

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

J M TEST SYSTEMS, INC.

585172

NUMBER

VERSUS

CAPITAL ONE BANK,  
NATIONAL ASSOCIATION

SECTION

**D**

PETITION

NOW INTO COURT, through undersigned counsel, comes J M Test Systems, Inc., and with respect represents:

PARTIES

1.

Plaintiff, J M Test Systems, Inc. ("JMT"), is a Louisiana corporation with its principal and registered office located at 7232 Tom Drive, Baton Rouge, Louisiana 70806.

2.

Made defendant herein is Capital One Bank, National Association ("Capital One"), a national bank doing business in the State of Louisiana and maintaining branch banking operations in the Parish of East Baton Rouge.

VENUE

3.

Venue is proper in this Court under La. Code of Civil Procedure Articles 42(5), 74, 76.1, and/or 77.

CAPITAL ONE

4.

On its website ([www.capitalone.com](http://www.capitalone.com)), Capital One represents that it "is one of the 10 largest banks in the U.S. based on deposits", is "ranked 145 on the Fortune 500", "serv[es]

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approximately 45 million customer accounts”, “trades on the New York Stock Exchange under the symbol COF”, and “is included in the S&P 100 Index.”

5.

Capital One also represents that it “offers a complete range of financial deposit products for commercial businesses including checking accounts” and that online banking with “Advanced Online Security” is available for customers in Louisiana.

6.

Capital One’s Online Banking Terms and Conditions specifically provide:

Your role is extremely important in the prevention of any wrongful use of your account(s). You must carefully examine your statement upon receipt.

Tell us AT ONCE if you believe that an unauthorized transaction has been or may be conducted from your account(s); if you believe another person has improperly obtained your online password(s) or has transferred or may transfer money from your account(s) without authorization; or you suspect fraudulent activity on your account(s).

7.

Capital One further represents that once a Capital One customer calls to report fraudulent activity, “[Capital One] will close [the customer’s] existing account to prevent further unauthorized charges” as required pursuant to Capital One’s “Fraud Investigation Process.”

JMT’S CAPITAL ONE ACCOUNT

8.

In February, 2009, JMT had a Tower Gold Commercial Checking Account with Capital One (the “JMT Account”).

9.

JMT accessed, and conducted transactions in connection with, the JMT Account through TowerNET, Capital One’s online banking system.

10.

On a regular basis, JMT accessed the JMT Account through TowerNET and frequently and diligently reviewed the transaction history therein in an effort to identify any unauthorized activity.

11.

The JMT Account was also tied to a line of credit JMT maintained with Capital One (the "JMT LOC") and if there were insufficient funds in the JMT Account, Capital One would automatically draw on the JMT LOC without any prior notice to or approval from JMT.

**THE FIRST UNAUTHORIZED TRANSACTION**

12.

On February 20, 2009, JMT accessed the JMT Account through TowerNET and identified an unauthorized wire transfer from the JMT Account to "Alpha-Bank Moscow" on February 19, 2009, in the amount of \$45,640.00 (the "Unauthorized Wire Transfer").

13.

JMT has never conducted business with or through, and has never transferred funds to or received funds from, any entity identified as "Alpha-Bank Moscow."

14.

On the same date, February 20, 2009, JMT immediately notified Capital One by telephone of the Unauthorized Wire Transfer.

15.

On information and belief, the Unauthorized Wire Transfer was initiated from an internet protocol address(es) that JMT has never used to conduct online banking.

16.

After JMT reported the Unauthorized Wire Transfer on February 20, 2009, Capital One advised that it would initiate an investigation of the unauthorized transaction.

17.

After JMT reported the Unauthorized Wire Transfer on February 20, 2009, Capital One did not close the JMT Account.

18.

After JMT reported the Unauthorized Wire Transfer on February 20, 2009, Capital One did not block the JMT Account.

19.

After JMT reported the Unauthorized Wire Transfer on February 20, 2009, Capital One did not monitor the JMT Account for further fraudulent or suspicious activity.

20.

On February 25, 2009, Capital One issued a new user ID number (the "New User ID") and password to JMT for use in accessing the JMT Account through TowerNET.

**THE SECOND UNAUTHORIZED TRANSACTION**

21.

On March 2, 2009, JMT accessed the JMT Account and identified a second unauthorized transaction, specifically, an Automated Clearing House withdrawal, from the JMT Account in the amount of \$51,556.44 (the "Unauthorized ACH Withdrawal").

22.

On the same date, March 2, 2009, JMT immediately notified Capital One by email and telephone of the Unauthorized ACH Withdrawal.

23.

When JMT reported the Unauthorized ACH Withdrawal to Capital One on March 2, 2009, Capital One advised JMT that the Unauthorized ACH Withdrawal originated on February 26, 2009.

24.

On information and belief, the Unauthorized ACH Withdrawal, which originated on February 26, 2009, was initiated from an internet protocol address(es) that JMT has never used to conduct online banking and was sent to individuals and/or entities with which JMT has never conducted business and to which JMT has never transferred, and from which JMT has never received, funds.

