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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

JACOB FIGUEROA, on Behalf of Himself
and All Others Similarly Situated,

Plaintiff,

vs.

CAPITAL ONE, N.A., and Does 1-100,
inclusive,

Defendants.

Case No. '18CV0692 JM BGS

CLASS ACTION COMPLAINT

[DEMAND FOR JURY TRIAL]

1 **CLASS ACTION COMPLAINT**

2 Plaintiff Jacob Figueroa (“Plaintiff”), on behalf of himself and all persons similarly
3 situated, alleges the following based on personal knowledge as to allegations regarding
4 the Plaintiff and on information and belief as to other allegations.

5 **INTRODUCTION**

6 1. Plaintiff brings this action on behalf of himself and a class of all similarly
7 situated consumers against Defendant Capital One, N.A. (“Capital One” or “Bank”),
8 arising from a) its unfair and unconscionable assessment of ATM fees on balance
9 inquiries undertaken at its own, in-network ATMs, which it promises will be entirely fee-
10 free; and b) its deceptive, unfair and unconscionable assessment of *two* out-of-network
11 ATM fees (“OON Fees”), when an accountholder conducts a balance inquiry that
12 precedes a cash withdrawal at out-of-network ATMs.

13 2. ATM fee revenue for Capital One has risen dramatically in recent years and
14 become one of the primary drivers of the Bank’s fee income. Capital One assesses OON
15 Fees on its accountholders who perform transactions on ATMs not owned by Capital One,
16 and it assesses ATM fees for nothing more than a balance inquiry at its own ATMs,
17 despite contractual promises not to do so.

18 3. Capital One’s contract documents plainly and expressly promise its
19 accountholders that they will not incur fees for use of in-network ATMs. Yet Capital One
20 does charge its accountholders for balance inquiries undertaken at its own ATMs.

21 4. When Capital One accountholders use a non-Capital One ATM, ATM fees
22 add up very quickly—to accountholders’ surprise. Not only does the non-Capital One
23 ATM operator charge the consumer a fee for use of its ATM, a charge which now
24 averages \$3, but Capital One charges a OON Fee for a cash withdrawal as well—a
25 punishing double-fee on accountholders that can rise to a total of several dollars for
26 simply accessing their own money. With most withdrawals below \$100, the ratio of the
27 ATM fees to the withdrawn amount can often be higher than a year’s worth of interest.
28 Capital One never adequately informs consumers they will be charged two separate fees

1 for each non-bank ATM withdrawal, and never once tells consumers the total amount of
2 that double-fee.

3 5. Capital One does not stop there, however. On some out-of-network ATM
4 withdrawals, Capital One accountholders pay a *third* fee for withdrawing funds at an out-
5 of-network ATM—one fee to the ATM operator and *two* OON Fees to Capital One.
6 Specifically, when Capital One accountholders accept the ATM prompt and check their
7 account balance prior to withdrawing funds at an out-of-network ATM, Capital One
8 charges its accountholder two OON Fees—*one for the balance inquiry and one for the*
9 *withdrawal*.

10 6. For a simple out-of-network ATM withdrawal, for example, Plaintiff paid a
11 total of \$6.50 for three separate fees, including \$4 for two separate fees to Capital One.

12 7. Plaintiff, and other Capital One customers, have been injured by Capital
13 One’s improper practices. On behalf of himself and the class, Plaintiff seeks damages,
14 restitution, and injunctive relief for Capital One’s breach of contract and violation of
15 California consumer protection statutes.

16 **JURISDICTION AND VENUE**

17 8. This Court has original jurisdiction of this action under the Class Action
18 Fairness Act of 2005. Pursuant to 28 U.S.C. §§ 1332(d)(2) and (6), this Court has original
19 jurisdiction because the aggregate claims of the putative class members exceed \$5 million,
20 exclusive of interest and costs, and at least one of the members of the proposed classes is
21 a citizen of a different state than Capital One.

22 9. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because Capital
23 One is subject to personal jurisdiction here and regularly conducts business in this
24 District, and because the Plaintiff resides in this District.

25 **PARTIES**

26 10. Plaintiff is a citizen of California.

27 11. Defendant Capital One is a national bank with its headquarters and principal
28 place of business located in McLean, Virginia. Capital One has hundreds of affiliates,

1 such as Capital One Financial and Capital One Bank, N.A. Among other things, Capital
2 One is engaged in the business of providing retail banking services to consumers,
3 including Plaintiff and members of the putative classes, which includes the issuance of
4 debit cards for use by its customers in conjunction with their checking accounts. Capital
5 One operates banking centers, and thus conducts business, throughout the State of
6 California.

7 **FACTUAL BACKGROUND AND GENERAL ALLEGATIONS**

8
9 **I. CAPITAL ONE CHARGES ATM FEES FOR BALANCE INQUIRIES**
10 **UNDERTAKEN AT ITS OWN ATMS, IN VIOLATION OF ITS CONTRACT**

11 12. Pursuant to Capital One’s EFTA Agreement in effect at the time of the
12 relevant transactions:

13 **Charges for ATM/Debit Card Transactions:** You may...be charged a fee by us,
14 as disclosed in our then current Schedule of Fees and Charges, for each cash withdrawal,
15 funds transfer or balance inquiry that you may make using a non-Capital One Bank
16 branded ATM. **You will not be charged this fee at most ATMs owned and operated by**
17 **Capital One Bank**, except at certain gaming establishments and other non-branch
18 locations, where we may charge a fee for each cash withdrawal. The amount of fees
19 charged at such ATMs at non-branch locations varies. Any fee charged will be displayed
20 on the ATM screen and you will be given an opportunity to cancel the transaction before
21 the fee is imposed. Please refer to our then current Schedule of Fees and Charges for the
22 amount of this fee.

23 See EFTA Agreement, p. 3 (emphasis added) (Exhibit A hereto).

24 13. The Fee Schedule in effect during the relevant time simply provided that
25 there is no fee “[w]hen you use a Capital One-branded ATM” for a “withdrawal, funds
26 transfer or balance inquiry.”

27 14. In short, Capital One states no ATM fees whatsoever will be charged for in-
28 network Capital One ATM transactions, except in rare circumstances not applicable here.

1 15. In the rare exception when fees may be charged for using a Capital One
2 ATM for any purpose, Capital One promises that “[a]ny fee charged will be displayed on
3 the ATM screen and you will be given an opportunity to cancel the transaction before the
4 fee is imposed.”

5 16. Capital One never states that a balance inquiry undertaken at a Capital One
6 ATM will incur a fee—either in the EFTA Agreement, the Fee Schedule, or on its ATM
7 screens at the time of the balance inquiry.

8 17. Yet Capital One does in fact charge \$2 fees for balance inquiries undertaken
9 at its own ATMs.

10 18. On June 15, 2015, Plaintiff withdrew \$60 from a Capital One in-network
11 ATM. Despite contractual promises to the contrary, Capital One charged Plaintiff a fee
12 for checking his balance prior to withdrawing the cash. Plaintiff would not have checked
13 his balance had he been warned that he would be charged a fee for doing so.

14 19. Plaintiff was shocked to discover at a later date that he was charged a fee by
15 Capital One for his in-network balance inquiry, especially because he was not warned that
16 the balance inquiry would incur any fee at all.

17 20. In violation of its contractual promise to do so, Capital One failed to display
18 this balance inquiry fee on the ATM screen and did not give Plaintiff an opportunity to
19 cancel the transaction before imposing this fee.

20 **II. CAPITAL ONE CHARGES TWO OON FEES FOR CERTAIN OUT OF**
21 **NETWORK ATM TRANSACTIONS IN VIOLATION OF ITS CONTRACT**

22 **A. Out-of-Network ATM Withdrawals**

23 21. When consumers use ATMs not owned by their own bank, federal law
24 requires the owners of those out of network ATMs to inform users of the amount of the
25 usage fees charged by the ATM owner.

26 22. Thus, it is standard at ATMs in the United States that when a consumer uses
27 an ATM not owned by his home bank, a message is displayed on the screen stating that
28 usage of the ATM will cost a specified amount to proceed with a withdrawal of funds, and

1 that such a fee is in addition to a fee that may be assessed by a consumer's financial
2 institution for use of the ATM.

3 23. That message appears only after a user has decided to perform a cash
4 withdrawal and entered the amount of cash he or she would like to withdraw.

5 24. Through repeated exposure to such fee warning messages, consumers are
6 accustomed to being warned of fee assessments at out of network ATMs, and to being
7 provided with the opportunity to decide whether the fees charged are reasonable—before
8 proceeding with their cash withdrawal.

9 25. Capital One knows this—that consumers expect a fair fee disclosure at the
10 ATM—and has designed a scheme to assess OON Fees on balance inquiries and exploit
11 consumers' reasonable expectation that they will be provided an opportunity to cancel
12 actions before being assessed a fee. That scheme involves assessing fees for the mere act
13 of checking a balance before proceeding with a cash withdrawal.

14 26. In the US, most ATM display screens immediately ask consumers if they
15 would like to “check their account balance” before proceeding with their transaction.

16 27. The ATM screen does not disclose that a balance inquiry alone will incur a
17 usage fee, and indeed ATM owners in the United States in general do not charge usage
18 fees for balance inquiries.

19 28. Repeated exposure to such messages is partly responsible for building the
20 reasonable consumer understanding that a balance inquiry is a common lead-in to a
21 withdrawal, a mere first step to the real business at hand, an informational exercise
22 offered by the ATM to help inform the cash withdrawal.

23 29. Reasonable consumers like Plaintiff do not, in sum, understand a balance
24 inquiry to be an independent transaction worthy of a separate fee.

25 30. Capital One knows this—that consumers expect a balance inquiry fee to be
26 an included part of a cash withdrawal—and has designed a scheme to assess OON Fees on
27 those balance inquiries. The Bank preys on the common sense that a balance inquiry
28 preceded by a cash withdrawal is not an independent basis for a fee.

1 31. Thus, in most circumstances, there is simply no warning at the ATM that a
2 balance inquiry alone could incur a fee.

3 32. As a result, consumers have zero expectation that their home bank will
4 charge a separate fee for a balance inquiry, especially one that precedes a cash withdrawal
5 at the same ATM.

6 33. If a bank is going to charge such a conscience-shocking fee, it must fully and
7 fairly disclose such a fee in its account documentation. Capital One did the opposite—
8 providing express and implied indications that balance inquires would not incur OON
9 Fees.

10 **B. Capital One's Account Contract**

11 34. Plaintiff has a Capital One checking account, which is governed by Capital
12 One's standardized account agreement.

13 35. Capital One issues debit cards to its checking account customers, including
14 Plaintiff, which allows its customers to have electronic access to their checking accounts
15 for purchases, payments, and ATM withdrawals at both Capital One and non-Capital One
16 ATMs.

17 36. Against the backdrop of the reasonable consumer expectations and federal
18 law above, Capital One's disclosures deceive consumers and reinforce the reasonable
19 understanding that no fee will be assessed for a balance inquiry—especially if ATM users
20 are not warned beforehand.

