

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

**JASSMINE SAFIER, for herself
and all others similarly situated,**

Plaintiff,

v.

Case No. _____

NATIONAL CREDIT SOLUTIONS, L.L.C.

JURY DEMANDED

Defendant.

**CLASS ACTION COMPLAINT FOR DAMAGES PURSUANT
TO THE FEDERAL DEBT COLLECTIONS PRACTICES
ACT AND THE NEW MEXICO UNFAIR PRACTICES ACT**

COMES NOW Plaintiff Jassmine Safier by and through her attorneys of record, Bach & Garcia LLC (Matthew L. Garcia) and for her causes of action and claims against the Defendant, states as follows:

I. INTRODUCTION AND PARTIES

1. This action arises out of the unlawful actions taken by National Credit Solutions, L.L.C. (“NCS”) whereby NCS strong-arms consumers into paying collection fees and disputed debts.

2. Ms. Safier is now, and was at all times material to this Complaint, a resident of Bernalillo County.

3. NCS is a foreign corporation headquartered in Oklahoma City, Oklahoma. According to its website, NCS is a debt-collection agency that services more than 2,000 corporate clients worldwide.

II. JURISDICTION AND VENUE

4. NCS conducts and transacts business in the State of New Mexico.

5. It maintains a registered agent for service of process at 5612 Cometa Ct. NE, Albuquerque, New Mexico 87111.

6. NCS is registered with the New Mexico Public Regulation Commission as required by the state Collection Agency Regulatory Act, §§ 61-18A-1 through 61-18A-33.

7. Jurisdiction and venue is proper pursuant to common law, and 28 U.S.C. § 1331.

8. The Plaintiff alleges violations of federal law including the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 et seq. (“FDCPA”). The Plaintiff also alleges violations of the New Mexico Unfair Practices Act (“UPA”), NMSA 1978 §§ 57-12-1 et seq.

9. Jurisdiction and venue is proper pursuant to common law, and 28 U.S.C. § 1331.

III. FACTUAL BACKGROUND

A. NCS uses unlawful means to coerce consumers into paying unverified debts and excessive collection fees.

10. In February 2010, a company operating in New Mexico under the names “Hollywood Video” or “Movie Gallery” (collectively referred to hereafter as “Hollywood Video”) filed for bankruptcy. Later, in the summer of 2010, Hollywood Video closed its remaining stores in New Mexico.

11. All of the alleged debts owed Hollywood Video were purchased by and/or turned over to NCS for collection.

12. Once NCS received notice of these purported debts it made no attempt to notify consumers of the charges nor did it undertake any effort to verify the debts.

13. According to an interview with the owner of NCS, Brett Evans, the company simply “dropped” collection notices in approximately 500,000 credit files.

14. NCS never notified any of these persons that it had placed unverified and negative credit information in their credit files. Moreover, NCS reported these unsubstantiated debts to the three major collection agencies.

15. Thereafter, many of these persons sought to obtain credit for mortgages, home refinancing, and other transactions where credit is required. Only then were consumers made aware that NCS had wrongfully represented that such persons were subject to collection of an outstanding debt. Many consumers remain unaware that (a) they allegedly owe debts to Hollywood Video, (b) their alleged debts were turned over to and/or purchased by NCS, and/or (b) that NCS reported these unsubstantiated debts to the three major collection agencies.

16. Consumers then began contacting NCS to understand why NCS had placed negative information in their credit file.

17. NCS employees advise the consumer that they had an outstanding debt arising from late charges for movie rentals from Hollywood Video. The NCS employee would then tell consumers that the information could be removed from their credit report within a matter of days if the consumer agreed to pay the outstanding debt plus a \$75.00 collection fee.

18. Because the adverse information placed in consumers’ credit files substantially increased the interest rates at which they could obtain a mortgage or refinance their home, many of the consumers paid money to NCS even though they disputed the validity of the underlying debt.

19. Numerous persons, governmental entities, and non-profit organizations began to take notice of NCS's wrongful conduct. For example, after her office received 48 separate complaints about NCS's conduct, the Washington State Attorney General stated that she was "very concerned given the number of complaints and the nature of the complaints."

