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# CFPB Takes Action Against the Two Largest Debt Buyers for Using Deceptive Tactics to Collect Bad Debts

***Encore and Portfolio Recovery Associates Must Refund Millions of Dollars and Overhaul Debt Collection and Litigation Practices***

**WASHINGTON, D.C.** – Today the Consumer Financial Protection Bureau (CFPB) took action against the nation's two largest debt buyers and collectors for using deceptive tactics to collect bad debts. The Bureau found that Encore Capital Group and Portfolio Recovery Associates bought debts that were potentially inaccurate, lacking documentation, or unenforceable. Without verifying the debt, the companies collected payments by pressuring consumers with false statements and churning out lawsuits using robo-signed court documents. The CFPB has ordered the companies to overhaul their debt collection and litigation practices and to stop reselling debts to third parties. Encore must pay up to $42 million in consumer refunds and a $10 million penalty, and stop collection on over $125 million worth of debts. Portfolio Recovery Associates must pay $19 million in consumer refunds and an $8 million penalty, and stop collecting on over $3 million worth of debts.

"Encore and Portfolio Recovery Associates threatened and deceived consumers to collect on debts they should have known were inaccurate or had other problems," said CFPB Director Richard Cordray. "Now, the two biggest debt buyers in the market must refund millions and overhaul their practices. We will continue to take action

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to protect consumers from illegal and obnoxious debt collection practices."

Encore Capital Group, Inc. is headquartered in San Diego, Calif. Its subsidiaries also named in today's action are Midland Funding LLC, Midland Credit Management, and Asset Acceptance Capital Corp. Together, they form the nation's largest debt buyer and collector. Portfolio Recovery Associates is the nation's second largest debt buyer and collector. Portfolio Recovery Associates is a Delaware for-profit corporation headquartered in Norfolk, Va. and is a wholly-owned subsidiary of PRA Group, Inc.

As debt buyers, Encore and Portfolio Recovery Associates purchase delinquent or charged-off accounts for a fraction of the value of the debt. Although they pay only pennies on the dollar for the debt, they may attempt to collect the full amount claimed by the original lender. Together, these two companies have purchased the rights to collect over $200 billion in defaulted consumer debts on credit cards, phone bills, and other accounts.

The CFPB found that Encore and Portfolio Recovery Associates attempted to collect debts that they knew, or should have known, were inaccurate or could not legally be enforced based on contractual disclaimers, past practices of debt sellers, or consumer disputes. The companies also filed lawsuits against consumers without having the intent to prove many of the debts, winning the vast majority of the lawsuits by default when consumers failed to defend themselves. These practices violated the Fair Debt Collection Practices Act and the Dodd-Frank Wall Street Reform and Consumer Protection Act.

## Collecting Bad Debts

Encore and Portfolio Recovery Associates illegally attempted to collect debt that they knew, or should have known, may have been inaccurate or unenforceable. Specifically, the CFPB found that the companies:

- **Attempted to collect on unsubstantiated or inaccurate debt:** Encore and Portfolio Recovery Associates stated incorrect balances, interest rates, and payment due dates in attempting to collect debts from consumers. The companies purchased large portfolios of consumer debt with balances that sellers claimed were "approximate" or that otherwise did not reflect the correct amount owed by the consumer. Sellers also warned the companies that some of the debts they were buying may not have the most recent consumer payments deducted from the balance. Some sellers also represented that documents were not available

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for some of the accounts. The companies continued purchasing from these sellers and then collecting on that debt without first conducting any investigation to determine whether the debts were accurate and enforceable.

## Illegal Litigation Practices

Encore and Portfolio Recovery Associates collected debts through lawsuits and threats of legal action in unlawful ways. Specifically, the companies:

- **Misrepresented their intention to prove debts they sued consumers over:** Encore and Portfolio Recovery Associates regularly attempted to collect on debts by suing consumers in state courts across the country. In numerous cases, the companies had no intention of proving these debts. They placed tens of thousands of debts with law firms staffed by only a handful of attorneys and in many cases made no effort to obtain the documents to back up their claims. Instead, the companies relied on consumers not filing a defense and winning the lawsuits by default.

- **Relied on misleading, robo-signed court filings to churn out lawsuits:** Encore and Portfolio Recovery Associates filed affidavits that contained misleading statements in debt collection lawsuits across the country. For example, they both used affidavits that misrepresented that the affiants had reviewed original account-level documentation confirming the consumers' debts when they had not. The companies also submitted affidavits with documents attached that they claimed were the consumers' specific account contracts or records when they weren't. These shortcuts allowed the companies to churn through lawsuits without doing the research and due diligence required to obtain a legitimate judgment.

- **Sued or threatened to sue consumers past the statute of limitations:** From at least July 21, 2011 to March 31, 2013, Encore sent thousands of letters offering a time-limited opportunity to "settle" without revealing that the debt was too old for litigation. From January 2009 to March 2012, Portfolio Recovery Associates sent similar letters to consumers. Both of the companies also filed cases past the applicable statute of limitations.

