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IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

TANYA FITZPATRICK, an individual, on behalf  
of herself and all others similarly situated,

Plaintiff,

vs.

CAPITAL ONE FINANCIAL CORPORATION,

Defendant.

No.

**CLASS ACTION COMPLAINT**  
**JURY TRIAL DEMANDED**

1 Plaintiff Tanya Fitzpatrick, on behalf of herself and all persons similarly situated, alleges the  
2 following:

3 **INTRODUCTION**

4 1. The COVID-19 pandemic devastated the economy and placed millions of people in  
5 financial distress.<sup>1</sup> Among those who suffered were credit card customers, many of whom were drawn  
6 into a cycle of high interest and late fees that further threatened their well-being.

7 2. For example, if a customer does not make a credit card payment by the due date set by  
8 Defendant Capital One Financial Corporation (“Capital One”), or pays an amount that is below the  
9 minimum payment required by Capital One, Capital One charges late fees of up to \$40 and interest on  
10 any balances—including interest on those late fees—carried over to the next month.

11 3. Through the imposition of these and other fees and penalties, Capital One makes  
12 billions of dollars. Capital One’s profits remained high throughout the global pandemic, due in no  
13 small part to these punitive fees. In 2020, Capital One raked in \$1.243 *billion* in service and other  
14 consumer charges, including late fees.<sup>2</sup>

15 4. In its contracts of adhesion with its credit card customers, Capital One retains  
16 discretion to charge, waive, or refund late fees and interest on unpaid balances. In the face of public  
17 pressure<sup>3</sup> and in a bid to obtain good publicity and attract more business and investors, Capital One  
18 exploited this discretion during the COVID-19 crisis by repeatedly promising its credit card customers  
19 that it was “here to help” with the financial distress caused by the pandemic and promising to use that  
20 discretion to give its customers a lifeline. It promised “assistance” in the form of “waiving fees,”  
21 “deferring payments on credit cards,” and “minimum payment assistance.” It advertised that it would  
22 forego charging interest on unpaid balances. It declared that “all customers will be eligible for  
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25 <sup>1</sup> E.g., Ctr. on Budget & Policy Priorities, *Tracking the COVID-19 Recession’s Effects on Food, Housing, and*  
26 *Employment Hardships* (last updated Aug. 9, 2021), <https://www.cbpp.org/sites/default/files/8-13-20pov.pdf>.

27 <sup>2</sup> Capital One, *2020 Annual Report* at 53 (2021), <https://investor.capitalone.com/static-files/1364d634-a3d5-464d-8505-ddf46eda928d>.

28 <sup>3</sup> See *infra* at ¶¶ 24-26.

1 assistance.” And it repeatedly encouraged its credit card customers to “reach out to discuss and find a  
2 solution for you.”<sup>4</sup>

3 5. But these public promises by Capital One were illusory. Even after widely publicizing  
4 its promises to exercise its discretion to waive or refund late fees and interest charges due to the  
5 COVID-19 pandemic, Capital One systematically denied requests for such help from its credit card  
6 customers, reaping enormous profits as a result. It earned these profits to the detriment of customers  
7 who could not make the minimum payment on their credit cards during extreme financial vulnerability.

8 6. Plaintiff Tanya Fitzpatrick is one such customer. She has a Capital One Platinum  
9 Mastercard. Her card is high interest (24.74%), and she must pay a \$95 yearly “membership fee” to  
10 keep the account open if she maintains a balance. During the pandemic, Ms. Fitzpatrick incurred late  
11 fees and interest charges on this card after the pandemic reduced the number of hours she could work.

12 7. Hoping for some relief, she contacted Capital One (just as it encouraged its customers  
13 to do) multiple times to ask for a waiver of these late fees, which were running up already daunting  
14 minimum payment amounts.

15 8. But Capital One did not keep its public promises. Its representatives repeatedly told  
16 them her there was nothing they could do, and Capital One continued to charge late fees and interest  
17 on her unpaid balances. It never exercised the discretion it retained, refusing to even *consider* waiving or  
18 refunding late fees or interest to give her a much-needed respite. As a result, the burden of making her  
19 minimum payments continued to grow.

20 9. Accordingly, Plaintiff brings this action on behalf of herself and a class of all similarly  
21 situated consumers against Capital One for breach of the implied covenant of good faith and fair  
22 dealing, unjust enrichment, and violation of the consumer protection laws of California.

23 10. It is a breach of the covenant of good faith and fair dealing for Capital One to (1)  
24 provide itself discretion as to whether to charge or waive late fees and interest; (2) dishonestly promise  
25 customers that it would waive late fees and interest and provide other financial assistance during the  
26 deadly COVID-19 pandemic; and (3) consistently exercise its discretion in its own favor, thereby

27 \_\_\_\_\_  
28 <sup>4</sup> See *infra* at ¶¶ 27-34.

1 denying in bad faith its most vulnerable customers the full benefit of the contract that Capital One  
2 wrote.

3 11. Additionally, Capital One was and is unjustly enriched as a result of these practices.  
4 Capital One sought to use its widely publicized offers to help its customers who were struggling during  
5 the pandemic to curry favor with the press, the public, investors, and lawmakers. But to maximize the  
6 profits it was raking in from late fees and interest on unpaid credit card balances, Capital One  
7 systematically denied requests for assistance in its behind-the-scenes interactions with its customers.  
8 This double-dealing was unfair, unconscionable, and oppressive.

9 12. Further, by explicitly promising that it would waive late fees and interest, Capital One  
10 misled its customers and other members of the public, including Ms. Fitzpatrick. Plaintiff and other  
11 Class members relied on and suffered financial harm from these promises because they would have  
12 taken action to avoid these punitive practices had they known that Capital One was going to continue  
13 to engage in them during this time of extraordinary financial hardship. Accordingly, these deceptive,  
14 unfair, and unconscionable practices violated the California Unfair Competition Law.

15 13. Plaintiff and other Class members have been injured by Capital One's practices. On  
16 behalf of herself and the Class, Plaintiff seeks damages, restitution, disgorgement, and injunctive relief  
17 for Capital One's unlawful course of conduct.

#### 18 **JURISDICTION AND VENUE**

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

23 15. This Court has jurisdiction over Capital One because Capital One regularly conducts  
24 and/or solicits business in, engages in other persistent courses of conduct in, and/or derives substantial  
25 revenue from products and/or services provided to persons in this District and in this State.

26 16. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Capital One is  
27 subject to personal jurisdiction here and regularly conducts business in the District, and because a  
28

1 substantial part of the events or omissions giving rise to the claims asserted herein occurred in this  
2 District.

3 **PARTIES**

4 17. Ms. Fitzpatrick is a citizen and resident of North Highlands, California. She maintains a  
5 Platinum Mastercard credit card account with Capital One. At all times relevant, Ms. Fitzpatrick resided  
6 in and received statements for that account at her residence in North Highlands, California.

7 18. Capital One is a national bank with its headquarters and principal place of business  
8 located in Mclean, Virginia. Among other things, Capital One is engaged in the business of providing  
9 consumer credit cards to customers. It provides credit cards to consumers, and thus conducts business,  
10 throughout the State of California, including within this District and Division.

11 **FACTUAL BACKGROUND AND GENERAL ALLEGATIONS**

12 **I. In its contracts, Capital One retains discretion to waive late fees and interest on overdue**  
13 **balances.**

14 19. Transactions involving consumer credit cards at Capital One are governed by the Credit  
15 Card Agreement, an adhesion contract drafted by Capital One. The Credit Card Agreement is attached  
16 to this Complaint as Exhibit A and incorporated herein.

17 20. According to the Credit Card Agreement, Capital One has the discretion as to whether  
18 to charge late fees: “Late Payment Fee: **We may charge you this Fee** if we do not receive your  
19 payment as instructed on your Statement by the payment due date.” (Emphasis added).

