

*This article was first published in Consumer Financial Services Law Report.  
To subscribe, please visit [www.legalsolutions.thomsonreuters.com](http://www.legalsolutions.thomsonreuters.com). © 2013 Thomson Reuters.*

## GUEST COMMENTARY

### ROBO-SIGNING REDUX: CALIFORNIA AG TARGETS CREDIT CARD INDUSTRY

By Hunter Eley and Cristina Reynaert

*Hunter R. Eley, managing partner of Doll Amir Eley in Los Angeles, chairs DAE's financial services practice. Eley has successfully defended TILA, FDCPA, RFDCPA, RESPA, FCRA, and CFCRA claims across the western states. His experience extends throughout consumer finance, including mortgage lending and servicing, credit cards, and health-care and auto loans. Cristine Reynaert focuses on complex commercial litigation across numerous areas of the law, including consumer financial services, securities litigation and enforcement, and appellate work, for a variety of clients ranging from national banking institutions to international retailers. Reach them via the firm's website at [dollamir.com](http://dollamir.com).*

When California Attorney General Kamala Harris filed a lawsuit against JPMorgan Chase, she alleged that the bank ran “a massive debt collection mill” to obtain default judgments “on the backs of lawsuits that cannot

withstand scrutiny.” Many of the allegations are reminiscent of the multi-state mortgage litigation, and the resulting settlement.

So what does this new lawsuit mean for credit card issuers, servicers and collections firms? Have we started down the path towards widespread litigation, new regulations, and a multi-state settlement costing billions of dollars? Or is there a reason the California AG targeted this bank, at this time, in this way?

## WHERE HAVE I SEEN THIS BEFORE ... OR NOT?

There are a number of similarities between the credit card collection lawsuit filed by the California AG in May of this year and the mortgage/foreclosure lawsuit filed by numerous attorneys general and the U.S. Department of Justice in March of 2012. The latter ultimately led to five of the nation’s largest banks paying out a record \$25 billion as part of a comprehensive settlement package. See *People v. JPMorgan Chase & Co.*, No. BC508466 (Cal. Super. Ct. 05/09/13), and *United States of America, et al. v. Bank of America Corp., et al.*, No. 12-00361 (D.D.C. 03/14/12). Both lawsuits target several of the same alleged practices: “robo-signing” declarations in support of legal actions; misrepresenting the status or title of the bank’s declarant; and providing misleading/inaccurate information to consumers in correspondence and in legal documents.

However, there are also a number of key differences between the two lawsuits that may impact both the public and private reaction to Harris’ filing. First, this new suit does not focus on the underlying product in the way that the multi-state mortgage suit did. The prior lawsuit alleged that the mortgage products themselves were faulty and were sold in a misleading way. These alleged misdeeds were then compounded when coupled with improper collection and foreclosure practices. Indeed, analysts estimated that as many as 14 million families would lose their homes as a result of the “mortgage crisis.” Public outcry demanded action, and government officials unified to do just that.

With the JPMorgan filing, AG Harris does not delve into whether or not the underlying credit cards at issue, or their terms, were fairly offered or marketed to California consumers. Rather, the focus is on JPMorgan’s processes for collecting on the credit extended to those consumers who were not paying their bills on time. Indeed, there is only a single line in the JPMorgan suit where it is alleged that the bank — in sending collection correspondence to its customers — claimed “amounts [that] are often inaccurate.”

With these unsecured credit accounts, no one is coming to take away the customers’ purchases. And whatever those purchases, they are unlikely to stir public sentiment

in the same way that home ownership (and loss) can and does. Coupled with the fact that the JPMorgan suit more or less details the same types of alleged misdeeds already aired in the multi-state mortgage suit, one would expect the public reaction to be more muted this time around.

## THERE IS AN ‘I’ IN ‘BANKING’

While the public may be paying less attention to credit card collection issues as they did to home foreclosures, one would expect that the executives at JPMorgan certainly are. Why? Harris took a step not taken in the multi-state mortgage litigation: she named “Doe” defendants — placeholder defendants that may signal her intent to uncover the names of (and pursue) those individuals deemed responsible for establishing and overseeing the practices detailed in her complaint.

This approach suggests that Harris is of a like mind with Sen. Elizabeth Warren, D-MA, when it comes to holding big banks (and their executives) more accountable for their alleged misdeeds. Warren recently complained at a hearing with bank regulators in March (involving one bank’s admitted money laundering practices) that “not one individual went to trial [and] no individual was banned from banking.” Warren concluded her remarks with this comparison:

If you’re caught with an ounce of cocaine, the chances are good you’re gonna go to jail. ... But evidently if you launder nearly a billion dollars for drug cartels and violate our international sanctions, your company pays a fine and you go home and sleep in your bed at night — [as did] every single individual associated with this. And I think that’s fundamentally wrong.

Harris may agree, and by naming Doe defendants, she has raised the stakes — or signaled her intent to do so.

## OUTLIER, OR CANARY IN THE COAL MINE?

The question of the hour, then, is whether the JPMorgan suit is simply the first in a new wave of litigation that will target multiple banks’ practices, across multiple jurisdictions, in the credit card collection space. Certain signs suggest that this is a distinct possibility: *Reuters* reported in March of this year that multiple states are presently investigating the credit card debt collection practices of the same U.S. banks that were targeted by the mortgage investigation, including JPMorgan, Bank of America, Citigroup and Wells Fargo.

Why then, did AG Harris strike out on her own in California against JPMorgan only? And why now?

Perhaps the California AG seeks a more prominent role in any future multi-state effort. She did, after all, briefly abandon the talks surrounding the multi-state mortgage settlement, declaring the initial proposal — as shaped by other attorneys general — to be “inadequate.” Having sought to establish herself as a fighter for California borrowers during the mortgage crisis, perhaps she seeks to cement her leadership in this area by targeting new areas of alleged collection improprieties.

Perhaps it also has something to do with JPMorgan’s recent and public struggles involving its credit card collection practices — exposing them as a uniquely vulnerable target for such litigation. For instance, JPMorgan was the subject of a whistleblower submission filed with the SEC at the end of 2010 detailing numerous alleged improprieties in their consumer debt collection practices, and the Office of the Comptroller of the Currency has been investigating these and other allegations lobbed at the bank. Likely as a result of these and other pressures, JPMorgan reportedly ceased filing lawsuits in 2011 as a primary strategy for collecting on consumer debts. Harris may have wanted to strike while this particular iron was hot, and — critically — before the relevant statute of limitations curtailed the scope of her attack.

## **WHERE TO FROM HERE?**

Obviously, now would be a good time for financial institutions to take a close look at their debt collection procedures to ensure they’re not vulnerable to any of the same charges currently levied against JPMorgan in the California lawsuit.

Only time will tell if AG Harris is ahead of the pack or is leading the charge in litigating these issues, but the lessons are there for the taking today.