

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

Susan Dress, on behalf of herself  
and all others similarly situated,

Plaintiff,

v.

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

Defendant.

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

**CASE NO. 4:18-cv-40064**

Plaintiff, SUSAN DRESS, on behalf of herself and all others similarly situated, sues  
Defendant, CAPITAL ONE BANK (USA), N.A., and alleges:

**INTRODUCTION**

1. Plaintiff asserts this action pursuant to Fed. R. Civ. P. 23, on behalf of herself and all others similarly situated throughout the United States, for damages and other relief arising from Capital One's routine practice of charging interest on credit card accounts on transactions that are fully paid by the billing period due date.

2. Capital One, like other major credit card companies, provides consumers a grace period to pay their credit card balances. This grace period is promised to consumers in both their Capital One Credit Card Agreement and in the disclosures on the back of their monthly statements. But unlike other major credit card companies, Capital One fails to tell consumers they can lose their grace period on all future transactions by failing to pay off their balance in full in a prior month.

3. Plaintiff Dress and reasonable American consumers understand the general rule that when making a purchase with a credit card, they will be hit with interest charges on purchase if they do not pay for those purchases, in full, by the next billing statement's due date. Reasonable consumers also understand the converse to be true: if they pay for their purchases on time, they will avoid paying interest on those purchases.

4. Capital One's credit card contracts affirm these common sense understandings, but Capital One's actual practice does not. Capital One customers who pay off purchases, in full, in a given month are often shocked to find that they are still charged interest on their next month's bill for those same purchases.

5. Capital One affirmatively misrepresents and omits in its contracts with consumers that they may be forced to pay interest on amounts that are paid in full by the statement date. Capital One's contracts and disclosures state, and lead reasonable consumers like Plaintiff to believe, that consumers who pay off new purchases in full by the due date for the billing cycle with not be charged interest on such purchases

6. In actuality, if a Capital One consumer fails to pay her entire balance by the statement due date, then Capital One takes away the interest-free grace period on all future purchases, causing interest charges to accrue the moment a customer makes a purchase. This is true regardless of whether the consumer pays her upcoming credit card balance in full. Accordingly, contrary to their reasonable expectations, consumers are charged interest on new purchases that are paid in full by the statement date.

7. Indeed, when a consumer has not paid off her statement balance in full, Capital One charges interest on all new purchases from the moment they are made (with no grace period) simply because other, prior purchases were not paid off in full. No reasonable consumer would expect this to be so and nowhere is the counterintuitive practice disclosed by Capital One.

8. Plaintiff and members of the class were improperly charged interest on amounts that were fully paid by the statement due date, contrary to their reasonable expectations and the express terms of Capital One's contract with consumers.

9. This practice is not only a breach of contract, it is also unfair and deceptive.

10. Plaintiff and other Capital One customers have been injured by Capital One's practices. On behalf of herself and the putative class, Plaintiff seeks damages and restitution for Capital One's breach of contract. Additionally, Plaintiff seeks an injunction on behalf of the general public to prevent Capital One from continuing to engage in its illegal practices.

## **PARTIES**

11. Plaintiff, Susan Dress, is a citizen and resident of the State of Massachusetts and has had a credit card with Capital One at all times material hereto.

12. Defendant Capital One is a federal bank headquartered in McLean, Virginia. Capital One is the fourth largest credit card issuer in the United States, and has approximately \$91 billion outstanding credit card loans to consumers.<sup>1</sup>

## **JURISDICTION AND VENUE**

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

14. This Court has personal jurisdiction over the Defendant because Defendant regularly conducts business in this District and the claims herein arose from business transactions of Defendant in this District.

15. Venue is likewise proper in this district pursuant to 28 U.S.C. § 1391 because Capital One regularly conducts business within this District and because a substantial part of the events giving rise to Plaintiff's claims occurred within this District, where Plaintiff resides.

## **FACTUAL ALLEGATIONS**

### **A. Capital One's Contract Promises Consumers No Interest on Amounts that are Paid In Full by the Billing Cycle Due Date**

16. American consumers understand that when they use their credit card to make a purchase, their credit card balance will not begin to accrue interest immediately. Rather,

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<sup>1</sup> Robert Harrow, *Largest U.S. Credit Card Issuers: 2017 Market Share Report*, ValuePenguin (Jun. 27, 2017), <https://www.valuepenguin.com/largest-credit-card-issuers>.

consumers are accustomed to—and indeed almost all major credit cards offer—a “grace period” for consumers to pay off new charges before they start accruing interest.

17. Like other credit card issuers, Capital One expressly promises consumers they will receive an interest-free grace period on all purchases, so long as those purchases are paid off before the end of the monthly grace period.

18. Capital One’s Credit Card Agreement specifically promised Plaintiff and other class members an interest-free grace period on their purchases:

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...if you paid the total balance across all Segments of your Account in full by the due date on your Statement each month.**

Ex. A at 3 (emphasis added).

19. Thus, pursuant to the Credit Card Agreement, Capital One may not charge interest on purchase balances that the customer pays in full before the statement due date.

20. Capital One reiterates its promise not to charge interest during the grace period on the back of its monthly credit card statements. The disclosure on the back of the statements reads as follows:

How is the Interest Charge applied? Interest Charges accrue from the date of the transaction or the first day of the Billing Cycle. **Interest Charges accrue on every unpaid amount until it is paid in full.** This means you may owe Interest Charges even if you pay the entire New Balance for one Billing Cycle, but did not do so the previous Billing Cycle.

Ex. B (monthly Statement) (emphasis added).

21. Together, Capital One’s disclosures to consumers make clear that new purchases will not be charged interest if those new purchases are paid off by the billing cycle’s due date.

22. But Capital One does not honor this promise to consumers. Instead, because of murky rules only known to itself, Capital One provides no grace period on new purchases paid within 30 days, simply because other, prior purchases were not paid off in full in the past. That makes no sense and is nowhere disclosed.

