

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

HERBERT SPENCER,

Plaintiff,

v.

No.

DAVID R. JORDAN and
THE LAW OFFICES OF DAVID R. JORDAN, P.C.,

Defendants.

CLASS ACTION COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

1. David R. Jordan is an attorney who sent thousands of debt collection letters on behalf of Cash Cow, a Gallup predatory lender.
2. The letters stated that they were from Mr. Jordan, and threatened that Mr. Jordan was “preparing to initiate [a] lawsuit” against each recipient.
3. The letters were lies. Mr. Jordan had no meaningful involvement in sending the letters, and had made no preparation to bring suit against the recipients.
4. Plaintiff brings claims on his own behalf, and on behalf of all others similarly situated, for violations of the federal Fair Debt Collection Practices Act, 15 U.S.C. §1692 *et seq.* (“FDCPA”) and the New Mexico Unfair Practices Act, N.M.S.A. 1978 §57-12-1 *et seq.* (“UPA”).

Jurisdiction

5. This Court has jurisdiction under the FDCPA, 15 U.S.C. §1692k(d), and under 28 U.S.C. §§1331, 1337 and 1367.

Parties

6. Plaintiff Herbert Spencer resides in Brimhall, New Mexico.

7. Herbert Spencer is a “consumer” as defined by 15 U.S.C. §1692a(3).
8. Defendant David R. Jordan is an attorney who practices law in Gallup, New Mexico.
9. Defendant The Law Offices of David R. Jordan, P.C. is New Mexico professional corporation.
10. Defendants are “debt collectors,” as defined by 15 U.S.C. §1692a(6), because they regularly collect or attempt to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.
11. Defendants’ debt collection activities take place in the regular course of their trade or commerce.

Facts

12. On October 14, 2016, Defendants sent Herbert Spencer a letter (“the Letter”). A copy of the Letter is attached as Exhibit 1.
13. The Letter stated that it was from “The Law Offices of David R. Jordan, P.C.,” and it appeared to bear the signature of David R. Jordan.
14. The Letter stated:

This firm has been retained to bring a lawsuit against you and all person who have not repaid their loan with Cash Cow. We are preparing to initiate this lawsuit; however, our client has encouraged us to reach out to you to convince you to repay your loan before litigation is commenced . . .

When I initiate a lawsuit on debts such as yours, I typically also seek recovery of court costs. This can mean that a final judgment is more than the amount due. The law then gives Cash Cow the power to enforce that judgment and collect their money . . .

You can avoid a lawsuit by making payment arrangements with Cash Cow immediately.

15. The Letter was meant to give the impression that Defendants had reviewed Mr. Spencer's loan file from Cash Cow, and had determined that Mr. Spencer was a candidate for legal action.
16. In truth, Defendants did not review Mr. Spencer's file before sending the Letter.
17. Defendants did not make any particular determination about whether the Letter should be sent to Mr. Spencer.
18. Defendants obtained absolutely no information whatsoever about Mr. Spencer's account before sending the Letter.
19. Defendants received a list of names from Cash Cow, including Mr. Spencer, and sent out a mass mailing with no review of any particular file.
20. Mr. Jordan's signature was printed electronically on the Letter.
21. In addition to misrepresenting their involvement, Defendants made numerous additional false or misleading representations in the Letter, including, but not limited to:
 - a. At the time the Letter was mailed, Defendants had not been "retained to bring a lawsuit" against Mr. Spencer.
 - b. Defendants were not "preparing to initiate this lawsuit."
 - c. Defendants had no basis for stating that they might obtain "a final judgment" against Mr. Spencer.
 - d. It was untrue that Mr. Spencer would be sued if he did not make "payment arrangements with Cash Cow."
22. When Defendants sent the Letter, they had only been retained to send the Letter to Mr. Spencer, not to bring suit against him.

