

Philip A. Goldstein  
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*Attorney for Defendant Capital One Bank (USA), N.A.*

IN THE UNITED STATES DISTRICT COURT  
 FOR THE DISTRICT OF NEW JERSEY  
 NEWARK DIVISION

----- X		
SERGIO D. FIORARANCIO, on behalf of himself	:	Civil Action No. 2:20-cv-18103
and those similarly situated,	:	
	:	(Removed from the Superior Court of the
Plaintiffs,	:	State of New Jersey, Law Division, Essex
	:	County, Docket No. ESX-L-007247-20)
v.	:	
	:	<b><u>NOTICE OF REMOVAL</u></b>
CAPITAL ONE BANK (USA) N.A.,	:	
	:	
Defendant.	:	
	:	
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**TO THE CLERK OF COURT:**

PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§ 1331, 1441, and 1446, Defendant Capital One Bank (USA), N.A. (“Capital One”), by and through its undersigned counsel, hereby removes the above-entitled action from the Superior Court of New Jersey, Law Division, Essex County, to the United States District Court for the District of New Jersey, Newark Division, on the ground of federal question jurisdiction. In support of its Notice of Removal, and in accordance with 28 U.S.C. § 1446, Capital One avers as follows:

**I. PLEADINGS AND FILINGS IN SUPERIOR COURT**

1. On or about October 27, 2020, Plaintiff Sergio Fiorarancio (“Plaintiff”) filed a Class Action Complaint (“Complaint”) in the Superior Court of New Jersey, Law Division, Essex

County, captioned *Sergio D. Fiorarancio, on behalf of himself and those similarly situated, v. Capital One Bank (USA) N.A.* (the “State Court Action”), bearing docket number ESX-L-007247-20. Pursuant to 28 U.S.C. § 1446(a), true and correct copies of all process, pleadings, and orders served upon Capital One are attached hereto as **Exhibit A**.

## **II. TIMELINESS OF REMOVAL**

2. The removal of this action to this Court is timely because Plaintiff served Capital One with process on November 5, 2020.

3. Capital One has not filed any responsive pleading in the State Court Action.

4. Pursuant to 28 U.S.C. § 1446(b), the Notice of Removal is to be filed within thirty days of receipt “through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based[.]”

5. Capital One has filed this Notice of Removal within 30 days of the first date upon which it was served with any paper giving it knowledge that the action was removable, i.e., the Complaint.

## **III. NATURE OF THE ACTION**

6. Plaintiff’s Complaint asserts that he and the putative class he seeks to represent “obtained a discharge of their debt through a bankruptcy proceeding and after the discharge, the Defendant [Capital One] pulled or obtained a consumer report about that person by certifying that it was for an account review and without a permissible purpose or written authorization within the 5 year period preceding the filing of this complaint.” *See* Exh. A (Complaint), ¶ 7.

7. Plaintiff’s Complaint asserts two (2) purported causes of action for:

- (1) Violation of Fair Credit Reporting Act (15 U.S.C. § 1681n); and
- (2) Violation of Fair Credit Reporting Act (15 U.S.C. § 1681o).

*See id.* ¶¶ 33-55.

#### **IV. REMOVAL JURISDICTION**

8. Article III of the Constitution vests federal courts with the authority to hear “all cases, in Law and Equity, arising under th[e] Constitution [or] the Laws of the United States.” U.S. Const. Art. III, § 2. Further, 28 U.S.C. § 1331 vests federal district courts with subject-matter jurisdiction over cases involving questions of federal law: “The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. As such, this Court has jurisdiction over any claim presenting a federal question.

9. Plaintiff’s Complaint asserts claims for violations of a federal statute—the Fair Credit Reporting Act, 15 U.S.C. §§ 1681 *et seq.*—meaning they are federal claims “arising under” the laws of the United States. *See* Compl. ¶¶ 33-55. Accordingly, this Court has subject matter jurisdiction over the action pursuant to 28 U.S.C. § 1331.

