Kardonick v. JP Morgan Chase & Co. et al

Doc. 44 Att. 4

EXHIBIT D

Dockets.Justia.com

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF FLORIDA

ARTHUR GRIFFIN, JANICE SCOTT, PHILLIP SCOTT, RAJSHAWN SCOTT, DONNIE MALONE, SHEILA ALLEN, THERESA ROBERSON, KENNETH SPINELLI, HEATHER SPRAGUE, LUCILLE, WALLS, PAULETTE WASHINGTON, and JENESE WILLIAMS, individually, and on behalf of all others similarly situated,

Case No. ____________________

Plaintiffs,

vs.

CAPITAL ONE BANK and CAPITAL ONE SERVICES, INC.,

Defendants./

NOTICE OF REMOVAL

Defendant Capital One Services, Inc., pursuant to 28 U.S.C. §§ 1441 and 1446, removes this action from the Circuit Court of Hillsborough County, Florida to the United States District Court for the Middle District of Florida, Tampa Division. In support of this Notice of Removal and this Court's jurisdiction, Defendant Capital One Services, Inc. states:

Procedural History

1. On September 28, 2007, plaintiffs Arthur Griffin, Janice Scott, Phillip Scott, Rajshawn Scott, Donnie Malone, Sheila Allen, Theresa Roberson, Kenneth Spinelli, Heather Sprague, Lucille Walls, Paulette Washington, and Jenese Williams ("plaintiffs") filed a purported class action complaint in the Circuit Court of the Thirteenth Judicial Circuit in and for Hillsborough County, Florida, entitled *Arthur Griffin, Janice Scott, Phillip Scott, Rajshawn*

Scott, Donnie Malone, Sheila Allen, Theresa Roberson, Kenneth Spinelli, Heather Sprague, Lucille Walls, Paulette Washington, and Jenese Williams individually and on behalf of all others similarly situated v. Capital One Bank and Capital One Services, Inc., Case No. 07-12706. A true and correct copy of the complaint and a true and correct copy of the First Amended Class Action Complaint are attached hereto as Exhibits 1 and 2, respectively.

2. On or about December 20, 2007, plaintiffs served Capital One Services with a summons and copy of the First Amended Class Action Complaint. A true and correct copy of the summons received by Capital One Services is attached hereto as Exhibit 3.

Timeliness of Removal

3. Capital One Services received notice of this action through service of the summons and complaint on its registered agent for service of process on December 20, 2007. This notice is therefore timely pursuant to 28 U.S.C. § 1446(b) and Fed. R. Civ. P. 6(a).

Basis for Removal Jurisdiction

4. Generally. This action is a civil class action over which this Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d)(2)(A), as amended by the Class Action Fairness Act, Pub. L. No. 109-2, 119 Stat. 4 (2005), and is one that may be removed to this Court pursuant to the provisions of 28 U.S.C. §§ 1446 and 1453. This is a putative class action in which at least one member of the class of plaintiffs is a citizen of a state different from at least one defendant and the amount in controversy, if plaintiffs prove their allegations, exceeds $5,000,000, exclusive of interest and costs.

5. Covered Class Action. The Class Action Fairness Act defines a "civil action" as "any civil action filed under rule 23 of the Federal Rules of Civil Procedure or similar State statute . . . authorizing an action to be brought by 1 or more representative persons as a class action." *See* 28 U.S.C. § 1332(d)(1)(B). The present action is a "class action" for purposes of the Class Action Fairness Act as plaintiffs are bringing their action individually and on behalf of

a Florida class of all similarly situated Capital One credit card holders, and are pursuing a class recovery pursuant to Florida Rule of Civil Procedure 1.220. (Am. Compl. ¶¶ 34-45, addressing numerosity, commonality, typicality, adequacy, and superiority requirements.) Plaintiffs allege that the class consists of "thousands" of people. (Am. Compl. ¶¶ 2, 37.)

6. Diversity. The diversity requirement of Section 1332(d), as amended by the Class Action Fairness Act ("CAFA"), is satisfied "if any member of a class of plaintiffs is a citizen of a State different from any defendant." 28 U.S.C. § 1332(d)(2)(A). The citizenship of each of the defendants and named plaintiffs is as follows:

(a) Both at the time of commencement of the action and at the time of removal, Defendant Capital One Services was a citizen of Virginia, because it is a bank chartered in and by the Commonwealth of Virginia with its principal place of business in Virginia.

(b) Both at the time of commencement of the action and at the time of removal, Defendant Capital One Services was a citizen of Delaware and Virginia, because it is a Delaware corporation with its principal place of business in Virginia.

(c) Plaintiffs allege that they are residents of Hillsborough County, Florida. (Am. Compl. ¶¶ 3-6.) Both at the time of commencement of the action and at the time of removal, Plaintiffs were also citizens of Florida.

7. Matter in Controversy. Pursuant to 28 U.S.C. § 1332(d)(2), this Court has "original jurisdiction of any civil action in which the matter in controversy exceeds the sum or value of $5,000,000 exclusive of interest and costs." As provided in 28 U.S.C. § 1332(d)(6), "In any class action, the claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs."

8. Plaintiffs do not explicitly allege the value of the matter in controversy in their Amended Complaint. Capital One Services does not concede that it is liable to plaintiffs or the

purported class in any amount, or at all. Nevertheless, without conceding the merit of plaintiffs' allegations, a fair reading of the complaint demonstrates that the "matter in controversy" well exceeds the sum or value of $5,000,000 for purposes of removal.

