

IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY MARYLAND

THOMAS ALSTON)
 10012 Cedarhollow Ln)
 Largo, MD 20774)

on behalf of himself and)
all others similarly situated)

Plaintiffs,)

CAPITAL ONE, N.A.)
Serve: CSC-Lawyers Incorp. Srvc. Co.)
 7 Saint Paul Street, Suite 820)
 Baltimore, Maryland 21202)

Defendant,)

WELLS FARGO BANK, N.A.)
Serve: CSC-Lawyers Incorp. Srvc. Co.)
 7 Saint Paul Street, Suite 820)
 Baltimore, Maryland 21202)

Defendant.)

Civil Action No. _____

**FIRST AMENDED CLASS ACTION
 COMPLAINT FOR DAMAGES AND
 INJUNCTIVE RELIEF**

Thomas Alston, on behalf of himself and all others similarly situated, brings this complaint under the Electronic Funds Transfer Act, 15 U.S.C. §1693 ("EFTA"), breach of contract, unjust enrichment and common law tort of conversion for injunctive relief and damages arising out of the systematic practice of the Defendants to assess illegal fees of users of Capital One debit cards and Wells Fargo ATM machines. Additionally, Capital One charges undue fees against its checking account holders on false premises of transactions that did not occur.

PARTIES

1. The plaintiff is a natural person and resides in the State of Maryland.
2. Capital One, N.A. ("Capital One") is a national bank that provides financial services, including debit cards and ATM services.

3. Wells Fargo Bank, N.A. ("Wells Fargo") is a national bank that provides financial services, including debit cards and ATM services.

FACTUAL ALLEGATIONS PERTAINING TO ATM FEES

4. In December 2014 Mr. Alston used his Capital One debit card to retrieve money from a Wells Fargo ATM located in Virginia.

5. Mr. Alston retrieved \$200 and was charged \$7.

6. The ATM screen indicated that only \$4 or \$5 would be the total amount charged for the transaction.

7. The ATM did not disclose that the transaction would cost \$7.

8. Mr. Alston believed, based on the representations from the ATM screen, that the transaction would only cost \$4 or \$5.

9. The \$7 charge constituted an overcharge by Capital One and/or Wells Fargo of \$2 or \$3 against Mr. Alston.

10. On or about December 28, 2014 Mr. Alston called Wells Fargo to complain about the excess charge.

11. The Wells Fargo representative was unhelpful and suggested he call Capital One.

12. Mr. Alston called Capital One and spoke with a representative who told me that Capital One charged Mr. Alston \$4 for the transaction. The representative further stated that Capital One receives several complaints about illegal charges for balance inquiries.

13. Mr. Alston did not make a balance inquiry during his transaction to withdraw \$200 from his debit card.

14. Following his phone call with Capital One, Mr. Alston initiated an online chat with a Capital One representative identified as Evita at about 2:07 PM.

15. Evita advised Mr. Alston that Capital One only charged \$2 for the transaction.

16. After Mr. Alston completed his online chat, he called Capital One's customer service again. During this conversation the Capital One representative advised him that Capital One charged \$4. Mr. Alston explained to the representative that Evita told him that the charge was only \$2. The representative stated the extra charge(s) may have come from Wells Fargo.

17. Either Wells Fargo charged an additional \$2 to \$3 for the transaction or Capital One charged an additional \$2 to \$3 for the transaction or both Capital One and Wells Fargo charged a portion of the additional \$2 to \$3 fee.

FACTS PERTAINING TO CHECKING ACCOUNT FEES

18. In June 2015 Capital One assessed a \$2 fee for exceeding a cash deposit limit.

19. Upon information and belief Mr. Alston did not agree to this fee when opening the bank account.

20. Mr. Alston contacted Capital One to inquire about the fee.

21. Capital One advised Mr. Alston that it charges for cash deposit amounts in excess of \$5,000. The representative explained that Capital One charges \$1 for every \$1,000 over \$5,000.

