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

13 **STEVEN PERDEW, Individually**
 14 **and On Behalf of All Others**
 15 **Similarly Situated,**

16 Plaintiff,

17 v.

18 **CAPITAL ONE BANK (USA),**
 19 **N.A.,**

20 Defendant.

21 Case No.: '19CV1421 BEN BLM

22 **CLASS ACTION COMPLAINT**
 23 **FOR DAMAGES FOR**
 24 **VIOLATIONS OF:**

- 25 I. CAL. CIV. CODE § 1798.81.5;
- 26 II. CAL. BUS. PROF. CODE §§ 17200, *ET SEQ.*;
- 27 III. NEGLIGENCE

JURY TRIAL DEMANDED

KAZEROUNI LAW GROUP, APC
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 COSTA MESA, CA 92626

1 The plaintiff STEVEN PERDEW (“Plaintiff” or “Mr. Perdeu”), brings this
2 Class action complaint on behalf of himself individually and all others similarly
3 situated, by and through their attorneys, against Defendant CAPITAL ONE BANK
4 (USA), N.A. (“Capital One” or “Defendant”) and allege upon information and belief
5 as follows:

6 INTRODUCTION

- 7 1. Plaintiff makes these allegations on information and belief, with the exception
8 of those allegations that pertain to Plaintiff, or to Plaintiff’s counsel, which
9 Plaintiff alleges on personal knowledge.
- 10 2. While many violations are described below with specificity, this Complaint
11 alleges violations of each statute cited in its entirety.
- 12 3. Unless otherwise indicated, the use of Defendant’s name in this Complaint
13 includes all agents, employees, officers, members, directors, heirs, successors,
14 assigns, principals, trustees, sureties, subrogees, representatives, and insurers of
15 the Defendant.
- 16 4. To ensure that that personally identifiable information (“PII”) about California
17 residents is protected, the California legislature enacted California Civil Code §
18 1798.81.5. The creation of this bill provided Plaintiff, and all other persons
19 similarly situated within the United States, a right to keep their personal
20 information maintained by Defendant confidential.
- 21 5. Under this title, businesses, including Defendant, are required to implement
22 and maintain reasonable security procedures and practices appropriate to the
23 nature of the information, to protect the personal information from
24 unauthorized access, destruction, use, modification, or disclosure. Cal. Civ.
25 Code § 1798.81.5.
- 26 6. As alleged in greater detail below, on July 19, 2019, Defendant determined that
27 there had been an unauthorized access to the personal data of individuals that
28 had applied for a credit card between 2005 and early 2019.

- 1 7. Defendant has neglected its duty to do so and has allowed unauthorized access
2 to its customers’ PII, including, but not limited to, social security numbers,
3 names, consumer credit scores, bank account numbers, date of birth, self-
4 reported income, addresses, telephone numbers, and email address.
- 5 8. Upon information and belief, this was the result of Defendant’s cyber security
6 has been substantially deficient, resulting in a clear violation of Cal. Civ. Code
7 § 1798.81.5, among other laws.
- 8 9. Notwithstanding this failure to abide by its statutory duty, Defendant continued
9 to represent itself as a company that has “[s]afeguards [] in place to protect
10 your information.”¹

11 **JURISDICTION AND VENUE**

- 12 10. This Court has subject matter jurisdiction over this action under 28 U.S.C. §
13 1332(d) of the Class and Subclass Action Fairness Act (“CAFA”) because the
14 amount in controversy exceeds the sum or value of \$5,000,000, exclusive of
15 interest and costs, with at least one member of the proposed Class and
16 Subclass being a citizen of a different state than Defendant.
- 17 11. This Court has personal jurisdiction over Defendant because Defendant
18 conducts business in California and maintains sufficient contacts with the
19 state.
- 20 12. Venue is appropriate in the United States District Court for the Central District
21 of California pursuant to 28 U.S.C. § 1391 for the following reasons:
- 22 (i) Plaintiff resides in San Diego County, California which is within this
23 judicial district;
 - 24 (ii) the injury to Plaintiff occurred within this judicial district; and,
 - 25 (iii) Defendant conducted business within this judicial district at all
26 relevant times.