25.

Also on March 2, 2009, Capital One advised JMT as follows: "please send in an ACH reversal request for these funds. What we need is a letter signed by an authorized signer, stating 'Can you please reverse the below ACH transactions, they were sent fraudulently'."

26.

In accordance with Capital One's instruction, JMT sent a letter to Capital One on March 2, 2009 (inadvertently dated March 1, 2009) requesting reversal of the Unauthorized ACH Withdrawal.

27.

On information and belief, as of March 2, 2009, Capital One had not completed its investigation of the initial unauthorized transaction – specifically, the Unauthorized Wire Transfer that occurred on February 19, 2009 – although Capital One did not so advise JMT.

28.

As of March 2, 2009, Capital One had not closed the JMT Account.

29.

As of March 2, 2009, Capital One had not blocked the JMT Account.

30.

As of March 2, 2009, Capital One had not monitored the JMT Account for fraudulent or suspicious activity.

31.

On March 3, 2009, Capital One advised JMT that the JMT Account had, as of that date, been blocked.

**CAPITAL ONE SEEKS TO AVOID RESPONSIBILITY FOR BOTH  
UNAUTHORIZED TRANSACTIONS**

32.

Also on March 3, 2009, Capital One advised JMT for the first time that Capital One believed it had no responsibility for the losses JMT sustained as a result of the Unauthorized Wire Transfer on February 19, 2009, or the Unauthorized ACH Withdrawal, which on information and belief originated on February 26, 2009, six (6) days after JMT advised Capital One of the initial unauthorized transaction.

33.

JMT avers that Capital One is fully responsible for the Unauthorized Wire Transfer and the Unauthorized ACH Withdrawal and all losses and expenses sustained by JMT in connection therewith, including the interest that Capital One charged JMT in connection with those funds Capital One drew on JMT's LOC to cover the unauthorized transactions.

34.

On March 4, 2009, JMT contacted Capital One and advised that, despite Capital One's assurance that the JMT Account had been blocked on March 3, 2009, JMT was still able to access the JMT Account through TowerNET.

35.

After being contacted by JMT on March 4, 2009, Capital One again advised JMT that the JMT Account was now blocked.

36.

Also on March 4, 2009, Capital One's Lead Fraud Investigator contacted and spoke with JMT for the first time.

37.

On March 5, 2009, Capital One IT security representatives contacted JMT and, after hearing a full description of the IT security measures employed by JMT, indicated that these measures were "great" and "perfect".

**CAPITAL ONE'S ONLINE BANKING SECURITY PROCEDURE  
IS NOT COMMERCIALLY REASONABLE**

38.

As a result of Capital One's inability to prevent, and subsequent refusal to take responsibility for, the two separate, substantial unauthorized transactions that occurred more than six (6) days apart in connection with the JMT Account, JMT contacted other national banks similarly situated to inquire about transferring JMT's banking business to one or more of these banks.

39.

During the course of this inquiry, JMT learned that Capital One's online banking security procedure is not commensurate with the online banking security procedures employed by other national banks similarly situated.

40.

JMT also learned that the online banking security procedures employed by other national banks similarly situated would have prevented the unauthorized transactions that occurred in connection with the JMT Account at Capital One.

41.

Capital One's online banking security procedure is, obviously, so deficient that it was unable to prevent the Unauthorized ACH Withdrawal on February 26, 2009, even though this second unauthorized transaction occurred six (6) days after the notice by JMT to Capital One of the initial unauthorized transaction – specifically, the Unauthorized Wire Transfer that occurred on February 19, 2009.

42.

Capital One's online banking security procedure fails to meet prevailing standards of good banking practice utilized by other national banks similarly situated.

43.

Capital One's online banking security procedure is not commercially reasonable.

44.

Capital One also did not comply with the online banking security procedure that it did have in place in February and March, 2009.

45.

On information and belief, other Capital One customers have notified Capital One of unauthorized online banking transactions that have occurred in connection with their Capital One accounts.

46.

In late May and early June, 2009, JMT transferred its banking business to another national bank.

**CAPITAL ONE REFUSES TO REVERSE THE UNAUTHORIZED WIRE TRANSFER AND THE UNAUTHORIZED ACH WITHDRAWAL**

47.

Against the total loss of \$97,196.44, representing the sum of the Unauthorized Wire Transfer and the Unauthorized ACH Withdrawal, Capital One has only issued a credit to JMT for \$7,965.00 in connection with the Unauthorized ACH Withdrawal, leaving a net loss of \$89,231.44 to JMT as a result of the unauthorized transfers (the "Net Loss").

48.

Despite amicable demand, Capital One has refused to refund the Net Loss to JMT despite JMT's timely notification to Capital One of both the Unauthorized Wire Transfer and the Unauthorized ACH Withdrawal and JMT's full cooperation with Capital One's investigation in connection therewith.

49.

In addition to the Net Loss, JMT has sustained costs and expenses in excess of \$70,000.00 associated with the Unauthorized Wire Transfer and the Unauthorized ACH Withdrawal.

