

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

MICHAEL JETTE, individually, and on
behalf of a class of similarly situated persons,

Plaintiff,

v.

BANK OF AMERICA, N.A.,

Defendant.

Case No. 2:20-cv-06791-SDW-LDW

JURY TRIAL DEMANDED

AMENDED CLASS ACTION COMPLAINT

Plaintiff, Michael Jette (“Plaintiff” or “Mr. Jette”), on behalf of himself and all persons similarly situated, alleges the following based on personal knowledge as to allegations relating to himself and on information and belief and the investigation of counsel as to the rest.

INTRODUCTION

1. Most adult Americans have at least one credit card. And in the era of electronic banking, the ability to make automatic credit card payments is essential for consumers who want to streamline their finances and avoid late payment fees.

2. Over the last few years, the credit card market—the largest U.S. consumer lending market measured by the number of users—has grown in almost all dimensions and measures.¹ Every year since 2015, an increasing number of credit card holders have enrolled in some kind of

¹ Consumer Financial Protection Bureau, *The Consumer Credit Card Market* 50 (Aug. 2019), https://files.consumerfinance.gov/f/documents/cfpb_consumer-credit-card-market-report_2019.pdf (last visited June 2, 2020).

automatic payment option.² In 2018, automatic payments surpassed payments by paper check as the second-most-common payment method after online, non-automatic payments.³

3. Typically, consumers who want to set up automatic payments through the credit card issuer can provide deposit account information through the issuer's online portal or mobile app, then authorize recurring automatic payments.⁴

4. Most credit card issuers allow cardholders the choice to automatically pay (1) the minimum amount due, (2) their balance reflected on their most recent billing statement, or (3) a fixed monthly amount.⁵ American Express offers a fourth option, to pay the "Total Balance," defined as the "full balance on your account."

5. When a consumer chooses to pay the minimum amount due, the minimum amount due on the consumer's most recent statement will be automatically withdrawn from the consumer's deposit account every month. If there is a remaining balance, that balance will carry over to the next month—unless the cardholder makes an additional payment—and accrue interest according to the cardholder's agreement with the issuer. As such, the minimum amount due option is the most costly option for the cardholder and most profitable for the credit card issuer.

6. When a consumer chooses to pay the statement balance every month (or the full balance due, *i.e.*, the statement balance plus any additional purchases), that amount will be withdrawn from the consumer's deposit account, and no balance will carry over. This option results in the lowest amount of accrued interest for the cardholder and the least profit for the credit card issuer.

² *Id.*

³ *Id.* at 51.

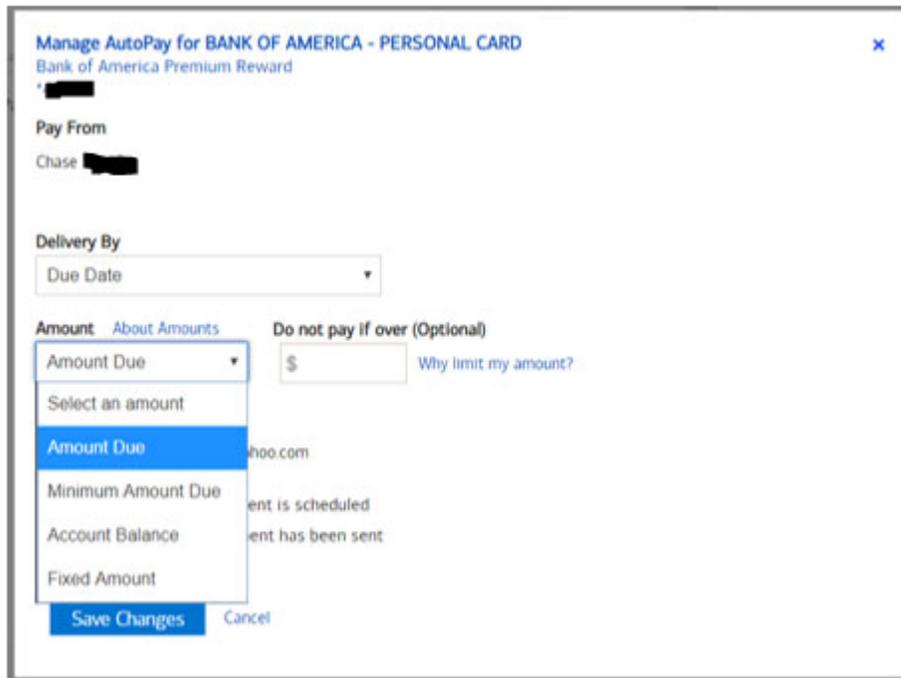
⁴ *Id.* at 50.

