UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

ALAN B. MCNICHOLS, individually and on behalf of all others similarly situated, Plaintiff, v. CAPITAL ONE BANK, N.A.; CAPITAL ONE SHOPPING HOLDINGS, LLC; and CAPITAL ONE FINANCIAL CORP., Defendants.	Case No. 1:26-cv-00145-AJT-WBP **AMENDED COMPLAINT** **CLASS ACTION** **JURY TRIAL DEMANDED**

Plaintiff Alan B. McNichols ("McNichols" or "Plaintiff"), on behalf of himself and all others similarly situated, by and through his counsel, brings this Amended Class Action Complaint ("Complaint") against Defendants Capital One Bank, N.A. ("CONA"); Capital One Shopping Holdings, LLC ("COSH"); and Capital One Financial Corp. ("COFC") (collectively "Capital One" or "Defendants"), and based upon personal knowledge with respect to himself, 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. Plaintiff brings this case on behalf of himself and all other participants in Defendants' "Capital One Offers" program ("Capital One Offers Cardholders" or "the Cardholders").

2. Capital One has maintained a cash-back rewards program for its credit card holders called "Capital One Offers" since at least 2022. Through the Capital One's Offers Program, holders of most Capital One credit cards, including the Quicksilver card, Savor card, Venture card,

and Walmart Rewards card, can claim offers to receive substantially more cash back via a statement credit by shopping at designated retailers promoted by Capital One (the "Offers").

3. Capital One promotes these Offers directly to the Cardholders through a link provided on its website and/or mobile application. By using the shopping portal available to Capital One Offers Cardholders through their account pages online or in the mobile app, Cardholders can browse offers from hundreds of online merchants across a wide variety of industries. The Offers Program promised Cardholders higher cashback rates at prominent and wide-ranging brands, which have included Adidas, Macy's, lululemon, Walmart, Lowe's, The Home Depot, IHG, Dell Technologies, StubHub, Ulta, and Vrbo, and have varied in their specific amounts over time.

4. Once the Cardholder made the purchase through the link provided by Capital One, Capital One represented to Cardholders that the cash or statement credit that had been promoted in the Offer (the "Payout") would be available "in about 45 days."

5. Moreover, the Offers were broadly promoted by Capital One to prospective Cardholders and the public. For instance, as early as November 2023, Capital One featured a promotional webpage titled "All about Capital One Offers" on its website that was available to the public, not just Cardholders. On it, Capital One stated that "Payouts are automatically applied to eligible accounts based on each merchant's offer rate."

6. The same promotional webpage featured a chart detailing "What purchases qualify for a payout" and an FAQ section, which all implied that the Offers were guaranteed to Cardholders if the purchases were made pursuant to the terms of the Offer. Capital One also stated that its "Offers makes it easy to earn rewards or statement credits at thousands of retailers," and encouraged the public to apply for preapproval to access the Offers.

7. In reality and in contrast to its promotions, Capital One has regularly failed to provide Cardholders with the Payout that they had been promised in the Offer after the Cardholders made purchases in reliance on the Offer.

8. As to Plaintiff, Capital One did not provide the Payout it had promised to Plaintiff through promotions on Plaintiff's online Capital One account page for cashback on purchases made through Zappos for 6% in December 2023 and for 3% in September 2025. Plaintiff made these purchases in reliance on Capital One's promotions on its website that claiming the Offers would provide 6% and 3% cashback rather than the 1.5% that would be received on ordinary sales. Indeed, Plaintiff was induced to make the purchases at the specific retailers as he did because of Capital One's promotions that he would receive the Payouts pursuant to the Offers, and would not have made them if he knew that Capital One would fail to issue the Payouts as promised.

9. On numerous other occasions, Plaintiff has claimed Offers only for Capital One to fail to timely issue the Payout. When Plaintiff has contacted Capital One to demand payment of such Payouts, Capital One has immediately complied, suggesting that Plaintiff has properly been claiming the corresponding Offers, but Capital One has simply not credited the Payouts as promised and advertised.

