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

_____, Individually and On
Behalf of All Others Similarly Situated,

Plaintiff,

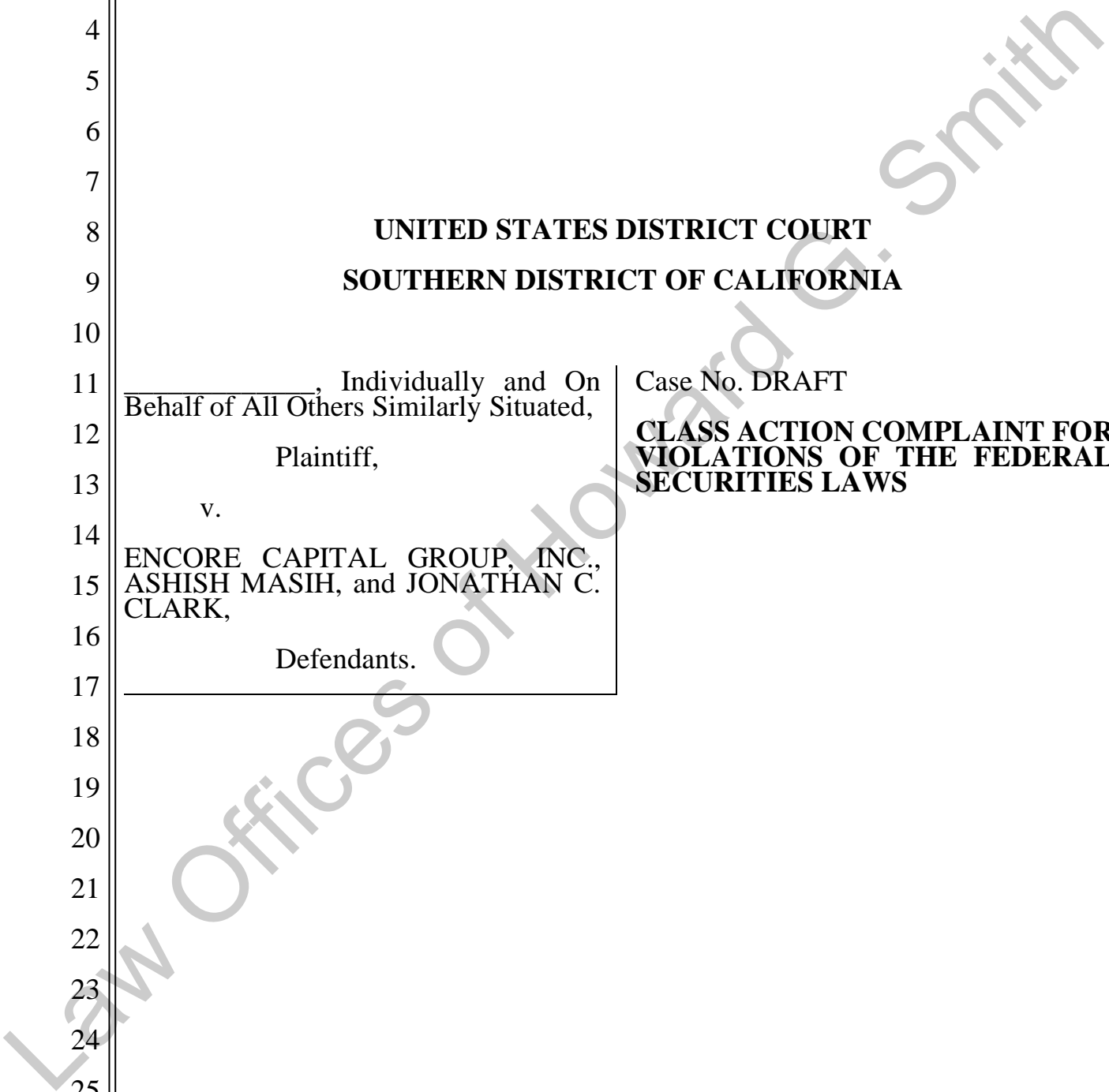
v.

ENCORE CAPITAL GROUP, INC.,
ASHISH MASIH, and JONATHAN C.
CLARK,

Defendants.

Case No. DRAFT

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



1 Plaintiff _____ (“Plaintiff”), individually and on behalf of all
2 others similarly situated, by and through his attorneys, alleges the following upon
3 information and belief, except as to those allegations concerning Plaintiff, which are
4 alleged upon personal knowledge. Plaintiff’s information and belief is based upon,
5 among other things, his counsel’s investigation, which includes without limitation: (a)
6 review and analysis of regulatory filings made by Encore Capital Group, Inc. (“Encore”
7 or the “Company”) with the United States (“U.S.”) Securities and Exchange Commission
8 (“SEC”); (b) review and analysis of press releases and media reports issued by and
9 disseminated by Encore; and (c) review of other publicly available information
10 concerning Encore.