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28 ¹ *Bank Securely*, Capital One, https://www.capitalone.com/applications/identity-protection/commitment/#2_pg_sl

PARTIES

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2 13. Mr. Perdew is a resident and citizen of San Diego County in the State of
3 California.

4 14. Defendant is incorporated under the laws of the State of Virginia with its
5 principal place of business and headquarters located in Fairfax County,
6 Virginia.

7 15. Upon information and belief, Defendant is one of largest banking institutions
8 with a reported \$249.8 billion in deposits as of December 31, 2018.

9 16. Defendant extends consumer credit cards nation-wide.

10 **NATURE OF THE CASE**

11 17. Plaintiff re-alleges and incorporates by reference all of the above paragraphs of
12 this Complaint as though fully stated herein.

13 18. Beginning sometime before July 2019, Capital One began storing customer
14 data on cloud servers in Amazon Web Services' ("AWS") popular data storage
15 software Simple Storage Service.

16 19. Capital One has been one of the most vocal advocates for using cloud services
17 among banks. The lender has said it is migrating an increasing percentage of its
18 applications and data to the cloud and plans to completely exit its data centers
19 by the end of 2020 -- a move the company says will help lower costs.

20 20. In utilizing AWS' data servers, Capital One built its own web application on
21 top of AWS' cloud data so that Capital One could use the information in ways
22 specific to its needs.

23 21. According to AWS, Capital One had full control over the construction of this
24 application.

25 22. Sometime between March 12 and July 17, 2019, a hacker was able to access
26 Capital One's data through a misconfiguration of a firewall on Capital One's
27 web application.
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1 23. This hole allowed the hacker to communicate with the servers where Capital
2 One was storing its information. Thus, providing the hacker with access to
3 consumer files.

4 24. For example, one command executed in the firewall hack allowed the hacker to
5 gain credentials for an administrator account known as *****WAF-Role. The
6 command in turn enabled access to bank data stored by AWS' at Capital One's
7 instruction.

8 25. Other commands allowed the hacker to enumerate Capital One's folders and
9 copy the content inside each folder.

10 26. Once the hacker had the consumers' information, it has been confirmed that the
11 hacker had shared the data with at least one other individual and posted
12 sensitive data on Github, a social networking site for programmers.

13 27. Capital One is no stranger to data breaches. In 2017 and 2014, Capital One had
14 two separate occasions where individuals gained unauthorized and
15 inappropriate access to consumer data including, social security numbers and
16 account numbers.

17 28. In cycle fashion, Capital One has yet again allowed for an unauthorized third-
18 party to access consumer data due to Capital One's misconfiguration of its
19 security system.

20 **FACTUAL ALLEGATIONS**

21 29. Plaintiff incorporates by reference all the above paragraphs of this complaint as
22 if fully stated herein.

23 30. On or about July 25, 2012, Plaintiff opened a credit card with Capital One
24 Bank.

25 31. Shortly before the account was opened, Plaintiff provided Capital One with a
26 credit card application.

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1 32. According to Capital One, the largest category of information accessed in the
2 breach was information on consumers' credit card applications filed between
3 2005 and early 2019.

4 33. Upon information and believe, Capital One allowed Plaintiff's PII that was on
5 his credit card application to be vulnerable and accessible. This PII includes his
6 name address, zip code, phone number, email address, date of birth, self-
7 reported income, credit score, and his social security number.

8 34. Upon information and belief, Plaintiff's PII has been shared with third parties
9 and is now accessible on the web.

10 35. Plaintiff's PII would not have been accessed and exposed if it were not for
11 Capital One's negligence and lack of reasonable measures in designing its web
12 application.

