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FILED
08 MAY -2 AM 11:17
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CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

BZ

13 CAPITAL ONE BANK (USA), N.A.,

CV 08 No.

2289

14 Plaintiff,

15 v.

16 EDMUND G. BROWN, JR., in his capacity as
Attorney General of the State of California,

18 Defendant.

COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF
(12 U.S.C. § 484; 42 U.S.C. § 1983)

19 Plaintiff Capital One Bank (USA), N.A. ("Plaintiff") alleges as follows:

20 OVERVIEW OF THE ACTION

21 1. Plaintiff brings this action to require the Attorney General of the State of California
22 (the "Attorney General") to comply with long-established federal law. The Attorney General
23 seeks to exercise rights of "visitation" over Plaintiff by demanding that Plaintiff respond to
24 information requests directed at whether their credit card marketing, advertising, issuing,
25 servicing, and related banking practices violate California or federal law. Plaintiff is a national
26 bank, and as such is an instrumentality of the federal government, authorized under the National
27 Bank Act (12 U.S.C. §§ 21 *et seq.*) to exercise enumerated and incidental powers related to the
28 business of banking. Plaintiff is subject to the exclusive visitorial power of the Office of the

1 Comptroller of the Currency (“OCC”) under the Visitorial Powers Statute, 12 U.S.C. § 484.
2 “Visitorial powers” include the power to examine books and records of a national bank, as well as
3 the power to enforce a national bank’s compliance with applicable law in the exercise of its
4 federally authorized banking functions.

5 **PARTIES**

6 2. Plaintiff Capital One Bank (USA), N.A. is a national bank organized under the
7 National Bank Act, as administered by the OCC, and is headquartered in Virginia. Capital One
8 Bank (USA), N.A. is a wholly-owned subsidiary of Capital One Financial Corporation, a publicly
9 traded company. Capital One Bank (USA), N.A. provides traditional banking services to its
10 customers, including receiving deposits, cashing checks, making loans, and extending credit
11 through credit cards. Capital One Bank (USA), N.A. was formerly chartered as Capital One
12 Bank, a Virginia general purpose bank, but on March 1, 2008, converted its charter to that of to a
13 national banking association organized under the National Bank Act. Assets and records
14 formerly owned by Capital One Bank are now owned by Capital One Bank (USA), N.A. To the
15 extent this Complaint refers to Capital One Bank (USA), N.A., that term includes Capital One
16 Bank.

17 3. Defendant Edmund G. Brown, Jr. is the Attorney General of the State of California
18 and is sued herein in his official capacity. He maintains offices at 455 Golden Gate Avenue,
19 Suite 11000, San Francisco, California.

20 **JURISDICTION AND VENUE**

21 4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.
22 § 1331, in that it arises under the Constitution and laws of the United States, including the
23 Supremacy Clause of the United States Constitution, U.S. Const. art. VI, the National Bank Act,
24 the regulations duly promulgated thereunder, and 42 U.S.C. § 1983. In addition, jurisdiction is
25 proper under 28 U.S.C. § 1343(a)(3), in order to protect federal rights and immunities that are
26 subject to deprivation under color of state law. This Court is authorized to issue a declaratory
27 judgment pursuant to 28 U.S.C. §§ 2201-02.

1 narrative description of certain credit card practices, in December, 2006. The Attorney General
2 made further requests for documents and information regarding Plaintiff's credit card lending in
3 January, 2007. Plaintiff provided further information responsive to the Attorney General's
4 demands in the fall of 2007.

5 10. The OCC acknowledged in its publicly available Weekly Bulletin for the week
6 ended September 8, 2007 that on September 4, 2007 it received from Capital One Bank an
7 application to convert its charter to that of a national bank. The OCC acknowledged in its
8 publicly available Weekly Bulletin for the week ended October 20, 2007 that it approved that
9 application on October 19, 2007.

10 11. As of March 1, 2008, Capital One Bank, a Virginia state-chartered bank, converted
11 its charter to that of a national banking association organized under the National Bank Act, as
12 administered by the OCC, and known as Capital One Bank (USA), N.A. Capital One Bank's
13 assets are now owned by Capital One Bank (USA), N.A.

14 12. On March 18, 2008, Plaintiff advised the Attorney General of its charter conversion,
15 and explained that the OCC now exercises complete and exclusive visitorial powers over
16 Plaintiff, which include the ability to inspect Plaintiff's books and records and to enforce
17 Plaintiff's compliance with applicable federal and state laws concerning its banking practices.