- **Pressured consumers to make payments using misrepresentations:** Encore and Portfolio Recovery Associates

made other inaccurate statements to consumers to press them to make additional payments. Specifically:

- **Encore falsely told consumers the burden of proof was on them to disprove the debt:** In sworn affidavits, Encore falsely told consumers and courts that the debt should be assumed to be valid because the consumer had not disputed it within a certain time period. In fact, Encore had the burden to first prove the debt was owed and accurate before the consumer had to challenge it.
- **Portfolio Recovery Associates falsely claimed an attorney had reviewed the file and a lawsuit was imminent:** The company's collectors, who identified themselves as from the "Litigation Department," misrepresented to consumers that litigation against them was planned, imminent, or even underway. In reality, in many cases, an attorney had not reviewed the account and the company had not decided whether to file suit.

## Other Illegal Collection Practices

- **Encore disregarded or failed to adequately investigate consumers' disputes:** If a consumer disputed their debt more than 45 days after Encore started collecting, Encore would require the consumer to produce specific documents or other "proof" to support their dispute or it would not conduct the legally-required investigation of the issues raised by the consumer.

- **Encore farmed out disputed debts to law firms without forwarding required information:** In numerous instances, Encore assigned disputed debt to law firms and third-party debt collectors without informing them that the debt was disputed. As a result, law firms evaluating Encore accounts for litigation did not know which accounts were disputed.

- **Encore made harassing collection calls to consumers:** Encore called consumers repeatedly or continuously with the intent to annoy, abuse, or harass them into paying. Encore's subsidiary, Asset Acceptance, made thousands of calls to consumers before 8 a.m. or after 9 p.m. and called hundreds of consumers more than 20 times in a two-day period.

- **Portfolio Recovery Associates misled consumers into consenting to receive auto-dialed cell phone calls:** For approximately a year, and ending in August 2013, Portfolio

Recovery Associates told consumers that they could only prevent collection calls to their cell phones before 9 a.m. if they consented to receive calls on their cell phones from a dialer. The company penalized representatives who failed to adhere to this policy.

## Enforcement Action

Pursuant to the Dodd-Frank Act, the CFPB has the authority to take action against institutions or individuals engaging in unfair, deceptive, or abusive acts or practices or that otherwise violate federal consumer financial laws. Under the terms of the CFPB orders released today, Encore and Portfolio Recovery Associates are required to:

- **Stop reselling debts:** The companies are prohibited from reselling the debts they buy to other debt collectors. This will protect consumers from the potential harm that results when debt collectors continue to sell and resell debts that may be inaccurate or lack the business records and information needed to collect them.
- **Refund millions of dollars to consumers:**
    - **Encore must pay up to $42 million in refunds:** The company must provide refunds where it collected payments by misrepresenting that it could sue on a time-barred debt or by misrepresenting in court that a debt was assumed valid because the consumer did not previously dispute it.
    - **Portfolio Recovery Associates must pay $19 million in refunds:** The company must provide refunds where it collected payments by misrepresenting that an attorney had reviewed a debt or that collectors were calling on behalf of attorneys, and where it collected payments on judgments that it should not have obtained because they were barred by the statute of limitations from suing to collect the debt.
- **Cease collections on millions of dollars of debt:**
    - **Encore must stop collecting on $125 million of debt:** The company must release or move to vacate all judgments and dismiss all lawsuits where it misrepresented that a debt was assumed valid, and stop any attempts to enforce or collect on these judgments. The face value of this debt is estimated at over $125 million.
    - **Portfolio Recovery Associates must stop collecting on $3 million of debt:** The company must release or move to vacate all judgments and dismiss all pending lawsuits it

filed past the statute of limitations and stop any attempts to enforce or collect on those judgments, estimated to have a face value of $3.4 million.

- **Stop collecting debts they can't verify:** Encore and Portfolio Recovery Associates can't collect unsubstantiated debt. Under the order, they must review original account-level documents verifying a debt before collecting on it when, for example, a consumer has disputed it, the seller didn't promise it was accurate or valid, or the debt was part of a portfolio they knew included unsupportable or inaccurate information.

- **Ensure accuracy when filing lawsuits:** The companies cannot file lawsuits to enforce debts unless they have specific documents and information showing the debt is accurate and enforceable.

- **Provide consumers information before filing suit:** Encore and Portfolio Recovery Associates must provide consumers with information about a debt, such as the name of the creditor and charge-off balance, and offer to provide consumers with original documents relating to the account before they are allowed to file a lawsuit or threaten to file suit to collect the debt.

- **Use accurate affidavits:** The companies cannot use affidavits to collect debts unless the statements contained in the affidavits specifically and accurately describe the signer's knowledge of the facts and the documents attached.

- **Reform collection of older debts:** Encore and Portfolio Recovery Associates are prohibited from suing or threatening to sue to collect on time-barred debt. They also cannot collect on such debt unless they disclose to consumers that they can't sue to collect it.

- **Pay civil money penalties:**

    - Encore must pay a penalty of $10 million to the CFPB's Civil Penalty Fund.

    - Portfolio Recovery Associates must pay a penalty of $8 million to the CFPB's Civil Penalty Fund.

**The Encore consent order can be found at:**
http://files.consumerfinance.gov/f/201509_cfpb_consent-order-encore-capital-group.pdf

**The Portfolio Recovery Associates consent order can be**

**found at:**
http://files.consumerfinance.gov/f/201509_cfpb_consent-order-portfolio-recovery-associates-llc.pdf

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*The Consumer Financial Protection Bureau is a 21st century agency that helps consumer finance markets work by making rules more effective, by consistently and fairly enforcing those rules, and by empowering consumers to take more control over their economic lives. For more information, visit consumerfinance.gov.*