

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

SCOTT C. SAVETT and SHERYL  
BARNES, individually and on behalf of all  
others similarly situated,

Plaintiffs,

v.

CAPITAL ONE, N.A. and CAPITAL ONE  
FINANCIAL CORP.,

Defendants.

Case No. 1:23-cv-00890-RDA-JFA

**FIRST AMENDED COMPLAINT**

**CLASS ACTION**

**JURY TRIAL DEMANDED**

Plaintiffs Scott C. Savett (“Savett”) and Sheryl Barnes (“Barnes”) (collectively “Plaintiffs”), on behalf of themselves and all others similarly situated, by and through their counsel, bring this First Amended Class Action Complaint (“Complaint”) against Defendants Capital One, N.A. and Capital One Financial Corp. (collectively “Capital One” or “Defendants”), and based upon personal knowledge with respect to themselves, and on information and belief and the investigation of counsel as to all other matters, in support thereof alleges as follows:

**NATURE OF THE ACTION**

1. Plaintiffs bring this case on behalf of themselves and all other Capital One “360 Savings” accountholders at any time from September 16, 2019 to the present.
2. Since February 2013, Capital One has maintained an online savings account for depositors called “360 Savings.” This savings account is the successor to the high-yield online savings account that had been offered by ING Direct USA, which Capital One acquired in 2012. Plaintiffs each had ING Direct online savings accounts that were converted into a Capital One

360 Savings accounts as of February 1, 2013. From February 1, 2013 until on or about September 16, 2019, Capital One offered the 360 Savings account to members of the general public, and advertised the 360 Savings account as a “high-interest” and “great rate” savings account, consistent with how ING Direct USA had positioned the product. The rate paid on the 360 Savings Account as of September 16, 2019 was 1.00%.

3. In mid-September 2019, Capital One abruptly stopped offering the 360 Savings account to new customers on its website and simultaneously introduced a new online savings account with an almost identical name: “360 Performance Savings,” which was advertised as a “high-yield” online savings account. From the moment it was created, this new 360 Performance Savings account featured a higher interest rate (1.90% APY as of September 2019) than the 360 Savings account (1.00% APY at that same time). There were, and are, no material differences between these two accounts other than the interest rate.

4. Although Capital One ceased offering the 360 Savings account to new depositors, it has continued to maintain that account for preexisting 360 Savings accountholders. Capital One did not notify its 360 Savings accountholders that the 360 Performance Savings account was available, that 360 Performance Savings was, in fact, a different account and not just another name for the 360 Savings account, or that 360 Performance Savings paid a higher rate of interest than the 360 Savings account. Instead, Capital One left its 360 Savings accountholders in lower-yield account and hoped that they would not notice.

5. Starting in March 2020, in response to the pandemic, the Federal Reserve lowered the federal funds rate to zero, and interest rates decreased throughout the economy. As of December 2020, the rate paid on 360 Performance Savings had fallen to 0.40%, and the rate paid on 360 Savings had fallen to an even lower 0.30%. Thereafter, from January 1, 2022 through

May 2023, the federal funds rate increased rapidly from 0.08% to 5.06%, and Capital One increased the rate paid on the 360 Performance Savings account to 3.75%. However, Capital One kept the rate paid on the 360 Savings Account at 0.30%. The rate on 360 Performance Savings is currently 4.30%, while the rate on 360 Savings has remained at 0.30%.

6. The 360 Savings Account Disclosures, which contain the “the terms applicable to [customers’] 360 Savings account[s]” to which customers “agree to be bound” by opening or maintaining the account, provide that “interest rates and annual percentage yields are variable and may change at any time at our [*i.e.*, Capital One’s] discretion.” A covenant of good faith and fair dealing is implied into this agreement, and provides that Capital One must exercise its discretion honestly and in good faith. Capital One breached the covenant of good faith and fair dealing by failing to raise interest rates for its 360 Savings accountholders, to whom Capital One had promised a variable “high interest” rate. Instead, as stated above, Capital One capped the interest rate for the 360 Savings account and furtively created a new, similar sounding savings account product with a higher yield (*i.e.*, 360 Performance Savings), without informing its current customers. In contrast to the 360 Performance Savings account, Capital One has not increased the interest rate for its 360 Savings accountholders in response to market conditions, depriving 360 Savings accountholders of interest payments on their purportedly “high interest” account to which they were entitled pursuant to the covenant of good faith and fair dealing implied in their contract with Capital One.

7. Plaintiff Savett has been a 360 Savings accountholder since on or about February 1, 2013, when his ING Direct savings account was converted to a 360 Savings account, and is still a 360 Savings accountholder as of the filing of this Complaint. Since 2015, Plaintiff Savett’s 360 Savings account has grown from approximately \$1,000 to approximately \$8,000

due primarily to recurring monthly transfers from another of Plaintiff Savett's bank accounts. Between September 2019 and May 2023, Plaintiff Savett received \$79.92 in interest on his 360 Savings account. Had his account featured an APY commensurate with the newer 360 Performance Savings account, he would have received approximately \$302.31 in interest during this time period. Accordingly, Plaintiff Savett alone has lost over two hundred dollars (\$200) in interest payments that he would have received had Capital One exercised its interest rate discretion in good faith, commensurate with the 360 Performance Savings account.

8. Plaintiff Barnes was a 360 Savings accountholder beginning on or about February 1, 2013, when her two ING Direct savings accounts were converted to 360 Savings accounts. She used those account over the years, and added substantial funds to them between 2020 and 2023. It is estimated that Plaintiff Barnes lost over eight thousand dollars (\$8,000) in interest payments that she would have received had Capital One exercised its interest rate discretion in good faith, commensurate with the 360 Performance Savings account.

9. Capital One's conduct caused its 360 Savings accountholders to lose millions of dollars of interest in the aggregate since September 2019, and especially since interest rates began rising rapidly in March of 2022, benefiting Capital One at the expense of its customers.

10. Capital One was financially motivated to breach the covenant of good faith and fair dealing and to make materially false and misleading statements with respect to the 360 Savings account. Capital One was able to report higher profits by underpaying 360 Savings customers for the use of their cash. According to its Form 10-K filed with the U.S. Securities and Exchange Commission, Capital One earned \$27.1 billion in net interest income in 2022, an increase of over 12% from the prior year. Capital One accomplished this increase in profits in

part by exercising its discretion unfairly with respect to the interest rate Capital One paid to its 360 Savings customers.

### **THE PARTIES**

11. Plaintiff Savett is a natural person who is a citizen of the United States and who is domiciled in the Commonwealth of Pennsylvania. Savett has been a 360 Savings accountholder since on or about February 1, 2013, when his ING Direct savings account was converted to a 360 Savings account, and is still a 360 Savings accountholder as of the filing of this Complaint.

12. Plaintiff Barnes is a natural person who is a citizen of the United States and who is domiciled in the Commonwealth of Massachusetts. Barnes became a 360 Savings accountholder on or about February 1, 2013, when her two ING Direct savings accounts were converted to 360 Savings accounts. After Barnes called Capital One to inquire as to why she was not receiving Capital One's advertised rates for online savings accounts, Capital One closed her two 360 Savings accounts and transferred the funds therein to two new 360 Performance Savings accounts in April 2023.

13. Defendant Capital One, N.A. is a national bank with its principal place of business McLean, Virginia. Defendant Capital One, N.A. is a wholly-owned subsidiary of Capital One Financial Corporation.

14. Defendant Capital One Financial Corporation is a holding company incorporated in the State of Delaware with its principal place of business in McLean, Virginia.

### **JURISDICTION AND VENUE**

15. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d), because this action is a class action in which there are 100 or more Class members; the matter in

controversy exceeds the sum of \$5,000,000, exclusive of interest and costs; and at least one Plaintiff and member of the Class is a citizen of a state different from Defendants.

16. This Court has personal jurisdiction over Defendants because Defendants are headquartered in this District and a substantial portion of the acts complained of took place in this District.

17. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Defendants are headquartered in this District and a substantial portion of the acts complained of took place in this District.