11 NATURE OF THE ACTION AND OVERVIEW

12 1. This is a class action on behalf of persons and entities that purchased or
13 otherwise acquired Encore securities between February 26, 2020 and September 8, 2020,
14 inclusive (the “Class Period”). Plaintiff pursues claims against the Defendants under the
15 Securities Exchange Act of 1934 (the “Exchange Act”).

16 2. Encore is a specialty finance company that provides debt recovery solutions
17 and related services, primarily by purchasing portfolios of defaulted consumer
18 receivables at deep discounts and working with individuals as they repay their
19 obligations. Through its subsidiary Midland Credit Management, Inc. and its domestic
20 affiliates (collectively, “MCM”), the Company purports to be a market leader in portfolio
21 purchasing and recovery in the United States.

22 3. In 2015, the Company entered into a consent order (the “Consent Order”)
23 with the Consumer Financial Protection Bureau (“CFPB”) to resolve claims that Encore
24 made false or unsubstantiated representations to consumers about owing debts. In
25 addition to ordering payment of \$34 million in restitution and \$10 million in civil
26 penalties, the Consent Order imposed certain conduct provisions designed to protect
27 consumers from efforts to collect inaccurate or unsubstantiated debts, particularly
28 through litigation or threats of litigation.

1 4. On September 8, 2020, the CFPB filed a complaint alleging that Encore and
2 its subsidiaries violated the Consent Order “by suing consumers without possessing
3 required documentation, using law firms and an internal legal department to engage in
4 collection efforts without providing required disclosures, and failing to provide
5 consumers with required loan documentation after consumers requested it.”

6 5. On this news, the Company’s share price fell \$3.59, or approximately 8%,
7 to close at \$42.29 per share on September 9, 2020, on unusually heavy trading volume.

8 6. On September 9, 2020, after the market closed, Encore issued a statement,
9 conceding that “for a very small percentage of transactions our execution [of the CFPB’s
10 requirements under the consent order] was not immediately perfect.”

11 7. On this news, the Company’s share price fell \$1.16, or nearly 3%, to close
12 at \$41.13 per share on September 10, 2020, on unusually heavy trading volume.

13 8. Throughout the Class Period, Defendants made materially false and/or
14 misleading statements, as well as failed to disclose material adverse facts about the
15 Company’s business, operations, and prospects. Specifically, Defendants failed to
16 disclose to investors: (1) that Encore was violating the Consent Order, including by suing
17 consumers without possessing required documentation, using law firms and an internal
18 legal department to engage in collection efforts without providing required disclosures,
19 and failing to provide consumers with required loan documentation after consumers
20 requested it; (2) that, as a result, the Company was reasonably likely to incur civil
21 penalties and reputational harm; and (3) that, as a result of the foregoing, Defendants’
22 positive statements about the Company’s business, operations, and prospects were
23 materially misleading and/or lacked a reasonable basis.

24 9. As a result of Defendants’ wrongful acts and omissions, and the precipitous
25 decline in the market value of the Company’s securities, Plaintiff and other Class
26 members have suffered significant losses and damages.

27
28

1 **JURISDICTION AND VENUE**

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

5 11. This Court has jurisdiction over the subject matter of this action pursuant to
6 28 U.S.C. § 1331 and Section 27 of the Exchange Act (15 U.S.C. § 78aa).

7 12. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391(b) and
8 Section 27 of the Exchange Act (15 U.S.C. § 78aa(c)). Substantial acts in furtherance of
9 the alleged fraud or the effects of the fraud have occurred in this Judicial District. Many
10 of the acts charged herein, including the dissemination of materially false and/or
11 misleading information, occurred in substantial part in this Judicial District. In addition,
12 the Company’s principal executive offices are located in this District.

13 13. In connection with the acts, transactions, and conduct alleged herein,
14 Defendants directly and indirectly used the means and instrumentalities of interstate
15 commerce, including the United States mail, interstate telephone communications, and
16 the facilities of a national securities exchange.

17 **PARTIES**

18 14. Plaintiff _____, as set forth in the accompanying
19 certification, incorporated by reference herein, purchased Encore securities during the
20 Class Period, and suffered damages as a result of the federal securities law violations and
21 false and/or misleading statements and/or material omissions alleged herein.

22 15. Defendant Encore is incorporated under the laws of Delaware with its
23 principal executive offices located in San Diego, California. Encore’s common stock
24 trades on the NASDAQ exchange under the symbol “ECPG.”

25 16. Defendant Ashish Masih (“Masih”) was the Company’s Chief Executive
26 Officer (“CEO”) at all relevant times.

