a reasonable opportunity for discovery.

3 **NATURE OF THE ACTION**

4 1. This is a federal securities class action on behalf of a class consisting of all persons
5 and entities other than Defendants who purchased or otherwise acquired the publicly traded
6 securities of Encore between February 24, 2016 and September 8, 2020, both dates inclusive (the
7 “Class Period”). Plaintiff seeks to recover compensable damages caused by Defendants’ violations
8 of the federal securities laws and to pursue remedies under Sections 10(b) and 20(a) of the
9 Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 10b-5 promulgated thereunder.
10

11 **JURISDICTION AND VENUE**

12 2. The claims asserted herein arise under and pursuant to §§10(b) and 20(a) of the
13 Exchange Act (15 U.S.C. §§78j(b) and §78t(a)) and Rule 10b-5 promulgated thereunder by the SEC
14 (17 C.F.R. §240.10b-5).

15 3. This Court has jurisdiction over the subject matter of this action under 28 U.S.C.
16 §1331 and §27 of the Exchange Act.

17 4. Venue is proper in this Judicial District pursuant to §27 of the Exchange Act (15
18 U.S.C. §78aa) and 28 U.S.C. §1391(b) as Defendants conduct business and the Company is
19 headquartered in this Judicial District.

20 5. In connection with the acts, conduct and other wrongs alleged in this Complaint,
21 Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce,
22 including but not limited to, the United States mail, interstate telephone communications and the
23 facilities of the national securities exchange.
24

25 **PARTIES**

26 6. Plaintiff, as set forth in the accompanying Certification, purchased Encore securities
27 at artificially inflated prices during the Class Period and was damaged upon the revelation of the
28 alleged corrective disclosure.

1 7. Defendant Encore purports to be a specialty finance company, that, together with its
2 subsidiaries, provides debt recovery solutions and other related services for consumers across a
3 range of financial assets worldwide. The Company purports to purchase portfolios of defaulted
4 consumer receivables at deep discounts to face value, as well as manages them by working with
5 individuals as they repay their obligations and works toward financial recovery. The Company is
6 incorporated in Delaware and its principal executive offices are located at 350 Camino De La
7 Reina, Suite 100, San Diego, CA 92108. Encore securities are traded on the NASDAQ
8 (“NASDAQ”) under the ticker symbol “ECPG.”

9 8. Defendant Ashish Masih (“Masih”) has served as the Company’s President and
10 Chief Executive Officer (“CEO”) since June 2017.

11 9. Defendant Kenneth A. Vecchione (“Vecchione”) served the Company’s President
12 and CEO from June 2013 until June 2017.

13 10. Defendant Jonathan C. Clark (“Clark”) has been the Company’s Chief Financial
14 Officer (“CFO”), Executive Vice President, and Treasurer throughout the Class Period.

15 11. Defendants Masih, Vecchione and Clark are sometimes referred to herein as the
16 “Individual Defendants.”

17 12. Each of the Individual Defendants:

- 18 (a) directly participated in the management of the Company;
19 (b) was directly involved in the day-to-day operations of the Company at the
20 highest levels;
21 (c) was privy to confidential proprietary information concerning the Company
22 and its business and operations;
23 (d) was directly or indirectly involved in drafting, producing, reviewing and/or
24 disseminating the false and misleading statements and information alleged
25 herein;
26 herein;
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- 1 (e) was directly or indirectly involved in the oversight or implementation of the
2 Company's internal controls;
- 3 (f) was aware of or recklessly disregarded the fact that the false and misleading
4 statements were being issued concerning the Company; and/or
- 5 (g) approved or ratified these statements in violation of the federal securities
6 laws.

7 13. The Company is liable for the acts of the Individual Defendants and its employees
8 under the doctrine of respondeat superior and common law principles of agency because all of the
9 wrongful acts complained of herein were carried out within the scope of their employment.

10 14. The scienter of the Individual Defendants and other employees and agents of the
11 Company is similarly imputed to the Company under respondeat superior and agency principles.

12 15. The Company and the Individual Defendants are referred to herein, collectively, as
13 the "Defendants."
14

15 **SUBSTANTIVE ALLEGATIONS**

16 **Background**

17 16. On September 3, 2015, Encore and its subsidiaries entered into a consent order
18 ("Order") with the Consumer Financial Protection Bureau ("CFPB") based on the CFPB's previous
19 findings that the Company had violated the Consumer Financial Protection Act (CFPA), Fair Debt
20 Collection Practices Act (FDCPA), and Fair Credit Reporting Act.

