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Attorney for Plaintiff

*Attorneys for Plaintiff, Ellen Fensterer,
and all others similarly situated*

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

ELLEN FENSTERER, an individual; on
behalf of themselves and all others similarly
situated,

Plaintiff,

vs.

CAPITAL ONE, N.A.,

Defendant.

**CLASS ACTION COMPLAINT
--and--
DEMAND FOR JURY TRIAL**

CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, Ellen Fensterer, on behalf of herself and all others similarly situated, and demanding a trial by jury, brings this action against Defendant, Capital One, N.A. (“Capital One”) for violations of the New Jersey Consumer Fraud Act, N.J. Stat. Ann. 56:8, *et. seq.*, unjust enrichment, conversion, fraudulent misrepresentation, and breach of contract. In support of this Complaint, Plaintiff avers as follows:

I. PRELIMINARY STATEMENT

1. Defendant’s Capital One Venture Card entices consumers to open an account in large part to earn rewards points every time the credit card is used. Consumers can redeem points

for various purchases, combine points and cash and, most specifically, use points or points and cash to purchase airlines tickets and hotel stays. If a Capital One Venture Card holder does not have enough points on their account, a cash payment can be used to bridge the difference to secure the desired travel purchase.

2. Beginning on or about March 2020, the Coronavirus Disease 2019 (“COVID-19”) pandemic caused airlines to cancel flights most especially trips outside of the United States. Hotel stays have been affected for the same reasons with many hotels closed for business. As a result of the near total shut down of the airline and travel industry, consumers holding tickets for flights that were canceled as a result of the COVID-19 pandemic were unable to use what they had purchased.

3. As to tickets secured using Defendant’s Capital One Venture Card travel services specifically, such consumers were instructed to call a special phone number instead of being furnished a refund. Defendant knew that the number it instructed card members to call was insufficiently staffed and would and did result in hours-long phone delays, misinformation, delayed action and inadequate solutions. When customers were able to finally reach a representative of Defendant card members were told that they would only be given airline-specific travel vouchers which included limitations and arbitrary deadlines for use, without regard to the wishes of the card member.

4. Plaintiff purchased tickets for herself and her family to travel and visit her child studying abroad and the flight was cancelled due the travel restrictions set forth above. The tickets cost her approximately \$5,000 in cash and additional consideration in rewards points to secure them. Upon information and belief, the retail value of the tickets Plaintiff purchased totaled approximately \$18,000.

5. After the flights had been cancelled by the airline, Plaintiff was finally able to reach a representative of Defendant by phone after numerous attempts and hour upon hour of wait time, but was provided inaccurate and incomplete information in separate calls. She was also hung up on, told that her claim was “under review” and told that she would be “hearing from someone shortly”, but none of what she was told by the Capital One representatives came to fruition.

6. Like other Capital One Venture Card members, Plaintiff was refused everything other than a voucher that was of no practical use as she only purchased the tickets to visit her child while she was studying abroad. There was no desire, plan or intention to travel for any other purpose in the future and there was no desire to create a travel plan in the future simply to make use of a travel voucher.

7. Further, since the cancelation of the flight, the outlook for overseas travel is at best uncertain and unknown, and fraught with health risks, incubation requirements and with many destinations either unable or unwilling to state when and if foreign travelers will be permitted. All of these factors make a travel voucher worth even less than it otherwise might be.

8. Defendant’s conduct has caused Plaintiff and all similarly-situated persons to either accept a voucher for travel that is impractical, unwanted or unneeded, non-transferable and worth far less than what was purchased or receive nothing at all. Defendant’s actions have resulted in substantial monetary and other actual losses, including loss of rewards points, time and effort spent trying to reach Defendant’s travel department and other deprivation of card member rights and benefits.

9. Plaintiff makes the following allegations pursuant to the investigation of her counsel and based upon information and belief, except as to the allegations specifically

pertaining to herself, which are based on personal knowledge.

II. JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2)(A), because this case is a class action where the aggregate claims of all members of the proposed Class are in the excess of \$5,000,000.00, exclusive of interest and costs.

11. This Court has general jurisdiction over Defendant, which conducts substantial business within New Jersey, and thus has significant, continuous, and pervasive contacts with the State.

12. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to Plaintiff's claims occurred within this federal judicial district and because Plaintiff suffered the alleged harm in this district.

III. PARTIES

13. Plaintiff, Ellen Fensterer, is a citizen and resident of Voorhees, Camden County, New Jersey.

14. Defendant is a corporation with national headquarters located at 1680 Capital One Drive McLean Virginia, 22101.

IV. FACTS CONCERNING THE PARTIES

15. On January 9, 2020, Plaintiff purchased three (3) airline tickets for travel to occur on April 3, 2020, returning April 13, 2020, traveling to Athens, Greece to visit Plaintiff's daughter while she studied abroad. The travel was to be on British Airways originating from New York, with a connecting flight in London.

16. The tickets were purchased through Capital One Venture Card Rewards. Plaintiff

applied Reward Miles on her account and charged \$4,906.31 to her Capital One Venture Card to make the purchase.

17. On March 11, 2020, United States President Donald Trump instituted a travel ban for flights from Europe to start on March 13, 2020 and continue for thirty (30) days.

18. On March 12, 2020, Plaintiff called the Capital One Venture Travel customer service number and was instructed to wait two (2) more weeks to see if her flights would be cancelled and if so, a refund would be automatically be issued by British Airways.

19. Plaintiff called Capital One Venture Travel again on March 25, 2020, and due to wait times, spent the next thirteen (13) hours waiting for a representative. When one finally answered, Plaintiff was told that British Airways was only offering travel vouchers which were only valid through January 9, 2021.

20. On April 3, 2020, Plaintiff called British Airways directly and was told that assistance could not be offered because the tickets were purchased through Capital One, not the airline directly. Plaintiff had learned during this call that purchases through the airline itself are refunded for cancelled flights, even if only one leg was cancelled.

21. Plaintiff then contacted Capital One again but learned that neither her rewards points nor credit card charges for the tickets would be refunded.

22. Plaintiff checked the terms and conditions listed on Capital One's website but saw that the only relevant information concerned ticket purchases made directly with the airlines and not the travel services. The pages provided contact information for the airlines and set forth a dispute procedure only.

23. Capital One has received substantial consideration for Plaintiff's purchases and has charged her for flights later cancelled by the airline because of the COVID19 Pandemic.

24. Capital One handled flight cancellation services poorly for card members, so much so that consumers, including Plaintiff, have been left without either travel and without a refund and/or reversal of charges and return of Rewards points. In short, Capital One Venture Card has received a windfall of from consumers that it has neither returned nor expressed any intention of returning in the future, entitling Plaintiff and other similarly-situated individuals to seek damages for recovery of same.

V. CLASS ALLEGATIONS

25. Plaintiff brings this claim on behalf of a class, pursuant to Federal Rules of Civil Procedure 23(a), (b)(2), b(3).

26. This claim is brought on behalf of a Class consisting of all Capital One Venture Card holders in the state of New Jersey who purchased airline travel using their Capital One Venture Card for travel on flights that later were cancelled as a result of COVID-19 travel restrictions.

27. Excluded from the Class are the Defendant, the officers and directors of the Defendant at all relevant times, members of the Defendant's immediate families and their legal representatives, heirs, successors, or assigns, and any entity in which Defendant has or had a controlling interest.

28. Plaintiff reserves the right to amend or modify the Class definition with greater specificity or further division into subclasses or limitations to particular issues, as discovery and the orders of this Court warrant.

29. The identities of all class members are readily ascertainable from the Capital One's records.

30. Plaintiff's claims are typical of the class members, as all are based on the same

facts and legal theories.