27 17. Defendant Jonathan C. Clark (“Clark”) was the Company’s Chief Financial
28 Officer (“CFO”) at all relevant times.

1 18. Defendants Masih and Clark (collectively the “Individual Defendants”),
2 because of their positions with the Company, possessed the power and authority to
3 control the contents of the Company’s reports to the SEC, press releases and
4 presentations to securities analysts, money and portfolio managers and institutional
5 investors, i.e., the market. The Individual Defendants were provided with copies of the
6 Company’s reports and press releases alleged herein to be misleading prior to, or shortly
7 after, their issuance and had the ability and opportunity to prevent their issuance or cause
8 them to be corrected. Because of their positions and access to material non-public
9 information available to them, the Individual Defendants knew that the adverse facts
10 specified herein had not been disclosed to, and were being concealed from, the public,
11 and that the positive representations which were being made were then materially false
12 and/or misleading. The Individual Defendants are liable for the false statements pleaded
13 herein.

14 **SUBSTANTIVE ALLEGATIONS**

15 **Background**

16 19. Encore is a specialty finance company that provides debt recovery solutions
17 and related services, primarily by purchasing portfolios of defaulted consumer
18 receivables at deep discounts and working with individuals as they repay their
19 obligations. Through its subsidiary Midland Credit Management, Inc. and its domestic
20 affiliates (collectively, “MCM”), the Company purports to be a market leader in portfolio
21 purchasing and recovery in the United States.

22 20. In 2015, the Company entered into a consent order (the “Consent Order”)
23 with the Consumer Financial Protection Bureau (“CFPB”) to resolve claims that Encore
24 made false or unsubstantiated representations to consumers about owing debts. In
25 addition to ordering payment of \$34 million in restitution and \$10 million in civil
26 penalties, the Consent Order imposed certain conduct provisions designed to protect
27 consumers from efforts to collect inaccurate or unsubstantiated debts, particularly
28 through litigation or threats of litigation. Among other things, the Consent Order

1 prohibited Encore from initiating a legal collection lawsuit unless it possessed certain
2 original account-level documentation and from collecting, or attempting to collect, debt
3 after the applicable statute of limitations expired.

4 **Materially False and Misleading**

5 **Statements Issued During the Class Period**

6 21. The Class Period begins on February 26, 2020. On that day, Encore filed its
7 annual report on Form 10-K for the period ended December 31, 2019 (the “2019 10-K”)
8 with the SEC. Therein, under “Risk Factors,” the Company stated:

9 *A significant portion of our collections relies upon our success in*
10 *individual lawsuits brought against consumers and our ability to collect*
on judgments in our favor.

11 We generate a significant portion of our revenue by collecting on judgments
12 that are granted by courts in lawsuits filed against consumers. A decrease
13 in the willingness of courts to grant these judgments, a change in the
14 requirements for filing these cases or obtaining these judgments, or a
15 decrease in our ability to collect on these judgments could have an adverse
16 effect on our business, financial condition and operating results. As we
17 increase our use of the legal channel for collections, our short-term margins
18 may decrease as a result of an increase in upfront court costs and costs
19 related to counter claims. We may not be able to collect on certain aged
20 accounts because of applicable statutes of limitations and we may be subject
21 to adverse effects of regulatory changes. Further, courts in certain
22 jurisdictions require that a copy of the account statements or applications
23 be attached to the pleadings in order to obtain a judgment against
24 consumers. If we are unable to produce those account documents, these
25 courts could deny our claims, and our business, financial condition and
26 operating results may be adversely affected.

27 22. Moreover, the 2019 10-K stated, regarding compliance with government
28 regulation, that the Company “will continue to cooperate and engage with the CFPB and
work to ensure compliance with the Consent Order, which terminates in September
2020.” Encore also stated, in relevant part:

29 *Failure to comply with government regulation could result in the*
30 *suspension, termination or impairment of our ability to conduct business,*
31 *may require the payment of significant fines and penalties, or require*
32 *other significant expenditures.*

33 The U.S. collections industry is heavily regulated under various federal,
34 state, and local laws, rules, and regulations. Many states and several cities
35 require that we be licensed as a debt collection company. The CFPB, FTC,
36 state Attorneys General and other regulatory bodies have the authority to
37 investigate a variety of matters, including consumer complaints against debt
38

1 collection companies, and can bring enforcement actions and seek
2 monetary penalties, consumer restitution, and injunctive relief. If we, or our
3 third-party collection agencies or law firms fail to comply with applicable
4 laws, rules, and regulations, including, but not limited to, identity theft,
5 privacy, data security, the use of automated dialing equipment, laws related
6 to consumer protection, debt collection, and laws applicable to specific
7 types of debt, it could result in the suspension or termination of our ability
8 to conduct collection operations, which would adversely affect us. Further,
9 our ability to collect our receivables may be affected by state laws, which
10 require that certain types of account documentation be presented prior to
11 the institution of any collection activities.

