

**Law Office of Bret Knewton**

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March 19, 2013

Senator Chip Shields, Chair  
Senate General Government, Small Business and Consumer Protection  
Committee Services Office  
900 Court St. NE, Room 453  
Salem, Oregon 97301

Re: *SB 525 and amendments SB 525-2 (Unlawful Debt Collection Practices)*

Dear Chair Shields:

Consumers facing debt collection lawsuits don't have many options for legal assistance. Legal aid rarely assists consumers with those cases. There aren't many consumer attorneys in Oregon who specialize in this area of the law. The cases don't result in high dollar wins and the consumers who need the most help have very little money to pay for legal representation. The issues are complicated and there is very little case law which greatly increases the risk of taking a case. As one of the very few lawyers in Oregon who represent people sued by debt purchasers I fully support these consumer protections.

The number of consumers coming to me for legal advice regarding debt collection by a debt buyer has increased substantially over the last decade. I typically get 10-15 calls a week from consumers seeking advice on their cases. Some consumers contact me for help when they first receive the lawsuit. The first problem we must deal with is the fact that the lawsuits contain minimal information about the origins of the debt, the basis for the amount owed and the age of the debt. These are crucial pieces of information the consumer must have to make an informed decision about the merits of the debt purchaser's claim against them. Attached are example lawsuits filed by the three prominent debt collecting lawfirms, Daniel Gordon PC, Suttell and Hammer PS, and Johnson Mark LLC. As you can see the facts are sparse.

My investigation starts by initiating litigation to request this information. It is not uncommon for the debt purchaser to drop a case rather than comply with my request for documentation on the account once I give them notice of my representation. I have to assume the only reason the debt buyer dropped the case is because they did not have the simple evidence we were requesting. The problem is the vast majority of Oregon consumers do not contact an attorney because the consumer understandably thinks they cannot afford representation. Many are unaware of the defenses to the lawsuit against and come to me for bankruptcy help. At that time it is too late to

challenge the merits of the suit and they are forced to file an unnecessary bankruptcy or suffer the harsh realities of having their wages garnished 25%. This is significant economic harm to consumers that could be prevented by simply requiring the debt buyer to provide the consumer and the court the evidence necessary to prove they have a valid claim or to allow a meritorious defense against the claim.

Finally, I want to talk about the consumers who come to me for help when they know they owe something but it's less than the amount in the lawsuit. Whether the difference is \$200 or \$1,000 I have to advise them that even if I don't charge them anything and they prove the error it the debt purchaser will ultimately win the suit and have the right to add fees to the judgment incurred by the debt purchaser in litigating the dispute. SB 525 puts the burden on the debt buyer to ensure they have accurate records by denying the plaintiff attorney fees in cases where the consumer prevails in asserting the amount is incorrect.

Sincerely,

/s/ Bret Knewton, Attorney

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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR WASHINGTON COUNTY

EQUABLE ASCENT FINANCIAL, LLC

NO. **C12-3941CV**

Plaintiff,

COMPLAINT  
[ACTION ON FOR MONIES DUE]

vs.



AMOUNT CLAIMED IS \$2602.14  
Subject to Mandatory Arbitration

Defendant(s).

*s/a 337038.001*

**THIS COMMUNICATION IS FROM A DEBT COLLECTOR. THIS COMMUNICATION IS AN ATTEMPT TO COLLECT A DEBT, AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.**

Plaintiff alleges:

I.

Plaintiff is a legal entity, and if required by law, has paid all licenses and fees due and is authorized to bring this action in the State of Oregon.

II.

Defendant resides in WASHINGTON County, Oregon.

III.

Plaintiff is informed and believes that within the last six years the defendant entered into a written credit account agreement bearing number XXXXXXXXXXXXXXX5199 or has made a payment pursuant to the terms of the written agreement. The account has been assigned to plaintiff and the plaintiff is the owner and holder of the account.

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IV.