9. This is an action brought by plaintiffs who purport to represent two subclasses of Florida citizens consisting of: "A. All residents of the State of Florida who [sic] (1) who were solicited by Capital One by mail and/or telephone; (2) who were marketed by Capital One for a Capital One a 'secured' credit card; (3) who received a 'secured' credit card; (4) whose line of credit was $200 or less; and (5) whose 'security deposit' was charged to the credit card ('Secured Credit Card Subclass')" and "B. All residents of the State of Florida (1) who had concurrent, multiple credit card accounts with lines of $1000 or less (2) and who paid a separate annual membership fee for each credit card account ('Duplicative Membership Fees Subclass')." (Am. Compl. ¶ 36.)

10. Plaintiffs allege that Capital One Services committed consumer fraud by four primary wrongful practices: (1) offering a line of credit "up to" a particular amount knowing that "virtually no consumer" would qualify for the maximum amount; (2) failing to disclose that the required security deposit was actually a $49 fee; (3) failing to disclose a $39 annual membership fee; and (4) offering existing card holders additional credit cards, with separate security deposit and membership fees.

11. Plaintiffs seek, among other relief, restitution of the alleged $49 security deposit, which they contend was actually a fee, and the $39 annual membership fee allegedly imposed, both of which plaintiffs contend were imposed unfairly and were not disclosed to them. (Am. Compl. ¶¶ 25, 28-29, 31-32.) Capital One Services denies any of its cardholders incurred undisclosed or unfair fees.

12. Plaintiffs allege that there are "thousands" of putative class members. (Am. Compl. ¶¶ 2, 37.) More than 98,000 consumers with addresses in Florida opened Capital One

credit card accounts for which they were required to establish a $49 security deposit and incurred a $39 annual membership fee in accordance with the express provisions of the agreements governing those accounts. Accordingly, if plaintiffs were to prevail on their claims for consumer fraud or unfair business practices on behalf of a Florida class of similarly situated Capital One credit card holders, the amount of damages or restitution of improperly assessed fees and punitive damages would be well in excess of $5,000,000.

13. Finally, if plaintiffs were to prevail on their claims for violations of the Florida Deceptive and Unfair Trade Practices Act, they would be entitled to seek recovery of attorneys' fees and costs. Fla. Stat. Ann. § 501.2105. The amount of plaintiffs' attorneys' fees should therefore be included in the amount in controversy calculation. *Smith v. GTE Corp.*, 236 F.3d 1292, 1305 (11th Cir. 2001) (citing *Graham v. Henegar*, 640 F.2d 732, 736 n.9 (5th Cir. 1981) (citations omitted)). Regardless of plaintiffs' counsels' hourly rates, Capital One Services is informed and believes that the amount of attorneys' fees plaintiffs will incur by prosecuting this action through trial, and will be able to seek recovery against Capital One Services if they are successful, will be substantial.

14. In light of plaintiffs' demands for actual, compensatory, and punitive damages, restitution, and attorney's fees, the matter in controversy exceeds the sum or value of $5,000,000 exclusive of interest and costs. Therefore, pursuant to 28 U.S.C. §§ 1441 and 1446, this action is removable.

15. No Class Action Fairness Act Exclusions Apply. This action does not fall within any of the exclusions to the removal jurisdiction recognized by 28 U.S.C. § 1332(d).

(a) 28 U.S.C. § 1332(d)(3) provides circumstances under which the Court may decline to exercise jurisdiction over a class action "in which greater than one-third but less than two-thirds of the members of all proposed plaintiff classes in the aggregate and the primary defendants are citizens of the State in which the action was originally filed . . . ." The Capital

One defendants are citizens of Virginia and the purported class is comprised of Florida residents, so this exception does not apply to this action.

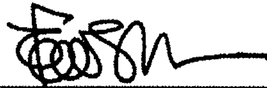
(b) 28 U.S.C. § 1332(d)(4) provides circumstances under which the Court shall decline to exercise jurisdiction over a class action. This Section does not apply to this action because all of the stated circumstances require that the defendant be a citizen of the State in which the action was originally filed. 28 U.S.C. §§ 1332(d)(4)(A)(II)(cc), 1332(d)(4)(B).

16. 28 U.S.C. § 1332(d)(5) provides that the class action diversity provision does not apply to any class action filed against a governmental entity or government officials, or in which the proposed class includes less than 100 members. This Section does not apply to this action because Capital One Bank and Capital One Services are the only defendants, and plaintiffs estimate that there are thousands of class members. (Am. Compl. ¶¶ 2, 37.)

(c) 28 U.S.C. § 1332(d)(9), which provides that the class action diversity provision shall not apply to any class action concerning securities or corporate governance claims, does not apply to this case.

17. For the reasons stated above, this Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2)(A), and this action is removable pursuant to 28 U.S.C. § 1444(b).

Dated in Tampa, Hillsborough County, Florida this 18th day of January,. 2008



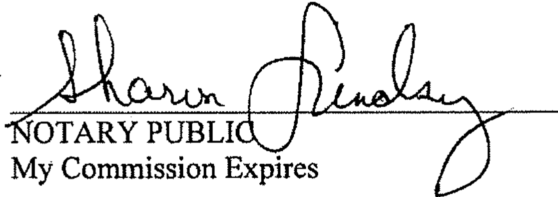
Eric S. Adams
SHUTTS & BOWEN LLP
100 South Ashley Drive
Suite 1500
Tampa, Florida 33602
(813) 229-8900
(813) 227-8222 (Facsimile)
EAdams@shutts.com

Gregory P. Dresser, Esquire
(*pro hac vice* application pending)
Karen Kreuzkamp, Esquire
(*pro hac vice* application pending)
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, CA 94105
(415) 268-7000
(415) 268-7522 (Facsimile)
GDresser@mofo.com
KKreuzkamp@mofo.com

Attorneys for Defendant
CAPITAL ONE SERVICES, INC.