⁵ *Id.*

7. If a consumer selects a fixed monthly amount, that amount will be withdrawn from their deposit account every month regardless of the statement balance or minimum amount due.

8. Defendant, Bank of America, N.A. (“Defendant” or “Bank of America”), like other major credit card issuers, offers its cardholders these three payment options: Minimum Amount Due, Account Balance, and Fixed Amount. Like other major credit card issuers, Bank of America’s uniform credit card agreements provide that if the cardholder pays his or her balance by the due date, Bank of America will not charge the cardholder interest on purchases.

9. But unlike other major credit card issuers, Bank of America invented a duplicative fourth option that intentionally misleads consumers into incurring unwanted credit card debt and interest charges. In addition to “Minimum Amount Due,” “Account Balance,” and “Fixed Amount,” Bank of America also provides the option to set up automatic payments for the “Amount Due,” listing it as the default among the four options.



10. Presented with these four options, reasonable consumers would expect “Amount Due” to mean the statement balance, (*i.e.*, the “amount due” from the last month’s purchases), while “Account Balance” would be an option similar to American Express’s fourth option (*i.e.*, the statement balance plus any other purchases made since the statement date). Reasonable consumers would also expect that after selecting “Amount Due,” Bank of America would withdraw the total “amount due” from their deposit accounts every month, and, as a result, no balance would carry over to the next month and no interest would accrue.

11. At a minimum, reasonable consumers would expect “Amount Due” to mean something different from “Minimum Amount Due,” since that option exists independently.

12. But in fact, under Bank of America’s misleading construct, “Amount Due” means *the same thing* as “Minimum Amount Due.” Selecting “Amount Due” will cause Bank of America to withdraw as payment only the *minimum* amount due from the customer’s bank account.

13. “Amount Due” is a duplicative feature that serves no purpose except to confuse customers and inflate Defendant’s profits. Bank of America, which collects interest charges as profit, makes less money when customers pay their entire account balance every month and do not incur interest.

14. Bank of America does not list the payment options in alphabetical order or by expected payment size. By positioning “Amount Due” as the first option and setting it as the default, Bank of America is trying to further influence customers into selecting that option.

15. Cardholders who select “Amount Due,” intending to choose an option that will pay off their entire credit card balance, instead end up paying only the minimum amount owed. As a result, their credit card debt grows, and they accrue the interest they were trying to avoid—to Bank of America’s benefit.

16. There is no reason for Bank of America to offer both the “Amount Due” and “Minimum Amount Due” options other than to confuse cardholders and profit from their confusion.

17. Bank of America’s credit card agreements uniformly provide that North Carolina law applies to customer accounts. By offering a duplicative payment option, which is likely to mislead consumers into paying unwanted interest, Bank of America has violated the New Jersey Consumer Fraud Act (“NJCFA”), breached its contract with customers as well as the implied covenant of good faith and fair dealing, and has been (and continues to be) unjustly enriched.

JURISDICTION AND VENUE

18. This Court has personal jurisdiction over Bank of America because it does business in this District and certain of the conduct at issue occurred in this District, as set forth herein.

19. This Court has subject matter jurisdiction over this class action pursuant to 28 U.S.C. § 1332, as amended by the Class Action Fairness Act of 2005, because the matter in controversy exceeds \$5 million, exclusive of interest and costs, and this is a class action in which some members of the class (defined below) are citizens of states other than the Defendant. *See* 28 U.S.C. § 1332(d)(2)(A).