By the use of said credit account, said defendant became indebted on said account for goods, services, and monies loaned in the stated amount. The defendant also agreed in the credit agreement to pay attorneys fees and costs in the event that legal action was necessary to collect the unpaid balance.

V.

The defendant has defaulted on the obligation by failing to make payments on the obligation and currently owes the sum of \$2602.14 together with interest thereon at the highest legal rate. More than 30 days prior to filing suit, Plaintiff has made demand on the Defendant. Despite demand, the defendant has failed or refuses to pay.

WHEREFORE, plaintiff prays for judgment against [REDACTED] for the sum of \$2602.14 together with interest thereon at the highest legal rate, and any further sum which may be proven at the time of trial, and if allowed by law or agreement, costs and a reasonable sum for plaintiff's attorney's fees; and such judgment shall bear interest at the highest legal rate after entry; and that the plaintiff has and receives such other and further relief as in the premises shall appear just and equitable.

DATED June 3, 2012.

SUTTELL & HAMMER, P.S.



Karen L. Hammer, OSBA #090454  
 Isaac L. Hammer, OSBA #092137  
 Patrick J. Layman, OSBA #025612  
 Mark T. Case, OSBA #105585  
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Attorneys for Plaintiff

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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR WASHINGTON COUNTY

MIDLAND FUNDING, LLC,

Case No. \_\_\_\_\_

vs.

Plaintiff,

COMPLAINT  
(For Breach of Contract)  
Section 15(1)(a), Chapter 595,  
Oregon Laws 2011

[REDACTED]

Defendant.

**FOR A CLAIM LESS THAN \$10,000  
SUBJECT TO MANDATORY ARBITRATION  
TOTAL CLAIM: \$9,941.13**

Plaintiff alleges: BREACH OF CONTRACT

1.

Plaintiff for good and valuable consideration has purchased Defendant's Target National Bank credit card account and contract.

2.

Defendant, an individual residing in Washington County Oregon, entered into a contract with Target National Bank for a credit card. The credit card was issued under the account number

[REDACTED]

3.

Target National Bank performed its obligations under the terms of the contract and supplied the Defendant with a credit card, and thereafter Defendant used the credit card and became indebted thereunder.

4.

Defendant has failed and refused in the obligation under the terms of the contract by

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1 discontinuing payment. The Defendant's credit card account was charged off for delinquency  
2 on December 11, 2009.

3 5.

4 Defendant is indebted to Plaintiff in the sum of \$9,941.13, which includes principal and interest,  
5 plus interest at the rate of 9% per annum from December 11, 2009 until paid. Plaintiff is also  
6 entitled to actual costs, with interest thereon at the rate of 9% per annum from the date of judgment  
7 until paid.

8 6.

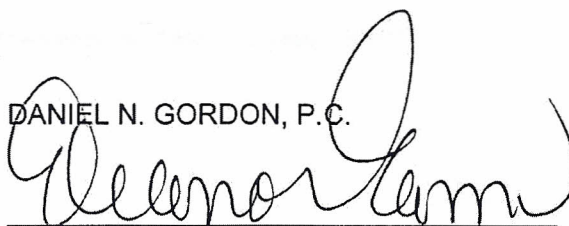
9 The Court should authorize Plaintiff and its attorneys to contact third persons and entities for  
10 the purpose of collecting its judgment entered in this court. The Court should also authorize  
11 Plaintiff and its attorneys to reveal the existence of Defendant's debt to such third persons and  
12 entities.

13 WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

- 14 1. The sum of \$9,941.13, which includes principal and interest, plus interest at the rate of 9%  
15 per annum from December 11, 2009 until paid;  
16 2. Plaintiff's costs and disbursements incurred herein, with interest thereon at the rate of 9%  
17 per annum from the date of judgment until paid;  
18 3. Authorize Plaintiff, its agents, attorneys and assigns to contact third persons and entities  
19 for the purpose of collecting its judgment entered in this court and to reveal the existence  
20 of Defendant's debt to such third persons and entities.