## **FACTUAL ALLEGATIONS**

### **I. Background on High-Interest and High-Yield Savings Accounts**

18. In the context of bank deposit accounts, including savings accounts, interest is the amount of money that the bank pays the depositor for use of the depositor's funds, typically represented as a percentage of the total deposit amount. The annual percentage yield, or APY, is the percentage reflecting the total amount of interest paid on an account based on the interest rate and frequency of compounding for a 365-day period.<sup>1</sup>

19. A "variable" rate savings account has an interest rate that is subject to change according to business and economic conditions. Capital One's website states regarding its savings accounts that "[i]nterest rates will always fluctuate based on the Fed and the economy, but your Capital One savings account is here to help you save."<sup>2</sup> The federal funds rate, set by the Federal Reserve (the "Fed"), is "the central interest rate in the U.S. financial market. It influences other interest rates such as the prime rate, which is the rate banks charge their

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<sup>1</sup> <https://www.capitalone.com/bank/money-management/banking-basics/how-to-calculate-savings-interest/> (dated January 25, 2023; last accessed July 6, 2023).

<sup>2</sup> <https://www.capitalone.com/help-center/checking-savings/savings-interest-rate-changes/> (last accessed July 6, 2023).

customers with higher credit ratings. Additionally, the federal funds rate indirectly influences longer-term interest rates such as mortgages, loans, and savings, all of which are very important to consumer wealth and confidence.”<sup>3</sup>

20. Capital One notes that there is a difference between “traditional” savings accounts and those that are labeled as “high interest” or “high yield.” Its website summarizes the answer to the question, “What is a high-yield savings account?,” with the answer, “It’s all about the interest.” Capital One’s website further states: “Simply put, a high-yield savings account—sometimes called a high-interest savings account—is a bank account that often has a higher interest rate or annual percentage yield (APY) than a traditional savings account.”<sup>4</sup> Capital One’s website also states: “Online high-yield savings accounts earn higher than average interest on the balance amount.”<sup>5</sup>

21. Capital One’s website advises that interest rates on high-yield savings accounts may change in response to the federal funds rate, and may be subject to promotional introductory rates: “[T]he interest rate a bank offers on a high-yield savings account can change. Each bank sets its own interest rates. The Federal Reserve’s benchmark interest rate can also change, and that sometimes impacts the interest rate banks offer on a high-yield savings account. That’s because the Fed’s rates are one of the things that banks use to determine the rates they offer. In addition, interest rates banks offer sometimes change as the result of bank promotions. Sometimes a bank will offer a high rate for a limited period of time. But the rate decreases once

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<sup>3</sup> Board of Governors of the Federal Reserve System (US), Federal Funds Effective Rate [FEDFUNDS], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/FEDFUNDS>, July 5, 2023.

<sup>4</sup> <https://www.capitalone.com/bank/money-management/banking-basics/what-is-a-high-yield-savings-account/> (dated April 13, 2022; last accessed July 6, 2023).

<sup>5</sup> <https://www.capitalone.com/bank/savings-accounts/online-performance-savings-account/> (last accessed Sept. 11, 2023).

the promotion is over. So, it's important to compare both the promo rate and the standard rate when you look at the options offered by different banks.”<sup>6</sup>

22. However, Capital One does not advise customers, on its website or otherwise, that high-interest or high-yield accounts are subject to being converted into *non-high-interest* or *non-high-yield* accounts with no notice to customers.

23. Savings accounts are designed to hold customer money for relatively longer periods of time. Capital One's own website reflects this reality, confirming that savings accounts are intended for “longer-term” deposits than a checking account.<sup>7</sup> Capital One's website further notes that “over time interest can be a nice cushion to your savings account and help you reach your future savings goals.”<sup>8</sup>

24. Capital One encourages customers to keep money in high-yield savings accounts for extended periods of time, saying on its website: “Once you deposit your money and keep it in the account, the interest alone will help your savings grow.” Capital One's website further advises: “A high-yield savings account can be a safe place to park your hard-earned cash . . . . There are some common things you can do to help your savings grow faster: Put your money into a high-interest savings account and leave it in there to earn interest.”<sup>9</sup>

25. Online savings accounts, as a category, offer significantly higher interest rates than physical branch savings accounts. As Capital One says: “One benefit of most online banks is that they usually don't have the same costs as physical locations. Because of that, they might be able to pass some of their savings to you with lower fees and higher interest savings rates on

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<sup>6</sup> *Supra* n. 4.

<sup>7</sup> <https://www.capitalone.com/learn-grow/money-management/checking-vs-savings-accounts/> (dated August 9, 2022; last accessed July 6, 2023).

<sup>8</sup> *Supra* n.4.

<sup>9</sup> <https://www.capitalone.com/bank/money-management/banking-basics/what-is-a-high-yield-savings-account/> (dated April 13, 2022; last accessed July 6, 2023).



your deposits. . . . A big difference between online savings vs. traditional savings accounts is how much interest you can earn. Online banks often offer higher interest rates on savings accounts than traditional banks.”<sup>10</sup> Consequently, the term “high interest” or “high yield,” when applied to an online savings account, is understood to mean that the interest rate is competitive with other online savings accounts.

26. Capital One’s website is operated jointly by Capital One, N.A. and Capital One Financial Corp. The “terms and conditions” on Capital One’s webpages pertaining to online banking products “refer to Capital One and its affiliates and related entities as ‘we,’ ‘us’ and ‘our.’ This includes Capital One Financial Corporation, Capital One, N.A. and each of their successors, assigns, agents, and representatives.” It also states: “The information contained on the Site, including its arrangement, (other than images licensed from third parties), are copyright ©2022 by Capital One Financial Corporation.”<sup>11</sup>

## **II. Capital One Acquires ING Direct and Begins Offering the “360 Savings” Account**

27. On February 17, 2012, Capital One announced that it had purchased ING Direct USA, a subsidiary of the Dutch-owned bank, ING Group. ING Direct USA at that time was offering an online savings account to U.S. consumers (called ING Direct). This ING Direct savings account was categorized as a high-interest account. After the sale was completed, on or around February 1, 2013, ING Direct became “Capital One 360,” the online or cyber branch division of Capital One. Consumers who held ING Direct savings accounts thereafter became Capital One “360 Savings” accountholders, and Capital One began selling 360 Savings accounts to the general public. Capital One’s February 17, 2012 press release assured depositors that they

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<sup>10</sup> <https://www.capitalone.com/bank/money-management/banking-basics/online-banking-vs-traditional-banking/> (dated March 16, 2022; last accessed July 6, 2023).

<sup>11</sup> <https://www.capitalone.com/digital/terms-conditions/> (last modified Feb. 27, 2023; last accessed Sept. 12, 2023).

would “experience no changes to account services and functionality” and that “ING Direct will continue to provide the same high quality customer experience, products, account servicing and functionality to its customers.”

28. Plaintiff Savett had an ING Direct online savings account, which he had opened on September 7, 2001, that was converted to a Capital One 360 Savings account on or around February 1, 2013. He has held the account, and has had money deposited in the account, ever since. Plaintiff was made aware of the switch from ING Direct to Capital One in his account statement ending January 31, 2013, which was the first account statement with Capital One branding, and which said: “Red’s the New Orange. We’re the Same Awesome. Hey Saver, ING DIRECT’s officially Capital One 360. New red and blue, yes, but everything you’ve grown to love about us - like eStatements - stays just the same. You’ll find everything you need right here, as usual, to easily track your January transactions. It’s just part of our ongoing commitment to help you save time and money. Some things never change.”

29. Plaintiff Barnes likewise had ING Direct savings accounts, which she opened in approximately the mid-2000s. Her ING Direct accounts were likewise converted to Capital One 360 Savings accounts on or about February 1, 2013.

30. Contemporaneously with the integration and rebranding of ING Direct into Capital One 360, Capital One made statements intended to assure customers that the nature of their ING Direct savings accounts as high-interest accounts would not be changing, and that the 360 Savings account would feature a competitive, high interest rate, like the ING Direct savings account had done.