**B. Capital One's Actual Practice**

23. If a consumer makes a \$100 purchase on her Capital One credit card, and she pays off that entire balance by the due date of her next statement, she will pay no interest on that purchase because of the grace period promised by Capital One. Indeed, if she pays her statement balance in full every month, she will enjoy an interest-free grace period on all her purchases and never pay interest charges.

24. But if, during one month, she does not pay her statement balance in full, she is in for an unpleasant surprise.

25. Here's how Capital One's undisclosed practice actually works. Without notifying consumers, Capital One eliminates the grace period *for all new purchases* if a consumer does not pay off her entire statement balance in a given month. If a consumer leaves even \$1 on her account balance after a billing period due date, Capital One eliminates the grace period for all subsequent new purchases—even for new purchases fully paid off by the next billing cycle's due date.

26. In other words, with a Capital One card, keeping a balance into the next billing cycle means there is no grace period on your purchases during that cycle. The card starts charging interest on your purchases the day you make them. But Capital One never informs consumers of this. In fact, Capital One affirmatively represents *the opposite*—that it will not charge interest on new transactions if a consumer pays their statement in full for the month by the due date, and that it will only charge interest on “unpaid amounts.”

**C. There is Significant Confusion Among Capital One's Customers**

27. Capital One is well aware that consumers do not understand the complexity of its machinations, yet it still issued confusing and ambiguous disclosures on this point.

28. This is true even though the Consumer Financial Protection Bureau ("CFPB") has warned that consumers are confused by this practice:

Regaining a grace period is another source of complexity as "trailing interest" comes into play. Trailing interest occurs when customers are assessed interest between the beginning of the billing cycle and the date on which they make payment in full. For consumers who pay their credit card balance in full each month, the grace period is a very simple concept to understand: they simply need to know when they must make payment to avoid an assessment of interest. But for consumers who revolve their balance, it is uncertain whether they understand that – unlike transactors -- they will be assessed interest on the unpaid balance from the beginning of the billing cycle and on new purchases made in the billing cycle and future billing cycles from the moment of a purchase until the consumer qualifies for the grace period again. And for consumers seeking to pay off their balance, it is unclear if they understand the potential for trailing interest. Disclosing these complexities in a clear manner is quite challenging.

29. Indeed, the CFPB has received numerous complaints from Capital One customers who had no idea they would not receive a grace period on new purchases even if they pay off their balance in full by the due date, merely because of a prior unpaid balance. The following excerpts from consumers' complaints to the CFPB illustrate the yawning gap between Capital One's policies and consumers' understanding of Capital One's policies:

I have a Capital One credit card. I paid off my entire monthly balance prior to the due date, yet I was hit with an interest charge. The company said it was practice for interest to be charged unless the card balance was paid off for two consecutive months. It doesn't seem appropriate to be charged interest on top of prior principal and interest after the card was paid off during the current cycle.

...

I paid my balance in full last month, yet was charged interest because I did not pay the balance the month before. It was explained that even though I was already charged interest on the previous months charges, and then paid the account balance prior to the due date as it was billed, I was being penalized for not paying it off the month before and that the Capital One cards are not like other cards, in that the only way to avoid interest is to pay it off each and every month. Again, I paid the balance in full prior to the due date. Also, when asking that the XXXX-dollars and some change be waived as a courtesy, I was advised that there were currently no offers to waive the fee.

...

I was charged interest on purchases for a credit card that had been paid in full the prior month. When I called to find out why I was charged interest, I was told that the interest was residual interest and unless I paid my account in full 2 months in a row, there would be residual interest. I asked them to explain to me what purchases had residual interest and they could not explain it.

...

Capital One has charged me interest when I paid the balance printed on the current statement in full and by the due date. The supervisor is claiming this is due to the fact that charges posted afterward. When I questioned the most recent statement, I was advised that this was because my due date was on the XXXX, but my next bill generated on the XXXX, resulting in further charges being due. I asked how I could be charged interest on something that hadn't yet been reflected on any billing and the same answer was repeated. The charges have not been credited back to my account. I even asked the supervisor if this is legal under the Credit Card Act, but again, received the same answer. I also read this to the supervisor. The XXXX line on the back of their bill reads as follows : How can I avoid paying interest charges? If you pay your statement 's New Balance in full by the due date ( which I did ), we will not charge you interest on the portion of the balance that you did not pay. It made no difference.

...

I paid my balance in full prior to the due date and was charged additional intrest [sic]. Based on what I can tell Capital One is charging interest on the purchase balance as if it were a loan balance. My due date was XX/XX/XXXX. I paid my balance in

full on XX/XX/XXXX and was charged interest on the average daily balance.

...

On XX/XX/XXXX I called Capital One to get my balance so that I could pay off the balance in full. On XX/XX/XXXX, I paid the balance that was quoted to me on XX/XX/XXXX. When I received my statement, I had been charged interest. When I called to find out why I had been charged interest when the balance had been paid before my billing cycle date, I was advised that it could take up to two billing cycles before the interest charges would stop. We have a total of 4 accounts. We paid the balances on all 4 accounts. We have received invoices for 2 accounts that have been charged interest. I feel that the other 2 statements will also have interest charges. I was only able to list one in the field for the account number.<sup>2</sup>

30. In recognition that eliminating the grace period on new purchases based on a prior unpaid balance is a counterintuitive concept for most consumers, *other* credit card issuers carefully word their agreements with consumers so as to clearly disclose the process. For example, Citibank explicitly says:

To get a grace period on purchases, you must pay the New Balance by the payment due date every billing cycle. If you do not, you will not get a grace period until you pay the New Balance for two billing cycles in a row.

31. In other words, Citibank chooses to tell its customers in plain English how the grace period works. Capital One, on the other hand, obscures the grace period mechanism behind confusing disclosures that nowhere clearly state that consumers lose the grace period on all future transactions merely because of a prior unpaid balance.

