

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

JOHN MEEHAN, <i>on behalf of himself and all</i>)	
<i>similarly situated individuals,</i>)	
)	
Plaintiff,)	
)	Civil Action No. 1:22-cv-1073
v.)	
)	
CAPITAL ONE, N.A.,)	
)	
Defendant.)	
_____)	

CLASS ACTION COMPLAINT

1. Plaintiff John Meehan, on behalf of himself and all similarly situated individuals, alleges as follows for his Class Action Complaint against Defendant Capital One, N.A.

PRELIMINARY STATEMENT

2. Congress enacted the Electronic Fund Transfer Act (“EFTA”) as a “remedial consumer protection statute,” which courts “read liberally to achieve the goals of protecting consumers.” *Curtis v. Propel Prop. Tax Funding, LLC*, 915 F.3d 234, 239 (4th Cir. 2019).

3. Concerned that uninformed consumers would encounter abuse in a growing electronic banking industry, Congress enacted several provisions to limit consumer liability for “unauthorized” electronic fund transfers. *See* 15 U.S.C. § 1693g.

4. The EFTA’s protections include placing the burden of establishing consumer liability on the financial institution, *see id.* § 1693g(b); and providing individuals with a private right of action against financial institutions for any violation of the statute, *see id.* § 1693m.

5. Most relevant here, the EFTA: (1) limits consumer liability to \$50.00 for an unauthorized electronic fund transfer (or a series of unauthorized electronic fund transfers),

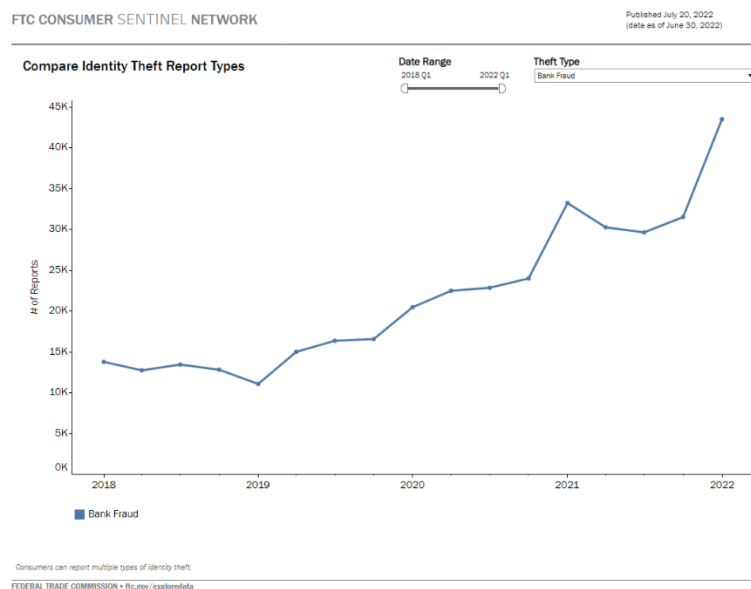
15 U.S.C. § 1693g; and (2) requires that financial institutions reasonably investigate consumer claims of “error,” which includes an unauthorized electronic transfer, *id.* § 1693f.

6. A violation of either section entitles the consumer to actual damages, statutory damages, costs, and attorneys’ fees under § 1693m.

7. The consumer also may obtain treble damages if the financial institution “knowingly and willfully concluded that the consumer’s account was not in error when such conclusion could not reasonably have been drawn from the evidence available to the institution at the time of its investigation.” 15 U.S.C. § 1693f(e)(2).

8. The EFTA’s unauthorized use protections are especially important in the wake of the COVID-19 pandemic, which saw the replacement of traditional modes of commerce (*e.g.*, face-to-face card transactions) with other more modern payment practices (*e.g.*, online payment options, remote payment terminals, etc.). Coupled with technological advancements—such as innovations aimed at making banking “easier”—these changes have expanded the fraudster’s playbook.

