IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

IN RE: CAPITAL ONE CONSUMER DATA SECURITY BREACH LITIGATION	)))	MDL No. 1:19md2915 (AJT/JFA)

This Document Relates to the Consumer Cases

PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL AND TO DIRECT NOTICE OF PROPOSED SETTLEMENT TO THE CLASS

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Following more than two years of intense litigation, and correspondingly hard-fought settlement negotiations, the Parties[1] have reached a Settlement to resolve consumer claims arising from the Data Breach announced by Capital One in July 2019. The Settlement creates a non-reversionary common fund of $190 million to pay benefits to Settlement Class Members, including cash compensation for Out-of-Pocket Losses fairly traceable to the Data Breach; cash compensation for Time Spent dealing with issues arising from the Data Breach; at least three years of Identity Defense Services designed to help detect and remediate potential identity theft and fraud; and at least three years of Restoration Services including access to fraud resolution specialists to assist with identity theft issues, for all Settlement Class Members, regardless of whether they make a claim. Further, as part of the Settlement, Capital One is committing to implement and maintain, for at least two years, significant Business Practice Changes designed to improve its cybersecurity, enforceable in this Court through agreed injunctive relief. Finally, the Settlement Fund will be used to pay additional necessary benefits, including a state-of-the-art notice and administration program, and, as approved by the Court, service awards to the Settlement Class Representatives and other plaintiffs who were deposed during discovery and attorneys' fees and expenses.

The Settlement is a tremendous result for the Settlement Class, securing valuable benefits tailored to the facts of the case developed during full discovery, through a Settlement fund that is one of the largest created in any MDL data breach litigation. The Settlement is fair, reasonable, and adequate and meets the requirements of Rule 23(e). Plaintiffs thus move for an order

[1] The parties to the settlement are the consumer Settlement Class Representatives, on behalf of the proposed Settlement Class, and Defendants Capital One Financial Corporation, Capital One Bank (USA) N.A., and Capital One, N.A. (collectively, "Capital One"). Capitalized terms used in this memorandum have the same meaning as in the Settlement Agreement and the proposed Consumer Settlement Benefits Plan.

preliminarily approving the Settlement and directing class notice, and scheduling a Final Approval Hearing. In support of their motion, Plaintiffs submit the Settlement Agreement (Ex. 1 hereto); the proposed Consumer Settlement Benefits Plan (Ex. 2); a proposed Preliminary Approval Order (Ex. 3); the declaration of Class Counsel (Ex. 4); the declaration of Cameron R. Azari, Esq. on behalf of the proposed Notice Provider and Settlement Administrator (Epiq Class Action & Claims Solutions, Inc.), including the Notice Plan (Ex. 5); the proposed Notices (Ex. 6); the proposed Claim Form (Ex. 7); and the declaration of Gerald Thompson on behalf of the proposed provider of Identity Defense and Restoration Services (Pango) (Ex. 8).

FACTUAL BACKGROUND

A. Overview of the Litigation

On July 29, 2019, Capital One announced that the sensitive personal information of approximately 98 million Americans who had applied for Capital One credit cards had been stolen by a malicious criminal hacker from Amazon's AWS cloud where Capital One stored this information (the "Data Breach"). Affected individuals across the country immediately began filing class action lawsuits against Capital One and Amazon. Ultimately, more than 60 such lawsuits were filed. In October 2019, the Judicial Panel on Multidistrict Litigation consolidated and transferred these lawsuits to this Court.

On December 2, 2019, after review of over 30 applications for plaintiffs' counsel leadership, the Court appointed the undersigned counsel as Plaintiffs' Lead Counsel and Local Counsel. Doc. 210, Pretrial Order #3. Plaintiffs' Lead Counsel immediately began preparation of a detailed proposed discovery plan, exchanged initial written discovery with Capital One, reached agreement on a proposed schedule for the litigation, negotiated an ESI protocol and crafted and negotiated search terms for ESI discovery, and negotiated a protective order. Docs. 270, 312, 329.

On March 2, 2020, after extensive factual investigation and legal research and the vetting and selection of appropriate, dedicated named plaintiffs ("Representative Plaintiffs"), plaintiffs filed a 91-page Representative Complaint, which the Court approved (Doc. 302) as the vehicle for litigating the plaintiffs' claims (the "Representative Complaint"). The Representative Complaint named Representative Plaintiffs from the states of California, Florida, New York, Texas, Virginia, and Washington, asserting representative common law claims on behalf of a nationwide class against Capital One and Amazon for negligence, negligence *per se*, unjust enrichment, breach of express and implied contract, and declaratory judgment, and state statutory claims under state data breach notification and consumer protection statutes on behalf of state subclasses. Doc. 332, Doc. 354 (corrected).[2]

On April 10, 2020, Capital One and Amazon each filed motions to dismiss the Representative Complaint in its entirety. Docs. 386, 389. Defendants' primary focus in these motions was arguing that Representative Plaintiffs had not alleged legally-cognizable harms arising out of the Data Breach or that Defendants were not the proximate cause of any such harms. Defendants further argued that Virginia law does not recognize a duty of care in tort to safeguard personal information. Docs. 387, 390. Plaintiffs filed extensive opposition briefs and the motions were fully briefed in just over one month. *See* Docs. 426, 427 (Plaintiffs' Memoranda in Opposition); Docs. 463, 464 (Defendants' Replies).

[2] During the next few months, three of the Representative Plaintiffs voluntarily dismissed their claims, primarily due to exigent circumstances created by COVID-19, without prejudice to their ability to submit claims as absent class members (Docs. 399, 436, 852) and two new Representative Plaintiffs were substituted, ultimately resulting in the eight current Representative Plaintiffs who are the Settlement Class Representatives under the settlement. Doc. 971 (Second Amended Representative Complaint).

On May 27, 2020, the Court heard nearly five hours of oral argument on Defendants' motions to dismiss. *See* Doc. 494. On September 18, 2020, the Court issued an extensive ruling largely denying the motions. Doc. 879. However, extensive briefing related to Representative Plaintiffs' allegations continued for months thereafter. On October 2, 2020, Capital One asked the Court to reconsider one of its rulings—that the Representative Plaintiffs had sufficiently alleged Capital One assumed a duty of care to them in tort under Virginia law, and alternatively asked the Court to certify this question to the Virginia Supreme Court. Doc. 916. Plaintiffs submitted opposition briefing, and the Court denied the motion for reconsideration. Doc. 934 (Plaintiffs' Opposition); Doc. 951 (Joinder by Amazon); Doc. 965 (Capital One's Reply); Doc. 1059 (Order denying). Later, after concluding Virginia law applied as to all Representative Plaintiffs' common law claims (Doc. 1293; Doc. 879 at 9), the Court granted Capital One's request to certify the question of tort duty to the Virginia Supreme Court (Doc. 1291). The Virginia Supreme Court subsequently declined to accept the certified question. Doc. 1380. On October 16, 2020, Defendants each filed Answers. Docs. 953, 955. On October 30, 2020, Capital One moved for judgment on the pleadings on Representative Plaintiffs' unjust enrichment and implied contract claims (Doc. 996), which Plaintiffs opposed. Doc. 1032 (Plaintiffs' Opposition); Doc. 1060 (Capital One's Reply). After a hearing, the Court denied the motion. Doc. 1096 (12/09/2020 Hr'g Tr.); Doc. 1290 (Order denying).

Meanwhile, as motion practice related to Representative Plaintiffs' allegations was underway and the global COVID-19 pandemic forced the case to be litigated remotely, Plaintiffs were engaged in a massive, time-consuming discovery effort. Plaintiffs served several rounds of written discovery on Defendants and eighteen third-party subpoenas, including six subpoenas to former Capital One employees, and reviewed over 350,000 documents produced by Defendants

and nearly 7,500 documents produced by third parties. *See* Class Counsel Decl., Ex. 4, ¶ 20. Plaintiffs also took 33 depositions of Defendants' fact witnesses, 13 depositions of Defendants' Rule 30(b)(6) witnesses, and two third-party depositions. *Id.* In addition, Plaintiffs answered Defendants' written discovery requests, which involved searches of Plaintiffs' electronic documents in addition to the collection and review of physical documents. Plaintiffs ultimately produced nearly 1,750 documents totaling over 7,500 pages in 54 document productions after collecting and reviewing over 145,000 documents from 24 custodians. *Id.* ¶ 21. Furthermore, discovery involved the completion and collection of a verified "Fact Sheet," including ten pages of questions and eight document requests, to MDL Plaintiffs. Ultimately, 101 MDL Plaintiffs submitted verified Fact Sheets and responsive documents, while 147 MDL Plaintiffs chose to dismiss their pending complaints.[3] *Id.* In May 2020, each of the Representative Plaintiffs sat for remote depositions. In addition, Defendants deposed ten additional MDL Plaintiffs. *Id.* ¶ 22.

Expert discovery was similarly intensive. Beginning in August 2019, Plaintiffs engaged numerous experts, including five disclosed testifying experts, to develop opinions for class certification and trial. Dr. Stuart E. Madnick, of the Massachusetts Institute of Technology, rendered opinions as to the mechanism and root causes of the Data Breach, how the Data Breach should have been prevented, and how the risk of further breaches can be mediated going forward. Kevin Mitnick, an expert in "black hat" and "white hat" hacking, explained how the types of personal information stolen in the Data Breach are misused to cause harm and the present risk of continuing harm to victims of the Data Breach. Gary Olsen, a CPA and appraisal expert, and Terry Long, an actuary, developed opinions relating to Representative Plaintiffs' and class members'

[3] Of the 101 MDL Plaintiffs who submitted verified Fact Sheets and documents, an additional 32 eventually chose to dismiss their pending complaints.

damages. Brian Kelley gave opinions concerning the relation between and among Capital One's contracts with applicants and cardholders, Capital One's cybersecurity policies and practices, and legal and regulatory requirements governing Capital One's protection of customer personal information. These experts were ultimately disclosed, with full reports, on March 21, 2021. Several of them also drafted supplemental or rebuttal reports, and all sat for at least one deposition. Both Defendants designated numerous experts as well, who also drafted expert reports and who were also deposed. *Id.* ¶ 23.

The case also involved significant motion practice before Judge Anderson related to discovery, some of which resulted in favorable rulings for Plaintiffs and the production of important documents for Plaintiffs' case. The discovery battles included several rounds of motions regarding Capital One's assertion of the bank examination privilege over thousands of documents, which involved contested briefing and argument from the Office of the Comptroller of the Currency. *Id.* ¶ 24.

After discovery closed in late 2020 and expert disclosures were completed in the spring of 2021, on April 28, 2021, Plaintiffs filed their Motion for Class Certification, seeking certification of a nationwide class of approximately 98 million Americans. Docs. 1259, 1261. This motion was fully briefed on June 18, 2021. *See* Doc. 1443 (Capital One's Opposition); Doc. 1435 (Amazon's Opposition); Doc. 1558 (Plaintiffs' Reply as to Capital One); Doc. 1571 (Plaintiffs' Reply as to Amazon). Defendants each filed several *Daubert* challenges related to Plaintiffs' class certification motion, which Plaintiffs opposed, and which were fully briefed by July 2, 2021. Docs. 1389, 1390, 1394, 1395, 1397, 1398, 1427, 1428, 1431, 1432 (Defendants' motions to exclude and memoranda in support); Docs. 1528, 1534, 1540, 1546, 1552 (Plaintiffs' Oppositions); Docs. 1607, 1609, 1611,

1633, 1647 (Defendants' Replies). Plaintiffs also moved to exclude one of Capital One's experts related to Plaintiffs' Motion for Class Certification. Docs. 1559-60.

During the briefing on class certification, Capital One challenged the Court's jurisdiction over the case, arguing no Representative Plaintiff could prove their harms were caused by Capital One. Capital One contended Representative Plaintiffs could not prove the known hacker, Paige Thompson, further disseminated the personal information stolen in the Data Breach before her arrest. Docs. 1385-86 (challenging the Court's jurisdiction to adjudicate Plaintiffs' tort and statutory claims). Capital One's jurisdictional challenge ultimately resulted in several rounds of briefing in which plaintiffs vigorously opposed the very premise of Capital One's contention that the Court's jurisdiction to adjudicate the case depended on the resolution of what were undisputedly merits issues. Doc. 1502 (Plaintiffs' Opposition); Doc. 1513 (Capital One's Reply); Doc. 1653 (Capital One's Supplemental Memorandum regarding *Transunion v. Ramirez*); Doc. 1721 (Plaintiffs' Response); Doc. 1727 (Amazon's Joinder); Doc. 1780 (Capital One's Supplemental Brief challenging the Court's jurisdiction to adjudicate Plaintiffs' contract and unjust enrichment claims); Doc. 1871 (Plaintiffs' Response); Doc. 1921 (Capital One's Reply); Docs. 2041, 2042, 2052, 2074, 2075, 2138, 2150, 2151 (filings related to supplemental authorities regarding jurisdictional challenge).

The Court held a two-day hearing on July 12 and 13, 2021 on Plaintiffs' Motion for Class Certification, the various related *Daubert* challenges, and Capital One's challenge to the Court's jurisdiction to adjudicate Representative Plaintiffs' tort and statutory claims. Docs. 1745, 1747; Docs. 1901-1902 (7/12-13/21 Hr'g Tr.). Soon thereafter, briefing on dispositive motions commenced. On June 3, 2021, Capital One filed its motion for summary judgment seeking judgment on each of Representative Plaintiffs' claims on several bases. Capital One's principal

argument was that Representative Plaintiffs could not prove they were harmed by Capital One because they could not prove the hacker, Paige Thompson, further disseminated the personal information stolen in the Data Breach before her arrest. Docs. 1460, 1463. Plaintiffs filed extensive opposition briefing, contending there was substantial evidence from which a jury could conclude Plaintiffs' personal information was further disseminated beyond Thompson and that they had suffered compensable damages resulting from Capital One's failure to protect their personal information. Doc. 1807. On July 2, 2021, Representative Plaintiffs moved for partial summary judgment on their claims for breach of express and implied contract against Capital One. Docs. 1646, 1649. On the same day, Amazon moved for summary judgment on each of Representative Plaintiffs' claims, arguing it owed no duty of care to them and that it could not be liable to them for unjust enrichment and under the asserted state statutes, to which plaintiffs submitted a detailed opposition. Docs. 1678, 1693, 1820.

The summary judgment motions were fully briefed on August 23, 2021. Capital One and Amazon also filed additional *Daubert* motions in connection with summary judgment, which plaintiffs opposed. Docs. 1658, 1675, 1828, 1840. Plaintiffs also filed a motion to exclude the testimony of one of Capital One's experts related to summary judgment. Docs. 1638, 1640. These *Daubert* motions were also fully briefed on August 23, 2021. On September 30, 2021, the Court held a full-day summary judgment hearing, including additional argument on Capital One's jurisdictional challenge. Doc. 2027; 9/30/21 Hr'g Tr. At the time of settlement, the motions for class certification, summary judgment, and to exclude expert testimony were submitted to the Court and under advisement.

B. Mediation and Settlement

Parallel to their litigation of the Actions, the Parties engaged in arm's-length settlement

negotiations beginning in March 2020. The negotiations were first overseen by former United States District Court Judge Layn R. Phillips and later overseen by United States District Judge Leonie M. Brinkema. The Parties engaged in four mediation sessions, on March 21, 2020, November 18, 2020, April 16, 2021, and August 3, 2021, with Judge Brinkema presiding over the last three conferences. The Parties also engaged in private and joint communications with Judge Brinkema to advance and resolve particular issues that arose in these negotiations and on December 17, 2021, the Parties executed a binding term sheet, to be superseded by the Settlement Agreement. Ex. 4, ¶ 30. The Settlement Agreement provides that Class Counsel shall seek Court approval of a Consumer Settlement Benefits Plan (Exhibit 2 hereto) describing the benefits available to Settlement Class Members and the process and timing for claiming such benefits. Ex. 1, § 8.1.

While the negotiations were professional throughout, they were marked by significant factual and legal disputes impacting the value of the case. From Plaintiffs' perspective, the hard work through discovery and motion practice framed the key issues for both sides, positioned the case for settlement, and—with Judge Brinkema's assistance—the Parties were able to reach a resolution. At all times the negotiations were made at arm's length, and free of collusion of any kind. Attorneys' fees, expenses, and the subject of service awards were not discussed in any manner until the Parties had reached agreement on the material terms of the Settlement, including the payment of the Settlement Fund. Ex. 4, ¶ 31.

C. The Terms of the Proposed Settlement

The following are the material terms of the Settlement:

1. The Settlement Class

The proposed Settlement Class is defined as follows:

The approximately 98 million U.S. residents identified by Capital One whose

information was compromised in the Data Breach that Capital One announced on July 29, 2019, as reflected in the Class List.

Excluded from the Settlement Class are (i) Capital One, any entity in which Capital One has a controlling interest, and Capital One's officers, directors, legal representatives, Successors, Subsidiaries, and assigns; (ii) any judge, justice, or judicial officer presiding over the Action and the members of their immediate families and judicial staff; and (iii) any individual who timely and validly opts out of the Settlement Class. Ex. 1, § 2.39.

2. The Settlement Fund

Capital One will pay $190 million into a Settlement Fund for class benefits, notice and administration costs, fees, expenses, and service awards to the Settlement Class Representatives. *Id.*, § 3. No proceeds will revert to Capital One. *Id.* The specific benefits available to Settlement Class Members are detailed in the proposed Consumer Settlement Benefits Plan (Ex. 2), and include:

- Reimbursement for up to $25,000 in "Out-of-Pocket Losses", which are verifiable unreimbursed costs or expenditures that a Settlement Class Member actually incurred and believes are fairly traceable to the Data Breach. Out-of-Pocket Losses may include, without limitation, the following:
    - unreimbursed costs, expenses, losses or charges incurred as a result of identity theft or identity fraud, falsified tax returns, or other alleged misuse of a Settlement Class Member's personal information;
    - costs incurred on or after March 22, 2019, associated with placing or removing a credit freeze on a Settlement Class Member's credit file with any credit reporting agency;
    - other miscellaneous expenses incurred on or after March 22, 2019, related to any Out-of-Pocket Loss such as notary, fax, postage, copying, mileage, and long-distance telephone charges;
    - costs of credit reports, credit monitoring, or other products related to detection or remediation of identity theft incurred on or after March 22, 2019, through the date of the Settlement Class Member's claim submission.

- Compensation for "Lost Time", which is time spent remedying fraud, identity theft, or other misuse of a Settlement Class Member's personal information that the Settlement Class Member believes is fairly traceable to the Data Breach and time spent taking preventative measures to avoid such losses. Lost Time will be paid at the "Reimbursement Rate", which shall be the greater of $25 per hour, or, if the Settlement Class Member took time off work at the Settlement Class Member's documented hourly wage.

    - Lost Time related to a qualifying claim for Out-of-Pocket losses may be supported by a certification for up to 15 hours.

    - Lost Time not related to a qualifying claim for Out-of-Pocket losses but incurred as a result of fraud, identity theft or other misuse, or incurred taking preventative measures to avoid fraud, identity theft or other misuse may be supported by a certification for up to 5 hours.

- At least three years of Identity Defense Services provided by Pango. This service is designed to help detect and remediate potential identity theft and fraud, and includes:

    - Dark web monitoring for your Social Security number, date of birth, address, driver's license number, passport number;

    - Identity monitoring with authentication alerts;

    - Lost wallet protection;

    - Security freeze capability in multiple categories: Credit – Experian, Equifax, TransUnion and Innovis; Specialty Finance – Sage Stream, Clarity DATAX and CoreLogic; Closed Checking and Savings accounts – Chex Systems; and Utilities – NCTUE;

    - $1 million in no-deductible insurance covering costs related to identity theft or fraud;

    - U.S.-based customer support specially trained in identity theft and fraud discovery and remediation; and

    - Insight and tips for members on a user dashboard.

- Additionally, for the approximately 200,000 Settlement Class Members whose Social Security number or linked bank account number was impacted in the Data Breach, the offered Identity Defense Services also include industry-leading credit monitoring, including three-bureau credit monitoring with instant alerts and a monthly credit score.

- Further, Pango will make available to all Settlement Class Members, even those who do not enroll in Identity Defense Services or do not submit a claim, access to

> fraud resolution and identity restoration support ("Restoration Services") for at least three years. This coverage is a separate benefit and permits all Settlement Class Members to have access to Pango's U.S.-based fraud resolution specialists who can assist with important tasks such as placing fraud alerts with the credit bureaus, disputing inaccurate information on credit reports, scheduling calls with creditors and other service providers, and working with law enforcement and government agencies to dispute fraudulent information.

Ex. 2 and Thompson Decl., Ex. 8. The retail cost of buying the same Identity Defense Services would be $180.00 per person for three years of the standard service and $540.00 per person for three years of the service including three-bureau credit monitoring with instant alerts and a monthly credit score. *See* Ex. 8.

Settlement Class Members will have 90 days after the Notice Date to claim payment for Out-of-Pocket Losses and Lost Time. Settlement Class Members are also strongly encouraged to claim Identity Defense Services during the 90-day claims period. However, Settlement Class Members may later enroll in Identity Defense Services directly with Pango during the period of the service, even if they did not make a claim for the service during the Claims Period. No claim is necessary to access Restoration Services, which are available to all Settlement Class Members. *See* Ex. 8.

The Consumer Settlement Benefits Plan provides that if valid claims exceed the Net Settlement Fund, payments for Out-of-Pocket Losses and Lost Time will be reduced on a *pro rata* basis. Ex. 2, ¶ 7.a. If the Net Settlement Fund is not exhausted, the remainder will first be used to purchase up to two years of additional Identity Defense Services and Restoration Services (and to pay any attendant expenses to provide notice of such extended period for Identity Defense Services and Restoration Services) and second will be used to increase payments to Settlement Class Members submitting valid claims on a pro-rated basis. *Id.* ¶ 7.b.

3. Proposed Injunctive Relief—Business Practice Changes

Capital One has also agreed to at least two years of Business Practice Changes and commitments to improve its cybersecurity through the implementation of a Cyber Event Action Plan. During the discovery phase of the case, a significant effort was targeted at developing an understanding of the root cause of the Data Breach and the vulnerabilities which were exploited by the hacker. Moreover, Plaintiffs' discovery efforts, assisted by consultation with experts, provided Class Counsel with a firm understanding of the improvements and remediation necessary to protect the information of Class Members from further exposure and loss to cyber criminals. With Class Counsel's experience in litigating numerous data breach cases and armed with the information gained during discovery, and with the assistance of cybersecurity experts, Class Counsel were able to negotiate valuable agreed Business Practice Changes, which are detailed in Ex. 2 to the Settlement Agreement (Ex. 1) and ¶ 39 of Class Counsel's declaration (Ex. 4).

4. Proposed Notice and Claims Program

Class Counsel have retained, and request that the Court appoint, Epiq Class Action & Claims Solutions, Inc. and its affiliate Hilsoft Notifications (together "Epiq") as Settlement Administrator to provide notice to class members and to process claims. The Notice Plan designed by Epiq satisfies the "best notice practicable" standard pursuant to Rule 23 of the Federal Rules of Civil Procedure by drawing on the most up-to-date techniques used in commercial advertising to inform the class and stimulate participation. Ex. 5. The Notice Plan includes dissemination of individual notice by email or postcard wherever possible. The total potential Settlement Class size is approximately 98 million people, and contact information (to provide individual notice) is available for virtually all Settlement Class members. The individual notice effort alone is likely to reach at least 90% of the Settlement Class (and likely higher). In addition, internet sponsored search listings will provide additional notice exposures. In Class Counsel's experience, and

according to Epiq, the reach of the Notice Plan meets that of other court-approved notice programs, and has been designed to meet due process requirements, including the "desire to actually inform" requirement. The Notice Plan is thus the best notice practicable under the circumstance of this case. Ex. 5, ¶¶ 43-46; Ex. 4, ¶¶ 40-41.

The claims process similarly draws upon the most up-to-date techniques to facilitate participation, including a link to a Settlement website in all emails and digital advertising; the ability to file claims electronically or by mail; and a call-center via a toll-free number to assist class members in filing claims. Epiq, the proposed Settlement Administrator, is a widely-regarded expert with the experience and capability to handle a case of this magnitude. Ex. 5, ¶¶ 4-8, 10-18, 23-39; Ex. 4, ¶¶ 40-41.

5. Attorneys' Fees and Expenses and Service Awards

Class Counsel may separately move for a fee of up to 35% of the Settlement Fund and reimbursement of litigation expenses. Class Counsel may also request service awards of up to $5,000 each for the 8 Settlement Class Representatives and the 10 other MDL Plaintiffs who were deposed by Capital One. Capital One takes no position on these requests. Class Counsel will move for fees, expenses, and service awards at least 21 days before the Objection Deadline. Ex. 4, ¶ 43.

6. Releases

The Settlement Class will release Capital One and Amazon from claims that were or could have been asserted in this case. The releases are detailed in the Settlement Agreement. Ex. 1, § 14.

ARGUMENT

I. ARTICLE III STANDING

As a preliminary consideration, the Court has an initial obligation to assure itself of the Plaintiffs' "standing under Article III," which "extends to court approval of proposed class action settlements." *Frank v. Gaos*, 139 S. Ct. 1041, 1046 (2019) (per curiam). The Court does not have

the power "to approve a proposed class settlement if it lacks jurisdiction over the dispute, and federal courts lack jurisdiction if no named plaintiff has standing." *Id.* "On the other hand, only one named plaintiff must have standing as to any particular claim in order for it to advance." *In re Equifax Inc. Customer Data Sec. Breach Litig.*, 999 F.3d 1247, 1261 (11th Cir. 2021), *cert. denied sub nom. Huang v. Spector*, 142 S. Ct. 431 (2021), *and cert. denied sub nom. Watkins v. Spector*, No. 21-638, 2022 WL 89334 (U.S. Jan. 10, 2022). The Court need not determine whether absent settlement class members have standing to have jurisdiction to approve a settlement. *J.D. v. Azar*, 925 F.3d 1291, 1324 (D.C. Cir. 2019); *see also Hutton v. Nat'l Bd. of Exam'rs in Optometry, Inc.*, 892 F.3d 613, 620 (4th Cir. 2018) (In a class action, "we analyze standing based on the allegations of personal injury made by the named plaintiffs.") (internal quotation marks omitted). Thus, to assure itself of its jurisdiction to approve the Settlement, the Court must find that at least one Settlement Class Representative has "(1) suffered an injury-in-fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Hutton*, 892 F.3d at 619 (citation omitted).

The Court should readily conclude that it has jurisdiction over the Settlement because the Settlement Class Representatives have established standing to sue. As just one example, Settlement Class Representative Gary Zielicke has presented evidence from which a reasonable factfinder could conclude that he suffered fraud using his personal information stolen in the Data Breach. Doc. 1807 at Appendix 1 (summarizing evidence for Mr. Zielicke and other Settlement Class Representatives). Fraud resulting from a data breach is an injury in fact that is traceable to the breached defendant and is redressable by a federal court. *See Hutton*, 892 F.3d at 622-24. Mr. Zielicke also incurred costs to mitigate the fraud and prevent additional fraud (*see* Doc. 1807 at Ex. BB), which also provides standing. *Hutton*, 892 F.3d at 622; *see also TransUnion LLC v.*

Ramirez, 141 S. Ct. 2190, 2204 (2021) ("If a defendant has caused . . . monetary injury to the plaintiff, the plaintiff has suffered a concrete injury in fact under Article III.").

In addition, Capital One has stipulated that its Privacy Notice contains one or more express contractual provisions covering Capital One's obligations with respect to safeguarding personal information. Doc. 1098. The Settlement Class Representatives have presented evidence from which a reasonable factfinder could conclude that Capital One breached one or more of these contractual obligations related to data security as to all Settlement Class Members, resulting in the theft of their and every Settlement Class Member's personal information in the Data Breach. Doc. 1649. Further, Settlement Class Representatives have presented evidence supporting their alternative claim that Capital One breached an implied contract with Settlement Class Representatives and Settlement Class Members to provide reasonable data security. *Id.* Either is sufficient to provide standing to the Settlement Class Representatives and thus to invoke the Court's subject matter jurisdiction to approve the Settlement.[4] *See L-3 Commc'ns Corp. v. Serco, Inc.*, 673 F. App'x 284, 289 (4th Cir. 2016) ("[B]y alleg[ing] the existence of a contract, express or implied, and a concomitant breach of that contract, [the plaintiff's] complaint adequately show[ed] an injury to her rights for purposes of standing.") (citation and quotations omitted); *see also id.* ("[W]hether a plaintiff ultimately recovers the damages he seeks is a question better left to the applicable substantive law rather than a standing inquiry under Article III.") (citation and quotations omitted).

[4] Because Article III standing exists for the contract and implied contract claims, the Court need not reach the standing question with respect to the other claims.

II. THE COURT SHOULD DIRECT NOTICE TO THE SETTLEMENT CLASS

When binding absent class members—as contemplated by the Settlement here—the Court "must direct notice in a reasonable manner to all class members who would be bound by the proposal if giving notice is justified by the parties' showing that the court will likely be able to (i) approve the proposal under Rule 23(e)(2)" by finding that the Settlement is "fair, reasonable, and adequate"; and (ii) "certify the class for purposes of judgment on the proposal." Fed. R. Civ. P. 23(e)(1)-(2). In determining whether a settlement is fair, reasonable, and adequate, the Court must consider whether:

> (A) the class representatives and class counsel have adequately represented the class;
>
> (B) the proposal was negotiated at arm's length;
>
> (C) the relief provided for the class is adequate, taking into account:
>
> > (i) the costs, risks, and delay of trial and appeal;
> >
> > (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
> >
> > (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
> >
> > (iv) any agreement required to be identified under Rule 23(e)(3); and
>
> (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2).

The Court's Rule 23(e) obligations are addressed with a "two-level analysis." *In re The Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 254 (E.D. Va. 2009). To determine whether a settlement is fair, the Court considers the four factors set forth by the Fourth Circuit in *Jiffy Lube*: "(1) the posture of the case at the time settlement was proposed; (2) the extent of discovery that had been conducted; (3) the circumstances surrounding the negotiations; and (4) the experience of counsel." *In re Jiffy Lube Securities Litigation*, 927 F.2d 155, 158-59 (4th Cir. 1991). To determine whether

a settlement is adequate, the courts also look to: "(1) the relative strength of the plaintiffs' case on the merits, (2) the existence of any difficulties of proof or strong defenses the plaintiffs are likely to encounter if the case goes to trial, (3) the anticipated duration and expense of additional litigation, (4) the solvency of the defendants and the likelihood of recovery on a litigated judgment, and (5) the degree of opposition to the settlement." *Id*.

Evaluation under these enumerated factors confirms that the proposed Settlement is fair, adequate, and reasonable; accordingly, the Court should issue notice of the Settlement to the Settlement Class.

A. The Class Was Adequately Represented.

"[T]he adequacy requirement is met when: (1) the named plaintiff does not have interests antagonistic to those of the class; and (2) plaintiff's attorneys are qualified, experienced, and generally able to conduct the litigation." *Brown v. Transurban USA, Inc.*, 318 F.R.D. 560, 567 (E.D. Va. 2016) (citation omitted). Here, the Settlement Class Representatives have the same interests as other class members as they are asserting the same claims and share the same injuries. Further, the Court has already recognized Class Counsel's experience and qualifications in appointing them to lead this litigation and the record shows Class Counsel worked diligently to litigate and ultimately bring this case to resolution. Ex. 4, ¶¶ 3-31; *see also In re: Lumber Liquidators Chinese-Manufactured Flooring Prod. Mktg., Sales Practices & Prod. Liab. Litig.*, 952 F.3d 471, 485 (4th Cir. 2020) (finding counsel's experience in complex civil litigation supported fairness of settlement).

B. The Proposed Settlement Was Negotiated at Arm's Length.

The Court can safely conclude this Settlement was negotiated at arm's length, without collusion, based on the terms of the Settlement itself; the Parties' vigorous pursuit of fact and

expert discovery and briefing and argument of numerous legal issues; the length and difficulty of the negotiations; and the involvement of two experienced mediators, including Judge Brinkema. *See In re NeuStar, Inc. Sec. Litig.*, No. 1:14–CV–885(JCC/TRJ), 2015 WL 5674798, at *10 (E.D. Va. Sept. 23, 2015) (adversarial encounters support a finding of arms' length negotiations). This factor supports a finding that the Court will likely be able to finally approve the Settlement.