32. Capital One itself knows how to state its true practice in plain English: when Plaintiff's husband called the customer service line to complain about his interest charges, the

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<sup>2</sup> Complaints were taken from the CFPB's Consumer Complaint Database, available at <https://www.consumerfinance.gov/data-research/consumer-complaints/>. The CFPB describes its database as follows: "Each week we send thousands of consumers' complaints about financial products and services to companies for response. Those complaints are published here after the company responds or after 15 days, whichever comes first. By adding their voice, consumers help improve the financial marketplace."



customer service representative told him that he would get no grace period unless he paid his full statement balance for two months straight. No similarly plan statement of Capital One's true practice ever made its way into its written disclosures.

33. In sum, Capital One is not authorized by contract to charge interest on amounts that are paid in full by the statement due date, but it has done so and continues to do so.

**D. Plaintiff Dress's Experience**

34. Mrs. Dress works as a lead associate at Petsmart in Leominster, Massachusetts, and her husband presently lives on a fixed income from social security disability insurance.

35. About nine years ago, Plaintiff Dress opened a credit card with Capital One to improve her credit.

36. That credit card came with an annual fee and no rewards, so about a year ago, Mrs. Dress requested a credit card with no annual fee and a rewards program from Capital One.

37. Capital One provided Mr. Dress with an "upgraded" Quicksilver Platinum MasterCard credit card with these features. Mrs. Dress was never told that the card could accrue residual interest charges.

38. Mrs. Dress's credit card agreement also specifically prohibited the assessment of residual interest charges by promising Plaintiff an interest-free grace period on her purchases. *See Exhibit A.*

39. The monthly credit card statements that Mrs. Dress received reaffirmed Capital One's equipment to not charge interest during the grace period. *See Exhibit B.*

40. In or around December 2017, Mrs. Dress noticed that Capital One charged her interest on new purchases, even though she had paid off her entire statement balance before the due date.

**CLASS ALLEGATIONS**

41. Plaintiff brings this action on behalf of herself and all others similarly situated pursuant to Rule 23 of the Federal Rules of Civil Procedure. This action satisfies the numerosity,

commonality, typicality, adequacy, predominance and superiority requirements of Rule 23. The proposed classes are defined as:

All Capital One credit card account holders who were charged interest on amounts that were paid in full before the due date.

In addition, the proposed Massachusetts subclass is defined as follows:

All Capital One credit card account holders in Massachusetts who were charged interest on amounts that were paid in full before the due date.

All of the classes are collectively referred to as the “Classes.”

42. Plaintiff brings this action on her own behalf and on behalf of all others similarly situated pursuant to Fed. R. Civ. P. 23. Excluded from the Classes are Capital One, its subsidiaries and affiliates, its officers, directors and member of their immediate families and any entity in which defendant has a controlling interest, the legal representatives, heirs, successors or assigns of any such excluded party, the judicial officer(s) to whom this action is assigned, and the members of their immediate families.

43. Plaintiff reserves the right to modify or amend the definitions of the proposed Classes if necessary before this Court determines whether certification is appropriate.

44. This case is properly brought as a class action under Fed. R. Civ. P. 23(a) and (b)(3), and all requirements therein are met for the reasons set forth in the following paragraphs.

45. Numerosity under Fed. R. Civ. P. 23(a)(1). The members of the Classes are so numerous that separate joinder of each member is impracticable. Upon information and belief, and subject to class discovery, the Classes consist of thousands of members or more, the identity of whom are within the exclusive knowledge of and can be ascertained only by resort to Capital One’s records. Capital One has the administrative capability through its computer systems and

other records to identify all members of the Classes and the amount of interest paid by each Class member, and such specific information is not otherwise available to Plaintiff.

46. Commonality under Fed. R. Civ. P. 23(a)(2). There are numerous questions of law and fact common to the Classes relating to Capital One's business practices challenged herein, and those common questions predominate over any questions affecting only individual Class members. The common questions include, but are not limited to:

- a) Whether Capital One improperly charged interest on amounts that were paid in full before the due date;
- b) Whether Capital One improperly charged interest before they were contractually authorized to do so;
- c) Whether Capital One abused its contractual discretion to charge interest on amounts that were paid in full before the due date;
- d) Whether Capital One developed and engaged in unlawful practices that mischaracterized or concealed its true practices as they pertain to charging interest on amounts that were paid in full before the due date; and
- e) Whether Plaintiff and other members of the Classes have sustained damages as a result of Capital One's assessment and collection of interest charges on transactions from the day they were made and the proper measure of damages.

47. Typicality under Fed. R. Civ. P. 23(a)(3). Plaintiff's claims are typical of the claims of the other Class members in that they arise out of the same wrongful business practice by Capital One, as described herein.

48. Adequacy of Representation under Fed. R. Civ. P. 23(a)(4). Plaintiff is an adequate representative of the Classes in that she has a Capital One credit card and has suffered damages as a result of Capital One's assessment and collection of improper interest charges. In addition:

- a) Plaintiff is committed to the vigorous prosecution of this action on behalf of herself and all others similarly situated and has retained competent counsel

experienced in the prosecution of class actions and, in particular, class actions on behalf of consumers against financial institutions;

b) There is no hostility of interest between Plaintiff and the unnamed Class members;

c) Plaintiff anticipates no difficulty in the management of this litigation as a class action; and

d) Plaintiff's legal counsel has the financial and legal resources to meet the substantial costs and legal issues associated with this type of litigation.

49. Predominance under Fed. R. Civ. P. 23(b)(3). The questions of law and fact common to the Class as set forth in the "commonality" allegation above predominate over any individual issues. As such, the "commonality" allegations (paragraph 73 and subparts) are restated and incorporated herein by reference.