22. Capital One charged Mr. Alston \$2 for purportedly exceeding \$2,000 over the \$5,000 cash deposit limit.

23. Mr. Alston did not deposit \$7,000 in cash for the month of June 2015.

24. The \$2 fee charged by Capital One was unfounded as Mr. Alston did not exceed the \$5,000 cash deposit limit by \$2,000.

CLASS ACTION ALLEGATIONS

25. Plaintiff seeks to maintain this action as a class action representing the following two classes:

ATM Fee Class

All individuals who, within three years of the filing of this complaint, have had an account with Capital One and was overcharged for the usage of a Capital One debit card at a Wells Fargo ATM card.

Cash Deposit Fee Class

All individuals who, within three years of the filing of this complaint, have had an account with Capital One and was overcharged for depositing cash in excess of prescribed limit.

26. *Ascertainability/Numerosity*: The classes are ascertainable in that each are comprised of individuals who can be identified by reference by a purely objective criteria. There are hundreds of thousands of members within each class and, therefore, it would be impracticable to bring all, or even a substantial percentage of, such persons before the Court as individual plaintiffs.

27. *Typicality*: The claims of the named plaintiff are typical of the claims of each member of the classes he seeks to represent because: (1) they have all been injured in the same manner as a result of Defendants' illegal assessment of fees and (2) their claims are all based on the same legal theory.

28. *Adequacy Of Representation*: Plaintiff is an adequate representative of the classes he seeks to represent because: (a) he is willing and able to represent the proposed classes and has every incentive to pursue this action to a successful conclusion; (b) his interest is not in any way antagonistic to those of the other class members; and (c) he will obtain experienced and competent counsel.

29. *Commonality*: There are questions of law and fact common to all members of the classes. The overarching questions of law and fact that are common to all members of the ATM Fee class is whether:

ATM Fee Class

- (a) Plaintiffs had an account with Capital One;
- (b) Plaintiffs had a debit card associated with their Capital One account;
- (c) Plaintiffs used their debit card to withdraw cash from a Wells Fargo ATM; and
- (d) Plaintiff were charged excessive fees for withdrawing cash from the ATM.

Cash Deposit Fee Class

- (a) Plaintiffs had an account with Capital One;
- (b) Plaintiffs and Defendant agreed that the account would be subject to a \$5,000 month cash deposit limit;
- (c) Plaintiffs deposited cash in amounts of \$6,000 or more; and
- (d) Plaintiffs were charged excessive fees for depositing cash in their accounts.

30. *Class Certification.* Class certification is appropriate because Defendants have acted and/or refused to act on grounds generally applicable to the classes, thereby making declaratory and final injunctive relief appropriate. Such generally applicable grounds consist of Defendants' continual assessment of illegal and unduly assessed fees.

31. *Class Certification.* Class certification is also appropriate because the common questions of law and fact relating to plaintiff's claims predominate over questions affecting only individual members. Moreover, the class action vehicle is superior to other available methods for the fair and efficient adjudication of these claims. For the vast majority of members of the classes, the amount of any potential recovery is too small to justify the cost of prosecuting their claims individually. Further, requiring each class member to pursue his or her claim individually would entail needless duplication of effort, would waste the resources of both the parties and the Court, and would risk inconsistent adjudications.

COUNT ONE: VIOLATION OF EFTA
(ATM Fee Class)

32. Plaintiff incorporates paragraphs 1-30 by reference.

33. Defendants violated 1693b by failing to state the actual amount of the fee that would be charged for the transaction.

34. Defendants violated 1693b by failing to provide notice of the actual and accurate amount to be charged on the screen of the ATM before Plaintiff was committed to go through with the transaction.

35. Pursuant to 15 U.S.C. §1693m, Defendants are liable to the Plaintiff and the Class for actual damages, as well as attorney fees and costs, in an amount to be determined by the Court.

36. Alternatively, pursuant to 15 U.S.C. §1693m, Defendants are liable to Plaintiff for actual damages, statutory damages of \$100 to \$1,000, attorney fees and costs, in an amount to be determined by the Court. Plaintiff's actual damages include emotional and mental distress arising from his frustration, anger, feelings of helplessness due to Defendants illegal enterprise to take advantage and steal his money.