10. The Offers have been promoted along with a link to "Shop Online," and incorporated a terms and conditions agreement (the "Terms and Conditions") that included a clause stating: "Subject to your compliance with these Terms, we will issue a payout to your Qualifying Account, according to the rate advertised in the Qualifying Offer and calculated in the manner outlined … above, following your Qualifying Offer Purchase[.]"

11. Given Plaintiff's performance of all obligations to receive the Payout as promised under the Terms and Conditions, Capital One's failure to issue the Payout as obligated amounts to

a breach of this contract, which the Cardholders are entitled to recoup under Virginia contract law. Alternatively or additionally, a covenant of good faith and fair dealing is implied into the Terms and Conditions, and provides that Capital One must exercise its discretion honestly and in good faith. The Terms and Conditions provide that Capital One "strive[s] to issue Account Payouts within 45 days" and "strive[s] to provide Account Payouts in connection with all Qualifying Offer Purchases that satisfy these Terms and the relevant Qualifying Offer Terms. If you believe that you should have received an Account Payout that you did not receive, you must contact us using the contact information connected to your Qualifying Account so that we can evaluate." Capital One breached the covenant of good faith and fair dealing by failing to adopt policies and procedures that would allow it to "strive to provide Account Payouts" within a reasonable period of time. Instead, as stated above, Capital One routinely failed to issue the Payouts it had promised even though Cardholders performed all obligations under the Terms and Conditions, without informing Cardholders of its failure to do so or providing any explanation.

12. Capital One's conduct has caused Cardholders to lose Payouts, benefiting Capital One at the expense of its customers. Indeed, Capital One was able to report higher profits by underpaying Cardholders the Payouts it had promised. According to its Form 8-K filed with the U.S. Securities and Exchange Commission on March 11, 2024 Capital One reported that its rewards programs amounted to liabilities of $3.1 billion, $3.0 billion and $2.5 billion for the years ending December 31, 2023, 2022 and 2021, respectively. Capital One was able to reduce its expenses and increase its profit in part by depriving Cardholders of their Payouts.

THE PARTIES

13. Plaintiff Alan McNichols is a natural person who is a citizen of the United States and who is domiciled in the State of Connecticut. Plaintiff has held a Capital One credit card

starting on or around December 2013, and became a participant in the Capital One Offers Program around the time of its inception. He is still a Capital One Cardholder as of the filing of this Complaint.

14. Defendant Capital One Shopping Holdings, LLC is a Delaware limited liability company. Upon information and belief, Defendant Capital One Shopping Holdings, LLC has its principal place of business in McLean, Virginia and is a wholly-owned subsidiary of Capital One Financial Corporation.

15. Defendant Capital One Bank, 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.

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

JURISDICTION AND VENUE

17. 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 Defendant.

18. 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.

19. 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 Capital One Credit Cards and the Offers Program

20. Cash back and statement credits on purchases are often offered as benefits to make a given credit card more attractive to cardholders and to induce purchases on such credit cards. The cash back rate is the percentage of the total purchase price that the Cardholder would receive in the form of cash to be deposited into the associated bank account or as credit on future credit card statements, and is a benefit that credit card providers market to make their cards more attractive to consumers.

21. Indeed, Capital One's website advertises its various credit card products, and included the "rewards" (e.g., the cashback rate offered) as one of the material terms that consumers would assess before applying for a credit card, along with the card product's annual fee, purchase rate, and transfer info.[1]