50. Superiority under Fed. R. Civ. P. 23(b)(3). A class action is superior to other available methods and highly desirable for the fair and efficient adjudication of this controversy. Since the amount of each individual Class member's claim is very small relative to the complexity of the litigation and since the financial resources of Capital One are enormous, no Class member could afford to seek legal redress individually for the claims alleged herein. Therefore, absent a class action, the Class members will continue to suffer losses and Capital One's misconduct will proceed without remedy. In addition, even if Class members themselves could afford such individual litigation, the court system could not. Given the complex legal and factual issues involved, individualized litigation would significantly increase the delay and expense to all parties and to the Court. Individualized litigation would also create the potential for inconsistent or contradictory rulings. By contrast, a class action presents far fewer management difficulties, allows claims to be heard which might otherwise go unheard because of the relative expense of bringing individual lawsuits, and provides the benefits of adjudication, economies of scale and comprehensive supervision by a single court.

51. All conditions precedent to bringing this action have been satisfied and/or waived.

**FIRST CLAIM FOR RELIEF**

**(Breach of Contract)  
(On Behalf of the Classes)**

52. Plaintiff incorporates the preceding allegations by reference as if fully set forth herein.

53. Plaintiff and the Classes formed a contract with Capital One. The terms of that contract include the promises and affirmations of fact made by Capital One in the Credit Card Agreement as described above.

54. Specifically, Capital One customers were promised a grace period on new purchases when they paid their purchase balances in full before the due date. They were also promised that Capital One would only charge interest on “unpaid amounts.”

55. Capital One breached the express terms of the account documents by charging interest to Plaintiff and the Classes on amounts that were paid in full before the due date.

56. No contract provision authorizes Capital One to charge interest on amounts that are paid in full before the due date. Rather, the contract only authorizes Capital One to charge interest on outstanding balances.

57. Therefore, Capital One breached the terms of its account documents by charging Plaintiff and class members interest on amounts that were paid in full before their due date.

58. Plaintiff and members of the Classes have performed all, or substantially all, of the obligations imposed on them under the contract.

59. Plaintiff and members of the Classes have sustained damages as a result of Capital One’s breach of the contract.

**SECOND CLAIM FOR RELIEF**

**(Breach of the Covenant of Good Faith and Fair Dealing)  
(On Behalf of the Classes)**

60. Plaintiff incorporates the preceding allegations by reference as if fully set forth herein.

61. Plaintiff and the Classes formed a contract with Capital One. The terms of that contract include the promises and affirmations of fact made by Capital One in the Credit Card Agreement as described above.

62. Under the law of Virginia, good faith is an element of every contract pertaining to the assessment of interest charges. Whether by common law or statute, all such contracts impose upon each party a duty of good faith and fair dealing. Good faith and fair dealing, in connection with executing contracts and discharging performance and other duties according to their terms, means preserving the spirit – not merely the letter – of the bargain. Put differently, the parties to a contract are mutually obligated to comply with the substance of their contract in addition to its form. Evading the spirit of the bargain and abusing the power to specify terms constitute examples of bad faith in the performance of contracts.

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

64. Capital One has breached the covenant of good faith and fair dealing in the contract through its policies and practices as alleged herein.

65. Specifically, Capital One harms consumers by abusing its contractual discretion to assess interest charges and to interpret certain contract provisions in a way in which no reasonable consumer would anticipate.

66. Capital One uses its contractual discretion to cause consumers to pay interest on amounts that were paid in full by the due date.

67. Plaintiff and members of the Classes have performed all, or substantially all, of the obligations imposed on them under the account documents.

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

**THIRD CLAIM FOR RELIEF**  
**(Violation of Massachusetts General Laws, Chapter 93A)**  
**(On Behalf of the Massachusetts Subclass)**

69. Plaintiff incorporates the preceding allegations by reference as if fully set forth herein.

70. This cause of action is brought on behalf of Plaintiff and members of the Massachusetts subclass pursuant to M.G.L. c. 93A §§ 2 and 9. M.G.L. c. 93A §2 provides that “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.” M.G.L. c. 93A § 9 permits any consumer injured by a violation of M.G.L. c. 93A § 2 to bring a civil action, including a class action, for damages and injunctive relief.

71. Plaintiff is informed and believes, and based on such information and belief, alleges that Capital One committed unfair and deceptive business acts and/or practices in violation of M.G.L. c. 93A §§ 2 and 9.

72. Capital One has, at all material times, provided Plaintiff and other members of the Massachusetts subclass a grace period to pay their credit card balances. This grace period was promised to Plaintiff and other members of the Massachusetts subclass in both their Capital One Credit Card Agreement and in the disclosures on the back of their monthly statements. But unlike other major credit card companies, Capital One fails to tell consumers they can lose their grace period on all future transactions by failing to pay off their balance in full in a prior month. As a result, and contrary to Capital One’s representations, Plaintiff and other members of the Massachusetts subclass were charged interest on amounts that were paid in full by the due date.

73. These acts and practices are unfair and deceptive in material respects, offend public policy, are immoral, unethical, oppressive and unscrupulous and violate 940 C.M.R. 3.05 and M.G.L. c. 93A § 2.

74. As a direct and proximate result of Capital One’s unfair and deceptive acts and practices, Plaintiff and the Massachusetts subclass have suffered injury by incurring interest charges for credit card balances that were paid in full by their due date.

75. Plaintiff and other members of the Massachusetts subclass would not have incurred these interest charges if Capital One's acts and practices with regard to charging interest on its customers' credit card balances were not unfair and deceptive.

76. Plaintiff made a demand for relief, in writing, to Capital One at least thirty (30) days prior to filing this complaint, as required by M.G.L. c. 93A § 9. Plaintiff has not received a written tender of settlement that is reasonable in relation to the injury actually suffered by Plaintiff and the Massachusetts subclass.