13 36. Plaintiff reasonably expected that Defendant would take reasonable measures
14 to ensure data security of sensitive information, and had Plaintiff known that
15 his information would be compromised, he would not have eaten at
16 Defendant's restaurant.

17 37. As of the filing of this Complaint, Defendant has not provided Plaintiff with
18 actual notice of the existence of the data breach.

19 **CHOICE OF LAW**

20 38. Plaintiff re-alleges and incorporates by reference all of the above paragraphs of
21 this Complaint as though fully stated herein.

22 39. The State of California has sufficient interest in the conduct at issue in this
23 complaint, such that California law may be uniformly applied to the claims of
24 the proposed Class.

25 40. Defendant does substantial business in California, and a significant portion of
26 the proposed nationwide Class and California Subclass members are located in
27 California. There are 4,969 ATM locations in California.

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1 41. Defendant avails itself to these California citizens by soliciting directly to
2 them.

3 42. The State of California also has the greatest interest in applying its law to Class
4 and Subclass members' claims. California's governmental interests include not
5 only compensating resident consumers under its consumer protection laws, but
6 also what the State has characterized as a "compelling" interest in using its
7 laws to preserve a business climate free of unfair and deceptive practices.
8 *Diamond Multimedia Sys. v. Sup. Ct.*, 19 Cal. 4th 1036, 1064 (1999).
9 Moreover, the State has expressly demonstrated an interest in protecting
10 California consumers' personal information, as well as encouraging California
11 business to provide reasonable security to protect consumer information. *See*
12 Cal. Civ. Code § 1798.81.5(a)(1).

13 43. If other states' laws were applied to Class and Subclass members' claims,
14 California's interest in discouraging resident corporations from engaging in the
15 sort of unfair and deceptive practices alleged in this complaint would be
16 significantly impaired. California could not effectively regulate a company like
17 Capital One, which does business throughout the United States, if it can only
18 ensure remuneration for consumers from one of the 50 states affected by
19 conduct that runs afoul of its laws.

20 **CLASS ACTION ALLEGATIONS**

21 44. Plaintiff re-alleges and incorporates by reference all of the above paragraphs of
22 this Complaint as though fully stated herein.

23 45. Plaintiff brings this action on behalf of himself individually and on behalf of all
24 others similarly situated, pursuant to Federal Rule Civil Procedure 23(b)(1),
25 (b)(2) and/or (b)(3).

26 46. The putative Class ("the Class") that Plaintiff seeks to represent is composed
27 of:
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1 All persons within the United States who applied for a Capital
2 One consumer credit cards since 2005.

3 47. The putative Subclass (“the Subclass”) that Plaintiff seeks to represent is
4 composed of:

5 All persons within the California who applied for a Capital One
6 consumer credit cards since 2005.

7 48. Excluded from the Class and Subclass are any of Defendant’s officers,
8 directors, employees, affiliates, legal representatives, attorneys, heirs, and
9 assigns, and any entity in which Defendant has a controlling interest. Judicial
10 officers presiding over this case, its staff, and immediate family members, are
11 also excluded from the Class and Subclass.

12 49. The members of the Class and Subclass are so numerous that joinder of all
13 members is impracticable. While the exact number of the Class and Subclass
14 members is unknown to Plaintiff at this time, Capital One has suspected it
15 includes around 100 million individuals.

16 50. There is a well-defined community of interest among the members of the Class
17 and Subclass because common questions of law and fact predominate,
18 Plaintiff’s claims are typical of the members of the Class, and Plaintiff can
19 fairly and adequately represent the interests of the Class.