9. Indeed, reports of bank fraud to the Federal Trade Commission tripled between 2018 and 2022:



Federal Trade Commission, *Compare Identity Theft Report Types* (July 20, 2022), available at <https://public.tableau.com/app/profile/federal.trade.commission/viz/IdentityTheftReports/TheftTypesOverTime> (last visited September 12, 2022)

10. Among the types of fraud commonly employed by fraudsters is “card skimming” or “card cloning,” which involves affixing a small device to a point-of-sale terminal at a physical retail location, like a gas station. The skimming or cloning device collects information from an unsuspecting consumer’s credit or debit card, including the consumer’s name, his card number, and his CVV data. The fraudster then takes that information and copies it to a new card, which the fraudster uses to make purchases in person but in the consumer’s name. The consumer has no way of knowing that his credit or debit card information has been stolen until he reviews his bank account history, such as account statements.

11. Card skimming, unfortunately, has not been thwarted by technological advancements intended to prevent such risks, such as EMV Chips. *See, e.g.*, Kristen Dalli, “Credit card skimming at gas stations appears to be increasing,” *Consumer Affairs*, <https://www.consumeraffairs.com/news/credit-card-skimming-at-gas-stations-appears-to-be-increasing-091522.html> (Sept. 15, 2022) (“Credit card skimming at gas stations has become problematic at pumps across the country. Reports have surfaced from countless cities nationwide, including: Nevada and California, Maryland, Alabama, Nebraska, and Oklahoma.”); Amanda del Castillo, “Credit card skimming devices found across Bay Area; at least 6 agencies issue warning to cardholders,” *ABC7*, <https://abc7news.com/credit-card-skimming-devices-bay-area-warning-7-eleven-chevron/12167064/> (Aug. 26, 2022) (discussing wave of card skimming crimes committed in the San Francisco, California area); Dennis Romboy, “6 face federal charges in alleged Utah

gas skimming, credit card cloning scheme,” *Deseret News* (Dec. 2, 2020), available at <https://www.deseret.com/utah/2020/12/2/22129476/utah-fraud-gas-skimming-cloned-credit-card-federal-charges> (“Victims of the alleged scheme lost at least \$200,000, according to the U.S. Attorney’s Office.”); Heather Murphy, “Conflict Over a Rental Car Leads to Elusive A.T.M. Skimming Suspect,” *The New York Times*, available at <https://www.nytimes.com/2020/07/17/business/credit-card-skimmer-arrest-alaska.html> (Jul. 17, 2020) (discussing arrest of man in possession of “around 1,000 blank, gold-colored magnetic strip cards and a bag of what appeared to be A.T.M. skimming components, including a magnetic strip card encoder”).

12. In fact, fraudsters have outpaced (or, at least, kept pace with) modern security procedures implemented by the banking industry. *See, e.g.*, Fahmida Y. Rashid, “Criminals Find a Way to Clone EMV Cards,” *Decipher*, <https://duo.com/decipher/criminals-find-a-way-to-clone-emv-cards> (Jul. 31, 2020) (“The shift from payment cards with magnetic stripes to EMV chips was supposed to stomp out card cloning, except cybercriminals appear to have figured out a workaround.”); KrebsOnSecurity, *Bluetooth Overlay Skimmer That Blocks Chip*, <https://krebsonsecurity.com/2021/02/bluetooth-overlay-skimmer-that-blocks-chip/> (Feb. 15, 2021) (explaining “overlay skimmers” used on chip reading terminals that block chip reading, forcing customers to instead swipe on a skimming device using their card’s magnetic strip); Mary Hadar, “Think your credit card is safe in your wallet? Think again,” *The Washington Post* (Sept. 11, 2019), available at https://www.washingtonpost.com/business/think-your-credit-card-is-safe-in-your-wallet-think-again/2019/09/11/05e316e4-be0e-11e9-b873-63ace636af08_story.html (“If you’ve swiped a credit card at a gas station that has a hidden skimmer . . . it is more than likely that thieves have your card information, according to cybersecurity experts, who often find themselves one step behind international criminal networks.”).

13. Notwithstanding these reported security pitfalls, EMV Chip technology can be rendered moot in any event, so long as merchants allow transactions to take place using a card's magnetic strip. In fact, allowing transactions to take place without the use of an EMV Chip is common in the United States, more so than anywhere else in the world.