COUNT TWO: BREACH OF CONTRACT
(ATM Fee Class)

37. Plaintiff incorporates paragraphs 1-36 by reference.

38. Capital One and ATM Fee Class entered into a checking account agreement .

39. As part of the agreement the ATM Fee Class was provided with a debit card that could be used to make purchases and withdrawals using the money in the checking account.

40. The agreement allowed Capital One to assess fees on withdrawals from ATM machines at banks other than a Capital One bank.

41. The fee amount that Capital One could charge for making withdrawals from ATM machine was stipulated at a certain dollar figure.

42. The fee amount to be charged for the withdrawal was provided at the time of the ATM withdrawal thru a monitor display located on the ATM.

43. Capital One assessed a fee in an amount greater than the amount stipulated in the checking account agreement and the fee amount disclosed on the ATM monitor at the time of the withdrawal transaction.

44. Capital One's assessment of fees in an amount greater than authorized was a breach of contract and/or breach of fiduciary duty.

45. Each ATM Fee Class member suffered damages of at least \$1 or more as a result of Capital One's breach of the checking account agreement.

COUNT THREE: UNJUST ENRICHMENT
(ATM Fee Class)

46. Plaintiff incorporates the foregoing paragraphs by reference.

47. Wells Fargo assessed an additional ATM fee that was over and beyond the fee that was disclosed on the ATM Fee Class.

48. Wells Fargo had no legal basis to assess an additional fee against the ATM Fee Class.

49. Wells Fargo collected and retained the additional ATM fee.

50. Wells Fargo had no legal basis to retain the additional ATM fee it assessed against the Class.

51. Wells Fargo knows that it is unduly in possession of money obtained from illegitimate fees and that the money belongs and should be returned to the Class.

52. Wells Fargo's retention and refusal to return the money to the Class has resulted in an inequity against the Class.

COUNT FOUR: BREACH OF CONTRACT
(Cash Deposit Fee Class)

53. Plaintiff incorporates paragraphs 1-36 by reference.

54. Capital One and Cash Deposit Fee Class entered into a checking account agreement.

55. Capital One claims that a term and condition of the agreement was that the Cash Deposit Fee would pay \$1 for every \$1,000 deposited as cash in excess of \$5,000.

56. Upon information and belief the agreement did not include a term and condition that limited cash deposits to \$5,000.

57. Capital One's assessment of fees for cash deposited in excess of \$5,000 was a breach of contract and/or breach of fiduciary duty.

58. Alternatively, the agreement allowed Capital One to assess fees for cash deposits of \$5,000 but Capital One assessed fees in greater amount than \$1 per \$1,000 cash deposits in excess of \$5,000.

59. Capital One's *over* assessment of fees for cash deposited in excess of \$5,000 was a breach of contract and/or breach of fiduciary duty.

60. Each Cash Deposit Fee Class member suffered damages of at least \$1 or more as a result of Capital One's breach of the checking account agreement.

COUNT FIVE: CONVERSION
(ATM Fee and Cash Deposit Fee Classes)

61. Plaintiff reincorporates all the allegations above by reference.

62. Defendants were only entitled to the \$4 or \$5 fee that was disclosed prior to the withdrawal of the funds from the ATM by the Plaintiff and the Class.

63. The Defendants only had a right to access the Plaintiff and the Class members' accounts for \$4 or \$5 but accessed the accounts for \$7.

63. It was illegal for the Defendants to access the Class members accounts and take money above and beyond what they were legally entitled to take.

64. Upon information and beliefs the Defendants deliberately established a process to over-charge fees and therefore intended to take the money from the Class members.

65. Upon information and belief the Defendants were motivated by malice when they set up this process to illegally take money from the Class members.

66. Defendants' conduct was the proximate cause of Plaintiff and the Class members' injuries, rendering Defendants liable for compensatory damages, actual damages and punitive damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs seek judgment in his favor for the following:

- (a) Permanent injunction be issued requiring Defendants to cease the illegal over-assessment of fees;
- (b) Order certifying all claims of the Classes alleged herein;
- (c) Award compensatory and actual damages for Counts I-V;
- (d) Award punitive damages for Count V;
- (e) Award costs and reasonable attorney's fees and costs; and
- (f) Any such other relief the Court deems just, equitable and proper.