STATE OF FLORIDA)
) ss:
COUNTY OF HILLSBOROUGH)

The foregoing instrument was acknowledged before me this 18th day of January, 2008 by ERIC S. ADAMS, who is personally known to me and who did take an oath.



NOTARY PUBLIC
My Commission Expires

Notary Public-State of Florida
Sharon Lindsey
Commission # DD299073
Expires: March 10, 2008
Bonded thru Aaron Notary / RLI

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT IN AND FOR HILLSBOROUGH COUNTY, FLORIDA. CIVIL ACTION.

07 12706

DIVISION J

ARTHUR GRIFFIN, JANICE SCOTT, PHILLIP SCOTT, DONNIE MALONE, SHEILA ALLEN, THERESA ROBERSON, HEATHER SPRAGUE, LUCILLE WALLS, PAULETTE WASHINGTON and JENESE WILLIAMS individually and for all other persons similarly situated,

CLASS REPRESENTATION

Plaintiffs

Vs.

Case No.
Division:

CAPITAL ONE BANK and CAPITAL ONE SERVICES, INC.,

Defendants.

FILED
CLERK OF CIRCUIT COURT
2007 SEP 28 PM 4:33
HILLSBOROUGH CNTY, FL
CIRCUIT CIVIL

CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiffs Arthur Griffin, Janice Scott, Phillip Scott, Donnie Malone, Sheila Allen, Theresa Roberson, Heather Sprague, Lucille Walls, Paulette Washington and Jenese Williams individually and on behalf of all other persons similarly situated as defined below, bring this action based upon information and belief against Defendants Capital One Bank and Capital One Services, Inc., (referred to collectively herein as "Capital One" or "Defendants" or the "Company") and state and allege as follows:

NATURE OF THE ACTION

1. This is a putative class action brought on behalf of all Florida consumers who received an offer and accepted a Capital One credit card in which security deposits were charged to the initial credit card billing statement for the account. This action is based in substantial part upon the Florida Deceptive and Unfair Trade Practices Act (hereinafter referred to as "FDUTPA"), and upon additional common-law and equitable causes of action.

2. Capital One is the largest issuer of credit cards in the country with millions of cardholders and $12 billion in 2006 revenue. Despite the literally billions of dollars the Company earns from its operations, Capital One devised and executed a scheme to defraud low income or credit impaired consumers.

3. Capital One has a sophisticated process to determine which of its varied credit card products to offer to a consumer. The subject of this lawsuit is a low credit limit "secured" credit card in which the security deposit is charged to the card. Capital One targeted consumers with "subprime" credit in its marketing of this card. Capital One used a uniform letter and telemarketing script that informed consumers that they were pre-approved for the credit card, and the credit limit was "up to" $500. In reality, Capital One rarely issued more than a $200 line of credit, and that line of credit was largely consumed at the outset by "security deposits", fees and charges.

4. The consumer was not told the amount of the line of credit until the consumer accepted and "activated" the card, thereby triggering approximately $88 in fees in charges ($49 security deposit and $39 membership fee), leaving a credit line of only $112. The consumer would have to pay all of these fees and charges before cancelling the credit card, even if the consumer

never used the card for a purchase. If the consumer refuses to pay the $88, Capital One charges monthly late fees, default penalty rates, and other charges that can far exceed the $200 line of credit.

5. Once a cardholder has exceeded her $200 line of credit, rather than raise the line or refuse to extend additional credit, Capital One's pattern and practice was to open a second account for the same consumer with its own $200 line of credit and its own $49 security deposit and $39 annual membership. As a result of this practice, Capital One is able to double the fee income it receives from a single cardholder.

6. According to the Testimony before the Committee on Homeland Security and Governmental Affairs Permanent Subcommittee on Investigations regarding Credit Card Practices: Fees, Interest Rates, and Grace Periods, March 7, 2007, the following testimony was given concerning these credit card marketing practices that are harmful to consumers:

Subprime credit cards.

- "Downselling" consumers by prominently marketing one package of credit card terms, but then approving consumers only for accounts with less favorable terms.
- Issuing credit cards with low credit limits, then adding mandatory fees or "security deposits" resulting in little or no available credit when the consumer receives the card.
- Deceptively marketing credit "protection" products.
- A single late payment on a "prime" credit card account may result in the imposition of a $35 fee and an increase in the APR from a reasonable 10% to a sky-high 28%. This account now bears the hallmarks of a subprime credit card — high rates and high fees.

JURISDICTION AND VENUE

7. Plaintiffs Arthur Griffin, Janice Scott, Phillip Scott, Donnie Malone, Sheila Allen and Theresa Roberson are all citizens of the State of Florida residing in Hillsborough County, Florida.

8. Plaintiffs Heather Sprague, Lucille Walls, Paulette Washington and Jenese Williams are all citizens of the State of Florida residing in Lee County, Florida.

9. The members of the proposed class are residents of the State of Florida.

10. Substantial acts which give rise to the causes of action asserted herein occurred in this State and within this venue.