20 51. Common questions of law and fact exist as to all members of the Class and
21 Subclass and predominate over any questions affecting solely individual
22 members of the Class. Among the questions of law and fact common to the
23 Class and Subclass are:

- 24 a) Whether Plaintiff and the Class and Subclass had their private and
25 confidential information accessed due to Defendant’s misconfiguration
26 in its web application’s firewall;
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- 1 b) Whether Defendant failed to implement and maintain reasonable
- 2 security procedures and practices appropriate to the nature of the
- 3 information, to protect the personal information from unauthorized
- 4 access, destruction, use, modification, or disclosure as required by Cal.
- 5 Civ. Code § 1798.81.5(b);
- 6 c) Whether Plaintiff and the Class and Subclass are entitled to damages
- 7 under Cal. Civ. Code § 1798.84(b); and
- 8 d) Whether Defendant’s claims and representations, as alleged herein, are
- 9 untrue, misleading, and/or reasonably likely to deceive the average
- 10 consumer;
- 11 e) Whether Defendant’s conduct is an unfair, fraudulent, or unlawful act or
- 12 practice within the meaning of California Business & Professions Code
- 13 §§ 17200, *et seq.*;
- 14 f) Whether Defendant acted negligently in creating its firewall;
- 15 g) Whether Defendant, through its conduct, received money that, in equity
- 16 and good conscience, belongs to Plaintiff and members of the Class;
- 17 h) Whether Plaintiff and the putative Class and Subclass members are
- 18 entitled to equitable relief, including but not limited to restitution and/or
- 19 disgorgement of ill-gotten gains; and
- 20 i) Whether Plaintiff and the putative Class and Subclass members are
- 21 entitled to injunctive relief as sought herein.

22 52. Plaintiff’s claims are typical of those of the other Class and Subclass members
23 because Plaintiff, like every other Class and Subclass member, provided PII for
24 similar purposes and had their PII exposed through malware installed on
25 Defendant’s POS systems.

26 53. Plaintiff will fairly and adequately protect the interests of the Class and
27 Subclass. Moreover, Plaintiff has no interest that is contrary to or in conflict
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1 with those of the Class and Subclass he seeks to represent during the Class and
2 Subclass Period.

3 54. Plaintiff has retained competent counsel experienced in Class and Subclass
4 action litigation to further ensure such protection and intend to prosecute this
5 action vigorously.

6 55. The prosecution of separate actions by individual members of the Class and
7 Subclass would create a risk of inconsistent or varying adjudications with
8 respect to individual members of the Class, which would establish
9 incompatible standards of conduct for the Defendant in the State of California
10 and would lead to repetitious trials of the numerous common questions of fact
11 and law in the State of California. Plaintiff knows of no difficulty that will be
12 encountered in the management of this litigation that would preclude its
13 maintenance as a Class and Subclass action. As a result, a Class and Subclass
14 action is superior to other available methods for the fair and efficient
15 adjudication of this controversy.

16 56. Proper and sufficient notice of this action may be provided to the Class and
17 Subclass members through direct mail and email.

18 57. The Class and Subclass members' individual damages are insufficient to justify
19 the cost of litigation, so that in the absence of Class and Subclass treatment,
20 Defendant's violations of law inflicting substantial damages in the aggregate
21 would not be remedied without certification of the Class.

22 58. Absent certification of this action as a Class and Subclass action, Plaintiff and
23 the members of the Class and Subclass will continue to be damaged by the
24 unauthorized release of their PII.

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CAUSES OF ACTION

Count I

Violations of California Civil Code §§ 1798.80, *et seq.*

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59. Plaintiff incorporates by reference all of the above paragraphs of this complaint as if fully stated herein.

60. Defendant is a “business” within the meaning of Cal. Civil Code § 1798.80(a).

61. The credit card application information that Defendant made available through the internet was personal information relating to Defendant’s internal customer account or for the purpose of using that information in transactions relating to Plaintiff’s and the Class’ accounts, specifically for the loaning of credit. Therefore, Defendant “owned” or “licensed” the information as defined by Cal. Civil Code § 1798.81.5(a)(2).

62. All of this information that Defendant owns, licenses, or maintains constitutes “personal information” as defined by 1798.80(e) and 1798.81.5(d), as it contained each Plaintiff’s and Class and Subclass members’ name, social security number, address, telephone number and income.