21 37. Capital One's disclosures also reinforce the common sense presumption that
22 there can be no balance inquiry fee when such an inquiry is in conjunction with a cash
23 withdrawal at the same ATM.

24 38. Pursuant to Capital One's EFTA Agreement in effect at the time of the
25 relevant transactions:

26 **Charges for ATM/Debit Card Transactions:** When you use your
27 ATM/Debit Card at a non-Capital One Bank branded ATM, the ATM
28 owner/operator may charge you a fee for your use of their ATM, and you
may be charged a fee for a balance inquiry even if you do not complete a

1 transaction. The fee charged should be disclosed to you on the ATM, and
2 you should be given an opportunity to cancel the transaction before the fee is
3 imposed. You may also be charged a fee by us, as disclosed in our then
4 current Schedule of Fees and Charges, for each cash withdrawal, funds
5 transfer or balance inquiry that you may make using a non-Capital One Bank
6 branded ATM.

7
8 See EFTA Agreement, p. 3 (Exhibit A hereto).

9 39. The Fee Schedule referenced by Capital One in the EFTA Agreement, which
10 Capital One states will clarify precisely what fees will be charged “by us,” has just one
11 relevant line, stating that \$2 will be charged per “transaction.”

12 40. First, the contract plainly promises that ATM owners will not assess fees for
13 balance inquiries unless they inform consumers of the amount of the fee beforehand. In
14 general, and in Plaintiff’s case here, the ATM owner does not warn the user that there is a
15 separate charge for a balance inquiry, and in fact the ATM owner does not charge a
16 separate fee to the user for a balance inquiry. Therefore, the user can have no reasonable
17 expectation that his home bank will assess a fee for an action that the ATM owner does
18 not charge or warn about.

19 41. Second, even by Capital One’s own terms, a balance inquiry is not a
20 transaction: “you may be charged a balance inquiry even if you do not complete a
21 *transaction*.” By simple logic, this means a balance inquiry cannot itself be a
22 “transaction.” And since Capital One has promised only “transactions” will incur a OON
23 Fee, it violates its contract when it charges OON Fees on balance inquiries.

24 42. Moreover, accountholders using a non-Capital One ATM are never warned
25 that they will receive **two separate fees** from Capital One—plus another one from the
26 ATM owner—when they check their balance before proceeding with a cash withdrawal at
27 the same ATM. But that is exactly what happens.

1 43. As discussed *supra*, ATMs immediately prompt consumers to check their
2 balance, and never warn that such a balance inquiry will be the basis for a fee, either from
3 the ATM owner or from the consumer’s own bank. Capital One’s disclosures do nothing
4 to disabuse consumers of the reasonable understanding that a balance inquiry will not
5 incur a separate fee when it precedes a cash withdrawal at the same ATM, and never state
6 outright that such a fee will be assessed. Again, the Fee Schedule says nothing more than
7 “\$2.50 per transaction.”

8 44. Moreover, reasonable consumers like Plaintiff do not understand—and are
9 never warned—that a mere balance inquiry (in which no funds are transferred in any way)
10 counts on its own as a separate “transaction” that could be the basis for an independent
11 OON Fee.

12 45. Merriman-Webster defines “transaction” to mean
13 “something transacted; *especially* : an exchange or transfer of goods, services, or funds.”
14 There is no exchange or transfer involved in a balance inquiry; a balance inquiry is merely
15 a precursor to the actual “transaction”—the cash withdrawal.

16 46. Further, Capital One’s disclosure that the ATM owner may charge a fee for a
17 balance inquiry “even if you do not complete a transaction” is problematic for several
18 reasons.

19 47. First, as is the case here, owners generally do not charge such fees (and
20 therefore do not disclose such fees). There can thus be no reasonable expectation that
21 Capital One will do so.

22 48. Second, even if ATM owners did charge such fees, the “even if you do not
23 complete a transaction” phrase indicates that a consumer will **not** be charged a separate
24 OON Fee for a balance inquiry if he **does** complete a cash withdrawal (and therefore does
25 pay an OON Fee for that cash withdrawal)—especially where, as here, the ATM owner
26 does not charge separate fees for balance inquiries and never provides an on-screen
27 warning that either it or the consumer’s bank will do so.

1 49. The reasonable consumer understanding that a balance inquiry is not itself an
 2 independent transaction or basis for a fee is the very reason the “even if you do not
 3 complete a transaction” is necessary. *Indeed, the warning would be nonsensical if it was*
 4 *generally understood that the balance inquiry was an independent transaction worthy of a*
 5 *fee.*

6 50. In other words, if the balance inquiry and the transaction (withdrawal) were
 7 not linked and intrinsic to each other in the minds of reasonable consumers—there would
 8 be no need to disclose the special case of when they are de-linked.

9 51. At the very least, by the repeated use of “may,” Capital One provides itself
 10 discretion as to when it will assess OON Fees, and it uses that discretion in bad faith when
 11 it assesses an OON Fee on both a balance inquiry and a cash withdrawal at the same
 12 ATM.

13 **C. Plaintiff’s Out of Network ATM Withdrawals**

14 52. On April 28, 2015, Plaintiff withdrew \$20 in cash from an out of network
 15 ATM in New York, New York. Prior to withdrawing the cash, Plaintiff was prompted to
 16 check his balance, and he did so. He received no warning that doing so would incur a fee
 17 from the ATM owner or from his own bank. The ATM owner charged Plaintiff \$3 for the
 18 cash withdrawal, but did not charge a fee for the balance inquiry. Later, Capital One
 19 charged Plaintiff two OON Fees – one for the balance inquiry and one for the cash
 20 withdrawal – of \$2 each. Plaintiff would not have proceeded with the balance inquiry or
 21 the cash withdrawal if he had been notified by the ATM owner or by Capital One that he
 22 would be charged three separate fees, totaling \$7, for his \$20 cash withdrawal.

23 53. Plaintiff was shocked to discover that he was charged these two OON Fees
 24 by Capital One, in addition to the ATM owner’s fee for the cash withdrawal, especially
 25 because he was not warned that the balance inquiry would incur any fee at all.

26 **CLASS ALLEGATIONS**

27 54. Plaintiff brings this action on behalf of himself and all others similarly
 28 situated pursuant to Rule 23 of the Federal Rules of Civil Procedure. This action satisfies

1 the numerosity, commonality, typicality, adequacy, predominance, and superiority
2 requirements of Rule 23.

3 55. The proposed classes are defined as:

- 4 • All Capital One checking account holders in the United States who within the
5 applicable statute of limitations were assessed an ATM fee for a balance inquiry at
6 in-network ATM (the “In-Network Class”).
- 7 • All Capital One checking account holders in California who within the applicable
8 statute of limitations were assessed an ATM fee for a balance inquiry at in-network
9 ATM (the “California In-Network Sub-Class”).
- 10 • All Capital One checking account holders in New York who within the applicable
11 statute of limitations were assessed an ATM fee for a balance inquiry at in-network
12 ATM (the “New York In-Network Sub-Class”).
- 13 • All Capital One checking account holders in the United States who within the
14 applicable statute of limitations were assessed two OON Fees when they performed
15 a balance inquiry prior to withdrawing cash at an out-of-network ATM (the
16 “National Balance Inquiry Fee Class”).
- 17 • All Capital One checking account holders in California who within the applicable
18 statute of limitations were assessed two OON Fees when they performed a balance
19 inquiry prior to withdrawing cash at an out-of-network ATM (the “California OON
20 Fee Sub-Class”).
- 21 • All Capital One checking account holders in New York who within the applicable
22 statute of limitations were assessed two OON Fees when they performed a balance
23 inquiry prior to withdrawing cash at an out-of-network ATM (the “New York OON
24 Fee Sub-Class”).

25 The National Classes and the California and New York Subclasses are collectively
26 referred to as the “Classes.”

27 56. Plaintiff reserves the right to modify or amend the definition of the proposed
28 Classes before the Court determines whether certification is appropriate.

1 57. Excluded from the Classes are Capital One, its parents, subsidiaries,
2 affiliates, officers, and directors; any entity in which Capital One has a controlling
3 interest; all customers who make a timely election to be excluded; governmental entities;
4 and all judges assigned to hear any aspect of this litigation, as well as their immediate
5 family members.

6 58. The members of the Classes are so numerous that joinder is impractical. The
7 Classes consist of thousands of members, the identity of whom is within the knowledge of
8 and can be ascertained only by resort to Capital One's records.

9 59. The claims of the representative Plaintiff are typical of the claims of the
10 Classes in that the representative Plaintiff, like all Class members, was charged for a
11 balance inquiry at an in-network ATM; was charged two OON Fees when he checked his
12 balance prior to withdrawing cash at an out of network ATM; was charged OON Fees for
13 transactions at an out-of-network ATM without the Fee charged by Capital One being
14 displayed on the ATM screen and being given an opportunity to cancel the transaction
15 before the fee was imposed. The representative Plaintiff, like all Class members, has been
16 damaged by Capital One's misconduct in that he was assessed unfair and unconscionable
17 fees. Furthermore, the factual basis of Capital One's misconduct is common to all Class
18 members, and represents a common thread of unfair and unconscionable conduct resulting
19 in injury to all members of the Classes.

20 60. There are numerous questions of law and fact common to the Classes and
21 those common questions predominate over any questions affecting only individual Class
22 members.

23 61. Among the questions of law and fact common to the Classes are whether
24 Capital One:

- 25 a. Deceived consumers;
- 26 b. Breached its contract;
- 27 c. Breached its covenant of good faith and fair dealing with Plaintiff and
28 other members of the Classes through its overdraft policies and practices;

1 d. Converted money belonging to Plaintiff and other members of the
2 Classes through its OON Fee policies and practices;

3 e. Was unjustly enriched through its OON Fee policies and practices; and

4 f. Violated the consumer protection acts of certain states through its
5 OON Fee policies and practices.

6 62. Other questions of law and fact common to the Classes include:

7 a. The proper method or methods by which to measure damages, and

8 b. The declaratory relief to which the Classes are entitled.

9 63. Plaintiff's claims are typical of the claims of other Class members, in that
10 they arise out of the same wrongful overdraft policies and practices of Capital One's
11 Account Agreement and other related documents. Plaintiff has suffered the harm alleged
12 and has no interests antagonistic to the interests of any other Class member.

13 64. Plaintiff is committed to the vigorous prosecution of this action and has
14 retained competent counsel experienced in the prosecution of class actions and, in
15 particular, class actions on behalf of consumers and against financial institutions.
16 Accordingly, Plaintiff is an adequate representative and will fairly and adequately protect
17 the interests of the Classes.

18 65. A class action is superior to other available methods for the fair and efficient
19 adjudication of this controversy. Since the amount of each individual Class member's
20 claim is small relative to the complexity of the litigation, and due to the financial
21 resources of Capital One, no Class member could afford to seek legal redress individually
22 for the claims alleged herein. Therefore, absent a class action, the Class members will
23 continue to suffer losses and Capital One's misconduct will proceed without remedy.