21 17. The Order resolved claims that Encore was making false or unsubstantiated
22 representations to consumers about consumers owing debts; misrepresenting that Encore intended to
23 prove debts if consumers contested them; filing affidavits that misled consumers about the affiants'
24 personal knowledge and the courts' presumption of the debts' validity; misrepresenting that Encore
25 had legally enforceable claims to debts outside of the applicable statutes of limitations;
26 misrepresenting to consumers that they had the burden of proof in litigation; making excessive and
27 inconvenient phone calls; and failing to adequately investigate consumer-reporting disputes.
28

1 18. The Order required the Company to pay \$34 million in restitution and a \$10 million
2 penalty to the CFPB.

3 19. The Order also required the Company to abide by certain practices designed to
4 protect consumers.

5 20. For example, Paragraph 131(a) of the Order prohibited Encore from suing a
6 consumer without possessing certain Original Account-Level Documentation (OALD). Paragraph
7 131(b) of the Order states that “Encore has to provide [the above-referenced OALD] upon request.”

8 21. Paragraph 131(b) of the Order restricts Encore’s use of Legal Collections, which the
9 Order defines, in relevant part, as “any collection efforts made by any internal legal department or
10 third-party law firm to collect a [d]ebt owed or allegedly owed to Encore.”

11 22. Paragraph 133(a) of the Order prohibits Encore from “collecting or attempting to
12 collect any Time-Barred Debt through litigation or arbitration.” The Order defines “Time-Barred
13 Debt” as debt “that is beyond an applicable statute of limitations for a [d]ebt collection lawsuit.”

14 23. Paragraph 133(b) of the Order further requires that when Encore attempts to collect a
15 Time-Barred debt, it must include certain statements asserting that the Company would not sue for
16 the debt.
17

18 **Materially False and Misleading Statements**

19 24. On February 24, 2016, Encore filed with the SEC its Annual Report on Form 10-K
20 for the fiscal year ended December 31, 2015 (the “2015 10-K”). Attached to the 2015 10-K were
21 certifications pursuant to the Sarbanes-Oxley Act of 2002 (“SOX”) signed by Defendants
22 Vecchione and Clark attesting to the accuracy of financial reporting, the disclosure of any material
23 changes to the Company’s internal control over financial reporting and the disclosure of all fraud.

24 25. The 2015 10-K stated the following concerning the Order:

25
26 On September 9, 2015, we entered into a consent order (the “Consent Order”)
27 with the CFPB in which we settled allegations arising from our practices between
28 2011 and 2015. The Consent Order includes obligations on us to, among other
things: *(1) follow certain specified operational requirements, substantially all of
which are already part of our current operations;* (2) submit to the CFPB for

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review a comprehensive plan designed to ensure that our debt collection practices comply with all applicable federal consumer financial laws and the terms of the Consent Order; (3) pay redress to certain specified groups of consumers; and (4) pay a civil monetary penalty. We will continue to cooperate and engage with the CFPB and work to ensure compliance with the Consent Order. In addition, we are subject to ancillary state attorney general investigations related to similar debt collection practices.

We incurred a one-time, after-tax charge of approximately \$43 million in the third quarter of 2015. We believe this charge will cover all related impacts of the Consent Order, including civil monetary penalties, restitution, any such ancillary state regulatory matters, legal expenses and portfolio allowance charges on several pool groups due to the impact on our current estimated remaining collections related to our existing receivable portfolios. We anticipate that after this one-time charge, any future earnings impact will be immaterial.

26. In addition, the 2015 10-K stated the following concerning the Company’s compliance with applicable law in debt collection:

Our debt purchasing and collection activities are subject to federal, state, and municipal statutes, rules, regulations, and ordinances that establish specific guidelines and procedures that debt purchasers and collectors must follow when collecting consumer accounts. ***It is our policy to comply with the provisions of all applicable laws in all of our recovery activities.*** Our failure to comply with these laws could have a material adverse effect on us to the extent that they limit our recovery activities or subject us to fines or penalties in connection with such activities.

27. On February 23, 2017, Encore filed with the SEC its Annual Report on Form 10-K for the fiscal year ended December 31, 2016 (the “2016 10-K”). Attached to the 2016 10-K were SOX certifications signed by Defendants Vecchione and Clark attesting to the accuracy of financial reporting, the disclosure of any material changes to the Company’s internal control over financial reporting and the disclosure of all fraud.