63. Plaintiff and Class and Subclass members are natural persons that provided personal information to Defendant for its credit services, and are therefore “Customers” as defined by Cal. Civil Code § 1798.80(c).

64. The exposure of the personal information of millions of Defendant’s current and former customers through a misconfiguration in its firewall to an unauthorized third party was a “breach of the security system” of Defendant as defined by Civil Code section 1798.82(g).

65. By failing to implement reasonable security measures appropriate to the nature of the personal information of its current and former customers as described above, Defendant violated Civil Code section 1798.81.5.

66. In addition, by failing to immediately notify all affected current and former customers that their personal information had been acquired (or was reasonably

1 believed to have been acquired) by unauthorized persons in the Data Breach,
2 Defendant violated Civil Code section 1798.82 of the same title.

3 67. Defendant’s failure to immediately notify its customers of the breach caused
4 Plaintiff and Class and Subclass members to suffer damages because they have
5 lost the opportunity to immediately: (i) buy identity protection, monitoring, and
6 recovery services; (ii) flag asset, credit, and tax accounts for fraud, including
7 reporting the theft of their Social Security numbers to financial institutions,
8 credit agencies, and the Internal Revenue Service; (iii) purchase or otherwise
9 obtain credit reports; (iv) monitor credit, financial, utility, explanation of
10 benefits, and other account statements on a monthly basis for unrecognized
11 credit inquiries, Social Security numbers, home addresses, charges, and/or
12 medical services; (v) place and renew credit fraud alerts on a quarterly basis;
13 (vi) routinely monitor public records, loan data, or criminal records; (vii)
14 contest fraudulent charges and other forms of criminal, financial and medical
15 identity theft, and repair damage to credit and other financial accounts; and
16 (viii) take other steps to protect themselves and recover from identity theft and
17 fraud, such as buying identity theft insurance, which is an out-of-pocket cost.

18 68. As Defendant violated Civil Code sections 1798.81.5 and 1798.82, Defendant
19 “may be enjoined” under Civil Code section 1798.84(e).

20 69. Plaintiff requests that the Court enter an injunction requiring Defendant to
21 implement and maintain reasonable security procedures to protect its
22 customers’ personal information, including, but not limited to, ordering that
23 Defendant: (1) engage third-party security auditors/penetration testers as well
24 as internal security personnel to conduct testing consistent with prudent
25 industry practices, including simulated attacks, penetration tests, and audits on
26 Defendant’s systems on a periodic basis; (2) engage third-party security
27 auditors and internal personnel to run automated security monitoring consistent
28 with prudent industry practices; (3) audit, test, and train its security personnel

1 regarding any new or modified procedures; (4) purge, delete and destroy, in a
2 secure manner, customer data not necessary for its business operations; (5)
3 conduct regular database scanning and securing checks consistent with prudent
4 industry practices; (6) periodically conduct internal training and education to
5 inform internal security personnel how to identify and contain a breach when it
6 occurs and what to do in response to a breach consistent with prudent industry
7 practices; (7) receive periodic compliance audits by a third party regarding the
8 security of the computer systems Defendant used to store the personal
9 information of its current and former employees; (8) meaningfully educate its
10 current and former employees about the threats they face as a result of the loss
11 of their PII to third parties, as well as the steps they must take to protect
12 themselves; and (9) provide ongoing identity theft protection, monitoring, and
13 recovery services to Plaintiff and Class and Subclass members.

14 70. Plaintiff further requests that the Court order Defendant to (1) identify and
15 notify all members of the Class and Subclass who have not yet been informed
16 of the data breach; and (2) notify affected current and former customers of any
17 future data breaches by email within 24 hours of Defendant's discovery of a
18 breach or possible breach and by mail within 72 hours.