12 Our failure or the failure of third-party agencies and attorneys, or the credit
13 originators or portfolio resellers selling receivables to us, to comply with
14 existing or new laws, rules, or regulations could limit our ability to recover
15 on receivables, affect the willingness of financial institutions to sell
16 portfolios to us, cause us to pay damages to consumers or result in fines or
17 penalties, which could reduce our revenues, or increase our expenses, and
18 consequently adversely affect our business, financial condition and
19 operating results.

20 In addition, new federal, state or local laws or regulations, or changes in the
21 ways these rules or laws are interpreted or enforced, could limit our
22 activities in the future and/or significantly increase the cost of regulatory
23 compliance.

24 23. The 2019 10-K stated that “the Company’s internal control over financial
25 reporting was effective as of December 31, 2019.”

26 24. On May 11, 2020, Encore filed its quarterly report on Form 10-Q for the
27 period ended March 31, 2020 (the “1Q20 10-Q”) with the SEC. Therein, the Company
28 stated that “[e]xcept for the additional risk factor set forth below [regarding the COVID-
19 pandemic], there is no material change in the information reported under” the Risk
Factors section of the 2019 10-K. Regarding internal control over financial reporting,
Encore stated:

29 Except as noted below there were no changes in our internal control over
30 financial reporting that occurred during the quarter ended March 31, 2020
31 that have materially affected, or are reasonably likely to materially affect,
32 our internal control over financial reporting.

33 On January 1, 2020, we adopted the new accounting standard for Financial
34 Instruments - Credit Losses (“CECL”). As a result, we implemented
35 changes to policies, processes, systems, and controls over estimating the
36 allowance for credit losses.

37 We have not experienced any material impact to our internal controls over
38 financial reporting due to the COVID-19 pandemic even though many of
our employees are working remotely. We are continually monitoring and

1 assessing the impact of the COVID-19 pandemic on our internal controls to
2 minimize the impact on their design and operating effectiveness.

3 25. On August 5, 2020, Encore filed its quarterly report for the period ended
4 June 30, 2020 with the SEC. Therein, the Company stated that there was “no material
5 change” in the information reported under the Risk Factors section of the 2019 10-K.
6 Regarding its internal control over financial reporting, Encore made substantially similar
7 statements to those in the 1Q20 10-Q.

8 26. The above statements identified in ¶¶ 21-26 were materially false and/or
9 misleading, and failed to disclose material adverse facts about the Company’s business,
10 operations, and prospects. Specifically, Defendants failed to disclose to investors: (1)
11 that Encore was violating the Consent Order, including by suing consumers without
12 possessing required documentation, using law firms and an internal legal department to
13 engage in collection efforts without providing required disclosures, and failing to provide
14 consumers with required loan documentation after consumers requested it; (2) that, as a
15 result, the Company was reasonably likely to incur civil penalties and reputational harm;
16 and (3) that, as a result of the foregoing, Defendants’ positive statements about the
17 Company’s business, operations, and prospects were materially misleading and/or lacked
18 a reasonable basis.

19 **Disclosures at the End of the Class Period**

20 27. On September 8, 2020, the CFPB filed a complaint alleging that Encore and
21 its subsidiaries violated the consent order “by suing consumers without possessing
22 required documentation, using law firms and an internal legal department to engage in
23 collection efforts without providing required disclosures, and failing to provide
24 consumers with required loan documentation after consumers requested it.” In a press
25 release, the CFPB announced the details of the lawsuit:

26 The Bureau’s complaint, filed in federal district court in the Southern
27 District of California, specifically alleges that since September 2015,
28 Encore and its subsidiaries violated the consent order by suing consumers
without possessing required documentation, using law firms and an internal
legal department to engage in collection efforts without providing required
disclosures, and failing to provide consumers with required loan

1 documentation after consumers requested it. The Bureau also alleges that
2 the companies violated the consent order, the CFPA, and the FDCPA by
3 suing consumers to collect debts even though the statutes of limitations had
4 run on those debts and violated the consent order by attempting to collect
5 on debts for which the statutes of limitations had run without providing
6 required disclosures. The Bureau further alleges that the companies violated
7 the CFPA by failing to disclose possible international-transaction fees to
8 consumers, thereby effectively denying consumers an opportunity to make
9 informed choices of their preferred payment methods. The Bureau also
10 alleges that each violation of the consent order constitutes a violation of the
11 CFPA.

12 28. On this news, the Company's share price fell \$3.59, or approximately 8%,
13 to close at \$42.29 per share on September 9, 2020, on unusually heavy trading volume.

