

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State, and address):
LAW OFFICES OF PATENAUE & FELIX, A.P.C.
 Michael R. Boulanger, (#226294) / Michael D. Kahn, (#236898) / Stephanie J. Boone, (#160182)
 Jeffrey W. Speights (#265206) / Jessica F. Flynn, (#270304)
 4545 Murphy Canyon Road, 3rd Floor, San Diego, CA 92123
 TELEPHONE NO.: (858) 244-7600 FAX NO. (Optional): (858) 836-0318
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 ATTORNEY FOR (Name): **PLAINTIFF**

FOR COURT USE ONLY

FILED
 Clerk of the Superior Court

SEP 25 2015

By: J. Pascual, Deputy

CASE NUMBER:
37-2015-00032571-CL-CL-CTL

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
 STREET ADDRESS:
 MAILING ADDRESS: 330 W BRADWAY
 CITY STATE AND ZIP CODE: SAN DIEGO CA 92101
 BRANCH NAME: SAN DIEGO CIVIL DIVISION

PLAINTIFF: **CAPITAL ONE BANK (USA), N.A.**
 DEFENDANT(S): **FRANK FOGGIANO JR,**
 and DOES 1 through 15, Inclusive

CONTRACT

COMPLAINT **AMENDED COMPLAINT (Number):**
 CROSS-COMPLAINT **AMENDED CROSS-COMPLAINT (Number)**

Jurisdiction (check all that apply):
 ACTION IS A LIMITED CIVIL CASE
 Amount demanded does not exceed \$10,000
 exceeds \$10,000 but does not exceed \$25,000
 ACTION IS AN UNLIMITED CIVIL CASE (exceeds \$25,000)
 ACTION IS RECLASSIFIED by this amended complaint or cross-complaint
 from limited to unlimited
 from unlimited to limited

1. Plaintiff* (name or names): **CAPITAL ONE BANK (USA), N.A.**

alleges causes of action against defendant(s)* (name or names): **FRANK FOGGIANO JR,**

2. This pleading, including attachments and exhibits, consists of the following number of pages: 3

3. a. Each plaintiff named above is a competent adult

except plaintiff (name): CAPITAL ONE BANK (USA), N.A.

(1) a corporation qualified to do business in California

(2) an unincorporated entity (describe):

(3) other (specify): a National Banking Association organized and existing under and by virtue of the law

of the United States of America.

b. Plaintiff (name):

a. has complied with the fictitious business name laws and is doing business under the fictitious name (specify):

b. has complied with all licensing requirements as a licensed (specify):

c. information about additional plaintiffs who are not competent adults is shown in Attachment 3c.

4 a. Each defendant(s) named above is a natural person

except defendant (name):

(1) a business organization, form unknown

(2) a corporation

(3) an unincorporated entity (describe):

(4) a public entity (describe):

(5) other (specify)

except defendant (name):

(1) a business organization, form unknown

(2) a corporation

(3) an unincorporated entity (describe):

(4) a public entity (describe):

(5) other (specify):

*If this form is used as a cross-complaint, plaintiff means cross-complainant and defendant means cross-defendant.

SHORT TITLE: CAPITAL ONE BANK (USA), N.A. VS. FRANK FOGGIANO JR,	CASE NUMBER:
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4. (Continued)

- b. The true names of defendant(s) sued as Does are unknown to plaintiff.
 - (1) Doe defendant(s) (specify Doe numbers): _____ were the agents or employees of the named defendant(s) and acted within the scope of that agency or employment.
 - (2) Doe defendant(s) (specify Doe numbers): 1 through 15 are persons whose capacities are unknown to plaintiff.
- c. Information about additional defendants who are not natural persons is contained in Attachment 4c.
- d. Defendant(s) who are joined under Code of Civil Procedure section 382 are (names):

- 5. Plaintiff is required to comply with a claims statute, and
 - a. has complied with applicable claims statutes, or
 - b. is excused from complying because (specify):

- 6. This action is subject to Civil Code section 1812.10 Civil Code section 2984.4.

7. This court is the proper court because

- a. a defendant(s) entered into the contract here.
- b. a defendant(s) lived here when the contract was entered into.
- c. a defendant(s) lives here now.
- d. the contract was to be performed here.
- e. a defendant(s) is a corporation or unincorporated association and its principal place of business is here.
- f. real property that is the subject of this action is located here.
- g. other (specify):

8. The following causes of action are attached and the statements above apply to each (each complaint must have one or more causes of action attached):

- Breach of Contract
- Common Counts
- Other (specify): Refer to Other allegation in number 9

- 9. Other allegations: Before commencement of this action, in those cases where recovery of costs is dependent on such notices, Plaintiff informed the defendant(s) in writing it intended to file this action and that this action could result in a judgment against defendant(s) that would include court costs and necessary disbursements allowed by CCP Section 1033(b)(2).