10. Thus, this action is one that may be removed to this Court pursuant to the provisions of 28 U.S.C. §§ 1441(a) and 1446(b) on the ground that this action raises federal questions and arises under federal law.

#### **V. VENUE**

11. The United States District Court for the District of New Jersey is the proper venue for this action because it is the federal district court that embraces the Superior Court of New Jersey, Essex County, the forum in which the original action was filed and is pending. *See* 28 U.S.C. §§ 1441(a) and 1446(a).

#### **VI. NOTICE**

12. In accordance with 28 U.S.C. § 1446(d), concurrent with filing this Notice of Removal, Capital One will file a copy of the Notice of Removal with the Clerk of the Superior Court

of New Jersey, Law Division, Essex County, and will attach a copy of this Notice of Removal thereto. A copy of the Notice to State Court and Adverse Parties of Filing of Notice of Removal to Federal Court is attached hereto as **Exhibit B**.

**VII. MISCELLANEOUS**

13. This action has not previously been removed to federal court.

14. By filing this Notice of Removal, Capital One does not waive any defenses either procedural or substantive, that may be available to it, including, but not limited to, its right to contest in personam jurisdiction, improper service of process or the absence of venue in this Court or in the court from which the action has been removed.

15. Capital One expressly reserves and does not waive its right to amend this Notice of Removal and/or offer evidence supporting the Court's jurisdiction over this action.

WHEREFORE, Capital One removes the State Court Action from the Superior Court of the State of New Jersey, Law Division, Essex County, pursuant to 28 U.S.C. §§ 1331, 1441 and 1446.

Dated: New York, New York  
December 4, 2020

**MCGUIREWOODS LLP**

By: /s/ Philip A. Goldstein  
Philip A. Goldstein  
MCGUIREWOODS LLP  
1251 Avenue of the Americas, 20<sup>th</sup> Floor  
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*Attorney for Defendant Capital One Bank  
(USA), N.A.*

# **EXHIBIT A**

Yongmoon Kim - 026122011  
KIM LAW FIRM LLC  
411 Hackensack Avenue, Suite 701  
Hackensack, New Jersey 07601  
Tel. & Fax (201) 273-7117  
ykim@kimlf.com  
*Attorneys for Plaintiff*

SERGIO D. FIORARANCIO, *on behalf of  
himself and those similarly situated,*

Plaintiff,

vs.

CAPITAL ONE BANK (USA) N.A.

Defendant.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: ESSEX COUNTY

Civil Action

Docket No. ESX-L7247-20

**SUMMONS**

From The State of New Jersey To The Defendant(s) Named Above:

The plaintiff, named above, have filed a lawsuit against you in the Superior Court of New Jersey. The complaint attached to this summons states the basis for this lawsuit. If you dispute this complaint, you or your attorney must file a written answer or motion and proof of service with the deputy clerk of the Superior Court in the county listed above within 35 days from the date you received this summons, not counting the date you received it. (A directory of the addresses of each deputy clerk of the Superior Court is available in the Civil Division Management Office in the county listed above and online at [http://www.judiciary.state.nj.us/prose/10153\\_deptyclerklawref.pdf](http://www.judiciary.state.nj.us/prose/10153_deptyclerklawref.pdf).) If the complaint is one in foreclosure, then you must file your written answer or motion and proof of service with the Clerk of the Superior Court, Hughes Justice Complex, P.O. Box 971, Trenton, NJ 08625-0971. A filing fee payable to the Treasurer, State of New Jersey and a completed Case Information Statement (available from the deputy clerk of the Superior Court) must accompany your answer or motion when it is filed. You must also send a copy of your answer or motion to plaintiffs' attorneys whose names and addresses appear above, or to plaintiffs, if no attorney is named above. A telephone call will not protect your rights; you must file and serve a written answer or motion (with fee of \$175.00 and completed Case Information Statement) if you want the court to hear your defense.