77. Based on the foregoing, Plaintiff and the other members of the Massachusetts subclass are entitled to all remedies available pursuant to M.G.L c. 93A, including, but not limited to, refunds, actual damages, or statutory damages in the amount of twenty-five dollars per violation, whichever is greater, double or treble damages, attorneys' fees and other reasonable costs.

78. Pursuant to M.G.L. c. 231, § 6B, Plaintiff and other members of the Massachusetts subclass are further entitled to pre-judgment interest as a direct and proximate result of Capital One's wrongful conduct. The amount of damages suffered as a result is a sum certain and capable of calculation and Plaintiff and other members of the Massachusetts subclass are entitled to interest in an amount according to proof.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff and the members of the Class demand a jury trial on all claims so triable and judgment against Defendant as follows:

A. An order certifying that this action may be maintained as a class action, that Plaintiff be appointed Class Representative and Plaintiff's counsel be appointed Class Counsel;

B. Declaring that Defendant's policies and practices to be wrongful, unfair, and unconscionable;



C. Ordering Capital One to immediately cease the wrongful conduct set forth above and enjoining Capital One from conducting business via the unlawful and unfair business acts and practices complained of herein;

D. Restitution of all interest charges paid to Capital One by Plaintiff and the Classes as a result of the wrongs alleged herein in an amount to be determined at trial;

E. Actual and punitive damages in an amount to be determined at trial;

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

G. Costs and disbursements assessed by Plaintiff in connection with this action, including reasonable attorneys' fees pursuant to applicable law;

H. Granting such other relief as the 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: May 2, 2018

Respectfully submitted,

/s/ Patrick J. Sheehan

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Attorneys for Plaintiff  
and the Putative Class

# 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.)

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|---|--|
| <b>I. (a) PLAINTIFFS</b> Susan Dress<br><br><b>(b)</b> County of Residence of First Listed Plaintiff <u>Worcester</u><br><i>(EXCEPT IN U.S. PLAINTIFF CASES)</i><br><br><b>(c)</b> Attorneys (Firm Name, Address, and Telephone Number)<br>Patrick J. Sheehan, Whatley Kallas, LLP,<br>60 State Street, 7th Floor, Boston, MA 02109<br>(617) 573-5118 | <b>DEFENDANTS</b> Capital One Bank, (USA), N.A.<br><br>County of Residence of First Listed Defendant _____<br><i>(IN U.S. PLAINTIFF CASES ONLY)</i><br><br>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.<br><br>Attorneys (If Known)<br>Andrew Soukup, Covington & Burling LLP,<br>One City Center, 850 Tenth NW, Washington, DC 20001<br>(202) 662-5006 |
|---|--|

| <b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only) <table style="width:100%; border: none;"> <tr> <td style="width:50%; vertical-align: top;"> <input type="checkbox"/> 1 U.S. Government Plaintiff<br/><br/> <input type="checkbox"/> 2 U.S. Government Defendant                 </td> <td style="width:50%; vertical-align: top;"> <input type="checkbox"/> 3 Federal Question<br/> <i>(U.S. Government Not a Party)</i><br/><br/> <input checked="" type="checkbox"/> 4 Diversity<br/> <i>(Indicate Citizenship of Parties in Item III)</i> </td> </tr> </table> | <input type="checkbox"/> 1 U.S. Government Plaintiff<br><br><input type="checkbox"/> 2 U.S. Government Defendant  | <input type="checkbox"/> 3 Federal Question<br><i>(U.S. Government Not a Party)</i><br><br><input checked="" type="checkbox"/> 4 Diversity<br><i>(Indicate Citizenship of Parties in Item III)</i> | <b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Place an "X" in One Box for Plaintiff and One Box for Defendant) <table style="width:100%; border: none;"> <tr> <th style="text-align: left;">PTF</th> <th style="text-align: left;">DEF</th> </tr> <tr> <td style="vertical-align: top;"> <input checked="" type="checkbox"/> 1 Citizen of This State<br/><br/> <input type="checkbox"/> 2 Citizen of Another State<br/><br/> <input type="checkbox"/> 3 Citizen or Subject of a Foreign Country                 </td> <td style="vertical-align: top;"> <input type="checkbox"/> 1 Incorporated or Principal Place of Business In This State<br/><br/> <input type="checkbox"/> 2 Incorporated and Principal Place of Business In Another State<br/><br/> <input type="checkbox"/> 3 Foreign Nation                 </td> </tr> </table> | PTF | DEF | <input checked="" type="checkbox"/> 1 Citizen of This State<br><br><input type="checkbox"/> 2 Citizen of Another State<br><br><input type="checkbox"/> 3 Citizen or Subject of a Foreign Country | <input type="checkbox"/> 1 Incorporated or Principal Place of Business In This State<br><br><input type="checkbox"/> 2 Incorporated and Principal Place of Business In Another State<br><br><input type="checkbox"/> 3 Foreign Nation |
|---|---|--|--|-----|-----|--|---|
| <input type="checkbox"/> 1 U.S. Government Plaintiff<br><br><input type="checkbox"/> 2 U.S. Government Defendant  | <input type="checkbox"/> 3 Federal Question<br><i>(U.S. Government Not a Party)</i><br><br><input checked="" type="checkbox"/> 4 Diversity<br><i>(Indicate Citizenship of Parties in Item III)</i>                                    |  |  |     |     |  |   |
| PTF   | DEF   |  |  |     |     |  |   |
| <input checked="" type="checkbox"/> 1 Citizen of This State<br><br><input type="checkbox"/> 2 Citizen of Another State<br><br><input type="checkbox"/> 3 Citizen or Subject of a Foreign Country  | <input type="checkbox"/> 1 Incorporated or Principal Place of Business In This State<br><br><input type="checkbox"/> 2 Incorporated and Principal Place of Business In Another State<br><br><input type="checkbox"/> 3 Foreign Nation |  |  |     |     |  |   |