20 21. Capital One also reserves the discretion as to whether to charge interest on overdue  
21 credit card balances. The Credit Card Agreement states that if a customer does not make “any payment  
22 when it is due,” Capital One “**may take certain actions**” with respect to the customer’s account,  
23 including “**continue to charge you *Interest Charges and Fees*** as long as your balance remains  
24 outstanding.” (Emphases in bold added).

25 22. Elsewhere, the Credit Card Agreement discusses Capital One’s discretion to remove  
26 fees and interest charges:

1 **Interest Charges and Fees**

2 We will charge Interest Charges and Fees to your Account as disclosed on your Statement and  
3 other Truth-in-Lending Disclosures.

4 \*\*\*

5 From time to time, **we may give you offers that allow you to pay less than the total  
6 balance and avoid Interest Charges on new purchase Segment transactions.**

(Emphases added).<sup>5</sup>

7 23. Against this contractual backdrop, Capital One advertised its purported “assistance”  
8 programs to credit card customers during the COVID-19 pandemic.

9 **II. Capital One faces public pressure to use its discretion to help its customers during the  
10 pandemics.**

11 24. Regulators and the public alike called for banks to put a stop to predatory late fees  
12 during the pandemic. For example, a November 2020 United States Federal Reserve study reported  
13 that, in the midst of the pandemic, “[a]s millions of Americans experienced a sudden loss of income,  
14 consumers increasingly relied on sources of short-term liquidity, such as savings and credit cards” to  
15 make ends meet.<sup>6</sup> And, the study found, in the early days of the pandemic, consumers who “recently  
16 experienced a loss of income and [were] under financial stress” complained frequently about “late  
17 fees for credit cards.”<sup>7</sup> Indeed, consumers complained about these credit cards more often than any  
18 other financial product in May, June, and July 2020.<sup>8</sup>

19 25. Federal regulators also pushed banks to help their customers. On March 13, 2020, the  
20 Office of the Controller of the Currency issued guidance encouraging banks to “take steps to meet  
21 the financial services needs of customers adversely affected by COVID-19-related issues,” and  
22 specifically asked that they waive late payment fees on credit cards.<sup>9</sup> The guidance explained that such

23 <sup>5</sup> “Segments” are defined as the “different parts of your Account we may establish that are subject to  
24 unique APRs, pricing, or other terms.” Segments include “purchases, Balance Transfers, Cash  
25 Advances, and Special Transfers.”

26 <sup>6</sup> Bd. of Governors, U.S. Fed. Reserve Sys., *The Pandemic’s Early Effects on Consumers and Communities*, 2  
27 Consumer & Community Context 18 (Nov. 2020),  
28 <https://www.federalreserve.gov/publications/files/consumer-community-context-20201118.pdf>.

<sup>7</sup> *Id.* at 19.

<sup>8</sup> *Id.* at 17 (Fig. 1).

<sup>9</sup> U.S. Office of the Controller of the Currency, *OCC Bulletin 2020-15, Pandemic Planning: Working With  
Customers Affected by Coronavirus and Regulatory Assistance* (Mar. 13, 2020), <https://www.occ.gov/news-issuances/bulletins/2020/bulletin-2020-15.html>.

1 relief measures “serve the long-term interests of communities and the financial system” and “are  
2 consistent with safe and sound banking practices and applicable laws.”<sup>10</sup>

3 26. State officials also asked banks to provide relief from these fees. For example, in March  
4 2020, New York’s governor issued an executive order instructing the state’s Department of Financial  
5 Services to require state-chartered banks to waive late fees and other credit card fees to help lessen  
6 the financial hardship of the pandemic on New Yorkers.<sup>11</sup> That same month, the Secretary of  
7 California’s Business, Consumer Services & Housing Agency and its Commissioner of Business  
8 Oversight jointly issued guidance to financial institutions in the state whose customers “may be  
9 suffering from loss of income or other financial hardship as a result of the COVID-19 pandemic.”<sup>12</sup>  
10 They specifically encouraged banks to waive payment fees on credit cards during the state of  
11 emergency.<sup>13</sup> And also that same month, the Illinois Department of Financial and Professional  
12 Regulation “strongly urge[d] banks and credit unions to respond to borrowers affected by the current  
13 economic environment” by waiving fees for “late payments on credit cards.”<sup>14</sup>

14 **III. Capital One promises to exercise its contractual discretion to help customers impacted**  
15 **by COVID-19.**

16 27. In light of this ongoing public pressure and the threat of legislative action, Capital One  
17 promised that it would help its most vulnerable customers, including by waiving late fees and interest  
18 on unpaid balances.

19 28. In March 2020, as governments and companies throughout the United States adopted  
20 shutdown measures to fight the spread of COVID-19, Capital One’s CEO touted the availability of  
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22 <sup>10</sup> *Id.*

23 <sup>11</sup> Press Release, N.Y. Dep’t Fin. Servs., Governor Cuomo Signs Executive Order Mandating  
24 Businesses That Require In-Office Personnel to Decrease In-Office Workforce by 75 Percent (Mar. 19,  
2020), [https://www.dfs.ny.gov/reports\\_and\\_publications/press\\_releases/pr20203191](https://www.dfs.ny.gov/reports_and_publications/press_releases/pr20203191).

25 <sup>12</sup> Lourdes Castro Ramirez, Sec’y, Cal. Bus., Consumer Servs. & Housing Agency & Manuel P. Alvarez,  
26 Comm’r, Cal. Bus. Oversight, *Guidance to Financial Institutions During the COVID-19 Pandemic* 1 (Mar. 22,  
2020), [https://www.bcsb.ca.gov/coronavirus19/dbo\\_banks.pdf](https://www.bcsb.ca.gov/coronavirus19/dbo_banks.pdf).

27 <sup>13</sup> *Id.* at 2.

28 <sup>14</sup> Press Release, Ill. Dep’t Fin. & Prof’l Regulation, Illinois Department of Financial and Professional  
Regulation Announces Help for Consumers Struggling to Make Payments on their Debts Due to the  
COVID-19 Crisis and Guidance for its Regulated Financial Sectors 1 (Mar. 30, 2020),  
<https://www.idfpr.com/News/2020/2020%2003%2030%20IDFPR%20financial%20guidance.pdf>.

1 its “assistance” to credit card customers and promised that its agents stood ready to help. In a letter  
2 published on Capital One’s website, he stated:

3 We have a range of policies and programs to accommodate customer hardships. For  
4 customers who let us know they are being impacted, we are here to support and work  
5 with them. We are offering assistance to consumers and small business owners,  
6 **including waiving fees or deferring payments on credit cards** or auto loans. **Our  
7 frontline associates are well-trained and well-prepared to serve customers in  
8 times of financial stress or hardship . . . .**<sup>15</sup>

9 29. During this same timeframe, a Capital One spokesperson stated that the relief offered  
10 could “include fee suppression, minimum payment assistance and deferred loan payments.”<sup>16</sup> The  
11 spokesperson declared, “Capital One encourages customers who may be impacted by the coronavirus  
12 to contact customer service for a solution.”<sup>17</sup>

13 30. Capital One also advertised to customers that it would allow its customers to skip card  
14 payments without incurring interest charges (although, as one reporter observed, consumer  
15 complaints suggested that that purported assistance “didn’t last long”).<sup>18</sup>

16 31. Capital One told Forbes that “**all customers will be eligible for assistance**, which  
17 will vary on the type of product they have and their individual needs.”<sup>19</sup>

18 32. Capital One proudly declared on its website that the company was “here to help”  
19 customers facing financial hardship as a result of the pandemic.<sup>20</sup>

20 33. Capital One actively encouraged customers to reach out for help, stating: “We also  
21 understand that there may be instances where customers find themselves facing financial difficulties.

22 <sup>15</sup> Press Release, *A Message from Rich Fairbank*, Capital One (Mar. 27, 2020),  
<https://www.capitalone.com/about/newsroom/a-message-from-rich-fairbank/> (emphasis added).