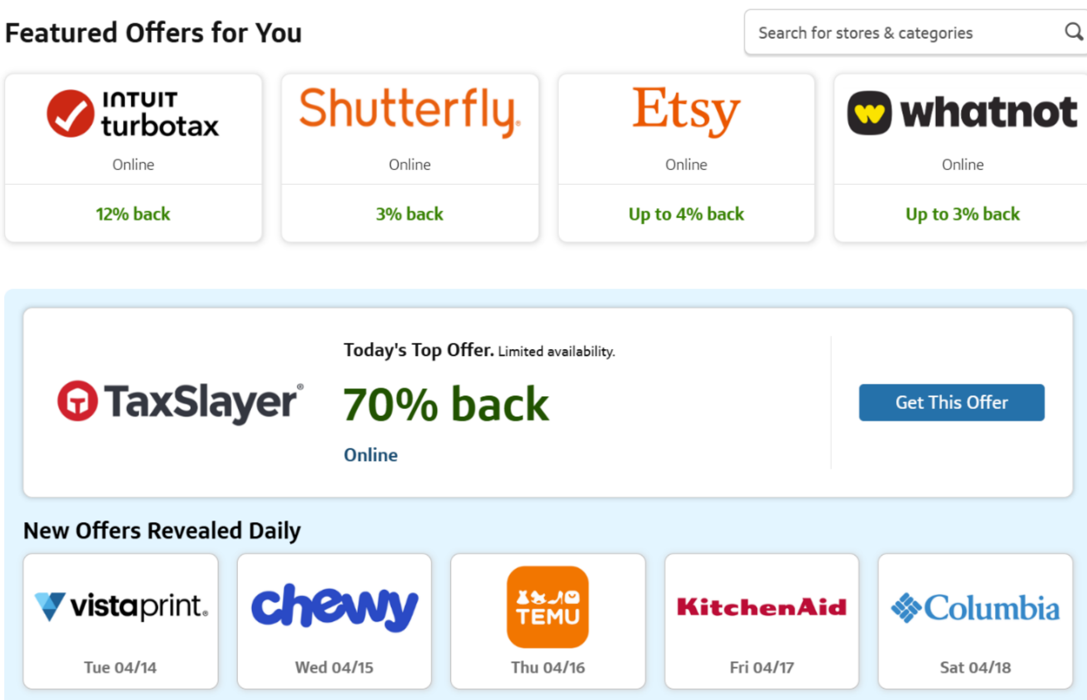
22. Most of Capital One's credit cards offer cash back of 1% or 1.5% on most or all purchases. For instance, the Quicksilver card offers 1.5% cashback on all purchases. The Savor card offers 1% as a default cashback rate on most purchases. For each of its credit cards, Capital One advertises the rewards as term for potential cardholders to compare before beginning the application process.

23. In addition to the cash back received on general purchases, holders of certain cards, including the Quicksilver card, Savor card, Venture card, and Walmart Rewards card, qualify for the Capital One Offers Program. Under the Offers Program, Cardholders can receive higher cashback for purchases from certain merchants, as promoted by Capital One through the

[1] https://www.capitalone.com/credit-cards/compare/ (last accessed April 10, 2026).

Cardholder's online account or mobile application.[2] The thousands of merchants that Capital One promoted through the Offers Program varied, and the promotions were for only for a limited time.

24. The cashback rates received by Cardholders through the Offers Program for purchases from the promoted merchants were significantly higher than the rate of 1% or 1.5% cashback for all other purchases made. Cashback rates promised to Cardholders on Capital One's website and the mobile application for purchases made through the Offers Program ranged from 2% to 40%, as shown below:[3]



25. In addition to its promises to Cardholders on its website and mobile application, Capital One promoted the Offers program to the public on its website. In a promotional webpage titled "All about Capital One Offers," Capital One stated that in a section under the heading "How does Capital One Offers Work?" that "Payouts are automatically applied to eligible accounts based

[2] https://www.capitalone.com/learn-grow/money-management/capital-one-offers/ (last accessed April 10, 2026).
[3] https://capitaloneoffers.com/feed (last accessed April 10, 2026).

on each merchant's offer rate," and that "You'll typically receive your payout in about 45 days. Rewards payouts are typically issued as a statement credit, miles or cash back."[4]

26. The same promotional webpage included a section under the subheading "What purchases qualify for a payout?", under which Capital One provided a chart that detailed "How to qualify" and "How payouts are calculated." The chart clearly stated the terms that Cardholders needed to comply with in order to receive the Payout for the Offers, as depicted below:[5]

What purchases qualify for a payout?

Depending on the offer, online and in-store purchases could qualify for Capital One Offers rewards. Here's a quick guide about some of the things you need to do to help ensure your purchases qualify.