24 66. Even if Class members themselves could afford such individual litigation, the
25 court system could not. Given the complex legal and factual issues involved,
26 individualized litigation would significantly increase the delay and expense to all parties
27 and to the Court. Individualized litigation would also create the potential for inconsistent
28 or contradictory rulings. By contrast, a class action presents far fewer management

1 difficulties, allows claims to be heard which might otherwise go unheard because of the
2 relative expense of bringing individual lawsuits, and provides the benefits of adjudication,
3 economies of scale and comprehensive supervision by a single court.

4 **FIRST CLAIM FOR RELIEF**

5 **Breach of Contract**

6 **(On Behalf of the National Classes)**

7 67. Plaintiff repeats paragraphs 1 through 66 above.

8 68. Plaintiff and Capital One have contracted for bank account deposit, checking,
9 ATM, and debit card services, as embodied in Capital One's EFTA Agreement, Schedule
10 of Fees and Charges, and related documentation.

11 69. No contract provision authorizes Capital One to charge a fee for a balance
12 inquiry at an in-network ATM, especially when, in violation of its contractual promise to
13 do so, Capital One failed to display this balance inquiry fee on the ATM screen and did
14 not give Plaintiff an opportunity to cancel the transaction before imposing this fee.

15 70. Therefore, Capital One breached the terms of its EFTA Agreement by
16 charging such fees on a transaction at an in-network ATM.

17 71. No contractual provision authorizes Capital One to assess an OON Fee for a
18 transaction at an out-of-network ATM, without the Fee charged by Capital One being
19 displayed on the ATM screen and being given an opportunity to cancel the transaction
20 before the fee is imposed.

21 72. Therefore, Capital One breached the terms of its EFTA Agreement by
22 charging OON Fees for such transactions at an out-of-network ATM.

23 73. Plaintiff and members of the National Classes have performed all, or
24 substantially all, of the obligations imposed on them under the EFTA Agreement.

1 74. Plaintiff and members of the National Classes have sustained damages as a
2 result of Capital One’s breach of the EFTA Agreement.

3 **SECOND CLAIM FOR RELIEF**

4 **Breach of the Covenant of Good Faith and Fair Dealing**

5 **(On Behalf of the National Classes)**

6 75. Plaintiff repeats paragraphs 1 through 74 above.

7 76. Plaintiff and Capital One have contracted for bank account deposit, checking,
8 ATM, and debit card services, as embodied in Capital One’s EFTA Agreement and
9 related documentation.

10 77. Under the laws of the states where Capital One does business, good faith is
11 an element of every contract. Whether by common law or statute, all such contracts
12 impose upon each party a duty of good faith and fair dealing. Good faith and fair dealing,
13 in connection with executing contracts and discharging performance and other duties
14 according to their terms, means preserving the spirit – not merely the letter – of the
15 bargain. Put differently, the parties to a contract are mutually obligated to comply with
16 the substance of their contract in addition to its form. Evading the spirit of the bargain
17 and abusing the power to specify terms constitute examples of bad faith in the
18 performance of contracts.

19 78. Subterfuge and evasion violate the obligation of good faith in performance
20 even when an actor believes their conduct to be justified. Bad faith may be overt or may
21 consist of inaction, and fair dealing may require more than honesty. Examples of bad
22 faith are evasion of the spirit of the bargain, willful rendering of imperfect performance,
23 abuse of a power to specify terms, and interference with or failure to cooperate in the
24 other party’s performance.

25 79. Capital One has breached the covenant of good faith and fair dealing in the
26 EFTA Agreement through its ATM Fee policies and practices as alleged herein.

27 80. Plaintiff and members of the National Classes have performed all, or
28 substantially all, of the obligations imposed on them under the EFTA Agreement.

1 81. Plaintiff and members of the National Classes have sustained damages as a
2 result of Capital One's breach of the covenant of good faith and fair dealing.

3 **THIRD CLAIM FOR RELIEF**

4 **Conversion**

5 **(On Behalf of the National Classes)**

6 82. Plaintiff repeats paragraphs 1 through 81 above.

7 83. Capital One had and continues to have a duty to maintain and preserve its
8 customers' checking accounts and to prevent their diminishment through its own wrongful
9 acts.

10 84. Capital One has wrongfully collected overdraft fees from Plaintiff and the
11 members of the National Classes, and has taken specific and readily identifiable funds
12 from their accounts in payment of these fees in order to satisfy them.

13 85. Capital One has, without proper authorization, assumed and exercised the
14 right of ownership over these funds, in hostility to the rights of Plaintiff and the members
15 of the National Classes, without legal justification.

16 86. Capital One continues to retain these funds unlawfully without the consent of
17 Plaintiff or members of the National Classes.

18 87. Capital One intends to permanently deprive Plaintiff and the members of the
19 National Classes of these funds.

20 88. These funds are properly owned by Plaintiff and the members of the National
21 Classes, not Capital One, which now claims that it is entitled to their ownership, contrary
22 to the rights of Plaintiff and the members of the National Classes.

23 89. Plaintiff and the members of the National Classes are entitled to the
24 immediate possession of these funds.

25 90. Capital One has wrongfully converted these specific and readily identifiable
26 funds.

27 91. Capital One's wrongful conduct is continuing.

28 92. As a direct and proximate result of this wrongful conversion, Plaintiff and the

1 members of the National Classes have suffered and continue to suffer damages.

2 93. By reason of the foregoing, Plaintiff and the members of the National Classes
3 are entitled to recover from Capital One all damages and costs permitted by law, including
4 all amounts that Capital One has wrongfully converted.

5 **FOURTH CLAIM FOR RELIEF**

6 **Unjust Enrichment**

7 **(On Behalf of the National Classes)**

8 94. Plaintiff repeats paragraphs 1 through 93 above.

9 95. Plaintiff, on behalf of himself and the National Classes, assert a common law
10 claim for unjust enrichment.

11 96. By means of Capital One's wrongful conduct alleged herein, Capital One
12 knowingly provided banking services to Plaintiff and members of the National Classes
13 that was unfair, unconscionable, and oppressive.

14 97. Capital One knowingly received and retained wrongful benefits and funds
15 from Plaintiff and members of the National Classes. In so doing, Capital One acted with
16 conscious disregard for the rights of Plaintiff and members of the National Classes.

17 98. As a result of Capital One's wrongful conduct as alleged herein, Capital One
18 has been unjustly enriched at the expense of, and to the detriment of, Plaintiff and
19 members of the National Classes.

20 99. Capital One's unjust enrichment is traceable to, and resulted directly and
21 proximately from, the conduct alleged herein.

22 100. Under the common law doctrine of unjust enrichment, it is inequitable for
23 Capital One to be permitted to retain the benefits it received, and is still receiving, without
24 justification, from the imposition of overdraft fees on Plaintiff and members of the
25 National Classes in an unfair, unconscionable, and oppressive manner. Capital One's
26 retention of such funds under circumstances making it inequitable to do so constitutes
27 unjust enrichment.

28 101. The financial benefits derived by Capital One rightfully belong to Plaintiff

1 and members of the National Classes. Capital One should be compelled to disgorge in a
2 common fund for the benefit of Plaintiff and members of the National Classes all
3 wrongful or inequitable proceeds received by them. A constructive trust should be
4 imposed upon all wrongful or inequitable sums received by Capital One traceable to
5 Plaintiff and the members of the National Classes.

6 102. Plaintiff and members of the National Classes have no adequate remedy at
7 law.

8 **FOURTH CLAIM FOR RELIEF**

9 **Violation of California Unfair Competition Law, Unfair Prong**

10 **Business and Professions Code § 17200**

11 **(On Behalf of the California Subclasses)**

12 103. Plaintiff repeats paragraphs 1 through 102 above.

13 104. Defendant’s conduct described herein violates the Unfair Competition Law
14 (the “UCL”), codified at California Business and Professions Code section 17200, et seq.

15 105. The UCL prohibits, and provides civil remedies for, unfair competition. Its
16 purpose is to protect both consumers and competitors by promoting fair competition in
17 commercial markets for goods and services. In service of that purpose, the Legislature
18 framed the UCL’s substantive provisions in broad, sweeping language.

19 106. By defining unfair competition to include any “any unlawful, unfair or
20 fraudulent business act or practice,” the UCL permits violations of other laws to be treated
21 as unfair competition that is independently actionable, and sweeps within its scope acts
22 and practices not specifically proscribed by any other law.

23 107. Defendant’s conduct violates the UCL’s “unfair” prong insofar as Defendant
24 charged OON Fees for a cash withdrawal preceded by a balance inquiry at the same out of
25 network ATM.

26 108. Defendant’s conduct was not motivated by any business or economic need or
27 rationale. The harm and adverse impact of Defendant’s conduct on members of the
28 general public was neither outweighed nor justified by any legitimate reasons,

1 justifications, or motives.

2 109. The harm to Plaintiff and Class Members arising from Defendant’s unfair
3 practices relating to the imposition of OON Fees outweighs the utility, if any, of those
4 practices.

5 110. Defendant’s unfair business practices relating to OON Fees as alleged herein
6 are immoral, unethical, oppressive, unscrupulous, unconscionable and/or substantially
7 injurious to Plaintiff and members of the Class.

8 111. Defendant’s conduct was substantially injurious to consumers in that they
9 have been forced to pay OON Fees, which are not disclosed in their contract with
10 CAPITAL ONE.

11 112. As a result of Defendant’s violations of the UCL’s “unfair” prong, Plaintiff
12 and members of the Class have paid, and/or will continue to pay OON Fees and thereby
13 have suffered and will continue to suffer actual damages.

14 **FIFTH CLAIM FOR RELIEF**

15 **Violation of California Unfair Competition Law, Fraudulent Prong**

16 **Business and Professions Code § 17200**

17 **(On Behalf of the California Subclasses)**

18 113. Plaintiff repeats paragraphs 1 through 112 above.

19 114. Defendant’s conduct described herein violates the Unfair Competition Law
20 (the “UCL”), codified at California Business and Professions Code section 17200, et seq.

21 115. The UCL prohibits, and provides civil remedies for, unfair competition. Its
22 purpose is to protect both consumers and competitors by promoting fair competition in
23 commercial markets for goods and services. In service of that purpose, the Legislature
24 framed the UCL’s substantive provisions in broad, sweeping language.

25 116. By defining unfair competition to include any “any unlawful, unfair or
26 fraudulent business act or practice,” the UCL permits violations of other laws to be treated
27 as unfair competition that is independently actionable, and sweeps within its scope acts
28 and practices not specifically proscribed by any other law.

1 117. Defendant committed fraudulent business acts and practices in violation of
2 Cal. Bus. & Prof. Code § 17200, et seq., when it affirmatively and knowingly
3 misrepresented its OON Fee practices. Such representations misled the Plaintiff and are
4 likely to mislead the public.

5 118. In addition, Defendant committed fraudulent business acts and practices in
6 violation of Cal. Bus. & Prof. Code § 17200, et seq., when it affirmatively and knowingly
7 omitted the total price of out of network ATM transactions and failed to inform
8 consumers they would be charged two fees for a cash withdrawal preceded by a balance
9 inquiry at the same out of network ATM. Such omissions misled the Plaintiff and are
10 likely to mislead the public.