- a. On or about April 24, 2013, Capital One had the following on the “Our History” tab of its online banking website: “Way back in 2000, we set out to build a

different kind of bank – one focused on helping our Customers save time & money. We did this by offering simple financial products, giving Savers fee-free checking and savings that they could access from their personal computer. Back then, we were known as this little thing called ING DIRECT USA, and we quickly grew to become the largest direct bank in the country. In 2012, we were acquired by Capital One; and in 2013, we transitioned our ING DIRECT Brand to Capital One 360 – fueled by the same commitment of saving Customers time and money. The name and logo you see today symbolize that we’ve come full-circle, with a new family, and the same passion. We’re excited about our future, and we’re committed to helping you save for yours.”<sup>12</sup>

- b. On or about May 8, 2013, Capital One issued a “pledge” to customers, saying, among other things: “What’s Capital One 360 all about? We’ll deliver real value. We’ll continue to be home to no-fee, no-minimum checking and saving accounts—*with the great rates that we know are important to you.*”<sup>13</sup>
- c. On or about January 22, 2014, Capital One posted a “press kit” on its website regarding its 360 Savings Account, and the first line read as follows: “*High interest*, no fees, no service charges, no kidding. With a 360 Savings, you earn a

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<sup>12</sup> <https://home.capitalone360.com/about-us/who-we-are/our-history> (accessed on June 15, 2023 via Wayback Machine at URL <https://web.archive.org/web/20130424010504/https://home.capitalone360.com/about-us/who-we-are/our-history>) (emphasis added).

<sup>13</sup> <https://home.capitalone360.com/capitalone/pledge> (accessed on June 15, 2023 via Wayback Machine at URL <https://web.archive.org/web/20130508064426/https://home.capitalone360.com/capitalone/pledge>) (emphasis added).

*competitive rate* with a level of flexibility, freedom, and security you simply won't find at other banks."<sup>14</sup>

31. The 360 Savings Account Disclosures (available on Capital One's website) contain the "the terms applicable to your 360 Savings account," to which customers "agree to be bound" whenever they "submit an application, open an account, or use [Capital One's] services." The 360 Savings Account Disclosures provide that "[t]he interest rates and annual percentage yields are variable and may change at any time at our [i.e., Capital One's] discretion."<sup>15</sup>

32. The 360 Savings Account Disclosures are made on behalf of Capital One, N.A., and state that for purposes thereof, "[t]he words 'our,' 'us,' 'we,' 'Capital One,' and 'bank' mean Capital One, N.A."<sup>16</sup>

33. Capital One advertised its 360 Savings account as featuring "high interest" or a "great rate" for over six years, from at least April 2013 through September 2019. For example:

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<sup>14</sup> <https://home.capitalone360.com/downloads/press-kit-360-savings.pdf> (accessed on June 15, 2023 via Wayback Machine at URL <https://web.archive.org/web/20140122080321/https://home.capitalone360.com/downloads/press-kit-360-savings.pdf>) (emphasis added).


<sup>15</sup> Accessible at <https://www.capitalone.com/bank/disclosures/savings-accounts/online-savings-account/>.

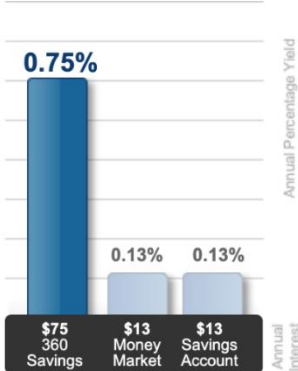
<sup>16</sup> *Id.*

**April 24, 2013**<sup>17</sup>

Checking Accounts ▾
Savings Accounts ▾
Home Loans ▾
Investing ▾
Retirement ▾
Business Accounts ▾

360 Savings Account
Kids Savings Account
CDs





\$75	\$13	\$13
360 Savings	Money Market	Savings Account

Rates are Annual Percentage Yields. Variable APY effective since 10/10/12. Chart based on a deposit of \$10,000 for one year. Sources: savings and money market averages from the non-jumbo Weekly National Rates on FDIC.gov as of 04/08/13.

### Watch Your Savings Grow.

Earn a variable **0.75% Annual Percentage Yield** (effective 10/10/2012). Open 360 Savings account today.

#### The 360 Savings Account

- High Interest, No Fees, No Minimums** - All your money goes to work for you.
- No Changing Banks** - It electronically links to your current checking account. Transfers are free and easy.
- FDIC Insured** - Your deposits are FDIC-insured up to \$250,000 per depositor.
- Quick Application** - Start saving in less than 5 minutes. Giddyup.

Open Now

#### Questions?

Call 1-800-464-3473 to talk to a real person.

#### Savings Central

Want to maximize your savings? Set up a free Automatic Savings Plan that allows you to have a fixed amount of money regularly transferred to your high interest 360 Savings account from your linked checking account.


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#### FAQs

- ▶ [How do I access my money?](#)
- ▶ [Are deposits at Capital One 360 insured by the FDIC?](#)
- ▶ [How do I calculate the interest on my account?](#)

[See More](#)

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Watch our [demo](#) to learn more about the 360 Savings Account.

<sup>17</sup> <https://home.capitalone360.com/online-savings-account> (accessed June 15, 2023 via Wayback Machine at URL <https://web.archive.org/web/20130424015814/https://home.capitalone360.com/online-savings-account>).

**July 8, 2016**<sup>18</sup>

## Challenge everything you'd expect from a savings account.

No Fees | Great everyday interest rate | Real people at 1-800-289-1992

**Open Now**

- What's 360 Savings?
- Savings Tools
- Deposits
- Ratings & Reviews

### 360 Savings® — the online savings account from Capital One 360®.

We've challenged what it means to be a savings account by building one that's better for your money – and we deliver better, every single day. Here's what that means for you:

- **No fees and no minimums:** No fees and no minimum balance required to open or keep an account.
- **A high interest savings account:** Earn a great everyday interest rate on your money – currently 0.75% APY.
- **Real people to help when you need it:** Chat with a real person at 1-800-289-1992 and enjoy 24/7 online and mobile access to your account.
- **Easy ways to stash cash:** Open multiple savings accounts (and nickname them as you wish), keep track with [My Savings Goals](#) and put your money on auto-pilot with an [Automatic Savings Plan](#).
- **We have your back:** Your deposits are FDIC-insured up to \$250,000 per depositor.
- **Deposit checks in a snap:** Deposit checks from anywhere using your mobile smartphone or computer with [Mobile Deposit](#).

**Open Now**

### Ratings & Reviews

[Check out](#) what Customers are saying about 360 Savings.

watch an online savings account demo  
**Learn More**

View a short [demo](#).  
Check out our [guide](#).

set savings goals for your online savings account

### Track Great Saves

Keep your eye on the prize with [My Savings Goals](#).

**WATCH YOUR SAVINGS GROW**

**0.75%**

<sup>18</sup> <https://home.capitalone360.com/online-savings-account> (accessed June 15, 2023 via Wayback Machine at URL <https://web.archive.org/web/20160708101036/https://home.capitalone360.com/online-savings-account>).

**September 1, 2019**<sup>19</sup>

## What's a 360 Savings<sup>®</sup> account?

A fee-free online savings account with a great rate for any savings balance.

**1.00** % Annual  
Percentage  
Yield  
A great rate for any savings  
balance

**Fee-Free**  
No monthly fees to keep your  
account going

**\$0**  
To open or keep the account

[Why 360 Savings?](#) [Rates](#) [Account Details](#) [Mobile Banking](#) [Locations & ATMs](#) [Customer Reviews](#)

## Say yes to the future with 360 Savings.

Your savings will be right there with you.



### Great Rate

Save at your own pace while earning 1.00% APY on your savings account balance.



### FDIC-Insured

Keep your savings secure with FDIC Insurance up to allowable limits.



### Top Rated Mobile App

Deposit checks from the couch and check your balance on-the-go with secure mobile banking.

## **II. Capital One Creates the Higher-Yield “360 Performance Savings” Account Without Informing 360 Savings Accountholders**

34. The federal funds rate, and bank deposit interest rates generally, were very low between 2008 and 2017. In January 2017, the federal funds effective rate was 0.65%. Between January 2017 and January 2018, the federal funds effective rate increased gradually to 1.41% due

<sup>19</sup> <https://www.capitalone.com/bank/savings-accounts/online-savings-account/> (accessed June 15, 2023 via Wayback Machine at <https://web.archive.org/web/20190901043647/https://www.capitalone.com/bank/savings-accounts/online-savings-account/>).

to rate increases implemented by the Federal Reserve. In January 2018, in the midst of this rising interest rate environment, Capital One increased the rate on the 360 Savings account from 0.75% to 1.00%.