11. Capital One has continuous and systematic contacts with this state through issuing secured and unsecured MasterCard and Visa credit cards, offering credit card loans, sending monthly statements and selling products and services in Florida to Florida residents.

FACTUAL ALLEGATIONS

12. Plaintiffs are among the thousands of Florida citizens who were targeted by Capital One as part of the Company's "subprime" credit card lending program, a program aimed at marketing and offering credit cards to borrowers with low credit scores and/or impaired credit histories.

13. As part of its "subprime" lending program, Capital One targeted consumers it identified as "subprime" borrowers. In doing so, the Company employed uniform marketing materials, which included direct mail solicitations and scripted telephone solicitations.

14. Plaintiffs and members of the proposed Class were identified by Capital One as "subprime" borrowers, meaning they fit within the specific market that the Company set out to capture. Plaintiffs and the putative Class were identified as targeted consumers through the Company's pre-screening process, a process which included a review of each consumer's credit information obtained from the three credit bureaus (Equifax, Experian and Trans Union). As identified "subprime" borrowers, Plaintiffs and members of the proposed Class were offered similar credit terms on certain Capital One credit cards.

15. Plaintiffs' experiences with Defendants are typical of that of each member of the putative Class and Subclass.

16. To be more specific, beginning on or after September, 2001, each Plaintiff received a credit card solicitation from Capital One via the mail. These solicitations informed Plaintiffs that they were "pre-approved" for a Capital One Bank credit card.

17. Although Plaintiffs have requested account documents from Capital One for the purpose of determining the exact date of the solicitations, Capital One has failed or refused to provide the requested documents, such as advertisements, mailings and account documents.

18. The direct mail solicitations received by Plaintiffs originated with, and were sent by, Capital One Services.

19. In conjunction with the direct mail solicitations described above and as part of Capital One's marketing plan, Plaintiffs were also solicited by Capital One Services via the telephone. The Company's telephone solicitors used a uniform script created by Capital One to persuade Plaintiffs to accept and activate a Capital One credit card. As part of the Company's

scripted representations, the telephone solicitors stated that Plaintiffs would receive a line of credit that was "up to" $500.

20. The Company's representation of a line of credit "up to" $500 was false and misleading in that Capital One knew from its marketing research, review of the consumer's credit information, and its classification of the customer as a "subprime" borrower that virtually no consumer in the targeted consumer market would qualify for a line of credit greater than $200.

21. Based on the representations contained in the Company's direct mail and telephone solicitations, Plaintiffs accepted and activated a Capital One credit card. Thereafter, Plaintiffs received a "welcome to Capital One" letter indicating that their credit cards had been approved but no credit card was enclosed.

22. Capital One's "welcome letter" failed to state the credit limit that the Plaintiffs would receive. The "welcome letter" instructed Plaintiffs as follows: "Once your card arrives, simply call the toll-free number to activate it, ***find out your initial credit line*** and select your Personal Identification number (PIN)." (Emphasis added).

23. After receiving the credit card, Plaintiffs called Capital One to activate the cards. Immediately upon activating the credit cards, Plaintiffs were assessed undisclosed, hidden or misrepresented fees, including a $49 "security deposit" and a $39 annual membership fee. By accepting the card, consumers also triggered the risk of late fees and additional charges should they fail to pay the charges in a time and manner dictated by Capital One.

24. None of the members of the putative Class knew the amount of their individual line of credit prior to activating their Capital One credit card.

25. It was not until sometime after they activated the credit cards that Plaintiffs learned that their actual credit limits were only $200.

26. Under the terms of the Capital One cardholder agreement, cardholders are required to pay all charges, including security deposits and membership fees, before a credit card may be terminated. Stated another way, a consumer who has activated a Capital One credit card but never made a single purchase is prohibited from canceling the credit card without paying the Company's excessive charges. For example, upon activating a credit card with a purported $200 line of credit, the Company charged the consumer approximately $88 in start-up fees, depleting the line of credit by 44%. Upon learning this information, however, a consumer was not allowed to cancel the card without paying Capital One's fees, even though the customer had never made a purchase on the card.

27. The account statements provided by Capital One to the consumer do not indicate whether interest charges apply to the security deposit or to determine the sequence or order in which consumer payments are applied to different charges. For example, if the consumer is charged for a "security deposit", a membership fee, and makes a small credit purchase, and then makes a small payment (less than the total obligation), the consumer cannot tell how the payment is applied to the security deposit. The consumer cannot tell, for example, whether the payment is first applied to interest charges, late payment charges, principal amounts on credit purchases, or security deposits.

28. Upon information and belief, Plaintiffs allege that Capital One did not account for the "security deposit" funds internally as an actual security deposit, but treated it as fees or fee income, or treated it in the same manner for accounting purposes as fee income.

29. Each Plaintiff and member of the Class was selected as a Capital One solicitation recipient because he or she was classified as a "subprime" borrower. As noted above, a "subprime" borrower generally means a borrower that has a lower credit score or an impaired credit history. More particularly, Capital One, at the time of the credit card offers, defined a "subprime" consumer as a person having a FICO score of 550-720.

30. The fees and charges were also conveyed to Plaintiffs and members of the Class in such a way that it was not possible for the customer to determine how charges and fees were triggered and calculated, or how payments were applied to charges.

31. Once a class member consumed the $200 line of credit, either via incurring $112 of initial charges or as a result of additional late fees, Capital One routinely offered cardholders a second (or even third) credit card. Once again, class members incurred $88 of charges in order to obtain a $200 line of credit. This practice enabled Capital One to double or even triple the fee income it received from a single cardholder.