14. In 2021, for example, nearly 20% of card-present transactions in the United States were performed in the absence of EMV Chip technology. EMVCo, *Worldwide EMV Deployment Statistics: EMV Card-Present Transaction Percentage*, <https://www.emvco.com/about/deployment-statistics/> (last visited Sept. 12, 2022) (cited by Capital One at <https://www.capitalone.com/tech/software-engineering/how-emv-chips-in-credit-cards-work/> (May 12, 2021)).

15. In other words, even though all or nearly all credit and debit cards are equipped with EMV Chips, nearly one in five card-present transactions in the United States are performed by swiping the card's magnetic strip instead of by dipping the EMV Chip.

16. Despite this reality that card-present fraud can and does occur when a consumer remains in physical possession of his debit card, Capital One ignores that possibility when investigating and evaluating unauthorized use claims. So long as the consumer remains in possession of his debit card, Capital One denies unauthorized use claims for any charges that stem from card-present transactions.

17. Plaintiff, for example, is the victim of thousands of dollars in fraudulent charges made between September 1, 2021 and November 15, 2021. Those charges involved obvious indicia of fraud, including card-present transactions made in Minneapolis, Minnesota and Atlanta, Georgia on the same day, as well as restaurant bills split across multiple transactions, seemingly to avoid detection by Plaintiff.

18. Even though Plaintiff advised Capital One that his debit card must have been skimmed or cloned, Capital One denied his request for reimbursement, claiming that he is responsible for card-present transactions. Capital One's investigation ignored the possibility that Plaintiff's debit card was present for those transactions, albeit in a cloned form.

19. By refusing to investigate the matter and holding Plaintiff liable for unauthorized transfers, Capital One violated 15 U.S.C. §§ 1693g and 1693f, entitling Plaintiff to his actual damages, statutory damages, attorneys' fees, and costs. *See* 15 U.S.C. § 1693m.

20. Because Capital One knowingly and willfully concluded that Plaintiff's account was not in error when such a conclusion could not reasonably have been drawn from the evidence available to Capital One at the time of its investigation, Plaintiff has a right to treble damages. *See* 15 U.S.C. 1693f(e).

21. Additionally, because Capital One's conduct appears to be a systematic policy to hold its debit cardholders liable for unauthorized card-present transactions so long as the cardholder remained in possession of his debit card, Plaintiff brings this action on behalf of himself and all similarly situated individuals.

22. Plaintiff and the class are entitled to their actual damages and treble damages, as well as statutory damages up to "\$500,000 or 1 per centum of the net worth of" Capital One. 15 U.S.C. § 1693m(a)(2)(B).

JURISDICTION AND VENUE

23. This Court has jurisdiction under 28 U.S.C. § 1331.

24. Venue is proper in this Court under 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to Plaintiff's claims occurred in this District, where Plaintiff resides.

PARTIES

25. Plaintiff is a natural person and a “consumer” as defined by 15 U.S.C. § 1693a(6).

26. Capital One is a national association headquartered in McLean, Virginia. Capital One is a “financial institution” as defined by 15 U.S.C. § 1693a(9).

FACTS

The Unauthorized Uses of Mr. Meehan’s Debit Card

27. Upon information and belief, on or before September 1, 2021, an unknown fraudster or fraudsters gained access to Plaintiff’s Capital One debit card information using a skimming or cloning device or similar technology.

28. Upon information and belief, the fraudster or fraudsters used that debit card information to clone Plaintiff’s debit card. As a result, Plaintiff remained in possession of his debit card, but the fraudster or fraudsters also had a card (or multiple cards) linked to Plaintiff’s checking account.

29. The fraudster or fraudsters then used the cloned debit cards beginning on September 1, 2021.

30. Over the next two and a half months, the fraudster or fraudsters performed about 58 unauthorized transactions, many at restaurants.

31. None of the unauthorized transactions exceeded \$100, and many transactions appear to have been split (*i.e.*, spread across multiple transactions) to avoid breaking the \$100 threshold.

32. Upon information and belief, the fraudster or fraudsters avoided spending more than \$100 in a single transaction to avoid being detected by Plaintiff.