DEMAND FOR TRIAL BY JURY

67. Plaintiff hereby demand a trial by jury on all issues so triable.

Respectfully submitted,
THOMAS ALSTON

Thomas Alston
10012 Cedarhollow Ln
Largo, MD 20774
Tel: (240) 432-0927
E-mail: talston@washlegal.com
Pro Se Plaintiff

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PARTIES

1. The plaintiff is a natural person and resides in the State of Maryland.
2. Capital One, N.A. ("Capital One") is a national bank that provides financial services, including debit cards and ATM services.

3. Wells Fargo Bank, N.A. ("Wells Fargo") is a national bank that provides financial services, including debit cards and ATM services.

FACTUAL ALLEGATIONS PERTAINING TO ATM FEES

4. In December 2014 Mr. Alston used his Capital One debit card to retrieve money from a Wells Fargo ATM located in Virginia.

5. Mr. Alston retrieved \$200 and was charged \$7.

6. The ATM screen indicated that only \$4 or \$5 would be the total amount charged for the transaction.

7. The ATM did not disclose that the transaction would cost \$7.

8. Mr. Alston believed, based on the representations from the ATM screen, that the transaction would only cost \$4 or \$5.

9. The \$7 charge constituted an overcharge by Capital One and/or Wells Fargo of \$2 or \$3 against Mr. Alston.

10. On or about December 28, 2014 Mr. Alston called Wells Fargo to complain about the excess charge.

11. The Wells Fargo representative was unhelpful and suggested he call Capital One.

12. Mr. Alston called Capital One and spoke with a representative who told me that Capital One charged Mr. Alston \$4 for the transaction. The representative further stated that Capital One receives several complaints about illegal charges for balance inquiries.

13. Mr. Alston did not make a balance inquiry during his transaction to withdraw \$200 from his debit card.

14. Following his phone call with Capital One, Mr. Alston initiated an online chat with a Capital One representative identified as Evita at about 2:07 PM.

15. Evita advised Mr. Alston that Capital One only charged \$2 for the transaction.

~~13~~16. After Mr. Alston completed his online chat, he called Capital One's customer service again. During this conversation the Capital One representative advised him that Capital One charged \$4. Mr. Alston explained to the representative that Evita told him that the charge was only \$2. The representative stated the extra charge(s) may have come from Wells Fargo.

17. Either Wells Fargo charged an additional \$2 to \$3 for the transaction or Capital One charged an additional \$2 to \$3 for the transaction or both Capital One and Wells Fargo charged a portion of the additional \$2 to \$3 fee.

FACTS PERTAINING TO CHECKING ACCOUNT FEES

~~14~~18. In June 2015 Capital One assessed a \$2 fee for exceeding a cash deposit limit.

~~15~~19. Upon information and belief Mr. Alston did not agree to this fee when opening the bank account.

~~16~~20. Mr. Alston contacted Capital One to inquire about the fee.

~~17~~21. Capital One advised Mr. Alston that it charges for cash deposit amounts in excess of \$5,000. The representative explained that Capital One charges \$1 for every \$1,000 over \$5,000.

~~18~~22. Capital One charged Mr. Alston \$2 for purportedly exceeding \$2,000 over the \$5,000 cash deposit limit.

~~19~~23. Mr. Alston did not deposit \$7,000 in cash for the month of June 2015.

~~20~~24. The \$2 fee charged by Capital One was unfounded as Mr. Alston did not exceed the \$5,000 cash deposit limit by \$2,000.

CLASS ACTION ALLEGATIONS

~~21~~25. Plaintiff seeks to maintain this action as a class action representing the following two classes:

ATM Fee Class

All individuals who, within three years of the filing of this complaint, have had an account with Capital One and was overcharged for the usage of a Capital One debit card at a Wells Fargo ATM card.

Cash Deposit Fee Class

All individuals who, within three years of the filing of this complaint, have had an account with Capital One and was overcharged for depositing cash in excess of prescribed limit.

