

The Fuss About Junk Fees, Pt. 2: Recent Regulatory, Enforcement, and Private Actions Challenging Fees

July 27, 2023

In this three-part series, we first reviewed the Biden Administration's [collaborative efforts](#) with the CFPB and the FTC to regulate "junk fees." In this second piece, we will highlight recent regulatory, enforcement, and private actions and trends. Third and finally, we will outline a few considerations for financial services companies to consider when navigating the new normal when it comes to challenges to so-called "junk fees" by consumers and regulatory agencies.

Part Two of our series on junk fees highlights recent regulatory, enforcement, and private action trends. Not only has the CFPB and FTC issued proposed rulemaking and guidance warnings against certain types of fee practices, both agencies have also ramped up enforcement actions and collected hundreds of millions of dollars in penalties for fee-related violations. These enforcement actions have clearly had the desired effect, as Director Chopra recently noted in an interview with Law360:

"There has been quite a move across the entire industry... . You do see a shift to something that's starting to look more like overdraft lines of credit, where there are either no or low fees or establishing of buffers. We think that that's a very positive development.[1]"

Recent Regulatory and Enforcement Activities

- In 2023, the CFPB, in conjunction with the Office of the Comptroller of the Currency (OCC) reached a settlement with a large national bank which agreed to pay more than \$150 million in fines related to credit card reward programs and overdraft policies. Specifically, the agencies alleged the national bank charged customers NSF fees multiple times for a single declined transaction, generating millions of dollars in a four-year period. In addition to the fine, the bank also agreed to refund at least more than \$75 million to customers charged multiple fees.
- In October 2022, the FTC brought suit[2] against a group of car dealerships for adding thousands of dollars' worth of fees onto the advertised price of vehicles. According to the FTC, the car dealerships regularly advertised certified, reconditioned, or inspected cars at specific prices, but then added extra certification,

reconditioning, or inspection fees that it falsely claimed consumers were required to pay. The car dealerships agreed to settle with the FTC and refund \$3.3 million to customers harmed by these actions.

- In another action, the FTC and the State of Illinois sued Napleton Automotive Group,[3] alleging that Napleton employees were sneaking illegal fees for unwanted “add-ons” onto vehicle purchases and discriminating against Black consumers. According to the joint complaint, eight of the company’s dealership illegally tacked on junk fees for unwanted “add-on” products such as payment insurance and paint protection, costing consumers hundreds or even thousands of dollars. Ultimately the car dealership settled for \$9.8 million.
- The FTC also entered into a consent order with Vonage,[4] an internet phone service provider regarding the imposition of unexpected early termination fees, among other acts and practices. The FTC alleged that the company used dark patterns to make it difficult for consumers to cancel and often continued to illegally charge them even after they spoke to an agent directly and requested cancellation. Under the proposed court order, Vonage will be required to pay \$100 million in refunds to consumers harmed by the company’s actions, make its cancellation process simple and transparent, and stop charging consumers without their consent.

Private Litigants Enter the Fray

Unsurprisingly, private litigants have begun to file suit attacking various fees and costs associated with consumer finance products and accounts as impermissible “junk fees.” Many of those lawsuits mirror comments and critiques by the CFPB and FTC. Of note:

- In early January 2023, a putative class action was filed against a bank in federal court in Virginia for charging a \$38.00 overdraft fee.[5] The putative class action, in direct reliance on regulatory comments from the CFPB and FTC, claims that this overdraft fee is an unlawful “junk fee” because, among other things, it takes “money out of consumers’ accounts without their permission and contrary to their reasonable expectations that they will not be charged improper fees.”
- Around that same time, another putative class action was filed in Virginia against Booz Allen, a for-profit federal contractor, for charging “junk fees” for consumers to access national parks.[6] According to the complaint, Booz Allen began running the website recreation.gov back in 2018 to facilitate reservations at national parks and other federal lands. The plaintiffs allege that when Booz Allen took over the website it began to charge consumers “junk fees in the form of ‘processing fees,’ ‘reservation fees,’ ‘lottery fees,’ ‘cancellation fees,’ and other bogus fees designed to line its own pockets.” The plaintiffs also claimed that these “junk fees,” typically between the range of \$2.00 to \$10.00, were grossly disproportionate to the costs of operating the website or the value of the services provided. Notably, at least one court has found that some of these fees violated the Federal Lands Recreation Enhancement Act (FLREA).[7] Unlike in the *Overton* lawsuit, the putative plaintiffs have asserted UDAAP claims against Booz Allen for charging purported junk fees.
- Similarly, a recent putative class action was filed against a bank in North Carolina over its practice of assessing multiple \$35.00 overdraft fees for a single dishonored payment.[8] According to the plaintiffs, and mirroring many of the factual assertions in the *Overton* lawsuit, the bank charges two or more fees on the same item for an NSF or overdraft fee. The plaintiffs contend that this junk fee breached the bank’s duty of

good faith and fair dealing, breached the underlying account agreements, and unjustly enriched the bank on the plaintiffs' behalf.

As these cases show, "junk fee" lawsuits are easily plead as a class action because the fees at issue normally transcend an individual plaintiff and are usually charged by a business across-the-board (which makes Rule 23 certification more likely). The above lawsuits also evidence a trend in focusing on fees associated with consumer products and services that are: (1) not expressly authorized by the underlying agreement; or (2) disproportionate to the value of the services provided.

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[1] [CFPB's Chopra Keeps Focus On Junk Fees Even As They Fall – Law360](#)

[2] [Federal Trade Commission Takes Action Against Passport Automotive Group for Illegally Charging Junk Fees and Discriminating Against Black and Latino Customers | Federal Trade Commission \(ftc.gov\)](#).

[3] [Napleton Auto | Federal Trade Commission \(ftc.gov\)](#).

[4] [FTC Action Against Vonage Results in \\$100 Million to Customers Trapped by Illegal Dark Patterns and Junk Fees When Trying to Cancel Service | Federal Trade Commission](#).

[5] *Overton v. Atlantic Union Bank*, No. 3:23cv24 (E.D.V.A. Jan. 10, 2023).

[6] *Wilson v. Booz Allen Hamilton*, No. 23-cv-00043 (E.D.V.A. Jan. 11, 2023).

[7] *Kotab v. Bureau of Land Mgmt.*, 595 F. Supp. 3d 947 (D. Nev. Mar. 31, 2022).

[8] *Preston v. HomeTrust Bancshares, Inc.*, Superior Court, Case No. 23CV000617 (N.C. Feb. 13, 2023).

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