	Online	**In-store**
How to qualify	• Make purchases on the merchant's website in the same browser session opened from Capital One Offers • Complete purchases within 24 hours of opening the tile	• Activate the offer before purchase • Pay with the same Capital One card used to activate the offer • Purchase before the offer expires
How payouts are calculated	• Based on the offer and eligible purchase amount • Excludes taxes, shipping, credits, fees or third-party add-ons	• Based on the total eligible purchase amount in the offer • May include taxes, shipping or fees, depending on terms • Some offers have a maximum payout cap

27. The promotional webpage also included a section titled "Capital One Offers FAQ", which provided further assurances that Cardholders would receive the Payouts. For instance, in response to an FAQ regarding the applicability of the Offers to other discounts, Capital One provided an illustrative example of how the Offers program functions, which stated:

> For example, say you see an offer to earn up to 4% at a department store. After reaching the site through the Capital One Offers tile, you find a new jacket for $60. After adding sales tax and shipping fees, your total comes to $68, and you complete the purchase. The payout would only apply to the $60, not the additional costs.[6]

[4] https://www.capitalone.com/learn-grow/money-management/capital-one-offers/ (last accessed April 10, 2026).
[5] *Id.*
[6] *Id.*

28. On the same promotional webpage, Capital One stated in a section titled "Key Takeaways" that its Offers program "makes it easy to earn rewards or statement credits at thousands of retailers[,]" and encouraged the public to seek pre-approval to obtain one of the qualifying cards, because doing so "gets you one step closer to exclusive deals from Capital One Offers."[7]

29. The website located at capitalone.com is maintained by Defendants. It is referred to as "Capital One's website" and its terms and conditions state: "We 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."[8]

II. **<u>The Capital One Offers Purchase Process and Capital One's Failure to Issue the Promised Payouts</u>**

30. On the Capital One Offers website or in the Capital One mobile application, Capital One provided the Cardholders with a link to shop online on the promoted merchant's website, along with the advertised cashback rate.

31. Once a Cardholder selected the link to shop online, the Terms and Conditions of the Offer are linked next to a button to continue shopping on the merchant's website.[9] In the Terms and Conditions, Capital One promised that the advertised cashback rate would be the rate that would be issued in the form of a Payout to Cardholders, and that "[s]ubject to your compliance with these Terms, we will issue a payout to your Qualifying Account, according to the rate

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[7] *Id.*
[8] https://www.capitalone.com/digital/terms-conditions/ (dated December 2, 2025)
[9] https://capitaloneoffers.com/Capital-One-Offers-Terms-and-Conditions.pdf (last accessed April 10, 2026).

advertised in the Qualifying Offer and calculated in the manner outlined … above, following your Qualifying Offer Purchase[.]"[10]

32. Moreover, Capital One assured Cardholders that best efforts would be made to issue the Payouts within 45 days, and that delays would only be to ensure compliance with the Offer's terms: "We strive to issue Account Payouts within 45 days, but we reserve the right to delay issuance of Account Payouts to confirm the existence of a Qualifying Offer Purchase and to ensure compliance with these Terms and with the relevant Qualifying Offer Terms." [11]

33. The Terms and Conditions also included specific terms that Cardholders must comply with to receive a Payout. Cardholders agreed that "[b]y participating in this Program, you indicate your agreement to these Terms."[12] For instance, the Terms and Conditions stated that for Cardholders to receive the Payout as promised, "the Qualifying Account that you used to activate the relevant Qualifying Offer must be open and in good standing at the time we attempt to issue the Account Payout."[13] The Terms and Conditions also advised customers: "[i]f you return, cancel, or prematurely terminate or unsubscribe from an otherwise Qualifying Offer Purchase, you are not eligible for an Account Payout."[14]

34. As a "General Term," Capital One also stated that it "reserve[s] the right to disqualify or withhold Account Payouts from any individual who we suspect, in our sole discretion, of tampering or interfering with the operation of the Program, of perpetrating fraud or abusive behavior on or through the Program, or of violating any of these Terms."[15]

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[10] *Id.* at ¶ 5(a).
[11] *Id.*
[12] *Id.* at ¶ 6(a).
[13] *Id.* at ¶ 5(c).
[14] *Id.* at ¶ 5(i).
[15] *Id.* at ¶ 6(c).