23 <sup>16</sup> Alexandria White, *Capital One cardholders may receive fee suppression and minimum payment assistance if affected  
24 by coronavirus*, CNBC (Mar. 23, 2020), <https://www.cnbc.com/select/capital-one-coronavirus-assistance/>.

25 <sup>17</sup> *Id.*

26 <sup>18</sup> Ron Lieber, *In Financial Trouble? Track Everything Companies Tell You*, N.Y. Times (May 16, 2020),  
<https://www.nytimes.com/2020/05/16/business/coronavirus-financial-help.html>.

27 <sup>19</sup> Kelly Anne Smith, *List Of Banks Offering Relief To Customers Affected By Coronavirus (COVID-19)*, Forbes  
(Apr. 3, 2020), <https://www.forbes.com/sites/advisor/2020/04/03/list-of-banks-offering-relief-to-customers-affected-by-coronavirus-covid-19/?sh=1874aafe4efa> (emphasis added).

28 <sup>20</sup> Capital One, *Supporting Our Customers* (last visited Feb. 15, 2022),  
<https://www.capitalone.com/updates/coronavirus/>.



1 Capital One is here to help, and we encourage customers who may be impacted or need assistance to  
2 reach out to discuss and find a solution for you.”<sup>21</sup>

3 34. In its 2020 Annual Report to investors, Capital One patted itself on the back for its  
4 pandemic response, claiming: “In our Card and Auto businesses, we implemented forbearance  
5 programs, which allowed customers to skip payments with no late fees.”<sup>22</sup>

6 35. Capital One’s claims of its willingness to help struggling customers spread far and wide  
7 and garnered positive coverage in the media and on the Internet. For example, Capital One was  
8 included (and still is) in numerous media-published lists of banks offering assistance to customers  
9 suffering from financial hardship caused by the pandemic.<sup>23</sup> These reports repeated Capital One’s  
10 misleading representations, claiming for example that for those facing financial difficulties, a Capital  
11 One representative would “work with you to come up with a suitable solution,”<sup>24</sup> that Capital One  
12 was “offering waived fees and deferred payments on credit cards for some cardholders,”<sup>25</sup> and that  
13 “Capital One is also including waived interest and fees in its assistance program for both personal and  
14 business cardholders.”<sup>26</sup>

15 36. In an online article glowingly titled *America’s Banks Are Here to Help*, the American  
16 Bankers Association (of which Capital One is a member) proclaimed that Capital One is “[o]ffering a  
17 number of different concessions to help customers, contingent on the product they have, including  
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19 <sup>21</sup> Capital One, *Assistance for Customers Impacted by the COVID-19 Virus Situation* (Apr. 4, 2020),  
20 <https://web.archive.org/web/20200404013537/https://www.capitalone.com/updates/coronavirus/overview/>.

21 <sup>22</sup> 2020 Annual Report, *supra* note 2, at 6.

22 <sup>23</sup> See, e.g., Kailey Hagen, *Credit Card Relief During Coronavirus*, Motley Fool (Jan. 5, 2021),  
23 <https://www.fool.com/the-ascent/credit-cards/credit-card-relief-during-coronavirus/> (“You can reach  
24 out to Capital One if you are facing financial difficulties. A representative will work with you to come  
25 up with a suitable solution.”); Susan Ladika & Caitlin Mims, *Credit card issuers offer cardholders relief amid  
26 coronavirus outbreak*, Creditcards.com (Jan. 11, 2021), [https://www.creditcards.com/credit-card-  
27 news/credit-card-issuers-relief-coronavirus/](https://www.creditcards.com/credit-card-news/credit-card-issuers-relief-coronavirus/) (“In a March 26, 2020 update, Chairman and CEO Rich  
28 Fairbank confirmed that they are offering waived fees and deferred payments on credit cards for some  
cardholders.”); Alexandria White, *Here’s our most up-to-date list of credit card financial assistance programs during  
coronavirus*, CNBC (last updated July 8, 2021), [https://www.cnbc.com/select/credit-card-issuers-offer-  
customer-assistance-amid-coronavirus-financial-hardship/](https://www.cnbc.com/select/credit-card-issuers-offer-customer-assistance-amid-coronavirus-financial-hardship/) (“Capital One is also including waived  
interest and fees in its assistance program for both personal and business cardholders.”).

<sup>24</sup> Hagen, *Credit Card Relief During Coronavirus*, *supra* note 23.

<sup>25</sup> Ladika & Mims, *Credit card issuers offer cardholders relief amid coronavirus outbreak*, *supra* note 23.

<sup>26</sup> White, *Here’s our most up-to-date list of credit card financial assistance programs during coronavirus*, *supra* note 23.

1 minimum payment assistance, deferred loan assistance, and fee suppression.”<sup>27</sup> And NBC News  
2 reported that Capital One was one of a handful of banks “offering to do more” than most by  
3 “working with consumers” to offer “steps that can be taken” such as “fee suppression, minimum  
4 payment assistance and deferred loan payments.”<sup>28</sup>

5 **IV. Capital One breaks those promises.**

6 37. Unfortunately, Capital One’s public promises did not match its actions. Despite its  
7 proclamations, the bank denied customers’ requests for help on late fees and interest without making  
8 a good-faith effort to consider their requests for assistance.

9 38. Ms. Fitzpatrick works as a merchandiser. She is a longtime customer of Capital One.  
10 Prior to the COVID-19 pandemic, she incurred only one or two late fees.

11 39. When the pandemic hit, business shutdowns caused a dramatic reduction in her work  
12 hours because closed stores did not need merchandise stocked and restocked. This made it difficult  
13 for her to keep up with her bills. On several occasions, she had to use her credit cards, including her  
14 Capital One card, to obtain cash advances or to pay for necessities because of the financial distress  
15 she faced.

16 40. In May 2020, June 2020, and May 2021, she paid the minimum payment after the due  
17 date. In each of these months, Capital One assessed a \$25 late fee and then charged interest on the  
18 balance that included the late fee.

19 41. During the pandemic, Ms. Fitzpatrick heard reports on television and on the radio that  
20 Capital One was promising relief from credit card late fees to customers suffering from financial  
21 hardship. This influenced the way she used her credit card and prompted her to seek relief from these  
22 fees. Each month that Capital One assessed a late fee, Ms. Fitzpatrick called Capital One to ask for a  
23 waiver of the fee (just as it encouraged customers to do). She spoke to three different customer  
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26 <sup>27</sup> Am. Bankers Assoc., *America’s Banks Are Here to Help* (last visited Feb. 15, 2022),  
<https://www.aba.com/about-us/press-room/industry-response-coronavirus#AlphaC>.

27 <sup>28</sup> Herb Weisbaum, *Millions of Americans will soon run out of money. Here’s how to deal with bills you can’t pay.*,  
28 NBC News (Mar. 19, 2020), <https://www.nbcnews.com/better/lifestyle/coronavirus-collateral-damage-what-do-you-do-when-paycheck-stops-ncna1163671>.

1 service representatives. She told each representative to whom she spoke that she missed the payment  
2 due date as a result of the financial hardships caused by the COVID-19 pandemic.

3 42. Despite the public promise by Capital One's CEO that the bank's "frontline associates  
4 are well-trained and well-prepared to serve customers in times of financial stress or hardship,"<sup>29</sup> each  
5 Capital One representative denied her request without any further investigation, and each told her  
6 that there was nothing they could do.

7 43. The statements by each of these Capital One representatives led Ms. Fitzpatrick to  
8 believe that Capital One had no process or program for considering or granting relief for its credit  
9 card customers during the pandemic, despite the explicit promises Capital One had made.

10 44. Had Ms. Fitzpatrick known that Capital One did not intend to keep its promises to use  
11 its discretion to grant customers relief from credit card late fees during the pandemic, she would have  
12 used another card to try to ensure that she would avoid such fees. But because of Capital One's  
13 promises to help, she did not believe that using another card was necessary.

