

I. PARTIES

1. Plaintiff, George Crisler ("Crisler") is an individual and citizen of the State of Illinois, who at all relevant times resided in the city of Edwardsville, Illinois.

2. Plaintiff, Matthew Martin ("Martin") is an individual and citizen of the State of Missouri who at all relevant times resided in the city of St. Charles, Missouri.

3. Defendant Capital One Financial Corporation is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Virginia. Defendant Capital One Financial Corporation is authorized to conduct business in the State of Illinois, and can be served via its registered agent for service of process in Delaware, Corporation Service Company 2711 Centerville Road, Suite 400 Wilmington, Delaware 19808.

4. Defendant Capital One Bank (USA), N.A., formerly known as Capital One Bank, is a national banking association organized under federal law, with its principal place of business located at 4851 Cox Road in Glen Allen, Virginia 23060, County of Henrico. Defendant Capital One Bank (USA), N.A. is authorized to do business in the State of Illinois, and can be served via its registered agent for service of process in Virginia, Corporation Service Company 11 S. 12th Street Richmond, VA 23218.

II. JURISDICTION AND VENUE

5. The Court has jurisdiction over each Defendant since at all relevant times each Defendant has regularly and systematically transacted business within the State of Illinois. Each Defendant derives substantial revenue from Illinois residents.

6. This Court has subject matter jurisdiction over this class action under the Class Action Fairness Act ("CAFA") because there are more than one-hundred class members, there are members

of the Plaintiff class who are citizens of states different from that of each Defendant, and the aggregate of class members' claims is more than \$5 million. 28 U.S.C. § 1332(d).

7. Venue is proper in this Court because a substantial part of the events giving rise to Plaintiffs' claims occurred in this district. 28 U.S.C. § 1391(a)(2). Among other things, Capital One has major operations in this District.

III. FACTS

8. Capital One is, and has been at all relevant times, engaged in the business of issuing credit cards.

9. Plaintiffs and Class members are Capital One credit card holders ("cardholders").

10. Capital One cardholders incur debt to Capital One both by making purchases and by getting cash advances. For purposes of calculating interest, the balance owed for purchases and the balance owed for cash advances are not combined into one aggregate balance because Capital One typically charges different interest rates on the different types of balances, usually a lower interest rate on the "Purchases Balance" and a higher interest rate on the "Cash Balance." Additionally, there are often promotions offered by Capital One which include a lower interest rate for various types of purchases. The resulting balance for these purchases is referred to as a "Special Transaction Balance."

11. Plaintiff Crisler is a Capital One cardholder. On his credit card bill, Plaintiff Crisler has a Purchases Balance (charged at an APR interest rate of 12.99%), a Cash Balance (charged at an APR interest rate of about 20.4%)¹, a Special Transaction Balance (charged at an interest rate of 0%), and a Second Special Transaction Balance (charged at an interest rate of about 4%).

12. Plaintiff Martin is a Capital One cardholder. On his credit card bill, Plaintiff Martin has a Purchases Balance (charged at an APR interest rate of 17.9%), a Cash Balance (charged at an APR interest rate of 24.9%).

13. On February 22, 2010, a new federal credit card law came into effect, which requires banks to apply any amount over the minimum payment paid by a debtor to the debtor's credit card balance that bears the highest interest rate.

Upon receipt of a payment from a cardholder, the card issuer shall apply amounts in excess of the minimum payment amount first to the card balance bearing the highest rate of interest, and then to each successive balance bearing the next highest rate of interest, until the payment is exhausted.

15 U.S.C. § 1666c(b)(1).

14. Capital One has routinely and repeatedly violated this statute with its customers.

15. For example, in March 2010, Plaintiff Martin had an average Cash Balance of \$20.26 and an average Purchase Balance of \$1,290.45. The minimum payment required for March was \$32.00. Plaintiff Martin made a payment of \$55.00, which was \$23.00 more than the minimum payment required.

16. Under the new law, the \$23.00 should have been applied entirely to his cash advance balance, which had the higher interest rate, but it was not. Instead of applying the entire \$23.00 to Plaintiff Martin's cash advance balance, only a portion was applied to it. This violation of the law resulted in increased interest charged to and paid by Martin.

17. As a second example, in March 2010, Plaintiff Crisler had a cash advance balance of \$2040.50 and a Purchase Balance of 3,950.68. The minimum payment required for March was

¹ The rate actually varied from 20.40% to 20.45%.