31. The Plaintiff will fairly and adequately protect the interests of the Class defined in this complaint. The Plaintiff has retained counsel with experience in handling consumer lawsuits, complex legal issues, and class actions, and neither the Plaintiff nor her attorneys have any interests, which might cause them not to vigorously pursue this action.

32. This action has been brought, any may be properly be maintained, as a class action pursuant to the provisions of Rule 23 of the Federal Rules of Civil Procedure because there is a well-defined community interest in the litigation:

- a. Numerosity: Under Rule 23(a)(1), Class Members are so numerous and geographically dispersed that their individual joinder of all Class Members is impracticable. The total number of members of the proposed Class is greater than 100 and exceeds the number required for jurisdiction under 28 U.S.C. § 1332(d)(2) and (d)(5)(B). Given the thousands of flight cancellations made as a result of COVID-19, that number greatly exceeds the number to make joinder possible. Class Members may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. Mail, electronic mail, Internet postings, and/or published notice.
- b. Common Questions Predominate: Common questions of law and fact exist to all Class Members and predominate over questions affecting only individual Class members. Common legal and factual questions include but are not limited to, whether Defendant has refused to offer refunds and whether it has breached its contract with its customers or otherwise acted unlawfully.
- c. Typicality: The claims of the named Plaintiff are typical of the claims of the Class

in that the named Plaintiff was charged fees and suffered losses. Plaintiff and all Class Members have claims arising out of the Defendant's common uniform course of conduct complained of herein.

- d. Adequacy: The Plaintiff will fairly and adequately protect the interests of the class members insofar as Plaintiff has no interests that are averse to the absent class members. The Plaintiff is committed to vigorously litigating this matter. Plaintiff has also retained counsel experienced in handling consumer lawsuits, complex legal issues, and class actions. Neither the Plaintiff nor her counsel have any interests which might cause them not to vigorously pursue this class action lawsuit.
- e. Superiority: The class mechanism is superior to other available means for the fair and efficient adjudication of the claims of the Class Members. Each individual Class member may lack the resources to undergo the burden and expense of individual prosecution of the complex and extensive litigation necessary to establish Defendant's liability. Individualized litigation increases the delay and expense to all parties and multiplies the burden on the judicial system presented by the complex legal and factual issues of this case. Individualized litigation also presents a potential for inconsistent and contradictory judgments. In contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court on the issue of Defendant's liability. Class treatment of the liability issues will ensure that all claims and claimants are before this Court for consistent adjudication of the liability issues.

33. Certification of a class under Rule 23(b)(3) of the Federal Rules of Civil Procedure is also appropriate in that the questions of law and fact common to members of the Class predominate over any questions affecting an individual member, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

34. Based on discovery and further investigation, Plaintiff may, in addition to moving for class certification, use modified definitions of the class, class claims, and the class period, and/or seek class certification only as to particular issues as permitted under Fed. R. Civ. P. 23(c)(4). Such modified definitions may be more expansive to include consumers excluded from the foregoing definitions.

VI. FIRST CAUSE OF ACTION
VIOLATIONS OF THE NEW JERSEY CONSUMER FRAUD ACT,
N.J. STAT. ANN. § 56:8, *et seq.*

35. Plaintiff restates, re-alleges, and incorporates herein by reference the preceding paragraphs as it fully set forth herein.

36. Defendant made intentional misrepresentations to Plaintiff and the Class Members regarding their inability to receive refunds for their cancelled travel and that the airline was only able to give travel vouchers.

37. Said misrepresentation by Defendant was an unconscionable consumer practice.

38. Plaintiff and the Class Members reasonably relied on Defendant's intentional misrepresentations.

39. Defendant's representations proximately caused damage to Plaintiff and the Class Members.

40. By misrepresenting that Plaintiff and the Class Members were only entitled to travel vouchers, Defendant financially damaged Plaintiff and members of the Class.