14 45. Capital One's course of conduct toward Ms. Fitzpatrick during the pandemic flouted  
15 the discretion in the Credit Card Agreement and directly contradicted its representations in the media  
16 and online. Capital One exercised the contractual discretion to waive late fees and interest it retained  
17 in the Credit Card Agreement in bad faith because it never meaningfully *considered* her request for  
18 assistance at all. Despite Capital One's widely publicized promise that "all customers" would be  
19 eligible for relief, Capital One's representatives told her that she was "ineligible" for help because  
20 there was nothing that they could do. And despite Capital One's oft-repeated claim that its  
21 representatives would "work" with customers to come up with a "suitable solution," none of the  
22 representatives with whom she spoke made any effort to work with her.

23 46. Experiences like Ms. Fitzpatrick's demonstrate that Capital One's claims of willingness  
24 to help its credit card was a publicity play. In practice, the bank continued to place profits over  
25 people, rejecting customers' requests for assistance without ever actually considering those requests or  
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27 <sup>29</sup> Press Release, *A Message from Rich Fairbank*, Capital One (Mar. 27, 2020),  
28 <https://www.capitalone.com/about/newsroom/a-message-from-rich-fairbank/>.

1 exercising the discretion it gave itself to provide the promised assistance with late fees and interest.  
2 Because Capital One failed to refund fees upon request and did not set up a system that would allow  
3 customer service representatives to do so, these promises were likely to deceive reasonable customers  
4 into believing that they could get their account fees refunded during the COVID-19 pandemic.

5 **CLASS ALLEGATIONS**

6 47. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiff brings this action  
7 on behalf of herself and all others similarly situated. This action satisfies the numerosity,  
8 commonality, typicality, adequacy, predominance and superiority requirements of Rule 23.

9 48. The proposed classes are defined as follows:

10 **Nationwide class:** All Capital One credit card holders in the United  
11 States who, after March 23, 2020, requested assistance from Capital  
12 One but were subsequently charged late fees or interest on unpaid  
13 credit card balances.

14 **Alternative California-only class:** All Capital One credit card holders in  
15 California who, after March 23, 2020, requested assistance from Capital  
16 One but were subsequently charged late fees or interest on unpaid credit  
17 card balances.

18 49. Plaintiff reserves the right to modify or amend the definition of the proposed Classes  
19 before the Court determines whether certification is appropriate.

20 50. Excluded from the Class are Capital One, its parents, subsidiaries, affiliates, officers and  
21 directors, any entity in which Capital One has a controlling interest, all customers who make a timely  
22 election to be excluded, governmental entities, and all judges assigned to hear any aspect of this  
23 litigation, as well as their immediate family members.

24 51. The members of the Class are so numerous that joinder is impractical. The Class  
25 consists of thousands of members, the identity of whom is within the knowledge of and can be  
26 ascertained only by resort to Capital One's records.

27 52. Plaintiff's claims are typical of the claims of other Class members. They are governed by  
28 the same contractual terms and arise out of the same promises by Capital One to provide assistance  
and the same subsequent wrongful policies and practices of denying assistance. Plaintiff has suffered  
the harm alleged and has no interests antagonistic to the interests of any other Class member.

1           53. Plaintiff, like all Class members, was denied the benefit of her contract with Capital  
2 One when it promised to exercise its discretion to charge or waive late fees and interest on unpaid  
3 balances during the COVID-19 pandemic, and then refused to even consider requests to waive or  
4 refund such fees or interest amounts. Plaintiff, like all Class members, has been damaged by Capital  
5 One's misconduct in that she has been denied the benefit of her contract with Capital One through  
6 the unfair imposition of late fees and interest, to Capital One's profitable benefit, despite the promise  
7 to exercise discretion in the choice to charge or waive such fees and interest. Furthermore, the factual  
8 basis of Capital One's misconduct is common to all Class members and represents a common thread  
9 of refusal to exercise its discretion fairly, resulting in injury to all members of the Classes.

10           54. Plaintiff's claims are also typical in that Capital One made misrepresentations to her and  
11 to all members of the Classes when it promised to consider requests for assistance with late fees and  
12 interest on unpaid balances, and then refused to do so. Plaintiff, like all class members, has been  
13 harmed by these wrongful business practices.

14           55. There are numerous questions of law and fact common to the Classes and those  
15 common questions predominate over any questions affecting only individual Class members.

16           56. Among the questions of law and fact common to the Classes are:

- 17           a. Whether Capital One breached its covenant of good faith and fair dealing with  
18           Plaintiff and other members of the Classes through its policies and practices;
- 19           b. Whether Capital One was unjustly enriched through its policies and practices;
- 20           c. Whether Capital One violated the California Unfair Competition Law through  
21           its fraudulent misrepresentations;
- 22           d. The proper method or methods by which to measure damages; and
- 23           e. Whether the Classes are entitled to declaratory and injunctive relief.

24           57. Plaintiff is committed to the vigorous prosecution of this action and has retained  
25 competent counsel experienced in the prosecution of class actions and, in particular, class actions on  
26 behalf of consumers and against financial institutions. Accordingly, she is an adequate representative  
27 and will fairly and adequately protect the interests of the Classes.

1 58. A class action is superior to other available methods for the fair and efficient  
2 adjudication of this controversy. Since the amount of each individual Class member's claim is small  
3 relative to the complexity of the litigation, and due to the financial resources of Capital One, few  
4 Class members could afford to seek legal redress individually for the claims alleged herein. Therefore,  
5 absent a class action, the Class members will continue to suffer losses and Capital One's misconduct  
6 will proceed without remedy.

7 59. Even if Class members themselves could afford such individual litigation, the court  
8 system could not. Given the complex legal and factual issues involved, individualized litigation would  
9 significantly increase the delay and expense to all parties and to the Court. Individualized litigation  
10 would also create the potential for inconsistent or contradictory rulings. By contrast, a class action  
11 presents far fewer management difficulties, allows claims to be heard which might otherwise go  
12 unheard because of the relative expense of bringing individual lawsuits, and provides the benefits of  
13 adjudication, economies of scale and comprehensive supervision by a single court.

14 60. Plaintiff knows of no difficulty to be encountered in the maintenance of this action that  
15 would preclude its maintenance as a class action.

16 **COUNT I**  
17 **Breach of the Covenant of Good Faith and Fair Dealing**  
18 **(On Behalf of all Classes)**

19 61. Plaintiff repeats paragraphs 1 through 60 above.

20 62. Plaintiff and Capital One have contracted for credit card services, as embodied in  
21 Capital One's Credit Card Agreement and related documentation.

22 63. Under the laws of California and the states in which Capital One does business, good  
23 faith is an element of every contract pertaining to the assessment of late fees and interest on unpaid  
24 balances. Whether by common law or statute, all such contracts impose upon each party a duty of  
25 good faith and fair dealing. Good faith and fair dealing, in connection with executing contracts and  
26 discharging performance and other duties according to their terms, means preserving the spirit—not  
27 merely the letter—of the bargain. Put differently, the parties to a contract are mutually obligated to  
28 comply with the substance of their contract in addition to its form. Evading the spirit of the bargain

1 and abusing the power to specify terms constitute examples of bad faith in the performance of  
2 contracts.

3 64. A party to a contract violates the obligation of good faith in performance by exercising  
4 discretion reserved to it solely in its own favor, and contrary to the benefit of the other party,  
5 exercising it with a bad motive, exercising it dishonestly, or otherwise exercising it in bad faith. Doing  
6 so exploits the discretion to their benefit, particularly when, as here, the party exercising the discretion  
7 drafted the contract—thus reserving the discretion to itself—and exercises that discretion consistently  
8 against the benefit of a less powerful, less sophisticated consumer. Bad faith may be overt or may  
9 consist of inaction, and fair dealing may require more than honesty. Examples of bad faith are evasion  
10 of the spirit of the bargain and abuse of the power to specify terms.