C. The Relief is Fair, Reasonable, and Adequate.

The relief offered to Class Members in the proposed Settlement is more than adequate under the factors outlined in Rule 23(e)(2)(C). Settlement Class Members are entitled to benefits that are tailored to the relief sought through the litigation: recovery of up to $25,000 in Out-of-Pocket Losses; payment for Lost Time spent dealing with the Data Breach; at least three years of Identity Defense Services to help detect and remediate potential identity theft and fraud; and at least three years of Restoration Services including access to U.S.-based specialists in fraud resolution and identity restoration available to all Settlement Class Members without making a claim. Capital One's agreed Business Practice Changes are likewise an important benefit flowing to Settlement Class Members, whose sensitive personal information may still reside at Capital One.

Class Counsel, a group with extraordinary experience in leading major data breach class actions, strongly believe that the relief is fair, reasonable, and adequate. Ex. 4, ¶¶ 3-10. The Court may rely upon such experienced counsel's judgment. *See, e.g.*, *Nelson v. Mead Johnson & Johnson Co.*, 484 F. App'x 429, 434 (11th Cir. 2012) ("Absent fraud, collusion, or the like, the district court should be hesitant to substitute its own judgment for that of counsel.") (quotation omitted).

That the relief is fair, reasonable, and adequate is further confirmed by considering the four specific factors enumerated in Rule 23(e)(2).

1. The costs, risk, and delay of trial and appeal.

Plaintiffs faced significant risks and costs should they continue to litigate the case. First, there was a risk that Plaintiffs' claims would not have survived, or survived in full, on a class-wide basis after a ruling on the fully briefed and argued motion for class certification, motions for summary judgment, *Daubert* motions on damages methodologies and other issues, and challenges to the existence of a tort duty under Virginia law. Second, if Plaintiffs had prevailed on their pending motion for class certification and successfully defeated Defendants' pending motions thus proceeding to trial, Plaintiffs still would have faced significant risk, cost, and delay including likely interlocutory and post-judgment appeals.

In contrast to the risk, cost, and delay posed by the pending motions and possible appeals and trial, the proposed Settlement provides certain, substantial, and immediate relief to the proposed Settlement Class without delay. It ensures that Settlement Class Members with valid claims for Out-of-Pocket Losses or Lost Time will receive guaranteed compensation now, and provides Settlement Class Members with access to Identity Defense Services and Restoration Services, benefits that may not have been available at trial. It also requires injunctive relief that will help protect Class Member data from potential subsequent exposure.

The substantial costs, risk, and delay of a trial and appeal support a finding that the proposed Settlement is adequate.

2. The method of distributing relief is effective.

The proposed distribution process will be efficient and effective. The available relief is detailed clearly in the Notice, which will be provided to all Settlement Class Members and lays out the benefits to which they are entitled, including benefits provided regardless of whether a Settlement Class Member files a claim.

As an initial matter, noticing the Settlement Class of the available relief will be efficient and effective. The proposed Notice Plan includes dissemination of individual notice by email or postcard wherever possible. The total potential Settlement Class size is approximately 98 million people, and contact information (to provide individual notice) is available for virtually all Settlement Class members. The Settlement Administrator expects that the individual notice effort alone will reach at least 90% of the Settlement Class (and likely higher). Ex. 5, ¶ 20. In addition, supplemental internet sponsored search listings will provide additional notice exposures.

Therefore, Settlement Class Members will receive effective and efficient notice of the three categories of relief, which will be distributed as follows:

First, Settlement Class Members are entitled to make claims online via the Settlement website or by mail for reimbursement for Out-of-Pocket Losses, such as fraudulent expenses or charges, and compensation for a certain number of hours of "Lost Time" spent remedying fraud, identity theft, or other misuse of personal information. *See* Ex. 6, Long Form Notice. Settlement Class Members need only submit a claim form on the website or by mail accompanied by reasonable documentation showing the claimed expenses to establish Out-of-Pocket Losses, or a self-certification of their Lost Time. *See* Ex. 2. If a claim is rejected for any reason, there is also a consumer-friendly appeals process whereby claimants will have the opportunity to cure any deficiencies in their submission or request an automatic appeal if the Settlement Administrator determines a claim is deficient in whole or part. *Id.* at ¶ 9.

Second, Settlement Class Members will be entitled to at least three years of Identity Defense Services provided by Pango, to help detect and remediate potential identity theft and fraud. Settlement Class Members need only visit the Settlement website and sign-up via an online

form in order to claim this benefit. And even if a Settlement Class Member does not initially claim Identity Defense Services, they can later enroll directly with Pango during the period of the service.

Third, for at least three years all Settlement Class Members will be entitled to utilize Restoration Services offered through Pango, regardless of whether they submit a claim for losses or enroll in Identity Defense Services. *Id*. at ¶¶ 2, 5. This coverage is a separate benefit and permits all Settlement Class Members to have access to U.S.-based fraud resolution specialists who can assist with important tasks such as placing fraud alerts with the credit bureaus, disputing inaccurate information on credit reports, scheduling calls with creditors and other service providers, and working with law enforcement and government agencies to dispute fraudulent transactions or credit applications.

Because Settlement Class Members may make claims through a simple online form or by mail—and have the benefit of additional services for which they need take no action, including the Restoration Services detailed above as well as the business practices Capital One has agreed to—the method of distributing the relief is both efficient and effective, and the proposed Settlement is adequate under this factor.

3. The terms relating to attorneys' fees are reasonable.

Class Counsel will request a fee expressed as a percentage of the value conferred by the Settlement on the Settlement Class, and for reimbursement of expenses incurred in prosecuting and settling this case. Ex. 1, § 19. Where, as here, a class settlement creates a non-reversionary common fund, fees are awarded on a "percentage of the fund" approach. *See, e.g.*, *Transurban*, 318 F.R.D. at 575. Under the Settlement Agreement, Plaintiffs' request for Attorneys' Fees and Expenses must be filed with the Court at least 21 days before the Objection deadline. Ex. 1, § 19.1. In the settlement negotiations, attorneys' fees were not discussed in any manner until the Parties had reached agreement on the material terms of the Settlement, including the amount of the

Settlement Fund. Ex. 4, ¶ 42. Capital One has agreed not to oppose any request for fees not in excess of 35 percent of the common fund, Ex. 1, § 19.2, but the ultimate fee award will be determined in the discretion of the Court based on an application to the Court based on Fourth Circuit law with the opportunity for comment from Settlement Class Members.

Importantly, the Settlement Agreement is not conditioned upon the Court's approval of the fee award. Ex. 1, § 19.3. Accordingly, at this stage, the Court can and should conclude that it is likely to approve the Settlement for purposes of sending notice to the Settlement Class, even if it has not yet concluded whether and in what amount it would award attorneys' fees and expenses.[5] The proposed Settlement is adequate under this factor.

4. Any agreement required to be identified under Rule 23(e)(3).

Rule 23(e) mandates that "[t]he parties seeking approval must file a statement identifying any agreement made in connection with the proposal," and that the Court must then take into account any such agreements when determining whether the relief provided in the settlement is adequate. *See* Fed. R. Civ. P. 23(e)(2)-(3). As is common in consumer class settlements, the Parties have entered into a confidential supplemental agreement establishing the opt-out threshold above which Capital One may terminate the Settlement Agreement. The Parties will submit *in camera* or seek leave to file under seal with the Court this confidential supplemental agreement with access limited to the Parties' counsel.

This factor weighs in favor of finding that the Proposed Settlement is adequate.

[5] Similarly, Class Counsel will request service awards of $5,000 for each of the Settlement Class Representatives and other MDL Plaintiffs who were deposed in this case. Service awards of this size are reasonable. *See In re: Lumber Liquidators Chinese-Manufactured Flooring Durability Mktg.*, No.115MD2627AJTTRJ, 2020 WL 5757504, at *3 (E.D. Va. Sept. 4, 2020) (granting service award of $5,000). The Settlement Agreement is not conditioned on the Court's approval of this request. Ex. 1, § 18.3.

D. The Proposed Settlement Treats Class Members Equitably.

Finally, the proposed Settlement treats all class members equitably relative to each other. Fed. R. Civ. P. 23(e)(2)(D). All Settlement Class Members will have the same opportunity to file a claim for Out-of-Pocket Losses and Lost Time; this means that monetary compensation will be apportioned in accordance with each claimant's injury. In the event claims exceed the available funds, all claims will be reduced *pro rata*, with no Settlement Class Member obtaining any greater relative benefit over another. This factor likewise supports a finding that the Court will be able to approve the proposed Settlement, and that class notice is appropriate.

III. THE PROPOSED SETTLEMENT CLASS MEETS THE REQUIREMENTS FOR CERTIFICATION.

To issue notice, the Court should decide it will "likely be able to . . . certify the class for purposes of judgment." Fed. R. Civ. P. 23(e)(1)(B); *Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 620 (1997). Such a decision should not be difficult here. Settlement classes are routinely certified in similar consumer data breach cases. *See, e.g., Abubaker v. Dominion Dental USA, Inc.*, No. 1:19-cv-01050, 2021 WL 6750844 (E.D. Va. Nov. 19, 2021) (Brinkema, J.); *Hutton v. Nat'l Bd. of Examiners in Optometry, Inc.*, No. 1:16-c-03025, 2019 WL 3183651 (D. Md. July 15, 2019); *In re: Equifax Inc. Customer Data Security Breach Litig.*, No. 1:17-md-2800, 2020 WL 256132 (N.D. Ga. March 17, 2020)), *aff'd in relevant part* 999 F.3d 1247 (11th Cir. 2021), *cert. denied sub nom. Huang v. Spector*, 142 S. Ct. 431 (2021), *and cert. denied sub nom. Watkins v. Spector*, No. 21-638, 2022 WL 89334 (U.S. Jan. 10, 2022); *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299 (N.D. Cal. 2018). There is nothing different about this case, which is demonstrated by examining the requirements of Rule 23(a) and (b).[6]

[6] There exists a fulsome record supporting class certification. *See* Docs. 1259, 1261 (Plaintiffs' motion for class certification and memorandum in support); Doc. 1557 (Plaintiffs' reply in support of class certification).

A. The Rule 23(a) Requirements Are Satisfied.

Numerosity: The proposed Settlement Class consists of approximately 98 million U.S. residents, indisputably rendering individual joinder impracticable. *See Jeffreys v. Commc'ns Workers of Am. AFL–CIO*, 212 F.R.D. 320, 322 (E.D. Va. 2003) (noting that "where the class numbers twenty-five or more, joinder is generally presumed to be impracticable").

Commonality: "Commonality requires the plaintiff to demonstrate that the class members have suffered the same injury" such that all their claims "can productively be litigated at once." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349-350 (2011) (internal citations omitted). This requires that the determination of the common question "will resolve an issue that is central to the validity of each one of the claims in one stroke." *Id.* at 350 "Even a single common question will do." *Id.* at 359 (internal quotations omitted). All Settlement Class Members suffered the same injury—theft of their personal data in the Data Breach—and are asserting the same legal claims. Accordingly, common questions of law and fact abound. *See, e.g.*, *Dominion*, 2021 WL 6750844, at *3; *Equifax*, 2020 WL 256132, at *11-12; *Anthem*, 327 F.R.D. at 309.

Typicality: Typicality under Rule 23(a)(3) requires an inquiry into the "representative parties' ability to represent a class . . . ." *Deiter v. Microsoft Corp.*, 436 F.3d 461, 466 (4th Cir. 2006). "The premise of the typicality requirement is simply stated: as goes the claim of the named plaintiff, so go the claims of the class." *Broussard v. Meineke Disc. Muffler Shops, Inc.*, 155 F.3d 331, 340 (4th Cir. 1998) (citation and quotations omitted). In other words, the "plaintiff's claim cannot be so different from the claims of absent class members that their claims will not be advanced by plaintiff's proof of his own individual claim." *Deiter*, 436 F.3d at 466-67. This requirement is readily satisfied in data breach cases. The Settlement Class Representatives' claims are typical of other Settlement Class Members because they arise from the same Data Breach and

involve the same overarching legal theories, including the theories that Capital One breached its contracts with Settlement Class Representatives and class members and failed in its common-law duty to protect their personal information. *See, e.g.*, *Dominion*, 2021 WL 6750844, at *3; *Equifax*, 2020 WL 256132, at *12.

Adequacy of Representation: "The adequacy inquiry . . . serves to uncover conflicts of interest between named parties and the class they seek to represent." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625 (1997). Settlement Class Representatives do not have any interests antagonistic to other class members and have retained lawyers who are abundantly qualified and experienced, satisfying the adequacy requirement. Ex. 4, ¶¶ 3-9, 50.

B. The Rule 23(b)(3) Requirements Are Satisfied

Rule 23(b)(3) requires that "questions of law or fact common to class members predominate over any questions affecting only individual members," and that class treatment is "superior to other available methods for fairly and efficiently adjudicating the controversy." One part of the superiority analysis—manageability—is irrelevant for purposes of certifying a settlement class. *Transurban*, 318 F.R.D. at 569.

Predominance: Rule 23(b)(3)'s predominance requirement tests whether a proposed class is "sufficiently cohesive to warrant adjudication by representation." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 623 (1997). The predominance inquiry measures the relative weight of the common questions as against individual ones. *Amchem*, 521 U.S. at 624. "If the 'qualitatively overarching issue' in the litigation is common, a class may be certified notwithstanding the need to resolve individualized issues." *Soutter v. Equifax Info. Servs., LLC*, 307 F.R.D 183, 214 (E.D. Va. 2015) (citing *Ealy v. Pinkerton Gov't Servs.*, 514 F. App'x 299, 305 (4th Cir. 2013)). Common liability issues often predominate where class members "all assert injury from the same action."

Gray v. Hearst Commc'ns, Inc., 444 F. App'x 698, 701–02 (4th Cir. 2011); *see also Stillmock v. Weis Markets, Inc.*, 385 F. App'x 267, 273 (4th Cir. 2010) (finding common issues predominated where class members were exposed to "the identical risk of identity theft in the identical manner by the repeated identical conduct of the same defendant.").

Here, as in other data breach cases, common questions predominate because all claims arise out of a common course of conduct by Capital One. *See, e.g.*, *Dominion*, 2021 WL 6750844, at *3; *Equifax*, 2020 WL 256132, at *13; *Anthem,* 327 F.R.D. at 311-16. The focus on a defendant's security measures in a data breach class action "is the precise type of predominant question that makes class-wide adjudication worthwhile." *Anthem*, 327 F.R.D. at 312. Further, the Court previously found that Virginia law applies across all common law claims, e.g., Plaintiffs' claims for breach of contract (Doc. 879 at 9) and Plaintiffs' tort and quasi-contract claims (Doc. 1293), such that any "variations in state law will not predominate over the common questions." *Equifax*, 2020 WL 256132, at *13.

Superiority: "[T]he purpose of the superiority requirement is to assure that the class action is the most efficient and effective means of resolving the controversy . . . ." 7AA Charles Wright, Arthur Miller & Mary Kay Kane, *Federal Practice and Procedure* § 1779 (3d ed. 2005). Litigating the same claims of 98 million Americans through individual litigation would obviously be inefficient. The superiority requirement thus is satisfied. *See Equifax*, 2020 WL 256132, at *14; *Anthem,* 327 F.R.D. at 315-16.

IV. THE COURT SHOULD APPROVE THE CONSUMER SETTLEMENT BENEFITS PLAN.

The Consumer Settlement Benefits Plan was designed by Class Counsel to equitably distribute cash and other relief to Settlement Class Members. The Plan is based in large part on Class Counsel's experience in scores of privacy and data breach class actions, and reflects iterated

improvements from the settlements of the largest data breach MDLs to date. The Plan includes guidance for the Settlement Administrator in reviewing claims, specific mechanisms to address instances where the Settlement Fund is either depleted or has a remainder, and a simple and fair appeal process for disallowed claims. Plaintiffs request that the Court approve the Consumer Settlement Benefits Plan (Exhibit 2) and direct that Class Counsel and the Administrator implement the Plan according to its own terms and the Settlement Agreement.

V. THE COURT SHOULD APPROVE THE NOTICE PLAN, NOTICES, AND CLAIM FORM, AND APPOINT THE SETTLEMENT ADMINISTRATOR.

To satisfy the requirements of both Rule 23 and due process, Rule 23(c)(2)(B) provides that, "[f]or any class certified under Rule 23(b)(3), the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). Rule 23(e)(1) similarly requires that notice be reasonably disseminated to those who would be bound by the court's judgment. Fed. R. Civ. P. 23(e)(1). The best practicable notice is that which is "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

Plaintiffs request that the Court appoint Epiq as the Settlement Administrator and approve the Notice Plan submitted by Epiq. *See* Ex. 5. The Notice Plan is uncomplicated. Capital One will generate and provide to Epiq a Class List within 30 days of the Preliminary Approval Order. Ex. 1, § 10.2. Using the information in that list, Epiq will provide direct notice by email or, as necessary, mailed postcard. Combined with other supplemental notice methods, Epiq expects the notice to reach at least 90% of the identified Settlement Class Members, easily meeting the requirements of Rule 23 and due process. Ex. 5, ¶20; *see, e.g.*, Federal Judicial Center, "Judges'

Class Action Notice and Claims Process Checklist and Plain Language Guide" (2010) (recognizing the effectiveness of notice that reaches between 70 and 95 percent of the class). When implemented, the Notice Plan will provide the best notice practicable under the circumstances. Ex. 5, ¶¶ 19-47; Ex. 4, ¶¶ 40-41.

The Court should also approve the proposed forms of notice attached as Exhibit 6 ("Notices"), which satisfy all of the criteria of Rule 23. The Notices are clear, straightforward, and provide persons in the proposed Settlement Class with enough information to evaluate whether to participate in the Settlement. Ex. 5, ¶¶ 40-41. The Notices also advise the proposed Settlement Class how to exclude themselves from the Settlement, and how to object to the Settlement, including the requested attorney fees and costs. Thus, the Notices satisfy the requirements of Rule 23. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985) (explaining a settlement notice must provide settlement class members with an opportunity to present their objections to the settlement).

Finally, the Court should approve the Claim Form attached as Exhibit 7. The Claim Form is written in plain language and can be submitted online or printed and mailed to the Settlement Administrator. Ex. 5, ¶¶ 37, 40-42.

VI. THE COURT SHOULD APPOINT THE PROVIDER OF IDENTITY DEFENSE SERVICES AND RESTORATION SERVICES.

Plaintiffs request that the Court appoint Intersections, LLC d/b/a Pango ("Pango") as the provider of Identity Defense Services and Restoration Services under the Consumer Settlement Benefits Plan. Pango has broad experience in providing its services to individuals, large companies, and in servicing large and small data breach populations, including in class action settlements. Pango's qualifications and services are detailed in the Declaration of Gerald Thompson, attached as Exhibit 8.

VII. THE COURT SHOULD APPOINT CLASS COUNSEL.

When certifying a class, Rule 23 requires a court to appoint class counsel that will fairly and adequately represent the class members. Fed. R. Civ. P. 23(g)(1)(B). In making this determination, the Court considers counsel's work in identifying or investigating potential claims; experience in handling class actions or other complex litigation and the types of claims asserted in the case; knowledge of the applicable law; and resources committed to representing the class. Fed. R. Civ. P. 23(g)(1)(A)(i–iv).

The Court previously appointed Norman E. Siegel, Karen Hanson Riebel, and John A. Yanchunis as Plaintiffs' Co-Lead Counsel. Doc. 210 (Pretrial Order #3 Appointing Plaintiffs' Lead Counsel); *see also* Doc. 136 (Siegel application and qualifications); Doc. 135 (Riebel); Doc. 140 (Yanchunis); Ex. 4, ¶¶ 3-9 (summary of qualifications and experience). Throughout this case, Lead Counsel have demonstrated the hard work, legal scholarship, experience, and resources they bring to bear, ultimately resulting in the Settlement now before the Court. The Court should thus appoint them as Class Counsel under Rule 23(g).

CONCLUSION

For the reasons set forth set forth above, Plaintiffs request the Court enter the order proposed by the Parties directing the Settlement Class be notified of the proposed Settlement in the manner set forth in the Notice Plan and schedule a Final Approval Hearing.

APPENDIX A – TIMELINE OF SETTLEMENT EVENTS

For convenience, proposed dates and deadlines leading to a Final Approval Hearing are provided below and in the proposed order separately submitted to the Court.

ACTION	DATE
Defendants Provide Class Member List	Within 30 days following entry of Order Directing Notice
Notice Date	105 days following entry of Order Directing Notice
Proof of Notice Submitted	At least 10 days prior to the Final Approval Hearing
Motion for Attorneys' Fees, Expenses, and Service Awards to the Plaintiffs	21 days prior to the Objection Deadline
Exclusion / Opt-Out Deadline	45 days after Notice Date
Objection Deadline	45 days after Notice Date
Final Approval Brief and Response to Objections Due	At least 10 days prior to the Final Approval Hearing
Final Approval Hearing	(To be scheduled no earlier than 175 days after entry of Preliminary Approval Order)
Deadline to Submit Claims	90 days after Notice Date

Dated: January 31, 2022

Respectfully Submitted,

/s/ *Steven T. Webster*

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Plaintiffs' Lead Counsel

CERTIFICATE OF SERVICE

I hereby certify that on January 31, 2022, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notice of electronic filing to all counsel of record.

/s/ *Steven T. Webster*
Steven T. Webster (VSB No. 31975)
WEBSTER BOOK LLP

EXHIBIT 1

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

IN RE: CAPITAL ONE CONSUMER DATA SECURITY BREACH LITIGATION	)	MDL No. 1:19md2915 (AJT/JFA)

This Document Relates to CONSUMER Cases

SETTLEMENT AGREEMENT AND RELEASE

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SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release is made as of January 31, 2022 by and between, as hereinafter defined, (a) the Settlement Class Representatives,[1] on behalf of themselves and the Settlement Class, and (b) Capital One. This Agreement fully and finally compromises and settles any and all claims that are, were, or could have been asserted in the litigation styled *In re: Capital One Consumer Data Security Breach Litigation*, No. 1:19-md-02915-AJT-JFA (E.D. Va.).

1. Recitals

1.1. On July 29, 2019, Capital One announced that it had been the victim of a criminal cyberattack in which the attacker was able to gain unauthorized access to information relating to approximately 98 million individuals in the United States stored in Capital One's cloud environment hosted by Amazon.

1.2. After the announcement of the Data Breach, multiple putative class action lawsuits were filed against Capital One and Amazon, alleging that Capital One had breached contracts it had with consumers and that both Capital One and Amazon were negligent, had failed to properly protect personal information in accordance with their duties, had inadequate data security, were unjustly enriched by the use of personal data of the impacted individuals, violated certain state consumer statutes and other laws, and improperly delayed notifying potentially impacted individuals.

1.3. On October 2, 2019, the U.S. Judicial Panel on Multidistrict Litigation transferred more than 20 putative class action lawsuits related to the Data Breach to the Honorable Anthony J. Trenga in the Alexandria Division of the United States District Court for the Eastern District of Virginia for coordinated pretrial proceedings.

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[1] All capitalized terms are defined in Section 2 below.

1.4. Additional lawsuits against Capital One and Amazon were also transferred to, filed in, or otherwise assigned to the Court and included in coordinated pretrial proceedings as part of *In re: Capital One Consumer Data Security Breach Litigation*, No. 1:19-md-02915-AJT-JFA (E.D. Va.).

1.5. On December 2, 2019, the Court appointed Class Counsel and authorized them to litigate all pretrial proceedings and to conduct settlement negotiations on behalf of plaintiffs and absent putative class members that now comprise the Settlement Class.

1.6. On March 2, 2020, Class Counsel filed a representative consumer class action complaint in the Action. Capital One and Amazon each moved to dismiss that complaint, and the Court granted in part and denied in part those motions by order dated September 18, 2020.[2] Class Counsel amended the representative complaint on September 7, 2020 and October 23, 2020 to substitute certain of the Settlement Class Representatives. Each of the Settlement Class Representatives is named in the operative Complaint. Defendants denied all wrongdoing, that the Settlement Class Representatives had suffered the damages they claimed, and that the Actions were suitable for class treatment.

1.7. Throughout 2020 and into 2021, Defendants and the Settlement Class Representatives engaged in far-reaching fact discovery. Such discovery included extensive written discovery, more than 60 depositions, and the production of hundreds of thousands of documents spanning millions of pages. Defendants and the Settlement Class Representatives litigated numerous discovery motions.

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2 Though GitHub, Inc. was named as a defendant in certain of the Actions, only Capital One and Amazon were named as Defendants in the operative Complaint.

1.8. In the early months of 2021, the Parties engaged in expert discovery. Capital One, Amazon, and the Settlement Class Representatives served four, two, and five expert reports, respectively, and each disclosed testifying expert sat for a deposition.

1.9. Expert discovery was followed by comprehensive class certification, dispositive, and *Daubert* motions practice, and those motions were heard by the Court over several days of oral argument.

1.10. Parallel to their litigation of the Action, the Parties engaged in arm's-length settlement negotiations beginning in March 2020. The negotiations were first overseen by former United States District Court Judge Layn R. Phillips and later overseen by United States District Court Judge Leonie M. Brinkema. The Parties engaged in four mediation sessions, on March 21, 2020, November 18, 2020, April 16, 2021, and August 3, 2021, with Judge Brinkema presiding over the last three conferences. Informal settlement discussions between the Parties were conducted in addition to these mediation sessions. The Parties engaged in private and joint communications with Judge Brinkema to assist on particular issues that arose in these negotiations, and, on December 17, 2021, the Parties executed a binding term sheet, to be superseded by this Agreement.

1.11. The Parties recognize the expense and length of proceedings necessary to continue litigation of the Action through further motion practice, trial, and any possible appeals. The Parties have taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation. The Parties are also aware of the burdens of proof necessary to establish liability and damages for the claims alleged in the Action and the defenses thereto. Based upon their investigation, discovery, and motion practice, as set forth above, the Parties have determined that the settlement set forth in this Agreement is in their

respective best interests and that the Agreement is fair, adequate, and reasonable. The Parties have therefore agreed to settle the claims asserted in the Action pursuant to the terms and provisions of this Agreement.

1.12. It is the intention of the Parties to resolve the disputes and claims which they have between them on the terms set forth below.

NOW, THEREFORE, in consideration of the promises, covenants, and agreements herein described and for other good and valuable consideration acknowledged by each of the Parties to be satisfactory and adequate, and intending to be legally bound, the Parties do hereby mutually agree as follows:

2. Definitions

As used in all parts of this Agreement, including the recitals above, and the exhibits hereto, the following terms have the meanings specified below:

2.1. "Action" or "Actions" means all the actions listed in Exhibit 1, which are cases that have been filed in, transferred to, or otherwise assigned to the Court and included in multidistrict litigation proceeding captioned *In re: Capital One Customer Data Security Breach Litigation*, Case No. 1:19-md-02915-AJT-JFA. The definition of "Action" or "Actions" does not include the case styled *Minsky v. Capital One Financial Corporation et al.*, Case No. 1:19-cv-01472 (AJT) (E.D. Va.).

2.2. "Administrative Costs" means all reasonable costs and expenses incurred by the Settlement Administrator in carrying out its duties under this Agreement.

2.3. "Affiliate" means, with respect to any Entity, any other Entity that directly or indirectly controls or is controlled by, or is under common control with, such Entity. For purposes of this definition, "control" when used with respect to any Entity means an ownership interest of at least twenty-five percent (25%) and/or the power to direct the management and policies of such

Entity, directly or indirectly, whether through the ownership of voting securities, by contract, or otherwise.

2.4. "Agreement" or "Settlement Agreement" means this Settlement Agreement and Release and all of its attachments and exhibits, which the Parties understand and agree set forth all material terms and conditions of the Settlement of the Action between them and which is subject to approval by the Court.

2.5. "Amazon" means Amazon.com, Inc. and Amazon Web Services, Inc.

2.6. "Attorneys' Fees" means the attorneys' fees that Class Counsel request the Court to approve for payment from the Settlement Fund as compensation for Class Counsel's work in prosecuting and settling the Action.

2.7. "Business Days" means Monday, Tuesday, Wednesday, Thursday, and Friday, excluding holidays observed by the U.S. federal government.

2.8. "Business Practice Changes" means the measures provided for in Exhibit 2 to this Agreement.

2.9. "Capital One" means Capital One Financial Corporation, Capital One Bank (USA), National Association, and Capital One, National Association.

2.10. "Capital One's Counsel" means Capital One's counsel of record in the Action from the law firms of King & Spalding LLP and Troutman Pepper Hamilton Sanders LLP.

2.11. "Class Counsel" means Norman E. Siegel of Stueve Siegel Hanson LLP, Karen Hanson Riebel of Lockridge Grindal Nauen P.L.L.P., and John A. Yanchunis of Morgan & Morgan Complex Litigation Group.

2.12. "Class List" means the list of individuals in the United States whose information Capital One determined was stored in Capital One's cloud environment hosted by Amazon and then unlawfully accessed during the Data Breach.

2.13. "Complaint" means the Second Amended Representative Consumer Class Action Complaint, at Docket Entry Number 971, filed in the Action on October 23, 2020.

2.14. "Consumer Settlement Benefits Plan" means the plan for processing claims for and distributing Settlement benefits to Settlement Class Members, which shall be presented by Class Counsel to the Court for approval in connection with a motion seeking a Preliminary Approval Order.

2.15. "Court" means the Alexandria Division of the United States District Court for the Eastern District of Virginia, where the Action is pending.

2.16. "Data Breach" means the cybersecurity incident announced by Capital One on July 29, 2019 which Capital One determined compromised the personal information of approximately 98 million U.S. consumers.

2.17. "Defendants" means Capital One and Amazon.

2.18. "Effective Date" means the date when all of the conditions set forth in Section 7.1 of this Agreement have occurred, provided, however, that Capital One has not exercised its right of termination under Section 7.2 of this Agreement.

2.19. "Entity" means any corporation, partnership, limited liability company, association, trust, or other organization of any type.

2.20. "Expenses" means the reasonable costs and expenses incurred in litigating the Action that Class Counsel request the Court to approve for payment from the Settlement Fund.

2.21. "Final Approval" means entry of a Final Approval Order and Judgment.

2.22. "Final Approval Hearing" means the hearing to be conducted before the Court to determine the fairness, adequacy, and reasonableness of the Agreement pursuant to Federal Rule of Civil Procedure 23 and whether to enter a Final Approval Order and Judgment.

2.23. "Final Approval Order and Judgment" means an order and judgment that the Court enters after the Final Approval Hearing, which finally approves the Agreement, certifies the Settlement Class, dismisses the Defendants with prejudice, and otherwise satisfies the settlement-related provisions of Federal Rule of Civil Procedure 23 in all respects.

2.24. "Judgment" means the Final Approval Order and Judgment.

2.25. "Notice Costs" means all reasonable costs and expenses incurred in connection with implementing and executing the Notice Plan.

2.26. "Notice Date" means the date by which notice will be completed, which shall be one hundred and five (105) days after the Court enters the Preliminary Approval Order.

2.27. "Notice Plan" means the Settlement notice program to be presented by Class Counsel to the Court for approval in connection with a motion seeking a Preliminary Approval Order.

2.28. "Objection Deadline" means the deadline by which written objections to the Settlement must be filed with the Court. Such deadline shall be forty-five (45) days after the Notice Date.

2.29. "Opt-Out Deadline" means the deadline by which written requests for exclusion from the Settlement must be postmarked as set forth in the Preliminary Approval Order. Such deadline shall be forty-five (45) days after the Notice Date.

2.30. "Parent" means, with respect to any Entity, any other Entity that owns or controls, directly or indirectly, at least a majority of the securities or other interests that have by their terms

ordinary voting power to elect a majority of the board of directors, or a majority of others performing similar function, of such Entity.

2.31. "Parties" means the Settlement Class Representatives, on behalf of themselves and the Settlement Class, and Capital One.

2.32. "Parties' Counsel" means Class Counsel and Capital One's Counsel.

2.33. "Preliminary Approval Order" means an order finding that the Court has Article III jurisdiction over the Action, determining that the Court will likely be able to approve the Settlement under Federal Rule of Civil Procedure 23(e)(2), and concluding that the Court will likely be able to certify the Settlement Class for purposes of entering a Judgment. The Preliminary Approval Order will include, among other things, (i) a procedure for Settlement Class Members to object to or request exclusion from the Settlement (along with the applicable Objection and Opt-Out Deadlines), (ii) the date and time of the Final Approval Hearing, and (iii) pertinent information from the Notice Plan and Consumer Settlement Benefits Plan.

2.34. "Released Claims" means any and all claims, defenses, demands, actions, causes of action, rights, offsets, setoffs, suits, damages, lawsuits, costs, relief for contempt, losses, attorneys' fees, expenses, or liabilities of any kind whatsoever, in law or in equity, for any relief whatsoever, including monetary sanctions or damage for contempt, injunctive or declaratory relief, rescission, general, compensatory, special, liquidated, indirect, incidental, consequential, or punitive damages, as well as any and all claims for treble damages, penalties, interest, attorneys' fees, costs, or expenses, whether a known or Unknown Claim, suspected or unsuspected, contingent or vested, accrued or not accrued, liquidated or unliquidated, matured or unmatured, that in any way concern, arise out of, or relate to the Data Breach, the facts alleged in the Actions, or any theories of recovery that were, or could have been, raised at any point in the Actions.