35. Despite the representations to Cardholders on its website and mobile application and promises made in its Terms and Conditions, Capital One routinely failed to issue Payouts as it had assured Cardholders it would pursuant to the represented cashback rates, even when Cardholders had performed all obligations and complied with all terms they had agreed to in the Terms and Conditions.

36. Illustratively, in December 2023, Plaintiff was induced to make a purchase at Zappos after seeing an Offer for 6% cash back on the Capital One Offers website. He claimed the Offer by clicking on it and then making his purchase on the merchant's website. Plaintiff would not have made this purchase if did not see the Offer and expect to receive a Payout. But Capital One never provided the Payout it had promised pursuant to that Offer. As a result of Capital One's failure to issue a Payout as it had promised, Plaintiff lost out on an effective 4.5% in cashback of the $212.65 purchase he made in reliance on the Offer, totaling $9.65.

37. In another instance, in September 2025, Plaintiff was induced to make purchases at Zappos after seeing an Offer for 3% cash back on the Capital One Offers website. He claimed the Offer by clicking on it and then making his purchase on the merchant's website. Plaintiff would not have made this purchase if he did not see the Offer and expect to receive a Payout. Again, Capital One never provided the Payout it had promised pursuant to that Offer . As a result of Capital One's failure to issue a Payout as it had promised, Plaintiff lost out on an effective 1.5% in cashback of the $249.87 purchase he made in reliance on the Offer, totaling $3.75.

38. On many other occasions, Plaintiff has claimed other Offers only for Capital One to fail to timely issue the Payout. For example, Plaintiff recalls having to chase down Capital One by calling customer service in order to receive Payouts on claimed Offers for purchases of Sketchers, Bouqs, Burrow, and possibly others. When Plaintiff has contacted Capital One to

demand payment of such Payouts, Capital One has immediately issued the Payout without further inquiry or explanation. As far as Plaintiff is aware, he has followed the same process to claim every Offer: clicking on the Offer, and then making the purchase. While Capital One repeatedly fails to issue his Payout, it has never denied Plaintiff a Payout following a complaint from him. Capital One's responses to Plaintiff's complaints suggests that Plaintiff has performed all obligations and complied with all terms in the Terms and Conditions, only for Capital One to fail to issue the Payout.

III. <u>Cardholders React to Capital One's Misconduct</u>

39. Other customers have made complaints online regarding Capital One's failure to deliver Payouts in the Offers program.

40. In March 2025, a user of the Venturex subreddit, an online platform dedicated to the discussion of Capital One's consumer financial product Venturex, lamented about "how inconsistently the points come in." Further, the user stated that there were "purchases [the user] made a month ago and heard nothing on." In response, other posters responded to state that they were "in the same boat" and that the Offers Program was an "awful system." As one poster summarized with respect to the Payouts: "You might get it or you might not, but at least you gave it a shot!"[16]

41. Another post by a user of the Venturex subreddit titled "CapitalOneOffers is actually a SCAM[]" described in detailed the first experience of a cardholder who failed to receive the promised Payout, and characterized the program as a "scam." In response to the same inquiry, another user stated that "most egregious was a 7k Hilton booking that should have gotten 11 points

[16] https://www.reddit.com/r/Venturex/comments/1jpnwhx/capital_one_offers/ (last accessed April 12, 2026).

per dollar but only got 3.” Another user stated that they had “used it once to purchase two HP laptops. I was supposed to get 10% back but got nothing.”[17]

42. 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.

43. Based on the foregoing, Capital One engages in a deliberate practice of failing to deliver Payouts as promised under the Capital One Offers Program, to Capital One’s benefit at the expense of its customers.

44. Capital One’s conduct is deceptive because Capital One falsely advertises the Capital One Offers Program as one that will increase customers’ cash back (and thereby lower the overall cost of the transaction), when it will not, and omits that Capital One will routinely fail to issue Payouts unless and until customers affirmatively complaint about not receiving them, if at all. As a result of Capital One’s conduct, customers overpay for products that they may not otherwise have purchased, to their detriment and Capital One’s benefit.