28. The 2016 10-K stated the following concerning the Order:

On September 9, 2015, we entered into a consent order (the “Consent Order”) with the CFPB in which we settled allegations arising from our practices between 2011 and 2015. The Consent Order includes obligations on us to, among other things: (1) follow certain specified operational requirements, substantially all of which are already part of our current operations; (2) submit to the CFPB for

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review a comprehensive plan designed to ensure that its debt collection practices comply with all applicable federal consumer financial laws and the terms of the Consent Order; (3) pay redress to certain specified groups of consumers; and (4) pay a civil monetary penalty. We will continue to cooperate and engage with the CFPB and work to ensure compliance with the Consent Order. In addition, we are subject to ancillary state attorney general investigations related to similar debt collection practices.

29. In addition, the 2016 10-K stated the following concerning the Company's compliance with applicable law in debt collection:

Our debt purchasing and collection activities are subject to federal, state, and municipal statutes, rules, regulations, and ordinances that establish specific guidelines and procedures that debt purchasers and collectors must follow when collecting consumer accounts. ***It is our policy to comply with the provisions of all applicable laws in all of our recovery activities.*** Our failure to comply with these laws could have a material adverse effect on us to the extent that they limit our recovery activities or subject us to fines or penalties in connection with such activities.

30. On February 21, 2018, Encore filed with the SEC its Annual Report on Form 10-K for the fiscal year ended December 31, 2017 (the "2017 10-K"). Attached to the 2017 10-K were SOX certifications signed by Defendants Masih and Clark attesting to the accuracy of financial reporting, the disclosure of any material changes to the Company's internal control over financial reporting and the disclosure of all fraud.

31. The 2017 10-K stated the following concerning the Order:

On September 9, 2015, we entered into a consent order (the "Consent Order") with the CFPB in which we settled allegations arising from our practices between 2011 and 2015. The Consent Order includes obligations on us to, among other things: (1) follow certain specified operational requirements, substantially all of which are already part of our current operations; (2) submit to the CFPB for review a comprehensive plan designed to ensure that its debt collection practices comply with all applicable federal consumer financial laws and the terms of the Consent Order; (3) pay redress to certain specified groups of consumers; and (4) pay a civil monetary penalty. We will continue to cooperate and engage with the CFPB and work to ensure compliance with the Consent Order. In addition, we are subject to ancillary state attorney general investigations related to similar debt collection practices.

1 32. In addition, the 2017 10-K stated the following concerning the Company's
2 compliance with applicable law in debt collection:

3 Our debt purchasing and collection activities are subject to federal, state, and
4 municipal statutes, rules, regulations, and ordinances that establish specific
5 guidelines and procedures that debt purchasers and collectors must follow when
6 collecting consumer accounts. ***It is our policy to comply with the provisions of all***
7 ***applicable laws in all of our recovery activities.*** Our failure to comply with these
8 laws could have a material adverse effect on us to the extent that they limit our
9 recovery activities or subject us to fines or penalties in connection with such
10 activities.

11 33. On February 27, 2019, Encore filed with the SEC its Annual Report on Form 10-K
12 for the fiscal year ended December 31, 2018 (the "2018 10-K"). Attached to the 2018 10-K were
13 SOX certifications signed by Defendants Masih and Clark attesting to the accuracy of financial
14 reporting, the disclosure of any material changes to the Company's internal control over financial
15 reporting and the disclosure of all fraud.

16 34. The 2018 10-K stated the following concerning the Order:

17 On September 9, 2015, we entered into a consent order (the "Consent Order")
18 with the CFPB in which we settled allegations arising from our practices between
19 2011 and 2015. We will continue to cooperate and engage with the CFPB and
20 work to ensure compliance with the Consent Order, which terminates in
21 September 2020. In addition, we are subject to ancillary state attorney general
22 investigations related to similar debt collection practices.

23 35. In addition, the 2018 10-K stated the following concerning the Company's
24 compliance with applicable law in debt collection:

25 Our operations in the United States are subject to federal, state, and municipal
26 statutes, rules, regulations, and ordinances that establish specific guidelines and
27 procedures that debt purchasers and collectors must follow when collecting
28 consumer accounts. ***It is our policy to comply with the provisions of all***
applicable laws in all of our recovery activities. Our failure to comply with these
laws could have a material adverse effect on us to the extent that they limit our
recovery activities or subject us to fines or penalties in connection with such
activities.

1 36. On February 26, 2020, Encore filed with the SEC its Annual Report on Form 10-K
2 for the fiscal year ended December 31, 2019 (the “2019 10-K”). Attached to the 2019 10-K were
3 SOX certifications signed by Defendants Masih and Clark attesting to the accuracy of financial
4 reporting, the disclosure of any material changes to the Company’s internal control over financial
5 reporting and the disclosure of all fraud.