20. Through a press release issued by his office Kansas State Attorney General, Derek Schmidt, called NCS's actions a scam:

The attorney general's office has received numerous calls from Kansans across the state who have been contacted by an organization calling itself National Credit Solutions and purporting to be a debt collection agency. Most of the consumers who have been contacted have been contacted either by mail or by telephone. National Credit Solutions says it is contacting the consumers to collect a late fee owed by the consumer to Hollywood Video. The organization tells the consumer that the late fee was never paid and that Hollywood Video has turned the account over to National Credit Solutions for collection, and increasing the amount due. The organization then tells the consumer that the amount must be paid immediately or it will be reported on the consumer's credit report. National Credit Solutions often will also attempt to bargain with the consumer to get them to pay on the spot, accepting less than the amount to ensure payment.

However, most of the consumers who are contacted do not owe any late fee to Hollywood Video.

"This appears to be a scam," Attorney General Derek Schmidt said. "Consumers should not pay or give any information to this organization over the telephone. Instead, they should gather whatever information they can about the alleged debt and the caller and then report that to our office. We're here to help."

21. On January 27, 2011 the Better Business Bureau ("BBB") revoked NCS's membership in the organization stating that NCS had "engag[ed] in activities reflecting poorly on the BBB or its members."

22. The BBB of Virginia and the BBB of Oklahoma also issued warnings about NCS's conduct.

23. On January 26, 2011 of this year, the Montana Attorney General's Office filed suit against NCS under the Montana Unfair Trade Practices and Consumer Protection Act, Mont. Code Ann. §§ 30-14-101, et seq. That complaint alleges, inter alia:

- NCS "issued adverse reports to credit bureaus about Montana consumers, based on alleged debts arising out of their transactions with the [Hollywood Video]."
- NCS "issued such adverse credit reports without first making any reasonable attempts to provide Montana consumers with fair notice of the alleged debts upon which the adverse credit reports are based."
- "When consumers learn about, and then contact Defendant NCS about the adverse credit reports, Defendant NCS demands payment of exorbitant, unreasonable, and unconscionable charges that are disproportionate to any amount that could properly have been demanded by [Hollywood Video] relating to any alleged late charge or other charge that the consumer may have incurred at [Hollywood Video] before it closed its stores."
- "[M]any of the alleged debts that form the basis for [NCS's] collections are not valid."

24. Numerous other newspapers and television stations have reported on the complaints from consumers regarding NCS's conduct. Consumers from around the United States have initiated group forums to discuss NCS's wrongful actions (see e.g., <http://www.complaintsboard.com/complaints/hollywood-video-c395177.html>), and they have even started a Facebook page titled "National Credit Solutions is Scamming Me" (available at http://www.facebook.com/home.php?sk=group_123925887671385).

B. Ms. Safier's credit is adversely affected by NCS's actions, and she is forced to pay a debt and an unreasonable collection fee.

25. In the summer of 2010, Ms. Safier decided to purchase the home she was renting at that time.

26. Accordingly, Ms. Safier applied for a home loan.

27. After submitting her loan application Ms. Safier learned that her top score from one of the major credit institutions was well above 800. When it came time to close the loan, the bank revoked the agreed to interest rate, because it said her credit score had dipped into the mid-600's.

28. Ms. Safier learned that the lower credit score was a result of the adverse credit information NCS placed in her credit file.

29. This was the first time that Ms. Safier had been notified that NCS had placed unfavorable information on her credit report. Indeed, prior to the closing of Hollywood Video, Ms. Safier went into a local store and made certain that she had no late fees. A Hollywood Video employee had assured Ms. Safier that her account was in good standing.

30. NCS did not provide her with any notification before it falsely reported to the three major credit bureaus that she owed money.

31. Thereafter, Ms. Safier called NCS to explain that she did not owe any late fees to Hollywood Video, and to have the debt removed from her file.

32. An NCS employee informed Ms. Safier that if she paid the total amount NCS requested, the adverse information the company had placed in her credit file would be removed the following day.