41. The actions of Defendant entitle Plaintiff and other Class Members to a full refund of all consideration paid, plus interest and attorney fees and costs.

42. Further, as a result of the foregoing, Plaintiff and Class Members suffered and will continue to suffer ascertainable losses and other damages as described in detail in paragraphs 15 through 24 of this Class Action Complaint, and are entitled to treble damages as provided by N.J.S.A. § 56:18-19.

**VII. SECOND CAUSE OF ACTION
UNJUST ENRICHMENT**

43. Plaintiff restates, re-alleges, and incorporates herein by reference the preceding paragraphs as it fully set forth herein.

44. Capital One has benefitted from its unlawful acts by retaining the payments used to purchase travel tickets which have been cancelled. Retentions of those monies under these circumstances is unjust and inequitable because Capital One charged consumers full price for travel and fees for travel that they can now not take due to a global pandemic.

45. Because Defendant's retention of the non-gratuitous benefits conferred by Plaintiff and other members of this Class is unjust and inequitable, Defendant must pay restitution to Plaintiff and members of the Class for their unjust enrichment, as ordered by the Court.

**VIII. THIRD CAUSE OF ACTION
CONVERSION**

46. Plaintiff restates, re-alleges, and incorporates herein by reference the preceding paragraphs as it fully set forth herein.

47. Plaintiff brings this claim individually and on behalf of the members of the proposed Class against Defendant.

48. Defendant had wrongfully exercised control over and/or intentionally interfered with the rights of Plaintiff and members of the class by limiting passengers on cancelled flights to a travel voucher which must be used within one (1) year while Defendant has unlawfully retained the monies Plaintiff and the Class Members paid for tickets on cancelled flights.

49. Defendant deprived Plaintiff and the other members of the Class of the value they paid for the tickets on cancelled flights as well as their right to a refund.

50. Plaintiff and members of the Class have requested and/or demanded that Defendant issue refunds for cancelled flights.

51. This interference with the rights and services for which Plaintiff and the members of the Class paid damaged Plaintiff and the members of the Class, in that they purchased tickets, and, as such, Defendant has deprived Plaintiff and members of the Class of the right to their property, in this case, the amounts paid for tickets on cancelled flights.

52. Plaintiff and members of the Class are entitled to a refund of the full amount paid for tickets on cancelled flights.

**IX. FOURTH CAUSE OF ACTION
FRAUDULENT MISREPRESENTATION**

53. Plaintiff restates, re-alleges, and incorporates herein by reference the preceding paragraphs as it fully set forth herein.

54. During the COVID19 Pandemic, Defendant has intentionally allowed wait times on hold to increase to unreasonable levels and instructed customer service representatives speaking to consumers ("Class Members") to furnish misleading information in hopes of confusing consumers and reducing and/or avoiding issuance of refunds to which the consumers are entitled for all flights cancelled as a result of the COVID19 Pandemic.

55. Defendant intentionally misrepresented to Plaintiff and Class Members that

passengers on cancelled flights are limited to rebookings or travel vouchers when no such limitation existed at the time of purchase.

56. Defendant's representations were made with the intent that Plaintiff and Class Members rely upon the misstatements in accepting rebookings instead of pressing for a refund.

57. Plaintiff and the Class Members relied on Defendant's representations.

58. The reliance by Plaintiff and the Class Members on Defendant's representations was reasonable.

59. Defendant's representations proximately caused damage to Plaintiff and the Class Members.

60. By misrepresenting that Plaintiff and the Class Members were only entitled to travel vouchers, Defendant financially harmed Plaintiff and Class Members, causing damages.

**X. FIFTH CAUSE OF ACTION
BREACH OF CONTRACT**

61. Plaintiff restates, re-alleges, and incorporates herein by reference the preceding paragraphs as it fully set forth herein.

62. Defendant and Class Members, including Plaintiff, entered into valid contracts for Defendant to provide airline travel tickets via third parties and in exchange Plaintiff and Class Members would pay money and/or travel reward points and/or a combination of the two, to complete the transaction.

