

Frequently Asked Questions

Figueroa v. Capital One, N.A.
Case No. 3:18-cv-00692-JM-BGS (S.D. Cal.)

1. Why did I receive a notice?

A Court authorized this notice because you have a right to know about the proposed Settlement of this class action lawsuit and about all your options before the Court decides whether to give Final Approval to the Settlement. This notice explains the lawsuit, the Settlement, and your legal rights.

The U.S. District Court for the Southern District of California is overseeing this case. The case is known as *Figueroa v. Capital One, N.A.*, Case No. 3:18-cv-00692-JM-BGS. The person who sued is called the “Plaintiff.” The Defendant is Capital One.

2. What is this lawsuit about?

The lawsuit claims that Capital One breached its contract with accountholders and improperly assessed and collected Out of Network ATM Balance Inquiry Fees when accountholders used an out of network ATM to conduct a balance inquiry.

The Complaint in this Action is posted on the Settlement Website, www.ATMBalanceInquiryFeeSettlement.com, and contains all of the allegations and claims asserted against Capital One. Capital One maintains it did nothing wrong but has agreed to settle the lawsuit to avoid the cost, delay, and uncertainty of litigation. The Court has not decided which side is right.

3. What is an Out of Network ATM Balance Inquiry Fee?

An Out of Network ATM Balance Inquiry Fee or “OON Balance Inquiry Fee” means the fee Capital One charged accountholders when using an ATM that is not part of Capital One’s fee-free ATM network to check an account balance. This Settlement does not relate to fees charged for cash withdrawals from out of network ATMs.

4. Why is this a class action?

In a class action, one person or a group of people, called Class Representatives (in this case, two Capital One customers who were assessed OON Balance Inquiry Fees) sued on behalf of people who have similar claims. All the people who have claims similar to the Class Representatives are members of the Settlement Class, except for those who exclude themselves from the class.

5. Why is there a Settlement?

The Court has not decided in favor of either the Plaintiff or Capital One. Instead, both sides agreed to the Settlement. By agreeing to the Settlement, the Parties avoid the costs and uncertainty of a trial, and Settlement Class Members receive the benefits described in this

Notice. The Class Representatives and their attorneys think the Settlement is best for everyone who is affected.

6. Who is included in this Settlement?

With some exceptions explained below, you are a member of the Settlement Class if you are a current or former Capital One customer who was charged an OON Balance Inquiry Fee during “the Class Period.” The Class Period means:

- a) For Settlement Class Members whose accounts were established in Louisiana: the period from April 6, 2008 to June 30, 2020;
- b) For Settlement Class Members whose accounts were established in Connecticut, New York and New Jersey: the period from April 6, 2012 to June 30, 2020;
- c) For Settlement Class Members whose accounts were established in Virginia: the period from April 6, 2013 to June 30, 2020;
- d) For Settlement Class Members whose accounts were established in Texas: the period from April 6, 2014 to June 30, 2020; and
- e) For Settlement Class Members whose accounts were established in the District of Columbia, Maryland, and Delaware: the period from April 6, 2015 to June 30, 2020.

The Class Period differs by state or district due to the relevant statutes of limitation in those states/districts. A statute of limitations is a law setting a specific period of time for the bringing of certain kinds of legal action.

Excluded from the Settlement Class is (1) Capital One, its parents, subsidiaries, affiliates, officers and directors; (2) all Settlement Class members who exclude themselves from the Settlement; and (3) all judges assigned to this litigation and their immediate family members.

7. What does the Settlement provide?

Capital One has agreed to establish a cash Settlement fund of \$13 million from which Settlement Class Members will receive payments or account credits. The amount of such payments or account credits cannot be determined at this time. However, it will be based on the number of Settlement Class Members and the amount of OON Balance Inquiry Fees each Settlement Class Member incurred. Pursuant to the Court’s approval, the Settlement Fund will also be used to pay a Service Award of up to \$10,000 for each Class Representative, attorneys’ fees awarded to Class Counsel, reimbursement of Class Counsel’s litigation expenses and costs, and Administrative Costs of the Settlement Administrator.