CLASS ALLEGATIONS

45. This action is brought by Plaintiff, for himself 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). Plaintiff seeks to represent a class of all persons who claimed Capital One Offers but have not received the corresponding Payout (the “Class”). Plaintiff also seeks to represent a subclass of all persons in Connecticut who claimed Capital One Offers but have not received the corresponding Payout (the “Connecticut Subclass”).

[17] https://www.reddit.com/r/Venturex/comments/1m8g744/capitaloneoffers_is_actually_a_scam/ (last accessed April 12, 2026).

46. 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.

47. 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 Offers Cardholders. The precise number of Class members and their identities are unknown to Plaintiff at this time but can be determined through discovery.

48. 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 Connecticut Subclass are:

a. Whether Capital One failed to issue Payouts it had promised to Cardholders dishonestly, unfairly, and/or in bad faith;

b. Whether Capital One breached the terms of its contract with Cardholders by failing to issue Payouts;

c. Whether Capital One breached the implied covenant of good faith and fair dealing implied by law into its contracts with Cardholders;

d. Whether Capital One's conduct violated the Connecticut Unfair Trade Practices Act and/or Virginia Consumer Protection Act;

e. Whether Capital One's conduct violates principles of quasi-contract and caused Capital One to be unjustly enriched;

f. Whether Capital One's wrongful conduct caused Plaintiff and the Class members damages;

g. The amount of damages suffered by Plaintiff and Class members;

h. The amount of restitution to which Plaintiff and Class members are entitled;

i. Whether Plaintiff and Connecticut Subclass members are entitled to treble and/or punitive damages;

j. Whether Plaintiff and Class members are entitled to a reasonable award of attorneys' fees, interest, and costs of suit.

49. Plaintiff's claims are typical of the claims of the members of the Class he seeks to represent because they were all Offers Cardholders and subject to the same Offers Program, and subject to the same Terms and Conditions.

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

51. 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. Plaintiff knows 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.

52. 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.

53. 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 IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

54. Plaintiff re-alleges and incorporates the allegation set forth in paragraphs 1-53 herein.

55. Plaintiff brings this Count I, on behalf of himself and the Class, against Defendants Capital One, N.A. and Capital One Shopping Holdings, LLC.

56. The Terms and Conditions of the Capital One Offers Program provides that "[s]ubject to [customers'] compliance with these Terms," Defendants "will issue a payout to your Qualifying Account, according to the rate advertised in the Qualifying Offer and calculated in the manner outlined in Section 4 above, following your Qualifying Offer Purchase."

57. The Terms and Conditions state that Defendants "reserve the right to determine whether a purchase constitutes a Qualifying Offer Purchase at our sole discretion."

58. The Terms and Conditions further state that Defendants will "strive to issue Account Payouts within 45 days" and will "strive to provide Account Payouts in connection with all Qualifying Offer Purchases that satisfy these Terms and the relevant Qualifying Offer Terms."

59. A covenant of good faith and fair dealing is implied by law in every contract. The covenant obligates the parties to a contract not to do anything which injures the right of the other to receive the benefits of the agreement. Where a contract confers on one party a discretionary power affecting the rights of the other, a duty is imposed to exercise that discretion in good faith and in accordance with fair dealing and the parties' legitimate expectations.

60. Plaintiff and Class Members have performed all, or substantially all, of the specifically delineated obligations imposed on them under the Terms and Conditions with Defendants. Plaintiff and Class Members therefore had a legitimate expectation of receiving the Payout by complying with these terms.

61. Defendants breached the implied covenant of good faith and fair dealing by exercising their discretion to determine whether a purchase constitutes a Qualifying Offer Purchase in bad faith, and/or by failing to adopt policies and procedures that would allow Defendants to strive to issue Payouts to Cardholders within 45 days. In doing so, Defendants deprived Plaintiff of substantial cash that they had been promised in the Offer, contrary to legitimate expectations, and have unfairly interfered with the right of Plaintiff and Class members to receive the benefits of their contracts with Defendant.