6 37. The 2019 10-K stated the following concerning the Order:

7
8 On September 9, 2015, we entered into a consent order (the “Consent Order”)
9 with the CFPB in which we settled allegations arising from our practices between
10 2011 and 2015. We will continue to cooperate and engage with the CFPB and
11 work to ensure compliance with the Consent Order, which terminates in
12 September 2020. In addition, we are subject to ancillary state attorney general
13 investigations related to similar debt collection practices.

14 38. In addition, the 2019 10-K stated the following concerning the Company’s
15 compliance with applicable law in debt collection:

16 Our operations in the United States are subject to federal, state, and municipal
17 statutes, rules, regulations, and ordinances that establish specific guidelines and
18 procedures that debt purchasers and collectors must follow when collecting
19 consumer accounts. ***It is our policy to comply with the provisions of all
20 applicable laws in all of our recovery activities.*** Our failure to comply with these
21 laws could have a material adverse effect on us to the extent that they limit our
22 recovery activities or subject us to fines or penalties in connection with such
23 activities.

24 39. The statements referenced in ¶¶16-38 above were materially false and/or misleading
25 because they misrepresented and failed to disclose the following adverse facts pertaining to the
26 Company’s business, operational and financial results, which were known to Defendants or
27 recklessly disregarded by them. Specifically, Defendants made false and/or misleading statements
28 and/or failed to disclose that: (1) the Company engaged in debt collections without providing
requisite disclosures; (2) the Company sued consumers on time-barred debts in violation of the
Order; (3) the Company attempted to collect time-barred debts without requisite disclosures; (4)
Encore hid the fact that consumers might incur international transaction fees; (5) consequently, the

1 Company was in violation of the Order and in violation of applicable debt collection law; and (7) as
2 a result, Defendants' public statements were materially false and misleading at all relevant times.

3 **The Truth Emerges**

4 40. On September 8, 2020, the CFPB announced that it had sued the Company for
5 violations of the CFPA, deceptive acts and practices, violations of the FDCPA, unfair acts and
6 practices, and violations of the Order. The CFPB's press release stated, in pertinent part:

7
8 WASHINGTON, D.C. — Today the Consumer Financial Protection Bureau
9 (Bureau) filed a lawsuit against Encore Capital Group, Inc. and its subsidiaries,
10 Midland Funding, LLC; Midland Credit Management, Inc.; and Asset Acceptance
11 Capital Corp. The companies, which are headquartered in San Diego, California,
12 together comprise the largest debt collector and debt buyer in the United States,
13 with annual revenue exceeding \$1 billion and annual net income exceeding \$75
14 million. Encore and its subsidiaries are currently subject to a 2015 consent order
15 with the Bureau based on the Bureau's previous findings that they violated the
16 Consumer Financial Protection Act (CFPA), Fair Debt Collection Practices Act
17 (FDCPA), and Fair Credit Reporting Act. The Bureau alleges that Encore and its
18 subsidiaries have violated the terms of this consent order and again violated the
19 FDCPA and CFPA. The Bureau's complaint seeks injunctions against them, as
20 well as damages, redress to consumers, disgorgement of ill-gotten gains, and civil
21 money penalties.

22 The Bureau's complaint, filed in federal district court in the Southern District of
23 California, specifically alleges that since September 2015, Encore and its
24 subsidiaries violated the consent order by suing consumers without possessing
25 required documentation, using law firms and an internal legal department to
26 engage in collection efforts without providing required disclosures, and failing to
27 provide consumers with required loan documentation after consumers requested
28 it. The Bureau also alleges that the companies violated the consent order, the
CFPA, and the FDCPA by suing consumers to collect debts even though the
statutes of limitations had run on those debts and violated the consent order by
attempting to collect on debts for which the statutes of limitations had run without
providing required disclosures. The Bureau further alleges that the companies
violated the CFPA by failing to disclose possible international-transaction fees to
consumers, thereby effectively denying consumers an opportunity to make
informed choices of their preferred payment methods. The Bureau also alleges
that each violation of the consent order constitutes a violation of the CFPA.

The complaint is not a finding or ruling that the defendants have violated the law.