23. After the Letter was sent, Defendants took absolutely no further action against Mr. Spencer, pending notification by Cash Cow that it desired to institute a lawsuit.
24. Defendants followed the same practice with respect to all debt collection letters it sent for Cash Cow.
25. In the small minority of cases in which Cash Cow later determined that it did desire to institute a lawsuit against a letter recipient, Cash Cow would prepare the complaint for Defendants. Mr. Jordan would sign and file the complaint in Gallup Magistrate Court, again with no meaningful review. *See Dale v. Jordan*, No. 1:16-cv-01260 (D.N.M., filed November 17, 2016); *Gonzales v. Jordan*, No. 1:17-cv-00629 (D.N.M., filed June 9, 2017); *Gray v. Jordan*, No. 1:17-cv-00630 (D.N.M., filed June 9, 2017).
26. Defendants never sued the great majority of New Mexicans to whom they sent debt collection letters.
27. Defendants never sued Mr. Spencer.
28. Defendants sent out thousands of debt collection letters, all of which were identical or nearly identical to the Letter sent to Mr. Spencer, and all of which contained the same false or misleading representations.

Mr. Spencer Brings this Case as a Class Action

29. Plaintiff Herbert Spencer is the representative of a class of persons who, starting one year prior to the filing of this action, were sent form debt collection letters by Defendants that were identical to the Letter to Mr. Spencer, and who, as of the filing of this action, have not been sued by Defendants.
30. The class is so numerous that joinder of all members is impracticable. Plaintiff believes the number of members of the class exceeds 1,000 persons.

31. This action is predicated on standard practices of Defendants, who sent thousands of identical form false or misleading debt collection letters.
32. The issues involve questions of law or fact common to the class, which Plaintiff has recited in detail. These questions predominate over any questions affecting only individual class members. The common questions include:
 - a. Whether Defendants' form debt collection letters violated the FDCPA;
 - b. Whether Defendant's form debt collection letters violated the UPA; and
 - c. Whether Plaintiff and the class are entitled to damages and injunctive relief.
33. Plaintiff's claims are typical of those of the class members. All claims are based on the same factual and legal theories. All claims arise from the same form documents and uniform practices.
34. Plaintiff will fairly and adequately represent the class. Plaintiff is committed to litigating this matter. He has retained counsel experienced in handling class claims and claims involving unlawful business practices. Neither Plaintiff nor counsel have any interests which might cause them not to pursue this claim vigorously.
35. A class action is superior for the fair and efficient adjudication of the class members' claims. Class members are unaware of the fact that their rights have been violated. Defendants' victims cannot generally afford counsel to engage in individual litigation against Defendants. A failure of justice will result in the absence of a class action.

First Claim for Relief: Violations of the Fair Debt Collection Practices Act

36. The foregoing actions of Defendants violated the FDCPA, including 15 U.S.C. §§1692d, 1692e, and 1692f.

37. Plaintiff and the class are entitled to recover damages, costs and reasonable attorney fees. 15 U.S.C. §1692k.

Second Claim for Relief: Violations of the Unfair Practices Act

38. The foregoing actions of Defendants constituted unfair or deceptive trade practices within the meaning of the UPA, NMSA 1978 §57-12-2(D).

39. Defendants willfully engaged in these unlawful trade practices.

40. Plaintiff and the class will suffer irreparable injury for which there is no adequate remedy at law in the absence of an injunction barring Defendants from continuing to make false or misleading statements in their debt collection letters.

41. Plaintiff and the class are entitled to injunctive relief to prevent continued Defendants' abusive debt collection.

42. Plaintiff and the class are entitled to costs and reasonable attorney's fees.

Prayer for Relief

WHEREFORE, Plaintiff prays that this Honorable Court:

- A. Certify this case as a class action, appoint Mr. Spencer as class representative, and appoint his attorneys to represent the class;
- B. Award damages for violations of the Fair Debt Collection Practices Act;
- C. Award injunctive relief for violations of the Unfair Practices Act;
- D. Award reasonable attorney's fees;
- E. Award costs; and
- F. Grant such other relief as it deems just and proper.

Respectfully submitted,

/s/Nicholas Mattison

Nicholas Mattison

Feferman, Warren & Mattison, Attorneys for Plaintiff

300 Central Ave., SW, Suite 2000 West

Albuquerque, NM 87102

(505) 243-7773

(505) 243-6663 (fax)

The Law Offices of David R. Jordan, P.C.

