

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

IN RE CAPITAL ONE CUSTOMER
DATA SECURITY BREACH LITIGATION

MDL No. 1:19-md-2915 (AJT/JFA)

**This Document Relates ONLY to the following
Case:**

MARCUS MINSKY, Individually and on Behalf
of All Others Similarly Situated,

Plaintiff,

Case No. 1:19-cv-1472 (AJT)

v.

CAPITAL ONE FINANCIAL
CORPORATION, RICHARD FAIRBANK,
ROBERT ALEXANDER, and MICHAEL
JOHNSON,

Defendants.

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS'
MOTION TO DISMISS THE AMENDED CLASS ACTION COMPLAINT**

TABLE OF CONTENTS

I. INTRODUCTION 1

II. SUMMARY OF PLAINTIFF’S ALLEGATIONS..... 2

 A. The Parties 2

 B. Capital One’s Well-Publicized “Information-Based” Business Strategy 3

 C. The Criminal Cyber-Theft Of Certain Capital One Data In
 The Cyber Incident 4

 D. Plaintiff’s Claims and Allegations 5

III. LEGAL STANDARDS 6

IV. ARGUMENT 7

 A. Plaintiff Fails To Plead That The Challenged Statements Were
 False, Misleading, Or Otherwise Actionable Under Section 10(b). 7

 1. The Legal Obligations/Industry Practices Statements 7

 2. The Risk Factor Statements 16

 3. The Digital Transformation Statements 18

 4. The Priority Statements 19

 5. Defendants’ Consumer-Facing And Technical Statements
 Were Not Made “In Connection With” The Purchase Or Sale Of
 Securities 22

 B. Plaintiff’s Allegations Fail To Raise A Strong Inference Of Scienter 23

 1. Plaintiff’s Allegations About Defendants’ Positions And
 Alleged Access To Internal Information Are Insufficient. 24

 2. The “Former Employee” (“FE”) Allegations Fail To Support
 A Strong Inference Of Scienter 26

 3. Plaintiff’s Other Allegations Fail To Raise The Required
 Strong Inference. 29

V. CONCLUSION 30

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>In re 2007 Novastar Fin. Inc., Sec. Litig.</i> , 579 F.3d 878 (8th Cir. 2009)	16
<i>Allen v. Administrative Review Bd.</i> , 514 F.3d 468 (5th Cir. 2008)	18
<i>In re Alphabet, Inc. Sec. Litig.</i> , No. 4:18-cv-06245 (N.D. Cal. Feb. 5, 2020)	21, 22
<i>In re Cable & Wireless, PLC</i> , 321 F. Supp. 749 (E.D. Va. 2004)	13
<i>In re Citigroup, Inc. Sec. Litig.</i> , 330 F. Supp. 2d 367 (S.D.N.Y. 2004).....	9
<i>City of Pontiac Gen. Employees’ Ret. Sys. v. Stryker Corp.</i> , 865 F. Supp. 2d 811 (W.D. Mich. 2012)	27
<i>In re Computer Sciences Corp. Sec. Litig.</i> , 890 F. Supp. 2d 650 (E.D. Va. 2012)	30
<i>Doyun Kim v. Advanced Micro Devices, Inc.</i> , No. 5:18-cv-00321-EJD, 2019 WL 2232545 (N.D. Cal. May 23, 2019)	17
<i>In re DRDGOLD Ltd. Sec. Litig.</i> , 472 F. Supp. 2d 562 (S.D.N.Y. 2007).....	28
<i>Druskin v. Answerthink, Inc.</i> , 299 F. Supp. 2d 1307 (S.D. Fla. 2004)	29
<i>Dura Pharms., Inc. v. Broudo</i> , 544 U.S. 336 (2005).....	6
<i>In re First Union Corp. Sec. Litig.</i> , 128 F. Supp. 2d 871 (W.D.N.C. 2001)	11
<i>In re Genworth Fin. Inc. Sec. Litig.</i> , 103 F. Supp. 3d 759 (E.D. Va. 2015)	24
<i>In re Heartland Payment Systems, Inc. Sec. Litig.</i> , Civ. No. 09-1043, 2009 WL 4798148 (D.N.J. Dec. 7, 2009).....	9, 10, 21

..