1 47. Common questions of law and fact exist as to all members of the Class and
2 predominate over any questions solely affecting individual members of the Class. Among the
3 questions of law and fact common to the Class are:

- 4 • whether the federal securities laws were violated by Defendants' acts as alleged
5 herein;
- 6 • whether statements made by Defendants to the investing public during the Class
7 Period misrepresented material facts about the financial condition, business,
8 operations, and management of the Company;
- 9 • whether Defendants' public statements to the investing public during the Class
10 Period omitted material facts necessary to make the statements made, in light of the
11 circumstances under which they were made, not misleading;
- 12 • whether the Individual Defendants caused the Company to issue false and misleading
13 SEC filings and public statements during the Class Period;
- 14 • whether Defendants acted knowingly or recklessly in issuing false and misleading
15 SEC filings and public statements during the Class Period;
- 16 • whether the prices of Encore securities during the Class Period were artificially
17 inflated because of the Defendants' conduct complained of herein; and
- 18 • whether the members of the Class have sustained damages and, if so, what is the
19 proper measure of damages.

20 48. A class action is superior to all other available methods for the fair and efficient
21 adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the
22 damages suffered by individual Class members may be relatively small, the expense and burden of
23 individual litigation make it impossible for members of the Class to individually redress the wrongs
24 done to them. There will be no difficulty in the management of this action as a class action.

25 49. Plaintiff will rely, in part, upon the presumption of reliance established by the fraud-
26 on-the-market doctrine in that:
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- 1 • Defendants made public misrepresentations or failed to disclose material facts during
- 2 the Class Period;
- 3 • the omissions and misrepresentations were material;
- 4 • Encore securities are traded in efficient markets;
- 5 • the Company's securities were liquid and traded with moderate to heavy volume
- 6 during the Class Period;
- 7 • the Company traded on the NASDAQ, and was covered by multiple analysts;
- 8 • the misrepresentations and omissions alleged would tend to induce a reasonable
- 9 investor to misjudge the value of the Company's securities; and
- 10 • Plaintiff and members of the Class purchased and/or sold Encore securities between
- 11 the time the Defendants failed to disclose or misrepresented material facts and the
- 12 time the true facts were disclosed, without knowledge of the omitted or
- 13 misrepresented facts.

14 50. Based upon the foregoing, Plaintiff and the members of the Class are entitled to a
15 presumption of reliance upon the integrity of the market.

16 51. Alternatively, Plaintiff and the members of the Class are entitled to the presumption
17 of reliance established by the Supreme Court in *Affiliated Ute Citizens of the State of Utah v.*
18 *United States*, 406 U.S. 128, 92 S. Ct. 2430 (1972), as Defendants omitted material information in
19 their Class Period statements in violation of a duty to disclose such information, as detailed above.
20

21 **COUNT I**

22 **Violation of Section 10(b) of The Exchange Act and Rule 10b-5**
23 **Against All Defendants**

24 52. Plaintiff repeats and realleges each and every allegation contained above as if fully
25 set forth herein.

26 53. This Count is asserted against the Company and the Individual Defendants and is
27 based upon Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated
28 thereunder by the SEC.

1 54. During the Class Period, the Company and the Individual Defendants, individually
2 and in concert, directly or indirectly, disseminated or approved the false statements specified above,
3 which they knew or deliberately disregarded were misleading in that they contained
4 misrepresentations and failed to disclose material facts necessary in order to make the statements
5 made, in light of the circumstances under which they were made, not misleading.

6 55. The Company and the Individual Defendants violated §10(b) of the 1934 Act and
7 Rule 10b-5 in that they:

- 8 • employed devices, schemes and artifices to defraud;
- 9 • made untrue statements of material facts or omitted to state material facts necessary
10 in order to make the statements made, in light of the circumstances under which they
11 were made, not misleading; or
- 12 • engaged in acts, practices and a course of business that operated as a fraud or deceit
13 upon plaintiff and others similarly situated in connection with their purchases of
14 Encore securities during the Class Period.

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16 56. The Company and the Individual Defendants acted with scienter in that they knew
17 that the public documents and statements issued or disseminated in the name of the Company were
18 materially false and misleading; knew that such statements or documents would be issued or
19 disseminated to the investing public; and knowingly and substantially participated, or acquiesced in
20 the issuance or dissemination of such statements or documents as primary violations of the
21 securities laws. These defendants by virtue of their receipt of information reflecting the true facts of
22 the Company, their control over, and/or receipt and/or modification of the Company's allegedly
23 materially misleading statements, and/or their associations with the Company which made them
24 privy to confidential proprietary information concerning the Company, participated in the
25 fraudulent scheme alleged herein.

26
27 57. Individual Defendants, who are the senior officers and/or directors of the Company,
28 had actual knowledge of the material omissions and/or the falsity of the material statements set forth