If you do not file and serve a written answer or motion within 35 days, the court may enter a judgment against you for the relief plaintiffs demands, plus interest and costs of suit. If judgment is entered against you, the Sheriff may seize your money, wages or property to pay all or part of the judgment.

If you cannot afford an attorney, you may call the Legal Services office in the county where you live or the Legal Services of New Jersey Statewide Hotline at 1-888-LSNJ-LAW (1-888-576-5529). If you do not have an attorney and are not eligible for free legal assistance, you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A directory with contact information for local Legal Services Offices and Lawyer Referral Services is available in the Civil Division Management Office in the county listed above and online at [http://www.judiciary.state.nj.us/prose/10153\\_deptyclerklawref.pdf](http://www.judiciary.state.nj.us/prose/10153_deptyclerklawref.pdf).

Dated: October 30, 2020

/s/ Michelle M. Smith

Michelle M. Smith  
Clerk of the Superior Court of New Jersey

Name of Defendant to be served:

**Capital One Bank (USA) N.A.**

Address of Defendant to be served:

**c/o Corporation Service Company  
Princeton South Corporate Center, Suite 160  
100 Charles Ewing Boulevard  
Ewing, New Jersey 08628**

Yongmoon Kim (NJ Attorney ID: 026122011)  
KIM LAW FIRM LLC  
411 Hackensack Avenue, Suite 701  
Hackensack, New Jersey 07601  
Tel. & Fax (201) 273-7117  
ykim@kimlf.com

Scott C. Borison (*pro hac vice* to be filed)  
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1400 S. Charles Street  
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Fax (301) 620-1018  
borison@legglaw.com

*Attorneys for Plaintiff*

SERGIO D. FIORARANCIO, *on behalf of  
himself and those similarly situated,*

Plaintiff,

vs.

CAPITAL ONE BANK (USA) N.A.

Defendant.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: ESSEX COUNTY

Docket No. ESX-L-\_\_\_\_\_

CIVIL ACTION

**CLASS ACTION COMPLAINT  
AND JURY DEMAND**

Plaintiff, Sergio D. Fiorarancio (“Fiorarancio”), by way of Class Action Complaint against the Defendant Capital One Bank (USA) N.A. (“Capital One”) alleges and states:

**I. NATURE OF THE ACTION**

1. Plaintiff brings this action to secure redress for Defendant Capital One’s course of conduct that included accessing Plaintiff’s credit report without consent or any lawful reason, in violation of the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681 et seq.



## II. JURISDICTION AND VENUE

2. Venue is properly in Essex County as the Defendant regularly conducts business there.

## III. PARTIES

3. Plaintiff is an individual who was a resident and domiciled in the State of New Jersey.

4. Defendant is Capital One, which is a national bank with its principal place of business in Virginia.

5. The Defendant has willfully and intentionally participated in the wrongful conduct complained of herein and caused injury to the Plaintiff and others similarly situated to the Plaintiff.

## IV. CLASS DEFINITION

6. This action is brought and may properly proceed as a class action, pursuant to the provisions of Rule 4:32 of the New Jersey Court Rules.

7. Fiorarancio also sues on behalf of others who are similarly situated to Fiorarancio.

This Class of persons consists of the following persons:

Any person who obtained a discharge of their debt through a bankruptcy proceeding and after the discharge, the Defendant pulled or obtained a consumer report about that person by certifying that it was for an account review and without a permissible purpose or written authorization within the 5 year period preceding the filing of this complaint. **This definition may be amended or modified, including to expand the class.**

## V. FACTS

8. On August 21, 2018, Fiorarancio filed a Chapter 7 bankruptcy proceeding under Title 11 before the United States Bankruptcy Court for the District of New Jersey. Prior to the bankruptcy filing, the Plaintiff had a credit card that was issued by the Defendant.

9. As a result of the bankruptcy proceeding, on November 21, 2018, Fiorarancio was granted a discharge of his *in personam* liability for debts, including any debt owed for the credit card issued by Capital One.

