

STATE OF NORTH CAROLINA  
FORSYTH COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
20 CVS 4279

TERRI MOOSE, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

ALLEGACY FEDERAL CREDIT  
UNION,

Defendant.

**ORDER ON PLAINTIFF'S  
OPPOSITION TO DESIGNATION AS  
MANDATORY COMPLEX BUSINESS  
CASE**

1. **THIS MATTER** is before the Court on Plaintiff's Opposition to Designation as Mandatory Complex Business Case under N.C.G.S. § 7A-45.4(a) ("Opposition"). (Pl.'s Opp'n Designation Mandatory Complex Bus. Case [hereinafter "Opp'n"], ECF No. 9.)

2. Plaintiff Terri Moose, individually and on behalf of all others similarly situated, initiated this class action on September 18, 2020, asserting claims for (i) breach of contract, including breach of the covenant of good faith and fair dealing; (ii) unjust enrichment; and (iii) violation of N.C.G.S. § 75-1.1 *et seq.* (See Class Action Compl. ¶¶ 93–114 [hereinafter "Compl."], ECF No. 3.)

3. Defendant Allegacy Federal Credit Union timely filed a Notice of Designation ("NOD") on October 23, 2020, asserting that this action involves a dispute under sections 7A-45.4(a)(5) and 7A-45.4(b)(2). (Notice Designation 1–2 [hereinafter "NOD"], ECF No. 4.)

4. This case was designated as a complex business case under section 7A-45.4(a)(5) by the Chief Justice of the Supreme Court of North Carolina on October 23,

2020, (Designation Order, ECF No. 1), and assigned to the Honorable Adam M. Conrad, Special Superior Court Judge for Complex Business Cases, on October 26, 2020, (Assignment Order, ECF No. 2).

5. Plaintiff timely filed the Opposition on November 23, 2020, contending that designation of this action as a mandatory complex business case is not proper under section 7A-45.4(a)(5). (Opp'n 2–3.) Defendant filed its Response to Plaintiff's Opposition to Designation on December 7, 2020. (Resp. Pl.'s Opp'n Designation [hereinafter "Resp."], ECF No. 12.) The matter is now ripe for determination.

6. Section 7A-45.4(c) requires that "[t]he Notice of Designation shall, in good faith and based on information reasonably available, succinctly state the basis of designation[.]" As a result, "the Court may consider all materials reasonably necessary to rule on an opposition to designation." *In re Summons Issues to Target Corp. & Affiliates*, 2018 NCBC LEXIS 185, at \*3 (N.C. Super. Ct. Dec. 4, 2018).

7. "For a case to be [designated] as a mandatory complex business case, the pleading upon which designation is based must raise a material issue that falls within one of the categories specified in section 7A-45.4." *Composite Fabrics of Am., LLC v. Edge Structural Composites, Inc.*, 2016 NCBC LEXIS 11, at \*25 (N.C. Super. Ct. Feb. 5, 2016).

8. Designation under section 7A-45.4(a)(5) is proper if the action involves a material issue related to "[d]isputes involving the ownership, use, licensing, lease, installation, or performance of intellectual property, including computer software,

software applications, information technology and systems, data and data security, pharmaceuticals, biotechnology products, and bioscience technologies.”

9. This case involves a dispute over fees that a financial institution charges its account holders. Plaintiff alleges that Defendant charges its account holders overdraft fees on debit card transactions even when an account has sufficient funds to cover the transaction. (*See* Compl. ¶¶ 1, 14, 17–18, 37–51.) Plaintiff further alleges that this practice constitutes a breach of Defendant’s Membership Account Agreement, (*see* Compl. ¶¶ 2, 4, 21–22, 29–35, 39–40), and should be affirmatively disclosed to account holders based on industry standards, (*see* Compl. ¶¶ 19, 52–57).

10. Plaintiff argues that designation under section 7A-45.4(a)(5) is improper because “[t]his is a simple case involving a breach of contract claim[]” and “the performance of computer software is in no way material to this case.” (Opp’n 1, 3.) Relying on *Cardioentis AG v. IQVIA Ltd.*, 2018 NCBC LEXIS 64 (N.C. Super. Ct. June 27, 2018), Plaintiff contends that “the case is not even *remotely* related to the underlying intellectual property aspects of the software[]” and “the underlying breach of contract dispute will in no way ultimately affect the **intellectual property value** of the software.” (Opp’n 4 (emphasis in original).)

11. But Plaintiff draws the wrong conclusion when she applies the analysis in *Cardioentis* to the instant action. In *Cardioentis*, Defendants also sought designation to the Business Court under section 7A-45.4(a)(5) on grounds that the disputes giving rise to Plaintiff’s breach of contract claims involved the use and performance of a pharmaceutical. *See Cardioentis*, 2018 NCBC LEXIS 64, at \*4.

This Court concluded that “a case may be designated if it contains disputes involving the use or performance of pharmaceuticals, but only if such dispute is closely tied to the underlying intellectual property aspects of the pharmaceutical.” *Cardioentis*, 2018 NCBC LEXIS 64, at \*7. This Court went on to note that it is “difficult to define a bright line test to determine when a dispute is closely tied to the intellectual property aspects of a pharmaceutical” such that “the determination requires an allegation-specific inquiry that will vary from case to case.” *Cardioentis*, 2018 NCBC LEXIS 64, at \*7.

12. In the instant action, Defendant correctly asserts that “all of the actions that Plaintiff alleges to establish her claims relate to the use and performance of [Defendant’s] automated transaction-processing system.” (Resp. 1.) In order to succeed on her breach of contract claim, Plaintiff will need to demonstrate how Defendant breached the terms of the Membership Account Agreement, which directly implicates actions performed by Defendant’s electronic transaction-processing system. (See Resp. 4.) The use and performance of Defendant’s electronic transaction-processing system necessarily form the backdrop to Plaintiff’s claims: from the time a “customer physically or virtually ‘swipes’ a customer’s debit card, the credit card terminal connects, via an intermediary, to Defendant, which verifies that the customer’s account is valid and that sufficient available funds exist[,]” (Compl. ¶ 24), to Defendant’s decision at the point of sale “to either pay the transaction or decline it[,]” (Compl. ¶27), to Defendant’s “middle of the night batch posting process[]” in which Defendant allegedly “releases the hold placed on funds for the transactions

for a split second, putting money back into the account, then re-debits the same transaction a second time[.]” (Compl. ¶ 48).

13. At its core, this dispute involves issues materially related to Defendant’s use of its intellectual property to allegedly charge account holders overdraft fees on transactions that have sufficient funds to cover the transactions. Those issues have a sufficient nexus to the intellectual property aspects of the computer software, software applications, and information technology and systems used by Defendant to cause this action to fall within the scope of section 7A-45.4(a)(5), so that Plaintiff’s challenge to designation on this basis is without merit.

14. Because Plaintiff’s contention challenging designation of this action as a mandatory complex business case under section 7A-45.4(a)(5) does not have merit, Plaintiff’s Opposition shall therefore be overruled.

15. **WHEREFORE**, the Court, in the exercise of its discretion, hereby **ORDERS** that the Opposition is **OVERRULED**. This action involves a material issue related to “[d]isputes involving the ownership, use, licensing, lease, installation, or performance of intellectual property, including computer software, software applications, information technology and systems, data and data security, pharmaceuticals, biotechnology products, and bioscience technologies[]” and shall proceed as a mandatory complex business case before the Honorable Adam M. Conrad.

**SO ORDERED**, this the 9th day of December, 2020.

/s/ Louis A. Bledsoe, III  
Louis A. Bledsoe, III  
Chief Business Court Judge