14 29. On September 9, 2020, after the market closed, Encore issued a statement,
15 conceding that "for a very small percentage of transactions our execution [of the CFPB's
16 requirements under the consent order] was not immediately perfect." The Company's
17 statement read, in relevant part:

18 "Encore is built on a foundation of treating our consumers fairly and
19 respectfully," said Greg Call, the Company's Executive Vice President,
20 General Counsel, and Chief Administrative Officer. "***Our efforts in 2015
21 to implement the CFPB's new requirements under the consent order were
22 quite thorough and effective, but for a very small percentage of
23 transactions our execution was not immediately perfect.*** We have long
24 since refined our processes, making the necessary changes to improve our
25 operations, and provided appropriate relief for impacted accounts over three
26 years ago."

27 Ryan Bell, President of Midland Credit Management, said, "We have great
28 confidence in our systems, practices and approach to working with
consumers. We've invested heavily for years to build robust compliance
functions that lead our highly regulated and swiftly evolving industry. We
operate with a Consumer Bill of Rights, which details our commitment to
conducting business ethically. We believe we're well-positioned to
continue our industry leadership because of our commitment to the
consumer and our unwavering focus on compliance."

"We are disappointed that the CFPB has chosen to file this lawsuit on
outdated issues, but we will continue to engage with the CFPB and work to
ensure that we maintain policies and practices that fully comply with all
applicable legal requirements. We believe that there will be no material
operational impact as a result of the suit," said Call. "We fully corrected the
issues underlying the allegations in this lawsuit years ago and are unaware
of any unresolved consumer impact."

30. On this news, the Company's share price fell \$1.16, or nearly 3%, to close
at \$41.13 per share on September 10, 2020, on unusually heavy trading volume.

1 **CLASS ACTION ALLEGATIONS**

2 31. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil
3 Procedure 23(a) and (b)(3) on behalf of a class, consisting of all persons and entities that
4 purchased or otherwise acquired Encore securities between February 26, 2020 and
5 September 8, 2020, inclusive, and who were damaged thereby (the “Class”). Excluded
6 from the Class are Defendants, the officers and directors of the Company, at all relevant
7 times, members of their immediate families and their legal representatives, heirs,
8 successors, or assigns, and any entity in which Defendants have or had a controlling
9 interest.

10 32. The members of the Class are so numerous that joinder of all members is
11 impracticable. Throughout the Class Period, Encore’s shares actively traded on the
12 NASDAQ. While the exact number of Class members is unknown to Plaintiff at this
13 time and can only be ascertained through appropriate discovery, Plaintiff believes that
14 there are at least hundreds or thousands of members in the proposed Class. Millions of
15 Encore shares were traded publicly during the Class Period on the NASDAQ. Record
16 owners and other members of the Class may be identified from records maintained by
17 Encore or its transfer agent and may be notified of the pendency of this action by mail,
18 using the form of notice similar to that customarily used in securities class actions.

19 33. Plaintiff’s claims are typical of the claims of the members of the Class as all
20 members of the Class are similarly affected by Defendants’ wrongful conduct in violation
21 of federal law that is complained of herein.

22 34. Plaintiff will fairly and adequately protect the interests of the members of
23 the Class and has retained counsel competent and experienced in class and securities
24 litigation.

25 35. Common questions of law and fact exist as to all members of the Class and
26 predominate over any questions solely affecting individual members of the Class.
27 Among the questions of law and fact common to the Class are:
28

1 (a) whether the federal securities laws were violated by Defendants' acts
2 as alleged herein;

3 (b) whether statements made by Defendants to the investing public
4 during the Class Period omitted and/or misrepresented material facts about the business,
5 operations, and prospects of Encore; and

6 (c) to what extent the members of the Class have sustained damages and
7 the proper measure of damages.

8 36. A class action is superior to all other available methods for the fair and
9 efficient adjudication of this controversy since joinder of all members is impracticable.
10 Furthermore, as the damages suffered by individual Class members may be relatively
11 small, the expense and burden of individual litigation makes it impossible for members
12 of the Class to individually redress the wrongs done to them. There will be no difficulty
13 in the management of this action as a class action.

14 **UNDISCLOSED ADVERSE FACTS**

15 37. The market for Encore's securities was open, well-developed and efficient
16 at all relevant times. As a result of these materially false and/or misleading statements,
17 and/or failures to disclose, Encore's securities traded at artificially inflated prices during
18 the Class Period. Plaintiff and other members of the Class purchased or otherwise
19 acquired Encore's securities relying upon the integrity of the market price of the
20 Company's securities and market information relating to Encore, and have been damaged
21 thereby.

22 38. During the Class Period, Defendants materially misled the investing public,
23 thereby inflating the price of Encore's securities, by publicly issuing false and/or
24 misleading statements and/or omitting to disclose material facts necessary to make
25 Defendants' statements, as set forth herein, not false and/or misleading. The statements
26 and omissions were materially false and/or misleading because they failed to disclose
27 material adverse information and/or misrepresented the truth about Encore's business,
28 operations, and prospects as alleged herein.