10. There was no other *in personam* relationship established or created between Fiorarancio and Capital One after Fiorarancio filed his bankruptcy.

11. Fiorarancio did not seek credit of any type from Capital One after his bankruptcy filing.

12. Capital One knew of Fiorarancio's bankruptcy filing and the grant of a discharge.

13. Despite the discharge and the absence of any *in personam* credit relationship between Fiorarancio and Capital One, Capital One accessed Fiorarancio's personal information after the discharge.

14. Capital One obtained information from a consumer reporting agency about Fiorarancio on December 3, 2018 purported as an account review.

15. Fiorarancio had not requested credit from the Defendant, nor was it a replacement for any other credit Fiorarancio had.

16. Fiorarancio did not have any credit relationship with the Defendant.

17. Fiorarancio had not authorized Defendant to obtain his private credit report or any information.

## VI. CLASS ACTION ALLEGATIONS

18. This action is brought as a Class Action under Rule 4:32. Plaintiff proposes to represent himself and the Class defined above.

19. The named Plaintiff falls within the Class definition above and is a class member.

20. The particular members of the Class are capable of being described without

difficult managerial or administrative problems. The members of the Class are readily identifiable from the information and records in the possession, custody or control of the Defendant and the records of the consumer reporting agencies since they charge the Defendant for each pull made by it.

21. Upon information and belief, the Class is sufficiently numerous such that individual joinder of all members is impractical. This allegation is based on the fact that Defendant is a substantial servicer across the country and in New Jersey.

22. There are questions of law and fact common to the Class which predominate over any questions affecting only the individual members of the Class and, in fact, the wrongs alleged against the Defendant are identical. The common issues include, but are certainly not limited to:

- A. Whether the Defendant obtained or pulled information about the Plaintiff and members of the Class from a consumer reporting agency;
- B. Whether the Defendant can show any permissible purpose or written authorization to obtain or pull private credit information about the Plaintiff or the members of the Class;
- C. Whether the Defendant acted willfully, as that term has been interpreted under the FCRA, when it pulled or obtained the private information about the Plaintiff or other members of the Class;
- D. Whether the Defendant acted negligently when it pulled or obtained the private information about the Plaintiff or other members of the Class;
- E. The amount of statutory damages to be assessed against the Defendant;
- F. Whether an award of punitive damages against Defendant is appropriate;
- G. The amount of damages to be assessed against the Defendant.

23. The Plaintiff's claims are the same as each member of the Class and are based on the same legal and factual theories.

24. There is nothing unusual about the Plaintiff to warrant a material difference between his claims and the claims of the members of the Class.

25. Defendant's likely defenses (though unavailing) are and will be typical of and the same or identical for each of the class members and will be based on the same legal and factual theories. There are no valid, unique defenses.

26. The named Plaintiff will fairly and adequately represent and protect the interests of the Class.

27. The named Plaintiff has retained counsel that is experienced in consumer litigation and class actions. The Plaintiff's counsel have been appointed as class counsel in a number of class actions asserting claims under consumer protection laws.

28. The named Plaintiff does not have any interests antagonistic to the members of the Class.

#### **VII. CERTIFICATION UNDER RULE 4:32**

29. The Defendants have acted on grounds that apply uniformly across the Class, so that the statutory relief afforded pursuant to 15 U.S.C. § 1681n or alternatively 15 U.S.C. § 1681o is appropriate respecting the Class as a whole. Further, the common questions predominate over any individual questions and a class action is superior for the fair and efficient adjudication of this controversy. A class action will cause an orderly and expeditious administration of class members' claims, and economies of time, effort, and expenses will be fostered and uniformity of decisions will be ensured.

30. There are no individual questions to establish the claims of the Plaintiff and the

class members. The claims are based on the Defendant obtaining private information held by consumer reporting agencies by certifying to consumer reporting agencies that it had the right to obtain information for an account review when Defendant did not have either a permissible purpose or written authorization to pull or obtain the private information of the Plaintiff and members of the Class.