20. Venue properly lies in this District under 28 U.S.C. § 1391 because the events giving rise to the claims in this action occurred in this District.

PARTIES

21. Plaintiff is a resident of Hoboken, New Jersey, and has a Bank of America credit card. Plaintiff, thus, is a New Jersey citizen.

22. Defendant is a national bank headquartered in North Carolina and, thus, is a North Carolina citizen. Among other things, Bank of America markets and issues credit cards to

consumers.

COMMON FACTUAL ALLEGATIONS

23. Bank of America provides customers with a variety of credit and banking services. Among these are several credit card options. A credit card allows the cardholder to borrow money to pay for goods and services. Each time the cardholder uses the credit card to pay for a purchase, the amount of the purchase adds to the balance of the card.

24. The terms of Bank of America's credit cards are set forth in its standard credit card agreements ("Card Agreement(s)") (attached hereto as Exhibit A). The Card Agreements provide that Bank of America will generate a monthly billing statement showing the balance owed on the credit card, the payment due date, the minimum amount due, and any interest charges or fees incurred.

25. Each billing cycle, Bank of America credit card holders must pay at least the total minimum payment due shown on the customer's monthly statement by the customer's payment due date. Under the terms of the uniform Card Agreements, if a customer pays his or her entire card balance by the due date, then Bank of America will not charge interest on purchases. If the customer pays only the minimum amount due, or some other amount less than the full balance, the remaining balance will carry over to the next month and accrue interest according to the Annual Percentage Rate ("APR"), which varies with the market.

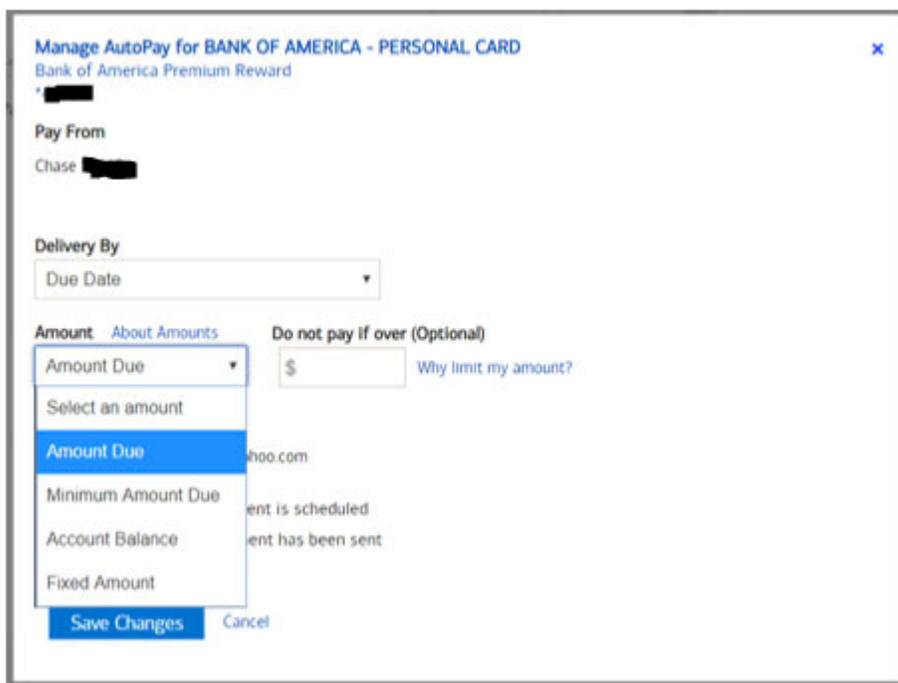
26. Bank of America offers its customers the ability to set up automatic payments through its website. Automatic monthly payments help customers avoid late fees by ensuring that they make a payment each month.

27. Customers who want to set up automatic payments can do so by logging into their Bank of America account online. Through Bank of America's website, customers can set up

automatic payments (known as “AutoPay”) by providing their deposit account information to Bank of America so that it can withdraw their chosen payment amount each month.