33. The NCS employee advised that Ms. Safier would need to pay \$129.98 to clear up the debt.

34. Ms. Safier learned that the amount requested by the NCS employee incorporated a fee of \$75.00 – more than 58% of the total amount demanded by NCS. Neither this fee nor the amount requested was authorized by the agreement between Ms. Safier and Hollywood Video.

35. The NCS employee never told Ms. Safier that such fees were unlawful.

36. Although Ms. Safier did not have any late fees with Hollywood Video, Ms. Safier felt compelled to pay the requested amount in order to clear her credit record.

37. Ms. Safier subsequently began the process of trying to have her debt verified and to have the payment she made to NCS refunded.

38. NCS was nonresponsive to Ms. Safier's requests for information.

39. Ms. Safier had to abandon the home loan. She continues to rent.

IV. CLASS ACTION ALLEGATIONS

40. The Plaintiff incorporates by reference the preceding paragraphs as though such paragraphs were stated fully herein.

41. NCS has, as with Ms. Safier, undertaken the above-described unlawful practices and misrepresentations against a number of other New Mexico residents and those similarly situated nationwide.

42. This action is properly maintainable as a class action pursuant to Federal Rule 23.

The Class is defined as follows:

All New Mexico residents who had negative information placed in their credit report by National Credit Solutions, L.L.C. based on alleged debts owed to either Hollywood Video or Movie Gallery. Excluded from the Class are officers, directors and employees of National Credit Solutions, L.L.C., and their spouses, children, heirs and assigns.

43. The Class can be reasonably divided into two subclasses:

a. The first subclass is comprised of all New Mexico residents who have not been informed by National Credit Solutions, L.L.C. that it has placed negative information in such residents' credit files as a result of alleged debts such persons owed to either Hollywood Video or Movie Gallery. Excluded from this subclass are officers, directors and employees of the Defendant, and their spouses, children, heirs and assigns.

b. The second subclass is comprised of all New Mexico residents who have paid money to National Credit Solutions, L.L.C. for the repayment of an alleged debt to Hollywood Video or Movie Gallery including any

collection fees added on to the debt by National Credit Solutions, L.L.C. Excluded from the Class are officers, directors and employees of the Defendant, and their spouses, children, heirs and assigns.

44. The members of the class can be objectively ascertained through the use of information contained in the Defendant's files.

45. Certification of the Class is desirable and proper because there are questions of law and fact in this case which are common to all members of the Class. Such common questions of law and fact include, but are not limited to the following issues:

a. Whether NCS's acts and practices violate the FDCPA by collecting unauthorized fees;

b. Whether NCS's acts, omissions, and practices constitute a violation of the New Mexico Unfair Practices Act, NMSA 1978 §§ 57-12-1 through 57-12-26;

c. Whether NCS has falsely represented to former Hollywood Video customers that they have unsettled debts when they do not;

d. Whether NCS's acts have been misleading and deceptive;

e. The interpretation of the FDCPA and the UPA insofar as they relate to the acts and practices set forth above;

f. The remedies available to Plaintiff and to classmembers should it be determined that NCS's acts and practices have violated the FDCPA and the UPA; and

g. The legal and/or factual applicability of affirmative defenses that may be alleged by NCS.

46. Certification is desirable and proper because Plaintiff's claims are typical of the claims of the members of the Class the Plaintiffs she seeks to represent. Without limitation,

Plaintiff claims that NCS's alleged acts and practices are in breach of the common law and statutory duties alleged above are typical of the claims of the members of the Class.

47. Certification is desirable and proper, because the Plaintiff will fairly and adequately protect the interests of the Class she seeks to represent. There are no conflicts between the interests of Plaintiff and those of other members of the Class, and the Plaintiff is cognizant of her duties and responsibilities to the entire Class. Plaintiff's attorney is qualified, experienced and able to conduct the proposed class action litigation.

48. Upon information and belief, the Plaintiff alleges that the members of the Class are so numerous that joinder of all members of the Class is impracticable.

49. This action should proceed as a class action under Rule 1-023B(2) because NCS has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate injunctive relief and corresponding declaratory relief with respect to the Class.