11 119. As a result of Defendant's violations of the UCL's "fraudulent" prong,
12 Plaintiff and members of the Class have paid, and/or will continue to pay, unreasonably
13 excessive amounts of money for banking services and thereby have suffered and will
14 continue to suffer actual damages.

15 **FIFTH CLAIM FOR RELIEF**

16 **NY GBL § 350**

17 **(On Behalf of the Classes)**

18 120. Plaintiff repeats paragraphs 1 through 119 above.

19 121. The New York Consumer Protection Act (N.Y. Gen. Bus. Law §§ 349, 350
20 (Consol.)) was enacted by the New York legislature to protect consumers from unfair,
21 unconscionable and deceptive business practices.

22 122. Certain of Defendant's policies and/or practices described in this Complaint
23 constitute unfair, unconscionable or deceptive trade or business practices. Defendant
24 engages in such conduct as a general business practice, uniformly and as a matter of
25 policy assessing and collecting overdraft fees where it is not legally permitted to do so.

26 123. In addition, Defendant has done so through substantially aggravating
27 circumstances in which it intentionally and knowingly engaged in this unlawful practice
28 that was targeted and directed at the poorest and most financially vulnerable customers.

1 As a result of the unlawful collection of overdraft fees, Plaintiffs and the class have been
2 harmed and Defendant has been improperly and unjustly enriched.

3 124. These violations have directly, foreseeably, and proximately caused damages
4 to Plaintiffs and the proposed Classes in amounts yet to be determined. They have also
5 unjustly enriched Defendant by an amount yet to be determined.

6 125. As a result of Defendant's violations of the New York Consumer Protection
7 Act prohibiting unfair and deceptive acts and practices, Plaintiff and members of the
8 proposed Classes have suffered actual damages for which Defendant is liable in an
9 amount up to and equal to threefold damages. Plaintiff and the Classes are likewise
10 entitled to recover by disgorgement an amount sufficient to restore to Plaintiff and the
11 Classes all monies improperly taken from them. In addition, Plaintiffs and the Classes are
12 entitled to injunctive relief to prevent Defendant from continuing to harm them through its
13 wrongful actions and conduct.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff prays on behalf of himself and all others similarly
16 situated, for judgment against Defendant as follows:

17 126. Certifying the Classes as requested herein, appointing Plaintiff as Class
18 Representative, and appointing his counsel as Class Counsel;

19 127. Declaring Capital One's overdraft fee policies and practices to be wrongful,
20 unfair, and unconscionable;

21 128. Restitution of all overdraft fees paid to Capital One by Plaintiff and the
22 Classes, as a result of the wrongs alleged herein in an amount to be determined at trial;

23 129. Disgorgement of the ill-gotten gains derived by Capital One from its
24 misconduct;

25 130. Actual damages in an amount according to proof;

26 131. Punitive and exemplary damages;

27 132. Pre-judgment interest at the maximum rate permitted by applicable law;

28 133. Costs and disbursements assessed by Plaintiff in connection with this action,

1 including reasonable attorneys' fees pursuant to applicable law; and

2 134. Such other relief as this Court deems just and proper.

3 **DEMAND FOR JURY TRIAL**

4 Plaintiff hereby demands a jury trial for all of the claims so triable.

5 Dated: April 6, 2018

6 **CARLSON LYNCH SWEET
KILPELA & CARPENTER, LLP**

7 /s/ Todd D. Carpenter

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26 *Attorneys for Plaintiff*

JS 44 (Rev. 06/17)

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 NEXT PAGE OF THIS FORM.)

<p>I. (a) PLAINTIFFS Jacob Figueroa, on Behalf of Himself and All Others Similarly Situated,</p> <p>(b) County of Residence of First Listed Plaintiff _____ <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys <i>(Firm Name, Address, and Telephone Number)</i> Todd D. Carpenter (CA 234464) / 619.762.1900 Carlson Lynch Sweet Kilpela & Carpenter 1350 Columbia Street, Suite 603, San Diego, CA 92101</p>	<p>DEFENDANTS Capital One N.A. and Does 1-100, inclusive</p> <p>County of Residence of First Listed Defendant _____ <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys <i>(If Known)</i></p> <p style="text-align: right; font-size: 1.2em;">'18CV0692 JM BGS</p>
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<p>II. BASIS OF JURISDICTION <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:30%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:40%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or 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 and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input 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
	PTF	DEF		PTF	DEF																				
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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)* Click here for: Nature of Suit Code Descriptions.

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 (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p>PERSONAL INJURY</p> <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 <input type="checkbox"/> 362 Personal Injury - Medical Malpractice <p>PERSONAL INJURY</p> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p>PERSONAL PROPERTY</p> <input 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"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	<p>PROPERTY RIGHTS</p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <p>SOCIAL SECURITY</p> <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))
<p>REAL PROPERTY</p> <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	<p>CIVIL RIGHTS</p> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<p>PRISONER PETITIONS</p> <p>Habeas Corpus:</p> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <p>Other:</p> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<p>LABOR</p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <p>IMMIGRATION</p> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<p>FEDERAL TAX SUITS</p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
				<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <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"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

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 - Transfer 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity):*
28 U.S.C. § 1332(d)(2) and (6)

Brief description of cause:
Breach of contract, breach of covenant of good faith and fair dealing, conversion, unjust enrichment, UCL, GBL

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 5,000,001.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY *(See instructions):* JUDGE _____ DOCKET NUMBER _____

DATE 04/06/2018 SIGNATURE OF ATTORNEY OF RECORD /s/ Todd D. Carpenter

FOR OFFICE USE ONLY

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

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.Cv.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; **NOTE: 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 there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- 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 – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- 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 actual dollar amount 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.

EXHIBIT A

ELECTRONIC FUND TRANSFER AGREEMENT AND DISCLOSURE FOR PERSONAL AND COMMERCIAL ACCOUNTS

Effective August 22, 2014

Welcome to Capital One, N.A. (hereinafter referred to as "Capital One Bank", "us", "our" or "we"). In this Agreement, "you", "your", and "yours" mean the authorized person or persons who conduct electronic fund transfers, including but not limited to persons to whom a Capital One Bank ATM or Debit Card is issued and anyone else you allow to use the ATM or Debit Card. Capital One Bank provides various electronic banking services to you. These services include, but are not limited to:

- Automated Teller Machine ("ATM") transactions.
- Telephone transfers.
- Point-of-Sale ("POS") transactions, whether or not initiated through an electronic terminal.
- Pre-authorized transfers to or from an account ("ACH").
- Smart phone or other mobile device transfers.
- Online banking (see the Online Banking Terms and Conditions at www.capitalonebank.com).

This Electronic Fund Transfers Agreement and Disclosure ("Agreement") contains disclosures required by Regulation E that apply to consumer accounts, in addition to disclosures that apply to commercial accounts as they relate to electronic banking services and it contains our terms and conditions with respect to these services. A consumer account is an account held by an individual and used primarily for personal, family, or household purposes.

1. Your Access Device and Your Personal Identification Number: An access device is a card, personal identification number ("PIN"), or other code used to initiate an electronic fund transfer ("EFT") to or from your account. The Capital One Bank, ATM card, platinum Debit Card, or Business Debit Card (hereinafter referred to collectively as "ATM/Debit Card") that you have requested is an access device.

You have selected or have been provided with a special PIN, a code you must enter into the ATM or that you may be required to enter into the POS terminal whenever you use your ATM/Debit Card. For your own protection, please memorize the PIN, and do not keep any notation of the PIN on the ATM/Debit Card or in the same wallet or purse as the ATM/Debit Card and do not disclose the PIN to anyone who is not authorized to use your ATM/Debit Card.

Important Information Concerning International Use of Your ATM or Debit Card: Capital One Bank employs fraud monitoring and protection capabilities to help protect you from ATM/Debit card fraud. These protection systems are designed to block transactions that occur outside of our customers' ordinary transaction patterns and may block transactions originating in countries that are experiencing a high incidence of card fraud. **To avoid the inconvenience of having your ATM/Debit card blocked while you are traveling abroad, please notify us before any international travel or international purchases by calling 1-800-655-2265 from inside the United States or 972-916-4111 collect from outside the United States.**

2. Accounts That May Be Accessed: When you requested your ATM/Debit Card, you provided us with a list of your accounts that you wish to access using your ATM/Debit Card. These accounts are referred to in this Agreement as "designated accounts." You may access only the designated accounts. If you requested access to multiple accounts, you chose one checking account and one savings account as your primary checking and savings accounts. If you wish to access additional accounts or change your primary accounts, please contact your banking officer.

You may use your ATM/Debit Card and PIN to access the following types of designated accounts:

- Checking account.
- NOW account.
- Savings account (other than Passbook Savings accounts).
- Money Market account.*

*At certain ATMs, when accessing your Money Market accounts you may need to select the 'checking' option rather than the 'savings' option.

3. Types of Transactions That Can Be Completed:

You may use your ATM/Debit Card at any Capital One Bank ATM. You may also use your ATM/Debit Card to complete transactions at non-Capital One Bank ATMs that are members of the EFT networks in which we participate.

Purchases may also be made using your ATM/Debit Card at merchant locations which are members of the POS networks in which we participate. You may also use your Platinum Debit Card or Business Debit Card to make purchases at locations which accept Debit MasterCardTM Cards. (Note: Your Platinum Debit Card or your Business Debit Card is not a MasterCard credit card, and this Agreement does not replace or affect any MasterCard account agreement that you may have with us or any other financial institution.)

Please note that some of the below services may not be available at all ATMs.

(A) Cash Withdrawals: You can use your ATM/Debit Card and PIN at ATMs to obtain cash withdrawals from your designated accounts. At certain ATMs, cash withdrawals may only be made from your primary savings and primary checking account. Withdrawals made at ATMs owned and operated by other entities will be automatically deducted from your designated primary checking or savings account. Each time you use your ATM/Debit Card we may place a hold on a corresponding amount of funds in your account until the transaction is posted against your account.

(B) Deposits: You can use your ATM/Debit Card and PIN at Capital One Bank-branded ATMs to make deposits into your designated accounts. Deposits made at an ATM may not be available for immediate withdrawal. Please refer to the Deposit Availability Disclosure contained in our Rules Governing Deposit Accounts Agreement to determine when the deposit will be credited to your account and when funds will be available for withdrawal or for paying transactions on your account.

(C) Transfers Between Your Capital One Accounts: You can use your ATM/Debit Card and PIN at a Capital One Bank-branded ATM to transfer available funds between your designated accounts. Transfers made at a non-Capital One Bank ATM can only be made between your designated primary checking and primary savings accounts.

You may also transfer funds between your Capital One Bank accounts via the telephone, online banking, or by establishing an automatic transfer schedule.

(D) Purchases: You can use your ATM/Debit Card and PIN to make purchases at merchant locations which are members of POS networks in which we participate. At certain Capital One Bank-branded ATMs, you can also use your ATM/Debit Card and PIN to purchase non-monetary items (such as stamps and gift certificates). Purchases of this type may also be made at certain non-Capital One Bank ATMs.