28. Like other major credit card issuers, Bank of America offers cardholders the ability to choose to pay their minimum amount due, their statement balance, or a fixed amount.

29. But, unlike other major credit card issuers, Bank of America offers a fourth option: “Amount Due.” Bank of America lists “Amount Due” as the default option, first among the list of payment choices:



30. The phrase “Amount Due” implies that this option will cause Bank of America to withdraw the full amount owed on the credit card, *i.e.*, the balance owed as of the last statement. Reasonable consumers would expect that by choosing “Amount Due,” they are choosing to pay off the amount due as of the previous month—thereby avoiding interest charges on purchases under the Card Agreement.

31. In fact, although offered as a separate and distinct option, “Amount Due” means

the exact same thing as “Minimum Amount Due.”

32. Reasonable consumers would not select “Amount Due” if they intended only to pay their minimum monthly amount; rather, they would select “Minimum Amount Due.”

33. Contrary to the expectations of reasonable consumers, including Plaintiff, selecting “Amount Due” will cause Bank of America to withdraw only the *minimum* amount due—typically leaving a balance to carry over to the next month and accrue interest charges.

34. Bank of America’s misleading explanation of this duplicative option does not provide any clarity and further demonstrates Defendant’s intention to mislead consumers. Hidden in a tiny link called “About Amounts” are four confusing descriptions of Bank of America’s payment options. None of them explain the difference between “Amount Due” and “Minimum Amount Due.”

35. The description of “Minimum Amount Due” provides:

For some bills, such as credit cards, you can pay a minimum amount of the total due. However, selecting this option may leave a balance due. Not paying the full amount due could result in fees or finance charges.

The description of “Account Balance” provides:

For some bills, such as credit cards, you can pay the total amount due. Selecting this option helps you avoid any fees or finance charges resulting from not paying the total balance.

The description of “Amount Due” provides:

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 or finance charges.

About Amounts X

Minimum Amount
For some bills, such as credit cards, you can pay a minimum amount of the total due. However, selecting this option may leave a balance due. Not paying the full amount due could result in fees or finance charges.

Amount Due
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 or finance charges.

Account Balance
For some bills, such as credit cards, you can pay the total amount due. Selecting this option helps you avoid any fees or finance charges resulting from not paying the total balance.

Fixed Amount
Pay a set amount for the bill. It won't vary based on what's due. This option is helpful when making payments larger than the amount due. However, if your balance due changes, the payment may not cover the total amount due.

36. These misleading and confusing descriptions do not explain that there is no difference between “Minimum Amount Due” and “Amount Due,” nor do they clearly state that selecting “Amount Due” will ensure that only the minimum amount due is paid. At best, Bank of America states that selecting “Amount Due” “*may*” leave a balance due. But this warning, hidden in a nondescript link, out of sight from most consumers, who most likely will not click on the link, is not sufficient to put consumers on notice that “Amount Due” will only cause them to pay the minimum amount due, will leave a remaining balance, and will cause them to accrue interest.

37. Nor do Bank of America’s monthly billing statements offer any explanation or clarity. The phrase “Amount Due” does not appear anywhere on Bank of America’s statements. The statements refer only to the “New Balance Total,” the “Current Payment Due,” and the “Total Minimum Payment Due.” Neither the statements, nor Bank of America’s website, nor even its own “Glossary of Banking Terms,”⁶ explain how to match “New Balance Total,” “Current Payment

⁶ <https://www.bankofamerica.com/credit-cards/glossary/>.

Due,” and “Total Minimum Payment Due” with the automatic payment options.

38. Similarly, Bank of America’s Card Agreement provides that Defendant will not charge interest on purchases “if you pay your entire balance by the due date,” but does not use the phrase “Amount Due.”

39. The only reason to offer this misleading and duplicative option is to increase Bank of America’s profits by allowing it to charge interest to customers who otherwise intended to pay off their balance monthly and not accrue interest. And the only reason to list “Amount Due” first among the payment options, as the default, is to further confuse customers into choosing it.