18 13. On April 8, 2008, the Attorney General responded by letter, making demands for
19 inspection of Plaintiff's books and records regarding its exercise of its banking powers. The
20 Attorney General also asked that "Capital One" enter into a form of tolling agreement that
21 recited:

22 The California Attorney General is conducting an inquiry into
23 [COMPANY NAME]'s practices and the Attorney General and
24 [COMPANY NAME] have begun discussions with respect to the Attorney
25 General's concerns regarding what it views as [COMPANY NAME]'s
26 possible violations of Business and Professions Code sections 17200 and
27 17500 and other possible violations of statutory and common law. The
28 Attorney General has refrained from filing any action in connection with
those concerns during the discussion.

1 The form provided for a waiver of all of "Capital One's" defenses based on delay or passage of
2 time that might be applicable with respect to "any action brought by the People based on causes
3 of action that exist on" a date to be entered into the Attorney General's form tolling agreement.

4 14. On May 2, 2008, counsel for the Plaintiff, in a telephone conference with Deputy
5 Attorney General Kathrin Sears, asked that the Attorney General withdraw both his request for
6 inspection of books and records relating to the banking business of Plaintiff and his request for a
7 tolling agreement with respect to claims against "Capital One." DAG Sears declined to withdraw
8 the Attorney General's requests.

9 **FIRST CAUSE OF ACTION**
10 **(For Injunctive Relief Based Upon**
11 **the Visitorial Powers Statute and the National Bank Act)**

12 15. Plaintiff realleges and fully incorporate by reference each of the preceding
13 paragraphs as if fully set forth herein.

14 16. The pertinent provisions of the Visitorial Powers Statute, which is part of the
15 National Bank Act, are codified at 12 U.S.C. § 484(a) and provide as follows:

16 No national bank shall be subject to any visitorial powers except as
17 authorized by Federal law, vested in the courts of justice or such as
18 shall be, or have been exercised or directed by Congress or by
19 either House thereof or by any committee of Congress or of either
20 House duly authorized.

21 17. The Comptroller of the Currency, the officer authorized by Congress to charter
22 national banks and to regulate them, is authorized by 12 U.S.C. § 93a to issue regulations with
23 respect to the National Bank Act.

24 18. The Comptroller of the Currency has issued, as part of Title 12, Chapter I, Part 7 of
25 the Code of Federal Regulations, certain regulations at section 7.4000 thereof, entitled "Visitorial
26 Powers" (the "Visitorial Powers Regulations").

27 19. In 12 C.F.R. section 7.4000(a)(1), the Visitorial Powers Regulations provide:

28 Only the OCC or an authorized representative of the OCC may
exercise visitorial powers with respect to national banks State
officials may not exercise visitorial powers with respect to national
banks, such as conducting examinations, inspecting or requiring the
production of books or records of national banks, or prosecuting
enforcement actions, except in limited circumstances authorized by
federal law.

1 consistent with the United States Constitution, the Visitorial Powers Statute, the Visitorial Powers
2 Regulations, and the National Bank Act, investigate or sue Plaintiff regarding banking activities.
3 The Attorney General contends otherwise.

4 29. Accordingly, Plaintiff prays that the Court issue a declaratory judgment that the
5 Attorney General and his agents may not, consistent with the United States Constitution, the
6 Visitorial Powers Statute, the Visitorial Powers Regulations, and the National Bank Act,
7 investigate or sue Plaintiff regarding banking activities.

8 **THIRD CAUSE OF ACTION**
9 **(For Injunctive Relief Based Upon 42 U.S.C. § 1983)**

10 30. Plaintiff realleges and fully incorporate by reference each of the preceding
11 paragraphs as if fully set forth herein.

12 31. Under federal law, including the United States Constitution (Supremacy Clause),
13 the Visitorial Powers Statute, the Visitorial Powers Regulations, the National Bank Act, and the
14 regulations duly promulgated thereunder, a national bank has the right to be free from unlawful
15 attempts to exercise visitorial powers over it and the right to be free from unlawful attempts to
16 obstruct or condition its exercise of its incidental and enumerated banking powers.

17 32. The Attorney General seeks and threatens to deprive Plaintiff of its rights to be free
18 from unlawful exercises of visitorial powers and unlawful attempts to obstruct and condition the
19 exercise of its incidental and enumerated banking powers.

20 33. The Attorney General has purported to act under color of state law.

21 34. Unless enjoined by order of this Court, the Attorney General threatens to investigate
22 or sue the Plaintiff regarding banking activities, in violation of 42 U.S.C. § 1983, under color of
23 state law, by exercising visitorial powers over Plaintiff and obstructing and conditioning its
24 exercise of incidental and enumerated powers under the National Bank Act.

25 35. Such violation of federal law by the Attorney General will inflict irreparable harm
26 on Plaintiff and will violate its legal rights under federal law.

27 36. Plaintiff has no adequate remedy at law.
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E. Such other and further relief as the Court may deem just and proper.

Dated: May 2, 2008

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