| <b>IV. NATURE OF SUIT</b> (Place an "X" in One Box Only)  |  |  | <a href="#">Click here for: Nature of Suit Code Descriptions.</a>  |  |  |  |
|---|--|--|--|--|--|--|
| <b>CONTRACT</b><br><input type="checkbox"/> 110 Insurance<br><input type="checkbox"/> 120 Marine<br><input type="checkbox"/> 130 Miller Act<br><input type="checkbox"/> 140 Negotiable Instrument<br><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment<br><input type="checkbox"/> 151 Medicare Act<br><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)<br><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits<br><input type="checkbox"/> 160 Stockholders' Suits<br><input checked="" type="checkbox"/> 190 Other Contract<br><input type="checkbox"/> 195 Contract Product Liability<br><input type="checkbox"/> 196 Franchise | <b>TORTS</b><br><table style="width:100%; border: none;"> <tr> <td style="width:50%; vertical-align: top;"> <b>PERSONAL INJURY</b><br/> <input type="checkbox"/> 310 Airplane<br/> <input type="checkbox"/> 315 Airplane Product Liability<br/> <input type="checkbox"/> 320 Assault, Libel &amp; Slander<br/> <input type="checkbox"/> 330 Federal Employers' Liability<br/> <input type="checkbox"/> 340 Marine<br/> <input type="checkbox"/> 345 Marine Product Liability<br/> <input type="checkbox"/> 350 Motor Vehicle<br/> <input type="checkbox"/> 355 Motor Vehicle Product Liability<br/> <input type="checkbox"/> 360 Other Personal Injury<br/> <input type="checkbox"/> 362 Personal Injury - Medical Malpractice                         </td> <td style="width:50%; vertical-align: top;"> <b>PERSONAL INJURY</b><br/> <input type="checkbox"/> 365 Personal Injury - Product Liability<br/> <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability<br/> <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability<br/><br/> <b>PERSONAL PROPERTY</b><br/> <input type="checkbox"/> 370 Other Fraud<br/> <input type="checkbox"/> 371 Truth in Lending<br/> <input type="checkbox"/> 380 Other Personal Property Damage<br/> <input type="checkbox"/> 385 Property Damage Product Liability                         </td> </tr> </table> | <b>PERSONAL INJURY</b><br><input type="checkbox"/> 310 Airplane<br><input type="checkbox"/> 315 Airplane Product Liability<br><input type="checkbox"/> 320 Assault, Libel & Slander<br><input type="checkbox"/> 330 Federal Employers' Liability<br><input type="checkbox"/> 340 Marine<br><input type="checkbox"/> 345 Marine Product Liability<br><input type="checkbox"/> 350 Motor Vehicle<br><input type="checkbox"/> 355 Motor Vehicle Product Liability<br><input type="checkbox"/> 360 Other Personal Injury<br><input type="checkbox"/> 362 Personal Injury - Medical Malpractice | <b>PERSONAL INJURY</b><br><input type="checkbox"/> 365 Personal Injury - Product Liability<br><input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability<br><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability<br><br><b>PERSONAL PROPERTY</b><br><input type="checkbox"/> 370 Other Fraud<br><input type="checkbox"/> 371 Truth in Lending<br><input type="checkbox"/> 380 Other Personal Property Damage<br><input type="checkbox"/> 385 Property Damage Product Liability | <b>FORFEITURE/PENALTY</b><br><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881<br><input type="checkbox"/> 690 Other<br><br><b>LABOR</b><br><input type="checkbox"/> 710 Fair Labor Standards Act<br><input type="checkbox"/> 720 Labor/Management Relations<br><input type="checkbox"/> 740 Railway Labor Act<br><input type="checkbox"/> 751 Family and Medical Leave Act<br><input type="checkbox"/> 790 Other Labor Litigation<br><input type="checkbox"/> 791 Employee Retirement Income Security Act<br><br><b>IMMIGRATION</b><br><input type="checkbox"/> 462 Naturalization Application<br><input type="checkbox"/> 465 Other Immigration Actions | <b>BANKRUPTCY</b><br><input type="checkbox"/> 422 Appeal 28 USC 158<br><input type="checkbox"/> 423 Withdrawal 28 USC 157<br><br><b>PROPERTY RIGHTS</b><br><input type="checkbox"/> 820 Copyrights<br><input type="checkbox"/> 830 Patent<br><input type="checkbox"/> 835 Patent - Abbreviated New Drug Application<br><input type="checkbox"/> 840 Trademark<br><br><b>SOCIAL SECURITY</b><br><input type="checkbox"/> 861 HIA (1395ff)<br><input type="checkbox"/> 862 Black Lung (923)<br><input type="checkbox"/> 863 DIWC/DIWW (405(g))<br><input type="checkbox"/> 864 SSID Title XVI<br><input type="checkbox"/> 865 RSI (405(g))<br><br><b>FEDERAL TAX SUITS</b><br><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)<br><input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <b>OTHER STATUTES</b><br><input type="checkbox"/> 375 False Claims Act<br><input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))<br><input type="checkbox"/> 400 State Reapportionment<br><input type="checkbox"/> 410 Antitrust<br><input type="checkbox"/> 430 Banks and Banking<br><input type="checkbox"/> 450 Commerce<br><input type="checkbox"/> 460 Deportation<br><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations<br><input type="checkbox"/> 480 Consumer Credit<br><input type="checkbox"/> 490 Cable/Sat TV<br><input type="checkbox"/> 850 Securities/Commodities/Exchange<br><input type="checkbox"/> 890 Other Statutory Actions<br><input type="checkbox"/> 891 Agricultural Acts<br><input type="checkbox"/> 893 Environmental Matters<br><input type="checkbox"/> 895 Freedom of Information Act<br><input type="checkbox"/> 896 Arbitration<br><input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision<br><input type="checkbox"/> 950 Constitutionality of State Statutes |
| <b>PERSONAL INJURY</b><br><input type="checkbox"/> 310 Airplane<br><input type="checkbox"/> 315 Airplane Product Liability<br><input type="checkbox"/> 320 Assault, Libel & Slander<br><input type="checkbox"/> 330 Federal Employers' Liability<br><input type="checkbox"/> 340 Marine<br><input type="checkbox"/> 345 Marine Product Liability<br><input type="checkbox"/> 350 Motor Vehicle<br><input type="checkbox"/> 355 Motor Vehicle Product Liability<br><input type="checkbox"/> 360 Other Personal Injury<br><input type="checkbox"/> 362 Personal Injury - Medical Malpractice  | <b>PERSONAL INJURY</b><br><input type="checkbox"/> 365 Personal Injury - Product Liability<br><input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability<br><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability<br><br><b>PERSONAL PROPERTY</b><br><input type="checkbox"/> 370 Other Fraud<br><input type="checkbox"/> 371 Truth in Lending<br><input type="checkbox"/> 380 Other Personal Property Damage<br><input type="checkbox"/> 385 Property Damage Product Liability   |  |  |  |  |  |
| <b>REAL PROPERTY</b><br><input type="checkbox"/> 210 Land Condemnation<br><input type="checkbox"/> 220 Foreclosure<br><input type="checkbox"/> 230 Rent Lease & Ejectment<br><input type="checkbox"/> 240 Torts to Land<br><input type="checkbox"/> 245 Tort Product Liability<br><input type="checkbox"/> 290 All Other Real Property  | <b>CIVIL RIGHTS</b><br><input type="checkbox"/> 440 Other Civil Rights<br><input type="checkbox"/> 441 Voting<br><input type="checkbox"/> 442 Employment<br><input type="checkbox"/> 443 Housing/Accommodations<br><input type="checkbox"/> 445 Amer. w/Disabilities - Employment<br><input type="checkbox"/> 446 Amer. w/Disabilities - Other<br><input type="checkbox"/> 448 Education   | <b>PRISONER PETITIONS</b><br><b>Habeas Corpus:</b><br><input type="checkbox"/> 463 Alien Detainee<br><input type="checkbox"/> 510 Motions to Vacate Sentence<br><input type="checkbox"/> 530 General<br><input type="checkbox"/> 535 Death Penalty<br><b>Other:</b><br><input type="checkbox"/> 540 Mandamus & Other<br><input type="checkbox"/> 550 Civil Rights<br><input type="checkbox"/> 555 Prison Condition<br><input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement  |  |  |  |  |