2.35. "Released Parties" means Capital One, Amazon, and any of their current, former, and future Affiliates, Parents, Subsidiaries, representatives, officers, agents, directors, employees, contractors, vendors, insurers, Successors, assigns, and attorneys.

2.36. "Service Awards" means any payments made, subject to Court approval, to (i) Settlement Class Representatives and (ii) any other Settlement Class Member who was deposed in the Action in recognition of his or her role in litigating this Action.

2.37. "Settlement" means the settlement of the Action by and between the Parties, and the terms and conditions thereof as stated in this Agreement.

2.38. "Settlement Administrator" means Epiq Class Action & Claims Solutions, Inc. A different Settlement Administrator may be substituted if approved by order of the Court.

2.39. "Settlement Class" means the approximately 98 million U.S. residents identified by Capital One whose information was compromised in the Data Breach that Capital One announced on July 29, 2019, as reflected in the Class List. Excluded from the Settlement Class are (i) Capital One, any entity in which Capital One has a controlling interest, and Capital One's officers, directors, legal representatives, Successors, Subsidiaries, and assigns; (ii) any judge, justice, or judicial officer presiding over the Action and the members of their immediate families and judicial staff; and (iii) any individual who timely and validly opts out of the Settlement Class.

2.40. "Settlement Class Member" or "Member of the Settlement Class" means any person who is a member of the Settlement Class.

2.41. "Settlement Class Representatives" means the following plaintiffs and proposed class representatives named in the Complaint filed in the Action: Brandon Hausauer, Carolyn Tada, Emily Behar, Gary Zielicke, Emily Gershen, Brandi Edmondson, John Spacek, and Sara Sharp.

2.42. "Settlement Fund" means the one hundred ninety million United States Dollars ($190,000,000) that Capital One shall pay pursuant to Section 3 of this Agreement.

2.43. "Settlement Fund Account" means the account described in Section 4 of this Agreement.

2.44. "Subsidiary" means, with respect to any Entity, any other Entity of which the first Entity owns or controls, directly or indirectly, at least a majority of the securities or other interests that have by their terms ordinary voting power to elect a majority of the board of directors, or others performing similar functions, of the other Entity.

2.45. "Successor" means, with respect to a natural person, that person's heirs, successors, and assigns, and, with respect to an Entity, any other Entity that through merger, buyout, assignment, or any other means or transaction, acquires all of the first Entity's duties, rights, obligations, shares, debts, or assets.

2.46. "Taxes" means (i) any applicable taxes, duties, and similar charges imposed by a government authority (including any estimated taxes, interest, or penalties) arising in any jurisdiction with respect to the income or gains earned by or in respect of the Settlement Fund, including, without limitation, any taxes that may be imposed upon the Parties or the Parties' Counsel with respect to any income or gains earned by or in respect of the Settlement Fund; (ii) any other taxes, duties, and similar charges imposed by a government authority (including any estimated taxes, interest, or penalties) relating to the Settlement Fund that the Settlement Administrator determines are or will become due and owing, if any; and (iii) any and all expenses, liabilities, and costs incurred in connection with the taxation of the Settlement Fund (including without limitation, expenses of tax attorneys and accountants).

2.47. "Unknown Claims" means any and all Released Claims that any Settlement Class Representative or Settlement Class Member does not know or suspect to exist in his or her favor as of the Effective Date and which, if known by him or her, might have affected his or her decision(s) with respect to the Settlement. With respect to any and all Released Claims, the Parties stipulate and agree that upon the Effective Date, Settlement Class Representatives and Settlement Class Members shall have waived any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, the District of Columbia, or principle of common law or otherwise, which includes or is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

The Settlement Class Representatives and Class Counsel acknowledge, and each Settlement Class Member by operation of law shall be deemed to have acknowledged, that the inclusion of "Unknown Claims" in the definition of Released Claims was separately bargained for and was a key element of the Settlement Agreement.

3. Settlement Fund

3.1. Capital One agrees to make a non-reversionary settlement payment of one hundred ninety million United States Dollars ($190,000,000) and deposit that settlement payment into the Settlement Fund as follows: (i) within ten (10) Business Days of the Court entering a Preliminary Approval Order, Capital One shall pay fifteen million United States Dollars ($15,000,000) into the Settlement Fund to pay for Notice Costs and Administrative Costs; and (ii) within ten (10)

Business Days of the Effective Date of the Settlement, Capital One shall fund the remaining balance of the Settlement Fund (*i.e.*, $175,000,000).

3.2. The Settlement Fund shall be used to pay for (i) Notice Costs; (ii) Administrative Costs; (iii) Service Awards approved by the Court; (iv) Attorneys' Fees and Expenses approved by the Court; and (v) Settlement benefits for the Settlement Class as provided for in the Consumer Settlement Benefits Plan to be filed by Class Counsel and approved by the Court. In no event shall Capital One be obligated to pay more than one hundred ninety million United States Dollars ($190,000,000) in connection with the Settlement of the Action, including with respect to all Notice Costs and Administrative Costs. In no event shall any funds revert to Capital One.

4. Settlement Fund Account

4.1. The Settlement Fund monies shall be held in the Settlement Fund Account, which shall be an account established at Huntington Bank.

4.2. All funds held in the Settlement Fund Account shall be deemed to be in the custody of the Court until such time as the funds shall be disbursed pursuant to this Agreement or further order of the Court.

4.3. No amounts may be withdrawn from the Settlement Fund Account unless (i) authorized by this Agreement; (ii) authorized by the Consumer Settlement Benefits Plan or Notice Plan, after approval by the Court; or (iii) otherwise approved by the Court.

4.4. The Parties agree that the Settlement Fund Account is intended to constitute a "qualified settlement fund" within the meaning of Treasury Regulation § 1.468B-1, *et seq*., and that the Settlement Administrator shall be the "administrator" within the meaning of Treasury Regulation § 1.468B-2(k)(3). The Parties further agree that the Settlement Fund Account shall be treated as a qualified settlement fund from the earliest date possible and agree to any relation-back

election required to treat the Settlement Fund Account as a qualified settlement fund from the earliest date possible.

4.5. Upon or before establishment of the Settlement Fund Account, the Settlement Administrator shall apply for an employer identification number for the Settlement Fund Account utilizing IRS Form SS-4 and in accordance with Treasury Regulation § 1.468B-2(k)(4), and shall provide Capital One with that employer identification number on a properly completed and signed IRS Form W-9.

4.6. The Settlement Administrator shall file or cause to be filed, on behalf of the Settlement Fund Account, all required federal, state, and local tax returns, information returns, including, but not limited to, any Form 1099-series return, and tax withholdings statements, in accordance with the provisions of Treasury Regulation § 1.468B-2(k)(l) and Treasury Regulation § l.468B-2(1)(2). Any contract, agreement, or understanding with the Settlement Administrator relating to the Settlement Fund Account shall require the Settlement Administrator or its agent to file or cause to be filed, on behalf of the Settlement Fund Account, all required federal, state, and local tax returns, information returns, including, but not limited to any Form 1099-series return, and tax withholdings statements, in accordance with the provisions of Treasury Regulation § 1.468B-2(k)(1) and Treasury Regulation § l.468B-2(1)(2). The Settlement Administrator may, if necessary, secure the advice of a certified public accounting firm in connection with its duties and tax issues arising hereunder.

4.7. All Taxes relating to the Settlement Fund Account shall be paid out of the Settlement Fund Account, shall be considered to be an Administrative Cost of the Settlement, and shall be timely paid by the Settlement Administrator without prior order of the Court. Further, the Settlement Fund Account shall indemnify and hold harmless the Parties and the Parties' Counsel

for Taxes (including, without limitation, taxes payable by reason of any such indemnification payments).

4.8. Following its payment of the Settlement Fund monies as described in Section 3.1 of this Agreement, Capital One shall have no responsibility, financial obligation, or liability whatsoever with respect to investment of Settlement Fund Account funds, payment of federal, state, and local income, employment, unemployment, excise, and any other Taxes, penalties, interest, or other charges related to Taxes imposed on the Settlement Fund Account or its disbursements, payment of the administrative, legal, accounting, or other costs occasioned by the use or administration of the Settlement Fund Account.

5. Business Practice Changes

5.1. In addition to the monetary relief provided by the Settlement Fund as contemplated in the Consumer Settlement Benefits Plan to be filed with and approved by the Court, Capital One has agreed to implement and/or continue the Business Practice Changes described in Exhibit 2 to this Agreement for a minimum period of two (2) years from the date of Final Approval of the Settlement, except where specifically noted otherwise in Exhibit 2.

6. Presentation of Settlement to the Court

6.1. No later than January 31, 2022, the Settlement Class Representatives and Class Counsel shall file this Agreement along with a motion seeking a Preliminary Approval Order pursuant to the requirements of Federal Rule of Civil Procedure 23(e)(1). Such motion shall also include and seek approval of the Notice Plan and Consumer Settlement Benefits Plan.

6.2. After entry by the Court of a Preliminary Approval Order, and no later than fourteen (14) days before the Final Approval Hearing, Settlement Class Representatives shall file a motion seeking final approval of the Settlement and entry of a Final Approval Order and Judgment,

including a request that the preliminary certification of the Settlement Class for settlement purposes be made final.

7. Effective Date and Termination

7.1. The Effective Date of the Settlement shall be the first Business Day after all of the following conditions have occurred:

7.1.1. The Parties execute this Agreement;

7.1.2. The Court enters a Preliminary Approval Order, which shall include approval of the Notice Plan and Consumer Settlement Benefits Plan to be proposed by Class Counsel;

7.1.3. Notice is provided to the Settlement Class in accordance with the Preliminary Approval Order and Notice Plan;

7.1.4. The Court enters a Final Approval Order and Judgment; and

7.1.5. The Final Approval Order and Judgment have become final because (i) the time for appeal, petition, rehearing, or other review has expired; (ii) if any appeal, petition, or request for rehearing or other review has been filed, the Final Approval Order and Judgment are affirmed without material change, or the appeal is dismissed or otherwise disposed of, and no other appeal, petition, rehearing or other review is pending, and the time for further appeals, petitions, and requests for rehearing or other review has expired.

7.2. Capital One may, in its sole discretion, terminate this Agreement upon five (5) Business Days written notice to Class Counsel if:

(i) The Parties fail to obtain and maintain Preliminary Approval consistent with the material provisions of this Settlement Agreement, and after negotiating in good faith, the Parties are unable to modify the Settlement in a manner to obtain and maintain Preliminary Approval;

(ii) More than a specified number of individuals submit valid and timely requests to exclude themselves from the Settlement Class, as agreed to by the Parties and submitted to the Court for *in camera* review.

(iii) The Court fails to enter a Final Approval Order and Judgment under the provisions of this Settlement Agreement;

(iv) The settlement of the Settlement Class claims, or the Final Approval Order and Judgment, is not upheld on appeal; or

(v) The Effective Date does not occur for any reason, including but not limited to the entry of an order by any court that would require either material modification or termination of the Settlement Agreement.

7.3. If this Agreement is terminated under Section 7.2 above, the following shall occur:

7.3.1. Within ten (10) Business Days of receiving notice of a termination event from Capital One's Counsel, the Settlement Administrator shall pay to Capital One an amount equal to the Settlement Fund, together with any interest or other income earned thereon, less (i) any Taxes paid or due with respect to such income and (ii) any reasonable and necessary Administrative Costs or Notice Costs already actually incurred and paid or payable from the Settlement Fund pursuant to the terms of this Agreement;

7.3.2. The Parties shall return to the status quo in the Action as if the Parties had not entered into this Agreement;

7.3.3. Any Court orders approving certification of the Settlement Class and any other orders entered pursuant to this Agreement shall be null and void and vacated, and shall not be used in or cited by any person or entity in support of claims or defenses or in support or in opposition to a future class certification motion in connection with any further proceedings in the Action or in any other action, lawsuit, arbitration, or other proceeding involving a Released Claim; and

7.3.4. This Agreement shall become null and void, and the fact of this Settlement and that Capital One did not oppose certification of a Settlement Class shall not be used or

cited by any person or entity in support of claims or defenses or in support of or in opposition to a future class certification motion in connection with any further proceedings in the Action or in any other action, lawsuit, arbitration, or other proceeding involving a Released Claim.

8. Consumer Settlement Benefits Plan

8.1. In connection with a motion seeking a Preliminary Approval Order, Class Counsel shall present to the Court for approval the Consumer Settlement Benefits Plan, which shall describe in detail, among other things, (i) the benefits available to Settlement Class Members and (ii) the process and timing for submitting claims for such benefits.

8.2. The Settlement Administrator shall be responsible for implementing and executing the Consumer Settlement Benefits Plan.

8.3. As specified in Section 3.2, the costs associated with any benefits provided to Settlement Class Members under the Consumer Settlement Benefits Plan shall be paid from the Settlement Fund. For the avoidance of doubt, other than funding the Settlement Fund, Capital One shall not under any circumstances be responsible for the costs associated with any benefits provided for under the Consumer Settlement Benefits Plan.

9. Duties of Settlement Administrator

9.1. The Parties agree that Class Counsel will retain, subject to Court approval, an independent Settlement Administrator. The Settlement Administrator shall perform the functions specified in this Agreement, any functions specified in the Notice Plan or Consumer Settlement Benefits Plan after Court approval, and any other functions approved by the Court. In addition to other responsibilities that are described elsewhere in this Agreement (and in the Notice Plan and Consumer Settlement Benefits Plan, once approved by the Court), the duties of the Settlement Administrator shall include:

9.1.1. Reviewing, determining the validity of, and processing all claims submitted by Settlement Class Members;

9.1.2. Establishing a reasonably practical procedure, using information obtained from Capital One pursuant to Section 10.2, to verify that claimants are Settlement Class Members.

9.1.3. Establishing and maintaining a post office box for receiving requests for exclusion from the Settlement Class;

9.1.4. Establishing and maintaining a Settlement website;

9.1.5. Responding to Settlement Class Member inquiries via U.S. mail, email, and telephone;

9.1.6. Establishing a toll-free telephone line for Settlement Class Members to call with Settlement-related inquiries, and answering the questions of Settlement Class members who call with or otherwise communicate such inquiries;

9.1.7. Paying Taxes;

9.1.8. Receiving and processing all written requests for exclusion from the Settlement Class and providing copies thereof to the Parties' Counsel. If the Settlement Administrator receives any requests for exclusion or other requests after the Opt-Out Deadline, the Settlement Administrator shall promptly provide copies thereof to the Parties' Counsel;

9.1.9. Within five (5) Business Days after the Opt-Out Deadline, providing a final report to the Parties' Counsel summarizing the number of written requests for exclusion and any other information requested by the Parties' Counsel;

9.1.10. After the Effective Date, processing and transmitting distributions to Settlement Class Members;

9.1.11. Prior to the Final Approval Hearing, preparing and executing an affidavit to submit to the Court that identifies each Settlement Class Member who timely and validly requested exclusion from the Settlement Class; and

9.1.12. Performing any other functions that the Parties jointly agree are necessary to accomplish administration of the Settlement.

9.2. As specified in Section 3.2, all Administrative Costs incurred by the Settlement Administrator or otherwise in connection with administering the Settlement shall be paid from the Settlement Fund. For the avoidance of doubt, Capital One shall not under any circumstances be responsible for any Administrative Costs.

9.3. Neither the Parties nor the Parties' Counsel shall have any liability whatsoever with respect to any act or omission of the Settlement Administrator, or any of its designees or agents, in connection with its performance of its duties under this Agreement, or under the Notice Plan or Consumer Settlement Benefits Plan once approved by the Court.

9.4. The Settlement Administrator shall indemnify and hold harmless the Parties and the Parties' Counsel for any liability arising from any act or omission of the Settlement Administrator, or any of its designees or agents, in connection with its performance of its duties under this Agreement, or under the Notice Plan or Consumer Settlement Benefits Plan once approved by the Court.

10. Notice Plan

10.1. In connection with a motion seeking a Preliminary Approval Order, Class Counsel shall present the Notice Plan to the Court for approval, which shall describe in detail the process for implementing and executing a plan to notify Settlement Class Members of, among other things,

(i) the Settlement, (ii) the availability and process for claiming benefits under the Consumer Settlement Benefits Plan, and (iii) the procedure for Settlement Class Members to object to the Settlement and request exclusion from the Settlement.

10.2. The Settlement Administrator shall be responsible for implementing and executing the Notice Plan. Within thirty (30) days after the Court's entry of a Preliminary Approval Order, Capital One shall provide to the Settlement Administrator a Class List, which shall include Settlement Class Members' full names, current addresses, and email addresses (to the extent available) as reflected in Capital One's records.

10.2.1. The Parties agree that the Class List shall be provided to the Settlement Administrator solely for the purpose of effecting the terms of this Settlement Agreement, and that such information shall not be used, disseminated, or disclosed by or to any other person for any other purpose.

10.2.2. Capital One's inclusion of an individual's information on the Class List is in no way an admission of liability by Capital One with respect to that individual nor is it an admission that a litigation class could be certified under Federal Rule of Civil Procedure 23 in the Actions.

10.2.3. Should the Settlement be terminated for any of the reasons identified in Section 7.2, the Settlement Class Representatives, the Settlement Administrator, and Class Counsel shall immediately destroy any and all copies of the Class List described in Section 10.2.

10.2.4. The provisions regarding the compilation and treatment of the Class List described in Section 10.2 and its subsections are material terms of this Settlement Agreement.

10.3. As specified in Section 3.2, all Notice Costs incurred by the Settlement Administrator or otherwise in connection with implementing and executing the Notice Plan shall be paid from the Settlement Fund.

11. CAFA Notice

11.1. Capital One will serve the notice required by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, not later than ten (10) days after this Agreement is filed with the Court.

12. Covenants Not to Sue

12.1. The Class Representatives covenant and agree: (i) not to file, commence, prosecute, intervene in, or participate in (as class members or otherwise) any action in any jurisdiction based on or relating to any Released Claim, or the facts and circumstances relating thereto, against any of the Released Parties; (ii) not to organize or solicit the participation of Settlement Class Members, or persons who would otherwise fall within the definition of the Settlement Class but who requested to be excluded from the Settlement Class, in a separate class for purposes of pursuing any action based on or relating to any Released Claim or the facts and circumstances relating thereto, against any of the Released Parties; and (iii) that the foregoing covenants and this Agreement shall be a complete defense to any Released Claim against any of the Released Parties.

13. Representations and Warranties

13.1. Each Party represents that:

(i) such Party has the full legal right, power, and authority to enter into and perform this Agreement, subject to Court approval;

(ii) such Party is voluntarily entering into the Agreement as a result of arm's-length negotiations conducted by its counsel;

(iii) such Party is relying solely upon its own judgment, belief, and knowledge, and the advice and recommendations of its own independently selected counsel, concerning the nature, extent, and duration of their rights and claims hereunder and regarding all matters which relate in any way to the subject matter hereof;

(iv) such Party has been represented by, and has consulted with, the counsel of its choice regarding the provisions, obligations, rights, risks, and legal effects of this Agreement and has been given the opportunity to review independently this Agreement with such legal counsel and agree to the particular language of the provisions herein;

(v) the execution and delivery of this Agreement by such Party and the consummation by such Party of the transactions contemplated by this Agreement have been duly authorized by such Party;

(vi) except as provided herein, such Party has not been influenced to any extent whatsoever in executing the Agreement by representations, statements, or omissions pertaining to any of the foregoing matters by any Party or by any person representing any party to the Agreement;

(vii) each of the Parties assumes the risk of mistake as to facts or law;

(viii) this Agreement constitutes a valid, binding, and enforceable agreement; and

(ix) no consent or approval of any person or entity is necessary for such Party to enter into this Agreement.

13.2. The Settlement Class Representatives represent and warrant that they have not assigned or otherwise transferred any interest in any of the Released Claims against any of the Released Parties, and further covenant that they will not assign or otherwise transfer any interest in any of the Released Claims against any of the Released Parties.

13.3. The Settlement Class Representatives represent and warrant that they have no surviving claim or cause of action against any of the Released Parties with respect to any of the Released Claims.

14. Releases

14.1. As of the Effective Date, all Settlement Class Members and all Settlement Class Representatives, on behalf of themselves, their heirs, assigns, executors, administrators, predecessors, and Successors, and any other person purporting to claim on their behalf, hereby expressly, generally, absolutely, and unconditionally release and discharge any and all Released Claims against the Released Parties (including Amazon, which is an intended third-party

beneficiary of the release in this Section), and any of their current, former, and future Affiliates, Parents, Subsidiaries, representatives, officers, agents, directors, employees, contractors, vendors, insurers, Successors, assigns, and attorneys, except for claims relating to the enforcement of the Settlement or this Agreement.

14.2. The Parties understand that if the facts upon which this Agreement is based are found hereafter to be different from the facts now believed to be true, each Party expressly assumes the risk of such possible difference in facts, and agrees that this Agreement, including the releases contained herein, shall remain effective notwithstanding such difference in facts. The Parties agree that in entering this Agreement, it is understood and agreed that each Party relies wholly upon its own judgment, belief, and knowledge and that each Party does not rely on inducements, promises, or representations made by anyone other than those embodied herein. Notwithstanding any other provision of this Agreement (including, without limitation, this Section), nothing in this Agreement shall be deemed to in any way impair, limit, or preclude the Parties' rights to enforce any provision of this Agreement, or any court order implementing this Agreement, in a manner consistent with the terms of this Agreement.

14.3. The Parties agree that the Released Parties will suffer irreparable harm if any Settlement Class Member takes action inconsistent with Section 14, and that in that event, the Released Parties may seek an injunction as to such action without further showing of irreparable harm in this or any other forum.

14.4. Promptly after the Effective Date, Class Counsel and the Settlement Class Representatives shall dismiss with prejudice all claims, actions, or proceedings that are released pursuant to this Agreement.

15. No Admission of Wrongdoing

15.1. This Agreement is made for the sole purpose of attempting to consummate settlement of the Actions on a class-wide basis. The Agreement compromises claims which are contested in good faith, and it shall not be deemed an admission by any of the Parties as to the merits of any claim or defense.

15.2. This Agreement, whether or not consummated, any communications and negotiations relating to this Agreement or the Settlement, and any proceedings taken pursuant to this Agreement:

15.2.1. Shall not be offered or received against any Defendant as evidence of or construed as or deemed to be evidence of any presumption, concession, or admission by any Defendant with respect to the truth of any fact alleged by any Settlement Class Representative or any Settlement Class Member or the validity of any claim that has been or could have been asserted in the Actions or in any litigation, or the deficiency of any defense that has been or could have been asserted in the Actions or in any litigation, or of any liability, negligence, fault, breach of duty, or wrongdoing of any Defendant;

15.2.2. Shall not be offered or received against any Defendant as evidence of a presumption, concession, or admission of any fault, misrepresentation, or omission with respect to any statement or written document approved or made by any Defendant;

15.2.3. Shall not be offered or received against any Defendant as evidence of a presumption, concession, or admission with respect to any liability, negligence, fault, breach of duty, or wrongdoing, or in any way referred to for any other reason as against any Defendant, in any other civil, criminal, or administrative action, or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Agreement;

provided, however, that if this Agreement is approved by the Court, the Parties may refer to it to effectuate the liability protection granted them hereunder;

15.2.4. Shall not be construed against any Defendant as an admission or concession that the consideration to be given hereunder represents the amount that could be or would have been recovered after trial;

15.2.5. Shall not be construed as or received in evidence as an admission, concession, or presumption against any Settlement Class Representative or any Settlement Class Member that any of their claims are without merit, or that any defenses asserted by any Defendants have any merit, or that damages recoverable under the Actions would not have exceeded the Settlement Fund, provided, however, that if this Agreement is approved by the Court, the Defendants may refer to it to enforce the release of claims granted to them hereunder; and

15.2.6. Shall not be used by the Settlement Class Representatives or Class Counsel to argue or present any argument that Defendants could not contest class certification and/or proceeding collectively on any grounds if the Actions were to proceed or to establish any of the elements of class certification in any litigated certification proceedings, whether in the Actions or in any other judicial proceeding in which any Defendant is a party.

15.3. The negotiation, terms, and entry of the Parties into this Agreement shall remain subject to the provisions of Federal Rule of Evidence 408, any and all state statutes of a similar nature, and the mediation privilege.

15.4. Notwithstanding the foregoing, Defendants may use, offer, admit, or refer to this Agreement and to the Settlement reached herein where necessary to defend themselves in any

other action, or in any judicial, administrative, regulatory, arbitrative, or other proceeding, and as necessary to comply with regulatory and/or disclosure obligations.

16. Opt-Outs

16.1. Any Settlement Class Member who wishes to exclude themselves from the Settlement Class must submit a written request for exclusion to the Settlement Administrator, postmarked no later than the Opt-Out Deadline.

16.2. The written request for exclusion must:

(i) Identify the case name of the Action;

(ii) Identify the name and address of the Settlement Class Member seeking exclusion;

(iii) Be personally signed by the Settlement Class Member seeking exclusion;

(iv) Include a statement clearly indicating the Settlement Class Member's intent to be excluded from the Settlement; and

(v) Request exclusion only for that one Settlement Class Member whose personal signature appears on the request.

16.3. Opt-out requests seeking exclusion on behalf of more than one Settlement Class Member shall be deemed invalid by the Settlement Administrator.

16.4. Any Settlement Class Member who submits a valid and timely request for exclusion in the manner described herein shall not: (i) be bound by any orders or judgments entered in connection with the Settlement; (ii) be entitled to any relief under, or be affected by, the Agreement; (iii) gain any rights by virtue of the Agreement; or (iv) be entitled to object to any aspect of the Settlement.

16.5. Any Settlement Class Member who does not submit a valid and timely request for exclusion in the manner described herein shall be deemed to be part of the Settlement Class upon

expiration of the Opt-Out Deadline, and shall be bound by all subsequent proceedings, orders, and judgments applicable to the Settlement Class.

16.6. Class Counsel agree that this Settlement Agreement is fair, reasonable, and in the best interests of the Settlement Class Members.

17. Objections

17.1. Any Settlement Class Member who wishes to object to the Settlement must submit a written objection to the Court on or before the Objection Deadline, as specified in the Preliminary Approval Order.

17.2. The written objection must include:

(i) The case name and number of the Action;

(ii) The name, address, telephone number of the objecting Settlement Class Member and, if represented by counsel, of his/her counsel;

(iii) A statement of whether the objection applies only to the objector, to a specific subset of the class, or to the entire class;

(iv) A statement of the specific grounds for the objection; and

(v) A statement of whether the objecting Settlement Class Member intends to appear at the Final Approval Hearing, and if so, whether personally or through counsel.

17.3. In addition to the foregoing requirements, if an objecting Settlement Class Member is represented by counsel and such counsel intends to speak at the Final Approval Hearing, the written objection must include a detailed description of any evidence the objecting Settlement Class Member may offer at the Final Approval Hearing, as well as copies of any exhibits the objecting Settlement Class Member may introduce at the Final Approval Hearing.

17.4. Any Settlement Class Member who fails to object to the Settlement in the manner described in this Agreement and in the notice provided pursuant to the Notice Plan shall be deemed to have waived any such objection, shall not be permitted to object to any terms or approval of the

Settlement at the Final Approval Hearing, and shall be precluded from seeking any review of the Settlement or the terms of this Agreement by appeal or any other means.

18. Service Awards

18.1. The Settlement Class Representatives and Class Counsel shall submit a request to the Court for payment of Service Awards, not to exceed five thousand United States Dollars ($5,000) per individual, to (i) the Settlement Class Representatives and (ii) any other Settlement Class Member who was deposed in the Action. Any request for Service Awards must be filed with the Court at least twenty-one (21) days before the Objection Deadline. If approved by the Court, such Service Awards shall be paid by the Settlement Administrator from the Settlement Fund within fourteen (14) Business Days after the Effective Date. For the avoidance of doubt, Capital One shall not under any circumstances be responsible for the payment of any Service Awards.

18.2. Capital One agrees not to oppose any request to the Court for Service Awards, provided such request does not seek more than five thousand United States Dollars ($5,000) per individual.

18.3. The Parties agree that the effectiveness of this Agreement is not contingent upon the Court's approval of the payment of any Service Awards. If the Court declines to approve, in whole or in part, a request for Service Awards, all remaining provisions in this Agreement shall remain in full force and effect. No decision by the Court, or modification or reversal or appeal of any decision by the Court, concerning the payment of Service Awards, or the amount thereof, shall be grounds for cancellation or termination of this Agreement.

19. Attorneys' Fees and Expenses

19.1. Class Counsel shall submit a request to the Court for payment of Attorneys' Fees, expressed as a percentage of the value conferred by the Settlement on the Settlement Class, and

for reimbursement of Expenses incurred in prosecuting and settling the Action. Any request for Attorneys' Fees and Expenses must be filed with the Court at least twenty-one (21) days before the Objection Deadline. If approved by the Court, such Attorneys' Fees and Expenses shall be paid by the Settlement Administrator from the Settlement Fund within fourteen (14) Business Days of the Effective Date. For the avoidance of doubt, Capital One shall not under any circumstances be responsible for the payment of any Attorneys' Fees and Expenses.

19.2. Capital One agrees not to oppose any request to the Court for Attorneys' Fees, provided such a request does not seek a fee in excess of thirty-five percent (35%) of the Settlement Fund. Notwithstanding the foregoing, Capital One shall have the right to file a response to any request for Attorneys' Fees or Expenses to address any misstatements made therein.

19.3. The Parties agree that the effectiveness of this Agreement is not contingent upon the Court's approval of the payment of any Attorneys' Fees or Expenses. If the Court declines to approve, in whole or in part, a request for Attorneys' Fees or Expenses, all remaining provisions in this Agreement shall remain in full force and effect. No decision by the Court, or modification or reversal or appeal of any decision by the Court, concerning the payment of Attorneys' Fees or Expenses, or the amount thereof, shall be grounds for cancellation or termination of this Agreement.

20. Confidentiality

20.1. The Parties and the Parties' Counsel agree that the terms of this Settlement shall remain confidential and not be disclosed until the Agreement is publicly filed in connection with the Settlement Class Representatives' motion seeking a Preliminary Approval Order.

21. Notices

21.1. All notices to Class Counsel provided for in this Agreement shall be sent by e-mail and First Class mail to the following:

Norman E. Siegel
STUEVE SIEGEL HANSON LLP
460 Nichols Road, Suite 200
Kansas City, MO 64112
siegel@stuevesiegel.com

Karen Hanson Riebel
LOCKRIDGE GRINDAL NAUEN, P.L.L.P
100 Washington Avenue South, Suite 2200
Minneapolis, MN 55401
khriebel@locklaw.com

John A. Yanchunis
MORGAN & MORGAN COMPLEX LITIGATION GROUP
201 N. Franklin Street, 7th Floor
Tampa, FL 33602
jyanchunis@ForThePeople.com

21.2. All notices to Capital One or Capital One's Counsel provided for in this Agreement shall be sent by e-mail and First Class mail to the following:

David L. Balser
S. Stewart Haskins II
KING & SPALDING LLP
1180 Peachtree Street, N.E.
Atlanta, GA 30309
dbalser@kslaw.com
shaskins@kslaw.com

Robert A. Angle
Timothy St. George
TROUTMAN PEPPER HAMILTON SANDERS LLP
1001 Haxall Point
Richmond, VA 23219
robert.angle@troutman.com
timothy.st.george@troutman.com

Mary C. Zinsner
TROUTMAN PEPPER HAMILTON SANDERS LLP
401 9th Street, NW, Suite 1000
Washington, DC 20004
mary.zinsner@troutman.com

21.3. All notices to the Settlement Administrator provided for in this Agreement shall be sent by e-mail and First Class mail to the following:

Capital One Settlement Administrator
PO Box 4518
Portland, OR 97208-4518
info@capitalonesettlement.com

21.4. The notice recipients and addresses designated in this Section may be changed by written notice posted to the Settlement website.

22. Miscellaneous Provisions

22.1. Further Steps. The Parties agree that they each shall undertake any further required steps to effectuate the purposes and intent of this Agreement

22.2. Cooperation. The Parties: (i) acknowledge that it is their intent to consummate this Settlement Agreement and (ii) agree to cooperate to the extent reasonably necessary to effect and implement all terms and conditions of the Settlement Agreement and to exercise their best efforts to accomplish the foregoing terms and conditions of the Settlement Agreement.