40. Bank of America does not earn interest from customers who pay their full account balances every month. But by duping them into paying only the minimum amount due, Bank of America can cause these customers to grow the balances on their credit cards and incur interest charges that will benefit Defendant.

41. Other major credit card issuers do not offer duplicative, confusing options. Chase Bank, Capital One, and USAA, for example, permit customers to set up automatic payments three ways: “Minimum payment due,” “Statement balance,” and “Fixed amount.”

42. American Express offers four options that are clearly explained: (1) the Minimum Payment Due, defined as “minimum amount due to keep the account current”; (2) the Statement Balance, defined as the “New Balance showing on your most recent billing statements”; (3) the Total Balance, defined as “the full balance on your account”; and (4) an “Other” fixed amount.

43. Bank of America stands alone in misleading its customers into paying only the minimum amount due when they, in fact, intend to pay some larger amount.

NAMED PLAINTIFF’S FACTS

44. Plaintiff opened a Bank of America credit card in December 2019 for personal,

family, or household uses.

45. Mr. Jette opened the Bank of America credit card to take advantage of a promotion.

46. Mr. Jette has opened credit cards in the past. His ordinary practice is to connect each credit card to his personal bank account and authorize automatic monthly payments of the full balance owed, such that the card is paid in full each month and no balance carries over. Mr. Jette chooses the option to pay the full balance due each month in order to avoid paying interest charges and fees.

47. In January 2020, Mr. Jette made \$458.93 in purchases using his new Bank of America credit card. He was also charged a \$95.00 Annual Fee. His January statement balance was \$553.93 and his minimum payment was \$25.00.

48. Prior to making his first payment, Mr. Jette set up automatic payments through Bank of America's website, authorizing it to withdraw monthly payments from his deposit account at Chase. He selected "Amount Due," intending to cause Bank of America to withdraw the balance reflected on his last statement each month by the due date, thus avoiding interest charges under the Card Agreement. Based on his experience with other credit cards, as well as his common-sense understanding of Bank of America's options, Mr. Jette believed the "Amount Due" option would cause Bank of America to withdraw from his checking account the amount reflected on his last month's statement, allowing no balance to carry over to the following month, and accruing no interest. Mr. Jette believed that the "Account Balance" option was the "Amount Due," plus any additional purchases made since the statement date.

49. Unbeknownst to Mr. Jette, the "Amount Due" option only caused Bank of America to withdraw the minimum amount due from his deposit account, leaving a balance due that would accrue interest.

50. Thus, on February 4, 2020, Bank of America withdrew only \$25.00 from Mr. Jette's deposit account and applied it to his amount owed, leaving a balance owed and causing Mr. Jette to accrue \$33.84 in interest.

51. Mr. Jette's February statement shows that he used his Bank of America credit card to pay for \$3,472.74 in goods and services the following month. After adding the interest from the previous month, his balance was \$4,035.51. His minimum payment was \$73.00.

52. Because the "Amount Due" option that Mr. Jette had selected only caused Bank of America to withdraw the minimum amount due from his deposit account and pay only that amount, instead of the statement balance, on March 4, 2020, Bank of America withdrew only \$73.00 from Mr. Jette's account and applied it to his credit card balance, leaving a balance owed. As a result, Mr. Jette incurred \$61.06 in interest.

53. The following month, Mr. Jette used his Bank of America credit card to pay for \$1,152.76 in goods and services. He received a statement credit for \$565.53. His balance, shown on his March 2020 statement, grew to \$4,610.80, including the interest accrued during the previous month. Mr. Jette's minimum amount due was \$106.00.

54. Because the "Amount Due" option that Mr. Jette had selected only caused Bank of America to withdraw the minimum amount due from his deposit account and pay only that amount, instead of the statement balance, on April 4, 2020, Bank of America withdrew only \$106.00 from Mr. Jette's account and applied it to his credit card balance, leaving a balance owed. As a result, Mr. Jette incurred \$64.13 in interest.

55. The following month, Mr. Jette used his Bank of America credit card to pay for \$366.89 in goods and services. He received refunds of \$639.16 for previous purchases. His balance, shown on his April 2020 statement, was \$4,296.66, with a minimum amount due of

\$106.00.