\$205.00. Plaintiff Crisler made a payment of \$300.00, which was \$95.00 more than the minimum payment required.

18. Under the new law, the \$95.00 should have been applied entirely to his cash advance balance, which had the higher interest rate, but it was not. Instead, of applying the entire \$95.00 to Plaintiff Crisler's cash advance balance, only a portion was applied to it. This violation of the law resulted in increased interest charged to and paid by Plaintiff Crisler.

19. This misapplication of these payments was not a bona fide error as evidenced by the fact that Defendants apparently misapply payments on many or all of its customers' accounts. Additionally, Defendants have failed to maintain procedures reasonably adapted to avoid this misapplication of payments.

20. Furthermore, Defendants' monthly statements make it difficult, if not impossible, to discern how payments are being credited. This is because the monthly statements only list the *aggregate* balances at the beginning and end of each billing period, without breaking down the balances to demonstrate how much of the balance is the Cash Balance and how much is the Purchases Balance. Accordingly, when a customer makes a payment, he only sees how much his aggregate balance decreased each billing period; he cannot see exactly how much of his payment was applied to his Cash Balance and how much was applied to his Purchases Balance.

21. The monthly statements do include a listing of the Balance Subject to Interest Rate ("BSI"), which is broken down into a Cash BSI and a Purchases BSI. However, the BSI is the monthly *average* balance for Cash and Purchases. The failure to list the Cash Balance and Purchases Balance at the beginning and end of each billing period prevents a customer from seeing which portion of his payment was applied to which balance.

22. The new federal statute makes creditors who fail to comply with this statute liable for actual damages, costs and attorney's fees, and specifically permits class actions. 15 U.S.C. § 1640(a).

IV. CLASS ACTION ALLEGATIONS

23. Pursuant to FED. R. CIV. P. 23, Plaintiffs brings this action for themselves and on behalf of a class ("the Class") defined as:

Each person in the United States who was a Capital One credit cardholder who carried more than one different type of balance bearing different interests rates and who made a payment to Capital One in excess of the cardholder's minimum payment amount on or after February 22, 2010.

A. **FED. R. CIV. P. 23(a) Prerequisites**

24. **Ascertainable Class.**

The class in this case can be objectively ascertained by reference to records maintained by Defendants which identify cardholders and demonstrate which of them qualify for inclusion in the class.

25. **Numerosity.** The class is so numerous that joinder of all members is impracticable. At this time, Plaintiffs do not know the exact size of the Class. Based on information and belief, the Class is comprised of at least tens of thousands of members and is geographically dispersed throughout the country as to render joinder of all Class members impracticable.

26. **Commonality.** The claims of Plaintiffs and the Class Members involve common questions of fact and law which will predominate over any individual issues. These common issues, include, but are not limited to:

- a. Whether Capital One failed to apply payments in excess of cardholder's minimum payment amount, to card balance bearing the highest interest rate, and then to each successive balance bearing the next highest rate of interest;

- b. Whether Capital One's methodology for applying payment amounts to balances violated the federal statute;
- c. the frequency and persistence of Capital One failure to comply with the statute;
- d. the resources of Capital One;
- e. the extent to which Capital One's failure to comply with the statute was intentional; and
- f. Whether Capital One's violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

27. **Typicality.** Plaintiffs' claims are typical of the other Class Members' claims. As described above, Defendants' methodology for applying payments to balances is computerized and standardized so if the methodology used with respect to Plaintiffs violates the statute, it is reasonable to presume that the same methodology is used with other Class members.

28. **Adequate Representation.** Plaintiffs will fairly and adequately protect the interests of the Class. Plaintiffs are members of the subject Class. Plaintiffs' interests coincide with, and are not antagonistic to, other Class Members' interests. Additionally, Plaintiffs have retained counsel experienced and competent in complex, commercial, multi-party, mass tort, consumer, and class action litigation. Plaintiffs' counsel have prosecuted complex class actions in state and federal courts across the country, including cases involving improper charges applied to credit cardholders.

B. FED. R. CIV. P. 23(b) Prerequisites

29. Questions of law and fact common to the Class 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. Individual damages on the matter can be readily and automatically

calculated by data maintained by Defendants regarding Class Members balances and payments. Thus the question of individual damages will not predominate over legal and factual questions common to the class.