11 65. Capital One has breached the covenant of good faith and fair dealing in the Credit Card  
12 Agreement through its late fee and interest policies and practices as alleged herein, because it failed to  
13 exercise the discretion it retained for itself in its contracts of adhesion to the benefit of its customers.

14 66. Capital One’s Credit Card Agreement states that Capital One “may charge” a late  
15 payment fee “if we do not receive your payment as instructed on your Statement by the payment due  
16 date” and “may take certain actions,” including continuing to charge interest and fees, if an account  
17 “balance remains outstanding.” The Credit Card Agreement also states elsewhere that Capital One  
18 “may give you offers that allow you to pay less than the total balance and avoid Interest Charges on  
19 new purchase Segment transactions.” These provisions give Capital One discretion to assess or waive  
20 late fees and interest.

21 67. Rather than use this discretion to provide relief to customers suffering from financial  
22 hardship during the pandemic as promised, Capital One instead exercised its discretion in its own  
23 favor. In doing so, Capital One has unfairly interfered with Ms. Fitzpatrick’s and the Classes’ right to  
24 receive the benefits of the contract.

25 68. Plaintiff and members of the Classes have performed all, or substantially all, of the  
26 obligations imposed on them under the Credit Card Agreement.





1 constructive trust should be imposed upon all wrongful or inequitable sums received by Capital One  
2 traceable to Plaintiff and the members of the Classes.

3 78. Plaintiff and members of the Classes have no adequate remedy at law.

4 **COUNT III**

5 **California Unfair Competition Law Business and Professions Code § 17200**  
6 **(On Behalf of the California Class)**

7 79. Plaintiff repeats paragraphs 1 through 78 above.

8 80. Capital One's conduct described herein violates the Unfair Competition Law (the  
9 "UCL"), codified at California Business and Professions Code section 17200, *et seq.*

10 81. The UCL prohibits, and provides civil remedies for, unfair competition. Its purpose is  
11 to protect both consumers and competitors by promoting fair competition in commercial markets for  
12 goods and services. In service of that purpose, the Legislature framed the UCL's substantive  
13 provisions in broad, sweeping language.

14 82. By defining unfair competition to include any "any unlawful, unfair or fraudulent  
15 business act or practice," the UCL permits violations of other laws to be treated as unfair competition  
16 that is independently actionable and sweeps within its scope acts and practices not specifically  
17 proscribed by any other law.

18 83. Ms. Fitzpatrick and the California Class bring this claim under the third prong, that of  
19 "fraudulent business act or practice."

20 84. Capital One committed fraudulent business acts and practices in violation of Cal. Bus.  
21 & Prof. Code § 17200, *et seq.*, when affirmatively and knowingly misrepresenting that it would waive  
22 credit card late fees and interest on unpaid balances. Such representations are likely to mislead the  
23 public.

24 85. As a direct and proximate result of Capital One's violations of the UCL's "deceptive"  
25 prong, Ms. Fitzpatrick and members of the California Class have been, and will continue to be  
26 charged excessive late fees and interest, and thereby have suffered and will continue to suffer actual  
27 damages.

86. Ms. Fitzpatrick and the California Class request equitable relief to restore to them all money acquired by means of Capital One’s unlawful conduct, an injunction on behalf of the general public to prevent Capital One from continuing to misrepresent its fee and waiver practices, and an award of attorneys’ fees and costs under Cal. Code of Civ. Proc. § 1021.5.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff and the Classes demand a jury trial on all claims so triable and judgment as follows:

1. Granting an injunction requiring Capital One to disclose the actual circumstances under which refunds will be provided to all its customers;
2. Granting an injunction requiring Capital One to set up a system that will allow refunds to be granted, including requiring the issuance of refunds when a fee was incurred due to circumstances related to the COVID-19 pandemic;
3. Restitution of all Capital One late fees and interest on unpaid balances paid to Capital One by Plaintiff and members of the Classes, as a result of the wrongs alleged herein in an amount to be determined at trial;
4. Disgorgement of the ill-gotten gains derived by Capital One from its misconduct;
5. Actual damages in an amount according to proof;
6. Pre-judgment interest at the maximum rate permitted by applicable law;
7. Costs and disbursements assessed by Plaintiff in connection with this action, including reasonable attorneys’ fees pursuant to applicable law; and
8. Such other relief as this Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff and all others similarly situated hereby demand trial by jury on all issues in this complaint that are so triable as a matter of right.

Dated: February 18, 2022

Respectfully submitted,

Hassan A. Zavareei (State Bar No. 181547)  
 Andrea R. Gold\*

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*\*pro hac vice application forthcoming*

# **EXHIBIT A**

# Credit Card Agreement for Consumer Cards in Capital One Bank (USA), N.A.

There are two parts to this Credit Card Agreement: **Capital One Pricing Information** and the **Capital One Customer Agreement**. The **Pricing Information** shows a range of terms that includes both mail and online offers for new accounts available under this Agreement as of September 30, 2021. The combination of terms that could apply to you will differ depending on the specific card offer and on your creditworthiness at the time of application. Not all offers will contain introductory rates. The **Customer Agreement** contains important information related to consumer credit cards issued by Capital One Bank (USA), N.A. Please visit [www.capitalone.com](http://www.capitalone.com) to view our online credit card offers. If you are a current Capital One cardholder, please log in to your account if you would like to request the Credit Card Agreement for your account(s).

CAPITAL ONE PRICING INFORMATION	
<b>Annual Percentage Rate (APR) for Purchases</b>	Introductory rate of <b>0%</b> , ranging from 9 months to 18 months. Non-introductory rates between <b>14.99%</b> and <b>26.99%</b> . This APR will vary with the market based on the Prime Rate.
<b>APR for Transfers</b>	Non-introductory rates between <b>14.99%</b> and <b>26.99%</b> . This APR will vary with the market based on the Prime Rate.
<b>APR for Cash Advances</b>	Non-introductory rates between <b>22.49%</b> and <b>26.99%</b> . This APR will vary with the market based on the Prime Rate.
<b>Paying Interest</b>	Your due date is at least 25 days after the close of each billing cycle. We will not charge you interest on new purchases, provided you have paid your previous balance in full by the due date each month. We will begin charging interest on cash advances and transfers on the transaction date.
<b>For Credit Card Tips from the Consumer Financial Protection Bureau</b>	To learn more about factors to consider when applying for or using a credit card, visit the website of the Consumer Financial Protection Bureau at <a href="http://www.consumerfinance.gov/learnmore">http://www.consumerfinance.gov/learnmore</a> .

<b>Annual Fee</b>	Between <b>\$0</b> and <b>\$39</b> annually.
<b>Transaction Fees</b>	
• Transfer	<b>3%</b> of the amount of each transferred balance that posts to your account at a promotional APR that we may offer you. None for balances transferred at the Transfer APR.
• Cash Advance	Either <b>\$10</b> or <b>3%</b> of the amount of each cash advance, whichever is greater.
<b>Penalty Fees</b>	
• Late Payment	Up to <b>\$40</b> .

**How Do You Calculate My Balance?** We use a method called “average daily balance (including new transactions).” See “How Do You Calculate The Interest Charge?” section below.

**What Are My Billing Rights?** Information on your rights to dispute transactions and how to exercise those rights is provided in “Your Billing Summary” on your Statement and other Truth-in-Lending Disclosures.

## **THINGS YOU SHOULD KNOW ABOUT THIS CARD**

**How Do You Calculate My Variable Rates?** Your variable rates may change when the Prime Rate changes. We calculate variable rates by adding a percentage to the Prime Rate published in *The Wall Street Journal* on the 25th day of December, March, June and September. If the *Journal* is not published on that day, then see the immediately preceding edition. Variable rates on the following segment(s) will be updated quarterly and will take effect on the first day of your January, April, July and October billing periods: Non-Introductory Purchase APR: Prime plus a margin between 11.74% and 23.74%; Non-Introductory Transfer APR: Prime plus a margin between 11.74% and 23.74%; Cash Advance APR: Prime plus a margin between 19.24% and 23.74%. Any increase in the Prime rate may increase your Interest Charges and your Minimum Payment.

