



June 10, 2020

CLASS ACTION FILED ON AUTOMATIC CREDIT CARD PAYMENTS

A cardholder filed a class action in federal court various alleging state law violations against a card issuer related to how payment amount options were presented when the cardholder signed up for automatic payments online. *Jette v. Bank of America, N.A.*, No. 20-cv-06791 (D.N.J. June 3, 2020) (complaint).

In the complaint, the cardholder explained that many card issuers give cardholders three options for the amount of automatic payments: (i) the minimum payment due, (ii) the cardholder's statement balance and (iii) a fixed monthly amount. Some card issuers offer a fourth payment amount option for automatic payments: the cardholder's total outstanding account balance as of the payment due date, including new purchases and fees. Setting automatic payments to withdraw only the minimum payment amount from a cardholder's bank account on the payment due date will enable a cardholder to avoid late fees each month, but may cause the cardholder to carry a balance from month to month and pay interest on that balance.

The card issuer in this case offered four options for automatic payments: minimum amount due, account balance, fixed amount and amount due. When a cardholder logged onto its online account to set up automatic payments, the cardholder would see all four payment amount options in a drop down box with the default payment option set to the "amount due." Next to the header for the payment amount selection drop down box, the card issuer's website had a hyperlink titled "About Amounts." If a cardholder clicked on the hyperlink, the cardholder could read an explanation of each amount in the drop down list. The "amount due" description stated that:

Every bill has an amount due. Some bills, such as credit cards, will have additional options for paying what's due. Selecting this option may leave a balance due. Not paying the full amount due could result in fees and finance charges.

The cardholder alleged that selecting the "amount due" causes the card issuer to withdraw a payment from a cardholder's bank account equal to the minimum payment due on the cardholder's credit card account. Stated differently, the "amount due" option meant the same thing as the "minimum amount due" option. The

cardholder argued that any reasonable consumer selecting the "amount due" option would expect the card issuer to withdraw an amount equal to the cardholder's statement balance (*i.e.*, the "amount due" from the previous month's purchases), not the cardholder's minimum payment. According to the cardholder, a consumer would reasonably expect the "amount due" to be different from the "minimum amount due" since the amounts are presented to consumers as independent automatic payment amount options. The cardholder argued that the hyperlink with explanations of the amount options was nondescript, could easily be missed by cardholders and did not give cardholders sufficient warning that selecting the "amount due" option will cause them to carry over their balances and pay interest. The cardholder also argued that placing the "amount due" as the most prominent and default amount option in the drop down list influenced cardholders to select that option.

The cardholder selected "amount due" intending to pay off the accrued balance monthly to avoid interest charges and fees and was surprised months later to find an increasing balance.

The cardholder alleged that the only reason the card issuer provided the duplicative and deceptive "amount due" option was intentionally to mislead consumers into not paying off their balances each month through automatic payments resulting in the cardholders incurring interest charges to the issuer's profit. The cardholder proposed the following the class: all person (1) with a credit card for the card issuer, (2) who enabled automatic payments through the card issuer's website and (3) selected the "Amount Due" payment option during the applicable statute of limitations through the date of class certification.

The complaint does not set forth any federal law claim, but rather alleged violations of the North Carolina Unfair and Deceptive Trade Practices Act and the North Carolina Debt Collection Act, or breach of the implied covenant of good faith and fair dealings in contracts and unjust enrichment. The complaint requested monetary and equitable relief, statutory damages (including treble damages), punitive damages, reasonable attorneys' fees and other relief

According to the complaint, automatic payments have become the second-most-common payment method for credit cards after online one-time electronic payments. This complaint (i) underlines the importance of testing online customer experiences to identify aspects of the experience that could be clarified and (ii) shows that

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experiences with other credit offerings may influence how customers understand other products or experiences. We often review customer experiences for regulatory concerns and can walk through your customer experience with you. □

✧ *Mike Tomkies and Susan Seaman*