31. Plaintiff's claims are typical of the claims of the class members.

32. The class members have suffered damages, losses, and harm similar to those sustained by the named Plaintiff. This includes the invasion of their privacy. All are entitled to the statutory damages allowed by the FCRA and to any punitive damages that may be awarded.

**VIII. COUNT I - FAIR CREDIT REPORTING ACT  
(VIOLATION OF 15 U.S.C. § 1681n)**

33. Fiorarancio incorporates the foregoing paragraphs.

34. The FCRA, 15 U.S.C. § 1681b, provides it is only permissible to obtain a credit report on a consumer with the written consent of the consumer or for certain "permissible purposes", which insofar as pertinent are the extension of credit to, or review or collection of an account of, the consumer, employment purposes, the underwriting of insurance, or in connection with a business transaction that is initiated by the consumer.

35. The requester must affirmatively certify to the consumer reporting agency that a permissible purpose exists. 15 U.S.C. § 1681b(f).

36. Defendant, acting in concert with others, obtained or pulled the consumer report of Fiorarancio and the members of the Class after certifying it was obtaining the report as an account review when the Defendant did not have written permission or a "permissible purpose".

37. To obtain the consumer report of Fiorarancio and the other class members, the Defendant had to affirmatively provide certification.

38. The Defendant knew that it did not have any right to obtain the consumer report of Fiorarancio for an account review. Defendant did not have either written consent or a permissible purpose.

39. The FCRA, 15 U.S.C. § 1681q, provides:

**§ 1681q. Obtaining information under false pretenses**

Any person who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses shall be fined under title 18, United States Code, imprisoned for not more than 2 years, or both.

40. The Defendant obtained information about Fiorarancio and the other Class members under false pretenses since the Defendant did not have an account to review, a permissible purpose or written permission.

41. The FCRA, 15 U.S.C. § 1681n, provides:

**§ 1681n. Civil liability for willful noncompliance**

**(a) In general.** Any person who willfully fails to comply with any requirement imposed under this title [15 USC §§ 1681 et seq.] with respect to any consumer is liable to that consumer in an amount equal to the sum of—

**(1)**

**(A)** any actual damages sustained by the consumer as a result of the failure or damages of not less than \$100 and not more than \$1,000; or

**(B)** in the case of liability of a natural person for obtaining a consumer report under false pretenses or knowingly without a permissible purpose, actual damages sustained by the consumer as a result of the failure or \$1,000, whichever is greater;

**(2)** such amount of punitive damages as the court may allow; and

**(3)** in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

42. The FCRA, 15 U.S.C. § 1681p, provides:

**§ 1681p. Jurisdiction of courts; limitation of actions**

An action to enforce any liability created under this title [15 USC §§ 1681 et seq.] may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, not later than the earlier of—

- (1) 2 years after the date of discovery by the plaintiff of the violation that is the basis for such liability; or
- (2) 5 years after the date on which the violation that is the basis for such liability occurs.

43. The Plaintiff and the other class members have had their privacy illegally invaded as a result of Defendant's willful actions and they are entitled to statutory damages allowed by the FCRA.

44. The Defendant's actions support an award of punitive damages since they acted knowingly including making false certifications to pull or obtain the private information of the Plaintiff and other class members.

**IX. PRAYER FOR RELIEF**

45. Wherefore, the Plaintiff prays for the following relief and judgment in his favor and the other members of the class and against the Defendant under this Court:

- a. The Court certify a class of persons defined herein as may be modified or amended;
- b. Appoint Plaintiff and his counsel to represent the certified Class;
- c. Award statutory damages to the Plaintiff and each class member;
- d. Award punitive damages against the Defendant;
- e. Award the Plaintiff and the Class their costs, including attorney fees.
- f. Award such other and further relief as may be appropriate and proper.