32. On July 25, 2000, John D. Hawke, Jr., the United States Comptroller of the Currency sent "OCC Advisory Letter AL 2000-7" to all chief executive officers and compliance officers of all national banks such as Capital One. The subject of the advisory was "Abusive Lending Practices." The Advisory stated, in part:

> Examiners should be alert for the following indications that an institution may be engaging in abusive lending practices:
>
> - Targeting persons, such as the elderly, women, minorities, and persons living in low- or moderate- income areas, who are perceived to be less financially sophisticated or otherwise vulnerable to abusive loan practices;
>
> - Inadequate disclosure of the true costs and risks of loan transactions;

- Lending practices that are fraudulent, coercive, unfair, deceptive or otherwise illegal;

- Aggressive marketing tactics that amount to deceptive or coercive conduct;

- Padding/Packing - charging customers unearned, concealed or unwarranted fees.

33. Capital One has violated each of the provisions or industry standards contained in the OCC Advisory Letter by the acts alleged in this Complaint.

34. Another scheme used by Capital One was to offer Plaintiffs and other cardholders who met or exceeded the $200 line of credit a second (or third, or fourth) account for the same consumer with its own $200 line of credit and its own $49 security deposit and $39 annual membership. Capital One could have simply raised the credit limit but instead chose to generate huge amounts of fee income through the practice of adding additional $200 accounts bearing $88 in charges, resulting again in a net credit extension of $112.

35. Upon information and belief, Capital One charges its cardholders an over line fee. This fee can "universally" apply to cardholders with more than one account. For example, if the cardholder goes over his credit limit on one of his Capital One credit card accounts he would be charged an over line charge on **each** of the credit card accounts, resulting in penalties and increased interest rates.

36. Upon information and belief, Plaintiffs allege that if the credit line was breached Capital One would systematically react by increasing the cardholder's interest rate and/or enticing him with another credit card offer. Capital One lured customers into accepting additional cards and

all the new fees associated with a new account, rather than simply increasing the credit limit on the original account.

37. Additionally, Capital One sold a credit protection product to the cardholder called Payment Protection. This fee generating product would not "protect payments" but, at best, only would keep the interest on the account current in the event the cardholder became disabled. A Payment Protection charge was levied on cardholders on a monthly basis. "Payment protection" was not a product that was disclosed to the customer prior to activating the card. In many instances, Capital One refused to provide the service as promised despite the fact that the cardholder was disabled.

38. Capital One uses this "payment protection" product to continue earning interest income while providing no real benefit to the cardholders when they need it most.

39. None of the class members knew their line of credit prior to activating the Capital One credit card.

40. Upon information and belief, Plaintiffs allege that Capital One did not account for the "security deposit" funds internally as an actual security deposit, but treated it as fees or fee income, or treated it in the same manner for accounting purposes as fee income. In addition, the term "security deposit" is defined in inconsistent, misleading and deceptive language in the cardholder agreements and other documents related to the "security deposits".

41. Plaintiffs fell victim to a common scheme which Capital One has perpetrated upon thousands of Florida consumers and over a million consumers in the United States.

CLASS REPRESENTATION ALLEGATIONS

42. Plaintiffs repeat and reallege all preceding paragraphs of the Complaint and incorporate them here by reference. Pursuant to Rule 1.220(c), the Plaintiffs plead as follows:

43. This action is brought under Rule 1.220(b)(1)(A), in that "inconsistent or varying adjudications concerning individual members of the class which would establish incompatible standards of conduct for the party opposing the class". In addition, this action is brought under Rule 1.220(b)(3), "the questions of law or fact common to the claim or defense of the representative party and the claim or defensc of each member of the class predominate over any question of law or fact affecting only individual members of the class, and class representation is superior to other available methods for the fair and efficient adjudication of the controversy."

44. Pursuant to Rule 1.220(c)(2)(D)(ii), the definition of the alleged class is as follows:

> All residents of the State of Florida who (1) who were solicited by Capital One by mail and/or telephone; (2) who were marketed by Capital One for a Capital One "secured" credit card; (3) who received a "secured" credit card; (4) whose "security deposit" was charged to the credit card. The class definition expressly excludes damages for any charges by Defendants which could reasonably be construed as being related to the amount of interest rates charged to consumers for credit purchases to the extent that such rates are regulated by federal banking laws. The Class period for such action relates back to the filing of a putative class action in Arkansas, filed on February 6, 2002, and continues to the present. Excluded from the Class are officers and directors of Defendants.

45. Pursuant to the requirements of Rule 1.220(c)(2)(D)(i), Plaintiffs allege that the members of the Class are so numerous that their joinder herein is impracticable. On information and belief, Plaintiffs believe the total number of Florida Class members to number in the thousands.

46. The precise number of Class members and their addresses are unknown to Plaintiffs but can be obtained from Defendants' records. Class members can be notified, if so Ordered by the Court, by mail, supplemented by published notice, if deemed necessary.