35. Capital One would never raise the interest rate on 360 Savings again. Instead, on or around September 16, 2019, Capital One introduced a new online savings account: the similarly named “Capital One 360 Performance Savings” account.<sup>20</sup> At the same time, Capital One removed references to the 360 Savings account from the page on its website that listed its savings account products, even though 360 Savings still existed as a separate product. On **September 17, 2019**, Capital One’s website showed 360 Savings as its non-retirement online savings account product.<sup>21</sup>

## Compare savings accounts.

360 Money Market®		360 Savings®		Kids Savings Account	
Where you can bank	<b>Online/Mobile</b>	Where you can bank	<b>Online/Mobile</b>	Where you can bank	<b>Online/Mobile</b>
APY	Up to <b>1.90%</b>	APY	<b>1.00%</b>	APY	<b>1.00%</b>
Minimum balance for 1.90%	<b>\$10,000</b>	Minimum balance	<b>\$0</b>	Minimum balance	<b>\$0</b>
FDIC-insured	<b>Yes</b>	FDIC-insured	<b>Yes</b>	FDIC-insured	<b>Yes</b>
<b>Open Account</b>		<b>Open Account</b>		<b>Open Account</b>	
<a href="#">Read Disclosures</a>		<a href="#">Read Disclosures</a>		<a href="#">Read Disclosures</a>	

<sup>20</sup> <https://www.capitalone.com/bank/savings-accounts/online-performance-savings-account/> (accessed on June 15, 2023 via Wayback Machine at URL <https://web.archive.org/web/20190916153024/https://www.capitalone.com/bank/savings-accounts/online-performance-savings-account/>).

<sup>21</sup> <https://www.capitalone.com/bank/open-an-account/> (accessed on June 15, 2023 via Wayback Machine at URL <https://web.archive.org/web/20190917195820/https://www.capitalone.com/bank/open-an-account/>).



However, the next day, on **September 18, 2019**, Capital One’s website dropped the reference to 360 Savings and instead showed 360 Performance Savings as its non-retirement online savings account product (with no explanation that this was a different account from 360 Savings).<sup>22</sup>

## Compare savings accounts.

360 Performance Savings™

APY	<b>1.90%</b>
Fees	<b>None</b>
Minimum balance	<b>\$0</b>
FDIC-insured	<b>Yes</b>

**Open Account**

[Read Disclosures](#)

Kids Savings Account

APY	<b>1.00%</b>
Fees	<b>None</b>
Minimum balance	<b>\$0</b>
FDIC-insured	<b>Yes</b>

**Open Account**

[Read Disclosures](#)

36. As shown above, when it was introduced, the new 360 Performance Savings account featured a 1.90% APY. At that same time, the APY on the 360 Savings account remained at 1.00%. Thus, instead of raising the 360 Savings rate to 1.90%, Capital One created 360 Performance Savings with a 1.90% APY but kept the 360 Savings rate at 1.00% (at the time). The 360 Performance Savings account has continued to have a significantly higher

<sup>22</sup> <https://www.capitalone.com/bank/open-an-account/> (accessed on June 15, 2023 via Wayback Machine at URL <https://web.archive.org/web/20190918192359/https://www.capitalone.com/bank/open-an-account/>).

interest rate than 360 Savings, at every moment from its creation on or about September 16, 2019 to the present day.

37. Capital One did nothing to inform its customers that 360 Performance Savings was in fact a different product, and not just a new name for the existing 360 Savings product. Capital One did not notify any 360 Savings accountholders about the creation or existence of the 360 Performance Savings account, or that the 360 Performance Savings account offered a higher APY than the 360 Savings account. Plaintiffs' monthly statements did not state that Capital One had introduced the 360 Performance savings product with a better APY.

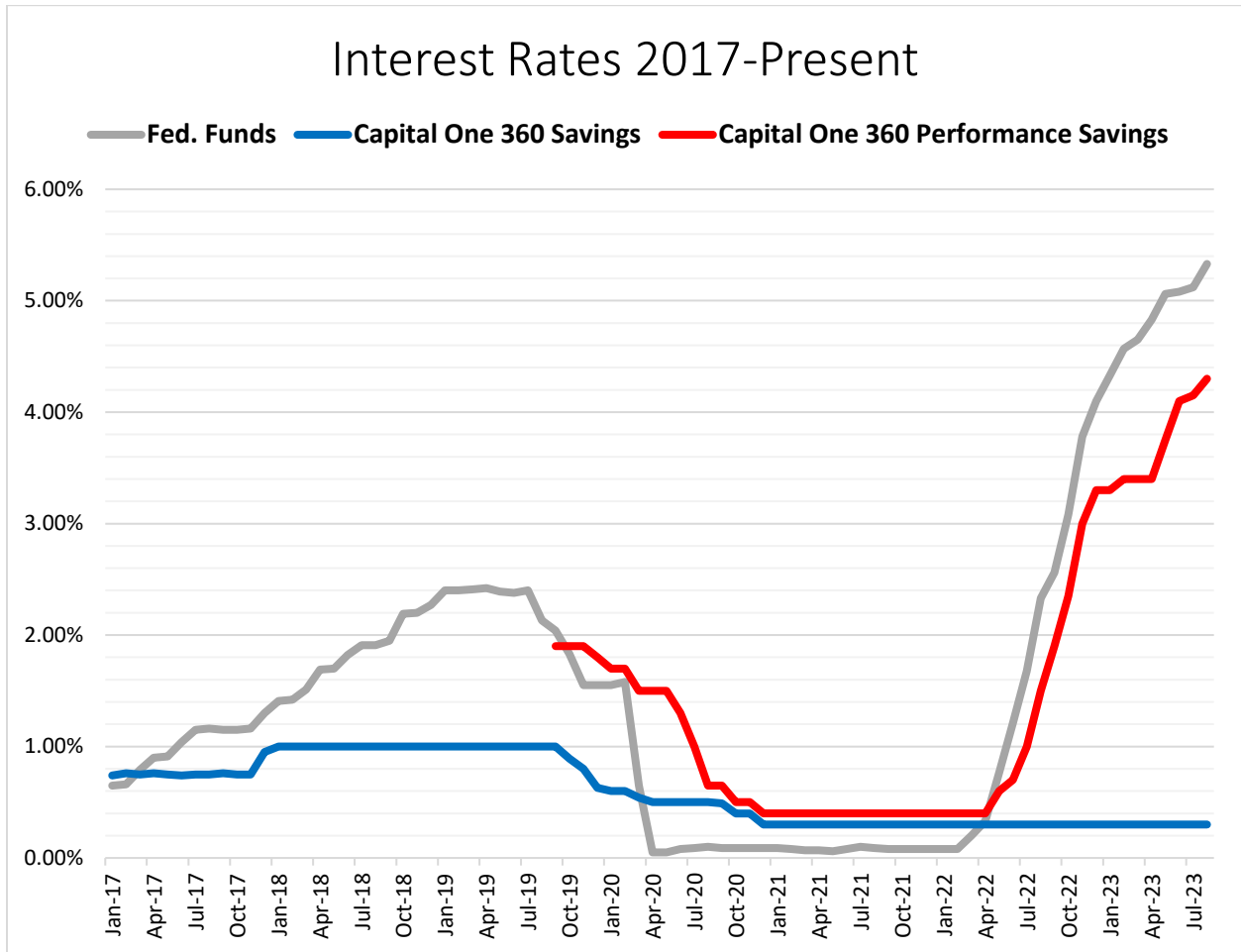
38. Capital One was financially motivated to not inform 360 Savings accountholders that the new 360 Performance Savings account was available to them. For every day that 360 Savings accountholders kept their money in the 360 Savings account and did not discover and switch to the 360 Performance Savings account, Capital One profited from paying less interest to those accountholders than it otherwise would have.