22.3. Contact with Settlement Class Members. The Parties agree that Class Counsel may communicate with Settlement Class Members regarding the Settlement, and Capital One shall not interfere with such communication.

22.4. Contractual Agreement. The Parties understand and agree that all terms of this Agreement, including the exhibits hereto, are contractual and are not a mere recital, and each signatory warrants that he or she is competent and possesses the full and complete authority to execute and covenant to this Agreement on behalf of the Party that he or she represents.

22.5. Recitals. The recitals set forth above in Section 1 shall be and hereby are terms of this Agreement as if set forth herein.

22.6. Headings. Any headings contained herein are for informational purposes only and do not constitute a substantive part of this Agreement. In the event of a dispute concerning the terms and conditions of this Agreement, the headings shall be disregarded.

22.7. Integration. This Agreement constitutes the entire agreement among the Parties and no representations, warranties, or inducements have been made to any Party concerning this Agreement other than the representations, warranties, and covenants expressly contained and memorialized herein.

22.8. Exhibits. The exhibits to this Agreement are expressly incorporated by reference and made part of the terms and conditions set forth herein.

22.9. Drafting. The language of all parts of this Agreement shall in all cases be construed as a whole, according to their fair meaning, and not strictly for or against any Party. No Party shall be deemed the drafter of this Agreement. The Parties acknowledge that the terms of the Agreement are contractual and are the product of negotiations between the Parties and their counsel. Each Party and their counsel cooperated in the drafting and preparation of the Agreement. In any construction to be made of the Agreement, the Agreement shall not be construed against any Party and any canon of contract interpretation to the contrary shall not be applied.

22.10. Modification or Amendment. This Agreement may not be modified or amended, nor may any of its provisions be waived, except by an express writing signed by the Parties who executed this Agreement, or their Successors.

22.11. Waiver. The failure of a Party to insist upon strict performance of any provision of this Agreement shall not be deemed a waiver of such Party's rights or remedies or a waiver by such Party of any default by another Party in the performance or compliance of any of the terms of this Agreement. In addition, the waiver by one Party of any breach of this Agreement by any other Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

22.12. Severability. Should any part, term, or provision of this Agreement be declared or determined by any court or tribunal to be illegal or invalid, the Parties agree that the Court may

modify such provision to the extent necessary to make it valid, legal, and enforceable. In any event, such provision shall be separable and shall not limit or affect the validity, legality, or enforceability of any other provision hereunder.

22.13. Counterparts. This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument provided that counsel for the Parties to this Agreement shall exchange among themselves original signed counterparts.

22.14. Electronic Mail. Transmission of a signed Agreement by electronic mail shall constitute receipt of an original signed Agreement by mail.

22.15. Successors and Assigns. The Agreement shall be binding upon, and inures to the benefit of, the heirs, executors, Successors, and assigns of the Parties hereto.

22.16. Survival. The Parties agree that the terms set forth in this Agreement shall survive the signing of this Agreement.

22.17. Governing Law. All terms and conditions of this Agreement shall be governed by and interpreted according to the laws of the Commonwealth of Virginia, without reference to its conflict of law provisions, except to the extent the federal law of the United States requires that federal law governs.

22.18. Interpretation. The following rules of interpretation shall apply to this Agreement:

(i) Definitions apply to the singular and plural forms of each term defined.

(ii) Definitions apply to the masculine, feminine, and neuter genders of each term defined.

(iii) Whenever the words “include,” “includes” or “including” are used in this Agreement, they shall not be limiting but rather shall be deemed to be followed by the words “without limitation.”

22.19. No Precedential Value. The Parties agree and acknowledge that this Agreement carries no precedential value.

22.20. Fair and Reasonable. The Parties and the Parties' Counsel believe this Agreement is a fair and reasonable compromise of the disputed claims and in the best interest of the Parties. The Parties have arrived at this Agreement as a result of extensive arms-length negotiations.

22.21. Retention of Jurisdiction. The administration and consummation of the Settlement as embodied in this Agreement shall be under the authority of the Court, and the Court shall retain jurisdiction over the Settlement and the Parties for the purpose of enforcing the terms of this Agreement. The Court also shall retain exclusive jurisdiction over any determination of whether any subsequent suit is released by the Settlement Agreement.

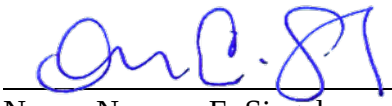
22.22. Confidentiality of Discovery Material. The Parties, the Parties' Counsel, and any retained or consulting experts, agree that they remain subject to the Court's Protective Order, Dkt. No. 368, as appropriate.

22.23. No Government Third-Party Rights or Beneficiaries. Except as expressly provided for herein, no government agency or official can claim any rights under this Agreement or Settlement, whether with respect to the alleged conduct that is the subject of the releases in Section 14 or the funds (or remainder of funds) paid or used in the Settlement.

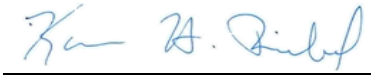
22.24. No Collateral Attack. The Settlement Agreement shall not be subject to collateral attack, including by any Settlement Class Member or any recipient of notices of the Settlement after the Judgment is entered.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by themselves or by their duly authorized counsel:

Class Counsel on behalf of the Settlement Class Representatives (who have specifically assented to the terms of this Settlement Agreement) and the Settlement Class:

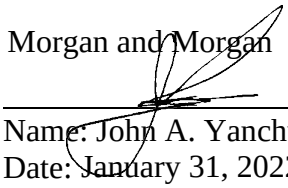


Name: Norman E. Siegel
Date: January 31, 2022



Name: Karen Hanson Riebel
Date: January 31, 2022

Morgan and Morgan



Name: John A. Yanchunis, Partner
Date: January 31, 2022

Defendant Capital One Financial Corporation:

Name:
Title:
Date:

Defendant Capital One Bank (USA), N.A.:

Name:
Title:
Date:

Defendant Capital One, N.A.:

Name:
Title:
Date:

EXHIBIT 1

LIST OF ACTIONS[1]

1. *In re: Capital One Consumer Data Security Breach Litigation* (E.D. Va., Case No. 1:19-md-02915-AJT-JFA) (encompassing all putative class action claims filed by Representative Plaintiffs in the MDL proceeding)

2. *Ababseh v. Capital One Financial Corporation et al.* (W.D. Wash., Case No. 2:19-cv-01397) (E.D. Va., Case No. 1:19-cv-02940)

3. *Aballo et al. v. Capital One Financial Corporation et al.* (N.D. Cal., Case No. 3:19-cv-04475) (E.D. Va., Case No. 1:19-cv-02929)

4. *Agnew et al. v. Capital One Financial Corporation* (D.D.C., Case No. 1:19-cv-02489) (E.D. Va., Case No. 1:19-cv-02963)

5. *Aminov v. Capital One Financial Corporation et al.* (E.D. Va., Case No. 1:19-cv-01006)

6. *Anthony v. Capital One Financial Corporation et al.* (E.D. Va., Case Nos. 1:19-cv-00993 and 3:19-cv-00608)

7. *Atachbarian v. Capital One Financial Corporation* (C.D. Cal., Case No. 2:19-cv-06965) (E.D. Va. Case No. 1:19-cv-02944)

8. *Baird v. Capital One Financial Corporation et al.* (E.D. Va. Case Nos. 1:19-cv-00979 and 3:19-cv-00585)

9. *Baisden et al. v. Capital One Financial Corporation et al.* (W.D. Wis., Case No. 3:19-cv-00623) (E.D. Va., Case No. 1:19-cv-02970)

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[1] As noted in Section 2.1 of the Settlement Agreement and Release, the definition of "Action" or "Actions" in the Settlement Agreement and Release does not include the case styled *Minsky v. Capital One Financial Corporation et al.*, Case No. 1:19-cv-01472 (AJT) (E.D. Va.).

10. *Barnes et al. v. Capital One Financial Corporation et al.* (E.D. Va. Case Nos. 1:19-cv-01021 and 3:19-cv-00587)

11. *Berger et al. v. Capital One Financial Corporation et al.* (D.D.C., Case No. 1:19-cv-02298) (E.D. Va., Case No. 1:19-cv-02918)

12. *Biaohealth, LLC v. Capital One Financial Corporation et al.* (E.D. Va., Case Nos. 1:19-cv-02957 and 3:19-cv-00650)

13. *Bowen et al. v. Capital One Financial Corporation et al.* (S.D.N.Y., Case No. 1:19-cv-07917) (E.D. Va., Case No. 1:19-cv-02966)

14. *Broderick et al. v. Capital One Financial Corporation et al.* (E.D. Va., Case No. 1:19-cv-01454)

15. *Busby et al. v. Capital One Financial Corporation et al.* (E.D. Va., Case Nos. 1:19-cv-01062 and 3:19-cv-00557)

16. *Carter et al. v. Capital One Financial Corporation et al.* (E.D. Va., Case Nos. 1:19-cv-02950 and 3:19-cv-00557)

17. *Castro et al. v. Capital One Financial Corporation et al.* (E.D. Va., Case Nos. 1:19-cv-01008 and 3:19-cv-00586)

18. *Cox et al. v. Capital One Financial Corporation* (E.D. Va., Case No. 1:19-cv-01042)

19. *Curtis et al. v. Capital One Financial Corporation et al.* (W.D. Wash., Case No. 2:19-cv-1366) (E.D. Va., Case No. 1:19-cv-02939)

20. *Dames v. Capital One Financial Corporation et al.* (E.D. Va., Case Nos. 1:19-cv-01010 and 3:19-cv-00607)

21. *Desoer v. Capital One Financial Corporation et al.* (W.D. Wash., Case No. 2:19-cv-01223) (E.D. Va., Case No. 1:19-cv-02935)

22. *Easton v. Capital One Financial Corporation et al.* (E.D. Va., Case Nos. 1:19-cv-02951 and 3:19-cv-00574)

23. *Edmondson et al. v. Capital One Financial Corporation et al.* (E.D. Va., Case No. 1:21-cv-00332)

24. *Fadullon v. Capital One Financial Corporation et al.* (W.D. Wash., Case No. 2:19-cv-01189) (E.D. Va., Case No. 1:19-cv-02926)

25. *Fisher et al. v. Capital One Financial Corporation et al.* (N.D. Cal., Case No. 3:19-cv-04485) (E.D. Va., Case No. 1:19-cv-02960)

26. *Francis v. Capital One Financial Corporation et al.* (M.D. Fla., Case No. 8:19-cv-01898) (E.D. Va., Case No. 1:19-cv-02923)

27. *Gershen v. Capital One Financial Corporation et al.* (E.D. Va., Case No. 1:19-cv-01174)

28. *Greenberg et al. v. Capital One Financial Corporation et al.* (S.D.NY., Case No. 1:19-cv-07752) (E.D. Va., Case No. 1:19-cv-02965)

29. *Greenstein v. Capital One Financial Corporation et al.* (D.D.C., Case No. 1:19-cv-02307) (E.D. Va., Case No. 1:19-cv-02919)

30. *Grimm et al. v. Capital One Financial Corporation et al.* (D.D.C., Case No. 1:19-cv-02357) (E.D. Va., Case No. 1:19-cv-02961)

31. *Haque v. Capital One Financial Corporation et al.* (E.D. Pa., Case No. 2:19-cv-03512) (E.D. Va., Case No. 1:19-cv-02969)

32. *Harn v. Capital One Financial Corporation et al.* (D. Kan., Case No. 2:19-cv-02441) (E.D. Va., Case No. 1:19-cv-02922)

33. *Heath et al. v. Capital One Financial Corporation et al.* (E.D. Va., Case Nos. 1:19-cv-02949 and 3:19-cv-00555)

34. *Hilker v. Capital One Financial Corporation et al.* (E.D. Va., Case No. 1:19-cv-00995)

35. *Hoskinson-Short et al. v. Capital One Financial Corporation et al.* (W.D. Wash., Case No. 2:19-cv-01218) (E.D. Va., Case No. 1:19-cv-02934)

36. *Howitt v. Capital One Financial Corporation* (S.D.N.Y., Case No. 1:19-cv-07161) (E.D. Va. Case No. 1:19-cv-02924)

37. *Hun v. Capital One Financial Corporation et al.* (E.D.N.Y., Case No. 1:19-cv-04436) (E.D. Va., Case No. 1:19-cv-02921)

38. *Imperatori v. Capital One Financial Corporation et al.* (D.D.C., Case No. 1:19-cv-02503) (E.D. Va., Case No. 1:19-cv-02964)

39. *Jacobs v. Capital One Financial Corporation et al.* (S.D. Ind., Case No. 1:19-cv-03217) (E.D. Va., Case No, 1:19-cv-02942)

40. *Janik v. Capital One Financial Corporation et al.* (D. Conn., Case No. 3:19-cv-01242) (E.D. Va., Case No. 1:19-cv-02941)

41. *Labajo et al. v. Capital One Financial Corporation et al.* (C.D. Cal., Case No. 5:19-cv-01431) (E.D. Va., Case No. 1:19-cv-02928)

42. *Lipskar v. Capital One Financial Corporation et al.* (D.D.C., Case No. 1:19-cv-02328) (E.D. Va., Case No. 1:19-cv-02920)

43. *Lundgren et al. v. Capital One Financial Corporation et al.* (W.D. Wash., Case No. 2:19-cv-1361 (E.D. Va., Case. No. 1:19-cv-02938)

44. *Mallh et al. v. Capital One Financial Corporation et al.* (E.D.N.Y., Case No. 1:19-cv-05040) (E.D. Va., Case No. 1:19-cv-02932)

45. *Materna v. Capital One Financial Corporation et al.* (E.D. Va., Case Nos. 1:19-cv-02953 and 3:19-cv-00581)

46. *McDonough v. Capital One Financial Corporation et al.* (E.D. Va., Case Nos. 1:19-cv-00984, 1:19-cv-02947, and 3:19-cv-00595)

47. *Merritt et al. v. Capital One Financial Corporation et al.* (E.D. Va., Case No. 1:19-cv-01048)

48. *Miller v. Capital One Financial Corporation et al.* (D.D.C., Case No. 1:19-cv-02447) (E.D. Va., Case No. 1:19-cv-02962)

49. *Miranda et al. v. Capital One Financial Corporation et al.* (Alameda Cty. Super. Ct., Case No. RG21113096) (N.D. Cal., Case No. 4:21-cv-08580) (E.D. Va., Case No. 1:21-cv-01259)

50. *Most Wanted Motorsports LLC v. Capital One Financial Corporation et al.* (W.D. Wash., Case No. 2:19-cv-01303) (E.D. Va., Case No. 1:19-cv-02936)

51. *Ouellette et al. v. Capital One Financial Corporation et al.* (W.D. Wash., Case No. 2:19-cv-01203) (E.D. Va., Case No. 1:19-cv-02927)

52. *Perdew v. Capital One Bank (USA), N.A.* (S.D. Cal., Case No. 3:19-cv-01421) (E.D. Va., Case No. 1:19-cv-02925)

53. *Potts v. Capital One Financial Corporation et al.* (N.D.N.Y., Case No. 3:19-cv-01001) (E.D. Va., Case No. 1:19-cv-02971)

54. *Robertson v. Capital One, N.A. et al.* (M.D. Pa., Case No. 1:19-cv-01368) (E.D. Va., Case No. 1:19-cv-02972)

55. *Ruffino v. Capital One Financial Corporation et al.* (N.D. Ill., Case No. 1:19-cv-05234) (E.D. Va., Case No. 1:19-cv-02930)

56. *Summer et al. v. Amazon Web Services, Inc. et al.* (W.D. Wash., Case No. 2:19-cv-01304) (E.D. Va., Case No. 1:19-cv-02937)

57. *Tadler v. Capital One Financial Corporation et al.* (E.D.N.Y., Case No. 2:19-cv-04782) (E.D. Va., Case No. 1:19-cv-02931)

58. *Tadrous v. Capital One Financial Corporation et al.* (D.D.C., No. 1:19-cv-02292) (E.D.Va., Case No. 1:19-cv-02917)

59. *Tester et al. v. Capital One Financial Corporation et al.* (E.D. Va. Case Nos. 1:19-cv-02952 and 3:19-cv-00579)

60. *Tsirigos et al. v. Capital One Bank (USA), N.A.* (E.D.N.Y. Case No., 1:19-cv-04507) (E.D. Va., Case No. 1:19-cv-02933)

61. *Veverka v. Capital One, N.A. et al.* (E.D. Pa., Case No. 2:19-cv-03461) (E.D. Va., Case No. 1:19-cv-02968)

62. *Wise et al. v. Capital One Financial Corporation et al.* (M.D. Fla., Case No. 8:19-cv-01915) (E.D. Va., Case No. 1:19-cv-02945)

63. *Zimprich v. Capital One Financial Corporation et al.* (C.D. Cal., Case No., 8:19-cv-01689) (E.D. Va., Case. No. 1:19-cv-02943)

64. *Zosiak v. Capital One Financial Corporation et al.* (D.D.C, Case No. 1:19-cv-02265) (E.D. Va., Case No. 1:19-cv-02916)

EXHIBIT 2

As part of this Settlement Agreement, the parties acknowledge that Capital One has agreed to implement and maintain the following business practices, many of which are already in place or in the process of being implemented, for a period of two years from the date of final approval of the Settlement Agreement unless otherwise noted.

1. **Scope:** The undertakings described herein apply to all networking equipment, databases, or data stores, applications, servers, and endpoints that: (1) are capable of accessing, using or sharing software, data, and hardware resources; (2) are owned, operated, and/or controlled by Capital One; and (3) collect, process, store, have access, or grant access to Personal Information of U.S. consumers. "Personal Information" shall have the same meaning as "nonpublic personal information" set forth in Section 509 of the Gramm-Leach-Bliley Act and regulations issued thereunder.

2. **Cyber Event Action Plan:** Capital One commits that it is implementing a comprehensive Cyber Event Action Plan designed to enhance and maintain a strong and sustainable cybersecurity program commensurate with the nature, size, complexity, and risk profile of the organization. Capital One is committed to enhance and improve Capital One's cybersecurity program and agrees that the commitments identified in the Cyber Event Action Plan will be reviewed and assessed by the company's internal audit function.[1]

[1] The parties recognize and acknowledge that cloud computing, cybersecurity, and other technological capabilities are constantly changing, often at a rapid pace. Nothing herein shall be read or interpreted to preclude Capital One from having the ability to depart from the precise technical details provided herein, where doing so does not degrade Capital One's cybersecurity capabilities compared with such capabilities upon the implementation of its Cyber Event Action Plan. Moreover, the parties acknowledge that where there is a conflict between regulatory requirements and the details in this document, the regulatory requirements will control.

a. Technology Enhancements: Capital One confirms that the Cyber Event Action Plan includes, at a minimum, enhancements to the Company's cybersecurity program in the following technology-related areas:

i. Cloud Governance and Perimeter Security, including:

1. Strengthening the Company's perimeter security defenses, including (i) implementation of an improved web application firewall architecture; and (ii) extension of the Company's anti-bot capabilities.
2. Strengthening the Company's cloud governance practices, including enhancing reviews of controls for cloud services.
3. Enhancing the Company's cloud security standards, procedures, and controls, including (i) enhanced compliance tracking; and, (ii) implementation of additional cloud security controls.
4. Strengthening the Company's security configuration management practices, including (i) updating the Company's Security Configuration Management Procedures for cloud and non-cloud resources to close any potential procedural or scope gaps; and (ii) enhancing baseline configuration documentation and compliance processes.

ii. Threat Detection and Vulnerability Management, including:

1. Expanding cloud environment monitoring and improving alert coverage and intelligence, including (i) reviewing logging and

alerting practices for enhancement opportunities; and (ii) reviewing Information Security Standards and enhancing as required.

2. Improving readiness and training for analysts in the Company's Cyber Security Operations Center ("CSOC"), including (i) reviewing and enhancing CSOC operating procedures; and, (ii) improving alert handling by improving automation and adding additional information and intelligence.

3. Strengthening of the Company's vulnerability scanning and penetration testing practices.

iii. Access Management, including:

1. Improving existing restrictive access for humans, machines, and resources in the Company's AWS environment, including (i) enhancing access policies for storage services; (ii) enhancing machine identity and access management policies; and (iii) enhancing governance procedures for AWS access management.

iv. Data Protection, including:

1. Strengthening the Company's data protection controls (e.g. encryption, data inventory) and governance, including enhancements to standards, monitoring, and exception management.

2. Enhancing data loss prevention program to better identify and measure risk, and improving corresponding technical capabilities.

b. Cyber Governance and Risk Management: Capital One confirms that the Cyber Event Action Plan includes, at a minimum, enhancements to the governance of the

Company's cybersecurity program, including enhanced Board and Senior Management oversight and elevated adherence monitoring to enterprise policies.

c. Cyber Talent and Education: Capital One confirms that the Cyber Event Action Plan includes, at a minimum, enhancements to the Company's cybersecurity skills framework and recruiting/training programs, and a resulting increase in the cloud and cyber certified practitioners.

EXHIBIT 2

PROPOSED CONSUMER SETTLEMENT BENEFITS PLAN

1. Capitalized Terms: Unless defined herein, the capitalized terms used in this Proposed Consumer Settlement Benefits Plan ("Benefits Plan") are defined in the Settlement Agreement and Release.

2. Net Settlement Fund: The "Net Settlement Fund" is the Settlement Fund less (1) Notice Costs and Administrative Costs; (2) Attorneys' Fees and Expenses awarded by the Court; (3) Service Awards awarded by the Court; and (4) costs associated with procurement of at least three years of Identity Defense Services and Restoration Services as provided in Exhibit 8. The Settlement Administrator shall use the Net Settlement Fund to pay valid claims for Out-of-Pocket Losses and Lost Time as set forth below. The Settlement Administrator, subject to such supervision and direction of the Court and Class Counsel as may be necessary or as circumstances may require, shall administer and oversee distribution of the Net Settlement Fund pursuant to the process set forth in this Benefits Plan.

3. Out-of-Pocket Losses: "Out-of-Pocket Losses" are verifiable unreimbursed costs or expenditures that a Settlement Class Member actually incurred and that the Settlement Class Member believes are fairly traceable to the Data Breach. Out-of-Pocket Losses may include, without limitation, the following:

    a. unreimbursed costs, expenses, losses or charges incurred as a result of identity theft or identity fraud, falsified tax returns, or other alleged misuse of a Settlement Class Member's personal information;

    b. costs incurred on or after March 22, 2019, associated with placing or removing a credit freeze on a Settlement Class Member's credit file with any credit reporting agency;

    c. other miscellaneous expenses incurred on or after March 22, 2019, related to any Out-of-Pocket Loss such as notary, fax, postage, copying, mileage, and long-distance telephone charges;

    d. costs of credit reports, credit monitoring, or other products related to detection or remediation of identity theft incurred on or after March 22, 2019, through the date of the Settlement Class Member's claim submission.

4. Lost Time: "Lost Time" is time spent remedying fraud, identity theft, or other misuse of a Settlement Class Member's personal information that the Settlement Class Member believes is fairly traceable to the Data Breach and time spent taking preventative measures to avoid such losses. Lost Time will be paid at the "Reimbursement Rate", which shall be the greater of $25 per hour, or, if the Settlement Class Member took time off work, at the Settlement Class Member's documented hourly wage.

a. Lost Time related to a qualifying claim for Out-of-Pocket Losses may be supported by a certification for up to 15 hours.

b. Lost Time not related to a qualifying claim for Out-of-Pocket Losses but incurred as a result of fraud, identity theft or other misuse, or incurred taking preventative measures to avoid fraud, identity theft or other misuse may be supported by a certification for up to 5 hours.

c. Lost Time claims may be made in 15-minute increments.

5. Claims Period: The "Claims Period" is the period starting from the date the Court enters the Preliminary Approval Order and ending 90 days after the Notice Date. Settlement Class Members must submit claims for Out-of-Pocket Losses and Lost Time during the Claims Period. Class members will be encouraged to claim Identity Defense Services during the Claims Period. After the Effective Date, Settlement Class Members may register for Identity Defense Services and request Restoration Services during the period such services are available to the Settlement Class, regardless of whether they made a claim for Identity Defense Services during the Claims Period.

6. Claims Cap: The Settlement Administrator will use the Net Settlement Fund to compensate those Settlement Class Members who submit valid claims for Out-of-Pocket Losses and Lost Time. Settlement Class Members will be subject to an aggregate claims cap of twenty-five thousand United States Dollars ($25,000) paid directly from the Net Settlement Fund regardless of the number of claims submitted by the Settlement Class Member during the Claims Period.

7. Insufficient or Excess Funds:

a. To the extent valid claims exceed the Net Settlement Fund, payments for Out-of-Pocket Losses and Lost Time shall be reduced on a pro rata basis.

b. To the extent the Net Settlement Fund is not exhausted by the claims, any remaining funds in the Net Settlement Fund will first be used to purchase up to 2 years of additional Identity Defense Services and Restoration Services (and to pay any attendant expenses to provide notice of such extended period for Identity Defense Services and Restoration Services) and second will be used to increase payments to Settlement Class Members submitting valid claims on a pro-rated basis. No funds may revert to Capital One.

c. Any remaining funds resulting from the failure of Settlement Class Members to timely negotiate a settlement check or to timely provide required tax information such that a settlement check could issue, shall be distributed to Settlement Class Members, or as otherwise ordered by the Court. No funds may revert to Capital One.

8. Claims Process: The "Claim Form" shall be the form approved by the Court and used by Settlement Class Members to submit claims for benefits under the Settlement. Settlement Class Members may submit Claim Forms to the Settlement Administrator electronically during the Claims Period, or download a form for mailing from the settlement website. The Settlement Administrator shall verify that each person who submits a Claim Form is a Settlement Class Member and shall be responsible for evaluating claims and deciding whether claimed Out-of-Pocket Losses and Lost Time are valid and fairly traceable to the Data Breach.

    a. Claims for Out-of-Pocket Losses:

        i. Settlement Class Members with Out-of-Pocket Losses must submit Reasonable Documentation supporting their claims. As used herein, "Reasonable Documentation" means documentation supporting a claim, including but not limited to: credit card statements, bank statements, invoices, telephone records, and receipts. Except as expressly provided herein, personal certifications, declarations, or affidavits from the claimant do not constitute Reasonable Documentation but may be included to provide clarification, context or support for other submitted Reasonable Documentation.

        ii. In assessing what qualifies as "fairly traceable," the Settlement Administrator must consider (1) the timing of the loss, including whether the loss occurred on or after March 22, 2019, through the date of the Settlement Class Member's claim submission; (2) whether the loss involved the possible misuse of the type of personal information accessed in the Data Breach; (3) whether the personal information accessed in the Data Breach that is related to the Settlement Class Member is of the type that was possibly misused; (4) the Class Member's explanation as to how the loss is fairly traceable to the Data Breach; (5) the nature of the loss, including whether the loss was reasonably incurred as a result of the Data Breach; and (6) any other factor that the Settlement Administrator considers to be relevant. The Settlement Administrator shall have the sole discretion and authority to determine whether claimed Out-of-Pocket Losses are valid and fairly traceable to the Data Breach.

    b. Claims for Lost Time:

        i. Lost Time related to Out-of-Pocket Losses. Settlement Class Members with (1) qualifying Out-of-Pocket Losses and (2) time spent remedying these issues may submit a claim for up to 15 hours of such time to be compensated at the Reimbursement Rate. In the event the Settlement Administrator does not approve a claim for Out-of-Pocket Losses, related claims for Lost Time shall be treated as a claim for Self-Certified Time.

ii. Self-Certified Time. Settlement Class Members who attest (i) to fraud, identity theft, or other alleged misuse of the Settlement Class Member's personal information the Settlement Class Member believes is fairly traceable to the Data Breach, or taking preventive measures to avoid such fraud, identity theft, or other misuse and (ii) that they spent time remedying such misuse or taking such preventative measures, may self-certify the amount of time they spent remedying the foregoing by providing a certified explanation of the misuse or preventative measures taken and how the time claimed was spent remedying the misuse or taking preventative measures. Settlement Class Members may file a claim for Self-Certified Time for up to 5 hours at the Reimbursement Rate.

9. Disputes and Appeals:

a. To the extent the Settlement Administrator determines a claim is deficient in whole or part, within 21 days after the Settlement Administrator processes all claims, the Settlement Administrator shall notify the Settlement Class Member in writing (including by e-mail where the Settlement Class Member selects e-mail as his or her preferred method of communication) of the deficiencies and provide the Settlement Class Member 30 days to cure the deficiencies. The notice shall inform the Settlement Class Member that he or she can either attempt to cure the deficiencies outlined in the notice, or dispute the determination in writing and request an appeal. If the Settlement Class Member attempts to cure the deficiencies but, in the sole discretion and authority of the Settlement Administrator fails to do so, the Settlement Administrator shall notify the Settlement Class Member of that determination within 14 days of the determination. The notice shall inform the Settlement Class Member of his or her right to dispute the determination in writing and request an appeal within 30 days. The Settlement Administrator shall have the sole discretion and authority to determine whether a claim is deficient in whole or part but may consult with the Parties in making individual determinations.

b. If a Settlement Class Member disputes a determination in writing (including by e-mail where the Settlement Class Member selects e-mail as his or her preferred method of communication) and requests an appeal, Class Counsel shall propose that the Court appoint a claims referee to be paid from the Net Settlement Fund. The Settlement Administrator shall provide the claims referee a copy of the Settlement Class Member's dispute and Claim Form along with all documentation or other information submitted by the Settlement Class Member. The claims referee's approval or denial of the Settlement Class Member's claim, in whole or part, will be final.

EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

IN RE: CAPITAL ONE CONSUMER DATA SECURITY BREACH LITIGATION	)))	MDL No. 1:19md2915 (AJT/JFA) JURY TRIAL DEMANDED

This Document Relates to the Consumer Cases

[PROPOSED] PRELIMINARY APPROVAL ORDER

WHEREAS, the Settling Parties to the above-described class action ("Action") have applied for an order, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, regarding certain matters in connection with a proposed settlement of the Action, in accordance with a Class Action Settlement Agreement and Release (the "Settlement" or "Settlement Agreement") entered into by the Parties as of January 31, 2022 (which, together with its exhibits, is incorporated herein by reference) and dismissing the Action upon the terms and conditions set forth in the Settlement Agreement;

WHEREAS, all capitalized terms used in this Order have the same meanings as set forth in the Settlement Agreement;

WHEREAS, the Parties have extensively litigated this matter through fact and expert discovery and have briefed and argued many issues of fact and law relating to the matters alleged in the Action;

WHEREAS, the Parties reached a settlement as a result of extensive arm's-length negotiations between the Parties and their counsel, occurring over the course of many months and overseen by United States District Judge Leonie M. Brinkema; and

WHEREAS, the Court has carefully reviewed the Settlement Agreement, including the

exhibits attached thereto and all files, records, and prior proceedings to date in this matter, and good cause appearing based on the record;

IT IS HEREBY ORDERED that:

The Settlement Agreement, including the exhibits attached thereto, are preliminarily approved as fair, reasonable, and adequate, in accordance with Rule 23(e) of the Federal Rules of Civil Procedure, pending a Final Approval Hearing on the Settlement as provided herein.

1. Stay of the Action. Pending the Final Approval Hearing, all proceedings in the consumer cases, other than proceedings necessary to carry out or enforce the terms and conditions of the Settlement Agreement and this Order, are hereby stayed.

2. Directive to Issue Notice to Settlement Class. Pursuant to Federal Rule of Civil Procedure 23(e), the Court finds that it has sufficient information to enable it to determine whether to give notice of the proposed Settlement to the Settlement Class. The Court further finds that the proposed Settlement and Notice Plan meet the requirements of Rule 23(e) and that the Court will likely be able to certify the Settlement Class for purposes of judgment on the Settlement.

The Court finds that the Settlement Class Representatives and Class Counsel have adequately represented the Settlement Class. The Court further finds that the Settlement was negotiated at arm's length by informed and experienced counsel, who were overseen by a federal judge acting as mediator. The relief provided to the Settlement Class under the Settlement is adequate. There would be substantial costs, risks and delay associated with proceeding to trial and potential appeal. The method proposed for distributing relief to the Settlement Class and processing claims is adequate and effective. The proposed award of Attorneys' Fees and Expenses, including the timing of such payment, is reasonable, subject to the Court's review of a timely filed fee application. The Court further finds that the Settlement is adequate in light of the separately

filed agreement providing a right to Capital One to terminate the Settlement Agreement if a significant number of Settlement Class Members opt-out of the Settlement. Finally, the Court finds that the proposed Settlement treats Settlement Class Members equitably relative to each other.