19 71. As a result of Defendant's violations of Civil Code §§ 1798.81.5 and 1798.82,
20 Plaintiff and members of the Class and Subclass have incurred and will incur
21 damages, including but not necessarily limited to: (1) the loss of the
22 opportunity to control how their PII is used; (2) the compromise, publication,
23 and/or theft of their PII and the PII of their family members; (3) out-of-pocket
24 costs associated with the prevention, detection, insurance, and recovery from
25 identity theft and/or unauthorized use of financial and medical accounts; (4)
26 lost opportunity costs associated with effort expended and the loss of
27 productivity from addressing and attempting to mitigate the actual and future
28 consequences of the breach, including but not limited to efforts spent

1 researching how to prevent, detect, contest and recover from identity and
2 health care/medical data misuse; (5) costs associated with the ability to use
3 credit and assets frozen or flagged due to credit misuse, including complete
4 credit denial and/or increased costs to use credit, credit scores, credit reports
5 and assets; (6) unauthorized use of compromised PII to open new financial
6 and/or health care or medical accounts; (7) tax fraud and/or other unauthorized
7 charges to financial, health care or medical accounts and associated lack of
8 access to funds while proper information is confirmed and corrected; (8) the
9 continued risk to their PII, which remain in Defendant's possession and are
10 subject to further breaches so long as Defendant fails to undertake appropriate
11 and adequate measures to protect the PII in its possession; and (9) future costs
12 in terms of time, effort and money that will be expended, to prevent, detect,
13 contest, and repair the impact of the PII compromised as a result of the Data
14 Breach for the remainder of the lives of the Class and Subclass members.

15 72. Plaintiff seeks all remedies available under Civil Code section 1798.84,
16 including actual and statutory damages, equitable relief, and reasonable
17 attorneys' fees. Plaintiff also seeks reasonable attorneys' fees and costs under
18 applicable law including Federal Rule of Civil Procedure 23; California Code
19 of Civil Procedure § 1021.5; and the Catalyst Theory.

20 **Count II**

21 **Violations of California's Unfair Competition Law ("UCL"),**

22 **Bus. & Prof. Code §§ 17200, *et seq.***

23 73. Plaintiff re-alleges and incorporates by reference all of the above paragraphs of
24 this Complaint as though fully stated herein.

25 74. Plaintiff and Defendant are each a "person" as defined by California Business
26 & Professions Code § 17201. California Business & Professions Code § 17204
27 authorizes a private right of action on both an individual and representative
28 basis.

1 75. “Unfair competition” is defined by Business and Professions Code § 17200 as
2 encompassing several types of business “wrongs,” including: (1) an “unlawful”
3 business act or practice, (2) an “unfair” business act or practice, (3) a
4 “fraudulent” business act or practice, and (4) “unfair, deceptive, untrue or
5 misleading advertising.” The definitions in § 17200 are drafted in the
6 disjunctive, meaning that each of these “wrongs” operates independently from
7 the others.

8 76. Plaintiff and the Classes have suffered economic injury in that, had they known
9 Capital One held the consumers’ PII protected only by a misconfigured
10 firewall, Plaintiff and members of the Classes would have utilized a bank with
11 a more secure system.

12 77. By and through Defendant’s conduct alleged in further detail above and herein,
13 Defendant engaged in conduct which constitutes unlawful, unfair, and/or
14 fraudulent business practices, and unfair, deceptive, untrue or misleading
15 advertising, as prohibited by California’s UCL.

16 **A. “UNLAWFUL” PRONG**

17 78. Defendant has committed acts of unfair competition, including those described
18 above, by engaging in a pattern of “unlawful” business practices, within the
19 meaning of Bus. & Prof. Code §§ 17200 *et seq.*, by not implement and
20 maintain reasonable security procedures or providing notice after a security
21 breach as required by Cal. Civ. Code § 1798.80, *et seq.*

22 79. By holding consumer data in violation of those California laws, Defendant
23 engaged in a pattern of “unlawful” business practices within the meaning of
24 California’s UCL.