47. Pursuant to the requirements of Rule 1.220(c)(2)(B), Plaintiffs allege that questions of law and fact common to the Class as a whole predominate over any questions affecting only individual class members who are identified as follows:

(a) Whether the consumers who were offered credit cards with security deposits charged to the initial credit card balances were targeted or identified by Capital One as subprime borrowers and marketed in the same manner;

(b) Whether the uniform mailings, telemarketing sales scripts and contracts used by Capital One personnel or third party marketers when marketing the "virtual deposit secured" credit cards were false or deceptive;

(c) Whether material facts were omitted, suppressed or concealed by Defendants in connection with the marketing and sale of the "virtual deposit secured" credit card;

(d) Whether the acts and practices of Capital One constitute deceptive acts and practices;

(e) Whether Defendants engaged in deceptive acts and practices by the use of "up to" marketing in which a consumer is offered a credit card with a line of credit "up to" $500 when Capital One knew, by pre-screening the consumers, that they would receive at best a $200 line of credit;

(f) Whether Defendants wrongfully mis-characterized fees or charges as "security deposit(s);"

(g) Whether Defendants engaged in false and deceptive acts and practices by telling the consumer that they were offering the consumer a $200 line of credit when in fact that line of credit was largely consumed by security deposits and other charges;

(h) Whether Plaintiffs and class members suffered economic damages as a proximate result of the alleged deceptive acts and practices of Defendants and the amount of such damages;

(i) Whether Defendants engaged in deceptive acts and practices;

(j) Whether Defendants and were unjustly enriched by the deceptive acts and practices; and

(k) Whether Plaintiffs are entitled to an award of punitive damages.

48. Pursuant to Rule 1.220(c)(2)(C), Plaintiffs allege that their claims are typical of the claims of the Class they represent because Plaintiffs, like all class members, received a credit card from Defendants and were subjected to Defendants' uniform marketing and business practices, as described herein. The particular facts and circumstances that show the claim of each representative party is typical of the claim of each class member as set forth above.

49. Plaintiffs adequately represent the Class because their interests are common with other Class members, because the Plaintiffs and the class members were commonly harmed by the same conduct and actions of Defendants, and because Plaintiffs' interests are not in conflict with the interests of the other Class members.

50. The attorneys for Plaintiffs are experienced and capable in both complex civil litigation and class actions.

51. A class action is superior to other available means for the fair and efficient adjudication of this controversy. The damages suffered by individual Class members are small compared to the burden and expense of individual prosecution of the complex and extensive litigation needed to address Defendants' conduct.

52. Class action treatment of this litigation is superior to individual litigation because it would be virtually impossible for the members of the Class individually to effectively seek redress for the wrongs done to them individually. Even if Class members could individually afford such litigation, which many cannot, the court system would be excessively burdened, given the size of the Class. In addition, individualized litigation increases the delay and expense to all parties and to the court system resulting from the relatively complex legal and factual issues of the case. Individualized litigation also presents a potential for inconsistent or contradictory judgments. By contrast, the class action device presents far fewer management difficulties; allows the hearing of claims which might otherwise go unaddressed because of the relative expense of bringing individual lawsuits; and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

53. Pursuant to Rule 1.220(c)(2)(E), the particular facts and circumstances that support the conclusions required by the court in determining that the action may be maintained as a class action as alleged herein are set forth above.

COUNT ONE
FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT
(BUSINESS AND COMMERCE CODE SECTION 501.201 et seq.)

54. Plaintiffs repeat and reallege all paragraphs of the Complaint.

55. By bringing this action, Plaintiffs herein act as a private Attorney General for their own benefit and for the benefit of the general public.

56. Plaintiffs are each a party engaged in consumer commerce in Florida who has been affected by Defendants' unfair business practices.

57. Defendants' conduct constitutes false and misleading and deceptive practices within the meaning of the Florida Deceptive and Unfair Trade Practices Act, Section 501.204(1), Florida Statutes.

58. Defendants' conduct constitutes unconscionable acts pursuant to section 501.204(1), Florida Statutes.

59. Defendants' conduct is further proscribed by section 501.2075, 501.2077(2), 501.2105, Florida Statutes.

60. Plaintiffs seek judicial orders of an equitable nature against Defendants, including, but not limited to, orders declaring Defendants' practices as alleged to be unlawful, unfair, fraudulent and/or deceptive, and enjoining Defendants from undertaking any further unfair, unlawful, fraudulent and/or deceptive acts or omissions.

61. Plaintiffs and the Class seek disgorgement and restitution plus interest on damages at the legal rate, as well as three times the amount of their economic damages based on Defendants' knowing and intentional violations of this statute.

62. Because Plaintiffs seek to enforce an important right affecting the public interest, Plaintiffs request an award of attorneys' fees and costs on behalf of themselves and the Class.

63. Defendants sought to sell and deliver credit cards to persons by intentional misrepresentations and omissions of fact about the credit cards, including the size of the available credit line the customer qualified for (based upon Defendants' own scoring criteria), and by mis-characterization of fees as security deposit(s), consumer protection and churning to create multiple low credit line accounts.

64. Defendants' practice of selling credit cards on an "up to" basis ("up to" $500 in this case) is a false and deceptive trade practice because Defendants knew at the time of the offer that none, or virtually none, of the consumers would qualify for a line of credit in excess of $200 at the time of the solicitation because the solicitations were based upon Defendants' own criteria and research into the credit worthiness of the targeted consumer.

65. Defendants acted in a false and deceptive manner in withholding from the consumer the amount of the credit line until after the card is activated and charges are triggered and charged to the consumer's account.

66. Defendants acted in a false and deceptive manner by misleading consumers into believing that they had executed a binding contract or agreement prior to providing the consumer with the material terms of the contract.

67. Defendants enforced the credit card agreements by requiring payment of the false charges before cancelling the credit card.