**What Are The Daily Periodic Rates Used To Calculate My Interest?** The daily periodic rate for your Introductory Purchase APR is 0.00000%, Non-introductory Purchase APR is between 0.04107% and 0.07395%, Non-introductory Transfer APR is between 0.04107% and 0.07395%, and Cash Advance APR is between 0.06162% and 0.07395%. See “How Do You Calculate The Interest Charge?” section below.

**How Do You Calculate The Interest Charge?** We use a method called Average Daily Balance (including new transactions). Under this method, we first calculate your daily balance; for each segment, 1) take the beginning balance and add in new transactions and the periodic interest charge on the previous day’s balance, then 2) subtract any payments and credits for that segment as of that day. The result is the daily balance for each segment. However, if you paid your previous month’s balance in full (or if your balance was zero or a credit amount), new transactions which post to your purchase or special purchase segments are not added to the daily balances. Also, transactions subject to a grace period are not added to the daily balances.

Next, to find your Average Daily Balance: 1) add the daily balances together for each segment, and 2) divide the sum by the number of days in the billing cycle.

At the end of each billing cycle, we determine your Interest Charge as follows: 1) multiply your Average Daily Balance by the daily periodic rate (APR divided by 365) for that segment, and 2) multiply the result by the number of days in the billing period.

NOTE: Due to rounding or a minimum interest charge, this calculation may vary from the interest charge actually assessed.

## Welcome to Capital One

Thank you for opening a credit card account with us. This Customer Agreement including any changes to it (“Agreement”) contains the terms of your agreement with Capital One.

## Definitions

The meanings of the terms you see in italics appear in the **Glossary** section at the end of this Agreement.

As used here, “you” and “your” mean each applicant and co-applicant for the *Account*; any person responsible for paying the *Account*; and any person responsible for complying with this Agreement. “We,” “us,” “our,” and “Capital One” mean Capital One Bank (USA), National Association; and its agents, authorized representatives, successors, and assignees.

## Account Documents

The following documents govern your *Account* with us:

- (1) this Agreement;
- (2) all *Statements*;
- (3) any rewards program terms, conditions, and disclosures;
- (4) any privacy notices;
- (5) your *Card* benefits brochure which describes benefits provided by the *Payment Card Network* for your *Account*;
- (6) all disclosures and materials provided to you before or when you opened your *Account*;
- (7) any other documents and disclosures relating to your *Account*, including those provided online; and
- (8) any future changes we make to any of the above.

Please read these carefully and keep them for future reference.

## New Offers

In the future, we may provide you with new offers that we think may interest you. The terms of these offers may differ from the standard terms on your *Account*. This Agreement will still apply.

## Account Information

We need information about you to manage your *Account*. This includes:

- (1) your legal name;
- (2) a valid U.S. mailing address and residential address (if different);
- (3) your date of birth;
- (4) your Social Security number or other government identification number;
- (5) your telephone number(s); and
- (6) your employment and income information.

You must tell us when this information changes. We may ask you for additional documents to verify any changes. We may restrict or close your *Account* if we cannot verify your information, or if you do not provide it as requested.

## Credit Limits

When you open your *Account*, we will tell you your credit limits. These will also appear on your *Statement*. We may also refer to your credit limits as your credit lines. We may give you different credit limits for the different *Segments* of your *Account*. For example, you may have one credit limit for purchases and a different one for *Cash Advances*.

You are responsible for keeping track of your *Segment* balances and your available credit. You must manage your *Account* to remain below your credit limits. We may honor transactions above your credit limits, but if we do these transactions will not increase your credit limit. You are responsible for paying for any transaction you make above your credit limits.

We may also increase, decrease, restrict or cancel your credit limit on any *Segment* at any time. This will not affect your obligation to pay us.

## Using Your Account

- (1) This Agreement applies whether or not you use your *Card* or *Account*. It will continue to apply even after your *Account* is closed, as long as you have a balance.
- (2) You must sign the *Card* immediately when you receive it.
- (3) You must return the *Card* to us or destroy it if we ask you to.
- (4) You must take reasonable steps to prevent the unauthorized use of your *Card*, *Access Checks* and *Account*.
- (5) We may decline to authorize a transaction for any reason. This may occur even if the transaction would not cause you to go over your credit limit or your *Account* is not in default.
- (6) We are not responsible for any losses you incur if we do not authorize a transaction.
- (7) We are not responsible for any losses you incur if anyone refuses to accept your *Card* for any reason.
- (8) Unless we tell you otherwise, we will bill each transaction to the applicable *Segment* of your *Account*. We will apply it against your available credit for that *Segment*.
- (9) You may obtain *Cash Advances* and *Transfers* as permitted for your *Account*. You may not use these to pay any amount you owe us or any other company in the Capital One organization.
- (10) You must not use, or try to use, the *Card* for any illegal activity. You are responsible for any charges if you do.
- (11) We are not liable for any losses that may result when our services are unavailable due to reasons beyond our control.

## Rewards

Your *Account* may provide you with the opportunity to earn rewards. If it does, we will separately provide you with information and terms about the rewards.

## Access Checks

We may provide you with *Access Checks*. If we do, we will tell you at the time if we consider them purchases, *Cash Advances* or *Special Transfers*.

Only the person we designate may use *Access Checks*. You may not use them to pay any amount you owe us or any other company in the Capital One organization. We may reject and not pay any *Access Check* if:

- (1) your *Account* is past due, charged off, bankrupt, lost/stolen or closed;
- (2) we suspect fraud;
- (3) your *Account* is over the credit limit; or
- (4) the check has expired, is damaged or cannot otherwise be processed.

Our liability if we do not pay an *Access Check* will never be more than (1) your actual damages or (2) the amount of the *Access Check*, whichever is less.

Use of an *Access Check* is not the same as using your *Card*. When you use an *Access Check*, you will have fewer rights to dispute merchant transactions than with uses of your *Card*. Please see the “Billing Rights Summary” on your *Statement* and your other *Truth-in-Lending Disclosures* for more information.

## Stopping Payment of Access Checks

You may request a stop payment on any *Access Check* by contacting Customer Service.

We will have a reasonable amount of time after your stop payment request to research and complete the stop payment. We will not be responsible if we cannot complete the stop payment. Reasons include:

- (1) the *Access Check* was already paid;
- (2) you do not give us the information we asked for; or
- (3) the information you gave us was incorrect.

We do not have to release the stop payment order unless the account holder who made the request asks us to. If we re-credit your *Account* after a valid stop payment order, you give us all of your rights against the payee or other holder of the paid *Access Check*. You also agree to help us in any legal action we may later take against the payee or other holder of the check.

## Using a PIN

We may give you a personal identification number (PIN). For security reasons, you may have to provide the PIN before you are able to use your *Card*.

Keep your PIN secure. Do not write it down, give it to anyone, or keep it with your *Card*. If you lose your *Card* or believe the confidentiality of your PIN has been compromised for any reason, you must contact Customer Service immediately.

## Authorized Users

If you ask us to issue a *Card* to any other person, they are an *Authorized User*. We may require certain information about them. We may limit their ability to use your *Card*. They may have access to certain information about your *Account*. You will be responsible for their use of the *Account* and anyone else they allow to use your *Account*, even if you did not want, or agree to, that use.

## Removing an Authorized User

If you want to remove an *Authorized User* from your *Account*, you must contact Customer Service and request their removal. You also must immediately destroy all *Cards* in their possession and cancel any arrangements they may have set up on your *Account*. They will be able to use your *Account* until you have notified us that you are removing them from your *Account*. During this time, you will still be responsible for all amounts they charge to your *Account*. You will be responsible even if these amounts do not appear on your *Account* until later.

*Authorized Users* may remove themselves from your *Account* upon request. We reserve the right to remove them from your *Account* for any reason. To remove them from your *Account*, we may close your existing *Account* and issue a new *Card* with a new *Account* number.