25 **B. “UNFAIR” PRONG**

26 80. Beginning as of approximately early as 2016, Defendant committed acts of
27 unfair competition as prohibited by Bus. & Prof. Code §§ 17200, *et seq.*
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1 81. Had Plaintiff and the putative Class and Subclass members been informed that
2 Defendant's services actually would place Plaintiff's and the putative Class and
3 Subclass members' personal information in jeopardy, they would not have
4 purchased the service, would have paid less for it, or would have purchased a
5 different product.

6 82. In other words, Defendant earned the business of Plaintiff and the putative
7 Class and Subclass members by using deceptive representations as the its
8 security, which placed competitors that had spent money on cyber security at a
9 disadvantage.

10 **C. "FRAUDULENT" PRONG**

11 83. Defendant engaged in acts of unfair competition, including those described
12 above and herein, in violation of Bus. & Prof. Code §§ 17200, *et seq.*, by
13 engaging in a pattern of "fraudulent" business practices within the meaning of
14 Bus. & Prof. Code §§ 17200, *et seq.*, by falsely representing its services as
15 secure, when, in fact, the services were not secure as explained above.

16 84. Plaintiff reserves the right to allege further conduct that constitutes other
17 fraudulent business acts or practices.

18 85. In prosecuting this action for the enforcement of important rights affecting the
19 public interest, Plaintiff seeks the recovery of attorneys' fees, which reward is
20 available to a prevailing Plaintiff in a Class and Subclass action such as this.

21 **Count V**

22 **Negligence**

23 86. Plaintiff realleges and incorporates by reference the allegations contained in
24 each of the preceding paragraphs as if fully set forth herein.

25 87. In collecting the financial and other personal information of its customers and
26 potential consumers, Defendant undertook and owed Plaintiff and Class and
27 Subclass members a duty to exercise reasonable care in safeguarding and
28 protecting that information. This duty included, maintaining and testing

1 Defendant's security systems and taking other reasonable security measures to
2 protect and adequately secure the PII of Plaintiff and Class and Subclass
3 members from unauthorized access. Moreover, Defendant was under the duty
4 to timely notify its former and current consumers that their information may
5 have been accessed.

6 88. Defendant owed a duty of care to Plaintiff and Class and Subclass members
7 because they were foreseeable and probable victims of any inadequate security
8 practices. It was foreseeable that if Defendant did not take reasonable security
9 measures, the PII of Plaintiff and members of the Class and Subclass would be
10 stolen.

11 89. Major corporations like Defendant face a higher threat of security breaches
12 than smaller companies due in part to the large amounts of data they possess
13 and Defendant knew or should have known its security systems, particularly
14 the firewall on its web application, were inadequate. Yet Defendant failed to
15 take reasonable precautions to safeguard the Plaintiff's and the Class and
16 Subclass members' PII. Even worse, up to the filing of this complaint Plaintiff
17 has not been provided actual notice that their information may have been
18 accessed by third parties. Therefore, Defendant breached the duties it owed to
19 its current and former customers.

20 90. Under Cal. Civ. Code §§ 1798.80, *et seq*, Defendant was under a statutory duty
21 to protect its customer's information and to notify their customers if this
22 information was compromised. Despite this, Defendant had below average
23 cyber security and it still has not provided any customers with notice of the
24 data compromise. Therefore, Defendant is negligent per se.

25 91. There is a very close connection between Defendant's failure to employ
26 reasonable security protections of its current and former customers' PII and the
27 injuries suffered by Plaintiff and Class and Subclass members. When
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1 individuals' PII is exposed as occurred here, they are at risk for identity theft
2 and need to preventative measures.

3 92. But for Defendant's failure to implement and maintain adequate security
4 measures to protect its customers' PII and failure to monitor its systems to
5 identify suspicious activity, the PII of Plaintiff and Class and Subclass
6 members would not have been at risk of theft or stolen, Plaintiff and Class and
7 Subclass members would not have been injured, and Plaintiff and Class and
8 Subclass members would not be at a heightened risk of identity theft in the
9 future.