68. Defendants' actions violate the Florida Deceptive and Unfair Trade Practices Act by omitting, suppressing and concealing material information regarding the true terms of the credit cards they sell and deliver to consumers.

69. As a result of Defendants' violations of the Florida Deceptive and Unfair Trade Practices Act prohibiting unfair and deceptive acts and practices, Plaintiffs and members of the Class have suffered monetary damages for which Defendants are liable.

COUNT TWO
UNJUST ENRICHMENT

70. Plaintiffs repeat and reallege all preceding paragraphs of this Complaint and incorporate them here by reference. This Count is brought under the law of unjust enrichment which, with regard to the issues raised by this Complaint, is applied in the same manner in each state in which Capital One does business.

71. In seeking to sell credit cards to Plaintiffs and members of the Class and Subclass, Defendants withheld material terms from consumers prior to card activation, including the actual amount of the available line of credit and the true nature of the fees and charges.

72. Defendants were unjustly enriched by the practice of withholding material terms of the credit card agreement until the card was activated and fees and charges and "deposits" were charged to the customer.

73. Defendants were unjustly enriched by forcing credit terms upon consumers and by forcing consumers to pay fees, charges, penalties and/or "security deposits" to cancel the credit card,

using such tactics as threats both express and implied to adversely harm the consumer's credit rating. Such acts were unconscionable.

74. Defendants were unjustly enriched by forcing the Plaintiffs and class members to pay for services either never provided, or services that were no longer provided after the customer cancelled the credit card.

75. As a result of Defendants' actions which constitute unjust enrichment, Plaintiffs and class members suffered actual damages for which Defendants are liable. Defendants' liability for such damages should be measured by the extent of Defendants' unjust enrichment.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray:

A. That the Court determine that this action may be maintained as a class action under Rule 1.220 of the Florida Rules of Civil Procedure, that Plaintiffs are proper class representatives, and that the best practicable notice of this action be given to members of the Class represented by Plaintiffs;

B. That judgment be entered against Defendants and in favor of Plaintiffs and the Class on Counts One and Two as alleged in this Complaint, including awards of actual, compensatory and punitive damages in an amount to be determined at trial;

C. That judgment be entered imposing interest on damages, litigation costs and attorneys' fees against the Defendants; and

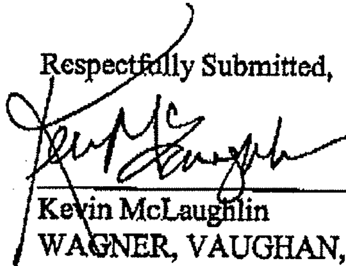
D. For all other and further relief as thus Court may deem necessary and appropriate.

JURY DEMAND

Plaintiffs demands a trial by jury consisting of twelve person on all issues so triable.

Dated this 28th day of September, 2007.

Respectfully Submitted,



Kevin McLaughlin
WAGNER, VAUGHAN, McLAUGHLIN &
BRENNAN, P.A.
601 Bayshore Boulevard
Suite 910
Tampa, FL 33606
(813) 225-4000

Brent Walker
CAULEY BOWMAN CARNEY &
WILLIAMS, PLLC
P.O. Box 25438
Little Rock, AR 72221-5438
(501) 312-8500

Steven A. Owings
OWINGS LAW FIRM
1320 "D" Brookwood
Little Rock, AR 72202
(501) 661-9999

Attorneys for the Plaintiffs

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA, TAMPA DIVISION

ARTHUR GRIFFIN, JANICE SCOTT, PHILLIP SCOTT, RAJSHAWN SCOTT, DONNIE MALONE, SHEILA ALLEN, THERESA ROBERSON, KENNETH SPINELLI, HEATHER SPRAGUE, LUCILLE, WALLS, PAULETTE WASHINGTON, and JENESE WILLIAMS, individually, and on behalf of all others similarly situated,

Case No. ____________

Plaintiffs,

vs.

CAPITAL ONE BANK and CAPITAL ONE SERVICES, INC.,

Defendants./

DESIGNATION AND CONSENT-TO-ACT

Defendant Capital One Services, Inc., by its counsel, Karen Kreuzkamp and Morrison & Foerster LLP, 425 Market Street. San Francisco, CA 94105, (415) 268-7000, (415) 268-7522 (facsimile), KKreuzkamp@mofo.com, files this Designation and Consent-to-Act, pursuant to Local Rule 2.02[1], so that Karen Kreuzkamp may specially appear in this action and participate as counsel for Defendant Capital One Services, Inc. for all purposes, and states as follows:

1. Karen Kreuzkamp was admitted in the state of California in 2006 and the state of Georgia in 2003 and is an active member in good standing of the bars of those states. Karen Kreuzkamp is also a member in good standing of the following courts: Supreme Court of California, United States District Court for the Northern District of

[1] Local Rule 2.02(a)(1) requires no motion, only a "written designation and consent-to-act..."

California, United States Court of Appeals for the Ninth Circuit, and the Superior Courts of Georgia.

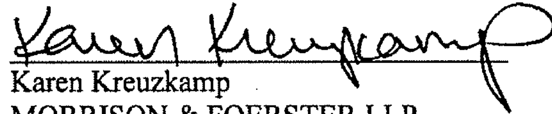
2. Karen Kreuzkamp has not sought to appear in Florida state (but not federal) court within the past five years.

3. Karen Kreuzkamp has not been disciplined in any jurisdiction in the preceding five years and has no disciplinary proceeding against her pending.