Any Residual Funds that are not feasible to distribute to individual Settlement Class Members will be provided to one or more charitable organization (“*cy pres*” recipients). The parties will recommend an organization or organizations with their Motion for Final Approval.

8. How do I receive a payment or Account credit?

If you are in the Settlement Class and entitled to receive a payment, you do not need to do anything to receive a payment or account credit. If the Court approves the Settlement and it becomes final and effective, you will automatically receive a payment or account credit.

Capital One will determine whether Settlement Class Members receive account credit or a payment. Payments will be issued in the form of a check made payable to the name (or names, in the case of an account held jointly) exactly as it appears on the account. Checks will be mailed to eligible Settlement Class Members' last known mailing addresses, as determined through the postcard notice mailing process or otherwise. Settlement Class Members may write to the Settlement Administrator to provide mailing address updates before the Final Approval Hearing.

Settlement Class Members not deemed to have been reached by class notice will not receive a payment or credit.

9. What am I giving up to stay in the Settlement Class?

If you stay in the Settlement Class, all the decisions by the Court will bind you, and you give Capital One a "release." A "release" means you cannot sue, continue to sue, or be part of any other lawsuit against Capital One about the legal issues in this case. Section 2.3 of the [Settlement Agreement](#) contains the release and describes the precise legal claims that you give up if you remain in the Settlement. The Settlement Agreement is available at www.ATMBalanceInquiryFeeSettlement.com.

10. How do I get out of the Settlement?

To exclude yourself from the Settlement, you must send a letter by mail that includes the following:

- Your name and Capital One account number(s);
- A dated, written statement that you want to "opt-out" or "be excluded" from the Settlement Class in *Figueroa v. Capital One, N.A.*, Case No. 3:18-cv-00692-JM-BGS and understand that you will not receive a Settlement Class Member Payment from the Settlement; and
- Your personal signature.

You must mail your exclusion request, postmarked no later than **October 26, 2020**, to:

Settlement Administrator
ATM Balance Inquiry Fee Settlement Program
P.O. Box 26387
Richmond, VA 23260

If an account has more than one accountholder, then all accountholders on that account shall be deemed to have opted-out of the Settlement with respect to that account if any

accountholder opts out of the Settlement, and no accountholder shall be entitled to a Settlement Class Member Payment.

11. If I do not exclude myself, can I sue Capital One for the same thing later?

No. Unless you exclude yourself, you give up the right to sue Capital One for the claims that the Settlement resolves. You must exclude yourself in order to try to pursue your own lawsuit.

12. If I exclude myself from the Settlement, can I still receive a payment?

No. You will not receive a payment or account credit if you exclude yourself from the Settlement.

13. Do I have a lawyer in this case?

The Court has appointed the following lawyers, known as Class Counsel, to represent you and others:

Jeffrey Kaliel Kaliel PLLC 1875 Connecticut Avenue NW 10 th Floor Washington, DC 20009	Todd D. Carpenter Carlson Lynch LLP 1350 Columbia Street Suite 603 San Diego, CA 92101
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Class Counsel will represent you and others in the Settlement Class. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

14. How will the lawyers be paid?

Class Counsel intends to request up to 30% of the Settlement Fund for attorneys' fees, plus reimbursement of their litigation expenses and costs incurred in connection with prosecuting this case. The fees and expenses awarded by the Court will be paid out of the Settlement Fund. The Court will determine the amount of fees and expenses to award. Class Counsel will make their request for attorney's fees and expenses by August 25, 2020.

Class Counsel will also request that a Service Award of up to \$10,000.00 for each Class Representative (totaling \$20,000) be paid from the Settlement Fund for their service to the entire Settlement Class. Any Service Award is subject to Court approval. The Class Representatives will make their request for a Service Award by August 25, 2020.