You may also use your ATM/Debit Card without your PIN to make purchases at merchant locations accepting Debit MasterCard Cards. The merchant may request a preauthorization for the transaction. If we authorize the transaction, the funds will be debited from your primary checking account immediately or a hold may be placed on your account for up to several days after the purchase transaction has occurred, depending upon the promptness with which the merchant processes your transaction.

Some purchases may result in a longer hold. Sometimes the preauthorization requests may be in amounts different from the total amount of the transaction. For example, a gas station typically requests authorization in the amount of \$1.00. Also, restaurants typically request authorization for 20% more than the price of the meal. If the preauthorization request varies from the amount of the actual transaction, payment of the transaction may not remove the preauthorization hold immediately. Generally, the preauthorization hold may remain on your account for up to three (3) business days after the date of the transaction and may affect the availability of funds from your designated account for other transactions. We will not be responsible for damages for wrongful dishonor of an item resulting from a preauthorization hold. You agree not to withdraw, write checks or make point of sale purchases against funds that are needed to pay ATM/Debit Card transactions that have not yet posted against your account.

(E) Inquiries: You can use your ATM/Debit Card and PIN at ATMs to check the balance in your designated accounts. At non-Capital One Bank ATMs, you may only make balance inquiries on your designated primary checking or savings account. You may also check the balance in your designated accounts via our telephone or online banking service.

(F) Change PIN: You may use your ATM/Debit Card and PIN to change your current PIN at Capital One Bank-branded ATMs. You must know your current PIN in order to change your PIN. If you have forgotten your current PIN, you may contact your banking officer to have your PIN re-established.

(G) Mini-Statements: You may use your ATM/Debit Card and PIN at Capital One Bank-branded ATMs to obtain a statement of up to the last ten (10) transactions performed through the previous business day.

(H) Transfers Between Your Capital One Bank Accounts and Accounts at Other Financial Institutions (or Third Parties) and Check Conversion: You can authorize a third party to initiate transfers between your accounts and the third party's accounts by providing the third party with our routing number and your account number.

You may also authorize a merchant or other payee to make a one-time electronic payment from your checking account using information from your check to: (i) pay for purchases, or (ii) pay bills.

When you provide a check as payment, you authorize us to use information from your check to make a one-time electronic fund transfer from your account. In certain circumstances, such as for technical or processing reasons, we may process your payment as a check transaction. When we use information from your check to make an electronic fund transfer, funds may be withdrawn from your account on the same day you make your payment.

You should only provide your financial institution and account information (whether over the phone, the internet, or via some other method) to trusted third parties whom you have authorized to initiate electronic fund transfers.

4. Limitations on Transactions: There are certain limitations on the use of electronic banking services. These include, but are not limited to, the following:

(A) Designated Accounts: You may only access your designated accounts with Capital One Bank.

(B) Daily Limitation: A daily withdrawal limitation exists on all ATM/Debit Cards. This limitation combines two categories: cash withdrawals and point of sale purchases. There is no limit on the number of transactions that may be completed. You may not aggregate withdrawals during any one (1) day (including either cash withdrawals, purchase withdrawals, or a combination of both) that exceed the established card limit. See the chart below for the limits established for the card product that you have. The limits listed below are default limits. Different limits may be assigned to individual cards on a case-by-case basis.

	Established card limit	Cash limit	POS limit
Platinum Debit	\$2,500	\$600	\$2,500
Business Debit	\$5,000	\$800	\$5,000
ATM CARD	\$2,500	\$600	\$2,500

Other ATM owners and operators may impose lower dollar limitations on the amount of cash withdrawals made at their ATMs.

(C) Online Banking External Funds Transfer Limitation: You may enroll in online banking to perform electronic transfers. When you enroll, you will be provided with additional terms and conditions that apply to electronic transfers using our online banking services. The below charts provide the default limits established for online banking transfers into and out of your designated accounts. Different limits may be assigned on a case-by- case basis. These limits do not apply to internal transfers between accounts opened in a Capital One Bank branch and accounts opened with Capital One Direct Banking accounts, bill pay transfers or pre-authorized third party Payments.

The below limits apply to High Yield Checking and High Interest Checking accounts:

	Per transfer limit	Daily limit	Monthly limit
Inbound Transfer	\$10,000	\$10,000	\$25,000
Outbound Transfer	\$10,000	\$10,000	\$25,000
Total Transfer Limit (Combined Inbound and Outbound)		\$20,000	\$50,000

The below limits apply to all other products (excluding High Yield Checking and High Interest Checking accounts):

	Per transfer limit	Daily limit	Monthly limit
Inbound Transfer	\$3,000	\$3,000	\$6,000
Outbound Transfer	\$3,000	\$3,000	\$6,000
Total Transfer Limit (Combined Inbound and Outbound)		\$6,000	\$12,000

(D) Third Party Transaction Limitation: Savings and money market accounts are permitted no more than six (6) transfers per statement cycle to a third party or to another account of the depositor at Capital One Bank by means of preauthorized, automatic, telephone or, to the extent any online banking program is available for your account, online transfer or withdrawal.

(E) Other Reasons: We and other ATM owners and operators may limit or refuse to complete your ATM/Debit Card transactions for security or technical reasons.

We may also suspend your ATM/Debit Card if we consider your designated account to be inactive or dormant.

5. Overdraft Situations: An Overdraft occurs when you do not have enough money in your designated account to cover a transaction, but we pay it anyway. Generally, we will not authorize and pay overdrafts for ATM withdrawals and everyday debit card transactions against your designated account unless you have authorized us to do so*. You understand and agree that even if you have authorized us to do so, you have no right to overdraw your account at any time, for any reason, and our decision to pay Overdraft items is solely within our discretion. You further agree that if we elect to pay Overdraft items, you must deposit additional funds into your designated account immediately in an amount sufficient to cover the Overdraft and to pay us Overdraft fees for each Overdraft item in accordance with our then current Schedule of Fees and Charges. Available credit on an overdraft protection line of credit associated with the designated account may be used to fund ATM/Debit Card transactions when you do not have sufficient collected funds in your designated account(s). If the amount of the Overdraft causes you to exceed the amount of credit available on the overdraft protection line of credit or balance in the overdraft protection deposit account linked to the overdrawn deposit account, you agree to pay the amount by which the deposit account has been overdrawn, plus all associated fees and charges as reflected in our then current Schedule of Fees and Charges and the applicable line of credit agreement.

* Applies only to consumer accounts.

6. Transactions That Are Not Completed: If we do not complete a transfer to or from your account on time or in the correct amount according to our Agreement with you, we will be liable for your losses or damages. However, there are some exceptions. We will not be liable, for instance:

- (A) If, through no fault of ours, you do not have enough money in your account to make the transfer;
- (B) if we have terminated this Agreement for any reason;
- (C) if the funds in your designated accounts are subject to legal process or other encumbrance restricting the transaction;
- (D) if circumstances beyond our control (such as fire or flood) prevent the transaction from being completed despite reasonable precautions that we have taken; if the transfer would exceed the available credit on your overdraft line of credit;
- (E) if an ATM does not have enough cash to complete the transaction;
- (F) if there is a technical malfunction in the ATM that is known to you when you try to perform the transaction;
- (G) if we have reason to believe that you or someone else is using our electronic banking services for fraudulent or illegal purposes;
- (H) Section 4 of this Agreement entitled "Limitations on Transactions" contains a list of transactions we will not complete;
- (I) if your ATM/Debit Card has deteriorated or has been damaged so that it does not function properly;
- (J) if your ATM/Debit Card or PIN has been reported lost or stolen. There may also be other exceptions as provided by applicable law, or
- (K) if the transfer would exceed the available credit on your overdraft line of credit.

You agree that we will not be liable for any damages resulting from a failure or refusal for any reason to authorize a transaction that you have attempted. You further agree that we will not be responsible or liable for a merchant's refusal to accept your ATM/Debit Card.

7. Charges for ATM/Debit Card Transactions: When you use your ATM/Debit Card at a non-Capital One Bank branded ATM, the ATM owner/operator may charge you a fee for your use of their ATM, and you may be charged a fee for a balance inquiry even if you do not complete a transaction. The fee charged should be disclosed to you on the ATM, and you should be given an opportunity to cancel the transaction before the fee is imposed. You may also be charged a fee by us, as disclosed in our then current Schedule of Fees and Charges, for each cash withdrawal, funds transfer or balance inquiry that you may make using a non-Capital One Bank branded ATM. You will not be charged this fee at most ATMs owned and operated by Capital One Bank, except at certain gaming establishments and other non-branch locations, where we may charge a fee for each cash withdrawal. The amount of fees charged at such ATMs at non-branch locations varies. Any fee charged will be displayed on the ATM screen and you will be given an opportunity to cancel the transaction before the fee is imposed. Please refer to our then current Schedule of Fees and Charges for the amount of this fee.

For international transactions, MasterCard's currency conversion procedure includes use of either a government mandated exchange rate, or a wholesale exchange rate selected by MasterCard for the processing cycle in which the transaction is processed, increased by an adjustment factor established from time to time by MasterCard. The currency conversion rate used by MasterCard on the processing date may differ from the rate that would have been used on the purchase date or cardholder statement posting date.

Withdrawals from an ATM outside of the United States, Puerto Rico, and U.S. Virgin Islands may incur an international transaction fee, as disclosed in our then current Schedule of Fees and Charges.

8. Receipts and Account Statement: You will be given a receipt for transactions made with your ATM/Debit Card at ATMs owned by Capital One Bank where this option is offered, unless you decline to receive the receipt. Your periodic account statement(s) for your designated accounts will also detail electronic transfer activity on the designated account. Generally, if you have a consumer account, you will receive a monthly statement if you have an EFT in that month. In any case, you will get the statement at least quarterly.

9. In Case of Errors or Questions About Your Electronic Transfers:

(For information pertaining to the error resolution process for international wire transfers, please refer to the Wire Funds Transfer Disclosure Statement and related disclosures.)

Call us at: 1 (866) 536-9023,
Write us at: Capital One, N.A.
P O Box 31277
Salt Lake City, Utah 84130-0277
Attn: Customer Service Center

or e-mail us using the Contact Us link in the Customer Service section of www.capitalonebank.com, as soon as you can if you think your statement or receipt is wrong or if you need more information about a transfer listed on the statement or receipt.

The following section applies only to consumer accounts: We must hear from you no later than sixty (60) days after we sent you the FIRST statement on which the problem or error appeared.

- (1) Tell us your name and account number.
- (2) Describe the error or transfer you are unsure about, and explain as clearly as you can why you believe it is an error, or why you need more information.
- (3) Tell us the dollar amount of the suspected error.

If you tell us verbally, we may require that you send us your complaint or question in writing within ten (10) business days.

We will determine whether an error occurred within ten (10) business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to forty-five (45) days (ninety (90) days for those transactions at merchant POS terminals, processed on a new account, or initiated outside the United States) to investigate your complaint or question. If we decide to do this, we will credit your account within ten (10) business days for the amount you think is in error, so that you will have full use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within ten (10) business days, we may not credit your account.

For errors involving new accounts, we may take up to twenty (20) business days to credit your account for the amount you think is in error.