## Your Promise to Pay

You promise to pay us all amounts due on your *Account*. This includes amounts where you did not sign a purchase slip or other documents for the transaction. We will treat transactions made without presenting your actual *Card* (such as for mail, telephone, Internet, or mobile device purchases) the same as if you used the *Card* in person. If you let someone else use your *Card*, you are responsible for all transactions that person makes.

## Statements

We will generally send or make available to you one *Statement* for all *Cards* on your *Account* at the end of each *Billing Cycle*. Under certain circumstances, the law may not require us to send or make available to you a *Statement*, or may prohibit us from doing so.

## Disputed Transactions

You must inspect each *Statement* you receive. Tell us about any errors or questions you have, as described in the “Billing Rights Summary” on your *Statement* and other *Truth-in-Lending Disclosures*. If you do not notify us of an error, we will assume that all information on the *Statement* is correct.

If we credit your *Account* for all or part of a disputed transaction, you give us all of your rights against others regarding that transaction. You will also:

- (1) give us any information about the disputed transaction, if we ask;
- (2) not pursue any claim or reimbursement of the transaction amount from the merchant or any other person; and



(3) help us get reimbursement from others.

## No Warranties

We are not responsible for any claim you may have regarding the purchase of goods or services made with your *Card* beyond your rights described in the “Billing Rights Summary” on your *Statement*.

## Lost or Stolen Card

If your *Card* is lost or stolen or if you think someone else may be using your *Card* or *Account* number without your permission, you must contact Customer Service immediately. You will not be responsible for transactions on your *Account* that we find are unauthorized.

If we reimburse you for unauthorized transactions, you will help us investigate, pursue and get reimbursement from the wrongdoer. Your help includes giving us documents in a form that we request.

## Interest Charges and Fees

We will charge *Interest Charges* and *Fees* to your *Account* as disclosed on your *Statement* and other *Truth-in-Lending Disclosures*. In general, *Interest Charges* begin to accrue from the day a transaction occurs. However, we will not charge you interest on any new transactions posted to the purchase *Segment* of your *Account* if you paid the total balance across all *Segments* of your *Account* in full by the due date on your *Statement* each month. From time to time, we may give you offers that allow you to pay less than the total balance and avoid *Interest Charges* on new purchase *Segment* transactions. If we do, we will provide details in the specific offer.

We will generally treat *Fees* as purchase transactions unless otherwise specified below. These *Fees* apply to your *Account* only if your *Truth-in-Lending Disclosures* provide for them. We may increase your *Interest Charges* and *Fees* as described in the **Changes to Your Agreement** section or in your *Truth-in-Lending Disclosures*.

## Membership Fee

If your *Account* has a membership *Fee*, we may charge the first membership *Fee* either on the day you activate your *Card* or on the day when you use your *Account*, whichever occurs first. If your *Account* terms include a \$0 introductory *Fee*, we may charge the first *Fee* when the introductory period ends. If it is an annual *Fee*, we may then charge it approximately once per year. If it is a monthly *Fee*, we may charge it each *Billing Cycle*.

## Late Payment Fee

We may charge you this *Fee* if we do not receive your payment as instructed on your *Statement* by the payment due date.

## Returned Payment Fee

We may charge you this *Fee* each time your financial institution for any reason rejects a payment you make to us.

## Stop Payment Fee

We may charge you this *Fee* each time you ask us to (1) stop payment on an *Access Check* or (2) renew an existing stop payment order.

## Cash Advance Fee

We may charge you this *Fee* each time you take out a *Cash Advance*. We will treat this *Fee* as a *Cash Advance* transaction.

## Transfer Fee

We may charge you this *Fee* each time you make a *Transfer*. We will charge the *Fee* to the same *Segment* where we post the *Transfer*.

## Transactions Made in Foreign Currencies

If you make a transaction in a foreign currency, the *Payment Card Network* will convert it into a U.S. dollar amount. *The Payment Card Network* will use its own currency conversion procedures. The conversion rate in effect on the processing date may differ from the rate in effect on the transaction date that appears on your *Statement*. We do not adjust the currency exchange rate or charge any currency conversion *Fees*.

## Minimum Payment

You must pay us at least the minimum payment amount by the payment due date. Your *Statement* will tell you:

- (1) the minimum payment due,
- (2) your new balance,
- (3) the payment due date, and
- (4) an explanation of when the payment must reach us for us to consider it received as of that date.

Returns and other credits to your *Account* will reduce your *Account* balance, but they will not change your minimum payment amount.

In addition to the minimum payment, you may pay all or part of the total balance on your *Account*. But, you must still pay at least the minimum payment amount each month, even if you paid more than the minimum payment due on the previous *Statement*. We will continue to charge *Interest Charges* during *Billing Cycles* when you carry a balance regardless of whether your *Statement* includes a minimum payment that is due. If your *Account* is 180 days past due, is part of a bankruptcy proceeding or is otherwise charged off, the total balance is immediately due and payable.

## Making Payments

Your payment must be made in U.S. dollars from a U.S. deposit account in a form acceptable to us. We do not accept cash payments through the mail. You may not make payments with funds from your *Account* or any other credit account with us or any other company in the Capital One organization. You must send mailed payments to us as instructed on your *Statement*, unless we tell you otherwise.

## Other Payment Services

We may make services available that allow you to make faster or recurring payments online or by telephone. We will describe the terms for using these services and any applicable *Fee* before you use them. You do not have to use these other payment services.

We are not responsible if your financial institution rejects a payment made using our payment services.

If you ask someone else to make a payment for you, we may provide that person with limited *Account* information necessary to set up and process that payment. We may also refuse to accept that payment. If we do accept it, you will be responsible for that payment even if a financial institution rejects it.

## Payment Processing

We may accept and process payments without losing any of our rights. We may delay the availability of credit until we confirm that your payment has cleared. This may happen even if we credit your payment to your *Account*. We may resubmit and collect returned payments electronically. If necessary, we may adjust your *Account* to correct errors, process returned and reversed payments, and handle similar issues.

When you send us an *Item* as payment, you authorize us to make a one-time electronic fund transfer from your deposit account. You also authorize us to process the payment as an *Item*. We may withdraw the funds from your deposit account as early as the same day we receive your payment. You will not receive your *Item* back from your bank. We will provide additional information about this process on your *Statement*.

We may use the information from an *Item* to create an electronic image. We may collect and return the image electronically. This electronic image may also be converted to a substitute check and may be processed in the same way we would process an *Item*. We will not be responsible if an *Item* you provide has physical features that when imaged result in it not being processed as you intended.

## How We Apply Your Payments

Your *Account* may have *Segments* with different Annual Percentage Rates (APR). For example, purchases may have a lower APR than *Cash Advances*. If your *Account* has *Segment* balances with different APRs, here is how we apply payments in a *Billing Cycle*:

- (1) We generally apply credits and payments up to your minimum payment first to the balance with the lowest APR, and then to balances with higher APRs.
- (2) We apply any part of your payment exceeding your minimum payment to the balance with the highest APR, and then to balances with lower APRs.

## Items with Restrictive Words, Conditions, or Instructions

You must mail all *Items* bearing restrictive words, conditions, limitations, or special instructions to:

Capital One  
PO Box 1330  
Charlotte, NC 28201-1330

This includes *Items* marked "Paid in Full" or similar language. This also includes all accompanying communications.

If you make such a payment or send any accompanying communications to any other address, we may reject it and return it to you. We may also accept it and process it without losing any of our rights.

## Credit Balances

We may reject and return any payment that creates or adds to a credit balance on your *Account*. Any credit balance we allow will not be available until we confirm that your payment has cleared. We may reduce the amount of any credit balance by any new charges. You may write to the address provided on your *Statement* or call Customer Service to request a refund of any available credit balance.