For these reasons, the Court concludes and determines that it will likely be able to certify the proposed Settlement Class under Rule 23(b)(3) of the Federal Rules of Civil Procedure, as it finds that: (a) the Settlement Class certified herein numbers approximately 98 million people, and joinder of all such persons would be impracticable, (b) there are questions of law and fact that are common to the Settlement Class, and those questions of law and fact common to the Settlement Class predominate over any questions affecting any individual Settlement Class Member; (c) the claims of the Settlement Class Representatives are typical of the claims of the Settlement Class they seek to represent for purposes of the Settlement; (d) a class action on behalf of the Settlement Class is superior to other available means of adjudicating this dispute; and (e) as set forth below, Settlement Class Representatives and Class Counsel are adequate representatives of the Settlement Class.

3. Class Definition. The Court hereby certifies, for settlement purposes only, a class consisting of: "the approximately 98 million U.S. residents identified by Capital One whose information was compromised in the Data Breach that Capital One announced on July 29, 2019, as reflected in the Class List. Excluded from the Settlement Class are (i) Capital One, any entity in which Capital One has a controlling interest, and Capital One's officers, directors, legal representatives, Successors, Subsidiaries, and assigns; (ii) any judge, justice, or judicial officer presiding over the Action and the members of their immediate families and judicial staff; and (iii) any individual who timely and validly opts out of the Settlement Class."

4. Settlement Class Representatives. For purposes of the Settlement only, the Court

finds and determines, pursuant to Rule 23(a) of the Federal Rules of Civil Procedure, that plaintiffs Brandon Hausauer, Carolyn Tada, Emily Behar, Gary Zielicke, Emily Gershen, Brandi Edmondson, John Spacek, and Sara Sharp ("Settlement Class Representatives") will fairly and adequately represent the interests of the Settlement Class in enforcing their rights in the Action and appoints them as Settlement Class Representatives. The Court preliminarily finds that they are similarly situated to absent Settlement Class Members and are therefore typical of the Settlement Class, and that they will be adequate class representatives.

5. Article III Standing. The Court has an initial obligation to assure itself of the plaintiffs' "standing under Article III," which "extends to court approval of proposed class action settlements." *Frank v. Gaos*, 139 S. Ct. 1041, 1046 (2019) (per curiam). The Court does not have the power "to approve a proposed class settlement if it lacks jurisdiction over the dispute, and federal courts lack jurisdiction if no named plaintiff has standing." *Id.* "On the other hand, only one named plaintiff must have standing as to any particular claim in order for it to advance." *In re Equifax Inc. Customer Data Sec. Breach Litig.*, 999 F.3d 1247, 1261 (11th Cir. 2021), *cert. denied sub nom. Huang v. Spector*, 142 S. Ct. 431 (2021), *and cert. denied sub nom. Watkins v. Spector*, No. 21-638, 2022 WL 89334 (U.S. Jan. 10, 2022). The Court need not determine whether absent Settlement Class Members have standing to have jurisdiction to approve the Settlement. *J.D. v. Azar*, 925 F.3d 1291, 1324 (D.C. Cir. 2019); *see also Hutton v. Nat'l Bd. of Exam'rs in Optometry, Inc.*, 892 F.3d 613, 620 (4th Cir. 2018) (In a class action, "we analyze standing based on the allegations of personal injury made by the named plaintiffs.") (internal quotation marks omitted). Thus, to assure itself of its jurisdiction to approve the Settlement, the Court must find that at least one Settlement Class Representative has "(1) suffered an injury-in-fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable

judicial decision." *Hutton*, 892 F.3d at 619.

The Court concludes that it has jurisdiction because the Settlement Class Representatives have established standing to sue. As just one example, Settlement Class Representative Gary Zielicke has presented evidence from which a reasonable factfinder could find that he suffered fraud using his personal information stolen in the Data Breach. *See* Doc. 1807 at Appendix 1 (summarizing evidence for Mr. Zielicke and other Settlement Class Representatives). Fraud resulting from a data breach is an injury in fact that is traceable to the breached defendant and is redressable by a federal court. *See Hutton*, 892 F.3d at 622-24. Mr. Zielicke also incurred costs to mitigate the fraud and prevent additional fraud (*see* Doc. 1807 at Ex. BB), which also provides standing. *Hutton*, 892 F.3d at 622; *see also TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2204 (2021) ("If a defendant has caused . . . monetary injury to the plaintiff, the plaintiff has suffered a concrete injury in fact under Article III.").

In addition, Capital One has stipulated that its Privacy Notice contains one or more express contractual provisions covering Capital One's obligations with respect to safeguarding personal information. *See* Doc. 1098. The Settlement Class Representatives have presented evidence from which a reasonable factfinder could conclude that Capital One breached one or more of these contractual obligations related to data security as to all Settlement Class Members, resulting in the theft of their and every Settlement Class Member's personal information in the Data Breach. *See* Doc. 1649. Further, Settlement Class Representatives have presented evidence supporting their alternative claim that Capital One breached an implied contract with Settlement Class Representatives and Settlement Class Members to provide reasonable data security. *Id.* Either is likewise sufficient to provide standing to the Settlement Class Representatives and thus to invoke the Court's subject matter jurisdiction to approve the Settlement. *See L-3 Commc'ns Corp. v.*

Serco, Inc., 673 F. App'x 284, 289 (4th Cir. 2016) ("[B]y alleg[ing] the existence of a contract, express or implied, and a concomitant breach of that contract, [the plaintiff's] complaint adequately show[ed] an injury to her rights for purposes of standing.") (citation and quotations omitted); *see also id.* ("[W]hether a plaintiff ultimately recovers the damages he seeks is a question better left to the applicable substantive law rather than a standing inquiry under Article III.") (citation and quotations omitted).

6. Class Counsel. For purposes of the Settlement, the Court appoints Norman E. Siegel of Stueve Siegel Hanson LLP, Karen Hanson Riebel of Lockridge Grindal Nauen, P.L.L.P., and John A. Yanchunis of Morgan & Morgan Complex Litigation Group as Class Counsel to act on behalf of the Settlement Class Representatives and the Settlement Class with respect to the Settlement. The Court authorizes Class Counsel to enter into the Settlement on behalf of the Settlement Class Representatives and the Settlement Class, and to bind them all to the duties and obligations contained therein, subject to final approval by the Court of the Settlement.

7. Notice Provider and Settlement Administrator. The Court appoints Epiq Class Action & Claims Solutions, Inc. ("Epiq") as Settlement Administrator to administer the Notice Plan and the processing of claims. The Court directs that the Settlement Administrator effectuate the Settlement Agreement in coordination with Class Counsel, subject to the jurisdiction and oversight of this Court.

8. CAFA Notice. Within 10 days after the filing of the Motion for Preliminary Approval, Capital One shall serve or cause to be served a notice of the proposed Settlement on appropriate state officials in accordance with the requirements of the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715(b).

9. Notice Plan. The Notice Plan submitted with the Motion for Preliminary Approval

and the forms of notice attached thereto satisfy the requirements of Federal Rule of Civil Procedure 23 and are thus approved. Non-material modifications to the notices may be made without further order of the Court. The Settlement Administrator is directed to carry out the Notice Program in conformance with the Settlement Agreement and to perform all other tasks that the Settlement Agreement requires. Prior to the Final Approval Hearing, Class Counsel shall cause to be filed with the Court an appropriate declaration with respect to complying with the provisions of the Notice Plan.

The Court further finds that the form, content, and method of giving notice to the Settlement Class as described in the Notice Plan submitted with the Motion for Preliminary Approval: (a) constitute the best practicable notice to the Settlement Class; (b) are reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action, the terms of the proposed Settlement, and their rights under the proposed Settlement; (c) are reasonable and constitute due, adequate, and sufficient notice to those persons entitled to receive notice; and (d) satisfy the requirements of Federal Rule of Civil Procedure 23, the constitutional requirement of due process, and any other legal requirements. The Court further finds that the notices are written in plain language, use simple terminology, and are designed to be readily understandable by Settlement Class Members.

10. Provider of Monitoring and Restoration Services. The Court appoints Intersections, LLC d/b/a Pango ("Pango") as the provider of monitoring and restoration services to eligible Settlement Class Members as set forth in the Consumer Settlement Benefits Plan. The Court directs that Pango effectuate the Settlement Agreement in coordination with Class Counsel and the Settlement Administrator, subject to the jurisdiction and oversight of this Court.

11. Consumer Settlement Benefits Plan. The Court has reviewed and considered the

Consumer Settlement Benefits Plan proposed by Class Counsel and finds that it is fair and reasonable and equitably distributes Settlement benefits amongst Settlement Class Members. The Court directs Class Counsel, the Settlement Administrator, and Pango to implement the Consumer Settlement Benefits Plan in accordance with its own terms, the Settlement Agreement, and the Court's orders.

12. Deadline to Submit Claim Forms. As set forth in the Consumer Settlement Benefits Plan, Settlement Class Members will have until 90 calendar days from the Notice Date to submit their Claim Forms ("Claims Deadline"), which is due, adequate, and sufficient time.

13. Exclusion from Settlement Class. Any person falling within the definition of the Settlement Class may, upon request, be excluded or "opt out" from the Settlement Class. Any such person who desires to request exclusion must submit written notice of such intent to the designated Post Office box established by the Settlement Administrator. The written notice must clearly manifest a Person's intent to be excluded from the Settlement Class and be personally signed by that person. To be effective, the written notice must be postmarked no later than forty-five (45) days after the Notice Date. All those persons submitting valid and timely notices of exclusion shall not be entitled to receive any benefits of the Settlement.

Any Settlement Class Member who does not timely and validly exclude themselves from the Settlement shall be bound by the terms of the Settlement. If final judgment is entered, any Settlement Class Member who has not submitted a timely, valid written notice of exclusion from the Settlement Class shall be bound by all subsequent proceedings, orders, and judgments in this matter, including but not limited to the release set forth in the Settlement Agreement and Judgment.

14. Final Approval Hearing. A hearing will be held by this Court in the Courtroom of The Honorable Anthony J. Trenga, United States District Court for the Eastern District of Virginia,

Albert V. Bryan United States Courthouse, Room ____, 401 Courthouse Square, Alexandria, Virginia 22314 at _____ __.m. on _____, 2022 ("Final Approval Hearing"), to determine: (a) whether the Settlement should be approved as fair, reasonable, and adequate to the Settlement Class; (b) whether the Final Approval Order and Judgment should be entered; (c) whether the Settlement benefits as proposed in the Settlement Agreement should be approved as fair, reasonable, and adequate; (d) whether to approve the application for service awards for the Settlement Class Representatives and the other Settlement Class Members who were deposed in the Action ("Service Awards") and an award of attorneys' fees and litigation expenses ("Attorneys' Fees and Expenses"); and (e) any other matters that may properly be brought before the Court in connection with the Settlement. The Court may approve the Settlement with such modifications as the Parties may agree to, if appropriate, without further notice to the Settlement Class.

15. Objections and Appearances. Any Settlement Class Member may enter an appearance in the Action, at their own expense, individually or through counsel of their own choice. If a Settlement Class Member does not enter an appearance, they will be represented by Class Counsel. Any Settlement Class Member who wishes to object to the Settlement, the Settlement benefits, Service Awards, and/or the Attorneys' Fees and Expenses, or to appear at the Final Approval Hearing and show cause, if any, why the Settlement should not be approved as fair, reasonable, and adequate to the Settlement Class, why a Final Approval Order and Judgment should not be entered thereon, why the Settlement benefits should not be approved, or why the Service Awards and/or the Attorneys' Fees and Expenses should not be granted, may do so, but must proceed as set forth in this paragraph. No Settlement Class Member will be heard on such matters unless they have filed in this Action the objection, together with any briefs, papers, statements, or other materials the Settlement Class Member wishes the Court to consider, within

forty-five (45) calendar days following the Notice Date. Any objection must include: (i) the case name and number of the Action; (ii) the name, address, telephone number of the objecting Settlement Class Member, and if represented by counsel, of his/her counsel; (iii) a statement whether the objection applies only to the objector, to a specific subset of the class, or to the entire class; (iv) a statement of the specific grounds for the objection; and (v) a statement of whether the objecting Settlement Class Member intends to appear at the Final Approval Hearing, and if so, whether personally or through counsel.

In addition to the foregoing requirements, if an objecting Settlement Class Member is represented by counsel and such counsel intends to speak at the Final Approval Hearing, the written objection must include a detailed description of any evidence the objecting Settlement Class Member may offer at the Final Approval Hearing, as well as copies of any exhibits the objecting Settlement Class Member may introduce at the Final Approval Hearing. Any Settlement Class Member who fails to object to the Settlement in the manner described in this Agreement and in the notice provided pursuant to the Notice Plan shall be deemed to have waived any such objection, shall not be permitted to object to any terms or approval of the Settlement at the Final Approval Hearing, and shall be precluded from seeking any review of the Settlement or the terms of this Agreement by appeal or any other means. With leave of Court for good cause shown, the Parties may take discovery of an objector or an objector's counsel.

16. Claimants. Settlement Class Members who submit within ninety (90) days of the Notice Date a valid Claim Form approved by the Settlement Administrator may qualify to receive Settlement benefits. Any such Settlement Class Member who does not submit a timely Claim Form in accordance with this Order shall not be entitled to receive such benefits, but shall nevertheless be bound by any final judgment entered by the Court. Notwithstanding the foregoing, all

Settlement Class Members, even those who do not enroll in Identity Defense Services or do not submit a claim, will be entitled to utilize identity Restoration Services offered through Pango throughout the duration of that service. Class Counsel shall have the discretion, but not the obligation, to accept late-submitted claims for processing by the Settlement Administrator, so long as processing does not materially delay distribution of compensation to Settlement Class Members. No person shall have any claim against Class Counsel or the Settlement Administrator by reason of the decision to exercise discretion whether to accept late-submitted claims.

17. Release. Upon the entry of the Court's Final Approval Order and Judgment after the Final Approval Hearing, the Settlement Class Representatives and all Settlement Class Members, whether or not they have filed a Claim Form within the time provided, shall be permanently enjoined and barred from asserting any claims (except through the Claim Form procedures) against Defendants and the Released Parties arising from the Released Claims, and the Settlement Class Representatives and all Settlement Class Members conclusively shall be deemed to have fully, finally, and forever released any and all such Released Claims.

18. Final Approval Briefing. All opening briefs and supporting documents in support of a request for Final Approval of the Settlement and Settlement benefits must be filed and served at least 10 days prior to the Final Approval Hearing. All briefing and supporting documents in support of an application for Attorneys' Fees and Expenses and Service Awards must be filed 21 days prior to the Objection Deadline.

19. Reasonable Procedures. Class Counsel and Capital One's Counsel are hereby authorized to use all reasonable procedures in connection with approval and administration of the Settlement that are not materially inconsistent with this Order or the Settlement Agreement, including making, without further approval of the Court, minor changes to the form or content of

the notices, and other exhibits that they jointly agree are reasonable or necessary to further the purpose of effectuating the Parties' Settlement Agreement.

20. Extension of Deadlines. Upon application of the Parties and good cause shown, the deadlines set forth in this Order may be extended by order of the Court, without further notice to the Settlement Class. Settlement Class Members must check the Settlement website (www.capitalonesettlement.com) regularly for updates and further details regarding extensions of these deadlines. The Court reserves the right to adjourn or continue the Final Approval Hearing, and/or to extend the deadlines set forth in this Order, without further notice of any kind to the Settlement Class.

21. If Effective Date Does Not Occur. In the event that the Effective Date does not occur, certification shall be automatically vacated and this order, and all other orders entered and releases delivered in connection herewith, shall be vacated and shall become null and void.

22. In sum, the Court enters the following deadlines:

ACTION	**DATE**
Capital One Provides Class List	Within 30 days following entry of this Order
Notice Date	105 days following entry of this Order
Proof of Notice Submitted	At least 10 days prior to the Final Approval Hearing
Motion for Attorneys' Fees and Expenses, and Service Awards	21 days prior to the Objection Deadline
Exclusion / Opt-Out Deadline	45 days after Notice Date

Objection Deadline	45 days after Notice Date
Final Approval Brief and Response to Objections Due	At least 10 days prior to the Final Approval Hearing
Final Approval Hearing	(To be scheduled no earlier than 175 days after entry of this Order)
Deadline to Submit Claims	90 days after Notice Date

IT IS SO ORDERED:

Date: _____

_____
Anthony J. Trenga
United States District Judge

EXHIBIT 4

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

IN RE: CAPITAL ONE CONSUMER DATA SECURITY BREACH LITIGATION	)	MDL No. 1:19md2915 (AJT/JFA)

This Document Relates to the Consumer Cases

CLASS COUNSEL'S DECLARATION IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL AND TO DIRECT NOTICE OF PROPOSED SETTLEMENT TO CLASS

Norman E. Siegel, Karen Hanson Riebel, and John A. Yanchunis declare as follows:

1. We were appointed by this Court to serve as Plaintiffs' Lead Counsel in the above-captioned MDL. We have led the plaintiffs' and absent putative class members' efforts since our appointment on December 2, 2019. Doc. 210, Pretrial Order #3. We have personal knowledge of all the matters addressed in this Declaration, including the negotiations that culminated with the filing of the proposed settlement (the "Settlement") now before the Court.

2. As detailed in our leadership applications in this case, we have led some of the country's most complex civil litigation; have been recognized by courts and national publications for our knowledge and experience in privacy and data breach cases; and are responsible for groundbreaking data breach settlements, including in *Equifax*, *Home Depot*, *Anthem*, *Yahoo!*, and *Target*. For purposes of the Court's consideration of certifying the class for settlement purposes (the "Settlement Class") and appointing Class Counsel, we briefly summarize our qualifications as part of this Declaration.

Norman E. Siegel

3. Since the revelation of the Target data breach in late 2013, Mr. Siegel has dedicated much of his practice to representing victims of data breaches. He co-founded the American

Association for Justice's Consumer Privacy and Data Breach Litigation Group and previously served as the group's co-chair. He is a nationally published author on emerging issues impacting data breach cases, and he regularly speaks on data breach litigation issues and best practices in settling data breach cases. In recent years, *Law360* recognized Mr. Siegel as a "Titan of the Plaintiff's Bar" and *Best Lawyers* named him "Lawyer of the Year" for his work in data breach litigation.

4. Over the last ten years, Mr. Siegel has led or substantively participated in nearly every major consumer data breach case on record, including serving as court-appointed co-lead counsel in multi-district litigation (MDLs) involving mega-breach cases such as *Target* (110 million class members), *Home Depot* (56 million class members), *Equifax* (149 million class members), and *Quest Diagnostics* (11.5 million class members). In addition, Mr. Siegel has worked alongside leadership in several other large data breach MDLs, including serving as a member of the plaintiffs' steering committee (PSC) leading the briefing committee in *Marriott* (383 million class members), and in *Anthem* (80 million class members) and *Office of Personnel Management* (21 million class members) where Stueve Siegel Hanson represented a significant percentage of the named plaintiffs and handled other critical components of the litigation, including drafting large portions of the successful standing appeal before the United States Court of Appeals for the D.C. Circuit in *Office of Personnel Management*.

5. In both *Equifax* and *Home Depot*, Mr. Siegel led the settlement negotiations for the plaintiffs' side, obtaining historic settlements which Judge Thrash endorsed in *Equifax* as being "the direct result of all counsel's experience, reputation, and ability in complex class actions including the evolving field of privacy and data breach class actions." *In re Equifax Inc. Customer Data Sec. Breach Litig.*, No. 1:17-MD-2800-TWT, 2020 WL 256132, at *33 (N.D. Ga. Mar. 17,

2020). Mr. Siegel has also served as lead counsel and crafted settlements in smaller data breach cases, including *Hutton v. National Board of Examiners in Optometry, Inc.*, No. 16-cv-03025-JKB, 2019 WL 3183651 (D. Md. July 15, 2019), where he resolved a data breach case impacting 60,000 eye doctors across the country, which the court found provided "multiple beneficial forms of relief [and] . . . reflects an outstanding result for the Class." *Id.* at *6. This settlement occurred after the plaintiffs were successful on appeal to the Fourth Circuit in obtaining a reversal of the district court's order dismissing the case for lack of Article III standing.

Karen Hanson Riebel

6. Karen Hanson Riebel is a partner in Lockridge Grindal Nauen, P.L.L.P., who has been working on the forefront of data privacy and data breach litigation in the United States for two decades. Ms. Riebel focuses her practice on advocacy for and representation of people and entities who have been negatively impacted by data and privacy breaches. She is regularly asked to speak on the subject around the country. Ms. Riebel has been appointed to leadership roles in the following consumer data breach litigation: Co-Lead Counsel in *In re Community Health Systems, Inc., Customer Security Data Breach Litig.*, No. 15-00222, MDL 2595 (N.D. Ala.); a member of the four-person Executive Committee for plaintiffs in *In re Yahoo! Inc. Customer Data Security Breach Litig.*, No. 16-02752 (N.D. Cal.); and a member of the Plaintiffs' Executive Committee in *Shores et al v. Premera Blue Cross*, No. 15-01268 (D. Or.). In addition, Ms. Riebel was appointed as Co-Lead Counsel for financial institution plaintiffs in *Greater Chautauqua Federal Credit Union v. Kmart Corporation*, No. 15-02228 (N.D. Ill.); Co-Lead Counsel for financial institution plaintiffs in *In re Arby's Restaurant Group, Inc. Data Security Litig.*, 17-00514 (N.D. Ga.); and Liaison Counsel for the financial institution plaintiffs and a member of Plaintiffs' Leadership Committee in *In re Target Corp. Customer Data Security Breach Litig.*,

No. 14-md-02522-PAM (D. Minn.) . Ms. Riebel serves or served on the Executive Committees for financial institution plaintiffs in: *In re Home Depot, Inc., Customer Data Security Breach Litig.*, No. 14-02583-TWT (N.D. Ga.); *Bellwether Community Credit Union v. Chipotle Mexican Grill, Inc.*, 17-01102 (D. Colo.); *Veridian Credit Union v. Eddie Bauer LLC*, No. 17-00356 (W.D. Wa.); *First Choice Federal Credit Union et al. v. The Wendy's Company*, No. 16-00506 (W.D. Pa.); and *In re Equifax, Inc. Customer Data Security Breach Litig.*, No. 17-02800 (N.D. Ga.).

7. Ms. Riebel also currently serves as or was counsel for financial institution plaintiffs or consumer plaintiffs in the following data breach and data privacy cases: *Adkins v. Facebook, Inc.*, No. 18-cv-05982 (N.D. Cal.); *In re Anthem, Inc. Data Breach*, No. 5:15-MD-02617-LHK (N.D. Cal.); *In re Ashley Madison Customer Data Breach Security Litig.*, MDL No. 2669 (E.D. Mo.); *Baker v. ParkMobile, LLC*, No. 1:21-cv-02182 (N.D. Ga.); *In re Banner Health Data Breach Litig.*, No. 16-cv-02696 (D. Ariz.); *Baysal et al. v. Midvale Indemnity Co.*, No. 3:21-cv-00394 (W.D. Wis.); *Duqum v. Scottrade, Inc.*, No. 4:15-cv-01537 (E.D. Mo.); *Fero et al v. Excellus Health Plan, Inc.*, No. 6:15-06569 (W.D.N.Y.); *In re Google Android Consumer Privacy Litig.*, Civil No. 11-md-2264-JSW (N.D. Cal.); *Greenstate Credit Union v. Hy-Vee, Inc.*, No. 20-cv-00621 (D. Minn.); *In re iPhone Application Litig.*, Civil No. 11-md-2250-LHK (N.D. Cal.); *In re: Netgain Technology, LLC Consumer Data Breach Litig.*, No. 0:21-cv-01210 (D. Minn.); *SELCO Community Credit Union v. Noodles & Company*, Civil No. 16-02247 (D. Colo.); *Smallman v. MGM Resorts International*, No. 20-cv-00375 (D. Nev.); *Storm v. Paytime, Inc.*, No. 14-01138-JEJ (M.D. Pa.); *In re Supervalu, Inc., Customer Data Security Breach Litig.*, MDL No. 2586 (D. Minn.); *Village Bank v. Caribou Coffee Company, Inc.*, No. 19-cv-01640 (D. Minn.); *In re Warner Music Group Data Breach*, No. 20-cv-07473 (S.D.N.Y.); and *In re WaWa, Inc. Data Security Litig.*, No. 19-cv-06019 (E.D. Pa.).

John A. Yanchunis

8. Mr. Yanchunis' practice in the privacy arena stretches back decades, beginning in 1999 with the filing of *In re Doubleclick Inc. Privacy Litigation*, 154 F. Supp. 497 (S.D.N.Y. 2001), which alleged privacy violations based on the placement of cookies on hard drives of internet users. Beginning in 2003, he served as co-lead counsel in the successful prosecution and settlement of privacy class action cases involving the protection of privacy rights arising from the misuse of information of more than 200 million consumers under the Driver's Protection Privacy Act against the world's largest data and information brokers, including Experian, R.L. Polk, Acxiom, and Reed Elsevier (which owns Lexis/Nexis). *See Fresco v. Auto. Directions, Inc.*, No. 03-cv-61063 and *Fresco v. R.L. Polk*, No. 07-cv-60695 (S.D. Fla.).

9. Mr. Yanchunis serves, by appointment of Judge Lucy Koh, as lead counsel in perhaps the largest class action lawsuit in history: *In re: Yahoo! Customer Data Security Breach Litigation*, No. 16-md-02752-LHK (N.D. Cal.), which at inception included some over 1 billion Yahoo user accounts. He also serves, or has served, in leadership positions in the following data privacy related Multidistrict cases: *In Re: Equifax, Inc. Customer Data Security Breach Litigation*, 1:17-md-2800-TWT (N.D. Ga.) (member of the Plaintiffs' Steering Committee) (final approval of $380.5 million fund); *In re: U.S. Office of Personnel Management Data Security Breach Litigation*, 1:15-mc-01394-ABJ (D.D.C.) (member of the Executive Committee) (dismissal on standing grounds reversed on appeal to the D.C. Circuit); *In re The Home Depot, Inc. Consumer Data Sec. Data Breach Litig.*, No. 1:14-md-02583-TWT (N.D. Ga.) (co-Lead Counsel) (final judgment entered approving a settlement on behalf of a class of 40 million consumers with total value of $29,025,000); and *In re Target Corp. Customer Data Sec. Breach Litig.*, MDL No. 2522 (D. Minn.) (Executive Committee member) (final judgment approving a settlement on behalf of a

class of approximately 100 million consumers upheld by the 8th Circuit), amongst others. Mr. Yanchunis also litigated and successfully resolved the Facebook data breach case, including achieving certification of a litigated class, in *Adkins v. Facebook, Inc.*, 424 F. Supp. 3d 686 (N.D. Cal. 2019).

10. Our collective experiences litigating and resolving the largest privacy and data breach cases in history were brought to bear in the approach to prosecuting and settling the claims presented in this case, and it is our shared view that the Settlement presented here is an excellent result for the Settlement Class. We are confident that this Settlement is fair, reasonable, and adequate and in the best interests of the approximately 98 million Americans who were impacted by the Capital One data breach.

Overview of the Litigation

11. On July 29, 2019, Capital One announced that the sensitive personal information of approximately 98 million Americans who had applied for Capital One credit cards had been stolen by a malicious criminal hacker from Amazon's AWS cloud where Capital One stored this information (the "Data Breach"). Affected individuals across the country immediately began filing class action lawsuits against Capital One and Amazon. Ultimately, more than 60 such lawsuits were filed.

12. In October 2019, the Judicial Panel on Multidistrict Litigation consolidated and transferred these lawsuits to Judge Anthony J. Trenga of the Eastern District of Virginia, Alexandria Division, where Capital One is headquartered.

13. On November 1, 2019, the Court stated its intention to appoint Plaintiffs' Lead Counsel and potentially a Plaintiffs' Steering Committee and ordered the submission of all applications and nominations for such positions by November 18, 2019. Doc. 3, Pretrial Order

#1. There were over 30 applications, some by groups of lawyers and others by individuals. On December 2, 2019, the Court appointed us as Plaintiffs' Lead Counsel and maintained under advisement whether to appoint a Plaintiffs' Steering Committee. Doc. 210, Pretrial Order #3. Pursuant to the Court's Pretrial Order #1, we associated with Steven T. Webster, a member of the Bar of this Court, to act as local counsel.

14. Pursuant to the Court's Pretrial Orders #1 and #1B, as Plaintiffs' Lead Counsel we were generally responsible for coordinating the activities of Plaintiffs during pretrial proceedings, including but not limited to formulating the proposed litigation schedule; determining how and through which counsel to present to the Court and opposing parties the position of Plaintiffs on all matters arising during pretrial proceedings; determining and coordinating how discovery was to be conducted on behalf of Plaintiffs, including written discovery, subpoenas, and depositions; conducting settlement negotiations on behalf of plaintiffs and entering into settlement agreements; entering into stipulations with opposing counsel as necessary for the conduct of the litigation; preparing and distributing periodic status reports to the parties; and maintaining adequate time and disbursement records.

15. Immediately upon our appointment, we worked to prepare a detailed proposed discovery plan pursuant to Paragraph 10(d) of Pretrial Order #1 (Doc. 269-1), and on December 20, 2019, Plaintiffs and Capital One exchanged their proposed discovery plans. As part of their discovery plan, Plaintiffs served on Capital One twenty-one (21) initial Rule 30(b)(6) topics, twenty (20) initial interrogatories, and thirty (30) initial requests for documents. We further conferred with counsel for Capital One to reach agreement on a proposed schedule for the litigation, negotiated an ESI protocol and crafted and negotiated search terms for ESI discovery, and negotiated a protective order. Docs. 270, 312, 329.

16. Our next major task was to prepare and file a representative complaint, which the Court approved (Doc. 302) as the vehicle for litigating Plaintiffs' claims (the "Representative Complaint"). Preparation of the Representative Complaint was a massive undertaking, involving investigating the underlying facts and thoroughly researching many legal theories under the laws of numerous states. We also worked to select appropriate, dedicated named plaintiffs ("Representative Plaintiffs") by analyzing all the complaints filed in the MDL and conducting numerous, extensive telephone interviews. Through this process, we selected ten Representative Plaintiffs to be named in the Representative Complaint.

17. On March 2, 2020, Plaintiffs filed the 91-page Representative Complaint with named Representative Plaintiffs from the states of California, Florida, New York, Texas, Virginia, and Washington, asserting representative common law claims on behalf of a nationwide class against Capital One and Amazon for negligence, negligence per se, unjust enrichment, breach of express and implied contract, declaratory judgment, and state statutory claims under state data breach notification and consumer protection statutes on behalf of state subclasses. Doc. 332, Doc. 354 (corrected). During the next few months, three of the Representative Plaintiffs voluntarily dismissed their claims, primarily due to exigent circumstances created by COVID-19, without prejudice to their ability to submit claims as absent class members (Docs. 399, 436, 852). In October 2020, a new Representative Plaintiff from Texas was substituted, ultimately resulting in the eight current Representative Plaintiffs. Doc. 971 (Second Amended Representative Complaint).

18. On April 10, 2020, Capital One and Amazon each filed motions to dismiss the Representative Complaint in its entirety. Docs. 386, 389. Defendants' primary focus in these motions was arguing that Representative Plaintiffs had not alleged legally-cognizable harms

arising out of the Data Breach or that Defendants were the proximate cause of any such harms. Defendants further argued that Virginia law does not recognize a duty of care in tort to safeguard personal information. Docs. 387, 390. We prepared extensive opposition briefing and the motions were fully briefed in just over one month. Docs. 426, 427 (Plaintiffs' Memoranda in Opposition); Docs. 463, 464 (Defendants' Replies).

19. On May 27, 2020, the Court heard nearly five hours of oral argument on Defendants' motions to dismiss. Doc. 494. On September 18, 2020, the Court issued an extensive ruling largely denying the motions. Doc. 879. However, extensive briefing related to Representative Plaintiffs' allegations continued for months thereafter. On October 2, 2020, Capital One asked the Court to reconsider one of its rulings—that Representative Plaintiffs had sufficiently alleged Capital One assumed a duty of care to them in tort under Virginia law, and alternatively asked the Court to certify this question to the Virginia Supreme Court. Doc. 916. We prepared opposition briefing, and the Court denied the motion for reconsideration. Doc. 934 (Plaintiffs' Opposition); Doc. 951 (Joinder by Amazon defendants); Doc. 965 (Capital One's Reply); Doc. 1059 (Order denying). Later, after concluding Virginia law applied as to all Representative Plaintiffs' common law claims (Doc. 1293; Doc. 879 at 9), the Court granted Capital One's request to certify the question of tort duty to the Virginia Supreme Court (Doc. 1291). The Virginia Supreme Court subsequently declined to accept the certified question. Doc. 1380. On October 16, 2020, Defendants each filed Answers. Docs. 953, 955. On October 30, 2020, Capital One moved for judgment on the pleadings on Representative Plaintiffs' unjust enrichment and implied contract claims (Doc. 996), we prepared and submitted an opposition and presented oral argument, and the Court denied Capital One's motion. Doc. 1032 (Plaintiffs'

Opposition); Doc. 1060 (Capital One's Reply); Doc. 1096 (12/09/2020 Hr'g Tr.); Doc. 1290 (Order denying).