56. Because the “Amount Due” option that Mr. Jette had selected only caused Bank of America to withdraw the minimum amount due from his deposit account and pay only that amount, instead of the statement balance, on May 4, 2020, Bank of America withdrew only \$106.00 from Mr. Jette’s account and applied it to his credit card balance, leaving a balance owed. As a result, Mr. Jette incurred \$59.07 in interest.

57. The following month, Mr. Jette used his Bank of America credit card to pay for \$336.41 in goods and services. His balance, shown on his May statement, was \$4,586.14, with a minimum amount due of \$104.00.

58. In total, between January and May 2020, Mr. Jette incurred interest charges of \$218.10. Mr. Jette had intended to (and believed he had) selected an automatic payment that would pay off his total balance each month.

59. Mr. Jette reasonably believed that he had authorized Bank of America to automatically pay the entire balance owed on the statement. He had no reason to think that Bank of America would only withdraw the minimum amount owed, because he had not chosen “Minimum Amount Due.” Because he believed he understood the meaning of the “Amount Due” option, Mr. Jette did not regularly monitor his monthly statements.

60. In May 2020, Mr. Jette decided to review his statements. He was shocked and dismayed when he saw that he was carrying a balance of over \$4,500.

CLASS ACTION ALLEGATIONS

61. Plaintiff brings this action under Federal Rule of Civil Procedure 23 on behalf of the following class of persons (the “Class”), subject to modification after discovery and case development:

All persons or entities in New Jersey (1) with a Bank of America credit card (2) who enabled automatic payments through the Bank of America website and (3) selected the “Amount Due” payment option, during the applicable statutes of limitations through the date a class is certified.

62. Class members are identifiable through Defendant’s records and payment databases.

63. Excluded from the Class are the Defendant; any entities in which it has a controlling interest; its agents and employees; any Judge to whom this action is assigned; and any member of such Judge’s staff and immediate family.

64. Plaintiff proposes that he serve as Class representative.

65. Plaintiff and the Class have all been harmed by the actions of Defendant.

66. Numerosity is satisfied as there are likely thousands of Class members. Individual joinder of these persons is impracticable.

67. There are questions of law and fact common to Plaintiff and to the Class, including, but not limited to:

- a. Whether the “Amount Due” payment option is deceptive;
- b. Whether Defendant violated the NJCFA;
- c. Whether the “Amount Due” option is likely to mislead consumers;
- d. Whether Defendant was unjustly enriched;
- e. Whether Defendant breached its contracts with customers;

- f. Whether Defendant owes a duty of good faith and fair dealing to its customers;
- g. Whether Defendant violated the duty of good faith and fair dealing;
- h. Whether Plaintiff and the Class were damaged by Defendant's conduct;
- i. Whether Plaintiff and the Class are entitled to damages as a result of Defendant's actions;
- j. Whether Plaintiff and the Class are entitled to restitution; and
- k. Whether Plaintiff and the Class are entitled to attorneys' fees and costs.

68. Plaintiff's claims are typical of the claims of the Class members. Defendant offered the same automatic payment options to all Class members.

69. Plaintiff is an adequate Class representative because his interests do not conflict with the interests of the Class members and Plaintiff will adequately and fairly protect the interests of the Class members. Plaintiff has hired skilled and experienced counsel to represent himself and the Class.

70. Common questions of law and fact predominate over questions affecting only individual Class members, and a class action is the superior method for fair and efficient adjudication of this controversy.

71. The likelihood that individual members of the Class will prosecute separate actions is remote due to the time and expense necessary to conduct such litigation.

COUNT I
Violation of the New Jersey Consumer Fraud Act ("CFA")
N.J.S.A. § 56:8-1, *et seq.*
(On Behalf of Plaintiff and the Class)

- 72. Paragraphs 1 to 71 are incorporated herein by reference.
- 73. The claims of Plaintiff and the Class members are governed by New Jersey law.