1 39. At all relevant times, the material misrepresentations and omissions
2 particularized in this Complaint directly or proximately caused or were a substantial
3 contributing cause of the damages sustained by Plaintiff and other members of the Class.
4 As described herein, during the Class Period, Defendants made or caused to be made a
5 series of materially false and/or misleading statements about Encore's financial well-
6 being and prospects. These material misstatements and/or omissions had the cause and
7 effect of creating in the market an unrealistically positive assessment of the Company
8 and its financial well-being and prospects, thus causing the Company's securities to be
9 overvalued and artificially inflated at all relevant times. Defendants' materially false
10 and/or misleading statements during the Class Period resulted in Plaintiff and other
11 members of the Class purchasing the Company's securities at artificially inflated prices,
12 thus causing the damages complained of herein when the truth was revealed.

13 **LOSS CAUSATION**

14 40. Defendants' wrongful conduct, as alleged herein, directly and proximately
15 caused the economic loss suffered by Plaintiff and the Class.

16 41. During the Class Period, Plaintiff and the Class purchased Encore's
17 securities at artificially inflated prices and were damaged thereby. The price of the
18 Company's securities significantly declined when the misrepresentations made to the
19 market, and/or the information alleged herein to have been concealed from the market,
20 and/or the effects thereof, were revealed, causing investors' losses.

21 **SCIENTER ALLEGATIONS**

22 42. As alleged herein, Defendants acted with scienter since Defendants knew
23 that the public documents and statements issued or disseminated in the name of the
24 Company were materially false and/or misleading; knew that such statements or
25 documents would be issued or disseminated to the investing public; and knowingly and
26 substantially participated or acquiesced in the issuance or dissemination of such
27 statements or documents as primary violations of the federal securities laws. As set forth
28 elsewhere herein in detail, the Individual Defendants, by virtue of their receipt of

1 information reflecting the true facts regarding Encore, their control over, and/or receipt
2 and/or modification of Encore's allegedly materially misleading misstatements and/or
3 their associations with the Company which made them privy to confidential proprietary
4 information concerning Encore, participated in the fraudulent scheme alleged herein.

5 **APPLICABILITY OF PRESUMPTION OF RELIANCE**
6 **(FRAUD-ON-THE-MARKET DOCTRINE)**

7 43. The market for Encore's securities was open, well-developed and efficient
8 at all relevant times. As a result of the materially false and/or misleading statements
9 and/or failures to disclose, Encore's securities traded at artificially inflated prices during
10 the Class Period. On September 1, 2020, the Company's share price closed at a Class
11 Period high of \$48.43 per share. Plaintiff and other members of the Class purchased or
12 otherwise acquired the Company's securities relying upon the integrity of the market
13 price of Encore's securities and market information relating to Encore, and have been
14 damaged thereby.

15 44. During the Class Period, the artificial inflation of Encore's shares was
16 caused by the material misrepresentations and/or omissions particularized in this
17 Complaint causing the damages sustained by Plaintiff and other members of the Class.
18 As described herein, during the Class Period, Defendants made or caused to be made a
19 series of materially false and/or misleading statements about Encore's business,
20 prospects, and operations. These material misstatements and/or omissions created an
21 unrealistically positive assessment of Encore and its business, operations, and prospects,
22 thus causing the price of the Company's securities to be artificially inflated at all relevant
23 times, and when disclosed, negatively affected the value of the Company shares.
24 Defendants' materially false and/or misleading statements during the Class Period
25 resulted in Plaintiff and other members of the Class purchasing the Company's securities
26 at such artificially inflated prices, and each of them has been damaged as a result.

27 45. At all relevant times, the market for Encore's securities was an efficient
28 market for the following reasons, among others:

1 (a) Encore shares met the requirements for listing, and was listed and
2 actively traded on the NASDAQ, a highly efficient and automated market;

3 (b) As a regulated issuer, Encore filed periodic public reports with the
4 SEC and/or the NASDAQ;

5 (c) Encore regularly communicated with public investors via established
6 market communication mechanisms, including through regular dissemination of press
7 releases on the national circuits of major newswire services and through other wide-
8 ranging public disclosures, such as communications with the financial press and other
9 similar reporting services; and/or

10 (d) Encore was followed by securities analysts employed by brokerage
11 firms who wrote reports about the Company, and these reports were distributed to the
12 sales force and certain customers of their respective brokerage firms. Each of these
13 reports was publicly available and entered the public marketplace.