**X. COUNT II - FAIR CREDIT REPORTING ACT  
(VIOLATION OF 15 U.S.C. § 1681o)**

46. Fiorarancio incorporates the foregoing paragraphs.

47. The FCRA, 15 U.S.C. § 1681b, provides it is only permissible to obtain a credit report on a consumer with the written consent of the consumer or for certain “permissible purposes”, which insofar as pertinent are the extension of credit to, or review or collection of an account of, the consumer, employment purposes, the underwriting of insurance, or in connection with a business transaction that is initiated by the consumer.

48. The requester must affirmatively certify to the consumer reporting agency that a permissible purpose exists. 15 U.S.C. § 1681b(f).

49. Defendant, acting in concert with others, obtained or pulled the consumer report of Fiorarancio and the members of the class after certifying it was obtaining the report as an account review when the Defendant did not have written permission or a “permissible purpose”.

50. To obtain the consumer report of Fiorarancio and the other class members, the Defendant had to affirmatively provide certification.

51. The Defendant knew or should have known that it did not have any right to obtain the consumer report of Fiorarancio for an account review.

52. The Defendant knew or should have known that it did not have either written consent or a permissible purpose.

53. Alternatively, if the Defendant did not violate 15 U.S.C. § 1681n, the Defendant violated 15 U.S.C. § 1681o, which states:

**(a)In general.** Any person who is negligent in failing to comply with any requirement imposed under this title [15 USCS §§ 1681 et seq.] with respect to any consumer is liable to that consumer in an amount equal to the sum of—

**(1)** any actual damages sustained by the consumer as a



result of the failure; and

(2) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

**(b)Attorney's fees.** On a finding by the court that an unsuccessful pleading, motion, or other paper filed in connection with an action under this section was filed in bad faith or for purposes of harassment, the court shall award to the prevailing party attorney's fees reasonable in relation to the work expended in responding to the pleading, motion, or other paper.

54. The Plaintiff and the other class members have had their privacy illegally invaded as a result of Defendant's negligent actions and they are entitled to damages allowed by the FCRA.

#### **XI. PRAYER FOR RELIEF**

55. Wherefore, the Plaintiff prays for the following relief and judgment in his favor and the other members of the Class and against the Defendant under this Count:

- a. The Court certify a class of persons defined herein as may be modified or amended;
- b. Appoint Plaintiff and his counsel to represent the certified Class;
- c. Award damages to the Plaintiff and each class member;
- d. Award the Plaintiff and the Class their costs, including attorney fees.
- e. Award such other and further relief as may be appropriate and proper.

#### **XII. JURY DEMAND**

Plaintiff demands trial by jury as to all claims and defenses.

#### **XIII. DESIGNATION OF TRIAL COUNSEL**

Pursuant to Rule 4:25-4, Plaintiff hereby designates Yongmoon Kim of the Kim Law Firm LLC as trial counsel in this matter.

#### **XIV. CERTIFICATION**

I hereby certify that confidential personal identifiers have been redacted from documents

now submitted to the Court, and will be redacted from all documents submitted in the future in accordance with R. 1:38-7(b). I further certify that the causes alleged herein is not the subject of any other action pending in any Court or arbitration proceeding. Furthermore, at this time, joinder of any additional parties is not necessary or anticipated to be necessary in the future.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

KIM LAW FIRM LLC

Dated: October 27, 2020

/s/ Yongmoon Kim  
Yongmoon Kim, Esq.