33. Most of the unauthorized transactions appear to have been performed in the Atlanta, Georgia area. Many others were made in Virginia’s Tidewater region.

34. Meanwhile, during the same period, Plaintiff performed *authorized* transactions in Northern Virginia (where he permanently resides); Minneapolis, Minnesota; and Naples, Florida.

35. Plaintiff's account records show that, several times, his debit card was somehow used in one of those places and—*on the same day*—in either Atlanta or the Tidewater region. That, of course, was not the case.

36. Plaintiff first noticed and alerted Capital One to the unauthorized charges after reviewing his checking account statements on or about November 14, 2021.

37. The statement showing the first unauthorized charges had been issued to Plaintiff at some point after September 30, 2021.

38. After more transactions trickled in, Plaintiff contacted Capital One again on both November 18 and 19, 2021.

39. In each instance, Plaintiff carefully explained to Capital One that he believed that his debit card had been cloned because he always maintained possession of his debit card, yet—somehow—someone “used” it in other areas of the country.

40. In response, Capital One credited Plaintiff's account with provisional credits totaling \$2,443.51, the sum of the 58 unauthorized transactions.

41. On or about December 13, 2021, Plaintiff received three separate letters from Capital One, each stating that the provisional credits would be removed, and that Plaintiff would be held responsible for the challenged charges.

42. Those letters did not explain the basis or bases for Capital One's decision.

43. Then, on or about January 20, 2022, after several attempts, Plaintiff finally reached a Capital One customer representative to discuss Capital One's decision.

44. The Capital One representative told Plaintiff that, because a debit card was present at the time the unauthorized transactions were made, Plaintiff was responsible for the charges.

45. Capital One did not mail or otherwise provide to Plaintiff any evidence in support of its decision to hold him liable.

46. At Plaintiff's urging, Capital One later reopened its investigation.

47. Capital One, however, again denied Plaintiff's claims in early February.

48. Because Plaintiff had informed Capital One that he was always in possession of his debit card, Capital One concluded that only he could have performed the card-present transactions.

49. Capital One neglected to consider that Plaintiff's debit card information could have been skimmed and that his debit card could have been cloned.

50. As a consequence of Capital One's absent investigation and its decision to hold Plaintiff liable for unauthorized transactions, Plaintiff was deprived of his money and any interest that would have accrued on that money had it remained in his account. Plaintiff also suffered actual damages, including stress, anxiety, and emotional distress.

51. Upon information and belief, Capital One neglected to investigate Plaintiff's disputes.

52. Upon information and belief, Capital One did not review its own records, including Plaintiff's transaction history.

53. Upon information and belief, Capital One did not consider the information provided to it by Plaintiff, including Plaintiff's reasonable belief that his debit card had been skimmed or cloned.

54. Upon information and belief, Capital One did not seek information or evidence relating to the unauthorized transactions from MasterCard or Visa or any of the merchants, such as proof of Plaintiff's signature or obtainable security footage.

55. Upon information and belief, Capital One instead relied *only* on the card-present nature of the transactions, coupled with Plaintiff's admission that he remained in possession of his debit card.

56. Upon information and belief, Capital One invariably denies debit cardholder claims of unauthorized use so long as the challenged transactions were card-present transactions, and the cardholder remained in possession of his debit card.

57. Upon information and belief, Capital One's policy is driven by its desire to limit costs that it would otherwise incur were it to engage in several prolonged disputes with various merchants about myriad unauthorized transactions.

The Statutory Scheme

58. The EFTA's \$50 cap on liability is subject to just two exceptions. *See* 15 U.S.C. § 1693g(a); 12 C.F.R. § 1005.6(b).

59. First, the \$50 cap is raised to \$500 when unauthorized transfers occur due to the loss or theft of an access device, *e.g.*, a debit card, and the consumer fails to notify his bank within two business days of learning that the device has been lost or stolen. 15 U.S.C. § 1693g(a); 12 C.F.R. § 1005.6(b)(2).

