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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

AZLYNNE HOARD, individually and on behalf of herself and all others similarly situated, Plaintiff, v. CAPITAL ONE, N.A., Defendant.	Case No: 37-2024-00024097-CU-BC-CTL **[E-FILE]** **CLASS ACTION COMPLAINT** **[DEMAND FOR JURY TRIAL]**

Plaintiff Azlynne Hoard ("Plaintiff") brings this action on behalf of herself and all others similarly situated against Defendant Capital One, N.A. ("Capital One" or "Defendant"), and states:

I. NATURE OF THE ACTION

1. Plaintiff brings this action on behalf of herself and a proposed class of all similarly situated consumers against Defendant Capital One arising from its unfair, deceptive, and unlawful practice of assessing cash advance fees and immediately-accruing interest ("Cash Advance Fees") on credit card purchases that are not "cash advances" as that term is used in the Bank's Cardholder Agreement. In so doing, Capital One deceives credit card holders and breaches its agreement with its customers.

2. Capital One, like most major credit card issuers, charges its customers steep Cash Advance Fees when customers elect to use their credit card to receive cash from an ATM or from a bank teller. Plaintiff does not dispute Capital One's right under its Cardholder Agreement to charge Cash Advance Fees on these bona fide cash advances. What Capital One is not permitted to do under its Cardholder Agreement is to assess Cash Advance Fees on credit card transactions that are not cash advances at all. *See* Capital One Credit Card Agreement, attached as **Exhibit A.**

3. Where the Agreement authorizes the Bank to assess Cash Advance Fees on cash or transactions that the Bank "considers" to be cash equivalents, Capital One may not keep secret its polices as to what it unilaterally "considers" to be a cash equivalent, and may not exercise its contractually-vested discretion in bad faith, electing to "consider" certain purchases to be "equivalent" to cash advances when they are not "equivalent" to cash advances at all. But that is exactly what it does, using that secrecy to assess Cash Advance Fees on credit card transaction types that do not share cash's essential characteristics—including that it is a totally fungible commodity that can be possessed and later used for any purpose or no purpose at all.

4. Plaintiff's experience is illustrative. Plaintiff Hoard recently received a beauty treatment and paid the technician with her credit card using the Venmo mobile application. Unbeknownst to Plaintiff, Capital One unilaterally and in its sole discretion elected to treat Plaintiff's beauty treatment as a "cash advance," and charged Plaintiff a cash advance fee *plus* immediately accruing interest.

5. Capital One's imposition of Cash Advance Fees on this transaction, which was not for a transaction that the Bank informed Plaintiff it would "consider" a cash equivalent and was not reasonably considered an advance of cash as that term is used in the Cardholder Agreement, is contrary to the Bank's contractual promises and is deceptive.

6. It is also contrary to industry practice. Some of Capital One's major competitors in the credit card industry such as American Express and Discover do not treat transactions like Plaintiff Hoard's beauty treatment as a "cash advance," as discussed herein. Other major American banks expressly inform their cardholders as to which transactions they consider cash equivalents. Capital One does neither.

7. Capital One's Cardholder Agreement never stated its true practice of categorizing non-cash advance transactions as worthy of Cash Advance Fees. Plaintiff Hoard and other reasonable consumers could not have determined from the Bank's Cardholder Agreement that it would adopt this unexpected, unreasonable, and bad faith policy.

8. Plaintiff brings this action on behalf of herself and a proposed class of all other similarly situated Capital One credit card holders who were improperly charged Cash Advance Fees on transactions that Capital One did not disclose to be equivalent to cash advances. Plaintiff seeks to end Capital One's deceptive practices and force it to refund improper fees and interest charges. Plaintiff seeks damages, restitution, and injunctive relief, as set forth more fully below.

II. PARTIES

9. Plaintiff Azlynne Hoard is a citizen and resident of Poway, California and the holder of a Capital One VentureOne credit card.

10. Defendant Capital One, N.A. is a national credit card issuer with its headquarters and principal place of business located in McLean, Virginia. Capital One operates banking centers and thus, conducts business throughout the United States, including within this district.

III. JURISDICTION AND VENUE

11. This Court has jurisdiction over Defendant and the claims set forth below pursuant to Code of Civil Procedure § 410.10 and the California Constitution, Article VI § 10, because this case is a cause not given by statute to the other trial courts.