10 93. Defendant has acknowledged that 100 million consumers' PII was exposed as a
11 result of its misconfigured firewall. As a result of Defendant's negligence,
12 Plaintiff and members of the Class and Subclass have suffered and will suffer
13 injury, including but not necessarily limited to those listed above.

14 94. Plaintiff and the Class and Subclass are also entitled to damages and reasonable
15 attorneys' fees and costs. Plaintiff also seeks reasonable attorneys' fees and
16 costs under applicable law including Federal Rule of Civil Procedure 23;
17 California Code of Civil Procedure § 1021.5; and Catalyst Theory.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff respectfully requests the Court grant Plaintiff and the
20 Class and Subclass the following relief against Defendant:

- 21 • That the Court determine that this action may be maintained as a Class and
22 Subclass Action by certifying this case as a Class and Subclass Action as to
23 the Class;
- 24 • That the Court appoint Plaintiff to serve as the Class and Subclass
25 Representative in this matter and appoint Plaintiff's Counsel as Class and
26 Subclass Counsel;
- 27 • That Plaintiff and the Class and Subclass be awarded prejudgment interest,
28 reasonable attorneys' fees, and costs of suit pursuant to Code of Civil

- 1 Procedure § 1021.5 and California Civil Code § 1780, and/or any other
2 applicable law;
- 3 • That Defendant’s wrongful conduct alleged herein be adjudged and decreed
4 to violate the statutes and laws asserted herein;
 - 5 • That Plaintiff and the Class and Subclass be awarded injunctive relief
6 prohibiting such conduct in the future;

7 **For Count I**

8 **Violations of California Civil Code §§ 1798.80, *et seq.***

- 9 • Costs of Suit;
- 10 • An award of actual damages according to proof per violation to each of the
11 named Plaintiff individually and to each member of the Class and Subclass
12 pursuant to Cal. Civ. Code § 1798.84(b); and
- 13 • Any and all further relief that this Court deems just and proper.

14 **For Count II**

15 **Violations of Cal. Bus. & Prof. Code §§ 17200, *et seq.***

- 16 • Costs of Suit;
- 17 • Restitution and injunctive relief pursuant to Bus. & Prof. Code § 17535;
18 and
- 19 • Recovery of reasonable attorneys’ fees pursuant to, *inter alia*, California
20 Code of Civil Procedure § 1021.5; and
- 21 • Any and all further relief that this Court deems just and proper.

22 **For Count III**

23 **Negligence**

- 24 • Costs of Suit;
- 25 • Actual damages;
- 26 • Punitive damages;
- 27 • Recovery of reasonable attorneys’ fees pursuant to, *inter alia*, California
28 Code of Civil Procedure § 1021.5; and

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- Any and all further relief that this Court deems just and proper.

TRIAL BY JURY

95. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff is entitled to, and hereby demands, a trial by jury on all causes of action and claims with respect to which they have a right to a jury trial.

Dated: July 29, 2019

KAZEROUNI LAW GROUP, APC

By: /s/ Abbas Kazerounian
Abbas Kazerounian, Esq.
Attorneys for Plaintiff

Additional Counsel for Plaintiff

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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

Steven Perdew, Individually and On Behalf of All Others Similarly Situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Kazerouni Law Group 245 Fischer Avenue, Suite D1 Costa Mesa, California 92626; Telephone: (800) 400-6808

DEFENDANTS

CAPITAL ONE BANK (USA), N.A.

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

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

Attorneys (If Known)

'19CV1421 BEN BLM

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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, 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)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): (I). CAL. CIV. CODE § 1798.81.5; (II) CAL. BUS. PROF. CODE §§ 17200, ET SEQ.; Negligence. Brief description of cause: Defendant released Plaintiff's personal information due to inadequate cyber security

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 07/29/2019 SIGNATURE OF ATTORNEY OF RECORD s/ Abbas Kazerounian

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

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

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

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

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Capital One Facing at Least Three Lawsuits in Wake of Data Breach Announcement](#)