60. Second, the \$50 cap on a consumer's liability (or the \$500 cap if the first exception applies) is lifted if: (1) an unauthorized transfer appears on the monthly statement that banks must send to consumers under 15 U.S.C. § 1693d(c); (2) the consumer fails to report the unauthorized transfer to his bank within 60 days after the statement was sent to the consumer; *and* (3) the bank

can establish that unauthorized transfers made after the 60-day period would not have occurred but for the consumer's failure to provide timely notice of the earlier unauthorized transfer. 15 U.S.C. § 1693g(a); 12 C.F.R. § 1005.6(b)(2).

61. In other words, when a consumer fails to alert his bank of unauthorized transfers within 60 days of those transfers first appearing on a bank-issued statement, the consumer's liability is uncapped for transfers that happen after the expiration of the 60-day period. *See* 12 C.F.R. § 1005.6(b)(3). The consumer's liability, however, remains capped at \$50 (or \$500) for transfers that occurred before or within the 60-day period.

62. Thus, a financial institution can never hold a consumer liable for more than \$50 in unauthorized transfers if (1) the consumer did not lose his debit card and (2) the consumer reported all losses within 60 days. *See Brown v. Bank of Am., N.A.*, No. 8:21-cv-2334, 2022 WL 2193286, at *2 (D. Md. June 17, 2022) (“[S]ection 1693g of the EFTA limits consumer liability to \$50.00 for unauthorized electronic fund transfers, provided the consumer alerts the Bank of the unauthorized transfer timely and that transaction is not the result of a lost or stolen access device.”).

63. The EFTA also requires that financial institutions investigate any “error” reported by a consumer within ten business days of the financial institution's receipt of notice of such error. *See* 15 U.S.C. § 1693f(a).

64. Alternatively, the institution may, within ten business days, provisionally recredit the consumer's account for the alleged error pending the conclusion of such investigation, provided that the investigation is concluded within forty-five days of the receipt of notice of the error. *Id.* at § 1693f(c).

65. While there is limited guidance as to what constitutes a “reasonable” investigation under § 1693f, the financial institution must—at a minimum—“review any relevant information

within the institution's own records for the particular account to resolve the consumer's claim." *Green v. Cap. One, N.A.*, 557 F. Supp. 3d 441, 451 (S.D.N.Y. 2021) (quoting 12 C.F.R. § 205, Supp. I at 11(c)(4)–5 (Official Interpretation of § 11(c)(4))).

66. The financial institution's obligations are even greater in the debit card context: "When a consumer alleges an error involving a transfer to a merchant via a [point-of-sale] terminal, the institution must verify the information previously transmitted when executing the transfer." 12 C.F.R. § 205, Supp. I (Official Interpretation of § 11(c)(4)).

67. "For example, the financial institution may request a copy of the sales receipt to verify that the amount of the transfer correctly corresponds to the amount of the consumer's purchase." *Id.*

68. Other information that the financial institution should review includes:

- The transaction history of the particular account for a reasonable period of time immediately preceding the allegation of error;
- The location of either the transaction or the payee in question relative to the consumer's place of residence and habitual transaction area;
- Information relative to the account in question within the control of the institution's third-party service providers if the financial institution reasonably believes that it may have records or other information that could be dispositive; and
- Any other information appropriate to resolve the claim.

Id.

69. Critically, any investigation of allegedly unauthorized transactions must consider this information through the lens of the financial institution's burden to show that the transaction was authorized. *See* 15 U.S.C. § 1693g(b).

COUNT ONE:
VIOLATION OF EFTA, 15 U.S.C. §§ 1693g, 1693m, 12 C.F.R. § 1005.6(b)
(Class Claim)

70. Plaintiff incorporates each of the preceding allegations.

71. Under Federal Rule of Civil Procedure 23, Plaintiff brings this action on behalf of the following class:

All individuals who as: (1) Capital One debit cardholders; (2) disputed as unauthorized one or more debit card charges; (3) but were held responsible for such unauthorized charges because the debit cardholders remained in possession of their debit cards and Capital One determined that some of the transactions were card-present transactions (4) during the one-year period before this Complaint was filed.

Plaintiff is a putative class member.