15. How do I tell the Court that I don't like the Settlement?

If you are a Settlement Class member and have not requested to be excluded from the Settlement Class, you can object to any part of the Settlement; the Settlement as a whole;

Class Counsel’s requests for fees, costs and expenses; and/or Class Counsel’s request for Service Awards for the Class Representatives. To object, you must submit your objection by first class mail to the Clerk of the Court, Class Counsel, and Capital One’s counsel. Your objection must include the following:

- The name and case number of this case, which is *Figueroa v. Capital One, N.A.*, Case No. 3:18-cv-00692-JM-BGS;
- Your full name, address and telephone number;
- All grounds for the objection, accompanied by citation to any relevant legal authority;
- The number of times you have objected to a class action settlement within the five years preceding the date that you file the objection, the caption of each case in which you have made such objection, and a copy of any orders or opinions related to or ruling upon the prior objections that were issued by the trial and appellate courts in each listed case;
- The identity of any counsel representing you;
- The number of times in which your counsel and/or your counsel’s law firm have objected to a class action settlement within the five years preceding the date you file the objection, the caption of each case, and a copy of any orders related to or ruling upon counsel’s or counsel’s law firm’s prior objections within the preceding five years;
- A statement confirming whether you (or your attorney) intend to personally appear and/or testify at the Final Approval Hearing; and
- Your personal signature (an attorney’s signature is not sufficient).

Your objection must be mailed to the following addresses and postmarked no later than **October 26, 2020**:

Clerk of the Court U.S. District Court for the Southern District of California 333 West Broadway, Suite 420 San Diego, CA 92101	Jeffrey D. Kaliel Kaliel PLLC 1875 Connecticut Avenue NW 10th Floor Washington, DC 20009	Hunter R. Eley Evan M. Ladd Doll Amir & Eley LLP 725 South Figueroa Street, Suite 3275 Los Angeles, CA 90017
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16. What’s the difference between objecting and excluding?

Objecting is telling the Court that you do not like something about the Settlement. You can object to the Settlement only if you do not exclude yourself from the Settlement. Excluding yourself from the Settlement is telling the Court that you don’t want to be part of the Settlement. If you exclude yourself from the Settlement, you have no basis to object to the Settlement because it no longer affects you.

17. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing at 10:00 am PT on January 11, 2021, at the United States District Court for the Southern District of California, located at 333 West

Broadway, Suite 420, San Diego, CA 92101. The hearing may be moved to a different date or time without additional notice, so it is a good idea to check the Settlement Website at www.ATMBalanceInquiryFeeSettlement.com for updates. At this hearing, the Court will consider whether the Settlement is fair, reasonable and adequate. The Court will also consider any request by Class Counsel for attorneys' fees and expenses and for the Service Awards for the Class Representatives. If there are objections, the Court will consider them at this time. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take.

18. Do I have to come to the hearing?

No. Class Counsel will answer any questions the Court may have. However, you may come at your own expense. If you send an objection, you don't have to come to Court to talk about it. Provided you submitted your written objection on time, to the proper address, and it complies with the requirements set forth above, the Court will consider it. You may also pay your own lawyer to attend, but it's not necessary.

YOU ARE **NOT** REQUIRED TO ATTEND THIS HEARING TO BENEFIT FROM THE SETTLEMENT.

19. May I speak at the hearing?

If you do not exclude yourself from the Settlement Class, you may ask the Court for permission to speak at the Final Approval Hearing concerning any part of the proposed Settlement by asking to speak in your objection by following the instructions above in Section 15.

20. What happens if I do nothing at all?

If you do nothing, you will still receive the benefits to which you are entitled, assuming you can be reached by class notice. Unless you exclude yourself, you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Capital One relating to the issues in this case.

21. How do I get more information?

This Long Form Notice summarizes the proposed Settlement. More details can be found in the Settlement Agreement. You can obtain a copy of the Settlement Agreement at www.ATMBalanceInquiryFeeSettlement.com. You may also write with questions to the Settlement Administrator, ATM Balance Inquiry Fee Settlement Program, P.O. Box 26387, Richmond, VA 23260, or call the toll-free number, 1-888-716-1219. Do not contact Capital One or the Court for information.