## Account Default

You will be in default if:

- (1) you do not make any payment when it is due;
- (2) any payment you make is rejected, not paid or cannot be processed;
- (3) you exceed a credit limit;
- (4) you file or become the subject of a bankruptcy or insolvency proceeding;
- (5) you are unable or unwilling to repay your obligations, including upon death or legally declared incapacity;
- (6) we determine that you made a false, incomplete or misleading statement to us, or you otherwise tried to defraud us;
- (7) you do not comply with any term of this Agreement or any other agreement with us; or
- (8) you permanently reside outside the United States.

If you are in default, we may take certain actions with respect to your *Account*. For example, depending on the default, we may take the following actions, without notifying you, unless the law says that we must give you notice:

- (1) charge you *Fees*, or change the APRs and *Fees* on your *Account*, if provided in your *Truth-in-Lending Disclosures*;
- (2) close or suspend your *Account*;
- (3) lower your credit limit(s);
- (4) demand that you immediately pay the total balance owing on your *Account*;
- (5) continue to charge you *Interest Charges* and *Fees* as long as your balance remains outstanding; and/or
- (6) file a lawsuit against you, or pursue another action that is not prohibited by law. If we file a lawsuit, you agree to pay our court costs, expenses and attorney fees, unless the law does not allow us to collect these amounts.

## Communications

You agree that we may communicate with you by mail, telephone, email, fax, prerecorded message, automated

voice, text message or other means allowed by law regarding your *Account*.

You agree that we may contact you at any telephone number (including a mobile telephone number that you provide us), and use an automated telephone dialing system or similar device to do so. You agree that we may monitor or record any conversation or other communication with you.

### Credit Reports

We may report information about your *Account* to credit bureaus and others. Late payments, missed payments, or other defaults on your *Account* may be reflected in your credit report. Information we provide may appear on your and the *Authorized Users'* credit reports.

If you believe that we have reported inaccurate information about your *Account* to a credit bureau or other consumer reporting agency, notify us in writing at PO Box 30281, Salt Lake City, UT 84130-0281. When you write, tell us the specific information that you believe is incorrect and why you believe it is incorrect.

We may obtain and use credit, income and other information about you from credit bureaus and others as the law allows.

### Closing or Suspending Your Account

You may contact Customer Service to ask us to close your *Account*.

We may close or suspend your *Account* at any time and for any reason permitted by law, even if you are not in default.

If we close or suspend your *Account* for any reason, you must stop using your *Card*. You must also cancel all billing arrangements set up on the *Account*. If we close or permanently suspend your *Account*, you must return or destroy all *Cards*. You must still pay us all amounts you owe on the *Account*.

### Changes to Your Agreement

At any time, we may add, delete or change any term of this Agreement, unless the law prohibits us from doing so. We will give you notice of any changes as required by law. We may notify you of changes on your *Statement* or in a separate notice. Our notice will tell you when and how the changes will take effect. The notice will describe any rights you have in connection with the changes.

Your variable APRs (if applicable) can go up or down as the index for the rate goes up or down. If we increase your APRs for any other reason, or if we change your *Fees* or other terms of your *Account*, we will notify you as required by law.

### The Law That Applies to Your Agreement

We make decisions to grant credit and issue you a *Card* from our offices in Virginia. This Agreement is governed by applicable federal law and by Virginia law. If any part of this Agreement is unenforceable, the remaining parts will remain in effect.

### Waiver

We will not lose any of our rights if we delay or choose not to take any action for any reason. We may waive our right without notifying you. For example, we may waive your *Interest Charges* or *Fees* without notifying you and without losing our right to charge them in the future.

### Assignment

This Agreement will be binding on, and benefit, any of your and our successors and assigns. You may not sell, assign or transfer your *Account* or this Agreement to someone else without our written permission.

We may sell, assign or transfer your *Account* and this Agreement without your permission and without prior notice to you. Any assignee or assignees will take our place under this Agreement. You must pay them and perform all of your obligations to them and not us. If you pay us after we notify you that we have transferred your *Account* or this Agreement, we can return the payment to you, forward the payment to the assignee, or handle it in another way that is reasonable.

### Glossary

- **“Access Check”** means any check we send to you to access credit from your *Account*. We may also refer to an *Access Check* as a “convenience check” or a “purchase check”.
- **“Account”** means your *Card Account* with us.
- **“Authorized User”** means a person who may use the *Card*, but is not responsible for the repayment of the *Account*.
- **“Balance Transfer”** means a *Transfer* posted to the purchase *Segment* of your *Account* unless otherwise described in your *Truth-in-Lending Disclosures*.
- **“Billing Cycle”** means the period of time reflected on a *Statement*. This period may vary in length, but is approximately 30 days. You will have a *Billing Cycle* even if a *Statement* is not required. We will often specify a *Billing Cycle* by the month in which its closing date occurs. For example, a “March *Billing Cycle*” will have a closing date in March. We may also refer to a *Billing Cycle* as a “Billing Period”. If your *Account* balance has charged off, we may switch to quarterly *Billing Cycles* for your *Account*.
- **“Card”** means any Capital One credit card associated with your *Account*. This includes all renewals and substitutions. It also means any other access device for your *Account* we give you that allows you to obtain credit, including any *Account* number.
- **“Cash Advance”** means a loan in cash or things we consider cash equivalents, including wire transfers, travelers’ checks, money orders, foreign currency, lottery tickets, gaming chips, and wagers. We post *Cash Advances* to the *Cash Advance Segment* of your *Account* and not to your purchase *Segment*.

- **“Fees”** means charges imposed on your *Account* not based on the Annual Percentage Rates.
- **“Interest Charges”** means any charges to your *Account* based on the application of Annual Percentage Rates.
- **“Item”** means a check, draft, money order or other negotiable instrument you use to pay your *Account*. This includes any image of these instruments. This does not include an *Access Check*.
- **“Payment Card Network”** means the network provider displayed on your *Card*. This may be Visa Inc., MasterCard International Incorporated, or any other network provider.
- **“Segments”** means the different parts of your *Account* we may establish that are subject to unique APRs, pricing, or other terms. We create these parts of your *Account* for such things as your purchases, *Balance Transfers*, *Cash Advances* and *Special Transfers*. The sum of your *Segment* balances equals your total *Account* balance.
- **“Special Transfer”** means a *Transfer* posted to a *Segment* of your *Account* that is not your purchase *Segment* or *Cash Advance Segment*.
- **“Statement”** means a document showing important *Account* information, including all transactions billed to your *Account* during a *Billing Cycle* and information about what you must pay. We may also refer to your *Statement* as a “Periodic *Statement*” or a “Billing *Statement*”.
- **“Transfers”** means amounts transferred from other accounts to this *Account* and includes *Balance Transfers* and *Special Transfers*.
- **“Truth-in-Lending Disclosures”** means disclosures that the federal Truth in Lending Act and Regulation Z require for any *Account*. This includes your application and solicitation disclosures, *Account* opening disclosures, subsequent disclosures, *Statements*, and change in terms notices.



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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

Tanya Fitzpatrick, on behalf of herself and all others similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number)

(see attachment)

DEFENDANTS

Capital One Financial Corporation

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

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

Attorneys (If Known)

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

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

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

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, 1 1, 2 2, 3 3, 4 4, 5 5, 6 6

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, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes codes like 110 Insurance, 210 Land Condemnation, 310 Airplane, 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): 28 U.S.C. §§ 1332(d)(2) and (6)

Brief description of cause: Contract action based on breach of duty of good faith and fair dealing

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 Feb 18, 2022 SIGNATURE OF ATTORNEY OF RECORD /s/ Hassan A. Zavareei

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

Case 2:22-cv-00312-MCE-DB Document 1-2 Filed 02/18/22 Page 2 of 3  
**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.  
 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.

**I. (c) Attorneys (*Firm Name, Address, and Telephone Number*)**

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*Counsel for Plaintiffs and the Proposed Classes*

*\*pro hac vice application forthcoming*

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Capital One Made 'Illusory' Promises to Refund Fees, Interest Amid Pandemic, Lawsuit Alleges](#)

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