20. Meanwhile, as motion practice related to Representative Plaintiffs' allegations was underway and the global COVID-19 pandemic forced the case to be litigated remotely, we were engaged in a considerable, time-consuming discovery effort. Plaintiffs served several rounds of written discovery on Defendants and eighteen third-party subpoenas, including six subpoenas to former Capital One employees. We managed the review of over 350,000 documents produced by Defendants, totaling nearly 3 million pages, and nearly 7,500 documents produced by third parties, totaling an additional 50,000 pages. Plaintiffs also took 33 depositions of Defendants' fact witnesses, 13 depositions of Defendants' Rule 30(b)(6) witnesses, and two third-party depositions.

21. In March 2020, we assisted the Representative Plaintiffs with answering Defendants' twelve interrogatories, arranged searches of the Representative Plaintiffs' electronic devices, and assisted them in identifying and collecting both electronic and physical documents responsive to Defendants' document requests, ultimately producing nearly 1,750 documents totaling over 7,500 pages in 54 document productions after collecting and reviewing over 145,000 documents from 24 custodians. In April 2020, Defendants moved the Court to take the same discovery, including interrogatories and document requests, from all 248 other plaintiffs named in the various actions that had been transferred to the MDL (the "MDL Plaintiffs"). Doc. 383. We opposed this motion. Doc. 400. The Court did not permit Defendants to serve their interrogatories and document requests on the MDL Plaintiffs, but did require the MDL Plaintiffs to provide information to Defendants through a verified "Fact Sheet." Doc. 404 at 3. The Parties negotiated to arrive at an agreed Fact Sheet, including ten pages of questions and eight document requests,

and we contacted all 248 MDL Plaintiffs to guide them through the process. One hundred and one (101) MDL Plaintiffs submitted verified Fact Sheets and responsive documents; while 147 MDL Plaintiffs chose alternatively to dismiss their pending complaints. Of the 101 MDL Plaintiffs who submitted verified Fact Sheets and documents, an additional 32 eventually chose to dismiss their pending complaints.

22. In May 2020, at the beginning of the pandemic, we prepared all eight Representative Plaintiffs to sit for remote depositions. Defendants then also moved for "clarification" seeking permission to take the depositions of all remaining MDL Plaintiffs without regard to limitations on the number of non-party depositions. Docs. 722 and 723. We opposed this motion. Doc. 736. Defendants replied (Doc. 740), and the Court held a hearing on July 31, 2020. Doc. 742. The Court ruled that Defendants would be limited to "up to ten nonparty, nonexpert depositions with only the representative plaintiffs considered 'parties.'" Doc. 758. Defendants chose ten MDL Plaintiffs as their permitted "nonparty, nonexpert depositions," and we coordinated and defended these additional ten MDL Plaintiff depositions in concert with the deposed MDL Plaintiffs' original counsel. In total, we defended eighteen plaintiff depositions, including the eight Representative Plaintiffs and the ten MDL Plaintiffs chosen by Defendants.

23. Expert discovery was likewise intensive. Beginning in August 2019, Plaintiffs engaged numerous experts, including five disclosed testifying experts, to develop opinions for class certification and trial. Dr. Stuart E. Madnick, a professor emeritus at the Massachusetts Institute of Technology, rendered opinions as to the mechanism and root causes of the Data Breach, how the Data Breach should have been prevented, and how the risk of further breaches can be mediated going forward. Kevin Mitnick, an expert in "black hat" and "white hat" hacking, explained how the types of personal information stolen in the Data Breach are misused to cause

harm and the present risk of continuing harm to victims of the Data Breach. Gary Olsen, a CPA and appraisal expert, and Terry Long, an actuary, developed opinions relating to Representative Plaintiffs' and class members' damages. Brian Kelley gave opinions concerning the relation between and among Capital One's contracts with applicants and cardholders, Capital One's cybersecurity policies and practices, and legal and regulatory requirements governing Capital One's protection of customer personal information. These experts were ultimately disclosed, with full reports, on March 21, 2021. Several of them also drafted supplemental or rebuttal reports, and all sat for at least one deposition. Both Defendants designated numerous experts. We took depositions of six of those experts and moved to exclude two of them in whole or in part.

24. We also prepared, filed, and presented argument to Judge Anderson on numerous motions to compel and other discovery-related motions, some of which resulted in favorable rulings for Plaintiffs and the production of important documents for Plaintiffs' case. The discovery battles included several rounds of motions regarding Capital One's assertion of the bank examination privilege over thousands of documents, which involved contested briefing and argument from the Office of the Comptroller of the Currency. The success of many of these motions informed our understanding of the facts, and the strengths and weaknesses of the case.

25. After discovery closed in late 2020 and expert disclosures were completed in the spring of 2021, on April 28, 2021, we submitted Plaintiffs' Motion for Class Certification, seeking certification of a nationwide class of approximately 98 million Americans. Docs. 1259, 1261. This motion was fully briefed on June 18, 2021. Doc. 1443 (Capital One's Opposition); Doc. 1435 (Amazon's Opposition); Doc. 1558 (Plaintiffs' Reply as to Capital One); Doc. 1571 (Plaintiffs' Reply as to Amazon). Defendants each filed several *Daubert* challenges related to Plaintiffs' class certification motion, which we prepared and submitted oppositions to, and which

were fully briefed by July 2, 2021. Docs. 1389, 1390, 1394, 1395, 1397, 1398, 1427, 1428, 1431, 1432 (Defendants' motions to exclude and memoranda in support); Docs. 1528, 1534, 1540, 1546, 1552 (Plaintiffs' Oppositions); Docs. 1607, 1609, 1611, 1633, 1647 (Defendants' Replies). We also prepared and filed Plaintiffs' motion to exclude one of Capital One's experts related to Plaintiffs' Motion for Class Certification. Docs. 1559-60.

26. During the briefing on class certification, Capital One challenged the Court's jurisdiction over the case, arguing no Representative Plaintiff could prove their harms were caused by Capital One where Capital One contended Representative Plaintiffs could not prove the known hacker, Paige Thompson, further disseminated the personal information stolen in the Data Breach before her arrest. Docs. 1385-86 (challenging the Court's jurisdiction to adjudicate Plaintiffs' tort and statutory claims). Capital One's jurisdictional challenge ultimately resulted in several rounds of briefing as we prepared and submitted opposition briefing vigorously opposing the very premise of Capital One's contention that the Court's jurisdiction to adjudicate the case depended on the resolution of disputed merits issues. Doc. 1502 (Plaintiffs' Opposition); Doc. 1513 (Capital One's Reply); Doc. 1653 (Capital One's Supplemental Memorandum regarding *Transunion v. Ramirez*); Doc. 1721 (Plaintiffs' Response); Doc. 1727 (Amazon's Joinder); Doc. 1780 (Capital One's Supplemental Brief challenging the Court's jurisdiction to adjudicate Plaintiffs' contract and unjust enrichment claims); Doc. 1871 (Plaintiffs' Response); Doc. 1921 (Capital One's Reply); Docs. 2041, 2042, 2052, 2074, 2075, 2138, 2150, 2151 (filings related to supplemental authorities regarding jurisdictional challenge).

27. The Court held a two-day hearing on July 12 and 13, 2021 on Plaintiffs' Motion for Class Certification, the various related *Daubert* challenges, and Capital One's challenge to the

Court's jurisdiction to adjudicate Representative Plaintiffs' tort and statutory claims. Docs. 1745, 1747; Docs. 1901-1902 (7/12-13/21 Hr'g Tr.).

28. Soon thereafter, briefing on dispositive motions commenced. On June 3, 2021, Capital One filed its motion for summary judgment seeking judgment on each of Representative Plaintiffs' claims on several bases. Capital One's principal argument was that Representative Plaintiffs could not prove they were harmed by Capital One because they could not prove the hacker, Paige Thompson, further disseminated the personal information stolen in the Data Breach before her arrest. Docs. 1460, 1463. We prepared and submitted an extensive opposition, contending there was substantial evidence from which a jury could conclude Representative Plaintiffs' personal information was further disseminated beyond Thompson and that they had suffered damages resulting from Capital One's failure to protect their personal information. Doc. 1807. On July 2, 2021, we submitted a motion for partial summary judgment on behalf of Representative Plaintiffs on their claims for breach of express and implied contract against Capital One. *See* Docs. 1646, 1649. On the same day, Amazon moved for summary judgment on each of Representative Plaintiffs' claims, arguing it owed no duty of care to them and that it could not be liable to them for unjust enrichment and under the asserted state statutes, to which we likewise submitted a detailed opposition. Docs. 1678, 1693, 1820. The summary judgment motions were fully briefed on August 23, 2021. Capital One and Amazon also filed additional *Daubert* motions in connection with summary judgment, to which we prepared oppositions. Docs. 1658, 1675, 1828, 1840. We also prepared and submitted a motion to exclude the testimony of one of Capital One's experts related to summary judgment. Docs. 1638, 1640. These *Daubert* motions were also fully briefed on August 23, 2021. On September 30, 2021, the Court held a full-day summary

judgment hearing, including additional argument on Capital One's jurisdictional challenge. Docs. 2027; 2030 (9/30/21 Hr'g Tr.).

29. The Parties also engaged in extensive briefing with respect to sealing issues in connection with the motion practice described above.

Overview of Settlement Discussions

30. Parallel to their litigation of the Actions, the Parties engaged in arm's-length settlement negotiations beginning in March 2020. The negotiations were first overseen by former United States District Court Judge Layn R. Phillips and later overseen by United States District Judge Leonie M. Brinkema. The Parties engaged in four mediation sessions, on March 21, 2020, November 18, 2020, April 16, 2021, and August 3, 2021, with Judge Brinkema presiding over the last three conferences. The Parties also engaged in private and joint communications with Judge Brinkema to assist on particular issues that arose in these negotiations and on December 17, 2021, the Parties executed a binding term sheet, to be superseded by the Settlement Agreement.

31. While the negotiations were professional throughout, they were marked by significant factual and legal disputes impacting the value of the case. From our perspective, the hard work through discovery and motion practice framed the key issues for both sides, positioned the case for settlement, and—with Judge Brinkema's assistance—the Parties were able to reach a resolution. At all times the negotiations were made at arm's length, and free of collusion of any kind. Attorneys' fees were not discussed in any manner until the Parties had reached agreement on the material terms of the Settlement, including the payment of the Settlement Fund.

The Settlement Benefits Conferred on the Class

32. Under the proposed Settlement, Capital One will pay $190 million into a non-reversionary fund for class benefits, notice and administration costs, fees, expenses, and service awards for the Representative Plaintiffs (hereafter "Settlement Class Representatives") and any other Settlement Class Member who was deposed in the Action.

33. The Settlement, as implemented through the Consumer Settlement Benefits Plan drafted by Class Counsel and submitted for the Court's approval, provides that the Settlement Fund will provide specific benefits to Settlement Class Members, including:

- Reimbursement for "Out-of-Pocket Losses", which are verifiable unreimbursed costs or expenditures that a Settlement Class Member actually incurred and believes are fairly traceable to the Data Breach. Out-of-Pocket Losses may include, without limitation, the following:
    - unreimbursed costs, expenses, losses or charges incurred as a result of identity theft or identity fraud, falsified tax returns, or other alleged misuse of a Settlement Class Member's personal information;
    - costs incurred on or after March 22, 2019, associated with placing or removing a credit freeze on a Settlement Class Member's credit file with any credit reporting agency;
    - other miscellaneous expenses incurred on or after March 22, 2019, related to any Out-of-Pocket Loss such as notary, fax, postage, copying, mileage, and long-distance telephone charges;
    - costs of credit reports, credit monitoring, or other products related to detection or remediation of identity theft incurred on or after March 22, 2019, through the date of the Settlement Class Member's claim submission.
- Compensation for "Lost Time", which is time spent remedying fraud, identity theft, or other misuse of a Settlement Class Member's personal information that the Settlement Class Member believes is fairly traceable to the Data Breach and time spent taking preventative measures to avoid such losses. Lost Time will be paid at the "Reimbursement Rate", which shall be the greater of $25 per hour, or, if the Settlement Class Member took time off work at the Settlement Class Member's documented hourly wage.
    - Lost Time related to a qualifying claim for Out-of-Pocket losses may be supported by a certification for up to 15 hours.

- Lost Time not related to a qualifying claim for Out-of-Pocket losses but incurred as a result of fraud, identity theft or other misuse, or incurred taking preventative measures to avoid fraud, identity theft or other misuse may be supported by a certification for up to 5 hours.

- Compensation for Out-of-Pocket Losses and Lost Time is subject to a $25,000 aggregate individual claims cap.

34. Settlement Class benefits also include Identity Defense Services provided by Pango, to help detect and remediate potential identity theft and fraud. Settlement Class Representatives request that the Court formally appoint Pango as the Provider of Identity Defense Services and Restoration Services, to work in coordination with Class Counsel and the Settlement Administrator, subject to the jurisdiction and oversight of this Court. As detailed in the declaration of Gerald Thompson (Ex. 8), the services Pango will provide to participating Settlement Class Members include:

- At least three years of specially-negotiated Identity Defense Services available to all Settlement Class Members who timely make a claim for the services or who seek to enroll directly with Pango during the period of the Services. This service, called Identity Defense Plus Service, includes the following:

    - Dark web monitoring for your Social Security number, date of birth, address, driver's license number, passport number, payment cards, email addresses, and other information;

    - Identity monitoring with authentication alerts;

    - Lost wallet protection;

    - Security freeze capability in multiple categories: Credit – Experian, Equifax, TransUnion and Innovis; Specialty Finance – Sage Stream, Clarity DATAX and CoreLogic; Closed Checking and Savings accounts – Chex Systems; and Utilities – NCTUE;

    - $1 million in no-deductible insurance covering costs related to identity theft or fraud;

    - U.S.-based customer support;

    - Insight and Tips for members on a user dashboard.

- For those approximately 200,000 Settlement Class Members whose Social Security Numbers or linked bank account numbers were stolen in the Data Breach, at least three years of Identity Defense Total Service, which includes all the attributes of Identity Defense Plus Service, and also 3-bureau credit monitoring with instant alerts, and a monthly credit score.

35. As a separate class benefit, all Settlement Class Members, even those who do not enroll Identity Defense Services or do not submit a claim, will be entitled to utilize Restoration Services offered through Pango. This coverage is a separate benefit and permits all Settlement Class Members to have access to U.S.-based fraud resolution specialists who can assist with important tasks such as placing fraud alerts with the credit bureaus, disputing inaccurate information on credit reports, scheduling calls with creditors and other service providers, and working with law enforcement and government agencies to dispute fraudulent information. Restoration Services will be available for a period of at least three years from the Effective Date. Ex. 2, ¶ 2; Ex. 8.

36. If a claim is rejected for any reason, there is also a consumer-friendly appeals process whereby claimants will have the opportunity to cure any deficiencies in their submission or request an automatic appeal if the Settlement Administrator determines a claim is deficient in whole or part. Ex. 2 at ¶ 9.

37. Settlement Class Members will have 90 days to file a claim for benefits, but are not required to file a claim to access Restoration Services. *Id*. at ¶ 5.

38. To the extent the Settlement Fund is not exhausted by valid claims, any remaining funds will first be used to purchase up to 2 years of additional Identity Defense Services and Restoration Services (and to pay any attendant expenses to provide notice of such extended period for Identity Defense Services and Restoration Services) and second will be used to increase payments to Settlement Class Members submitting valid claims on a pro rata basis. No funds may

revert to Capital One. To the extent valid claims exceed the Net Settlement Fund, the cash payments will be reduced on a pro rata basis. *Id*. at ¶ 7.

39. Additionally, Capital One has also agreed to entry of a consent order requiring at least two years of business practices changes and commitments to improve its cybersecurity through the implementation of a Cyber Event Action Plan. During the discovery phase of the case, a significant effort was targeted at developing an understanding of the root cause of the breach and the vulnerabilities which were exploited by the hacker. Moreover, Plaintiffs' discovery efforts, assisted by consultation with a cyber security consultant and Dr. Madnick, provided Class Counsel with a firm understanding of the improvements and remediation necessary to protect the information of class members from further exposure and loss to cyber criminals. With our experience in litigating numerous data breach cases and armed with the information gained during discovery, and with the assistance of our experts, Class Counsel were able to negotiate certain business practices as a part of the benefits to be provided to the Settlement Class through this settlement. The components of the business practice changes include, in part (Ex. 1 at Ex. 2):

- Capital One commits that it is implementing a comprehensive Cyber Event Action Plan designed to enhance and maintain a strong and sustainable cybersecurity program commensurate with the nature, size, complexity, and risk profile of the organization. Capital One is committed to enhance and improve Capital One's cybersecurity program and agrees that the commitments identified in the Cyber Event Action Plan will be reviewed and assessed by the company's internal audit function.
    a. Technology Enhancements: Capital One confirms that the Cyber Event Action Plan includes, at a minimum, enhancements to the Company's cybersecurity program in the following technology-related areas:
        i. Cloud Governance and Perimeter Security, including:
            1. Strengthening the Company's perimeter security defenses, including (i) implementation of an improved web application firewall architecture; and (ii) extension of the Company's anti-bot capabilities.
            2. Strengthening the Company's cloud governance practices, including enhancing reviews of controls for cloud services.

3. Enhancing the Company's cloud security standards, procedures, and controls, including (i) enhanced compliance tracking; and, (ii) implementation of additional cloud security controls.

4. Strengthening the Company's security configuration management practices, including (i) updating the Company's Security Configuration Management Procedures for cloud and non-cloud resources to close any potential procedural or scope gaps; and (ii) enhancing baseline configuration documentation and compliance processes.

ii. Threat Detection and Vulnerability Management, including:

1. Expanding cloud environment monitoring and improving alert coverage and intelligence, including (i) reviewing logging and alerting practices for enhancement opportunities; and (ii) reviewing Information Security Standards and enhancing as required.

2. Improving readiness and training for analysts in the Company's Cyber Security Operations Center ("CSOC"), including (i) reviewing and enhancing CSOC operating procedures; and, (ii) improving alert handling by improving automation and adding additional information and intelligence.

3. Strengthening of the Company's vulnerability scanning and penetration testing practices.

iii. Access Management, including:

1. Improving existing restrictive access for humans, machines, and resources in the Company's AWS environment, including (i) enhancing access policies for storage services; (ii) enhancing machine identity and access management policies; and (iii) enhancing governance procedures for AWS access management.

iv. Data Protection, including:

1. Strengthening the Company's data protection controls (e.g. encryption, data inventory) and governance, including enhancements to standards, monitoring, and exception management.

2. Enhancing data loss prevention program to better identify and measure risk, and improving corresponding technical capabilities.

b. Cyber Governance and Risk Management: Capital One confirms that the Cyber Event Action Plan includes, at a minimum, enhancements to the governance of the Company's cybersecurity program, including enhanced Board and Senior Management oversight and elevated adherence monitoring to enterprise policies.

c. Cyber Talent and Education: Capital One confirms that the Cyber Event Action Plan includes, at a minimum, enhancements to the Company's cybersecurity skills framework and recruiting/training programs, and a resulting increase in the cloud and cyber certified practitioners.

- **Scope:** Capital One's undertakings described in this paragraph apply to all networking equipment, databases, or data stores, applications, servers, and endpoints that: (1) are capable of accessing, using or sharing software, data, and hardware resources; (2) are owned, operated, and/or controlled by Capital One; and (3) collect, process, store, have access, or grant access to Personal Information of U.S. consumers. "Personal Information" shall have the same meaning as "nonpublic personal information" set forth in Section 509 of the Gramm-Leach-Bliley Act and regulations issued thereunder.

The Notice and Claims Process

40. Class Counsel have retained, and request that the Court appoint, Epiq Class Action & Claims Solutions, Inc. and its affiliate Hilsoft Notifications (together "Epiq") as Settlement Administrator to provide notice to class members and to process claims. The Notice Plan designed by Epiq satisfies the "best notice practicable" standard pursuant to Rule 23 of the Federal Rules of Civil Procedure by drawing on the most up-to-date techniques used in commercial advertising to inform the class and stimulate participation. Ex. 5. The Notice Plan includes dissemination of individual notice by email or postcard wherever possible. The total potential Settlement Class size is approximately 98 million people, and contact information (to provide individual notice) is available for virtually all Settlement Class members. Class Counsel expect that the individual notice effort alone will reach at least 90% of the Settlement Class (and likely higher). In addition, internet sponsored search listings will provide additional notice exposures. In our experience, the reach of the Notice Plan meets that of other court-approved notice programs, and has been designed to meet due process requirements, including the "desire to actually inform" requirement. In our opinion, the Notice Plan is the best notice practicable under the circumstance of this case.

41. The claims process similarly draws upon the most up-to-date techniques to facilitate participation, including a link to a settlement website in all emails and digital advertising; the ability to file claims electronically or by mail; and a call-center via a toll-free number to assist

class members in filing claims. Epiq, the proposed Settlement Administrator, is a widely-regarded expert with the experience and capability to handle a case of this magnitude.

Attorneys' Fees and Expenses

42. Class Counsel will separately move the Court for an order awarding attorneys' fees expressed as a percentage of the value conferred on the Settlement Class, and for reimbursement of costs and expenses incurred in the case, to be paid from the Settlement Fund. Capital One will take no position on this motion so long as the fee request does not exceed 35% of the Settlement Fund. Ex. 1, § 19. This provision was a separately negotiated provision of the Term Sheet and Settlement Agreement, which was not discussed until after the Parties had agreed on relief to the Settlement Class. Class Counsel believes this fee is justified as a percentage of the fund generated through its skill and efforts, and when considered in light of the substantial monetary and non-monetary benefits conferred on the Settlement Class.

43. Class Counsel will also seek Service Awards of up to $5,000 for each Settlement Class Representative and each other Settlement Class Member who was deposed in the MDL. Each of these individuals provided detailed information of the circumstances regarding the impact of the Data Breach that was vital to Class Counsel's investigation and litigation of the Settlement Class's claims. Furthermore, each of them has remained active in the case, communicating with the attorneys working on the case during subsequent phases of the case. Capital One does not oppose these requests. *Id.*, § 18.2. Both the application for Attorneys' Fees and Expenses, and the application for Service Awards will be filed at least 21 days before the Objection Deadline

Releases

44. The Settlement Class will release the Released Parties from claims that were or could have been asserted in this case. *Id.*, § 14. Class Counsel believes the releases are

appropriately tethered to the claims that were presented in the litigation and therefore appropriate consideration in exchange for the substantial class relief provided by the Settlement

The Settlement is Fair, Reasonable, and Adequate

45. The proposed Settlement is one of the largest settlements ever achieved in a data breach case. If approved, it will deliver substantial relief specifically tailored to the types of harm often incurred as a result of criminal data breaches. Reimbursement for out-of-pocket losses, payment for lost time, and identity monitoring and assistance with identity theft, all available under the Settlement, are precisely the types of issues that Class Counsel and Settlement Class Representatives sought to redress through this litigation. Capital One's business practices commitments, enforceable in Court, provide further value and comfort that more will be done going forward to prevent additional breaches of Settlement Class Members' personal information still held by Capital One.

46. Class Counsel also believe that a settlement at this point in the litigation, before trial and appeals, is warranted because Settlement Class Members benefit immediately from protections like Identity Defense Services that can help detect identity theft and fraud, and assist Settlement Class Members in addressing any issues that arise, including the protection of a $1 million insurance policy in case of identity theft or fraud.

47. Based on our experience in other data breach cases, the funds available in the non-reversionary Settlement Fund are tailored to address the losses stemming from the alleged Data Breach. When a victim incurs out-of-pocket expenses relating to a data breach, it is typically associated with seeking advice about how to address the breach (e.g., paying for professional services), paying incidental costs associated with identity theft or fraud (e.g., overdraft fees or costs for sending documents by certified mail), or taking mitigative measures like paying for

credit monitoring or credit freezes. As such, the out-of-pocket expenses associated with a data breach are generally relatively modest, and rarely exceed several hundred dollars. When victims spend more than this amount, it is typically associated with paying for professional services such as accountant or attorneys' fees.

48. The Settlement must also be viewed against the significant risks to the Plaintiffs had they continued to litigate the case. There was a risk that Plaintiffs' claims would not have survived, or survived in full, on a class-wide basis after a ruling on the fully briefed and argued motion for class certification, motions for summary judgment, *Daubert* motions on damages methodologies and other issues, and challenges to the existence of a tort duty under Virginia law.

49. Because of the sheer volume and complexity of completed fact and expert discovery, we are confident we had all the necessary information to advocate for a fair settlement that serves the best interests of the Settlement Class. Based on the factual record and the extensive briefing and argument on legal issues, Class Counsel believe the Settlement is in the best interests of the Settlement Class.

50. Finally, there is no indication that there are any conflicts between the Settlement Class Representatives and the Settlement Class. Rather, the Settlement Class Representatives' claims are substantially similar to the claims of the Settlement Class. Each of them was impacted by the Data Breach due to the unauthorized access to their personal information. Moreover, in crafting the Settlement, we took care to ensure that the relief was allocated commensurate to the value of each Settlement Class Member's respective claims—those that suffered a greater Out-of-Pocket loss will be able to make a proportionately larger claim than someone that did not.

51. In light of the totality of the circumstances, the Court should conclude that the Settlement as described in the Settlement Agreement and the Consumer Settlement Benefits Plan,

is fair, reasonable, and adequate and likely to achieve final approval, and therefore notice should issue to the class.

Continuing Appointment of Plaintiffs' Lead Counsel as Class Counsel

52. As discussed above, the Court previously appointed Norman E. Siegel, Karen Hanson Riebel, and John A. Yanchunis as Plaintiffs' Lead Counsel based on extensive applications provided to the Court. We respectfully submit that we have diligently served the class and the Court in litigating this case and presenting this Settlement for initial approval requesting issuance of notice and therefore request a continuing appointment pursuant to Fed. R. Civ. P. Rule 23(g) for purposes of implementing this Settlement.

We declare under the penalty of perjury under the laws of the United States that the foregoing is true and correct.

DATED this 31st day of January, 2022 in the United States of America.

Norman E. Siegel

Karen Hanson Riebel

John A. Yanchunis

EXHIBIT 5

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

IN RE: CAPITAL ONE CONSUMER DATA SECURITY BREACH LITIGATION	)	MDL No. 1:19md2915 (AJT/JFA)

This Document Relates to CONSUMER Cases

DECLARATION OF CAMERON R. AZARI, ESQ. ON NOTICE PLAN AND NOTICES

I, Cameron R. Azari, Esq., hereby declare and state as follows:

1. My name is Cameron R. Azari, Esq. I have personal knowledge of the matters set forth herein, and I believe them to be true and correct.

2. I am a nationally recognized expert in the field of legal notice, and I have served as an expert in hundreds of federal and state cases involving class action notice plans.

3. I am the Senior Vice-President of Epiq Class Action and Claims Solutions, Inc. ("Epiq") and the Director of Legal Notice for Hilsoft Notifications, a firm that specializes in designing, developing, analyzing, and implementing large-scale, un-biased, legal notification plans. Hilsoft Notifications is a business unit of Epiq.[1]

4. Epiq is an industry leader in class action settlement administration, having implemented more than a thousand successful class action notice and settlement administration matters. Epiq has been involved with some of the most complex and significant notice programs in recent history, examples of which are discussed below. With experience in more than 500 cases, including more than 45 multidistrict litigations, Epiq has prepared notices which have appeared in 53 languages and been distributed in almost every country, territory, and dependency in the world. Courts have recognized and approved numerous notice plans developed by Epiq, and those decisions have invariably withstood appellate and collateral review.

[1] All references to Epiq within this declaration include Hilsoft Notifications.

RELEVANT EXPERIENCE

5. I have served as a notice expert and have been recognized and appointed by courts to design and provide notice in many large and significant cases, including:

a) *In re Takata Airbag Products Liability Litigation*, 1:15-md-02599-FAM (S.D. Fla), involved $1.49 billion in settlements with BMW, Mazda, Subaru, Toyota, Honda, Nissan, and Ford regarding Takata airbags. The notice plans in those settlements included individual mailed notice to more than 59.6 million potential class members and extensive nationwide media via consumer publications, U.S. Territory newspapers, radio spots, internet banners, mobile banners, and behaviorally targeted digital media. Combined, the notice plans reached more than 95% of adults aged 18+ in the U.S. who owned or leased a subject vehicle, with a frequency of 4.0 times each.

b) *Hale v. State Farm Mutual Automobile Insurance Company, et al.*, 12-cv-00660 (S.D. Ill.), involved a $250 million settlement with approximately 4.7 million class members. The extensive notice program provided individual notice via postcard or email to approximately 1.43 million class members and implemented a robust publication program which, combined with individual notice, reached approximately 78.8% of all U.S. adults aged 35+ approximately 2.4 times each.

c) *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices and Product Liability Litigation (Bosch Settlement)*, MDL No. 2672 (N.D. Cal.), involved a comprehensive notice program that provided individual notice to more than 946,000 vehicle owners via first class mail and to more than 855,000 via email. A targeted internet campaign further enhanced the notice effort.

d) *In re: Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, MDL No. 1720 (E.D.N.Y.), involved a $6.05 billion settlement reached by Visa and MasterCard in 2012 with an intensive notice program, which included over 19.8 million direct mail notices to class members together with insertions in over 1,500 newspapers, consumer magazines, national business publications, trade and specialty publications, and language &

ethnic targeted publications. Epiq also implemented an extensive online notice campaign with banner notices, which generated more than 770 million adult impressions, a settlement website in eight languages, and acquisition of sponsored search listings to facilitate locating the website. For the subsequent superseding $5.54 billion settlement reached by Visa and MasterCard in 2019, Epiq implemented an extensive notice program, which included over 16.3 million direct mail notices to class members together with over 354 print publication units and banner notices, which generated more than 689 million adult impressions.

e) *In Re: Premera Blue Cross Customer Data Security Breach Litigation*, 3:15-md-2633 (D. Ore.), involved an extensive individual notice program, which included 8.6 million double-postcard notices and 1.4 million email notices. The notices informed class members of a $32 million settlement for a "security incident" regarding class members' personal information stored in Premera's computer network, which was compromised. The individual notice efforts reached 93.3% of the settlement class. A settlement website, an informational release, and a geo-targeted publication notice further enhanced the notice efforts.

f) *In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010*, MDL No. 2179 (E.D. La.), involved dual landmark settlement notice programs to distinct "Economic and Property Damages" and "Medical Benefits" settlement classes for BP's $7.8 billion settlement of claims related to the Deepwater Horizon oil spill. Notice efforts included more than 7,900 television spots, 5,200 radio spots, and 5,400 print insertions and reached over 95% of Gulf Coast residents.

g) *In re: Checking Account Overdraft Litigation*, MDL No. 2036 (S.D. Fla.), for multiple bank settlements from 2010-2020, the notice programs involved direct mail and email to millions of class members, as well as publication in relevant local newspapers. Representative banks included Fifth Third Bank, National City Bank, Bank of Oklahoma, Webster Bank, Harris Bank, M & I Bank, PNC Bank, Compass Bank, Commerce Bank, Citizens Bank, Great Western Bank, TD Bank, BancorpSouth, Comerica Bank, Susquehanna Bank, Associated Bank, Capital One, M&T Bank, Iberiabank, and Synovus are among the more than 20 banks.