Howard v. Arconic Inc.,
395 F. Supp. 3d 516 (W.D. Pa. 2019).....22, 23

Inst’l Invs. Grp. v. Avaya, Inc.,
564 F.3d 242 (3d Cir. 2009).....27

In re Intel Corp. Sec. Litig.,
No. 18-cv-00507-YGR, 2019 WL 1427660 (N.D. Cal. Mar. 29, 2019).....16, 23

Juntti v. Prudential-Bache Sec., Inc.,
993 F.2d 228 (4th Cir. 1993)30

Kiken v. Lumber Liquidators Holdings, Inc.,
155 F. Supp. 3d 593 (E.D. Va. 2015)29

Lerner v. Northwest Biotherapeutics,
273 F. Supp. 3d 573 (D. Md. 2017)26

In re LifeLock, Inc. Sec. Litig.,
690 F. App’x 947 (9th Cir. 2017)23

Longman v. Food Lion, Inc.,
197 F.3d 675 (4th Cir. 1999)13, 21

Maguire Fin., LP v. PowerSecure Int’l, Inc.,
876 F.3d 541 (4th Cir. 2017)6, 24

Matrix Capital Management Fund, LP v. BearingPoint, Inc.,
576 F.3d 172 (4th Cir. 2009)30

In re Neustar Sec.,
83 F. Supp. 3d 671 (E.D. Va. 2015)21

Nolte v. Capital One Fin. Corp.,
390 F.3d 311 (4th Cir. 2004)19, 20

Oklahoma Firefighters Pension & Ret. Sys. v. K12, Inc.,
66 F. Supp. 3d 711 (E.D. Va. 2014)9, 14

Ong v. Chipotle Mexican Grill, Inc.,
294 F. Supp. 3d 199 (S.D.N.Y. 2018).....19, 22

In re PEC Sols. Sec. Litig.,
2004 WL 1854202 (E.D. Va. May 25, 2004)12

Phillips v. Triad Guar. Inc.,
No. 1:09-CV-71, 2015 WL 1457980 (M.D.N.C. Mar. 30, 2015).....16, 29

...

Pipefitters Local No. 636 Defined Ben. Plan v. Tekelec,
 No. 5:11-CV-4-D, 2013 WL 1192004 (E.D.N.C. March 22, 2013).....27, 30

S.E.C. v. Pirate Inv’r LLC,
 580 F.3d 233 (4th Cir. 2009)22, 23

*Schwab v. E*Trade Fin. Corp.*,
 285 F. Supp. 3d 745 (S.D.N.Y. 2018).....26

SEC v. Rana Research, Inc.,
 8 F.3d 1358 (9th Cir. 1993)23

SEC v. Tex. Gulf Sulphur Co.,
 401 F.2d 833 (2d Cir. 1968).....22

Singh v. Cigna Corp.,
 918 F.3d 57 (2d Cir. 2019).....14, 21, 22

Smith v. Circuit City Stores, Inc.,
 286 F. Supp. 2d 707 (E.D. Va. 2003)26

In re Target Corp. Sec. Litig.,
 275 F. Supp. 3d 1063 (D. Minn. 2017).....10

Teachers’ Ret. Sys. of La. v. Hunter,
 477 F.3d 162 (4th Cir. 2007)24, 27, 30

Teamsters Local 210 Affiliated Tr. Fund v. Neustar, Inc.,
 No. 1:17-cv-1145-AJT-JFA, 2019 WL 693276 (E.D. Va. Feb. 19, 2019).....14

Teamsters Local 445 Freight Div. Pension Fund v. Dynex Capital Inc.,
 531 F.3d 190 (2d Cir. 2008).....25

Tellabs, Inc. v. Makor Issues & Rights, Ltd.,
 551 U.S. 308 (2007).....7

In re Under Armour Sec. Litig.,
 342 F. Supp. 3d 658 (D. Md. 2018)28

Veal v. LendingClub Corp.,
 No. 18-cv-02599-BLF, 2019 WL 5698072 (N.D. Cal. Nov. 4, 2019)17

Weil v. Dominion Resources, Inc.,
 875 F. Supp. 331 (E.D. Va. 1994)21

Yates v. Mun. Mortgage & Equity, LLC,
 744 F.3d 874 (4th Cir. 2014)24, 29, 30

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.