We will tell you the results within three (3) business days after completing our investigation. If we decide that there was no error, we will send you a written explanation. You may ask for copies of the documents that we used in our investigation.

The following section applies only to commercial accounts: If you are a business or other entity that is not a natural person, the above referenced procedures do not apply to any accounts held by you. If you believe that an unauthorized transaction has occurred, we must hear from you within twenty four (24) hours of the time the transaction posts to your account. We will require you to submit an affidavit of unauthorized activity in connection with any such transaction immediately thereafter.

(A) Right to stop payment: if you have authorized regular payments out of your account, you can stop any of these payments. If the account requires multiple signatures to transact the withdrawal of funds, it is understood that we will recognize and accept stop payment instructions from any one authorized signer.

Here is how: Visit your nearest Capital One Bank location, or e-mail us using the Contact Us link in the Customer service section of www.capitalonebank.com. You may also:

10. Pre-Authorized Payments:

Call us at: 1 (800) 655-2265, or
Write us at: Capital One, N.A.
3939 W. John Carpenter Frwy.
Irving, TX 75063
Attn: Customer Service Center

We must receive your request at least three (3) business days before the payment is scheduled to be made. If you call us, we may also require you to put your request in writing to the above address and to get it to us within fourteen (14) days after you call. If you do not, then your verbal request will expire after fourteen (14) days. We will charge you a fee, as disclosed in our then current Schedule of Fees and Charges, for each stop payment order you give.

Merchants may allow returns or refunds on purchases; however, except as provided above for recurring payments you cannot stop a one-time payment on any ATM/Debit Card transactions. For this reason, you should inquire about the merchant's return or refund policy before entering into a purchase transaction. Merchandise purchased using your ATM/Debit Card that is subsequently returned will be reflected as a credit on your designated account statement, provided you elect to have the return credited to your designated account. Please refer to section 9 for information on error resolution.

(B) Varying amounts: If these regular payments vary in amount, the person you are paying must tell you ten (10) days before each payment when it will be made and how much it will be. If you do not know this information, you may be unable to have the payment stopped without closing your account. (You may choose instead to get this notice only when the payment would differ by more than a certain amount from the previous payment, or when the amount would fall outside certain limits that you set.)

(C) Liability: If you order us to stop one of these payments three (3) business days or more before the transfer is scheduled, and we do not do so, we will be liable for your actual losses or damages. We will pay other damages only as required by applicable law. *We will not be liable for any consequential or special losses or damages unless we act in bad faith. In addition, we will not be liable if the merchant or other third party initiating the transaction changes the dollar amount of the transaction or makes other changes so that we do not recognize it as the payment you stopped.*

11. Verifying Pre-Authorized Deposits: You can verify whether a direct deposit has been processed to your account by calling us at 1 (800) 655-2265.

12. Joint Accounts: If more than one person signed your request for electronic banking services, each person who signed will be bound by this Agreement and will be responsible for paying all amounts owed as a result of this Agreement. If two (2) signatures are required to transact business on a designated account any ONE (1) signer may initiate an electronic banking transaction on the account.

13. Authorized Users: You should not allow unauthorized persons to use your ATM/Debit Card and PIN without first advising us in writing that you are adding them as an authorized user. You must also advise us in writing should such persons no longer be authorized to use your ATM/Debit Card.

14. Liability for Unauthorized Transfers on Consumer Accounts Only:

(A) Tell us at ONCE if you believe your ATM/Debit Card has been lost or stolen, or if you believe that an electronic fund transfer has been made without your permission. Telephoning is the best way of keeping your possible losses down. You could lose all the money in your designated accounts (plus any available revolving line of credit, if applicable). If you tell us within two (2) business days after you learn of the loss or theft, you can lose no more than \$50.00 if someone used your ATM/Debit Card without your permission.

(B) If you DO NOT tell us within two (2) business days after you learn of the loss or the theft of your ATM/Debit Card, and we can prove we could have stopped someone from using your ATM/Debit Card without your permission if you had told us, you could lose as much as \$500.00.

(C) If you think that a transfer or withdrawal shown on your periodic statement is incorrect, or if you believe an unauthorized transfer or withdrawal has taken place, including those made by your ATM/Debit Card, code or other means, contact us at once. We must be notified within sixty (60) days after the first statement we mailed to you on which the suspected problem appeared. If you do not contact us within this sixty (60) day time period, you could be held responsible for all unauthorized transfers and withdrawals that occurred between the end of the sixty (60) day period and the time you actually notified us if the transaction could have been prevented if we had been notified.

(D) If a good reason (such as a long trip or a hospital stay) kept you from telling us, we may extend the above time periods.

(E) If you believe that your ATM/Debit Card has been lost or stolen or that someone has transferred or may transfer money from your account without your permission, you may e-mail us using the Contact Us link in the Customer service section of www.capitalonebank.com. You may also:

Call us at: 1(800) 655-2265, or
Write us at: Capital One, N.A.
3939 W. John Carpenter Frwy.
Irving, TX 75063
Attn: Customer Service Center

15. MasterCard Zero Liability: You may have additional rights under the MasterCard rules. Provided that the PIN is not used as the cardholder verification method, you will not be responsible for unauthorized use of the Platinum Debit and Business Debit Cards under the following conditions:

(A) Your account is in good standing;

(B) You have exercised reasonable care in safeguarding your card from any unauthorized use. Unauthorized use means that you did not provide directly, by implication or otherwise, the right to use your card and you received no benefit from the "unauthorized" purchase; and

(C) You have not reported two or more unauthorized events in the past 12 months.

If you have questions regarding zero liability coverage or you suspect unauthorized use of your ATM/Debit card, contact us IMMEDIATELY.

16. Evidence: If we go to court for any reason, we can use a copy, microfilm, or microfiche of any document or electronic documentation, e-mail, or database information to prove what you owe or that a transaction has taken place. These facsimiles will have the same validity as the original documents.

17. Our Rules and Regulations and Other Agreements: The designated deposit accounts are also subject to other agreements that you may have with us including, but not limited to, our Rules Governing Deposit Accounts and Online Banking Terms and Conditions.

18. Disclosure of Information About Your Account: In the ordinary course of business, we may disclose information to third parties about your designated accounts or the transfers you make:

- Where it is necessary for completing transfers or resolving errors involving transfers;
- In order to verify the existence and condition of your account for a third party, such as a consumer reporting agency or a merchant;
- In order to comply with orders or subpoenas of government agencies or courts;
- If you give us your written permission;
- As disclosed in our Privacy Notice; or
- As otherwise permitted by law.

19. Our Business Days: For purposes of this Agreement, our business days are Monday through Friday. Federal holidays or other days we are closed are not considered business days.

20. Terminating This Agreement: You can terminate this Agreement at any time by notifying us in writing. We reserve the right to deactivate any ATM/Debit Card that has not been used for an extended period of time. We can also terminate this Agreement at any time. The termination of this Agreement by either party will not affect your obligations under this Agreement, even if we allow any transaction to be completed after this Agreement has been terminated.

21. Changing This Agreement: We have the right to change the terms of this Agreement from time to time. We will notify you at least twenty-one (21) days before the change will take effect if the change will cause you greater costs or liability or if it will limit your access to your designated accounts. We will not have to notify you in advance, however, if the change is necessary for security reasons.

22. Notices: All notices from us will be effective when we have e-mailed them, mailed them or delivered them to the last address that we have for you in our records. Notices from you will generally be effective when received at the appropriate address specified in this Agreement; but notices under Section 14 ("Liability for Unauthorized Transfers on Consumer Accounts Only") will be effective once you have done whatever is reasonably necessary to give us the information we need. A mailed notice will be considered delivered to us when it is received by us at the notice address in Section 14 of this Agreement. If more than one person signs your request for electronic banking services, notice to or from one of the people who signed the request will be effective for everybody who signed.

23. Collection Expenses: If we have to file a lawsuit to collect whatever you owe us, you will pay our reasonable expenses, including attorney's fees.

24. Governing Law: Any questions under this Agreement will be decided by applicable Federal law, or, if no Federal law exists, applicable state law. If any term of this Agreement cannot legally be enforced, the Agreement is to be considered changed to the extent necessary to comply with the law.

25. Acceptance of This Agreement: You have agreed to be bound and obligated under the terms of this Agreement and any subsequent amendments to this Agreement by using our electronic banking services.

EXHIBIT A

ELECTRONIC FUND TRANSFER AGREEMENT AND DISCLOSURE FOR PERSONAL AND COMMERCIAL ACCOUNTS

Effective August 22, 2014

Welcome to Capital One, N.A. (hereinafter referred to as "Capital One Bank", "us", "our" or "we"). In this Agreement, "you", "your", and "yours" mean the authorized person or persons who conduct electronic fund transfers, including but not limited to persons to whom a Capital One Bank ATM or Debit Card is issued and anyone else you allow to use the ATM or Debit Card. Capital One Bank provides various electronic banking services to you. These services include, but are not limited to:

- Automated Teller Machine ("ATM") transactions.
- Telephone transfers.
- Point-of-Sale ("POS") transactions, whether or not initiated through an electronic terminal.
- Pre-authorized transfers to or from an account ("ACH").
- Smart phone or other mobile device transfers.
- Online banking (see the Online Banking Terms and Conditions at www.capitalonebank.com).

This Electronic Fund Transfers Agreement and Disclosure ("Agreement") contains disclosures required by Regulation E that apply to consumer accounts, in addition to disclosures that apply to commercial accounts as they relate to electronic banking services and it contains our terms and conditions with respect to these services. A consumer account is an account held by an individual and used primarily for personal, family, or household purposes.

1. Your Access Device and Your Personal Identification Number: An access device is a card, personal identification number ("PIN"), or other code used to initiate an electronic fund transfer ("EFT") to or from your account. The Capital One Bank, ATM card, platinum Debit Card, or Business Debit Card (hereinafter referred to collectively as "ATM/Debit Card") that you have requested is an access device.

You have selected or have been provided with a special PIN, a code you must enter into the ATM or that you may be required to enter into the POS terminal whenever you use your ATM/Debit Card. For your own protection, please memorize the PIN, and do not keep any notation of the PIN on the ATM/Debit Card or in the same wallet or purse as the ATM/Debit Card and do not disclose the PIN to anyone who is not authorized to use your ATM/Debit Card.

Important Information Concerning International Use of Your ATM or Debit Card: Capital One Bank employs fraud monitoring and protection capabilities to help protect you from ATM/Debit card fraud. These protection systems are designed to block transactions that occur outside of our customers' ordinary transaction patterns and may block transactions originating in countries that are experiencing a high incidence of card fraud. **To avoid the inconvenience of having your ATM/Debit card blocked while you are traveling abroad, please notify us before any international travel or international purchases by calling 1-800-655-2265 from inside the United States or 972-916-4111 collect from outside the United States.**

2. Accounts That May Be Accessed: When you requested your ATM/Debit Card, you provided us with a list of your accounts that you wish to access using your ATM/Debit Card. These accounts are referred to in this Agreement as "designated accounts." You may access only the designated accounts. If you requested access to multiple accounts, you chose one checking account and one savings account as your primary checking and savings accounts. If you wish to access additional accounts or change your primary accounts, please contact your banking officer.

