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HB 6372 Memorandum in Opposition

February 8, 2021

The Honorable Alexandra Kasser, Chair
The Honorable Jason Doucette, Chair
Joint Committee on Banking
Legislative Office Building, #2400
Hartford, CT 06106

RE: House Bill 6372 – OPPOSE

Dear Co-Chairs Doucette and Kasser, Ranking Members Berthel and Delnicki, Vice Chairs Gucker and McCrory, and Members of the Joint Committee on Banking:

On behalf of Encore Capital Group, Inc. and its wholly-owned subsidiaries (collectively, "Encore"), I'm writing in **opposition** to House Bill 6372. This legislation is an attempt to reverse the Connecticut Supreme Court's ruling in *The Cadle Company v. Fletcher*, 324 Conn. 228 (Supreme Ct. Conn. 2016), that a debtor cannot shield post-garnishment wages from further execution in the debtor's bank account. Existing Federal and Connecticut law already provides a host of exemptions from bank account execution – including retirement, Social Security, pension, Veteran's benefits, unemployment compensation, and a $1,000 blanket exemption. Further expanding the exemptions to protect post-garnishment wages is an unnecessary reversal of the Supreme Court's *Cadle* holding, and would make it extremely difficult for creditors to recover monies due on valid court judgments. In addition, HB 6372 would have a detrimental impact on the availability of affordable credit to Connecticut consumers.

By way of background, Encore is a publicly-traded company and a leading provider of debt recovery solutions for consumers, with more than 60 years of experience helping consumers toward a better life. Through its subsidiaries, our company purchases portfolios of mostly consumer credit card receivables from major banks and partners with individuals as they repay their obligations and work toward financial recovery.

We take a consumer-centric approach to helping consumers resolve their obligations, and we forgive or suspend debt where consumers demonstrate a hardship.[1] Indeed, last year we forgave approximately $1.5 million in debt to Connecticut consumers alone.

Still, even with our consumer-centric approach, we sometimes must resort to litigation as a last recovery method. A key priority for us is to try to communicate with our consumers to resolve their debt obligations, and we typically offer a steep discount off of the face value of the debt. In addition, we charge no interest or fees on debt we purchase. Still, for a small segment of consumers who we believe have the ability, but not the willingness, to repay their obligations, litigation is a path we sometimes take.

[1] Encore's Consumer Bill of Rights, https://www.midlandcredit.com/who-is-mcm/our-pledge/

When we do proceed to the last resort of litigation and a court awards a judgment for a valid debt obligation, we believe that judgment should be enforced, and the debt obligation should be repaid. When we obtain a judgment issued by a Connecticut court of law, if a consumer fails to abide by a court-ordered installment payment plan, bank executions are an important way we can collect on the judgment. Creditors give consumers many opportunities to resolve their past due account or submit a dispute. Timing varies from consumer to consumer, but it may take years for a creditor to exhaust all options before resorting to a bank levy. If the law enabling creditors to enforce court orders and judgments through bank executions has no teeth, courts' judgments will be rendered meaningless.

HB 6372 Would Render Courts' Installment Payment Orders – and Courts' Judgments – Virtually Meaningless, and Would Reverse Well-Established Case Law Issued by the Supreme Court

In Connecticut, upon issuing a judgment, the judgment creditor or judgment debtor may move the court for an order for installment payments in accordance with a money judgment.[2] After a hearing and consideration of the judgment debtor's financial circumstances, the court may order installment payments reasonably calculated to facilitate payment of the judgment. This grants a large amount of flexibility for consumers who are truly unable to repay their debts. However, if the consumer violates a court-ordered payment schedule, then creditors may obtain the money due through bank garnishment or another method.

Unfortunately, HB 6372 would further hamper the ability of judgment creditors to use bank garnishments to collect a valid court-ordered judgment. Since the average amount we recover through bank garnishments in Connecticut is typically around $700, exempting wages deposited into a bank account in the prior two months – on top of an already $1,000 wild card exemption[3] – would in many cases leave us and other creditors unable to use bank garnishments when a consumer has refused to comply with an installment order.

If a valid judgment has been obtained by a creditor, the courts have agreed with the creditor that the consumer must allot a portion of their available funds to pay the installment schedule that was ordered, including the funds in their bank account. By making it even more difficult for creditors to obtain those funds, this bill would encourage consumers to shield money in a bank account or even spread their funds amongst multiple bank accounts in order to avoid repayment of a judgment. This legislation would have the effect of overturning the Supreme Court's ruling in *The Cadle Co. v. Fletcher,* 324 Conn. 228 (Sup. Ct. Conn. 2016), which held that a wealthy debtor who owed plaintiff more than $3 million could not shield post-garnishment earnings from bank execution. Ultimately, this legislation would let debtors shield their earnings from execution – exactly what the Supreme Court ruled runs counter to the law.