72. **Numerosity. Fed. R. Civ. P. 23(a)(1).** Upon information and belief, Plaintiffs allege that the class members are so numerous that joinder of all is impractical. The class members' names and addresses can be identified through Capital One's internal business records, and the class members may be notified of the pendency of this action by published or mailed notice

73. **Predominance of Common Questions of Law and Fact. Fed. R. Civ. P. 23(a)(2) and Fed. R. Civ. P. 23(b)(3).** Common questions of law and fact exist as to all putative class members, and there are no factual or legal issues that differ between them. These questions predominate over the questions affecting only individual class members. The principal issues include: (1) whether Capital One violated 15 U.S.C. § 1693g and 12 C.F.R. § 1005.6(b) by holding its cardholders liable for unauthorized use of their debit cards; (2) whether Capital One regularly rejects unauthorized use claims because transactions were card-present transactions; and (3) the appropriate amount of statutory damages in consideration of the frequency and persistence of noncompliance, the nature of such noncompliance, the resources of Capital One, the number of persons adversely affected, and the extent to which Capital One's noncompliance was intentional.

74. **Typicality**. Fed. R. Civ. P. 23(a)(3). Plaintiff's claim is typical of the claim of each putative class member. Plaintiff is also entitled to relief under the same cause of action as the other putative class members. All claims are based on the same facts and legal theories.

75. **Adequacy of Representation**. Fed. R. Civ. P. 23(a)(4). Plaintiff is an adequate class representative because his interests coincide with, and are not antagonistic to, the putative class members' interests. Plaintiff has retained experienced and competent counsel; he intends to continue to prosecute the action vigorously; he and his counsel will fairly and adequately protect the interests of the members of the class; and he and his counsel have no interest that might cause them to not vigorously pursue this action.

76. **Superiority**. Fed. R. Civ. P. 23(b)(3). Questions of law and fact common to the class members predominate over questions affecting only individual members, and a class action is superior to other available methods for fair and efficient adjudication of the controversy. The damages sought by each member are such that individual prosecution would prove burdensome and expensive. It would be nearly impossible for class members to effectively redress the wrongs done to them in individual litigation. Even class members could afford it, individual litigation would be an unnecessary burden on the Courts. Furthermore, individualized litigation presents a potential for inconsistent or contradictory judgments and increases the delay and expense to all parties and to the court system presented by the legal and factual issues raised by Capital One's conduct. By contrast, the class-action device will result in substantial benefits to the litigants and the Court by allowing the Court to resolve several individual claims based on a single set of proof in a case.

77. Capital One violated 15 U.S.C. § 1693g and 12 C.F.R. § 1005.6(b) by holding cardholders liable for unauthorized debit card transactions.

78. Upon information and belief, Plaintiff alleges that, as a standard practice, Capital One denies its debit cardholders' unauthorized use claims so long as the consumers remained in possession of their debit cards and some of the challenged transactions were card-present transactions.

79. Upon information and belief, Capital One's conduct is a part of a broader practice of frequent and persistent noncompliance with 15 U.S.C. § 1693g and 12 C.F.R. § 1005.6(b).

80. Plaintiff and the putative class members suffered actual damages because of Capital One's violations of 15 U.S.C. § 1693g and 12 C.F.R. § 1005.6(b), including but not limited to the amounts of the unauthorized transactions and any interest that would have accrued on those amounts.

81. Based on Capital One's noncompliance with 15 U.S.C. § 1693g and 12 C.F.R. § 1005.6(b), Plaintiff seeks, individually and on behalf of the class, actual damages, statutory damages, reasonable attorneys' fees, and costs under 15 U.S.C. §§ 1693m.

COUNT TWO:
VIOLATION OF EFTA, 15 U.S.C. §§ 1693f, 1693f(e), 1693m, 12 C.F.R. § 205.11
(Class Claim)

82. Plaintiff incorporates each of the preceding allegations.

83. Under Federal Rule of Civil Procedure 23, Plaintiff brings this action on behalf of the following class:

All individuals who as: (1) Capital One debit cardholders; (2) notified Capital One about one or more unauthorized debit card charges by indicating that the charges were applied to the cardholder's account in error; (3) but were held responsible for such unauthorized charges because the debit cardholders remained in possession of their debit cards and Capital One determined that some of the transactions were card-present transactions (4) during the one-year period before this Complaint was filed.