10. Plaintiff prays for judgment for costs of suit; for such relief as is fair, just, and equitable; and for

- a. damages of: \$4,235.40
- b. interest on the damages
 - (1) according to proof
 - (2) at the rate of (specify): _____ percent per year from (date):
- c. attorney's fees
 - (1) of:
 - (2) according to proof.
- d. other (specify): For such other relief as the Court deems just and fair.

- 11. The paragraphs of this pleading alleged on information and belief are as follows (specify paragraph numbers):

Date: AUG 24 2015

MICHAEL KAHN, ESQ.

(TYPE OR PRINT NAME)

(SIGNATURE OF PLAINTIFF OR ATTORNEY)

(If you wish to verify this pleading, affix a verification.)

SHORT TITLE:
CAPITAL ONE BANK (USA), N.A. vs. FRANK FOGGIANO JR,

CASE NUMBER:

FIRST

(number)

CAUSE OF ACTION—Common Counts

ATTACHMENT TO Complaint Cross-Complaint

(Use a separate cause of action form for each cause of action.)

CC-1. Plaintiff (name): CAPITAL ONE BANK (USA), N.A.

alleges that Defendant(s) (name): FRANK FOGGIANO JR,

became indebted to plaintiff other (name):

a. within the last four years

(1) on an open book account for money due.

(2) because an account was stated in writing by and between plaintiff and defendant in which it was agreed that defendant was indebted to plaintiff.

b. within the last two years four years

(1) for money had and received by defendant for the use and benefit of plaintiff.

(2) for work, labor, services and materials rendered at the special instance and request of defendant and for which defendant promised to pay plaintiff

the sum of \$

the reasonable value.

(3) for goods, wares, and merchandise sold and delivered to defendant and for which defendant promised to pay plaintiff

the sum of \$

the reasonable value.

(4) for money lent by plaintiff to defendant at defendant's request.

(5) for money paid, laid out, and expended to or for defendant at defendant's special instance and request.

(6) other (specify): This cause of action is based upon account number XXXXXXXXXXXXXXX7137 for the sum by which Defendant has been unjustly enriched by virtue of Defendant receiving monetary or other benefit, by Defendant knowingly requesting the funds at issue and/or accepting the benefits bestowed. It is inequitable for Defendant to retain said benefits without repaying Plaintiff the value thereof.

CC-2. \$4,235.40, which is the reasonable value, is due and unpaid despite plaintiff's demand, plus prejudgment interest according to proof at the rate of _____ percent per year from (date):

CC-3. Plaintiff is entitled to attorney fees by an agreement or a statute

of \$

according to proof.

CC-4. Other: For such other and further relief as the Court deems just and fair.

PATENAUDE & FELIX, APC
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11 Attorneys for Plaintiff
12 CAPITAL ONE BANK (USA), N.A.

13 SUPERIOR COURT OF CALIFORNIA
14 COUNTY OF SAN DIEGO, SAN DIEGO CIVIL DIVISION

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

Case No.

Plaintiff,

DECLARATION RE: VENUE

v.

16 FRANK FOGGIANO JR,
17 and DOES 1 through 15 inclusive,

Defendant(s).

18 I, Michael Kahn, do hereby declare:

19 1. That I am the attorney at law, duly licensed to practice before all Courts in the state of
20 California.

21 2. I am an associate with the Law Offices of Patenaude & Felix, APC, counsel of record
22 for Plaintiff herein.

23 3. I make this Declaration based on my personal knowledge, except for those items
24 which are stated to be based on my information and belief. If called to testify I could, and would,
25 competently testify to the matters contained herein, based upon my personal knowledge, except for
26 that which is stated to be based on my information and belief, and with the respect to those items, I
27 believe them to be true.

28 ///

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4. Based on the information in this office's file, this is the proper Judicial District because at least one Defendant resides in this Judicial District.

5. This Action is not subject to California Civil Code section 1812.10 or California Civil Code section 2984.4.

6. This Action is subject to California Code of Civil Procedure section 392 *et seq.*

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on AUG 24 2015, San Diego, California.



MICHAEL KAHN, ESQ.