12. Plaintiff is informed and believes that the State of California has personal jurisdiction over the Defendant named in the action because Defendant is a company authorized to conduct and does conduct business in this State. Defendant is registered with the California Secretary of State to do sufficient business with sufficient minimum contacts in California, and/or otherwise intentionally avails itself of the California market, including in the County of San Diego, which has caused both obligations and liability of Defendant to arise in the County of San Diego.

13. The amount in controversy exceeds the jurisdictional minimum of this Court.

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IV. FACTUAL BACKGROUND AND GENERAL ALLEGATIONS

A. Credit Card Cash Advances

14. American credit card issuers generally provide a "grace period" for almost all transactions, and do not charge up-front fees for such purchases. If a cardholder pays for a purchase in full prior to the beginning of the next billing cycle, generally that cardholder will not pay any interest or fees on that purchase.

15. The exception is for cash advances. Credit card issuers generally treat cash advances differently in order to discourage the use of credit cards for cash loans. Issuers generally assess interest beginning immediately for cash advances from an ATM or a bank teller, and also assess up-front fees for using a credit card to perform such a cash advance.

16. It is therefore extremely expensive to borrow cash with a credit card. The distinction between a purchase and a cash advance is crucial and can mean a difference in interest and fees of tens or hundreds of dollars on a purchase. For example, if a $100 purchase were instead treated as a "cash advance" by Capital One, the transaction would come with a $5 advance fee and over $8 in immediately-accruing interest—both of which would not be charged otherwise.

B. Capital One Promises to Charge Cash Advance Fees Only on Cash Advances and Disclosed "Cash Equivalents."

17. Capital One credit card holders are subject to Capital One's Credit Card Agreement.

18. Capital One's Credit Card Agreement is a form contract. The contract is materially uniform across all Capital One branded cards, and states in relevant part:

> Cash Advance: Either $5 or 5% of the amount of each cash advance, whichever is greater.
>
> […]
>
> APR for Cash Advances Non-introductory rates between 27.74% and 32.74%.
>
> […]
>
> "Cash Advance" means a loan in cash or things we consider cash equivalents, including wire transfers, travelers' checks, money orders, foreign currency, lottery tickets, gaming chips, and wagers. We post Cash Advances to the Cash Advance Segment of your Account and not to your purchase Segment.

Ex. A at 1, 6 (emphasis added).

19. Under the Agreement, then, Capital One may assess Cash Advance Fees on "loans in cash or things we consider cash equivalents" like money orders or travelers' checks. The Bank may not assess Cash Advance Fees on other transactions.

20. Unlike other major American banks discussed below, Capital One keeps secret major transaction types that is "consider[s] [to be] cash equivalents," excluding them from enumeration in the Cardholder Agreement. There is, of course, no way for a cardholder to know what Capital One "consider[s] [to be] cash equivalents" unless such supposed "equivalents" are listed in the Cardholder Agreement. Capital One does not include peer to peer transfers like Plaintiff's in its definition of Cash Advances.

21. As Capital One is aware, payment apps like that used by Plaintiff are massively popular and commonly used components of consumers' economic activity in the U.S. Capital One alone knows that it "considers" transactions using those apps to be "cash equivalents," but keeps this policy decision secret.

22. By operation of the contract interpretation principle *expressio unius est exclusio alterius*, the exclusion from its list of consider[s] [to be] cash equivalents" was intentional and fairly means Capital One does not consider such transactions to be "cash equivalents."

23. Additionally, it was bad faith and deceptive for Capital One to hide from cardholders its true list of transaction types it "consider[s] [to be] cash equivalents," especially where it alone knew or could know what it "considered" and especially where peer to peer payments are a popular transaction type for U.S. consumers.

24. Further, even if bank could keep what it considers to be a "cash equivalent" secret from its cardholders, it would be objectively unreasonable to consider transactions like Plaintiff's to be a cash equivalent.

25. However, as a matter of policy Capital One does just that. Capital One routinely charges Cash Advance Fees on transactions that are <u>not</u> "loans in cash" and are <u>not</u> reasonably understood as "cash equivalents." Indeed, the Bank assesses such fees on transactions that are not

close equivalents to cash and that totally lack cash's essential characteristic as a fungible method of payment.