14 46. As a result of the foregoing, the market for Encore's securities promptly
15 digested current information regarding Encore from all publicly available sources and
16 reflected such information in Encore's share price. Under these circumstances, all
17 purchasers of Encore's securities during the Class Period suffered similar injury through
18 their purchase of Encore's securities at artificially inflated prices and a presumption of
19 reliance applies.

20 47. A Class-wide presumption of reliance is also appropriate in this action under
21 the Supreme Court's holding in *Affiliated Ute Citizens of Utah v. United States*, 406 U.S.
22 128 (1972), because the Class's claims are, in large part, grounded on Defendants'
23 material misstatements and/or omissions. Because this action involves Defendants'
24 failure to disclose material adverse information regarding the Company's business
25 operations and financial prospects—information that Defendants were obligated to
26 disclose—positive proof of reliance is not a prerequisite to recovery. All that is necessary
27 is that the facts withheld be material in the sense that a reasonable investor might have
28 considered them important in making investment decisions. Given the importance of the

1 Class Period material misstatements and omissions set forth above, that requirement is
2 satisfied here.

3 **NO SAFE HARBOR**

4 48. The statutory safe harbor provided for forward-looking statements under
5 certain circumstances does not apply to any of the allegedly false statements pleaded in
6 this Complaint. The statements alleged to be false and misleading herein all relate to then-
7 existing facts and conditions. In addition, to the extent certain of the statements alleged
8 to be false may be characterized as forward looking, they were not identified as “forward-
9 looking statements” when made and there were no meaningful cautionary statements
10 identifying important factors that could cause actual results to differ materially from
11 those in the purportedly forward-looking statements. In the alternative, to the extent that
12 the statutory safe harbor is determined to apply to any forward-looking statements
13 pleaded herein, Defendants are liable for those false forward-looking statements because
14 at the time each of those forward-looking statements was made, the speaker had actual
15 knowledge that the forward-looking statement was materially false or misleading, and/or
16 the forward-looking statement was authorized or approved by an executive officer of
17 Encore who knew that the statement was false when made.

18 **FIRST CLAIM**

19 **Violation of Section 10(b) of The Exchange Act and**

20 **Rule 10b-5 Promulgated Thereunder**

21 **Against All Defendants**

22 49. Plaintiff repeats and re-alleges each and every allegation contained above as
23 if fully set forth herein.

24 50. During the Class Period, Defendants carried out a plan, scheme and course
25 of conduct which was intended to and, throughout the Class Period, did: (i) deceive the
26 investing public, including Plaintiff and other Class members, as alleged herein; and (ii)
27 cause Plaintiff and other members of the Class to purchase Encore’s securities at
28

1 artificially inflated prices. In furtherance of this unlawful scheme, plan and course of
2 conduct, Defendants, and each defendant, took the actions set forth herein.

3 51. Defendants (i) employed devices, schemes, and artifices to defraud; (ii)
4 made untrue statements of material fact and/or omitted to state material facts necessary
5 to make the statements not misleading; and (iii) engaged in acts, practices, and a course
6 of business which operated as a fraud and deceit upon the purchasers of the Company's
7 securities in an effort to maintain artificially high market prices for Encore's securities in
8 violation of Section 10(b) of the Exchange Act and Rule 10b-5. All Defendants are sued
9 either as primary participants in the wrongful and illegal conduct charged herein or as
10 controlling persons as alleged below.

11 52. Defendants, individually and in concert, directly and indirectly, by the use,
12 means or instrumentalities of interstate commerce and/or of the mails, engaged and
13 participated in a continuous course of conduct to conceal adverse material information
14 about Encore's financial well-being and prospects, as specified herein.

15 53. Defendants employed devices, schemes and artifices to defraud, while in
16 possession of material adverse non-public information and engaged in acts, practices, and
17 a course of conduct as alleged herein in an effort to assure investors of Encore's value
18 and performance and continued substantial growth, which included the making of, or the
19 participation in the making of, untrue statements of material facts and/or omitting to state
20 material facts necessary in order to make the statements made about Encore and its
21 business operations and future prospects in light of the circumstances under which they
22 were made, not misleading, as set forth more particularly herein, and engaged in
23 transactions, practices and a course of business which operated as a fraud and deceit upon
24 the purchasers of the Company's securities during the Class Period.

25 54. Each of the Individual Defendants' primary liability and controlling person
26 liability arises from the following facts: (i) the Individual Defendants were high-level
27 executives and/or directors at the Company during the Class Period and members of the
28 Company's management team or had control thereof; (ii) each of these defendants, by

1 virtue of their responsibilities and activities as a senior officer and/or director of the
2 Company, was privy to and participated in the creation, development and reporting of
3 the Company's internal budgets, plans, projections and/or reports; (iii) each of these
4 defendants enjoyed significant personal contact and familiarity with the other defendants
5 and was advised of, and had access to, other members of the Company's management
6 team, internal reports and other data and information about the Company's finances,
7 operations, and sales at all relevant times; and (iv) each of these defendants was aware
8 of the Company's dissemination of information to the investing public which they knew
9 and/or recklessly disregarded was materially false and misleading.