**III. Capital One Freezes Rates on the 360 Savings Account but Raises Rates on the 360 Performance Savings Account**

39. After creating the 360 Performance Savings account, Capital One did not exercise its contractual discretion in good faith to adjust the variable interest rate for the 360 Savings account. Instead, from October 2019 through December 2020, Capital One dropped the rate paid on 360 Savings from 1.00% APY to 0.30% APY and then froze that rate at 0.30% from December 2020 to the present, notwithstanding material increases in the federal funds rate and the rate paid on the 360 Performance Savings account.

40. For example, as of May 2023, the federal funds rate was 5.06%, the rate paid on 360 Savings was 0.30%, and the rate paid on 360 Performance Savings was 3.75%. Since then, Capital One has further increased the rate paid on 360 Performance Savings to 4.30%.

41. The following graph shows the Federal Funds effective rate (gray), the rates on 360 Savings (blue), and the rates on 360 Performance Savings (red) over time<sup>23</sup>:



42. As shown in the chart above, Capital One has raised interest rates on the 360 Performance Savings account in response to market conditions, but has kept interest rates on the 360 Savings account fixed. Since approximately December 2020, the 360 Savings account has

<sup>23</sup> Federal Funds rate data taken from St. Louis Fed, accessible at <https://fred.stlouisfed.org/series/FEDFUNDS>. Rate data for 360 Savings taken from Plaintiff’s account statements. Rate data for 360 Performance Savings taken from Capital One’s website, where available, supplemented by promotions on DepositAccounts.com (<https://www.depositaccounts.com/savings/>), accessed via Wayback Machine. Rates are approximate because they may change at different points during the month.

maintained an interest rate of 0.30%, which, in contrast to the 360 Performance Savings rate, has not changed in response to rising market interest rates.

43. As alleged above, Capital One positioned its 360 Savings account as its high-interest online savings account offering. After interest rates rose, instead of exercising its discretion in good faith to raise rates for 360 Savings accountholders, Capital One instead created a new, but materially identical account, with a similar name, without informing current customers, thus attempting to conceal from current customers that Capital One had changed the nature of the 360 Savings account product at its customers' expense. Capital One did so to take advantage of customers who used their 360 Savings account to—in Capital One's words—"park" their "longer-term" cash holding and "leave it in there," in an account that Capital One had previously promised would pay a variable "High Interest" rate.

44. As alleged above, Capital One promoted the 360 Savings account as paying "High Interest," and similarly promotes the 360 Performance Savings account as paying a "High Yield." There is no difference between these two terms; as Capital One acknowledges on its website, "High Interest" and "High Yield" mean the same thing.<sup>24</sup> Capital One thus acknowledges the contradictions in its conduct by emphasizing that currently it pays "High Yield" on its 360 Performance Savings account, whereas previously it had committed to pay "High Interest" on the 360 Savings account—two terms that mean the same thing, but used with respect to accounts that currently pay materially different interest rates. The 360 Savings account is in fact no longer "high interest" or "high yield."

45. The interest rates on ING Direct savings accounts fluctuated over time. After Capital One took over those accounts and converted them into 360 Savings accounts, Capital

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<sup>24</sup> <https://www.capitalone.com/bank/money-management/banking-basics/what-is-a-high-yield-savings-account/> (dated April 13, 2022; last accessed July 6, 2023).

One raised the interest rate in 2017 in response to changing market conditions. This course of conduct is consistent with customers' reasonable expectation that the "variable" rate on their 360 Savings accounts would change over time. Moreover, the newer 360 Performance Savings account also states that it is a "variable" rate account,<sup>25</sup> and the rate on that account has changed repeatedly (both up and down) since its inception in 2019. However, Capital One has failed to change the rate on the 360 Savings account since 2020. Consequently, it no longer is a "variable" rate account.

46. Capital One's conduct has caused Plaintiff Savett to lose out on over \$200 (i.e., approximately \$222.39) in interest between September 2019 and May 2023, compared to what he would have received had Capital One adjusted the 360 Savings interest rate in good faith, commensurate with the 360 Performance Savings rate.

47. Capital One's conduct has caused Plaintiff Barnes to lose out on approximately \$8,000 in interest between September 2019 and April 2023, compared to what she would have received had Capital One adjusted the 360 Savings interest rate in good faith, commensurate with the 360 Performance Savings rate.

#### **IV. 360 Savings Account Holders React to Capital One's Conduct**

48. Plaintiffs were entitled to interest rates determined by Capital One's exercise of honest and good faith discretion. By failing to raise rates on the 360 Savings account and instead furtively creating a new savings account product, Capital One acted deceptively, dishonestly, and unfairly. In so doing, Capital One breached its contract with Plaintiffs and violated consumer protection statutes and/or common law as further alleged herein.

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<sup>25</sup>*Supra* n.5.

49. There is no reason why anyone would choose the 360 Savings account over the 360 Performance Savings account. The products are identical except for the interest rate.

50. Since the filing of the initial complaint in this action in July 2023, Plaintiff Savett has opened a 360 Performance Savings account and moved nearly all of the funds from his 360 Savings account into the 360 Performance Savings account, leaving only a nominal amount in his 360 Savings account (i.e., over \$8,000 moved to 360 Performance Savings, leaving only \$300 in 360 Savings in connection with this litigation). In the first *month* of having his funds in 360 Performance Savings, Savett earned more interest than he did in the entire previous *year* of having his funds in 360 Savings—such is the vast discrepancy between the interest rates.

51. Plaintiff Barnes called Capital One in April 2023 to inquire as to why she was not receiving Capital One's advertised interest rate for online savings accounts. The Capital One representative to whom she spoke offered to open 360 Performance Savings accounts and transfer Ms. Barnes' funds from her 360 Savings accounts into the 360 Performance Savings accounts. Ms. Barnes agreed. Ms. Barnes asked if she would be credited the amount of interest that she had missed by not having a 360 Performance Savings account, but was told that the 360 Performance Savings had only recently been introduced. Ms. Barnes later called Capital One back and asked, again, if she could be credited the interest she had missed by not having a 360 Performance Savings account. On this second call, a Capital One representative who identified herself as a supervisor advised Ms. Barnes that Capital One would not repay her any lost interest.

52. Capital One's conduct has been widely panned as dishonest and unfair. Complaints from consumers regarding Capital One's practices abound on the Internet, and even savvy consumers who follow and post on personal finance blogs were surprised by Capital One's conduct with respect to its savings accounts.

53. On October 24, 2019, a personal finance YouTuber posted a video alerting followers of her “Freedom in a Budget” channel to the existence of the new 360 Performance Savings account and to the fact that existing Capital One customers would have to open a new account and move their money in order to take advantage of Capital One’s high yield savings account rate.<sup>26</sup> She further said: “I wish that they had automatically just transferred everyone to the Performance Savings, I mean, why wouldn’t you want it? There’s no other benefits that the old one had that this one doesn’t, so you’re getting more interest. So, to me, I don’t know, I feel like it’s, I don’t want to say shady, but just come on, like seriously Capital One, you’re making everyone transfer it over rather than just bumping it up?”

54. Writers on the Bogleheads personal finance forum have taken note of Capital One’s conduct. One thread beginning on June 17, 2020 is entitled “Capital One is at it again.”<sup>27</sup>

- a. A post on June 18, 2020 reads: “Nobody is saying a savings account should have a fixed rate. Rates are dropping, we get that. What’s shady is when Capital One, CIT, and others create a new type of account, and only the new one has a competitive rate, while rates on existing accounts become uncompetitive. When you add the lack of notification about rate changes and difficulty of seeing the actual rate (both in contrast to Ally and Marcus, who put it right on their home pages, no need to even log in), yeah, I think it’s totally fair to call it shady.”
- b. Another post on June 18, 2020 reads: “What’s slimy is that while 360 Savings used to be heavily promoted and had a competitive rate, Capital One created a whole new account, 360 Performance Savings, with competitive rates, and made

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<sup>26</sup> <https://www.youtube.com/watch?v=ACpLVLwMznI> (dated October 24, 2019; last accessed July 6, 2023).