26. The terms "cash" or "cash equivalent" reasonably mean currency or currency equivalents that can be used for any purpose. Cash, like the travelers' checks, money orders, or foreign currency specified in Capital One's definition of "cash equivalents," can be independently possessed to make a later purchase or transfer—or simply to place under a proverbial mattress.[1]

27. But as demonstrated by Plaintiff's experience, Capital One assesses Cash Advance Fees on transactions that are not cash loans or cash equivalents. Plaintiff never received any cash or a cash equivalent from Capital One that could later be used for a purchase. She received cosmetic services directly.

28. Upon information and belief, Capital One systematically and unreasonably treats payments made on peer-to-peer mobile applications as "cash advances," and systematically assesses Cash Advance Fees on such transactions. In so doing, Capital One breaches its contractual promises and breaches the covenant of good faith and fair dealing.

29. Capital One's Cash Advance Fees, when assessed on transactions that are not fairly disclosed to be "cash equivalents," are problematic junk fees because an accountholder has no reasonable way to predict or understand which transactions Capital One will consider cash advances and which will not be unless they are enumerated in the Capital One Credit Card Agreement.

30. Tellingly, for many years Capital One did *not* treat payments made on peer-to-peer mobile applications as "cash advances" and did *not* charge Cash Advance Fees on such transactions. Only recently, and unbeknownst to consumers, did it change its policy.

[1] A "wire transfer" is a technical banking term meaning direct, cash transfers between two financial institutions using networks such as the Fedwire Funds Service (Fedwire) or Society for Worldwide Interbank Financial Telecommunication (SWIFT). Apps like Paypal, Cash App and Venmo are not financial institutions, do not require bank accounts, and do not employ wire transfers.

31. At best, Capital One's Credit Card Agreement is ambiguous as to the meaning of the term "cash equivalents." Any ambiguity in a consumer contract of adhesion should be strictly construed against the drafter, Capital One, and in favor of the consumer.

32. A comparison of Capital One's agreement with other credit card agreements demonstrates the ambiguity. American Express's credit card agreement is like Capital One's in that it does not include payments made on peer-to-peer mobile applications as cash advances. Specifically, American Express's agreement states:

> A ***cash advance*** is a charge to get cash or cash equivalents, including travelers cheques, gift cheques, foreign currency, money orders, digital currency, casino gaming chips, race track wagers, and similar offline and online betting transactions.

Unlike Capital One, however, American Express does ***not*** treat payments made on peer-to-peer mobile applications as cash advances and does not charge Cash Advance Fees on transactions made through those applications.

33. Similarly, Discover Bank does not define payments made on peer-to-peer mobile applications as cash advances and does not charge Cash Advance fees on transactions made through those applications.

34. Conversely, other major credit issuers such as Bank of America and Chase clearly and explicitly disclose in their agreements that such transactions will be treated as cash advances and subject to cash advance fees.

35. For example, Bank of America's credit card agreement defines a cash advance far more broadly than Capital One does, and clearly and explicitly discloses that it considers "person-to-person money transfers" as equivalent to a cash advance:

> Bank Cash Advance: by loans accessed in the following manner:
> a. ATM Cash Advance: at an automated teller machine;
> b. Over the Counter ("OTC") Cash Advance: at any financial institution (e.g., to obtain cash, money orders, wire transfers, or travelers checks);
> c. Same-Day Online Cash Advance: by a same day online funds transfer to a deposit account;
> d. Overdraft Protection Cash Advance: by a transfer of funds to a deposit account pursuant to an overdraft protection program (see the section titled Overdraft Protection below);
> e. Cash Equivalents: by the purchase of foreign currency, money orders, travelers checks, wire transfers, or to obtain cash, each from a non-financial institution, or ***person-to-person money transfers***, bets, lottery tickets purchased outside the

> United States, casino gaming chips, cryptocurrency to the extent accepted, or bail bonds, with your card or account number (including through the use of an enabled mobile device).