63. Defendant's services carried with it the obligation to refund all consideration paid by Plaintiff and Class Members should flights be cancelled as a result of unforeseen world events, specifically the COVID19 Pandemic.

64. Plaintiff and the Class Members purchased tickets for travel services with the Defendant in reliance that cancelled flights would entitle them to a full refund.

65. Defendant breached its obligations owed to Plaintiff and Class Members by failing after-the-fact to provide a full refund for travel cancelled because of the COVID-19 Pandemic.

66. As a result of Defendant's failure to perform the contract, Plaintiff and other Class Members have been damaged and did not receive the paid for benefits, refund, and/or performance to which they each and all were entitled.

67. As a result, Plaintiff and the Class Members are entitled to fair compensation in the form of full refunds for all tickets, fees, taxes, and interest that Defendant charged and/or collected..

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and the Class Members request that the Court enter and order or judgment against Defendant including:

- 1) A certification of the action as a class action under Rules 23(b)(2) and 23(b)(3) of the Federal Rules of Civil Procedure, appointment of Plaintiff as Class Representative, and appointment of his counsel as Class Counsel;
- 2) Damages and refunds in the amount of all consideration paid, in cash, points or a combination of both as may be, for airline travel using the Capital One Venture Travel Card;
- 3) Actual damages, statutory damages, punitive or treble damages, and such other relief as provided by the statutes cited;
- 4) Pre-judgement and post-judgement interest on such monetary relief;
- 5) Injunctive relief, including an order enjoining Defendant from retaining refunds for cancelled flights;

- 6) The cost of bringing this suit, including reasonable attorney's fees; and
- 7) All other relief to which Plaintiff and members of the Class may be entitled by law or in equity.

JURY DEMAND

Plaintiff hereby demands that this case be tried before a Jury.

CERTIFICATION PURSUANT TO L. CIV. R. 11.2

I hereby certify pursuant to Local Civil Rule 11.2 that this matter in controversy is not the subject of any other action pending in any court, arbitration or administrative proceeding.

Dated: May 5, 2020

By: /s/ Amy L.B. Ginsburg
Amy L.B. Ginsburg, Esq.
Kimmel & Silverman, P.C.
30 East Butler Pike
Ambler, PA 19002
Telephone: 215-540-8888
Email: teamkimmel@creditlaw.com

*Attorneys for Plaintiff, Ellen Fensterer, and all others
similarly situated*

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

ELLEN FENSTERER, an individual; on behalf of themselves and all others similarly situated,

(b) County of Residence of First Listed Plaintiff Camden County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Amy L. Bennecoff Ginsburg, Esq., Kimmel & Silverman, PC,
30 E. Butler Ave., Ambler, PA, 19002, (215) 540-8888

DEFENDANTS

CAPITAL ONE, N.A.,

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|--|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated <i>or</i> Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated <i>and</i> Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify) _____
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
N.J. STAT. ANN. § 56:8, et seq.

Brief description of cause:

New Jersey Consumer Fraud Act, Unjust Enrichment, Conversion, Fraudulent Misrepresentation, et al.

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

05/05/2020

/s/ Amy L. Bennecoff Ginsburg, Esq.

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

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INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of New Jersey

ELLEN FENSTERER, an individual; on behalf of
themselves and all others similarly situated,

Plaintiff

v.

CAPITAL ONE, N.A.,

Defendant

)
)
)
)
)
)
)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* CAPITAL ONE, N.A.
1680 Capital One Drive
McLean, VA 22101

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Amy L. Bennecoff Ginsburg, Esquire
KIMMEL & SILVERMAN, P.C.
30 East Butler Pike
Ambler, PA 19002
(215)540-8888

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Print**Save As...****Reset**

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Capital One Venture Card Holders Owed Refunds for COVID-19-Canceled Travel, Class Action Claims](#)