You may use your ATM/Debit Card and PIN to access the following types of designated accounts:

- Checking account.
- NOW account.
- Savings account (other than Passbook Savings accounts).
- Money Market account.*

*At certain ATMs, when accessing your Money Market accounts you may need to select the 'checking' option rather than the 'savings' option.

3. Types of Transactions That Can Be Completed:

You may use your ATM/Debit Card at any Capital One Bank ATM. You may also use your ATM/Debit Card to complete transactions at non-Capital One Bank ATMs that are members of the EFT networks in which we participate.

Purchases may also be made using your ATM/Debit Card at merchant locations which are members of the POS networks in which we participate. You may also use your Platinum Debit Card or Business Debit Card to make purchases at locations which accept Debit MasterCardTM Cards. (Note: Your Platinum Debit Card or your Business Debit Card is not a MasterCard credit card, and this Agreement does not replace or affect any MasterCard account agreement that you may have with us or any other financial institution.)

Please note that some of the below services may not be available at all ATMs.

(A) Cash Withdrawals: You can use your ATM/Debit Card and PIN at ATMs to obtain cash withdrawals from your designated accounts. At certain ATMs, cash withdrawals may only be made from your primary savings and primary checking account. Withdrawals made at ATMs owned and operated by other entities will be automatically deducted from your designated primary checking or savings account. Each time you use your ATM/Debit Card we may place a hold on a corresponding amount of funds in your account until the transaction is posted against your account.

(B) Deposits: You can use your ATM/Debit Card and PIN at Capital One Bank-branded ATMs to make deposits into your designated accounts. Deposits made at an ATM may not be available for immediate withdrawal. Please refer to the Deposit Availability Disclosure contained in our Rules Governing Deposit Accounts Agreement to determine when the deposit will be credited to your account and when funds will be available for withdrawal or for paying transactions on your account.

(C) Transfers Between Your Capital One Accounts: You can use your ATM/Debit Card and PIN at a Capital One Bank-branded ATM to transfer available funds between your designated accounts. Transfers made at a non-Capital One Bank ATM can only be made between your designated primary checking and primary savings accounts.

You may also transfer funds between your Capital One Bank accounts via the telephone, online banking, or by establishing an automatic transfer schedule.

(D) Purchases: You can use your ATM/Debit Card and PIN to make purchases at merchant locations which are members of POS networks in which we participate. At certain Capital One Bank-branded ATMs, you can also use your ATM/Debit Card and PIN to purchase non-monetary items (such as stamps and gift certificates). Purchases of this type may also be made at certain non-Capital One Bank ATMs.

You may also use your ATM/Debit Card without your PIN to make purchases at merchant locations accepting Debit MasterCard Cards. The merchant may request a preauthorization for the transaction. If we authorize the transaction, the funds will be debited from your primary checking account immediately or a hold may be placed on your account for up to several days after the purchase transaction has occurred, depending upon the promptness with which the merchant processes your transaction.

Some purchases may result in a longer hold. Sometimes the preauthorization requests may be in amounts different from the total amount of the transaction. For example, a gas station typically requests authorization in the amount of \$1.00. Also, restaurants typically request authorization for 20% more than the price of the meal. If the preauthorization request varies from the amount of the actual transaction, payment of the transaction may not remove the preauthorization hold immediately. Generally, the preauthorization hold may remain on your account for up to three (3) business days after the date of the transaction and may affect the availability of funds from your designated account for other transactions. We will not be responsible for damages for wrongful dishonor of an item resulting from a preauthorization hold. You agree not to withdraw, write checks or make point of sale purchases against funds that are needed to pay ATM/Debit Card transactions that have not yet posted against your account.

(E) Inquiries: You can use your ATM/Debit Card and PIN at ATMs to check the balance in your designated accounts. At non-Capital One Bank ATMs, you may only make balance inquiries on your designated primary checking or savings account. You may also check the balance in your designated accounts via our telephone or online banking service.

(F) Change PIN: You may use your ATM/Debit Card and PIN to change your current PIN at Capital One Bank-branded ATMs. You must know your current PIN in order to change your PIN. If you have forgotten your current PIN, you may contact your banking officer to have your PIN re-established.

(G) Mini-Statements: You may use your ATM/Debit Card and PIN at Capital One Bank-branded ATMs to obtain a statement of up to the last ten (10) transactions performed through the previous business day.

(H) Transfers Between Your Capital One Bank Accounts and Accounts at Other Financial Institutions (or Third Parties) and Check Conversion: You can authorize a third party to initiate transfers between your accounts and the third party's accounts by providing the third party with our routing number and your account number.

You may also authorize a merchant or other payee to make a one-time electronic payment from your checking account using information from your check to: (i) pay for purchases, or (ii) pay bills.

When you provide a check as payment, you authorize us to use information from your check to make a one-time electronic fund transfer from your account. In certain circumstances, such as for technical or processing reasons, we may process your payment as a check transaction. When we use information from your check to make an electronic fund transfer, funds may be withdrawn from your account on the same day you make your payment.

You should only provide your financial institution and account information (whether over the phone, the internet, or via some other method) to trusted third parties whom you have authorized to initiate electronic fund transfers.

4. Limitations on Transactions: There are certain limitations on the use of electronic banking services. These include, but are not limited to, the following:

(A) Designated Accounts: You may only access your designated accounts with Capital One Bank.

(B) Daily Limitation: A daily withdrawal limitation exists on all ATM/Debit Cards. This limitation combines two categories: cash withdrawals and point of sale purchases. There is no limit on the number of transactions that may be completed. You may not aggregate withdrawals during any one (1) day (including either cash withdrawals, purchase withdrawals, or a combination of both) that exceed the established card limit. See the chart below for the limits established for the card product that you have. The limits listed below are default limits. Different limits may be assigned to individual cards on a case-by-case basis.

	Established card limit	Cash limit	POS limit
Platinum Debit	\$2,500	\$600	\$2,500
Business Debit	\$5,000	\$800	\$5,000
ATM CARD	\$2,500	\$600	\$2,500

Other ATM owners and operators may impose lower dollar limitations on the amount of cash withdrawals made at their ATMs.

(C) Online Banking External Funds Transfer Limitation: You may enroll in online banking to perform electronic transfers. When you enroll, you will be provided with additional terms and conditions that apply to electronic transfers using our online banking services. The below charts provide the default limits established for online banking transfers into and out of your designated accounts. Different limits may be assigned on a case-by-case basis. These limits do not apply to internal transfers between accounts opened in a Capital One Bank branch and accounts opened with Capital One Direct Banking accounts, bill pay transfers or pre-authorized third party Payments.

The below limits apply to High Yield Checking and High Interest Checking accounts:

	Per transfer limit	Daily limit	Monthly limit
Inbound Transfer	\$10,000	\$10,000	\$25,000
Outbound Transfer	\$10,000	\$10,000	\$25,000
Total Transfer Limit (Combined Inbound and Outbound)		\$20,000	\$50,000

The below limits apply to all other products (excluding High Yield Checking and High Interest Checking accounts):

	Per transfer limit	Daily limit	Monthly limit
Inbound Transfer	\$3,000	\$3,000	\$6,000
Outbound Transfer	\$3,000	\$3,000	\$6,000
Total Transfer Limit (Combined Inbound and Outbound)		\$6,000	\$12,000

(D) Third Party Transaction Limitation: Savings and money market accounts are permitted no more than six (6) transfers per statement cycle to a third party or to another account of the depositor at Capital One Bank by means of preauthorized, automatic, telephone or, to the extent any online banking program is available for your account, online transfer or withdrawal.

(E) Other Reasons: We and other ATM owners and operators may limit or refuse to complete your ATM/Debit Card transactions for security or technical reasons.

We may also suspend your ATM/Debit Card if we consider your designated account to be inactive or dormant.

5. Overdraft Situations: An Overdraft occurs when you do not have enough money in your designated account to cover a transaction, but we pay it anyway. Generally, we will not authorize and pay overdrafts for ATM withdrawals and everyday debit card transactions against your designated account unless you have authorized us to do so*. You understand and agree that even if you have authorized us to do so, you have no right to overdraw your account at any time, for any reason, and our decision to pay Overdraft items is solely within our discretion. You further agree that if we elect to pay Overdraft items, you must deposit additional funds into your designated account immediately in an amount sufficient to cover the Overdraft and to pay us Overdraft fees for each Overdraft item in accordance with our then current Schedule of Fees and Charges. Available credit on an overdraft protection line of credit associated with the designated account may be used to fund ATM/Debit Card transactions when you do not have sufficient collected funds in your designated account(s). If the amount of the Overdraft causes you to exceed the amount of credit available on the overdraft protection line of credit or balance in the overdraft protection deposit account linked to the overdrawn deposit account, you agree to pay the amount by which the deposit account has been overdrawn, plus all associated fees and charges as reflected in our then current Schedule of Fees and Charges and the applicable line of credit agreement.

* Applies only to consumer accounts.

6. Transactions That Are Not Completed: If we do not complete a transfer to or from your account on time or in the correct amount according to our Agreement with you, we will be liable for your losses or damages. However, there are some exceptions. We will not be liable, for instance:

- (A) If, through no fault of ours, you do not have enough money in your account to make the transfer;
- (B) if we have terminated this Agreement for any reason;
- (C) if the funds in your designated accounts are subject to legal process or other encumbrance restricting the transaction;
- (D) if circumstances beyond our control (such as fire or flood) prevent the transaction from being completed despite reasonable precautions that we have taken; if the transfer would exceed the available credit on your overdraft line of credit;
- (E) if an ATM does not have enough cash to complete the transaction;
- (F) if there is a technical malfunction in the ATM that is known to you when you try to perform the transaction;
- (G) if we have reason to believe that you or someone else is using our electronic banking services for fraudulent or illegal purposes;
- (H) Section 4 of this Agreement entitled "Limitations on Transactions" contains a list of transactions we will not complete;
- (I) if your ATM/Debit Card has deteriorated or has been damaged so that it does not function properly;
- (J) if your ATM/Debit Card or PIN has been reported lost or stolen. There may also be other exceptions as provided by applicable law, or
- (K) if the transfer would exceed the available credit on your overdraft line of credit.

You agree that we will not be liable for any damages resulting from a failure or refusal for any reason to authorize a transaction that you have attempted. You further agree that we will not be responsible or liable for a merchant's refusal to accept your ATM/Debit Card.

7. Charges for ATM/Debit Card Transactions: When you use your ATM/Debit Card at a non-Capital One Bank branded ATM, the ATM owner/operator may charge you a fee for your use of their ATM, and you may be charged a fee for a balance inquiry even if you do not complete a transaction. The fee charged should be disclosed to you on the ATM, and you should be given an opportunity to cancel the transaction before the fee is imposed. You may also be charged a fee by us, as disclosed in our then current Schedule of Fees and Charges, for each cash withdrawal, funds transfer or balance inquiry that you may make using a non-Capital One Bank branded ATM. You will not be charged this fee at most ATMs owned and operated by Capital One Bank, except at certain gaming establishments and other non-branch locations, where we may charge a fee for each cash withdrawal. The amount of fees charged at such ATMs at non-branch locations varies. Any fee charged will be displayed on the ATM screen and you will be given an opportunity to cancel the transaction before the fee is imposed. Please refer to our then current Schedule of Fees and Charges for the amount of this fee.