6. Courts have recognized our testimony as to which method of notification is appropriate for a given case, and I have provided testimony on numerous occasions on whether a certain method of notice represents the best notice practicable under the circumstances. For example:

a) *In re: Lithium Ion Batteries Antitrust Litigation*, 4:13-md-02420, MDL No. 2420 (N.D. Cal.), Judge Yvonne Gonzalez Rogers stated on December 10, 2020:

> *The proposed notice plan was undertaken and carried out pursuant to this Court's preliminary approval order prior to remand, and a second notice campaign thereafter. (See Dkt. No. 2571.) The class received direct and indirect notice through several methods – email notice, mailed notice upon request, an informative settlement website, a telephone support line, and a vigorous online campaign. Digital banner advertisements were targeted specifically to settlement class members, including on Google and Yahoo's ad networks, as well as Facebook and Instagram, with over 396 million impressions delivered. Sponsored search listings were employed on Google, Yahoo and Bing, resulting in 216,477 results, with 1,845 clicks through to the settlement website. An informational released was distributed to 495 media contacts in the consumer electronics industry. The case website has continued to be maintained as a channel for communications with class members. Between February 11, 2020 and April 23, 2020, there were 207,205 unique visitors to the website. In the same period, the toll-free telephone number available to class members received 515 calls.*

b) *Lusnak v. Bank of America, N.A.*, CV 14-1855 (C.D. Cal.), Judge George H. Wu stated on August 10, 2020:

> *The Court finds that the Notice program for disseminating notice to the Settlement Class, provided for in the Settlement Agreement and previously approved and directed by the Court, has been implemented by the Settlement Administrator and the Parties. The Court finds that such Notice program, including the approved forms of notice: (a) constituted the best notice that is practicable under the circumstances; (b) included direct individual notice to all Settlement Class Members who could be identified through reasonable effort; (c) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the nature of the Lawsuit, the definition of the Settlement Class certified, the class claims and issues, the opportunity to enter an appearance through an attorney if the member so desires; the opportunity, the time, and manner for requesting exclusion from the Settlement Class, and the binding effect of a class judgment; (d) constituted due, adequate and sufficient notice to all persons entitled to notice; and (e) met all applicable requirements of Federal Rule of Civil Procedure 23, due process under the U.S. Constitution, and any other applicable law.*

c) *Cook, et al. v. South Carolina Public Service Authority, et al.*, 2019-CP-23-6675 (Ct. of Com. Pleas. 13th Jud. Cir. S.C.), Judge Jean Hoefer Toal stated on July 31, 2020:

> *Notice was sent to more than 1.65 million Class members, published in newspapers whose collective circulation covers the entirety of the State, and supplemented with internet banner ads totaling approximately 12.3 million impressions. The notices directed Class members to the settlement website and toll-free line for additional inquiries and further information. After this extensive notice campaign, only 78 individuals (0.0047%) have opted-out, and only nine (0.00054%) have objected. The Court finds this response to be overwhelmingly favorable.*

d) *Waldrup v Countrywide Financial Corporation, et al.*, 2:13-cv-08833 (C.D. Cal.), Judge Christina A. Snyder stated on July 16, 2020:

> *The Court finds that mailed and publication notice previously given to Class Members in the Action was the best notice practicable under the circumstances, and satisfies the requirements of due process and FED. R. CIV. P. 23. The Court further finds that, because (a) adequate notice has been provided to all Class Members and (b) all Class Members have been given the opportunity to object to, and/or request exclusion from, the Settlement, it has jurisdiction over all Class Members. The Court further finds that all requirements of statute (including but not limited to 28 U.S.C. § 1715), rule, and state and federal constitutions necessary to effectuate this Settlement have been met and satisfied.*

e) *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, MDL No. 1720 (E.D.N.Y.) Judge Margo K. Brodie stated on December 13, 2019:

> *The notice and exclusion procedures provided to the Rule 23(b)(3) Settlement Class, including but not limited to the methods of identifying and notifying members of the Rule 23(b)(3) Settlement Class, were fair, adequate, and sufficient, constituted the best practicable notice under the circumstances, and were reasonably calculated to apprise members of the Rule 23(b)(3) Settlement Class of the Action, the terms of the Superseding Settlement Agreement, and their objection rights, and to apprise members of the Rule 23(b)(3) Settlement Class of their exclusion rights, and fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, any other applicable laws or rules of the Court, and due process.*

f) *In re: Takata Airbag Products Liability Litigation (Ford),* MDL No. 2599 (S.D. Fla.), Judge Federico A. Moreno stated on December 20, 2018:

> *The record shows and the Court finds that the Class Notice has been given to the Class in the manner approved by the Court in its Preliminary Approval Order. The Court finds that such Class Notice: (i) is reasonable and constitutes the best practicable notice to Class Members under the circumstances; (ii) constitutes notice that was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Action and the terms of the Settlement Agreement, their right to exclude themselves from the Class or to object to all or any part of the Settlement Agreement, their right to appear at the Fairness Hearing (either on their own or through counsel hired at their own expense) and the binding effect of the orders and*

> *Final Order and Final Judgment in the Action, whether favorable or unfavorable, on all persons and entities who or which do not exclude themselves from the Class; (iii) constitutes due, adequate, and sufficient notice to all persons or entities entitled to receive notice; and (iv) fully satisfied the requirements of the United States Constitution (including the Due Process Clause), FED. R. Civ. P. 23 and any other applicable law as well as complying with the Federal Judicial Center's illustrative class action notices.*

g) *Hale v. State Farm Mutual Automobile Insurance Company, et al.,* 3:12-cv-00660-DRH-SCW (S.D. Ill.), Judge Herndon stated on December 16, 2018:

> *The Class here is estimated to include approximately 4.7 million members. Approximately 1.43 million of them received individual postcard or email notice of the terms of the proposed Settlement, and the rest were notified via a robust publication program "estimated to reach 78.8% of all U.S. Adults Aged 35+ approximately 2.4 times." Doc. 966-2 ¶¶ 26, 41. The Court previously approved the notice plan (Doc. 947), and now, having carefully reviewed the declaration of the Notice Administrator (Doc. 966-2), concludes that it was fully and properly executed, and reflected "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." See Fed. R. Civ. P. 23(c)(2)(B). The Court further concludes that CAFA notice was properly effectuated to the attorneys general and insurance commissioners of all 50 states and District of Columbia.*

h) *Vergara, et al., v. Uber Technologies, Inc.,* 1:15-CV-06972 (N.D. Ill.), Judge Thomas M. Durkin stated on March 1, 2018:

> *The Court finds that the Notice Plan set forth in Section IX of the Settlement Agreement and effectuated pursuant to the Preliminary Approval Order constitutes the best notice practicable under the circumstances and shall constitute due and sufficient notice to the Settlement Classes of the pendency of this case, certification of the Settlement Classes for settlement purposes only, the terms of the Settlement Agreement, and the Final Approval Hearing, and satisfies the requirements of the Federal Rules of Civil Procedure, the United States Constitution, and any other applicable law. Further, the Court finds that Defendant has timely satisfied the notice requirements of 28 U.S.C. Section 1715.*

i) *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices and Products Liability Litigation* (Bosch Settlement), MDL No. 2672 (N.D. Cal.), Judge Charles R. Breyer stated on May 17, 2017:

> *The Court is satisfied that the Notice Program was reasonably calculated to notify Class Members of the proposed Settlement. The Notice "apprise[d] interested parties of the pendency of the action and afford[ed] them an opportunity to present their objections." Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950). Indeed, the Notice*

> *Administrator reports that the notice delivery rate of 97.04% "exceed[ed] the expected range and is indicative of the extensive address updating and re-mailing protocols used." (Dkt. No. 3188-2 ¶ 24.).*

j) *In Re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010,* MDL No. 2179 (E.D. La.), Judge Carl J. Barbier stated on January 11, 2013:

> *The Court finds that the Class Notice and Class Notice Plan satisfied and continue to satisfy the applicable requirements of Federal Rule of Civil Procedure 23(c)(2)(b) and 23(e), the Class Action Fairness Act (28 U.S.C. § 1711 et seq.), and the Due Process Clause of the United States Constitution (U.S. Const., amend. V), constituting the best notice that is practicable under the circumstances of this litigation.*
>
> *The notice program surpassed the requirements of Due Process, Rule 23, and CAFA. Based on the factual elements of the Notice Program as detailed below, the Notice Program surpassed all of the requirements of Due Process, Rule 23, and CAFA.*
>
> *The media notice effort alone reached an estimated 95% of adults in the Gulf region an average of 10.3 times each, and an estimated 83% of all adults in the United States an average of 4 times each. These figures do not include notice efforts that cannot be measured, such as advertisements in trade publications and sponsored search engine listings. The Notice Program fairly and adequately covered and notified the class without excluding any demographic group or geographic area, and it exceeded the reach percentage achieved in most other court-approved notice programs.*

7. I have served as a notice expert and have been recognized and appointed by courts to design and provide notice in several, large data breach and privacy settlements, including:

- *In re: Zoom Video Communications, Inc. Privacy Litigation*, Master Case No. 5:20-cv-02155-LHK (N.D. Cal.) (preliminary approval granted October 21, 2021);
- *Cochran et al. v. Accellion, Inc., et al.*, ("Kroger"), Case No. 5:21-cv-01887-EJD (N.D. Cal.) (preliminary approval granted November 5, 2021);
- *Lozano v. CodeMetro, Inc. et al.*, Case No. 37-2020-00022701-CU-MC-CTL (Sup. Ct. of Cal. Cnty. of San Diego);
- *Nelson v. Roadrunner Transportation Systems, Inc.*, Case No. 1:18-cv-07400, (N.D. Ill.);
- *In re: Premera Blue Cross Customer Data Security Breach Litigation*, Case No. 3:15-md-02633-SI (D. Ore.);
- *In re Community Health Systems, Inc. Customer Data Security Breach*

Litigation, MDL No. 2595 (N.D. Ala.);

- *Adlouni v. UCLA Health System Auxiliary, et al*, Case No. BC589243 (Sup. Ct. Cal.);
- *Parsons v. Kimpton Hotel & Restaurant Group, LLC*, Case No. 3:16-cv-05387-VC (N.D. Cal);
- *In re: Valley Anesthesiology Consultants, Inc. Data Breach Litigation*, Case No. CV2016-013446 (Sup. Ct. Cal);
- *McGann, et al., v. Schnuck Markets, Inc.*, Case No. 1322-CC00800 (Mo. Cir. Ct.);
- *Greater Chautauqua Federal Credit Union v. Kmart Corp., et al.*, Case No. 1:15-cv- 02228 (N.D. Ill.);
- *In re Heartland Data Security Breach Litigation*, MDL No. 2046 (S.D. Tex.);
- *In re Trans Union Corp. Privacy Litigation*, MDL No. 1350 (N.D. Ill.);
- *In re: Countrywide Financial Corp. Customer Data Security Breach Litigation*, MDL No.1998, (W.D. Ky.);
- *In re TJX Companies, Inc., Customer Data Security Breach Litigation*, MDL No. 1838 (D. Mass.);
- *Lockwood v. Certegy Check Services, Inc.*, 8:07-cv-1434-T-23TGW (M.D. Fla.); and
- *In re: Department of Veteran Affairs (VA) Data Theft Litigation*, MDL No. 1796 (D.D.C.).

8. Numerous court opinions and comments regarding my testimony and the adequacy of our notice efforts are included in Hilsoft's curriculum vitae attached hereto as **Attachment 1**. In forming expert opinions, my staff and I draw from our in-depth class action case experience, as well as our educational and related work experiences. I am an active member of the Oregon State Bar, having received my Bachelor of Science from Willamette University and my Juris Doctor from Northwestern School of Law at Lewis and Clark College. I have served as the Director of Legal Notice for Epiq since 2008 and have overseen the detailed planning of virtually all of our court-approved notice programs during that time. Overall, I have over 21 years of experience in the design and implementation of legal notification and claims administration programs, having

been personally involved in well over one hundred successful notice programs.

9. The facts in this declaration are based on my personal knowledge, as well as information provided to me by my colleagues in the ordinary course of my business at Epiq.

OVERVIEW

10. This declaration will describe the Settlement Notice Plan ("Notice Plan"), attached hereto as **Attachment 2,** and notices (the "Notice" or "Notices") proposed here for *In re: Capital One Consumer Data Security Breach Litigation*, MDL No. 1:19md2915 (AJT/JFA) in the United States District Court for the Eastern District of Virginia. Epiq designed the Notice Plan based on our prior experience and research into the notice issues in this case. We have analyzed and propose the most effective method practicable of providing notice to this Settlement Class.

11. It is my understanding from counsel for the parties that data will be provided to Epiq for the vast majority of identified Settlement Class Members in the form of a "Class List". According to the Settlement Agreement, the Class List will include the list of individuals in the United States whose information Capital One determined was stored in Capital One's cloud environment hosted by Amazon and then unlawfully accessed during the Data Breach. The Class List will be used to provide individual notice to the Settlement Class, with an Email Notice or a mailed Postcard Notice sent via United States Postal Service ("USPS") first class mail to identified Settlement Class Members. The individual notice efforts will be supplemented with a media program (digital notice and internet sponsored search) as well as a Settlement website. In my opinion, the proposed Notice Plan is designed to reach the greatest practicable number of Settlement Class Members through the use of individual notice.

DATA PRIVACY AND SECURITY

12. As with all cases, Epiq will maintain extensive data security and privacy safeguards in its official capacity as the Settlement Administrator for this Action. A *Services Agreement* between Epiq and the parties, which formally retains Epiq as the Settlement Administrator will govern Epiq's Settlement Administration responsibilities for the case. Service changes or modification, which are beyond the original contract scope will require formal contract addendum

or modification, including legal review.

13. As a data processor, Epiq performs services on data provided, only as those outlined in a contract and/or associated statement(s) of work. Epiq does not utilize or perform other procedures on personal data provided or obtained as part of services to a client. For this Action, Capital One will provide the Class List directly to Epiq solely for the purpose of effecting the terms of this Settlement Agreement. Epiq will not use such information or information to be provided by Settlement Class Members for any other purpose than the administration of the Settlement in this Action, specifically the information will not be used, disseminated, or disclosed by or to any other person for any other purpose.

14. The security and privacy of clients' and class members' information and data are paramount to Epiq. That is why Epiq has invested in a layered and robust set of trusted security personnel, controls, and technology to protect the data we handle. To promote a secure environment for client and class member data, industry leading firewalls and intrusion prevention systems protect and monitor Epiq's network perimeter with regular vulnerability scans and penetration tests. Epiq deploys best-in-class endpoint detection, response, and anti-virus solutions on our endpoints and servers. Strong authentication mechanisms and multi-factor authentication are required for access to Epiq's systems and the data we protect. In addition, Epiq has employed the use of behavior and signature-based analytics as well as monitoring tools across our entire network, which are managed 24 hours per day, 7 days per week, by a team of experienced professionals.

15. Epiq's world class data centers are defended by multi-layered, physical access security, including formal ID and prior approval before access is granted, CCTV, alarms, biometric devices, and security guards, 24 hours per day, 7 days per week. Epiq manages minimum Tier 3+ data centers in 18 locations worldwide. Our centers have robust environmental controls including UPS, fire detection and suppression controls, flood protection, and cooling systems.

16. Beyond Epiq's technology, our people play a vital role in protecting class members' and our clients' information. Epiq has a dedicated information security team comprised of highly

trained, experienced, and qualified security professionals. Our teams stay on top of important security issues and retain important industry standard certifications, like SANS, CISSP, and CISA. Epiq is continually improving security infrastructure and processes based on an ever-changing digital landscape. Epiq also partners with best-in-class security service providers. Our robust policies and processes cover all aspects of information security to form part of an industry leading security and compliance program, which is regularly assessed by independent third parties.

17. Epiq holds several industry certifications including: TISAX, Cyber Essentials, Privacy Shield, and ISO 27001. In addition to retaining these certifications, we are aligned to HIPAA, NIST, and FISMA frameworks. We follow local, national, and international privacy regulations. To support our business and staff, Epiq has a dedicated team to facilitate and monitor compliance with privacy policies. Epiq is also committed to a culture of security mindfulness. All employees routinely undergo cybersecurity trainings to ensure that safeguarding information and cybersecurity vigilance is a core practice in all aspects of the work our teams complete.

18. Upon completion of a project, Epiq continues to host all data until otherwise instructed in writing by a customer to delete, archive or return such data. When a customer requests that Epiq delete or destroy all data, Epiq agrees to delete or destroy all such data; provided, however, that Epiq may retain data as required by applicable law, rule or regulation, and to the extent such copies are electronically stored in accordance with Epiq's record retention or back-up policies or procedures (including those regarding electronic communications) then in effect. Epiq keeps data in line with client retention requirements. If no retention period is specified, Epiq returns the data to the client or securely deletes as appropriate. Per the Settlement Agreement, if the Settlement is terminated, Epiq, as the Settlement Administrator will immediately destroy any and all copies of the Class List.

NOTICE PLAN SUMMARY

19. Federal Rule of Civil Procedure, Rule 23 directs that notice must be the best notice practicable under the circumstances and must include "individual notice to all members who can

be identified through reasonable effort."[2] The proposed Notice Plan will satisfy this requirement.

20. Given our experience with similar notice efforts, we expect that the proposed Notice Plan individual notice efforts on their own will reach at least 90% of the identified Settlement Class. The reach will be further enhanced by the supplemental media program (digital notice and internet sponsored search) as well as a Settlement website, which are not included in the estimated reach calculation. In my experience, the projected reach of the Notice Plan is consistent with or exceeds other court-approved notice plans, is the best notice practicable under the circumstances of this case, and has been designed to satisfy the requirements of due process, including its "desire to actually inform" requirement.[3]

21. I have reviewed the Settlement Agreement, Long Form Notice, Postcard Notice, and Email Notice to ensure, and I can confirm, that all required information is plainly available to Settlement Class Members.

NOTICE PLAN DETAIL

22. The Notice Plan was designed to provide notice to the following "Settlement Class" as defined in the Settlement Agreement and Release as:

> [T]he approximately 98 million U.S. residents identified by Capital One whose information was accessed in the Data Breach that Capital One announced on July 29, 2019, as reflected in the Class List.
>
> Excluded from the Settlement Class are (i) Capital One, any entity in which Capital One has a controlling interest, and Capital One's officers, directors, legal representatives, Successors, Subsidiaries, and assigns; (ii) any judge, justice, or judicial officer presiding over the Action and the members of their immediate families and judicial staff; and (iii) any individual who timely and validly opts out of the Settlement Class.

NOTICE PLAN

Individual Notice

23. I have reviewed the Settlement Agreement and Release and it is my understanding

[2] Fed. R. Civ. P. 23(c)(2)(B).

[3] *Mullane v. Cent. Hanover Bank & Trust Co*., 339 U.S. 306, 315 (1950) ("But when notice is a person's due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it. The reasonableness and hence the constitutional validity of any chosen method may be defended on the ground that it is in itself reasonably certain to inform those affected . . .").

that Defendant Capital One will provide to Epiq a Class List that includes Settlement Class Members' full names, current addresses, and email addresses (to the extent available) as reflected in Capital One's records. Capital One will separately identify those Settlement Class Members with compromised social security numbers or bank account information. Epiq will work with a third-party to perform "reverse look-ups" on all records without an associated email address to determine if an email address, or addresses, can be identified from any publicly available databases.

24. The proposed Notice Plan provides for first sending individual notice via email ("Email Notice") to all identified Settlement Class Members with a valid email address. For those records with an associated physical address for whom a valid email address is not provided or appended via the reverse look-up process, or the email address is undeliverable after multiple attempts, a Postcard Notice will be mailed via USPS first class mail.

25. All Email and Postcard Notices will include a unique identifying number for each identified Settlement Class Member to allow for more secure online claim processing and the efficient processing of any returned paper Claim Forms.

Individual Notice - Email

26. An Email Notice will be sent via email to all identified Settlement Class Members for whom a valid email address is available. Industry standard best practices will be followed for the Email Notice efforts. The Email Notice will be drafted in such a way that the subject line, the sender, and the body of the message overcome SPAM filters and ensure readership to the fullest extent reasonably practicable. For instance, the Email Notice will use an embedded html text format. This format will provide easy to read text without graphics, tables, images, attachments, and other elements that would increase the likelihood that the message could be blocked by Internet Service Providers (ISPs) and/or SPAM filters. The Email Notices will be sent from an IP address known to major email providers as one not used to send bulk "SPAM" or "junk" email blasts. Each Email Notice will be transmitted with a digital signature to the header and content of the Email Notice, which will allow ISPs to programmatically authenticate that the Email Notices are

from our authorized mail servers. Each Email Notice will also be transmitted with a unique message identifier. The Email Notice will include an embedded link to the Settlement Website. By clicking the link, recipients will be able to easily file an online claim, access the Long Form Notice, Settlement Agreement, and other information about the Settlement.

27. If the receiving email server cannot deliver the message, a "bounce code" will be returned along with the unique message identifier. For any Email Notice for which a bounce code is received indicating that the message was undeliverable for reasons such as an inactive or disabled account, the recipient's mailbox was full, technical autoreplies, etc., at least two additional attempts will be made to deliver the Notice by email.

Individual Notice - Direct Mail

28. A Postcard Notice will be sent to all identified Settlement Class Members with an associated physical address for whom a valid email address is not available or the email address is undeliverable after multiple attempts. The Postcard Notice will be sent via USPS first class mail. The Postcard Notice clearly and concisely summarizes the case and the legal rights of the Settlement Class Members. The Postcard Notice will also direct the recipients to a Settlement website where they can access additional information.

29. Prior to sending the Postcard Notice, all mailing addresses will be checked against the National Change of Address ("NCOA") database maintained by the USPS to ensure Settlement Class Member address information is up-to-date and accurately formatted for mailing.[4] In addition, the addresses will be certified via the Coding Accuracy Support System (CASS) to ensure the quality of the zip code, and will be verified through Delivery Point Validation (DPV) to verify the accuracy of the addresses. This address updating process is standard for the industry and for the majority of promotional mailings that occur today.

30. Postcard Notices returned as undeliverable will be re-mailed to any new address

[4] The NCOA database is maintained by the USPS and consists of approximately 160 million permanent change-of-address (COA) records consisting of names and addresses of individuals, families, and businesses who have filed a change-of-address with the Postal Service™. The address information is maintained on the database for 48 months and reduces undeliverable mail by providing the most current address information, including standardized and delivery point coded addresses, for matches made to the NCOA file for individual, family, and business moves.

available through USPS information, for example, to the address provided by the USPS on returned pieces for which the automatic forwarding order has expired, but which is still during the period in which the USPS returns the piece with the address indicated, or to better addresses that may be found using a third-party lookup service. Upon successfully locating better addresses, Postcard Notices will be promptly remailed.

Media Plan

Internet Notice Campaign

31. Internet advertising has become a standard component in legal notice programs. The internet has proven to be an efficient and cost-effective method to target and provide measurable reach of persons covered by a settlement. According to MRI-Simmons data[5], 94% of all adults and 96% of adults with a Capital One card in the United States are online. Additionally, 83% of all adults use social media and 85% of adults with a Capital One card use social media.[6]

32. The Notice Plan includes targeted Banner Notice advertising on a selected advertising network, which will be targeted to Settlement Class Members. The Banner Notices will link directly to the Settlement website, thereby allowing visitors easy access to relevant information and documents. Consistent with common practice, the Banner Notices will use language from the notice headline, which will allow users to identify themselves as potential Settlement Class Members. As an additional way to draw the interest of the Settlement Class Members, and to be consistent with FJC recommendations that a picture or graphic may help class members self-identify, the Banner Notices may prominently feature high-resolution image(s). The Banner Notices will also be placed on social media such *Facebook*, *Instagram,* and *Twitter*.

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[5] MRI-Simmons is a leading source of publication readership and product usage data for the communications industry. MRI-Simmons is the new name for the joint venture of GfK Mediamark Research & Intelligence, LLC ("MRI") and Simmons Market Research. MRI-Simmons offers comprehensive demographic, lifestyle, product usage and exposure to all forms of advertising media collected from a single sample. As the leading U.S. supplier of multimedia audience research, the company provides information to magazines, televisions, radio, Internet, and other media, leading national advertisers, and over 450 advertising agencies—including 90 of the top 100 in the United States. MRI-Simmons's national syndicated data is widely used by companies as the basis for the majority of the media and marketing plans that are written for advertised brands in the United States.

[6] MRI-Simmons 2021 Survey of the American Consumer®.

33. All Banner Notices will appear on desktop, mobile, and tablet devices and will be distributed to the selected targeted audiences nationwide. Internet Banner Notices will also be targeted (remarketed) to people who visit the Settlement website.

34. More details regarding the target audiences, distribution, and specific ad sizes of the Banner Notices are included in the following table.

Network/Property	*Target*	*Ad Sizes*	*Estimated Impressions*
Google Display Network	Adults 18+	728x90, 300x250, 300x600, 970x250	16,808,333
Google Display Network	Adults 18+; In-Market[7] Capital One	728x90, 300x250, 300x600, 970x250	20,170,000
Google Display Network	Adults 18+; Custom Affinity Audience[8] Capital One	728x90, 300x250, 300x600, 970x250	20,170,000
Facebook	Adults 18+	Newsfeed & Right Hand Column	14,600,000
Facebook	Interests: Capital One	Newsfeed & Right Hand Column	14,600,000
Instagram	Adults 18+	Instagram Feed Ads	8,050,000
Instagram	Interests: Capital One	Instagram Feed Ads	8,050,000
Twitter	Adults 18+	Twitter Feed Ads	7,225,000
Twitter	Interests: Capital One	Twitter Feed Ads	7,225,000
TOTAL			**116,898,333**

35. Combined, more than 116 million impressions will be generated by the Banner Notices, nationwide.[9] The internet advertising campaign will run for approximately 30 days. Clicking on the Banner Notices links the reader to the Settlement website, where the reader can easily obtain detailed information about the case.

[7] In-Market Audiences allow Banner Notices to be targeted to connect with consumers who are actively researching or comparing products and services across *Google Display Network* publisher and partner sites.
[8] Custom Affinity Audiences allow Banner Notices to be targeted to specific website content, here meaning websites, blogs, etc. that include banking, finance and credit and lending content.
[9] The third-party ad management platform, ClickCease, will be used to audit any digital Banner Notice ad placements. This type of platform tracks all Banner Notice ad clicks to provide real-time ad monitoring, fraud traffic analysis, blocks clicks from fraudulent sources, and quarantines dangerous IP addresses. This helps reduce wasted, fraudulent or otherwise invalid traffic (*e.g.*, ads being seen by 'bots' or non-humans, ads not being viewable, etc.).

Internet Sponsored Search Listings

36. To facilitate locating the Settlement website, sponsored search listings will be acquired online through highly visited internet search engines: *Google*, *Yahoo!*, and *Bing*. When search-engine visitors search on common keyword combinations to identify the Settlement, the sponsored search listing generally will be displayed at the top of the page prior to the search results or in the upper right-hand column of the web-browser screen. A list of keywords will be developed in conjunction with counsel and could include such terms as "Capital One Data Breach" and/or "Capital One Settlement," among others. The sponsored search listings will be displayed nationwide. All sponsored search listing ads will link directly to the Settlement website.

Settlement Website

37. Epiq will create and maintain a dedicated website for the Settlement with an easy to remember domain name. Relevant documents, including the Long Form Notice (in English and Spanish), Claim Form, Settlement Agreement, Complaint(s), Motion for Preliminary Approval, Preliminary Approval Order once entered by the Court, and after filing, Motion for Attorneys' Fees and Costs, and Motion for Final Approval will be posted on the Settlement website. The Settlement website will also provide the ability for Settlement Class Members to file an online Claim Form. In addition, the Settlement website will include relevant dates, answers to frequently asked questions ("FAQs"), instructions for how Settlement Class Members may opt-out (request exclusion) from or object to the Settlement, contact information for the Settlement Administrator, and how to obtain other case-related information. The website address will be prominently displayed in all notice documents.

Toll-Free Telephone Number

38. A toll-free telephone number will be established for the Settlement. Callers will be able to hear an introductory message. Callers will also have the option to learn more about the Settlement in the form of recorded answers to FAQs. The toll-free telephone number will be prominently displayed in all notice documents. This automated phone system is available 24 hours per day, 7 days per week. During normal business hours, callers will also have the option to speak

to a live operator.

39. A postal mailing address will be provided, allowing Settlement Class Members the opportunity to request additional information or ask questions.

PLAIN LANGUAGE NOTICE DESIGN

40. The Notices and Claim Form are designed to be "noticed," reviewed, and—by presenting the information in plain language—understood by Settlement Class Members. The design of the Notices follows the principles embodied in the Federal Judicial Center's illustrative "model" notices posted at www.fjc.gov. Many courts, and the FJC itself, have approved notices that we have written and designed in a similar fashion. The Notices contain substantial, albeit easy-to-read summaries of all key information about Settlement Class Members' rights and options. Consistent with our normal practice, all notice documents will undergo a final edit prior to actual mailing and publication for grammatical errors and accuracy.

41. The Long Form Notice will provide substantial information to Settlement Class Members. The Long Form Notice will include (i) details regarding the Settlement Class Members' ability to opt-out or object to the Settlement Agreement, (ii) instructions on how to submit a Claim Form, (iii) the deadline to submit a Claim Form, opt-out, or objection, and (iv) the date, time, and location of the Final Approval Hearing, among other information.

Distribution Options

42. The Settlement provides Settlement Class Members the option of filing a Claim Form. The Notices contain a detailed summary of the relevant information about the Settlement, including the Settlement website address and how Settlement Class Members can file a Claim Form online or by mail. The Email Notice will include a link directly to the claim filing portal on the Settlement Website, where Settlement Class Members can file an online Claim Form. With any method of filing a Claim Form, Settlement Class Members will be given the option of receiving a digital payment (such as Venmo, Paypal, Digital Mastercard or other options). Settlement Class Members will also be able to elect to receive a traditional paper check.

CONCLUSION

43. In class action notice planning, execution, and analysis, we are guided by due process considerations under the United States Constitution, by federal and local rules and statutes, and further by case law pertaining to notice. This framework directs that the notice plan be designed to reach the greatest practicable number of potential class members and, in a settlement class action notice situation such as this, that the notice or notice plan itself not limit knowledge of the availability of benefits—nor the ability to exercise other options—to class members in any way. All of these requirements will be met in this case.

44. The Notice Plan includes individual notice to millions of identified Settlement Class Members and supplemental media notice. With the address updating protocols that will be employed, we reasonably expect the Notice Plan individual notice efforts alone will reach at least 90% of the Settlement Class. The reach will be further enhanced by the supplemental media program (digital notice and internet sponsored search) as well as a Settlement website, which are not included in the estimated reach calculation. In 2010, the Federal Judicial Center issued a Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide. This Guide states that, "the lynchpin in an objective determination of the adequacy of a proposed notice effort is whether all the notice efforts together will reach a high percentage of the Settlement Class. It is reasonable to reach between 70–95%."[10] Here, we have developed a Notice Plan that will readily achieve a reach at the high end of that standard.

45. The Notice Plan follows the guidance for how to satisfy due process obligations that a notice expert gleans from the United States Supreme Court's seminal decisions, which are: a) to endeavor to actually inform the Settlement Class, and b) to demonstrate that notice is reasonably calculated to do so:

a. "But when notice is a person's due, process which is a mere gesture is not due process. The means employed must be such as one desirous of

[10] FED. JUDICIAL CTR, JUDGES' CLASS ACTION NOTICE AND CLAIMS PROCESS CHECKLIST AND PLAIN LANGUAGE GUIDE 3 (2010), available at http://www.fjc.gov/public/pdf.nsf/lookup/NotCheck.pdf/$file/NotCheck.pdf.

actually informing the absentee might reasonably adopt to accomplish it," *Mullane v. Central Hanover Trust*, 339 U.S. 306, 315 (1950).

b. "[N]otice must be reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections," *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156 (1974) citing *Mullane* at 314.

46. The Notice Plan will provide the best notice practicable under the circumstances of this case, conform to all aspects of Federal Rules of Civil Procedure, Rule 23 regarding notice, and comport with the guidance for effective notice articulated in the Manual for Complex Litigation 4th Ed. and FJC guidance, and exceed the requirements of due process, including its "desire to actually inform" requirement.

47. The Notice Plan schedule will afford enough time to provide full and proper notice to Settlement Class Members before any opt-out and objection deadline.

48. At the conclusion of the Notice Plan, I will provide a final report verifying its effective implementation.

I declare under penalty of perjury that the foregoing is true and correct. Executed January 31, 2022.

Cameron R. Azari, Esq.

Attachment 1

HILSOFT NOTIFICATIONS

Hilsoft Notifications ("Hilsoft") is a leading provider of legal notice services for large-scale class action and bankruptcy matters. We specialize in providing quality, expert, and notice plan development – designing notice programs that satisfy due process requirements and withstand judicial scrutiny. Hilsoft is a business unit of Epiq Class Action & Claims Solutions, Inc. ("Epiq"). Hilsoft has been retained by defendants or plaintiffs for more than 500 cases, including more than 40 MDL cases, with notices appearing in more than 53 languages and in almost every country, territory and dependency in the world. For more than 25 years, Hilsoft's notice plans have been approved and upheld by courts. Case examples include:

- Hilsoft designed and implemented monumental notice campaigns to notify current or former owners or lessees of certain BMW, Mazda, Subaru, Toyota, Honda, Nissan, and Ford vehicles as part of $1.49 billion in settlements regarding Takata airbags. The Notice Plans included individual mailed notice to more than 59.6 million potential class members and notice via consumer publications, U.S. Territory newspapers, radio, internet banners, mobile banners, and other behaviorally targeted digital media. Combined, the Notice Plans reached more than 95% of adults aged 18+ in the U.S. who owned or leased a subject vehicle with a frequency of 4.0 times each. ***In re: Takata Airbag Products Liability Litigation*** **(OEMS – BMW, Mazda, Subaru, Toyota, Honda, Nissan and Ford)**, MDL No. 2599 (S.D. Fla.).