2226. *Ascertainability/Numerosity*: The classes are ascertainable in that each are comprised of individuals who can be identified by reference by a purely objective criteria. There are hundreds of thousands of members within each class and, therefore, it would be impracticable to bring all, or even a substantial percentage of, such persons before the Court as individual plaintiffs.

2327. *Typicality*: The claims of the named plaintiff are typical of the claims of each member of the classes he seeks to represent because: (1) they have all been injured in the same manner as a result of Defendants' illegal assessment of fees and (2) their claims are all based on the same legal theory.

2428. *Adequacy Of Representation*: Plaintiff is an adequate representative of the classes he seeks to represent because: (a) he is willing and able to represent the proposed classes and has every incentive to pursue this action to a successful conclusion; (b) his interest is not in any way antagonistic to those of the other class members; and (c) he will obtain experienced and competent counsel.

2529. *Commonality*: There are questions of law and fact common to all members of the classes. The overarching questions of law and fact that are common to all members of the ATM Fee class is whether:

ATM Fee Class

- (a) Plaintiffs had an account with Capital One;
- (b) Plaintiffs had a debit card associated with their Capital One account;
- (c) Plaintiffs used their debit card to withdraw cash from a Wells Fargo ATM; and
- (d) Plaintiff were charged excessive fees for withdrawing cash from the ATM.

Cash Deposit Fee Class

- (a) Plaintiffs had an account with Capital One;
- (b) Plaintiffs and Defendant agreed that the account would be subject to a \$5,000 month cash deposit limit;
- (c) Plaintiffs deposited cash in amounts of \$6,000 or more; and
- (d) Plaintiffs were charged excessive fees for depositing cash in their accounts.

2630. *Class Certification*. Class certification is appropriate because Defendants have acted and/or refused to act on grounds generally applicable to the classes, thereby making declaratory and final injunctive relief appropriate. Such generally applicable grounds consist of Defendants' continual assessment of illegal and unduly assessed fees.

2731. *Class Certification*. Class certification is also appropriate because the common questions of law and fact relating to plaintiff's claims predominate over questions affecting only individual members. Moreover, the class action vehicle is superior to other available methods for the fair and efficient adjudication of these claims. For the vast majority of members of the classes, the amount of any potential recovery is too small to justify the cost of prosecuting their claims individually. Further, requiring each class member to pursue his or her claim individually would entail needless duplication of effort, would waste the resources of both the parties and the Court, and would risk inconsistent adjudications.

COUNT ONE: VIOLATION OF EFTA
(ATM Fee Class)

32. Plaintiff incorporates paragraphs 1-30 by reference.

33. Defendants violated 1693b by failing to state the actual amount of the fee that would be charged for the transaction.

34. Defendants violated 1693b by failing to provide notice of the actual and accurate amount to be charged on the screen of the ATM before Plaintiff was committed to go through with the transaction.

35. Pursuant to 15 U.S.C. §1693m, Defendants are liable to the Plaintiff and the Class for actual damages, as well as attorney fees and costs, in an amount to be determined by the Court.

36. Alternatively, pursuant to 15 U.S.C. §1693m, Defendants are liable to Plaintiff for actual damages, statutory damages of \$100 to \$1,000, attorney fees and costs, in an amount to be determined by the Court. Plaintiff's actual damages include emotional and mental distress arising from his frustration, anger, feelings of helplessness due to Defendants illegal enterprise to take advantage and steal his money.

COUNT ONETWO: BREACH OF CONTRACT
(ATM Fee Class)

2837. Plaintiff incorporates paragraphs 1-27-36 by reference.

2938. Capital One and ATM Fee Class entered into a checking account agreement .

3039. As part of the agreement the ATM Fee Class was provided with a debit card that could be used to make purchases and withdrawals using the money in the checking account.

3140. The agreement allowed Capital One to assess fees on withdrawals from ATM machines at banks other than a Capital One bank.

3241. The fee amount that Capital One could charge for making withdrawals from ATM machine was stipulated at a certain dollar figure.