Plaintiff is a putative class member.

84. **Numerosity. Fed. R. Civ. P. 23(a)(1).** Upon information and belief, Plaintiffs allege that the class members are so numerous that joinder of all is impractical. The class members' names and addresses can be identified through Capital One's internal business records, and the class members may be notified of the pendency of this action by published or mailed notice

85. **Predominance of Common Questions of Law and Fact. Fed. R. Civ. P. 23(a)(2) and Fed. R. Civ. P. 23(b)(3).** Common questions of law and fact exist as to all putative class members, and there are no factual or legal issues that differ between them. These questions predominate over the questions affecting only individual class members. The principal issues include: (1) whether Capital One violated 15 U.S.C. § 1693f and 12 C.F.R. § 205.11 by failing to reasonably investigate unauthorized debit card transactions; (2) whether Capital One regularly rejects unauthorized use claims because transactions were card-present transactions while the debit cardholder remained in possession of their debit card; (3) whether Capital One knowingly and willfully concluded that the class members' accounts were not in error when such a conclusion could not reasonably have been drawn from the evidence available to Capital One at the time of its investigations; and (4) the appropriate amount of statutory damages in consideration of the frequency and persistence of noncompliance, the nature of such noncompliance, the resources of Capital One, the number of persons adversely affected, and the extent to which Capital One's noncompliance was intentional.

86. **Typicality. Fed. R. Civ. P. 23(a)(3).** Plaintiff's claim is typical of the claim of each putative class member. Plaintiff is also entitled to relief under the same cause of action as the other putative class members. All claims are based on the same facts and legal theories.

87. **Adequacy of Representation. Fed. R. Civ. P. 23(a)(4).** Plaintiff is an adequate class representative because his interests coincide with, and are not antagonistic to, the putative

class members' interests. Plaintiff has retained experienced and competent counsel; he intends to continue to prosecute the action vigorously; he and his counsel will fairly and adequately protect the interests of the members of the class; and he and his counsel have no interest that might cause them to not vigorously pursue this action.

88. **Superiority. Fed. R. Civ. P. 23(b)(3).** Questions of law and fact common to the class members predominate over questions affecting only individual members, and a class action is superior to other available methods for fair and efficient adjudication of the controversy. The damages sought by each member are such that individual prosecution would prove burdensome and expensive. It would be nearly impossible for class members to effectively redress the wrongs done to them in individual litigation. Even class members could afford it, individual litigation would be an unnecessary burden on the Courts. Furthermore, individualized litigation presents a potential for inconsistent or contradictory judgments and increases the delay and expense to all parties and to the court system presented by the legal and factual issues raised by Capital One's conduct. By contrast, the class-action device will result in substantial benefits to the litigants and the Court by allowing the Court to resolve several individual claims based on a single set of proof in a case.

89. Capital One violated 15 U.S.C. § 1693f by failing to reasonably investigate unauthorized debit card transactions involving card-present transactions.

90. Upon information and belief, Plaintiff alleges that, as a standard practice, Capital One denies its debit cardholders' unauthorized use claims so long as the consumers remained in possession of their debit cards and some of the challenged transactions were card-present transactions.

91. Upon information and belief, Capital One's conduct is a part of a broader practice of frequent and persistent noncompliance with 15 U.S.C. § 1693f.

92. Plaintiff and the putative class members suffered actual damages because of Capital One's violations of 15 U.S.C. § 1693f, including but not limited to the amounts of the unauthorized transactions and any interest that would have accrued on those amounts.

93. Based on Capital One's noncompliance with § 1693f, Plaintiff seeks, individually and on behalf of the class, actual damages, treble damages, statutory damages, reasonable attorneys' fees, and costs under 15 U.S.C. §§ 1693m and 1693f(e).

WHEREFORE, Plaintiff demands judgment for actual, treble, and statutory damages against Capital One; his attorneys' fees and costs; prejudgment and post-judgment interest at the judgment rate; and such other relief the Court considers proper.

TRIAL BY JURY IS DEMANDED.

Respectfully submitted,

JOHN MEEHAN

By: /s/ Kristi C. Kelly

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