



February 28, 2017

Christine P. Burak
Supreme Judicial Court
John Adams Courthouse
One Pemberton Square
Boston, MA 02108

Re: Proposed Amendments to the Mass. Rules of Civil Procedure Regarding Credit Card Debts

Dear Ms. Burak:

On behalf of the American Financial Services Association (“AFSA”),¹ I thank you for the opportunity to comment on the Standing Advisory Committee on the Rules of Civil and Appellate Procedure’s proposed amendments to the Massachusetts Rules of Civil Procedure regarding credit card debts.

As written, we have several concerns with the specific affidavit requirements in Proposed Rule 8.1. Our concerns lie with the affidavit regarding the debt required by Section 8.1(b) and the information it must include, which we believe may create confusion during the collections process.

8.1(b)(3) The last four digits of the original account number, if any

While we believe this requirement is intended to help the debtor identify the account in question, we are concerned that listing only the original account number may be confusing and not of assistance to the debtor. We believe that the debtor would be better served by seeing the most recent account number issued by the creditor. Even prior to any default or assignment to a vendor, account numbers can change. For example, if a consumer reports fraud on an account, the creditor assigns a new number. Accordingly, we suggest amending this provision to require listing the last four digits of the most recent account number.

8.1(b)(6) the date of the default (e.g., the date of the first missed payment) and the date on which the last payment was made

We believe this provision needs additional clarification, as using “the date of the first missed payment” as the only example of the “date of the default” is confusing and potentially not relevant to the debt being collected. If payments are made after the first missed payment, the account can become current again, and the first missed payment would be irrelevant to determining the date of default (which, for example, could be a later missed payment). We request that “the date of the first missed payment”

¹ Founded in 1916, the American Financial Services Association (AFSA), based in Washington, D.C., is the primary trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including direct and indirect vehicle financing, traditional installment loans, mortgages, and payment cards. AFSA members do not provide payday or vehicle title loans.

example be deleted from the rule and that additional more relevant examples of “the date of default” be provided.

8.1(b)(8) the amount due to plaintiff broken down by principal, interest, and fees.

As credit cards are a revolving source of credit, there is not always a clear or simple method for dividing the balance on an account between principal and interest. We suggest amending this requirement to read: *the amount due to plaintiff broken down by the balance at charge off, plus any interest and fees after charge off.*

We also encourage the Committee to reconsider the proposed address verification process in Section 8.1(c). The proposed process may create difficulties for creditors seeking to verify an address. If a consumer is not listed with a municipal record and/or does not have a motor vehicle registered, the creditor must verify the address directly with the consumer. It is not uncommon for a consumer to fail to answer calls or return messages from the creditor, which would leave the creditor with no way to obtain address verification from the consumer.

Alternatively, we suggest the Committee adopt the address verification options set forth in Joint Standing Order 2-15: Verification of Defendant's Address for Claims Incurred in Trade or Commerce or Pursuing Assigned Debt issued by the Chief Justices of the Boston Municipal Court and of the District Court. In addition to the address verification options set forth in the suggested revisions, Joint Standing Order 2-15 allows for address verification via at least two of the following means:

- i. a letter having been sent to the defendant at the address by first-class mail on a date within six months prior to the commencement of the action and at least four weeks prior to the commencement of the action, with the letter not having been returned to the sender by the postal service, with a specification of the date of mailing;
- ii. using an online database (other than the white pages or other unpaid general telephone directory) within six months prior to the commencement of the action, specifying the name and source of the database;
- iii. using an additional source, with an identification of the source.

Thank you in advance for your consideration of our comments and suggested amendments to the proposed rules. If you have any questions or would like to discuss this further, please do not hesitate to contact me at 202-469-3181 or mkownacki@afsamail.org.

Sincerely,



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