For international transactions, MasterCard's currency conversion procedure includes use of either a government mandated exchange rate, or a wholesale exchange rate selected by MasterCard for the processing cycle in which the transaction is processed, increased by an adjustment factor established from time to time by MasterCard. The currency conversion rate used by MasterCard on the processing date may differ from the rate that would have been used on the purchase date or cardholder statement posting date.

Withdrawals from an ATM outside of the United States, Puerto Rico, and U.S. Virgin Islands may incur an international transaction fee, as disclosed in our then current Schedule of Fees and Charges.

8. Receipts and Account Statement: You will be given a receipt for transactions made with your ATM/Debit Card at ATMs owned by Capital One Bank where this option is offered, unless you decline to receive the receipt. Your periodic account statement(s) for your designated accounts will also detail electronic transfer activity on the designated account. Generally, if you have a consumer account, you will receive a monthly statement if you have an EFT in that month. In any case, you will get the statement at least quarterly.

9. In Case of Errors or Questions About Your Electronic Transfers:

(For information pertaining to the error resolution process for international wire transfers, please refer to the Wire Funds Transfer Disclosure Statement and related disclosures.)

Call us at: 1 (866) 536-9023,
Write us at: Capital One, N.A.
P O Box 31277
Salt Lake City, Utah 84130-0277
Attn: Customer Service Center

or e-mail us using the Contact Us link in the Customer Service section of www.capitalonebank.com, as soon as you can if you think your statement or receipt is wrong or if you need more information about a transfer listed on the statement or receipt.

The following section applies only to consumer accounts: We must hear from you no later than sixty (60) days after we sent you the FIRST statement on which the problem or error appeared.

- (1) Tell us your name and account number.
- (2) Describe the error or transfer you are unsure about, and explain as clearly as you can why you believe it is an error, or why you need more information.
- (3) Tell us the dollar amount of the suspected error.

If you tell us verbally, we may require that you send us your complaint or question in writing within ten (10) business days.

We will determine whether an error occurred within ten (10) business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to forty-five (45) days (ninety (90) days for those transactions at merchant POS terminals, processed on a new account, or initiated outside the United States) to investigate your complaint or question. If we decide to do this, we will credit your account within ten (10) business days for the amount you think is in error, so that you will have full use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within ten (10) business days, we may not credit your account.

For errors involving new accounts, we may take up to twenty (20) business days to credit your account for the amount you think is in error.

We will tell you the results within three (3) business days after completing our investigation. If we decide that there was no error, we will send you a written explanation. You may ask for copies of the documents that we used in our investigation.

The following section applies only to commercial accounts: If you are a business or other entity that is not a natural person, the above referenced procedures do not apply to any accounts held by you. If you believe that an unauthorized transaction has occurred, we must hear from you within twenty four (24) hours of the time the transaction posts to your account. We will require you to submit an affidavit of unauthorized activity in connection with any such transaction immediately thereafter.

(A) Right to stop payment: if you have authorized regular payments out of your account, you can stop any of these payments. If the account requires multiple signatures to transact the withdrawal of funds, it is understood that we will recognize and accept stop payment instructions from any one authorized signer. Here is how: Visit your nearest Capital One Bank location, or e-mail us using the Contact Us link in the Customer service section of www.capitalonebank.com. You may also:

10. Pre-Authorized Payments:

Call us at: 1 (800) 655-2265, or
Write us at: Capital One, N.A.
3939 W. John Carpenter Frwy.
Irving, TX 75063
Attn: Customer Service Center

We must receive your request at least three (3) business days before the payment is scheduled to be made. If you call us, we may also require you to put your request in writing to the above address and to get it to us within fourteen (14) days after you call. If you do not, then your verbal request will expire after fourteen (14) days. We will charge you a fee, as disclosed in our then current Schedule of Fees and Charges, for each stop payment order you give.

Merchants may allow returns or refunds on purchases; however, except as provided above for recurring payments you cannot stop a one-time payment on any ATM/Debit Card transactions. For this reason, you should inquire about the merchant's return or refund policy before entering into a purchase transaction. Merchandise purchased using your ATM/Debit Card that is subsequently returned will be reflected as a credit on your designated account statement, provided you elect to have the return credited to your designated account. Please refer to section 9 for information on error resolution.

(B) Varying amounts: If these regular payments vary in amount, the person you are paying must tell you ten (10) days before each payment when it will be made and how much it will be. If you do not know this information, you may be unable to have the payment stopped without closing your account. (You may choose instead to get this notice only when the payment would differ by more than a certain amount from the previous payment, or when the amount would fall outside certain limits that you set.)

(C) Liability: If you order us to stop one of these payments three (3) business days or more before the transfer is scheduled, and we do not do so, we will be liable for your actual losses or damages. We will pay other damages only as required by applicable law. *We will not be liable for any consequential or special losses or damages unless we act in bad faith. In addition, we will not be liable if the merchant or other third party initiating the transaction changes the dollar amount of the transaction or makes other changes so that we do not recognize it as the payment you stopped.*

11. Verifying Pre-Authorized Deposits: You can verify whether a direct deposit has been processed to your account by calling us at 1 (800) 655-2265.

12. Joint Accounts: If more than one person signed your request for electronic banking services, each person who signed will be bound by this Agreement and will be responsible for paying all amounts owed as a result of this Agreement. If two (2) signatures are required to transact business on a designated account any ONE (1) signer may initiate an electronic banking transaction on the account.

13. Authorized Users: You should not allow unauthorized persons to use your ATM/Debit Card and PIN without first advising us in writing that you are adding them as an authorized user. You must also advise us in writing should such persons no longer be authorized to use your ATM/Debit Card.

14. Liability for Unauthorized Transfers on Consumer Accounts Only:

(A) Tell us at ONCE if you believe your ATM/Debit Card has been lost or stolen, or if you believe that an electronic fund transfer has been made without your permission. Telephoning is the best way of keeping your possible losses down. You could lose all the money in your designated accounts (plus any available revolving line of credit, if applicable). If you tell us within two (2) business days after you learn of the loss or theft, you can lose no more than \$50.00 if someone used your ATM/Debit Card without your permission.

(B) If you DO NOT tell us within two (2) business days after you learn of the loss or the theft of your ATM/Debit Card, and we can prove we could have stopped someone from using your ATM/Debit Card without your permission if you had told us, you could lose as much as \$500.00.

(C) If you think that a transfer or withdrawal shown on your periodic statement is incorrect, or if you believe an unauthorized transfer or withdrawal has taken place, including those made by your ATM/Debit Card, code or other means, contact us at once. We must be notified within sixty (60) days after the first statement we mailed to you on which the suspected problem appeared. If you do not contact us within this sixty (60) day time period, you could be held responsible for all unauthorized transfers and withdrawals that occurred between the end of the sixty (60) day period and the time you actually notified us if the transaction could have been prevented if we had been notified.

(D) If a good reason (such as a long trip or a hospital stay) kept you from telling us, we may extend the above time periods.

(E) If you believe that your ATM/Debit Card has been lost or stolen or that someone has transferred or may transfer money from your account without your permission, you may e-mail us using the Contact Us link in the Customer service section of www.capitalonebank.com. You may also:

Call us at: 1(800) 655-2265, or
Write us at: Capital One, N.A.
3939 W. John Carpenter Frwy.
Irving, TX 75063
Attn: Customer Service Center

15. MasterCard Zero Liability: You may have additional rights under the MasterCard rules. Provided that the PIN is not used as the cardholder verification method, you will not be responsible for unauthorized use of the Platinum Debit and Business Debit Cards under the following conditions:

(A) Your account is in good standing;

(B) You have exercised reasonable care in safeguarding your card from any unauthorized use. Unauthorized use means that you did not provide directly, by implication or otherwise, the right to use your card and you received no benefit from the "unauthorized" purchase; and

(C) You have not reported two or more unauthorized events in the past 12 months.

If you have questions regarding zero liability coverage or you suspect unauthorized use of your ATM/Debit card, contact us IMMEDIATELY.

16. Evidence: If we go to court for any reason, we can use a copy, microfilm, or microfiche of any document or electronic documentation, e-mail, or database information to prove what you owe or that a transaction has taken place. These facsimiles will have the same validity as the original documents.

17. Our Rules and Regulations and Other Agreements: The designated deposit accounts are also subject to other agreements that you may have with us including, but not limited to, our Rules Governing Deposit Accounts and Online Banking Terms and Conditions.

18. Disclosure of Information About Your Account: In the ordinary course of business, we may disclose information to third parties about your designated accounts or the transfers you make:

- Where it is necessary for completing transfers or resolving errors involving transfers;
- In order to verify the existence and condition of your account for a third party, such as a consumer reporting agency or a merchant;
- In order to comply with orders or subpoenas of government agencies or courts;
- If you give us your written permission;
- As disclosed in our Privacy Notice; or
- As otherwise permitted by law.

19. Our Business Days: For purposes of this Agreement, our business days are Monday through Friday. Federal holidays or other days we are closed are not considered business days.

20. Terminating This Agreement: You can terminate this Agreement at any time by notifying us in writing. We reserve the right to deactivate any ATM/Debit Card that has not been used for an extended period of time. We can also terminate this Agreement at any time. The termination of this Agreement by either party will not affect your obligations under this Agreement, even if we allow any transaction to be completed after this Agreement has been terminated.

21. Changing This Agreement: We have the right to change the terms of this Agreement from time to time. We will notify you at least twenty-one (21) days before the change will take effect if the change will cause you greater costs or liability or if it will limit your access to your designated accounts. We will not have to notify you in advance, however, if the change is necessary for security reasons.

22. Notices: All notices from us will be effective when we have e-mailed them, mailed them or delivered them to the last address that we have for you in our records. Notices from you will generally be effective when received at the appropriate address specified in this Agreement; but notices under Section 14 ("Liability for Unauthorized Transfers on Consumer Accounts Only") will be effective once you have done whatever is reasonably necessary to give us the information we need. A mailed notice will be considered delivered to us when it is received by us at the notice address in Section 14 of this Agreement. If more than one person signs your request for electronic banking services, notice to or from one of the people who signed the request will be effective for everybody who signed.

23. Collection Expenses: If we have to file a lawsuit to collect whatever you owe us, you will pay our reasonable expenses, including attorney's fees.

24. Governing Law: Any questions under this Agreement will be decided by applicable Federal law, or, if no Federal law exists, applicable state law. If any term of this Agreement cannot legally be enforced, the Agreement is to be considered changed to the extent necessary to comply with the law.

25. Acceptance of This Agreement: You have agreed to be bound and obligated under the terms of this Agreement and any subsequent amendments to this Agreement by using our electronic banking services.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Capital One Hit with Class Action Over Fees for ATM Balance Inquiries](#)