Scott C. Borison, Esq. (*pro hac vice* to be filed)  
BORISON FIRM, LLC  
1400 S. Charles St.  
Baltimore MD 21230  
Telephone (301) 620-1016  
Fax (301) 620-1018  
scott@borisonfirm.com

*Attorneys for Plaintiff*

## Civil Case Information Statement

**Case Details: ESSEX | Civil Part Docket# L-007247-20**

**Case Caption:** FIORARANCIO SERGIO VS CAPITAL ONE  
BANK (US A) N.

**Case Initiation Date:** 10/27/2020

**Attorney Name:** YONGMOON KIM

**Firm Name:** KIM LAW FIRM LLC

**Address:** 411 HACKENSACK AVE STE 701

HACKENSACK NJ 07601

**Phone:** 2012737117

**Name of Party:** PLAINTIFF : Fiorarancio, Sergio, D

**Name of Defendant's Primary Insurance Company**  
(if known): Unknown

**Case Type:** COMPLEX COMMERCIAL

**Document Type:** NJ eCourts Case Initiation Confirmation

**Jury Demand:** YES - 6 JURORS

**Is this a professional malpractice case?** NO

**Related cases pending:** NO

**If yes, list docket numbers:**

**Do you anticipate adding any parties (arising out of same transaction or occurrence)?** NO

**Are sexual abuse claims alleged by: Sergio D Fiorarancio?** NO

**THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE**

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

**Do parties have a current, past, or recurrent relationship?** NO

**If yes, is that relationship:**

**Does the statute governing this case provide for payment of fees by the losing party?** YES

**Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:**

**Do you or your client need any disability accommodations?** NO

**If yes, please identify the requested accommodation:**

**Will an interpreter be needed?** NO

**If yes, for what language:**

**Please check off each applicable category: Putative Class Action?** YES **Title 59?** NO **Consumer Fraud?** NO

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule 1:38-7(b)*

10/27/2020

Dated

/s/ YONGMOON KIM

Signed

ESSEX COUNTY - CIVIL DIVISION  
SUPERIOR COURT OF NJ  
465 MARTIN LUTHER KING JR BLVD  
NEWARK NJ 07102

TRACK ASSIGNMENT NOTICE

COURT TELEPHONE NO. (973) 776-9300  
COURT HOURS 8:30 AM - 4:30 PM

DATE: OCTOBER 28, 2020  
RE: FIORARANCIO SERGIO VS CAPITAL ONE BANK (US A) N.  
DOCKET: ESX L -007247 20

THE ABOVE CASE HAS BEEN ASSIGNED TO: TRACK 4.

DISCOVERY IS PRESUMPTIVELY 450 DAYS BUT MAY BE ENLARGED OR SHORTENED BY THE JUDGE AND RUNS FROM THE FIRST ANSWER OR 90 DAYS FROM SERVICE ON THE FIRST DEFENDANT, WHICHEVER COMES FIRST.  
FROM SERVICE ON THE FIRST DEFENDANT, WHICHEVER COMES FIRST.

THE MANAGING JUDGE ASSIGNED IS: HON KEITH E. LYNOTT

IF YOU HAVE ANY QUESTIONS, CONTACT TEAM 002  
AT: (973) 776-9300.

IF YOU BELIEVE THAT THE TRACK IS INAPPROPRIATE YOU MUST FILE A CERTIFICATION OF GOOD CAUSE WITHIN 30 DAYS OF THE FILING OF YOUR PLEADING.  
PLAINTIFF MUST SERVE COPIES OF THIS FORM ON ALL OTHER PARTIES IN ACCORDANCE WITH R.4:5A-2.

ATTENTION:

ATT: YONGMOON KIM  
KIM LAW FIRM LLC  
411 HACKENSACK AVE STE 701  
HACKENSACK NJ 07601

ECOURTS

# **EXHIBIT B**

Philip A. Goldstein (NJ Bar # 025732001)  
MCGUIREWOODS LLP  
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New York, New York 10020-1104  
(212) 548-2167  
pagoldstein@mcguirewoods.com  
*Attorney for Defendant Capital One Bank (USA), N.A.*

----- X	
SERGIO D. FIORARANCIO, on behalf of himself :	SUPERIOR COURT OF NEW JERSEY
and those similarly situated, :	LAW DIVISION - ESSEX COUNTY
:	:
Plaintiffs, :	:
:	DOCKET NO: ESX-L-007247-20
v. :	:
:	<b>NOTICE TO STATE COURT AND</b>
CAPITAL ONE BANK (USA) N.A., :	<b>ADVERSE PARTIES OF FILING OF</b>
:	<b>NOTICE OF REMOVAL TO</b>
Defendant. :	<b><u>FEDERAL COURT</u></b>
:	:
:	:
----- X	