**COUNT I**

**CAPITAL ONE IMPROPERLY ACCEPTED A PAYMENT ORDER IN CONNECTION WITH THE UNAUTHORIZED WIRE TRANSFER**

50.

In connection with the Unauthorized Wire Transfer, Capital One improperly accepted a payment order that was not authorized and not effective as the order of JMT under La. R.S. 10:4A-202.

51.

In connection with the Unauthorized Wire Transfer, Capital One also improperly accepted a payment order that was not enforceable against JMT under La. R.S. 10:4A-203.

52.

JMT timely discovered the Unauthorized Wire Transfer and notified Capital One thereof.

53.

Under La. R.S. 10:4A-204, JMT is entitled to a refund from Capital One of the full amount of the Unauthorized Wire Transfer.

54.

Under La. R.S. 10:4A-204, JMT is entitled to interest on the refundable amount of the Unauthorized Wire Transfer from the date Capital One debited the amount of the Unauthorized Wire Transfer from the JMT Account through the date of the refund.

55.

Moreover, Capital One's improper acceptance of the Unauthorized Wire Transfer was the result of its negligence and/or was in breach of its bank/customer contract with JMT.

## COUNT II

### CAPITAL ONE IMPROPERLY ACCEPTED A PAYMENT ORDER(S) IN CONNECTION WITH THE UNAUTHORIZED ACH WITHDRAWAL

56.

In connection with the Unauthorized ACH Withdrawal, Capital One improperly accepted a payment order(s) that was not authorized and not effective as the order of JMT under La. R.S. 10:4A-202.

57.

In connection with the Unauthorized ACH Withdrawal, Capital One also improperly accepted a payment order(s) that was not enforceable against JMT under La. R.S. 10:4A-203.

58.

Capital One improperly accepted this payment order(s) in connection with the Unauthorized ACH Withdrawal six (6) days after JMT advised Capital One of the initial unauthorized transaction – specifically, the Unauthorized Wire Transfer.

59.

JMT timely discovered the Unauthorized ACH Withdrawal and notified Capital One thereof.

60.

Under La. R.S. 10:4A-204, JMT is entitled to a refund from Capital One of the full amount of the Unauthorized ACH Withdrawal less \$7,965.00, which amount Capital One credited back to the JMT Account in connection with the Unauthorized ACH Withdrawal.

61.

Under La. R.S. 10:4A-204, JMT is entitled to interest on the refundable amount of the Unauthorized ACH Withdrawal from the date Capital One debited the refundable amount of the Unauthorized ACH Withdrawal from the JMT Account through the date of the refund.

62.

Moreover, Capital One's acceptance of the Unauthorized ACH Withdrawal was the result of its negligence and/or in breach of its bank/customer contract with JMT.

### COUNT III

#### CAPITAL ONE PERMITTED UNAUTHORIZED DRAWS ON THE JMT LOC

63.

In addition to its inability to prevent, and subsequent refusal to take responsibility for, the Unauthorized Wire Transfer and the Unauthorized ACH Withdrawal that occurred more than six (6) days apart in connection with the JMT Account, Capital One also improperly drew funds on JMT's LOC to cover the unauthorized transactions and charged JMT interest in connection therewith.

64.

Capital One has refused to reimburse JMT for these interest charges and, in fact, continues to charge JMT such interest.

65.

Capital One has been unjustly enriched at the impoverishment of JMT inasmuch as Capital One has retained the benefits of these improperly charged interest payments.

JMT is thus entitled to recover all interest payments charged JMT on the funds drawn on the JMT LOC to cover the Unauthorized Wire Transfer and the Unauthorized ACH Withdrawal.

**REQUEST FOR TRIAL BY JURY**

JMT requests a trial by jury as to all claims asserted herein.

WHEREFORE, the plaintiff, JMT, prays for service of citation of this petition upon the defendant, Capital One, and that in due course there be judgment in favor of JMT and against Capital One (1) ordering Capital One to (i) refund to JMT the full amount of the Unauthorized Wire Transfer; (ii) pay JMT interest on the refundable amount of the Unauthorized Wire Transfer from the date Capital One debited the amount of the Unauthorized Wire Transfer from the JMT Account through the date of the refund; (iii) refund to JMT the full amount of the Unauthorized ACH Withdrawal less \$7,965.00, which amount Capital One credited back to the JMT Account in connection with the Unauthorized ACH Withdrawal; (iv) pay JMT interest on the refundable amount of the Unauthorized ACH Withdrawal from the date Capital One debited the refundable amount of the Unauthorized ACH Withdrawal from the JMT Account through the date of the refund; (v) refund all interest payments charged JMT on the funds drawn on the JMT LOC to cover the Unauthorized Wire Transfer and the Unauthorized ACH Withdrawal; and (vi) pay all additional amounts proven at trial; and (2) awarding JMT its attorney's fees, all costs of these proceedings, legal interest from the date of judicial demand, and any and all other general and equitable relief to which it is entitled.

By Attorneys,

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**SERVICE INFORMATION:**

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