V. CAUSES OF ACTION

Count 1: Violation of 15 U.S.C. § 1666c(b)(1)

30. Plaintiffs incorporate by reference those paragraphs set out above as though fully set forth herein.

31. As described above, Defendants violated 15 U.S.C. § 1666c(b)(1) by failing to apply payment amounts in excess of the minimum payment amount first to the cardholder's balance bearing the highest rate of interest, and then to each successive balance bearing the next highest rate of interest.

32. As a direct result of Defendants' violation of this statute, Plaintiffs and Class members were damaged by paying more interest than they would have paid had Defendants applied their payments as mandated by the statute.

33. Defendants' failure to comply with the statute was intentional.

34. Defendants' failure to comply with the statute did not result from a bona fide error.

35. Defendants failed to maintain procedures reasonably adapted to avoid violation of the statute.

Count 2: Violation of 735 ILCS 5/2-701 Declaratory Judgment

36. Plaintiffs repeat and reallege each of the foregoing paragraphs of this Complaint as if set forth in full.

37. An actual and justiciable controversy exists between Defendants and Plaintiffs concerning the parties' respective rights and obligations under 15 U.S.C. § 1666c(b)(1).

38. Plaintiffs and the proposed class have tangible legal interests in the instant controversy, including but not limited to:

- a. Their interest in obtaining injunctive relief so that Defendants do not in the future employ deceptive practices by applying Plaintiffs and the proposed class members's payments in a manner which violates 15 U.S.C. § 1666c(b)(1).
- b. Their interest in obtaining injunctive relief so that Defendants do not in the future employ deceptive practices by applying Plaintiffs and the proposed class members' payments in a manner inconsistent with what Capital One advertises.

39. Plaintiffs are therefore entitled to a declaration from this Court that Defendants must apply payments in a manner consistent with 15 U.S.C. § 1666c(b)(1).

40. Plaintiffs are therefore entitled to a declaration from this Court that Defendants must apply payments in a manner consistent with its advertisements.

41. Plaintiffs are therefore entitled to a declaration from this Court that Defendants must apply payments in a manner consistent with Defendants' advertisements.

**Count 3: Violation of 815 ILCS §505/1 et seq.
Illinois Consumer Fraud and Deceptive Business Practices Act**

42. Plaintiffs incorporate by reference the allegations above as if fully set forth herein.

43. Pursuant to the Illinois Consumer Fraud & Deceptive Practices Act, 815 ILCS 505/1 et seq. (hereinafter "IFCA"), unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception fraud, false pretense, false

promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the "Uniform Deceptive Trade Practices Act" in the conduct of any trade or commerce are declared unlawful, whether any person has in fact been misled, deceived or damaged thereby. (hereinafter, violated ICFA).

44. Defendants, through their employees, agents and representatives, have violated ICFA by engaging in the following unfair methods of competition and unfair or deceptive acts or practices:

a. by failing to apply payment amounts in excess of the minimum payment amount first to the cardholder's balance bearing the highest rate of interest, and then to each successive balance bearing the next highest rate of interest in violation of 15 U.S.C. § 1666c(b)(1).

b. by failing to apply payment amounts in excess of the minimum payment amount first to the cardholder's balance bearing the highest rate of interest, and then to each successive balance bearing the next highest rate of interest, which is inconsistent with what Defendants advertise on their website.

45. There is no legitimate business reason for Defendants' practice of failing to apply payment amounts in excess of the minimum payment amount first to the cardholder's balance bearing the highest rate of interest, and then to each successive balance bearing the next highest rate of interest.

46. The manner in which Defendants apply excess payments in violation of 15 U.S.C. § 1666c(b)(1) undermines this state's fundamental policy against unfair business practices that are likely to deceive or mislead consumers and that undercut trust and fair competition in the consumer marketplace.

47. Credit Cards were provided by Defendants to Plaintiffs and the Class primarily for personal, family or household purposes.

48. As a direct and proximate result of Defendants' unfair methods of competition and unfair or deceptive acts or practices, Plaintiffs and the Class were damaged.

49. Defendants at all times acted intentionally, maliciously, wilfully, outrageously and knowingly by failing to apply payment amounts in excess of the minimum payment amount first to the cardholder's balance bearing the highest rate of interest, and then to each successive balance bearing the next highest rate of interest. This conduct reflects a deliberate indifference to Plaintiffs' and the Class Members' rights, entitling Plaintiffs and the Class to an award of punitive damages.