<sup>27</sup> <https://www.bogleheads.org/forum/viewtopic.php?t=317965> (last accessed July 6, 2023).

the old accounts' rates uncompetitive (the older one gets 0.5% and the new one gets 1%). Unlike with [a money market account], there's no discernible difference between 360 Savings and 360 Performance Savings, so there's zero reason for this except to screw over existing customers. And because they don't "spam" their customers as you call it (except, interestingly, when rates go up!), many customers don't know about this."

- c. Yet another post on June 18, 2020 lamented: "Capital One dropped the rates to an uncompetitive level for existing customers, didn't tell them about it, also didn't tell them about the new account."

55. As illustrated in the chart above, when prevailing interest rates were low in 2020 and 2021, there was a comparatively small difference between the 360 Savings account rate (0.30% APY) and the 360 Performance Savings account rate (0.40% APY). However, when market interest rates started rising in 2022 alongside increases in the federal funds rate, 360 Savings accountholders increasingly were deprived of high interest rates.

56. Another Bogleheads post dated November 5, 2022 reads: "[I]f you look at nearly every popular high yield online bank, they do new promos / bonus offers, but very rarely screw their existing base. They just raise your account to their normal high rate. Sure you may miss out on 1% extra bonus up to \$x dollar amount, but you're never completely slammed like 0.3% - > 3%..."<sup>28</sup> A response to this post on the same date reads: "I do find it unscrupulous of them and it's basically a form of bait and switch."

57. The Women's Money blog has a post, dated September 29, 2022, entitled "IS CAPITAL ONE CHEATING YOU TOO? THE SECRET YOU MUST KNOW ABOUT YOUR

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<sup>28</sup> <https://www.bogleheads.org/forum/viewtopic.php?t=389707> (last accessed July 6, 2023).



HIGH-INTEREST ACCOUNT.”<sup>29</sup> This post alleges the same conduct by Capital One at issue in this Complaint. Specifically, the author writes: “As diligent as I am with my money, I recently discovered I was losing thousands of dollars a year in interest. I thought I had a high-interest bank account with Capital One, but it turns out, my interest rate was only 0.30%. Why was it so low? Because apparently several years ago Capital One essentially archived certain legacy accounts – the “360 Savings Accounts”– and instead created a competing product that actually earns high interest. (These new accounts are called a deceptively similar name – the “360 Performance Savings Account” and currently earn 2.15% interest.) At first upon learning I had only been earning 0.30% interest instead of a competitive rate, I was embarrassed – how could I as a personal finance writer miss this? Then I was angry, not just for myself, but for the millions of consumers who are similarly situated to me. Why was I angry? Because Capital One told us we had high-interest accounts. Further, when Capital One stopped keeping our accounts at high-interest, and instead created a competing product that paid much higher rates, they didn’t email us or automatically opt us in to the new accounts. They just left us to sit out there believing we still held high-interest accounts.” The author later concludes: “Personally, I’m really angry at Capital One and believe they violated the law. U.S. banks aren’t allowed to engage in unfair, deceitful, or abusive acts or practices. I believe that by holding out the legacy ING Direct accounts as high-interest accounts and not contacting consumers of the accounts to let us know that we in fact no longer part of their high-interest rate account family (you can’t even find information about the 360 Savings Account on their website), Capital One engaged in deceitful practices. They could have sent an email or automatically rolled our accounts into the new 360

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<sup>29</sup> <https://womensmoney.com/blog/capital-one-cheating-you-too-high-interest-accounts/> (dated September 29, 2022; last accessed July 6, 2023).

Performance Accounts. But instead, they just let us lose money.” The Women’s Money Blog post has seventeen (17) comments, including the following:

- a. On October 2, 2022, one commenter wrote: “Yes, I thought about opening a Performance Account (and I probably would have if they had ever emailed me and offered it or told me I needed to do it to keep my rate. I kept every one of my emails from them. I thought I must have missed an email but I went back and never did. They tried to get me to open a money market account, but never mentioned the Performance Savings!)[]. But I would just worry that they would do it again with the Performance Account. Seemed safer to move my money to a company that seems more interested in keeping my business.”
- b. On February 3, 2023, a commenter wrote: “I discovered this same fraudulent behavior by capital one bank today. I have been a customer since the ING Direct days, from 2004. I lost over ten thousand dollars in interest due to this scam by Capital One. I am mad at them and closing my account soon and considering moving to SoFi or AllyBank.”
- c. Also on February 3, 2023, a commenter wrote: “We just found out about this scam by Capital One bank today as well. Like many of you posting here, we have been a customer since the ING Direct days. We spoke with customer service about this and escalated to a manager. I requested them to send me information on when this Performance Savings account product was created and what the interest rates have been since inception. They said they will provide this information in 30 days though[] I doubt I’ll hear back from them. They took an action item that they should improve their process to let existing customers know

about this new product – again I doubt that will lead to anything since they know customers have been complaining about this for many years now. We all have lost thousands of \$ of interest at this point – Wonder if there is a class action lawsuit here. This just stinks.”

- d. On February 9, 2023, another commenter wrote: “My wife and I banked with ING Direct > Capital One for many years and experienced the same thing. Capital One reduced the rates on our accounts as market rates decreased in 2020 and 2021 and we assumed wrongly they were increasing them as market rates increased in 2022. It’s embarrassing to say we lost many thousands of dollars interest by not paying attention to what they were doing with the interest rates. They’ve probably made many millions on this scheme by cheating inattentive clients.”
58. On the informational website DepositAccounts.com, posters similarly complained about Capital One’s conduct.<sup>30</sup>
- e. A post from December 30, 2022 reads: “I discovered today that my Capital One savings accounts were only earning 0.3% and not earning the advertised 3.3% APY. So I called to ask why, and it turns out I had OLD “360 Savings” accounts and not the new “360 Performance Savings” accounts...I did not know I was playing a shell game with my bank. Don’t take an eye off these slime bags!”
- f. A post from February 5, 2023 reads: “I have been a customer of Capital One (IngDirect originally) since 2004. I had their ‘360 Savings account’. Capital One claimed it is a high interest account and rates will fluctuate based on Federal reserve interest rates. Apparently, some years ago they started a new savings

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<sup>30</sup> <https://www.depositaccounts.com/banks/reviews/capital-one-360.html> (last accessed July 6, 2023).

account called ‘360 Performance Savings’ with much higher interest rates. For example, the new Performance savings has an interest rate of 3.4% as of today. While the legacy account is only at 0.3% and it stopped fluctuating with Fed rates many years ago. So I lost a lot of money over the years as my savings account silently turned into a regular savings account and stopped being a high interest account. They didn’t inform established customers of the new Performance savings account and kept people like me at 0.3%. They should have upgraded all accounts to the new type. At a minimum, they should have informed existing customers of this new account type. I learned about this new account type yesterday. This is clearly bad faith behavior by the bank. I am in the process of closing out my account. I can never trust Capital One again. You should not do this to long term customers to make a few bucks.”

59. The online complaints alleged above are illustrative and not an exhaustive recounting of the many online complaints against Capital One for the conduct alleged herein.

### **CLASS ALLEGATIONS**

60. This action is brought by Plaintiffs, for themselves and on behalf of all others similarly situated, as a class action pursuant to Fed. R. Civ. P. 23(a), (b)(2), and (b)(3). Plaintiffs seek to represent a class of all persons who maintained a Capital One 360 Savings account at any time from September 16, 2019 through the present (the “Class”), with the exact date to be determined through discovery. Plaintiff Savett also seeks to represent a subclass of all persons in Pennsylvania who maintained a Capital One 360 Savings account at any time from September 16, 2019 through the present (the “Pennsylvania Subclass”), with the exact date to be determined through discovery. Plaintiff Barnes also seeks to represent a subclass of all persons in

Massachusetts who maintained a Capital One 360 Savings account at any time from September 16, 2019 through the present (the “Massachusetts Subclass”) (together with the Pennsylvania Subclass, the “Subclasses”), with the exact date to be determined through discovery.

61. Excluded from the Class are Capital One and any person, firm, trust, corporation, or other entity related to or affiliated with any of Capital One’s partners, subsidiaries, affiliates or joint ventures.