1995 State Road 602
PO Box 840
Gallup, NM 87305-0840
Fax (866) 604-5709

October 14, 2016

PAULINE AND SPENCER, HERBERT SPENCER
[REDACTED]

This communication is an attempt to collect a debt, any information obtained will be used for that purpose.

Greetings:

This firm has been retained to bring a lawsuit against you and all persons who have not repaid their loan with Cash Cow. We are preparing to initiate this lawsuit; however, our client has encouraged us to reach out to you to convince you to repay your loan before litigation is commenced.

I am certain that you are the kind of person who pays your debts. However, many have seen in the local press that Cash Cow has filed for bankruptcy protection and have incorrectly concluded that they do not have to repay their loan. Actually, the bankruptcy court expects Cash Cow to collect the amounts due. Your loan has been identified as an "asset of the estate", which means that it is the responsibility of Cash Cow to collect payment. If you have a question about your account, you may contact Cash Cow at 505-726-4586.

When I initiate a lawsuit on debts such as yours, I typically also seek recovery of court costs. This can mean that a final judgment is more than the amount due. The law then gives Cash Cow the power to enforce that judgment and collect their money.

You are entitled to certain information that sets forth your rights and our obligations under the law. The law provides that: (a) Within five (5) days after our initial communication with you in connection with the collection of any debt, unless the following information is contained in the initial communication or unless you have paid the debt, we shall send you a written notice containing (1) the amount of the debt, "\$2,890.27" (2) the name of the creditor to whom the debt is owed, "Cash Cow" (3) unless you, within thirty (30) days after receipt of this notice, dispute the validity of the debt, or any portion thereof, the debt will be assumed to be valid by us, (4) if you notify us in writing within the thirty (30) day period that the debt, or any portion thereof, is disputed, we will obtain verifications of the debt or a copy of the debt, judgment against you and a copy of such verification or judgments will be mailed to you by us, and (5) upon your written request within the thirty (30) day period, we will provide you with the name and address of the original creditor, if different from the current, if different from the current creditor; (b) you notify us in writing within the thirty (30) day period that the debt, or any portion thereof, is disputed, or that you request the name and address of the original creditor; we shall cease collection of the debt, or any disputed portion thereof, until we obtain verification of the debt or a copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to you by us; (c) Your failure to dispute the validity of a debt under the section may not be construed by any court as an admission of liability by you.

You can avoid a lawsuit by making payment arrangements with Cash Cow immediately.

Very Truly Yours,



David R. Jordan

EXHIBIT 1

JS 44 (Rev. 08/16)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS HERBERT SPENCER (b) County of Residence of First Listed Plaintiff <u>McKINLEY</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i> (c) Attorneys (Firm Name, Address, and Telephone Number) Feferman, Warren & Mattison (Nicholas Mattison) 300 Central Ave. SW, Suite 2000 West, Albuquerque, NM 87102 (505) 243-7773	DEFENDANTS DAVID R. JORDAN and THE LAW OFFICES OF DAVID R. JORDAN, P.C. County of Residence of First Listed Defendant <u>McKINLEY</u> <i>(IN U.S. PLAINTIFF CASES ONLY)</i> NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known)
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II. BASIS OF JURISDICTION <i>(Place an "X" in One Box Only)</i> <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i> <input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i>	III. CITIZENSHIP OF PRINCIPAL PARTIES <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;"></td> <td style="width:33%; text-align: center;">PTF</td> <td style="width:33%; text-align: center;">DEF</td> <td style="width:33%;"></td> <td style="width:33%; text-align: center;">PTF</td> <td style="width:33%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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Click here for: Nature of Suit Code Descriptions					
CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN *(Place an "X" in One Box Only)*

1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from Another District *(specify)*
 6 Multidistrict Litigation - Transfer
 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
15 USC 1692

Brief description of cause:
Misleading debt collection letters

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMANDS CHECK YES only if demanded in complaint:
 JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY *(See instructions):* JUDGE DOCKET NUMBER

DATE: 8-3-17 SIGNATURE OF ATTORNEY OF RECORD: 

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Law Offices of David R. Jordan Hit with Lawsuit Over Cash Cow Collection Notices](#)