21 Dated this 6 day of December, 2012.

22 DANIEL N. GORDON, P.C.



23 [ ]Matthew R. Aylworth, OSB#070930  
24 [ ]Eleanor Tami, OSB#105214  
25 of Attorneys for Plaintiff  
26 Trial Attorney not yet appointed  
27  
28

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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MULTNOMAH

LVNV FUNDING LLC,  
Plaintiff,

vs.

  
Defendant.

CASE NO. **1004-06383**

**COMPLAINT**  
**(Breach of Contract)**  
UNDER 10,000  
SUBJECT TO MANDATORY  
ARBITRATION

Plaintiff asserts the following claims for relief against Defendant:

1.

Jurisdiction and venue are proper. Plaintiff is a lawfully organized business engaged in interstate commerce. Defendant resides in the county in which this action has been filed.

**FIRST CLAIM FOR RELIEF**  
*(Breach of Contract)*

2.

Defendant was indebted to Citibank, (herein after 'Original Creditor') for credit extended to Defendant. Under the terms of the agreement between the Original Creditor and Defendant, Defendant acquired merchandise, services, and/or cash advances through the credit provided by the Original Creditor. The Original Creditor performed its obligations to Defendant by providing the credit as agreed.

3.

The Original Creditor mailed statements to Defendant, showing all charges, credits, payments, fees and finance charges incurred during each preceding month while Defendant credit account ("Account") was open. Defendant did not object or otherwise dispute said statements within the time prescribed by 15 U.S.C. § 1666. The Original Creditor and Defendant thereby established a stated balance of Defendant's Account.

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4.

Defendant agreed to make payments on the Account. Defendant breached the agreement with the Original Creditor by failing to make all payments as agreed. Such breach of agreement caused the Original Creditor to suffer damages in the amount of \$6,017.63 less any payment made. Upon default by Defendant, the Original Creditor requested full payment of the Account balance.

5.

Plaintiff acquired the Account from the Original Creditor or its lawful successors-in-interest through a valid purchase and assignment. Under Oregon law, Plaintiff has full right to collect on the Account in accordance with all of the terms and conditions of the Agreement.

6.

As part of the Agreement, Defendant agreed to pay all courts costs and attorney fees incurred in enforcing the Agreement. Further, more than ten days before filing this action, written demand was made on Defendant for payment of all sums due, but the balance remains unpaid. Accordingly, Plaintiff is entitled to reasonable attorney fees under ORS 20.082, as applicable, as well as under the Agreement.

7.

As part of the Agreement, Defendant agreed to pay interest on the amounts borrowed. The applicable rate is 9.00%, as specified in the terms of the Agreement; or, if the Agreement rate is found not to apply, as provided by ORS 82.010.

**SECOND CLAIM FOR RELIEF**  
*(Quantum Meruit)*

8.

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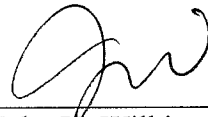
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2 IN THE ALTERNATIVE, Plaintiff pleads a claim of *Quantum Meruit*. Plaintiff  
3 incorporates into this claim paragraph 1. Principles of equity also require Defendant to pay  
4 for the benefit conferred on Defendant by the Original Creditor's extension of credit.  
5 Defendant was fully aware of the benefit received. Under the circumstances, it would be  
6 unjust to allow Defendant to retain this benefit without requiring Defendant to pay the value  
7 thereof.  
8

9 WHEREFORE, Plaintiff prays for judgment against Defendant for the following amounts:

- 10 1. The Account balance of \$6,017.63 less any payments made.
- 11 2. Interest, both prejudgment and post judgment, at 9.00% per year until paid.
- 12 3. Reasonable attorney fees and court costs.
- 13 4. Any other relief the Court deems just and equitable.

14 DATE: April 19, 2010.

15 JOHNSON MARK LLC



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17  
18 John H. Wilkinson (082276)