36. Likewise, Chase's credit card agreement states:

> Cash-like transactions will be treated as cash advances. Cash-like transactions include, but are not limited to, the following transactions to the extent they are accepted:
> • purchasing travelers checks, foreign currency, money orders, wire transfers, cryptocurrency, other similar digital or virtual currency and other similar transactions;
> • purchasing lottery tickets, casino gaming chips, race track wagers, and similar offline and online betting transactions;
> • ***person-to-person money transfers*** and account-funding transactions that transfer currency; and
> • making a payment using a third party service including bill payment transactions not made directly with the merchant or their service provider.

37. The reason these other major American banks specify that person to person money transfers are "cash-like" or "cash equivalent" is because it would be unreasonable to understand that such transfers are cash-like without an express disclosure stating as much.

38. Unlike Chase and Bank of America, Capital One never defines a "cash advance" to include transactions using person to person money transfer services.

C. Plaintiff's Experience

39. On February 25, 2024, Plaintiff Hoard received a beauty treatment and paid the technician $130 with her Capital One credit card vis-à-vis the Venmo mobile application. Capital One deemed Plaintiff Hoard's beauty treatment as a "cash advance" and charged Plaintiff a cash advance fee, in addition to immediately-accruing interest.

40. Had Plaintiff known Capital One would consider Plaintiff's payment via Venmo to be a cash advance, Plaintiff would have chosen to make the payment for her beauty treatment a different way.

V. CLASS ACTION ALLEGATIONS

41. Plaintiff brings this action on her own behalf and on behalf of all others similarly situated. The proposed Class includes:

> All holders of a Capital One credit card who, within the applicable statute of limitations preceding the filing of this lawsuit up until the date of class certification, were charged Cash Advance Fees on transactions other than for: a loan in cash, wire transfers, travelers' checks, money orders, foreign currency, lottery tickets, gaming chips, and wagers (the "Class").

42. Additionally, Plaintiff proposes a California subclass for the foregoing class ("California Subclass").

43. Excluded from the Class is Defendant, its subsidiaries and affiliates, their officers, directors and members of their immediate families and any entity in which Defendant has a controlling interest, the legal representatives, heirs, successors or assigns of any such excluded party, the judicial officer(s) to whom this action is assigned, and the members of their immediate families.

44. Plaintiff reserves the right to modify or amend the definition of the proposed Class and/or to add a subclass(es), if necessary, before this Court determines whether certification is appropriate.

45. **Numerosity (Rule 23(a)(1)).** The proposed Class is numerous such that joinder is impracticable. Upon information and belief, and subject to class discovery, the Class consists of thousands of members or more, the identity of whom are within the exclusive knowledge of and can be ascertained only by resort to Capital One's records. The proposed Class is also sufficiently ascertainable because Capital One has the administrative capability through its computer systems and other business records to identify all members of the proposed Class, and such specific information is not otherwise available to Plaintiff.

46. **Commonality (Rule 23(a)(2)).** The questions here are ones of common or general interests such that there is a well-defined community of interest among the proposed Class members. These questions predominate over questions that may affect only individual Class members because Capital One has acted on grounds generally applicable to the proposed Class. Such common legal or factual questions include, but are not limited to:

a. Whether Capital One breached its contract with accountholders and/or breached the implied covenant of good faith and fair dealing;

b. Whether Capital One's practice of charging Cash Advance Fees on transactions a reasonable person would not understand to be a loan in cash or equivalent to a cash advance constitutes an unfair, misleading, or unlawful business practice under California's Unfair Competition Law (the "UCL"), Cal. Bus. & Prof. Code § 17200, *et seq.;*

c. Whether Plaintiff and other members of the proposed Class are entitled to injunctive relief to enjoin Capital One's from its unlawful business practices described herein; and

d. Whether Plaintiff and other members of the proposed Class have sustained damages because of Capital One's wrongful business practices described herein and the measure of damages.

47. **Typicality (Rule 23(a)(3)).** Plaintiff's claims are typical of the claims of the other proposed Class members in that they arise out of the same wrongful business practice by Capital One, as described herein.

48. Plaintiff is more than an adequate representative of the proposed Class in that she has suffered damages because of Capital One's improper business practices. Additionally:

a. Plaintiff is committed to the vigorous prosecution of this action on behalf of herself and all others similarly situated and has retained competent counsel experienced in the prosecution of class actions and, in particular, class actions on behalf of consumers against financial institutions;

b. There is no conflict of interest between Plaintiff and the unnamed Class members;

c. Plaintiff anticipates no difficulty in the management of this litigation as a class action; and

d. Plaintiff's legal counsel has the financial and legal resources to meet the substantial costs and legal issues associated with this type of litigation.