There are Existing Protections in Place That Eliminate the Need for this Legislation

[2] Sec. 52-356d
[3] Sec. 52-352b(r)

We are sensitive to the need for debtors to have access to funds in their bank accounts to pay for basic necessities such as rent, food, and utilities. For that reason, we support the already robust process by which judgment debtors – those who truly cannot afford to repay their debt – may exempt a host of assets. Under current law, a judgment debtor may claim that certain funds in their bank account, as discussed above, are exempt from a bank levy through a well-established, court-supervised process called a "claim of exemption." A claim of exemption must be liberally construed by the court in favor of the consumer claiming the exceptions.[4] These protections include a variety of items completely exempt from execution, including:

- Any interest in property not to exceed in value one thousand dollars;
- Veterans' benefits;
- All types of social security benefits,
- Supplemental security income benefits;
- Pension benefits;
- Unemployment compensation benefits; and
- Child support payments

This claim of exemption process works well, and it justly ensures that consumers who truly cannot afford to pay their judgments are protected from bank levies.

With these protections in place, it should be noted that bank executions are a last resort, as we typically only seek to garnish funds from a bank account after we've tried, unsuccessfully, to work out a reasonable payment arrangement with the consumer (and with the court's oversight). Also, please note that Connecticut only allows one active execution at a time. This means that if a creditor is garnishing wages, the creditor cannot garnish funds in a bank account at the same time. With the above protections already in place, we see that HB 6372 would go far beyond – to an outright elimination of creditors' ability to execute funds in a judgment debtor's bank account that come from wages in the prior two months. Not only would this render courts' orders and judgments meaningless in many cases, but it would have a devastating impact on Connecticut consumers' ability to obtain affordable credit.

Any changes to add additional exemptions to this well-established process would harm the very consumers it is intended to protect, as well as that consumer who pay their financial obligations. Increasing available exemptions places restrictions on a creditors ability to enforce past-due financial obligations. Consequently, such restrictions reduce the availability of affordable credit for all consumers.

The Availability of Credit for All Connecticut Consumers Would Decline

This inequity doesn't just impact creditors and the consumers who failed to repay their valid debt obligations. The inequity will harm a far greater segment of society - Connecticut consumers who seek credit to get a mortgage, car loan, or credit card, the majority of which *do* repay their valid debt obligations. Simply put, the availability of credit at reasonable prices will go down. Numerous research studies in recent years have shown just this – that placing more

[4] *Konover Const. Corp. v. Silberstein*, Superior Court, Judicial District of New Haven at New Haven, No. CV 02-0467948 S (July 22, 2003).

restrictions on the collection of validly owed debt causes the availability of credit to decrease.[5] As Professor Todd Zywicki of the Mercatus Center at George Mason University found in his comprehensive research, greater restraints on creditors' remedies will reduce the supply of lending and raise prices, at the expense of other consumers who may end up paying more or obtaining less access to credit.[6] Another recent study noted that cumbersome regulation has "restricted the availability of financial products and credit, particularly for low-income borrowers, young people, and minorities."[7] Finally, a recent study from the Harvard Kennedy School of Government noted that a 250% surge in credit card related restrictions by regulations since 2007 has contributed to a drop in annual credit card originations to lower-risk-score Americans.[8]

It is critical to maintain creditors' ability to collect valid judgments through bank executions, so that Connecticut continues to be a state where creditors who have extended money and have not been repaid are able to recoup the outstanding debt owed to them. Without the ability to recoup valid debt obligations, creditors will have little incentive to lend money to Connecticut consumers in the first place. We ask you to consider these unintended consequences, adhere to the Supreme Court's holding in *Cadle*, and urge the Committee to issue an unfavorable report on HB 6372.

Thank you for your attention to this important matter. Please feel free to contact me at Sonia.Gibson@encorecapital.com for any further information.

Sincerely,

Sonia Gibson
National Government Affairs

[5] *Debt Collection Agencies and the Supply of Consumer Credit*, Philadelphia Federal Reserve Working Paper 15-23 (June 2015).
[6] Todd J. Zywicki, *The Law and Economics of Consumer Debt Collection and its Regulation*. Mercatus Center at George Mason University (September 2015).
[7] *Dodd-Frank At 5: Higher Costs, Uncertain Benefits*, American Action Forum (July 2015).
[8] Marshall Lux and Robert Green, *Out of Reach: Regressive Trends in Credit Card Access*, Harvard Kennedy School of Government (April 2016)