74. The CFA was enacted and designed to protect consumers against unfair, deceptive and fraudulent business practices. N.J. Stat. Ann. §§ 56:8-1, *et seq.*

75. N.J. Stat. Ann. § 56:8-2 provides:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice

76. Plaintiff, other members of the Class, and Defendant are “persons” within the meaning of the CFA.

77. The credit cards are “merchandise” within the meaning of the CFA, and Plaintiff and other members of the Class are “consumers” within the meaning of the CFA and, thus, are entitled to the statutory remedies made available in the CFA.

78. Defendant engaged in unconscionable commercial practices, deception, fraud, concealment, false promises and misrepresentations, in violation of the CFA, when it offered a meaningless and misleading payment option that serves no purpose except to confuse its customers. For cardholders who enabled automatic payments, Defendant offered online automatic payment options labeled “Minimum Amount Due,” “Amount Due,” “Account Balance,” and “Fixed Amount.” The phrase “Amount Due” implies that the “Amount Due” option will cause Bank of America to withdraw the full amount owed on the credit card each month, similar to the statement balance option offered by other banks. Reasonable consumers would expect that by choosing “Amount Due,” they are choosing to pay off the amount due as of the last statement—thereby avoiding interest charges on purchases under the Card Agreement.

79. In fact, “Amount Due” means the exact same thing as “Minimum Amount Due.”

80. Reasonable consumers would not select “Amount Due” if they intended only to pay their minimum monthly amount. Rather, they would select “Minimum Amount Due.”

81. Contrary to the expectations of reasonable consumers, selecting “Amount Due” will cause Bank of America to withdraw only the *minimum* amount due—typically leaving a balance to carry over to the next month and accrue interest charges.

82. Plaintiff and the Class members selected “Amount Due,” believing it to mean something different than “Minimum Amount Due.” Plaintiff and the Class members relied on the option’s name, as contrasted with the alternative option, “Minimum Amount Due,” in selecting the option labeled “Amount Due,” and believing it to mean something other than “Minimum Amount Due.” This reliance was reasonable, as it was based upon industry practice and common sense.

83. As a result, Bank of America withdrew only the minimum amounts due on their account balances, leaving balances that carried over and incurred interest charges.

84. Defendant also knowingly concealed, suppressed, and consciously omitted material facts to Plaintiff and other Class members concerning its “Minimum Amount Due,” “Amount Due,” “Account Balance,” and “Fixed Amount” options.

85. These acts and omissions directly and proximately caused Plaintiff and other members of the Class to suffer an ascertainable loss in the form of, *inter alia*, money spent paying for fraudulently accumulating balances and accrued interest charges, together with appropriate penalties, including treble damages, attorneys’ fees, and costs of suit.

86. The CFA is, by its terms, a cumulative remedy, such that remedies under its provisions can be awarded in addition to those provided under other laws or statutory schemes.

COUNT II
Breach of Contract
(On Behalf of Plaintiff and the Class)

87. Paragraphs 1 to 71 are incorporated herein by reference.

88. When Plaintiff and the Class members opened credit cards with Bank of America, they entered into the uniform Card Agreements with Bank of America (*see* Exhibit A attached hereto).

89. The claims under the Card Agreements between Plaintiff and the Class members are governed by North Carolina law as set forth under the Card Agreements (*id.*, at 12) (“This Agreement is made in North Carolina and we extend credit to you from North Carolina. This Agreement is governed by the laws of the State of North Carolina (without regard to its conflict of laws principles) and by any applicable federal laws.”).

90. Under the uniform Card Agreements between Bank of America, on the one hand, and Plaintiff and the Class members on the other, Bank of America agreed not to charge interest on purchases if Plaintiff and the Class members paid the balance owed each month by the due date (*i.e.*, the statement balance).

91. In addition, under the uniform Card Agreements, Plaintiff and Class members were able to pay Defendant the entire amount owed at any time. (*Id.*, at 8.)