49. **Predominance & Superiority (Rule 23(b)(3)).** Common questions of fact or law concerning Capital One's liability to all class members for charging Cash Advance Fees on transactions a reasonable person would not understand to be a loan in cash or equivalent to a cash advance based on the Capital One Credit Card Agreement predominate over any questions affecting only individual class members. Plaintiff's proposed class action is the superior method for resolving this dispute because it is impracticable to bring proposed Class members' individual claims before the Court, especially where, as here, individual class members' damages are relatively small. Class treatment permits many similarly situated persons or entities to prosecute their common claims in a

single forum simultaneously, efficiently, and without the unnecessary duplication of evidence, effort, expense, or the possibility of inconsistent or contradictory judgments that numerous individual actions would engender. The benefits of the class action mechanism, including providing injured persons or entities with a method for obtaining redress on claims that might not be practicable to pursue individually, substantially outweigh any difficulties that may arise in the management of this class action. Plaintiff knows of no difficulty to be encountered in the maintenance of this action that would preclude its maintenance as a class action.

50. **Final Declaratory or Injunctive Relief (Rule 23(b)(2)).** Plaintiff satisfies the requirements for maintaining a class action under Rule 23(b)(2). Defendant has acted or refused to act on grounds generally applicable to each of the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to each Class as a whole.

51. **Particular Issues (Rule 23(c)(4)).** Plaintiff satisfies the requirements for maintaining a class action under Rule 23(c)(4). Plaintiff's claims consist of particular issues that are common to all members of the Classes and are capable of class-wide resolution that will significantly advance the litigation.

FIRST CAUSE OF ACTION
Breach of Contract Including Breach of the Covenant of Good Faith and Fair Dealing (On Behalf of Plaintiff and the Breach of Contract Class and California Subclass)

52. Plaintiff incorporates the allegations in paragraphs 1 through 45 by reference as if fully set forth herein.

53. Plaintiff and members of the Class contracted with Capital One for a credit card, as embodied in the Capital One Credit Card Agreement.

54. Capital One breached the terms of its contract with consumers when, as described herein, Capital One charged Cash Advance Fees on transactions a reasonable person would not understand to be a loan in cash or equivalent to a cash advance based on the text of the Capital One Credit Card Agreement.

55. Further, under the law of each of the states where Capital One does business, an implied covenant of good faith and fair dealing governs every contract. The covenant of good faith

and fair dealing constrains Capital One's discretion to abuse self-granted contractual powers. This good faith requirement extends to the way a party employs discretion conferred by a contract.

56. Good faith and fair dealing, in connection with executing contracts and discharging performance and other duties according to their terms, means preserving the spirit—not merely the letter—of the bargain. Put differently, the parties to a contract are mutually obligated to comply with the substance of their contract in addition to its form. Evading the spirit of the bargain and abusing the power to specify terms constitute examples of bad faith in the performance of contract.

57. Subterfuge and evasion violate the obligation of good faith in performance even when an actor believes her conduct to be justified. A lack of good faith may be overt or may consist of inaction, and fair dealing may require more than honesty. Other examples of violations of good faith and fair dealing are willful rendering of imperfect performance, abuse of a power to specify terms, and interference with or failure to cooperate in the other party's performance.

58. Capital One breached the implied covenant of good faith and fair dealing when it charged Cash Advance Fees on transactions a reasonable person would understand to be a loan in cash or equivalent to a cash advance. Reasonable consumers would have no reason to conclude, based on the Capital One Credit Card Agreement's ambiguous definition of cash advance equivalents, that they would be charged Cash Advance Fees for such purchases.

59. Capital One's breach of the implied covenant of good faith and fair dealing is particularly egregious with respect to transactions made via peer-to-peer mobile applications because, for many years, Capital One customers who used their credit cards as the form of payment for such transactions were never charged Cash Advance Fees by Capital One, yet Capital One began charging Cash Advance Fees on such transactions without providing notice in the Capital One Credit Card Agreement. Capital One's bad faith conduct starkly contrasts with the good faith conduct of competing banks that either do not charge Cash Advance Fees for transactions made via peer-to-peer mobile applications or that do charge such fees based on express contractual disclosures.