50. Pursuant to 805 ILCS §505/1 et seq., and the law of other states deceptive trade practices this Court may award attorney's fees to Plaintiffs and the Class.

51. Plaintiffs and the Class have sustained an ascertainable loss and were damaged by the unlawful acts, methods and/or practices of Defendants plus interest thereon.

52. Plaintiffs, individually and as Members of the Class, have no adequate remedy at law for the future unlawful acts, methods or practices as set forth above.

53. Plaintiffs and the Class are entitled to equitable relief, including restitutionary disgorgement of all profits accruing to Defendants during their unfair business practices and an injunction prohibiting Defendants from engaging in the same or similar unfair business practices in the future. The entry of injunctive relief is of particular importance and is necessary to secure a fair consumer marketplace.

54. In bringing this action Plaintiffs have engaged the services of attorneys, and have incurred reasonable legal expenses.

55. The violations of the Illinois Consumer Fraud and Deceptive Business Practices Act (815 Ill. Comp. Stat. Ann. §505/1 et seq.) have directly, foreseeably, and proximately caused damages to Plaintiffs and the Putative Class in an amount that exceeds five million dollars (\$5,000,000.00).

56. Defendants' actions are outrageous due to their reckless indifference to the rights of Plaintiffs and Putative Class.

**Count 3: Violation of 815 ILCS 510/1 et seq.
The Uniform Deceptive Trade Practices Act**

57. Plaintiffs incorporate by reference the allegations above as if fully set forth herein.

58. Defendants had a statutory duty to refrain from engaging in deceptive trade practices in connection with applying payments made in excess of the minimum payment due.

59. Defendants, through its employees, agents and representatives, breached their duty to refrain from engaging in deceptive trade practices in connection with applying payments made in excess of the minimum payment due by failing to apply payment amounts in excess of the minimum payment amount first to the cardholder's balance bearing the highest rate of interest, and then to each successive balance bearing the next highest rate of interest.

60. Each of the aforementioned actions and failures to act of Defendants constitute deceptive trade practices within the meaning of the Uniform Deceptive Trade Practices Act, 815 ILCS 510/1 et seq.

61. As a result of said deceptive trade practices, Defendants have directly, foreseeably, and proximately caused damages to Plaintiffs and the Putative Class in an amount that exceeds five million dollars (\$5,000,000.00).

62. Defendants' actions are outrageous due to their reckless indifference to the rights of

Plaintiffs and the Putative Class.

Count 4: Unjust Enrichment

63. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

64. Defendants have knowingly received and retained benefits from Plaintiffs and the Class, under circumstances that would render it unjust to allow Defendants to retain such benefits.

65. By failing to apply payment amounts in excess of the minimum payment amount first to the cardholder's balance bearing the highest rate of interest, and then to each successive balance bearing the next highest rate of interest in violation of 15 U.S.C. § 1666c(b)(1) and in a manner inconsistent with Defendants' advertisements, Defendants knowingly received and appreciated benefits at the expense and to the detriment of Plaintiffs and the Class.

66. Defendants appreciate or have knowledge of that benefit.

67. Under principles of equity and good conscience, Defendants should not be permitted to retain the monies belonging to Plaintiffs, the Class, and Subclass that they were paid and that Defendants unjustly received as a result of its misconduct alleged herein.

VI. DAMAGES

68. Plaintiffs incorporates by reference those paragraphs set out above as though fully set forth herein.

69. Plaintiffs would further show that as a result of the acts and/or omissions of Defendant, Plaintiffs have suffered and continue to suffer at least the following damages for which Plaintiffs now sue:

- a. Excessive interest charges above those permitted by statute;
- b. Actual Damages;

- c. Prejudgment and Post-judgment interest;
- d. Punitive Damages;
- e. Treble Damages;
- f. Costs of court;
- g. Attorney's fees; and
- h. Any other relief this Court deems proper.

70. The damages set forth above are sought by Plaintiffs and Class members from and against Defendants.

WHEREFORE, Plaintiffs pray for joint and several judgment against Defendants, Capital One Financial Corporation and Capital One Bank (USA), N.A., f/k/a Capital One Bank, for actual damages, treble damages, attorney's fees, prejudgment and post-judgment interest, costs, punitive damages, and such other relief the Court may deem proper.

JURY DEMAND

Plaintiffs demand a trial by jury on all issues so triable.

Respectfully submitted,

Date: September 1, 2010

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