50. This matter should also proceed as a class action under Rule 1-023B(3). The questions of law or fact common to the members of the Class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

51. No member of the Class has a substantial interest in individually controlling the prosecution of a separate action, but, if any such member or members wish to do so, they may exclude themselves from the Class upon the receipt of notice under Rule 1-023C(2).

52. Upon information and belief, there are no pending lawsuits by members of the Plaintiff Class who may be similarly situated and which may potentially affect the matters raised in this action.

53. The difficulties likely to be encountered in the management of a class action in this litigation are reasonably manageable, especially when weighed against the virtual impossibility of affording adequate relief to the members of the Class through numerous separate actions.

54. The monetary amounts sought for each class member under Rule 1-023(B)(3) are so small that class members would be discouraged from pursuing their claims on an individual basis.

COUNT I
(Violations of the Fair Debt Collections Practices Act)

55. The Plaintiff incorporates by reference the preceding paragraphs as though such paragraphs were stated fully herein.

56. In undertaking the actions described above, the Defendant has violated 15 U.S.C. § 1692(e) by making false, misleading, and deceptive representations in attempting to collect a debt.

57. In particular, the Defendant has represented to Ms. Safier and to other classmembers that monies were owed for late fees when they were not.

58. The Defendant also violated § 1692(e) of the FDCPA by communicating information about Ms. Safier and classmembers to the major credit bureaus that the Defendant knew was false or should have known was false.

59. The Defendant violated § 1692(e) of the FDCPA by using unconscionable tactics to pressure consumers into paying unverified debts and unlawful collection fees.

60. The Defendant violated § 1692(f) of the FDCPA by seeking collection fees against Ms. Safier and others similarly situated even though such amount is expressly authorized by the agreement creating the debt or permitted by law.

61. Because of the above-referenced violations, Ms. Safier is entitled to recover statutory damages and attorney's fees and costs.

62. Members of the class are entitled to recover actual damages plus statutory damages in an amount equal to \$500,000 or one percent of the Defendant's net worth, whichever is less.

COUNT II
(Violations of the New Mexico Unfair Practices Act)

63. The Plaintiff incorporates by reference the preceding paragraphs as though such paragraphs were stated fully herein.

64. The Defendant undertook the actions above in the regular course of its business, trade, and commerce.

65. The foregoing actions of the Defendant constitute misrepresentations and omissions that constitute unfair and/or deceptive trade practices within the meaning of NMSA 1978 § 57-12-2(D) generally and NMSA 1978 §§ 57-12-2(D)(14) and (15) specifically.

66. The foregoing actions of the Defendant constitute misrepresentations and omissions that constitute unfair and/or deceptive trade practices within the meaning of NMSA 1978 § 57-12-2(E) generally and NMSA 1978 §§ 57-12-2(E)(1) specifically.

67. Defendants knowingly and willfully engaged in the above-described unlawful trade practices.

68. Ms. Safier is entitled to recover statutory damages, trebled, plus costs and attorney's fees.

69. Members of the class are entitled to actual damages.

COUNT III
(Declaratory and Injunctive Relief)

70. The Plaintiff incorporates by reference the preceding paragraphs as though such paragraphs were stated fully herein.

71. NMSA 1978, § 57-12-10 (2010) expressly authorizes permits a person who is likely to be damaged by an unfair or deceptive trade practice or by an unconscionable trade practice of another to seek an injunction against the Defendant under the principles of equity and on terms that the court considers reasonable.

72. This Court should issue an injunction to prevent future violations of the UPA by the Defendant.

WHEREFORE, Ms. Safier prays that this Court issue an order granting the following relief:

- A. A declaration from the Court holding that the Defendant has violated the FDCPA and the UPA;
- B. An order enjoining the Defendant from engaging in further violations of the UPA;
- C. Awarding statutory damages to Ms. Safier for the Defendant's violations of the FDCPA;
- D. Awarding actual and statutory damages to members of the class for the Defendant's violations of the FDCPA;
- E. Awarding statutory damages to Ms. Safier as a result of the Defendant's violation of the UPA;
- F. Awarding statutory damages to classmembers for the Defendant's violations of the UPA;

- G. All costs and attorney's fee; and
- H. Any other relief that the Court deems just and reasonable under the circumstances.

Respectfully submitted,



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