60. Each of Capital One's actions were done in bad faith and were arbitrary and capricious.

61. Plaintiff and members of the Class have performed all the obligations imposed on them under the contract.

62. Plaintiff and members of the Class have sustained monetary damages because of Capital One's breaches of the contract and implied covenant of good faith and fair dealing.

SECOND CAUSE OF ACTION
Violation of California's Unfair Competition Law ("UCL")
Cal. Bus. & Prof Code § 17200, *et seq.*
(On Behalf of Plaintiff and the California Subclass)

63. Plaintiff incorporates the allegations in paragraphs 1 through 45 by reference as if fully set forth herein.

64. Plaintiff and members of the putative class have standing to pursue a cause of action against Defendant for unfair, unlawful, and fraudulent business acts or practices because they have suffered an injury-in-fact and lost money due to Defendant's actions and/or omissions as set forth herein.

65. Defendant's conduct described herein is "unfair" under Bus. & Prof. Code § 17200 because it violates public policy and is immoral, unethical, oppressive, unscrupulous, and/or substantially injurious to consumers, and any utility of such practices is outweighed by the harm caused to consumers, including to Plaintiff, the Class, and the public. Specifically, Capital One wrongfully charges Cash Advance Fees on transactions a reasonable person would not understand to be a loan in cash or "equivalent" to a cash advance. The financial harm to consumers because of Capital One's wrongful business practices is substantial.

66. Defendant's conduct described herein is "fraudulent" under Bus. & Prof. Code § 17200 because Capital One's business practices have misled Plaintiff and the Class and will continue to mislead them in the future.

67. Plaintiff relied on Capital One's misrepresentations about its cash advance fee policies insofar as Plaintiff believed she would not be charged Cash Advance Fees on transactions that were not disclosed to be cash advances or their equivalents, such as a payment via Venmo. Had Plaintiff known she would be charged Cash Advance Fees by Capital One for making payments via Venmo, she would have used a different method of payment. By misrepresenting material facts as to its

policies, Capital One deceived Plaintiff and the class into making banking decisions they otherwise would not make.

68. As a direct and proximate result of Capital One's misconduct, Plaintiff and the Classes have suffered and will continue to suffer harm.

69. Plaintiff and the putative Classes are entitled to restitution of all funds wrongfully obtained by Capital One through their unlawful and unfair business practices as described herein.

70. Defendant's wrongful conduct is ongoing and is part of a pattern or generalized course of conduct repeated on thousands of occasions yearly.

71. Plaintiff remains a Capital One credit card holder and as such may be subject to the same wrongful conduct in the future unless Capital One is enjoined. Pursuant to Bus. & Prof. Code § 17203, Plaintiff seeks an injunction on behalf of the general public enjoining Defendant from continuing to engage in the unfair and unlawful business practices described above, or any other act prohibited by law.

72. Additionally, Plaintiff and the putative Class members seek an order requiring Defendant to pay attorneys' fees pursuant to Cal. Civ. Code § 1021.5.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Capital One for herself and the proposed Class members as follows:

a. Certifying the proposed Class, appointing Plaintiff as representative of the Class, and appointing Plaintiff's counsel as class counsel for the proposed Class;

b. Declaring that Capital One's policies and practices described herein constitute a breach of contract and breach of the covenant of good faith and fair dealing;

c. Enjoining Capital One from the wrongful conduct as described herein on behalf of the general public;

d. Awarding actual damages and statutory damages in an amount according to proof;

e. Awarding treble damages, if permitted by law;

f. Awarding pre-judgment interest at the maximum rate permitted by applicable law;

g. Reimbursing all costs, expenses, and disbursements accrued by Plaintiff in connection with this action, including reasonable attorneys' fees, costs, and expenses, pursuant to applicable law and any other basis; and

h. Awarding such other relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff and all others similarly situated hereby demands a jury trial on all issues in this complaint that are so triable as a matter of right.

Dated: May 23, 2024

KALIELGOLD PLLC

By: _____
Jeffrey D. Kaliel
Sophia G. Gold

Attorneys for Plaintiffs and the Putative Class