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

|   |   |  |   |  |  |   |
|---|---|--|---|--|--|---|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from Another District (specify) | <input type="checkbox"/> 6 Multidistrict Litigation - Transfer | <input type="checkbox"/> 8 Multidistrict Litigation - Direct File |
|---|---|--|---|--|--|---|

**VI. CAUSE OF ACTION**

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

Brief description of cause:  
Breach of Contract, M.G.L. c 93A

**VII. REQUESTED IN COMPLAINT:**

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$ \$ 5,000,001

CHECK YES only if demanded in complaint:  
 JURY DEMAND: ☒ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY** (See instructions):

JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE 5/2/2018 SIGNATURE OF ATTORNEY OF RECORD /s/ Patrick J. Sheehan

**FOR OFFICE USE ONLY**

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

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS1. Title of case (name of first party on each side only) Susan Dress v. Capital One Bank (USA), N.A.

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).



I. 410, 441, 470, 535, 830\*, 835\*, 891, 893, 895, R.23, REGARDLESS OF NATURE OF SUIT.



II. 110, 130, 140, 160, 190, 196, 230, 240, 290, 320, 362, 370, 371, 380, 430, 440, 442, 443, 445, 446, 448, 710, 720, 740, 790, 820\*, 840\*, 850, 870, 871.



III. 120, 150, 151, 152, 153, 195, 210, 220, 245, 310, 315, 330, 340, 345, 350, 355, 360, 365, 367, 368, 375, 376, 385, 400, 422, 423, 450, 460, 462, 463, 465, 480, 490, 510, 530, 540, 550, 555, 625, 690, 751, 791, 861-865, 890, 896, 899, 950.

\*Also complete AO 120 or AO 121. for patent, trademark or copyright cases.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

N/A

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES ☐NO ☒

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES ☐NO ☒

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES ☐NO ☐

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES ☐NO ☒7. Do all of the parties in this action, excluding governmental agencies of the United States and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).YES ☒NO ☐A. If yes, in which division do all of the non-governmental parties reside?Eastern Division ☐Central Division ☒Western Division ☐

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division ☐Central Division ☐Western Division ☐

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES ☐NO ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Patrick J. SheehanADDRESS 60 State Street, 7th Floor, Boston, MA 02109TELEPHONE NO. (617) 573-5118

# Exhibit A

## Capital One® Customer Agreement

### 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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# **Exhibit B**

**How can I Avoid Paying Interest Charges?** If you pay your statement's New Balance in full by the due date, we will not charge you interest on any new transactions that post to the purchase segment. If you have been paying your account in full with no Interest Charges, but then you do not pay your next New Balance in full, we will charge interest on the portion of the balance that you did not pay. For Cash Advances and Special Transfers, we will start charging Interest on the transaction date. Certain promotional offers may allow you to pay less than the total New Balance and avoid paying Interest Charges on new purchases. Please refer to the front of your statement for additional information.

**How is the Interest Charge applied?** Interest Charges accrue from the date of the transaction or the first day of the Billing Cycle. Interest Charges accrue on every unpaid amount until it is paid in full. This means you may owe Interest Charges even if you pay the entire New Balance for one Billing Cycle, but did not do so the previous Billing Cycle. Unpaid Interest Charges are added to the corresponding segment of your account.

**Do you assess a Minimum Interest Charge?** We may assess a minimum Interest Charge of \$0.50 for each Billing Cycle if your account is subject to an Interest Charge.