62. Plaintiff and Class members have suffered substantial damages as a result of Defendants' breaches.

<u>COUNT II</u>

BREACH OF QUASI-CONTRACT AND UNJUST ENRICHMENT

63. Plaintiff re-alleges and incorporates the allegation set forth in paragraphs 1-53 herein.

64. Plaintiff brings this Count II, on behalf of himself and the Class, against all Defendants.

65. Plaintiff brings this claim in the alternative to the claim in Counts I, in the event the Court determines that Plaintiff (and member of the Class), on the one hand, and Defendant, on the other hand, were not subject to a contractual relationship with respect to the Offers Program.

66. Plaintiff and the Class conferred a benefit on Capital One by making purchases through the Offers Program on their Capital One credit cards as alleged herein. Defendants knowingly retained the full Payout to Cardholders and unjustly profited from the failing to issue all Payouts expected by Plaintiff and the Class.

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

68. 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 Plaintiff and the Class, all proceeds received from Plaintiff and the Class as a result of the unlawful and/or inequitable conduct described herein.

COUNT III

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

69. Plaintiff re-alleges and incorporates the allegation set forth in paragraphs 1-53 herein.

70. Plaintiff brings this Count III, on behalf of himself and the Class, against Defendants Capital One Shopping Holdings LLC and Capital One Financial Corp.

71. As described above, while engaging in trade or commerce within the Commonwealth of Virginia during the time period relevant hereto, Defendants Capital One

Shopping Holdings LLC and Capital One Financial Corp. created and marketed Capital One Offers, and in doing so represented that purchases made through certain promoted merchants would receive higher cash back, while routinely failing to pay the represented cash back rate to Cardholders.

72. Defendants further promoted the Offers program broadly online to Cardholders and the public alike, and described the Offers in a detailed manner that implied at all times that Cardholders would receive the Payouts as advertised if they complied with the terms of the Offer. At no time did Defendants disclose that the Payouts were routinely withheld from Cardholders, or that the cashback rates advertised in the Offers were not guaranteed to be issued as Payouts even when Cardholders complied with the terms.

73. 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)).

74. 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 Defendants' conduct as alleged herein is proper because that conduct was committed by Defendants in Virginia and Defendants were unjustly enriched in Virginia.

75. The aforesaid acts damaged Plaintiff and members of the putative class.

COUNT IV

VIOLATIONS OF THE CONNECTICUT UNFAIR TRADE PRACTICES ACT
CONN. GEN. STAT. § 42-110a et seq.

AGAINST ALL DEFENDANTS

ON BEHALF OF THE CONNECTICUT SUBCLASS

76. Plaintiff re-alleges and incorporates the allegation set forth in paragraphs 1-53 herein.

77. Plaintiff brings this Count IV, on behalf of himself and the Connecticut Subclass, against all Defendants.

78. The Connecticut Unfair Trade Practices Act ("CUTPA") prohibits "unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." Conn. Gen. Stat. § 42-110b(a).

79. Defendants' conduct violates the CUTPA because it is deceptive, and also because it (1) offends public policy as it has been established by statutes, the common law, or otherwise; (2) is immoral, unethical, oppressive, or unscrupulous; and (3) causes substantial injury to consumers.

80. Plaintiff, on behalf of himself and the Connecticut Subclass, seeks damages, punitive damages, injunctive relief, other equitable relief, costs, and attorneys' fees as permitted by Conn. Gen. Stat. § 42-110g.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, requests that the Court award the following relief:

81. Certify this action as a class action, appoint Plaintiff as the Class representative, and designated the undersigned as Class Counsel;

82. Declare Defendants' conduct unlawful;

83. Enjoin Defendants from the unlawful conduct alleged herein, including by ordering Defendants CONA and COSH to immediately issue Payouts for all claimed Offers to all Class members and remedy its policies to ensure all Payouts are issued as promised and advertised to Cardholders in the future;

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

85. Award Plaintiff and the Class restitution and/or disgorgement;

86. Award Plaintiff attorney's fees, costs, and pre-judgment and post-judgment interest; and

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

DEMAND FOR JURY TRIAL

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

Dated: April 27, 2026 Respectfully submitted,

By: /s/ ____________________________

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