**TO THE CLERK OF COURT AND TO PLAINTIFF SERGIO D. FIORARANCIO AND HIS ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE** that on December 4, 2020, Defendant Capital One Bank (USA), N.A., filed a Notice of Removal, a copy of which is attached hereto, removing this case to the United States District Court for the District of New Jersey.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to 28 U.S.C. §§ 1331, 1441, 1446 and all other applicable bases for removal, the filing of the Notice of Removal in the Federal Court, together with the filing of this Notice to State Court and Adverse Parties and the copy of the Notice of Removal attached hereto as Exhibit 1, effects the removal of the above-entitled action from this Court to the Federal Court, and this Court may proceed no further with the action unless and/or until the action is remanded.

Dated: New York, New York  
December 4, 2020

**MCGUIREWOODS LLP**

By: /s/ Philip A. Goldstein  
Philip A. Goldstein (NJ Bar # 025732001)  
MCGUIREWOODS LLP  
1251 Avenue of the Americas, 20<sup>th</sup> Floor  
New York, New York 10020-1104  
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*Attorney for Capital One Bank (USA), N.A.*

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.)

I. (a) PLAINTIFFS

SERGIO D. FIORARANCIO, on behalf of himself and those similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Yongmoon Kim, Kim Law Firm LLC, 411 Hackensack Avenue, Suite 701, Hackensack, New Jersey 07601, (201) 273-7117

DEFENDANTS

CAPITAL ONE BANK (USA), N.A.

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

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

Attorneys (If Known)

Philip A. Goldstein, McGuireWoods LLP, 1251 Avenue of the Americas, 20th Floor NY, NY 10020, (212) 548-2167

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

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

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

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

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

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, HABEAS CORPUS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Real Estate, Labor, etc.

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, 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): 15 U.S.C. § 1681, et seq.

Brief description of cause: Alleged violations of the Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq. (alleged impermissible credit pull)

VII. REQUESTED IN COMPLAINT:

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

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

Dec 4, 2020 /s/ Philip A. Goldstein

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE



Philip A. Goldstein  
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pagoldstein@mcguirewoods.com

*Attorney for Defendant Capital One Bank (USA), N.A.*

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
NEWARK DIVISION

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SERGIO D. FIORARANCIO, on behalf of himself :	
and those similarly situated, :	Civil Action No. 2:20-cv-18103
	:
Plaintiffs, :	(Removed from the Superior Court of the
	: State of New Jersey, Law Division, Essex
v. :	: County, Docket No. ESX-L-007247-20)
	:
CAPITAL ONE BANK (USA) N.A., :	
	: <b><u>CERTIFICATE OF SERVICE</u></b>
Defendant. :	
	:
	:
----- X	

I HEREBY CERTIFY that on December 4, 2020, I caused a true and correct copy of the foregoing Notice of Removal and accompanying exhibits to be served via electronic filing, electronic mail and/or U.S. first class mail, postage prepaid, on Plaintiff to the following as noted below:

Yongmoon Kim (via eCourts, first class mail, and email)  
Kim Law Firm LLC  
411 Hackensack Avenue, Suite 701  
Hackensack, New Jersey 07601  
Email: ykim@kimlf.com

Scott C. Borison (via email and first class mail)  
Borison Firm, LLC  
1400 S. Charles Street  
Baltimore, Maryland 21230

Email: borison@legglaw.com

*Attorneys for Plaintiff*

Dated: December 4, 2020

/s/ Philip A. Goldstein  
Philip A. Goldstein

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Capital One Unlawfully Obtained Credit Reports for Accounts Discharged in Bankruptcy, Class Action Claims](#)

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