4. All applicable provisions of the Local Rules for the Middle District of Florida, including Rule 2.02 (a)-(c) have been read and this designation complies with the rules.

5. Eric S. Adams of Shutts & Bowen, L.L.P., who is an active member of The Florida Bar and the Middle District of Florida, is so designated and consents to act as the local counsel to whom all notices of papers may be served and who will be responsible for the progress of the case.

WHEREFORE, Karen Kreuzkamp moves that he be specially admitted to practice in this action.

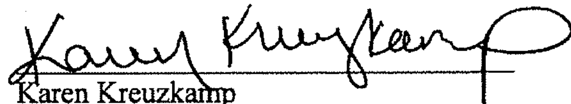


Karen Kreuzkamp
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, CA 94105
(415) 268-7000
(415) 268-7522 (Facsimile)
KKreuzkamp@mofo.com

Eric S. Adams, Esq. 0090476
SHUTTS & BOWEN, L.L.P.
100 South Ashley Drive
Suite 1500
Tampa, Florida 33602
(813) 229-8900
(813) 227-8222 (Facsimile)
EAdams@shutts.com

VERIFICATION

Under penalties of perjury, I declare that I have read the foregoing motion and the facts stated in it are true.



Karen Kreuzkamp

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA, TAMPA DIVISION

ARTHUR GRIFFIN, JANICE SCOTT, PHILLIP SCOTT, RAJSHAWN SCOTT, DONNIE MALONE, SHEILA ALLEN, THERESA ROBERSON, KENNETH SPINELLI, HEATHER SPRAGUE, LUCILLE, WALLS, PAULETTE WASHINGTON, and JENESE WILLIAMS, individually, and on behalf of all others similarly situated,

Plaintiffs,

vs.

CAPITAL ONE BANK and CAPITAL ONE SERVICES, INC.,

Defendants./

Case No. ______________________

DESIGNATION AND CONSENT-TO-ACT

Defendant Capital One Services, Inc., by its counsel, Gregory P. Dresser and Morrison & Foerster LLP, 425 Market Street. San Francisco, CA 94105(415) 268-7000, (415) 268-7522 (facsimile), GDresser@mofo.com, files this Designation and Consent-to-Act, pursuant to Local Rule 2.02[1], so that Gregory P. Dresser may specially appear in this action and participate as counsel for Defendant Capital One Services, Inc., for all purposes, and states as follows:

1. Gregory P. Dresser was admitted in the state of California in 1988 and is an active member in good standing of the bar of that state. Gregory P. Dresser is also a member in good standing of the following courts: Supreme Court of California, United States District Courts for the Northern, Eastern, and Central Districts of California,

[1] Local Rule 2.02(a)(1) requires no motion, only a "written designation and consent-to-act..."

United States Court of Appeals for the Seventh, Ninth, and Tenth Circuits, and the United States Supreme Court.

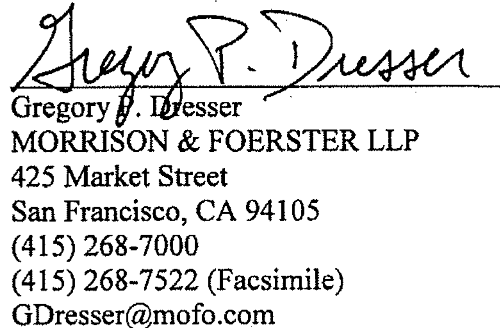
2. Gregory P. Dresser has not sought to appear in Florida state (but not federal) court within the past five years.

3. Gregory P. Dresser has not been disciplined in any jurisdiction in the preceding five years and has no disciplinary proceeding against her pending.

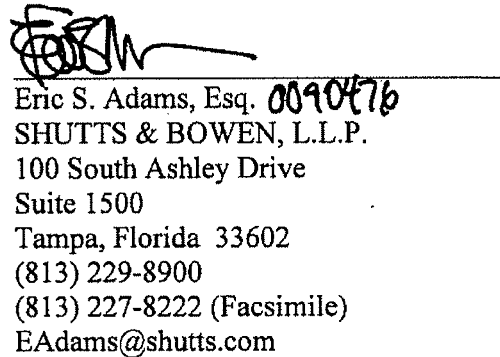
4. All applicable provisions of the Local Rules for the Middle District of Florida, including Rule 2.02 (a)-(c) have been read and this designation complies with the rules.

5. Eric S. Adams of Shutts & Bowen, L.L.P., who is an active member of The Florida Bar and the Middle District of Florida, is so designated and consents to act as the local counsel to whom all notices of papers may be served and who will be responsible for the progress of the case.

WHEREFORE, Gregory P. Dresser moves that he be specially admitted to practice in this action.



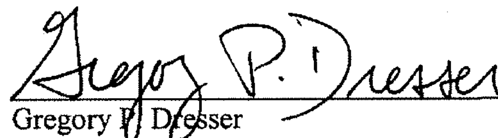
Gregory P. Dresser
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, CA 94105
(415) 268-7000
(415) 268-7522 (Facsimile)
GDresser@mofo.com



Eric S. Adams, Esq. 0090476
SHUTTS & BOWEN, L.L.P.
100 South Ashley Drive
Suite 1500
Tampa, Florida 33602
(813) 229-8900
(813) 227-8222 (Facsimile)
EAdams@shutts.com

VERIFICATION

Under penalties of perjury, I declare that I have read the foregoing motion and the facts stated in it are true.



Gregory P. Dresser