**How do you Calculate the Interest Charge?** We use a method called Average Daily Balance (including new transactions).

1. First, for each segment we take the beginning balance each day and add in new transactions and the periodic Interest Charge on the previous day's balance. Then we subtract any payments and credits for that segment as of that day. The result is the daily balance for each segment. However, if your previous statement balance was zero or a credit amount, new transactions which post to your purchase segment are not added to the daily balance.
2. Next, for each segment, we add the daily balances together and divide the sum by the number of days in the Billing Cycle. The result is the Average Daily Balance for each segment.
3. At the end of each Billing Cycle, we multiply your Average Daily Balance for each segment by the daily periodic rate (APR divided by 365) for that segment, and then we multiply the result by the number of days in the Billing Cycle. We add the Interest Charges for all segments together. The result is your total Interest Charge for the Billing Cycle.

The Average Daily Balance is referred to as the Balance Subject to Interest Rate in the Interest Charge Calculation section of this Statement.

NOTE: Due to rounding or a minimum Interest Charge, this calculation may vary slightly from the Interest Charge actually assessed.

**How can my Variable APR change?** Your APRs may increase or decrease based on one of the following indices (reported in *The Wall Street Journal*). The letter code below corresponds with the letter next to your APRs in the Interest Charge Calculation section of this statement.

| Code next to your APR(s) | How do we calculate your APR(s)? Index + margin | When your APR(s) will change  |
|--------------------------|---|---|
| P<br>L                   | Prime Rate + margin<br>3 month LIBOR + margin   | The first day of the Billing Cycles that end in Jan., April, July, and Oct. |
| D<br>F                   | Prime Rate + margin<br>1 month LIBOR + margin   | The first day of each Billing Cycle.  |

**How can I Avoid Membership Fees?** If a Renewal Notice is printed on this statement, you may avoid paying an annual membership Fee by contacting Customer Service no later than 45 days after the last day in the Billing Cycle covered by this statement to request that we close your account. To avoid paying a monthly membership Fee, close your account and we will stop assessing your monthly membership Fee.

**How can I Close My Account?** You can contact Customer Service anytime to request that we close your account.

**How do you Process Payments?** When you make a payment, you authorize us to initiate an ACH or electronic payment that will be debited from your bank account or other related account. When you provide a check or check information to make a payment, you authorize us to use information from the check to make a one-time ACH or other electronic transfer from your bank account. We may also process it as a check transaction. Funds may be withdrawn from your bank account as soon as the same day we process your payment.

**How do you Apply My Payment?** We generally apply payments up to your Minimum Payment first to the balance with the lowest APR (including 0% APR), and then to balances with higher APRs. 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.

**Billing Rights Summary (Does not Apply to Small Business Accounts)**

**What To Do If You Think You Find A Mistake On Your Statement :** If you think there is an error on your statement, write to us at:

Capital One P.O. Box 30285 Salt Lake City, UT 84130-0285.

In your letter, give us the following information:

- Account information: Your name and account number.
- Dollar amount: The dollar amount of the suspected error.
- Description of Problem: If you think there is an error on your bill, describe what you believe is wrong and why you believe it is a mistake. You must contact us within 60 days after the error appeared on your statement. You must notify us of any potential errors in writing. You may call us or notify us electronically, but if you do we are not required to investigate any potential errors and you may have to pay the amount in question. We will notify you in writing within 30 days of our receipt of your letter. While we investigate whether or not there has been an error, the following are true:
  - We cannot try to collect the amount in question, or report you as delinquent on that amount. The charge in question may remain on your statement, and we may continue to charge you interest on that amount. But, if we determine that we made a mistake, you will not have to pay the amount in question or any interest or other fees related to that amount.
  - While you do not have to pay the amount in question until we send you a notice about the outcome of our investigation, you are responsible for the remainder of your balance.
  - We can apply any unpaid amount against your credit limit. Within 90 days of our receipt of your letter, we will send you a written notice explaining either that we corrected the error (to appear on your next statement) or the reasons we believe the bill is correct.

**Your Rights If You Are Dissatisfied With Your Purchase:** If you are dissatisfied with the goods or services that you have purchased with your credit card, and you have tried in good faith to correct the problem with the merchant, you may have the right not to pay the remaining amount due on the purchase. To use this right, the following must be true:

- 1) You must have used your credit card for the purchase. Purchases made with cash advances from an ATM or with a check that accesses your credit card account do not qualify; and
- 2) You must not yet have fully paid for the purchase.

If all of the criteria above are met and you are still dissatisfied with the purchase, contact us in writing at: Capital One, P.O. Box 30285, Salt Lake City, UT 84130-0285. While we investigate, the same rules apply to the disputed amount as discussed above. After we finish our investigation, we will tell you our decision. At that point, if we think you owe an amount and you do not pay we may report you as delinquent.

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## Changing Mailing Address?

You can change your address immediately at [capitalone.com](http://capitalone.com) or complete the information below, and return this coupon with your payment. Please print using blue or black ink.

Street.....

City.....

State..... Zip code .....

Phone.....

Email.....

**How do I Make Payments?** You may make your payment in several ways:

1. Online Banking by logging into your account;
2. Capital One Mobile Banking app for approved electronic devices;
3. Calling the telephone number listed on the front of this statement and providing the required payment information;
4. Sending mail payments to the address on the front of this statement with the payment coupon or your account information.

**When will you Credit My Payment?**

- For mobile, online or over the phone, as of the business day we receive it, as long as it is made by 8 p.m. ET.
- For mail, as of the business day we receive it, as long as it is received by 5 p.m. local time at our processing center. You must send the bottom portion of this statement and your check to the payment address on the front of this statement. Please allow at least seven (7) business days for mail delivery. Mailed payments received by us at any other location or payments in any other form may not be credited as of the day we receive them.