62. The members of the Class are so numerous and dispersed that it would be impracticable to join them individually. At all relevant times, there were thousands of 360 Savings accountholders. The precise number of Class members and their identities are unknown to Plaintiffs at this time but can be determined through discovery.

63. Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting solely individual members of the Class. Among the questions of law and fact common to Class and/or Subclasses are:

- a. Whether Capital One, N.A. adjusted (or did not adjust) the interest rate associated with 360 Savings accountholders dishonestly, unfairly, and/or in bad faith;
- b. Whether Capital One, N.A. breached the covenant of good faith and fair dealing implied by law into its contracts with 360 Savings customers;
- c. Whether Capital One Financial Corp.’s conduct violates the Virginia Consumer Protection Act;
- d. Whether Capital One’s conduct violates the Pennsylvania Unfair Trade Practices and Consumer Protection Law;
- e. Whether Capital One’s conduct violates the Massachusetts Consumer Protection Act;

- f. Whether Capital One's conduct violates principles of quasi-contract and caused Capital One to be unjustly enriched;
- g. Whether Capital One's conduct violates principles of promissory estoppel;
- h. Whether Capital One's wrongful conduct caused Plaintiffs and the Class members damages;
- i. The amount of damages suffered by Plaintiffs and Class members;
- j. The amount of restitution to which Plaintiffs and Class members are entitled;
- k. Whether Plaintiffs and the Subclass members are entitled to treble and/or punitive damages;
- l. Whether Plaintiffs and Class members are entitled to a reasonable award of attorneys' fees, interest, and costs of suit.

64. Plaintiffs' claims are typical of the claims of the members of the Class they seek to represent because they were all 360 Savings accountholders and received the same interest rate.

65. Plaintiffs will adequately represent and protect the interests of the Class and have no interests that conflict with or are antagonistic to the interests of Class members. Plaintiffs have retained attorneys who are experienced and capable of prosecuting class actions and complex litigation. Plaintiffs' attorneys will actively conduct and be responsible for prosecuting this litigation, and have adequate resources, experience, and commitment to litigate this matter.

66. A class action is superior to any other method available for the fair and efficient adjudication of this controversy because it would be impractical and unduly burdensome for each of the individual Class members to bring a separate action. Since the damages suffered by individual Class members may be relatively small, the expense and burden of individual

litigation make it virtually impossible for the respective Class members to seek redress for the wrongful conduct alleged. Plaintiffs know of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a class action. Moreover, individual litigation has the potential to result in inconsistent or contradictory judgments. A class action in this case presents fewer management problems and provides the benefits of a single adjudication, economies of scale, and comprehensive supervision by a single court.

67. Defendants have acted on grounds that apply generally to the Class, such that final injunctive relief or corresponding declaratory relief is appropriate respecting the Class as a whole.

68. Class certification is also appropriate because there is a readily identifiable class on whose behalf this action can be prosecuted. Class members are readily ascertainable from Capital One's records. A notice of pendency or resolution of this class action can be provided to Class members by direct mail, email, publication notice, or other similar means.

## **CAUSES OF ACTION**

### **COUNT I**

#### **BREACH OF CONTRACT AND BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING**

**AGAINST DEFENDANT CAPITAL ONE, N.A.**

**ON BEHALF OF THE CLASS**

69. Plaintiffs re-allege and incorporate all other factual allegations set forth in this Complaint.

70. The 360 Savings Account Disclosures, which contain the “the terms applicable to [customers’] 360 Savings account” to which customers “agree to be bound,” provide that 360 Savings “accounts are subject to both federal law and the laws of the state of Virginia.”

71. The contract between the respective Plaintiffs (and other Class members) on the one hand, and Capital One, N.A. on the other hand, previously described herein, provides that “interest rates and annual percentage yields are variable and may change at any time at our [i.e., Capital One’s] discretion.”

72. A covenant of good faith and fair dealing is implied by law in Capital One, N.A.’s contracts with 360 Savings customers, and provides that Capital One, N.A. must exercise contractual discretion honestly and in good faith.

73. Although Capital One, N.A. had discretion to set the interest rate paid on the 360 Savings account, that discretion is subject to the covenant of good faith and fair dealing.

74. Capital One, N.A. breached the covenant of good faith and fair dealing by paying a materially lower rate of interest for its 360 Savings account, which Capital One represented as having the same fundamental characteristic (i.e., a high interest rate) as the newer 360 Performance Savings account. Instead of exercising its discretion to adjust the interest rate on the 360 Savings account after market interest rates rose, Capital One instead unfairly and deceptively created a new account, the similarly named “360 Performance Savings” account, which featured a higher APY than the 360 Savings account. Capital One’s conduct is dishonest and unfair because Capital One did nothing to inform its 360 Savings customers about the creation or existence of the 360 Performance Savings account, or that the 360 Performance Savings account offered a higher APY than the 360 Savings account, or that 360 Performance Savings was in fact a different product, and not just a new name for the existing 360 Savings



product, and because Capital One failed to pay the same interest rate on the 360 Savings account that it paid on the 360 Performance Savings Account.

75. Defendant's breach damaged Plaintiffs and members of the putative Class.

**COUNT II**

**VIOLATIONS OF THE VIRGINIA CONSUMER PROTECTION ACT,  
VA. CODE ANN. § 59.1-200**

**AGAINST DEFENDANT CAPITAL ONE FINANCIAL CORP.**

**ON BEHALF OF THE CLASS**

76. Plaintiffs re-allege and incorporate all other factual allegations set forth in this Complaint.

77. Capital One Financial Corp. is a "supplier" and the conduct described herein is a "consumer transaction" within the meaning of Va. Code Ann. § 59.1-198.

78. As described above, while engaging in trade or commerce within the Commonwealth of Virginia during the time period relevant hereto, Defendant Capital One Financial Corp.:

- a. Advertised the 360 Savings online savings account as a "high interest" savings account, but paid a rate of interest that is not "high interest" relative to other online savings account products or Capital One's own online savings account product line, including the 360 Performance Savings account (i.e., 0.30% is not "high interest," when Capital One gives 4.30% on its "high yield" 360 Performance Savings account);
- b. Unfairly and deceptively created a new account, the similarly named "360 Performance Savings" account, which featured a higher APY than the 360

Savings account, while failing to pay 360 Savings depositors the same APY as paid on the 360 Performance Savings account;

- c. Misrepresented that the two accounts have an identical characteristic (High Interest and High Yield), when the two accounts paid materially different interest rates to depositors; and
- d. Failed to disclose to its existing 360 Savings accountholders that a new, materially identical online savings account product was available, namely the 360 Performance Savings account.

79. The aforesaid fraudulent acts and practices are unlawful and prohibited by the provisions of the Virginia Consumer Protection Act, Va. Code. Ann. § 59.1-200, including, but not limited to, the following:

- a. “Misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or benefits” (§ 59.1-200(A)(5));
- b. “Misrepresenting that goods or services are of a particular standard, quality, grade, style, or model” (§ 59.1-200(A)(6));
- c. “Advertising goods or services with intent not to sell them as advertised, or with intent not to sell at the price or upon the terms advertised” (§ 59.1-200(A)(8));
- d. “Using any other deception, fraud, false pretense, false promise, or misrepresentation in connection with a consumer transaction” (§ 59.1-200(A)(14)); and
- e. “Violating any provision of § 18.2-178,” i.e., “obtain[ing] by any false pretense or token, from any person, with intent to defraud, money” (§ 59.1-200(A)(57)).

80. To the extent reliance is an element of any of the claims under the Virginia statute, Class members are presumed to have relied on Defendants' conduct. Other than the interest rate paid on the accounts, the 360 Savings Account and the 360 Performance Savings Account are identical. No rational person would maintain an identical account that paid materially lower interest absent Defendants' wrongful conduct.

81. The Virginia Consumer Protection Act is "remedial legislation to promote fair and ethical standards of dealings between suppliers and the consuming public." Va. Code. Ann. § 59.1-197. Application of the Virginia Consumer Protection Act to Defendant Capital One Financial Corp.'s conduct as alleged herein is proper because that conduct was committed by Defendant in Virginia and Defendant was unjustly enriched in Virginia.