92. For cardholders who enabled automatic payments, Defendant offered online automatic payment options labeled “Minimum Amount Due,” “Amount Due,” “Account Balance,” and “Fixed Amount.” These payment options differed from the amount the cardholder is required to pay pursuant to the Card Agreement, are confusing, and are not defined by Defendant in the Card Agreement.

93. Plaintiff and the Class members who intended to pay of the entire amount owed,

which is contemplated by, and allowed under, the Card Agreement, were not able to do so because of Defendant's conduct, which amounted to a breach of the Card Agreement.

94. Bank of America withdrew only the minimum amounts due on Plaintiff's and Class members' balances, leaving balances that carried over and incurred interest charges, which was done in a manner that did not comport with and was a breach of the Card Agreement.

95. By its conduct, Bank of America has injured Plaintiff's and the Class members' right to receive a benefit under their Card Agreements. Bank of America's duplicative payment options are misleading and interfere with the right of cardholders to pay their statement balance each month and avoid interest charges.

96. Plaintiff and the Class members were harmed due to this breach.

COUNT III
Breach of the Implied Covenant of Good Faith and Fair Dealing
(On Behalf of Plaintiff and the Class)

97. Paragraphs 1 to 71 are incorporated herein by reference.

98. When Plaintiff and the Class members opened credit cards with Bank of America, they entered into uniform Card Agreements with Defendant.

99. The Card Agreements were subject to the implied covenant that Defendant would conduct business with Plaintiff and the Class in good faith and would deal fairly with them.

100. Defendant breached those implied covenants by its deception and misleading and improper performance of the contract or by intentionally subjecting Plaintiff and the Class to terms not in accordance with or defined by the Card Agreement.

101. As a direct and proximate result of Defendant's breach of its duty of good faith and fair dealing, Plaintiff and the Class have suffered damages.

COUNT IV
Unjust Enrichment
(In the Alternative, On Behalf of Plaintiff and the Class)

102. Paragraphs 1 to 71 are incorporated herein by reference.

103. The claims of Plaintiff and the Class members are governed by New Jersey law.

104. Plaintiff and the Class members conferred benefits on Defendant; namely, Plaintiff and the Class members paid their credit card bills, including interest unfairly obtained due to Defendant's deceptive payment options.

105. Defendant's retention of these benefits is unjust because it created a meaningless and duplicative payment option that was likely to, and did, mislead consumers into carrying a balance on their credit cards and pay interest to Defendant.

106. Plaintiff and the Class members are entitled to restitution and Defendant is required to disgorge the benefits it unjustly obtained.

107. This claim is pled in the alternative to Count II to the extent required by applicable law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

1. An Order certifying the proposed Class pursuant to Federal Rule of Civil Procedure 23 and appointing Plaintiff and his counsel to represent them;
2. Monetary and/or equitable relief in an amount to be determined at trial;
3. Statutory damages and/or penalties, including treble damages;
4. Punitive or exemplary damages;
5. Pre- and post-judgment interest to the extent provided by law;

6. Attorneys' fees and costs of suit, including costs of notice, administration, and expert fees; and

7. Such other legal or equitable relief, including injunctive or declaratory relief, as the Court may deem appropriate.

PLAINTIFF DEMANDS A TRIAL BY JURY OF ALL ISSUES SO TRIABLE.

Dated: November 9, 2020

Respectfully submitted,

SHEPHERD, FINKELMAN, MILLER
& SHAH, LLP

/s/ James C. Shah

James C. Shah
Natalie Finkelman Bennett
475 White Horse Pike
Collingswood, NJ 08107
Telephone: (856) 526-1100
Facsimile: (866) 300-7367
Email: jshah@sfmslaw.com
nfinkelman@sfmslaw.com

Hassan A. Zavareei (*pro hac vice*)
Katherine M. Aizpuru (*pro hac vice*)
TYCKO & ZAVAREEI LLP
1828 L Street NW, Suite 1000
Washington, D.C. 20036
Telephone: (202) 973-0900
Facsimile: (202) 973-0950
Email: havareei@tzlegal.com
Email: kaizpuru@tzlegal.com

*Attorneys for Plaintiff and the Proposed
Class*