10 55. Defendants had actual knowledge of the misrepresentations and/or
11 omissions of material facts set forth herein, or acted with reckless disregard for the truth
12 in that they failed to ascertain and to disclose such facts, even though such facts were
13 available to them. Such defendants' material misrepresentations and/or omissions were
14 done knowingly or recklessly and for the purpose and effect of concealing Encore's
15 financial well-being and prospects from the investing public and supporting the
16 artificially inflated price of its securities. As demonstrated by Defendants'
17 overstatements and/or misstatements of the Company's business, operations, financial
18 well-being, and prospects throughout the Class Period, Defendants, if they did not have
19 actual knowledge of the misrepresentations and/or omissions alleged, were reckless in
20 failing to obtain such knowledge by deliberately refraining from taking those steps
21 necessary to discover whether those statements were false or misleading.

22 56. As a result of the dissemination of the materially false and/or misleading
23 information and/or failure to disclose material facts, as set forth above, the market price
24 of Encore's securities was artificially inflated during the Class Period. In ignorance of
25 the fact that market prices of the Company's securities were artificially inflated, and
26 relying directly or indirectly on the false and misleading statements made by Defendants,
27 or upon the integrity of the market in which the securities trades, and/or in the absence
28 of material adverse information that was known to or recklessly disregarded by

1 Defendants, but not disclosed in public statements by Defendants during the Class Period,
2 Plaintiff and the other members of the Class acquired Encore's securities during the Class
3 Period at artificially high prices and were damaged thereby.

4 57. At the time of said misrepresentations and/or omissions, Plaintiff and other
5 members of the Class were ignorant of their falsity, and believed them to be true. Had
6 Plaintiff and the other members of the Class and the marketplace known the truth
7 regarding the problems that Encore was experiencing, which were not disclosed by
8 Defendants, Plaintiff and other members of the Class would not have purchased or
9 otherwise acquired their Encore securities, or, if they had acquired such securities during
10 the Class Period, they would not have done so at the artificially inflated prices which they
11 paid.

12 58. By virtue of the foregoing, Defendants violated Section 10(b) of the
13 Exchange Act and Rule 10b-5 promulgated thereunder.

14 59. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff
15 and the other members of the Class suffered damages in connection with their respective
16 purchases and sales of the Company's securities during the Class Period.

17 **SECOND CLAIM**

18 **Violation of Section 20(a) of The Exchange Act**

19 **Against the Individual Defendants**

20 60. Plaintiff repeats and re-alleges each and every allegation contained above as
21 if fully set forth herein.

22 61. Individual Defendants acted as controlling persons of Encore within the
23 meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-
24 level positions and their ownership and contractual rights, participation in, and/or
25 awareness of the Company's operations and intimate knowledge of the false financial
26 statements filed by the Company with the SEC and disseminated to the investing public,
27 Individual Defendants had the power to influence and control and did influence and
28 control, directly or indirectly, the decision-making of the Company, including the content

1 and dissemination of the various statements which Plaintiff contends are false and
2 misleading. Individual Defendants were provided with or had unlimited access to copies
3 of the Company's reports, press releases, public filings, and other statements alleged by
4 Plaintiff to be misleading prior to and/or shortly after these statements were issued and
5 had the ability to prevent the issuance of the statements or cause the statements to be
6 corrected.

7 62. In particular, Individual Defendants had direct and supervisory involvement
8 in the day-to-day operations of the Company and, therefore, had the power to control or
9 influence the particular transactions giving rise to the securities violations as alleged
10 herein, and exercised the same.

11 63. As set forth above, Encore and Individual Defendants each violated Section
12 10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue
13 of their position as controlling persons, Individual Defendants are liable pursuant to
14 Section 20(a) of the Exchange Act. As a direct and proximate result of Defendants'
15 wrongful conduct, Plaintiff and other members of the Class suffered damages in
16 connection with their purchases of the Company's securities during the Class Period.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff prays for relief and judgment, as follows:

19 (a) Determining that this action is a proper class action under Rule 23 of the
20 Federal Rules of Civil Procedure;

21 (b) Awarding compensatory damages in favor of Plaintiff and the other Class
22 members against all defendants, jointly and severally, for all damages sustained as a
23 result of Defendants' wrongdoing, in an amount to be proven at trial, including interest
24 thereon;

25 (c) Awarding Plaintiff and the Class their reasonable costs and expenses
26 incurred in this action, including counsel fees and expert fees; and

27 (d) Such other and further relief as the Court may deem just and proper.

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JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

DATED: _____, 2020

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By: _____

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