82. The aforesaid acts damaged Plaintiffs and members of the putative Class.

83. Plaintiffs and the putative Class are entitled to treble and/or punitive damages pursuant to Va. Code. Ann. § 59.1-204.

### **COUNT III**

#### **VIOLATIONS OF THE PENNSYLVANIA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW, 73 P.S. §§ 201-1–201-9.2**

#### **AGAINST ALL DEFENDANTS**

#### **ON BEHALF OF THE PENNSYLVANIA SUBCLASS**

84. Plaintiff Savett re-alleges and incorporates all other factual allegations set forth in this Complaint.

85. As described above, while engaging in trade or commerce within the Commonwealth of Pennsylvania during the time period relevant hereto, Capital One:

- a. Advertised the 360 Savings online savings account as a “high interest” savings account, but paid a rate of interest that is not “high interest” relative to other online savings account products or Capital One’s own online savings account product line, including the 360 Performance Savings account;
- b. Unfairly and deceptively created a new account, the similarly named “360 Performance Savings” account, which featured a higher APY than the 360 Savings account, while failing to pay 360 Savings depositors the same APY as paid on the 360 Performance Savings account;
- c. Misrepresented that the two accounts have an identical characteristic (High Interest and High Yield), when the two accounts paid materially different interest rates to depositors; and
- d. Failed to disclose to its existing 360 Savings accountholders that a new, materially identical online savings account product was available, namely the 360 Performance Savings account.

86. The aforesaid methods, acts, and practices constitute unfair methods of competition and unfair acts or practices in the conduct of trade or commerce prohibited by § 201-2 of the Unfair Trade Practices and Consumer Protection Law, including, but not limited to, the following:

- a. “representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have” (§ 201-2(4)(v));
- b. “representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another” (§ 201-2(4)(vii));

- c. “advertising goods or services with intent not to sell them as advertised” (§ 201-2(4)(ix)); and
- d. “engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or misunderstanding” (§ 201-2(4)(xxi)).

87. To the extent reliance is an element of any of the claims under the Pennsylvania statute, class members are presumed to have relied on Defendants’ conduct. Other than the interest rate paid on the accounts, the 360 Savings Account and the 360 Performance Savings Account are identical. No rational person would maintain an identical account that paid materially lower interest absent Defendants’ wrongful conduct.

88. The aforesaid acts damaged Plaintiff Savett and members of the putative Pennsylvania Subclass.

89. Plaintiff Savett and the putative Pennsylvania Subclass are entitled to treble and/or punitive damages pursuant to 73 P.S. § 201-9.2(a).

#### **COUNT IV**

#### **VIOLATIONS OF THE MASSACHUSETTS CONSUMER PROTECTION LAW, MASS. GEN. LAWS CH. 93A**

#### **AGAINST ALL DEFENDANTS**

#### **ON BEHALF OF THE MASSACHUSETTS SUBCLASS**

90. Plaintiff Barnes re-alleges and incorporates all other factual allegations set forth in this Complaint.

91. Both Plaintiff and Capital One are “persons” as defined in Mass. Gen. Laws ch. 93A, § 1(a).

92. Capital One’s dealings with Massachusetts Subclass members, as described herein, constitute “trade” and “commerce” under Mass. Gen. Laws ch. 93A, § 1(b).

93. Section 2(a) of Mass. Gen. Laws ch. 93A (the “Massachusetts Consumer Protection Law”) declares unlawful any “unfair or deceptive acts or practices in the conduct of trade or commerce.”

94. As described above, while engaging in trade or commerce within the Commonwealth of Massachusetts during the time period relevant hereto, Capital One:

- a. Advertised the 360 Savings online savings account as a “high interest” savings account, but paid a rate of interest that is not “high interest” relative to other online savings account products or Capital One’s own online savings account product line, including the 360 Performance Savings account (i.e., 0.30% is not “high interest,” when Capital One gives 4.30% on its “high yield” 360 Performance Savings account);
- b. Unfairly and deceptively creating a new account, the similarly named “360 Performance Savings” account, which featured a higher APY than the 360 Savings account, while failing to pay 360 Savings depositors the same APY as paid on the 360 Performance Savings account;
- c. Misrepresenting that the two accounts have an identical characteristic (High Interest and High Yield), when the two accounts paid materially different interest rates to depositors; and
- d. Failing to disclose to its existing 360 Savings accountholders that a new, materially identical online savings account product was available, namely the 360 Performance Savings account.

95. Capital One’s conduct as alleged herein violates a common-law, regulatory, or other established concept of fairness and is unethical and unscrupulous.

96. The aforesaid acts damaged Plaintiff Barnes and members of the putative Massachusetts Subclass.

97. Plaintiff Barnes and the putative Massachusetts Subclass are entitled to treble and/or punitive damages pursuant to Mass. Gen. Laws ch. 93A, § 9.

98. In accordance with Mass. Gen. Laws ch. 93A, § 9(3), Plaintiff, more than thirty days prior to the filing of this Complaint, delivered a written demand for relief upon Capital One, describing Capital One's unfair and deceptive acts, the injury she and other Capital One customers have suffered, and demanding that Capital One cease and rectify its unlawful conduct. Capital One has failed to remedy its unlawful conduct within the requisite time period.

### **COUNT V**

#### **BREACH OF QUASI-CONTRACT AND UNJUST ENRICHMENT**

#### **AGAINST ALL DEFENDANTS**

#### **ON BEHALF OF THE CLASS**

99. Plaintiffs re-allege and incorporate all other factual allegations set forth in this Complaint.

100. Plaintiffs and the Class conferred a benefit on Capital One by maintaining their cash in 360 Savings accounts paying less interest than Plaintiffs and the Class should have rightfully received based on Defendant's conduct as alleged herein. Defendant knowingly retained this deposited cash and unjustly profited from the lower interest rate it paid to Plaintiffs and the Class.

101. In the absence of a contract, Plaintiffs and the Class have no adequate remedy at law.

102. Defendants' unjust enrichment can be remedied by ordering Defendants to provide restitution, and to disgorge into a common fund or constructive trust, for the benefit of Plaintiffs and the Class, all proceeds received from Plaintiffs and the Class as a result of the unlawful and/or inequitable conduct described herein.

**COUNT VI**

**PROMISSORY ESTOPPEL**

**AGAINST ALL DEFENDANTS**

**ON BEHALF OF THE PENNSYLVANIA SUBCLASS  
AND THE MASSACHUSETTS SUBCLASS**

103. Plaintiffs re-allege and incorporate all other factual allegations set forth in this Complaint.

104. Defendants promised that the 360 Savings account would be "high interest" and would pay a "great rate," which promises were designed to induce customers to deposit funds in 360 Savings accounts and/or keep funds in 360 Savings accounts.

105. In reliance on Defendants' statements as alleged herein, Plaintiff (and Subclass members) took action by depositing their funds in 360 Savings accounts, and refrained from taking action by leaving their funds in 360 Savings accounts.

106. Class members are presumed to have relied on Defendants' conduct. Other than the interest rate paid on the accounts, the 360 Savings account and the 360 Performance Savings account are identical. No rational person would maintain an identical account that paid materially lower interest absent Defendants' wrongful conduct.

107. Injustice can be avoided only by enforcing Defendants' promise.



**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, request that the Court award the following relief:

108. Certify this action as a class action, appoint Plaintiffs as the Class representatives, and designate the undersigned as Class counsel;

109. Declare Defendants' conduct unlawful;

110. Enjoin Defendants from the unlawful conduct alleged herein, including by ordering Defendants to convert all 360 Savings accounts into 360 Performance Savings accounts, and/or ordering Defendants to immediately provide variable, high-yield interest rates to legacy 360 Savings accountholders commensurate with the rates offered on the 360 Performance Savings account;

111. Award Plaintiffs and the Class damages under common law and/or by statute, including treble and/or punitive damages;

112. Award Plaintiffs and the Class restitution and/or disgorgement;

113. Award Plaintiffs attorney's fees, costs, and pre-judgment and post-judgment interest; and

114. Grant such other and further relief as this Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiffs and the Class members demand a trial by jury on all triable issues.

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Dated: September 15, 2023

Respectfully submitted,

By: /s/ Matthew B. Kaplan  
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