3242. The fee amount to be charged for the withdrawal was provided at the time of the ATM withdrawal thru a monitor display located on the ATM.

3343. Capital One assessed a fee in an amount greater than the amount stipulated in the checking account agreement and the fee amount disclosed on the ATM monitor at the time of the withdrawal transaction.

3444. Capital One's assessment of fees in an amount greater than authorized was a breach of contract and/or breach of fiduciary duty.

3545. Each ATM Fee Class member suffered damages of at least \$1 or more as a result of Capital One's breach of the checking account agreement.

COUNT TWOTHREE: UNJUST ENRICHMENT
(ATM Fee Class)

3646. Plaintiff incorporates the foregoing paragraphs by reference.

3747. Wells Fargo assessed an additional ATM fee that was over and beyond the fee that was disclosed on the ATM Fee Class.

3848. Wells Fargo had no legal basis to assess an additional fee against the ATM Fee Class.

3949. Wells Fargo collected and retained the additional ATM fee.

4050. Wells Fargo had no legal basis to retain the additional ATM fee it assessed against the Class.

4151. Wells Fargo knows that it is unduly in possession of money obtained from illegitimate fees and that the money belongs and should be returned to the Class.

4252. Wells Fargo's retention and refusal to return the money to the Class has resulted in an inequity against the Class.

COUNT THREEFOUR: BREACH OF CONTRACT
(Cash Deposit Fee Class)

4353. Plaintiff incorporates paragraphs 1-27-36 by reference.

4454. Capital One and Cash Deposit Fee Class entered into a checking account agreement.

4555. Capital One claims that a term and condition of the agreement was that the Cash Deposit Fee would pay \$1 for every \$1,000 deposited as cash in excess of \$5,000.

4656. Upon information and belief the agreement did not include a term and condition that limited cash deposits to \$5,000.

4757. Capital One's assessment of fees for cash deposited in excess of \$5,000 was a breach of contract and/or breach of fiduciary duty.

4858. Alternatively, the agreement allowed Capital One to assess fees for cash deposits of \$5,000 but Capital One assessed fees in greater amount than \$1 per \$1,000 cash deposits in excess of \$5,000.

4959. Capital One's *over* assessment of fees for cash deposited in excess of \$5,000 was a breach of contract and/or breach of fiduciary duty.

5060. Each Cash Deposit Fee Class member suffered damages of at least \$1 or more as a result of Capital One's breach of the checking account agreement.

COUNT FOURFIVE: CONVERSION
(ATM Fee and Cash Deposit Fee Classes)

5161. Plaintiff reincorporates all the allegations above by reference.

62. Defendants were only entitled to the \$4 or \$5 fee that was disclosed prior to the withdrawal of the funds from the ATM by the Plaintiff and the Class.

63. The Defendants only had a right to access the Plaintiff and the Class members' accounts for \$4 or \$5 but accessed the accounts for \$7.

~~5263.~~ It was illegal for the Defendants to accessed the Class members accounts and illegally take money above and beyond what they were legally entitled to take.

~~5364.~~ Upon information and beliefs the Defendants deliberately established a process to over-charge fees and therefore intended to take the money from the Class members.

~~5465.~~ Upon information and belief the Defendants were motivated by malice when they set up this process to illegally take money from the Class members.

~~5566.~~ Defendants' conduct was the proximate cause of Plaintiffs and the Class members' injuries, rendering Defendants liable for compensatory damages, actual damages and punitive damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs seek judgment in his favor for the following:

- (a) Permanent injunction be issued requiring Defendants to cease the illegal over-assessment of fees;
- (b) Order certifying all claims of the Classes alleged herein;
- (c) Award compensatory and actual damages for Counts I-~~III~~V;
- (d) Award punitive damages for Count IV;
- (e) Award costs and reasonable attorney's fees and costs; and
- (f) Any such other relief the Court deems just, equitable and proper.

DEMAND FOR TRIAL BY JURY

~~5667.~~ Plaintiff hereby demand a trial by jury on all issues so triable.

Respectfully submitted,
THOMAS ALSTON

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E-mail: talston@washlegal.com
Pro Se Plaintiff