- For a landmark $6.05 billion settlement reached by Visa and MasterCard in 2012, Hilsoft implemented an intensive notice program, which included over 19.8 million direct mail notices to class members together with insertions in over 1,500 newspapers, consumer magazines, national business publications, trade and specialty publications, and language & ethnic targeted publications. Hilsoft also implemented an extensive online notice campaign with banner notices, which generated more than 770 million adult impressions, a settlement website in eight languages, and acquisition of sponsored search listings to facilitate locating the website. For the subsequent, superseding $5.54 billion settlement reached by Visa and MasterCard in 2019, Hilsoft implemented an extensive notice program, which included over 16.3 million direct mail notices to class members together with over 354 print publication insertions and banner notices, which generated more than 689 million adult impressions. ***In re: Payment Card Interchange Fee and Merchant Discount Antitrust Litigation,*** 05-MD-1720, MDL No. 1720 (E.D.N.Y.).

- For a $250 million settlement with approximately 4.7 million class members, Hilsoft designed and implemented a notice program with individual notice via postcard or email to approximately 1.43 million class members and a robust publication program, which combined, reached approximately 78.8% of all U.S. adults aged 35+ approximately 2.4 times each. ***Hale v. State Farm Mutual Automobile Insurance Company, et al.,*** 12-cv-00660 (S.D. Ill.).

- Hilsoft designed and implemented an extensive individual notice program, which included 8.6 million double-postcard notices and 1.4 million email notices. The notices informed class members of a $32 million settlement for a "security incident" regarding class members' personal information stored in Premera's computer network, which was compromised. The individual notice efforts reached 93.3% of the settlement class. A settlement website, an informational release, and a geo-targeted publication notice further enhanced the notice efforts. ***In re: Premera Blue Cross Customer Data Security Breach Litigation***, 3:15-md-2633 (D. Ore.).

- Hilsoft provided notice for the $113 million lithium-ion batteries antitrust litigation settlements, which included individual notice via email to millions of class members, banner and social media ads, an informational release, and a settlement website. ***In re: Lithium Ion Batteries Antitrust Litigation***, 4:13-md-02420, MDL No. 2420 (N.D. Cal.).

- Hilsoft designed a notice program that included extensive data acquisition and mailed notice to inform owners and lessees of specific models of Mercedes-Benz vehicles. The notice program reached approximately 96.5% of all class members. ***Callaway v. Mercedes-Benz USA, LLC***, 8:14-cv-02011 (C.D. Cal.).

- Hilsoft provided notice for a $520 million settlement, which involved utility customers (residential, commercial, industrial, etc.) who paid utility bills. The notice program included individual notice to more than 1.6 million known class members via postal mail or email and a supplemental publication notice in local newspapers, banner notices, and a settlement website. The individual notice efforts alone reached more than 98.6% of the class. ***Cook, et al. v. South Carolina Public Service Authority, et al.***, 2019-CP-23-6675 (Ct. of Com. Pleas. 13th Jud. Cir. S.C.).

- For a $20 million TCPA settlement that involved Uber, Hilsoft created a notice program, which resulted in notice via mail or email to more than 6.9 million identifiable class members. The combined measurable notice effort reached approximately 90.6% of the settlement class with direct mail and email, newspaper and internet banner ads. ***Vergara, et al., v. Uber Technologies, Inc.***, 1:15-CV-06972 (N.D. Ill.).

- A comprehensive notice program within the *Volkswagen Emissions Litigation* that provided individual notice to more than 946,000 vehicle owners via first class mail and to more than 855,000 vehicle owners via email. A targeted internet campaign further enhanced the notice effort. ***In re: Volkswagen "Clean Diesel" Marketing, Sales Practices and Product Liability Litigation (Bosch Settlement)***, MDL No. 2672 (N.D. Cal.).

- Hilsoft designed and implemented a comprehensive notice plan, which included individual notice via an oversized postcard notice to more than 740,000 class members as well as email notice to class members. Combined the individual notice efforts delivered notice to approximately 98% of the class. Supplemental newspaper notice in four large-circulation newspapers and a settlement website further expanded the notice efforts. ***Lusnak v. Bank of America, N.A.***, CV 14-1855 (C.D. Cal.).

- Hilsoft provided notice for both the class certification and the settlement phases of the case. The individual notice efforts included sending postcard notices to more than 2.3 million class members, which reached 96% of the class. Publication notice in a national newspaper, targeted internet banner notices and a settlement website further extended the reach of the notice plan. ***Waldrup v. Countrywide Financial Corporation, et al.***, 2:13-cv-08833 (C.D. Cal.).

- An extensive notice effort regarding asbestos personal injury claims and rights as to Debtors' Joint Plan of Reorganization and Disclosure Statement that was designed and implemented by Hilsoft. The notice program included nationwide consumer print publications, trade and union labor publications, internet banner advertising, an informational release, and a website. ***In re: Kaiser Gypsum Company, Inc., el al.***, 16-31602 (Bankr. W.D. N.C.).

- Hilsoft designed and implemented an extensive settlement notice plan for a class period spanning more than 40 years for smokers of light cigarettes. The notice plan delivered a measured reach of approximately 87.8% of Arkansas adults 25+ with a frequency of 8.9 times and approximately 91.1% of Arkansas adults 55+ with a frequency of 10.8 times. Hispanic newspaper notice, an informational release, radio public service announcements ("PSAs"), sponsored search listings and a case website further enhanced reach. ***Miner v. Philip Morris USA, Inc.***, 60CV03-4661 (Ark. Cir. Ct.).

- A large asbestos bar date notice effort, which included individual notice, national consumer publications, hundreds of local and national newspapers, Spanish newspapers, union labor publications, and digital media to reach the target audience. ***In re: Energy Future Holdings Corp., et al.***, 14-10979 (Bankr. D. Del.).

- Overdraft fee class actions have been brought against nearly every major U.S. commercial bank. For related settlements from 2010-2020, Hilsoft has developed programs that integrate individual notice, and in some cases paid media efforts. Fifth Third Bank, National City Bank, Bank of Oklahoma, Webster Bank, Harris Bank, M& I Bank, PNC Bank, Compass Bank, Commerce Bank, Citizens Bank, Great Western Bank, TD Bank, BancorpSouth, Comerica Bank, Susquehanna Bank, Associated Bank, Capital One, M&T Bank, Iberiabank and Synovus are among the more than 20 banks that have retained Epiq (Hilsoft). ***In re: Checking Account Overdraft Litigation***, MDL No. 2036 (S.D. Fla.).

- For one of the largest and most complex class action case in Canadian history, Hilsoft designed and implemented groundbreaking notice to disparate, remote indigenous people in the multi-billion-dollar settlement. ***In re: Residential Schools Class Action Litigation***, 00-CV-192059 CPA (Ont. Super. Ct.).

- BP's $7.8 billion settlement related to the Deepwater Horizon oil spill emerged from possibly the most complex class action case in U.S. history. Hilsoft drafted and opined on all forms of notice. The 2012 dual notice program to "Economic and Property Damages" and "Medical Benefits" settlement classes designed by Hilsoft reached at least 95% Gulf Coast region adults via more than 7,900 television spots, 5,200 radio spots, 5,400 print insertions in newspapers, consumer publications, and trade journals, digital media, and individual notice. Subsequently, Hilsoft designed and implemented one of the largest claim deadline notice campaigns ever implemented, which resulted in a combined measurable paid print, television, radio and internet effort, which reached in excess of 90% of adults aged 18+ in the 26 identified DMAs covering the Gulf Coast Areas an average of 5.5 times each. ***In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010***, MDL No. 2179 (E.D. La.).

- Extensive point of sale notice program of a settlement, which provided payments of up to $100,000 related to Chinese drywall – 100 million notices distributed to Lowe's purchasers during a six-week period. ***Vereen v. Lowe's Home Centers***, SU10-CV-2267B (Ga. Super. Ct.).

LEGAL NOTICING EXPERTS

Cameron Azari, Esq., Epiq Senior Vice President, Hilsoft Director of Legal Notice

Cameron Azari, Esq. has more than 21 years of experience in the design and implementation of legal notice and claims administration programs. He is a nationally recognized expert in the creation of class action notification campaigns in compliance with Fed R. Civ. P. 23(c)(2) (d)(2) and (e) and similar state class action statutes. Cameron has been responsible for hundreds of legal notice and advertising programs. During his career, he has been involved in an array of high profile class action matters, including *In re: Takata Airbag Products Liability Litigation, In re: Payment Card Interchange Fee and Merchant Discount Antitrust Litigation (MasterCard & Visa), In re: Volkswagen "Clean Diesel" Marketing, Sales Practices and Product Liability Litigation (Bosch Settlement), In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico on April 20, 2010, In re: Checking Account Overdraft Litigation,* and *In re: Residential Schools Class Action Litigation*. He is an active author and speaker on a broad range of legal notice and class action topics ranging from FRCP Rule 23 to email noticing, response rates, and optimizing settlement effectiveness. Cameron is an active member of the Oregon State Bar. He received his B.S. from Willamette University and his J.D. from Northwestern School of Law at Lewis and Clark College. Cameron can be reached at caza@legalnotice.com.

Lauran Schultz, Epiq Managing Director

Lauran Schultz consults with Hilsoft clients on complex noticing issues. Lauran has more than 20 years of experience as a professional in the marketing and advertising field, specializing in legal notice and class action administration since 2005. High profile actions he has been involved in include companies such as BP, Bank of America, Fifth Third Bank, Symantec Corporation, Lowe's Home Centers, First Health, Apple, TJX, CNA and Carrier Corporation. Prior to joining Epiq in 2005, Lauran was a Senior Vice President of Marketing at National City Bank in Cleveland, Ohio. Lauran's education includes advanced study in political science at the University of Wisconsin-Madison along with a Ford Foundation fellowship from the Social Science Research Council and American Council of Learned Societies. Lauran can be reached at lschultz@hilsoft.com.

Kyle Bingham, Manager of Strategic Communications

Kyle Bingham has 15 years of experience in the advertising industry. At Hilsoft and Epiq, Kyle is responsible for overseeing the research, planning, and execution of advertising campaigns for legal notice programs including class action, bankruptcy and other legal cases. Kyle has been involved in the design and implementation of numerous legal notice campaigns, including *In re: Takata Airbag Products Liability Litigation, In re: Volkswagen "Clean Diesel" Marketing, Sales Practices and Product Liability Litigation (Bosch), In re: Payment Card Interchange Fee and Merchant Discount Antitrust Litigation (MasterCard & Visa), In re: Energy Future Holdings Corp., et al. (Asbestos Claims Bar Notice), In re: Residential Schools Class Action Litigation, Hale v. State Farm Mutual Automobile Insurance Company,* and *In re: Checking Account Overdraft Litigation*. Prior to joining Epiq and Hilsoft, Kyle worked at Wieden+Kennedy for seven years, an industry-leading advertising agency where he planned and purchased print, digital and broadcast media, and presented strategy and media campaigns to clients for multi-million dollar branding campaigns and regional direct response initiatives. He received his B.A. from Willamette University. Kyle can be reached at kbingham@epiqglobal.com.

ARTICLES AND PRESENTATIONS

- **Cameron Azari** Speaker, "Virtual Global Class Actions Symposium 2020, Class Actions Case Management Panel." November 18, 2020.
- **Cameron Azari** Speaker, "Consumers and Class Action Notices: An FTC Workshop." Federal Trade Commission, Washington, DC, October 29, 2019.
- **Cameron Azari** Speaker, "The New Outlook for Automotive Class Action Litigation: Coattails, Recalls, and Loss of Value/Diminution Cases." ACI's Automotive Product Liability Litigation Conference." American Conference Institute, Chicago, IL, July 18, 2019.
- **Cameron Azari** Moderator, "Prepare for the Future of Automotive Class Actions." Bloomberg Next, Webinar-CLE, November 6, 2018.
- **Cameron Azari** Speaker, "The Battleground for Class Certification: Plaintiff and Defense Burdens, Commonality Requirements and Ascertainability." 30th National Forum on Consumer Finance Class Actions and Government Enforcement, Chicago, IL, July 17, 2018.
- **Cameron Azari** Speaker, "Recent Developments in Class Action Notice and Claims Administration." PLI's Class Action Litigation 2018 Conference, New York, NY, June 21, 2018.
- **Cameron Azari** Speaker, "One Class Action or 50? Choice of Law Considerations as Potential Impediment to Nationwide Class Action Settlements." 5th Annual Western Regional CLE Program on Class Actions and Mass Torts. Clyde & Co LLP, San Francisco, CA, June 22, 2018.
- **Cameron Azari** Co-Author, *A Practical Guide to Chapter 11 Bankruptcy Publication Notice*. E-book, published, May 2017.
- **Cameron Azari** Featured Speaker, "Proposed Changes to Rule 23 Notice and Scrutiny of Claim Filing Rates," DC Consumer Class Action Lawyers Luncheon, December 6, 2016.
- **Cameron Azari** Speaker, "Recent Developments in Consumer Class Action Notice and Claims Administration." Berman DeValerio Litigation Group, San Francisco, CA, June 8, 2016.
- **Cameron Azari** Speaker, "2016 Cybersecurity & Privacy Summit. Moving From 'Issue Spotting' To Implementing a Mature Risk Management Model." King & Spalding, Atlanta, GA, April 25, 2016.
- **Cameron Azari** Speaker, "Live Cyber Incident Simulation Exercise." Advisen's Cyber Risk Insights Conference, London, UK, February 10, 2015.
- **Cameron Azari** Speaker, "Pitfalls of Class Action Notice and Claims Administration." PLI's Class Action Litigation 2014 Conference, New York, NY, July 9, 2014.
- **Cameron Azari** Co-Author, "What You Need to Know About Frequency Capping In Online Class Action Notice Programs." *Class Action Litigation Report*, June 2014.
- **Cameron Azari** Speaker, "Class Settlement Update – Legal Notice and Court Expectations." PLI's 19th Annual Consumer Financial Services Institute Conference, New York, NY, April 7-8, 2014 and Chicago, IL, April 28-29, 2014.
- **Cameron Azari** Speaker, "Legal Notice in Consumer Finance Settlements - Recent Developments." ACI's Consumer Finance Class Actions and Litigation, New York, NY, January 29-30, 2014.
- **Cameron Azari** Speaker, "Legal Notice in Building Products Cases." HarrisMartin's Construction Product Litigation Conference, Miami, FL, October 25, 2013.

- **Cameron Azari** Co-Author, "Class Action Legal Noticing: Plain Language Revisited." *Law360*, April 2013.
- **Cameron Azari** Speaker, "Legal Notice in Consumer Finance Settlements Getting your Settlement Approved." ACI's Consumer Finance Class Actions and Litigation, New York, NY, January 31-February 1, 2013.
- **Cameron Azari** Speaker, "Perspectives from Class Action Claims Administrators: Email Notices and Response Rates." CLE International's 8th Annual Class Actions Conference, Los Angeles, CA, May 17-18, 2012.
- **Cameron Azari** Speaker, "Class Action Litigation Trends: A Look into New Cases, Theories of Liability & Updates on the Cases to Watch." ACI's Consumer Finance Class Actions and Litigation, New York, NY, January 26-27, 2012.
- **Lauran Schultz** Speaker, "Legal Notice Best Practices: Building a Workable Settlement Structure." CLE International's 7th Annual Class Action Conference, San Francisco, CA, May 2011.
- **Cameron Azari** Speaker, "Data Breaches Involving Consumer Financial Information: Litigation Exposures and Settlement Considerations." ACI's Consumer Finance Class Actions and Litigation, New York, NY, January 2011.
- **Cameron Azari** Speaker, "Notice in Consumer Class Actions: Adequacy, Efficiency and Best Practices." CLE International's 5th Annual Class Action Conference: Prosecuting and Defending Complex Litigation, San Francisco, CA, 2009.
- **Lauran Schultz** Speaker, "Efficiency and Adequacy Considerations in Class Action Media Notice Programs." Chicago Bar Association, Chicago, IL, 2009.
- **Cameron Azari** Author, "Clearing the Five Hurdles of Email - Delivery of Class Action Legal Notices." *Thomson Reuters Class Action Litigation Reporter*, June 2008.
- **Cameron Azari** Speaker, "Planning for a Smooth Settlement." ACI: Class Action Defense – Complex Settlement Administration for the Class Action Litigator, Phoenix, AZ, 2007.
- **Cameron Azari** Speaker, "Structuring a Litigation Settlement." CLE International's 3rd Annual Conference on Class Actions, Los Angeles, CA, 2007.
- **Cameron Azari** Speaker, "Noticing and Response Rates in Class Action Settlements" – Class Action Bar Gathering, Vancouver, British Columbia, 2007.
- **Cameron Azari** Speaker, "Notice and Response Rates in Class Action Settlements" – Skadden Arps Slate Meagher & Flom, LLP, New York, NY, 2006.
- **Cameron Azari** Speaker, "Notice and Response Rates in Class Action Settlements" – Bridgeport Continuing Legal Education, Class Action and the UCL, San Diego, CA, 2006.
- **Cameron Azari** Speaker, "Notice and Response Rates in Class Action Settlements" – Stoel Rives litigation group, Portland, OR / Seattle, WA / Boise, ID / Salt Lake City, UT, 2005.
- **Cameron Azari** Speaker, "Notice and Response Rates in Class Action Settlements" – Stroock & Stroock & Lavan Litigation Group, Los Angeles, CA, 2005.
- **Cameron Azari** Author, "Twice the Notice or No Settlement." Current Developments – Issue II, August 2003.
- **Cameron Azari** Speaker, "A Scientific Approach to Legal Notice Communication" – Weil Gotshal litigation group, New York, NY, 2003.

JUDICIAL COMMENTS

Judge Anne-Christine Massullo, *Morris v. Provident Credit Union* (June 23, 2021) CGC-19-581616, Sup. Ct. Cal. Cty. of San Fran.:

> *The Notice approved by this Court was distributed to the Classes in substantial compliance with this Court's Order Certifying Classes for Settlement Purposes and Granting Preliminary Approval of Class Settlement ("Preliminary Approval Order") and the Agreement. The Notice met the requirements of due process and California Rules of Court, rules 3.766 and 3.769(f). The notice to the Classes was adequate.*

Judge Esther Salas, *Sager, et al. v. Volkswagen Group of America, Inc., et al.* (June 22, 2021) 18-cv-13556 (D.N.J.):

> *The Court further finds and concludes that Class Notice was properly and timely disseminated to the Settlement Class in accordance with the Class Notice Plan set forth in the Settlement Agreement and the Preliminary Approval Order (Dkt. No. 69). The Class Notice Plan and its implementation in this case fully satisfy Rule 23, the requirements of due process and constitute the best notice practicable under the circumstances.*

Judge Josephine L. Staton, *In re: Hyundai and Kia Engine Litigation and Flaherty v. Hyundai Motor Company, Inc., et al.* (June 10, 2021) 8:17-CV-00838 & 18-cv-02223 (C.D. Cal.):

> *The Class Notice was disseminated in accordance with the procedures required by the Court's Orders … in accordance with applicable law, and satisfied the requirements of Rule 23(e) and due process and constituted the best notice practicable for the reasons discussed in the Preliminary Approval Order and Final Approval Order.*

Judge Harvey Schlesinger, *In re: Disposable Contact Lens Antitrust Litigation* (ABB Concise Optical Group, LLC) (May 31, 2021) 3:15-md-02626 (M.D. Fla.):

> *The Court finds that the dissemination of the Notice: (a) was implemented in accordance with the Preliminary Approval Order; (b) constitutes the best notice practicable under the circumstances; (c) constitutes notice that was reasonably calculated, under the circumstances, to apprise the Settlement Class of (i) the pendency of the Action; (ii) the effect of the Settlement Agreement (including the Releases to be provided thereunder); (iii) Class Counsel's possible motion for an award of attorneys' fees and reimbursement of expenses; (iv) the right to object to any aspect of the Settlement Agreement, the Plan of Distribution, and/or Class Counsel's motion for attorneys' fees and reimbursement of expenses; (v) the right to opt out of the Settlement Class; (vi) the right to appear at the Fairness Hearing; and (vii) the fact that Plaintiffs may receive incentive awards; (d) constitutes due, adequate, and sufficient notice to all persons and entities entitled to receive notice of the Settlement Agreement; and (e) satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure and the United States Constitution (including the Due Process Clause).*

Judge Haywood S. Gilliam, Jr. *Richards, et al. v. Chime Financial, Inc.* (May 24, 2021) 4:19-cv-06864 (N.D. Cal.):

> *The Court finds that the notice and notice plan previously approved by the Court was implemented and complies with Rule 23(c)(2)(B)… The Court ordered that the third-party settlement administrator send class notice via email based on a class list Defendant provided… Epiq Class Action & Claims Solutions, Inc., the third-party settlement administrator, represents that class notice was provided as directed… Epiq received a total of 527,505 records for potential Class Members, including their email addresses…. If the receiving email server could not deliver the message, a "bounce code" was returned to Epiq indicating that the message was undeliverable…. Epiq made two additional attempts to deliver the email notice… As of Mach 1, 2021, a total of 495,006 email notices were delivered, and 32,499 remained undeliverable… In light of these facts, the Court finds that the parties have sufficiently provided the best practicable notice to the Class Members.*

Judge Henry Edward Autrey, *Pearlstone v. Wal-Mart Stores, Inc.* (Apr. 22, 2021) 4:17-cv-02856 (C.D. Cal.):

> *The Court finds that adequate notice was given to all Settlement Class Members pursuant to the terms of the Parties' Settlement Agreement and the Preliminary Approval Order. The Court has further determined that the Notice Plan fully and accurately informed Settlement Class Members of all material elements of the Settlement, constituted the best notice practicable under the circumstances, and fully satisfied the requirements of Federal Rule 23(c)(2) and 23(e)(1), applicable law, and the Due Process Clause of the United States Constitution.*

Judge Lucy H. Koh, *Grace v. Apple, Inc.* (Mar. 31, 2021) 17-CV-00551 (N.D. Cal.):

> *Federal Rule of Civil Procedure 23(c)(2)(B) requires that the settling parties provide class members with "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice must clearly and concisely state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3)." The Court finds that the Notice Plan, which was direct notice sent to 99.8% of the Settlement Class via email and U.S. Mail, has been implemented in compliance with this Court's Order (ECF No. 426) and complies with Rule 23(c)(2)(B).*

Judge Gary A. Fenner, *In re: Pre-Filled Propane Tank Antitrust Litigation* (Mar. 30, 2021) MDL No. 2567, 14-2567 (W.D. Mo.):

> *Based upon the Declaration of Cameron Azari, on behalf of Epiq, the Administrator appointed by the Court, the Court finds that the Notice Program has been properly implemented. That Declaration shows that there have been no requests for exclusion from the Settlement, and no objections to the Settlement. Finally, the Declaration reflects that AmeriGas has given appropriate notice of this settlement to the Attorney General of the United States and the appropriate State officials under the Class Action Fairness Act, 28 U.S.C. § 1715, and no objections have been received from any of them.*

Judge Richard Seeborg, *Bautista v. Valero Marketing and Supply Company* (Mar. 17, 2021) 3:15-cv-05557 (N.D. Cal.):

> *The Notice given to the Settlement Class in accordance with the Notice Order was the best notice practicable under the circumstances of these proceedings and of the matters set forth therein, including the proposed Settlement set forth in the Settlement Agreement, to all Persons entitled to such notice, and said notice fully satisfied the requirements of Fed. R. Civ. P. 23 and due process.*

Judge James D. Peterson, *Fox, et al. v. Iowa Health System d.b.a. UnityPoint Health* (Mar. 4, 2021) 18-cv-327 (W.D. Wis.):

> *The approved Notice plan provided for direct mail notice to all class members at their last known address according to UnityPoint's records, as updated by the administrator through the U.S. Postal Service. For postcards returned undeliverable, the administrator tried to find updated addresses for those class members. The administrator maintained the Settlement website and made Spanish versions of the Long Form Notice and Claim Form available upon request. The administrator also maintained a toll-free telephone line which provides class members detailed information about the settlement and allows individuals to request a claim form be mailed to them.*
>
> *The Court finds that this Notice (i) constituted the best notice practicable under the circumstances; (ii) was reasonably calculated, under the circumstances, to apprise Settlement Class members of the Settlement, the effect of the Settlement (including the release therein), and their right to object to the terms of the settlement and appear at the Final Approval Hearing; (iii) constituted due and sufficient notice of the Settlement to all reasonably identifiable persons entitled to receive such notice; (iv) satisfied the requirements of due process, Federal Rule of Civil Procedure 23(e)(1) and the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, and all applicable laws and rules.*

Judge Larry A. Burns, *Trujillo, et al. v. Ametek, Inc., et al.* (Mar. 3, 2021) 3:15-cv-01394 (S.D. Cal.):

> *The Class has received the best practicable notice under the circumstances of this case. The Parties' selection and retention of Epiq Class Action & Claims Solutions, Inc. ("Epiq") as the Claims Administrator was reasonable and appropriate. Based on the Declaration of Cameron Azari of Epiq, the Court finds that the Settlement Notices were published to the Class Members in the form and manner approved by the Court in its Preliminary Approval Order. See Dkt. 181-6. The Settlement Notices provided fair, effective, and the best practicable notice to the Class of the Settlement's terms. The Settlement Notices informed the Class of Plaintiffs' intent to seek attorneys' fees, costs, and incentive payments, set forth the date, time, and place of the Fairness Hearing, and explained Class Members' rights to object to the Settlement or Fee Motion and to appear at the Fairness Hearing… The Settlement Notices fully satisfied all notice requirements under the law, including the Federal Rules of Civil Procedure, the requirements of the California Legal Remedies Act, Cal. Civ. Code § 1781, and all due process rights under the U.S. Constitution and California Constitutions.*

Judge Sherri A. Lydon, *Fitzhenry v. Independent Home Products, LLC* (Mar. 2, 2021) 2:19-cv-02993 (D.S.C.):

> *Notice was provided to Class Members in compliance with Section VI of the Settlement Agreement, due process, and Rule 23 of the Federal Rules of Civil Procedure. The notice: (i) fully and accurately informed Settlement Class Members about the lawsuit and settlement; (ii) provided sufficient information so that Settlement Class Members could decide whether to accept the benefits offered, opt-out and pursue their own remedies, or object to the settlement; (iii) provided procedures for Class Members to file written objections to the proposed settlement, to appear at the hearing, and to state objections to the proposed settlement; and (iv) provided the time, date, and place of the final fairness hearing.*

Judge James V. Selna, *Alvarez v. Sirius XM Radio Inc.* (Feb. 9, 2021) 2:18-cv-8605 (C.D. Cal.):

> *The Court finds that the dissemination of the Notices attached as Exhibits to the Settlement Agreement: (a) was implemented in accordance with the Notice Order; (b) constituted the best notice practicable under the circumstances; (c) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of (i) the pendency of the Action; (ii) their right to submit a claim (where applicable) by submitting a Claim Form; (iii) their right to exclude themselves from the Settlement Class; (iv) the effect of the proposed Settlement (including the Releases to be provided thereunder); (v) Named Plaintiffs' application for the payment of Service Awards; (vi) Class Counsel's motion for an award an attorneys' fees and expenses; (vii) their right to object to any aspect of the Settlement, and/or Class Counsel's motion for attorneys' fees and expenses (including a Service Award to the Named Plaintiffs and Mr. Wright); and (viii) their right to appear at the Final Approval Hearing; (d) constituted due, adequate, and sufficient notice to all Persons entitled to receive notice of the proposed Settlement; and (e) satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Constitution of the United States (including the Due Process Clause), and all other applicable laws and rules.*

Judge Jon S .Tigar, *Elder v. Hilton Worldwide Holdings, Inc.* (Feb. 4, 2021) 16-cv-00278 (N.D. Cal.):

> *"Epiq implemented the notice plan precisely as set out in the Settlement Agreement and as ordered by the Court." ECF No. 162 at 9-10. Epiq sent initial notice by email to 8,777 Class Members and by U.S. Mail to the remaining 1,244 Class members. Id. at 10. The Notice informed Class Members about all aspects of the Settlement, the date and time of the fairness hearing, and the process for objections. ECF No. 155 at 28-37. Epiq then mailed notice to the 2,696 Class Members whose emails were returned as undeliverable. Id. "Of the 10,021 Class Members identified from Defendants' records, Epiq was unable to deliver the notice to only 35 Class Members. Accordingly, the reach of the notice is 99.65%." Id. (citation omitted). Epiq also created and maintained a settlement website and a toll-free hotline that Class Members could call if they had questions about the settlement. Id.*
>
> *The Court finds that the parties have complied with the Court's preliminary approval order and, because the notice plan complied with Rule 23, have provided adequate notice to class members.*

Judge Michael W. Jones, *Wallace, et al, v. Monier Lifetile LLC, et al.* (Jan. 15, 2021) SCV-16410 (Sup. Ct. Cal.):

> *The Court also finds that the Class Notice and notice process were implemented in accordance with the Preliminary Approval Order, providing the best practicable notice under the circumstances.*

Judge Kristi K. DuBose, *Drazen v. GoDaddy.com, LLC* and *Bennett v. GoDaddy.com, LLC* (Dec. 23, 2020) 1:19-cv-00563 (S.D. Ala.):

> *The Court finds that the Notice and the claims procedures actually implemented satisfy due process, meet the requirements of Rule 23(e)(1), and the Notice constitutes the best notice practicable under the circumstances.*

Judge Haywood S. Gilliam, Jr.*, Izor v. Abacus Data Systems, Inc.* (Dec. 21, 2020) 19-cv-01057 (N.D. Cal.):

> *The Court finds that the notice plan previously approved by the Court was implemented and that the notice thus satisfied Rule 23(c)(2)(B). [T]he Court finds that the parties have sufficiently provided the best practicable notice to the class members.*

Judge Christopher C. Conner, *Al's Discount Plumbing, et al. v. Viega, LLC* (Dec. 18, 2020) 19-cv-00159 (M.D. Pa.):

> *The Court finds that the notice and notice plan previously approved by the Court was implemented and complies with Fed. R. Civ. P. 23(c)(2)(B) and due process. Specifically, the Court ordered that the third-party Settlement Administrator, Epiq, send class notice via email, U.S. mail, by publication in two recognized industry magazines, Plumber and PHC News, in both their print and online digital forms, and to implement a digital media campaign. (ECF 99). Epiq represents that class notice was provided as directed. See Declaration of Cameron R. Azari, ¶¶ 12-15 (ECF 104-13).*

Judge Naomi Reice Buchwald, *In re: Libor-Based Financial Instruments Antitrust Litigation* (Dec. 16, 2020) MDL No. 2262 1:11-md-2262 (S.D.N.Y.):

> *Upon review of the record, the Court hereby finds that the forms and methods of notifying the members of the Settlement Classes and their terms and conditions have met the requirements of the United States Constitution (including the Due Process Clause), Rule 23 of the Federal Rules of Civil Procedure, and all other applicable law and rules; constituted the best notice practicable under the circumstances; and constituted due and sufficient notice to all members of the Settlement Classes of these proceedings and the matters set forth herein, including the Settlements, the Plan of Allocation and the Fairness Hearing. Therefore, the Class Notice is finally approved.*

Judge Larry A. Burns, *Cox, et al. Ametek, Inc., et al.* (Dec 15, 2020) 3:17-cv-00597 (S.D. Cal.):

> *The Class has received the best practicable notice under the circumstances of this case. The Parties' selection and retention of Epiq Class Action & Claims Solutions, Inc. ("Epiq") as the Claims Administrator was reasonable and appropriate. Based on the Declaration of Cameron Azari of Epiq, the Court finds that the Settlement Notices were published to the Class Members in the form and manner approved by the Court in its Preliminary Approval Order. See Dkt. 129-6. The Settlement Notices provided fair, effective, and the best practicable notice to the Class of the Settlement's terms. The Settlement Notices informed the Class of Plaintiffs' intent to seek attorneys' fees, costs, and incentive payments, set forth the date, time, and place of the Fairness Hearing, and explained Class Members' rights to object to the Settlement or Fee Motion and to appear at the Fairness Hearing… The Settlement Notices fully satisfied all notice requirements under the law, including the Federal Rules of Civil Procedure, the requirements of the California Legal Remedies Act, Cal. Civ. Code § 1781, and all due process rights under the U.S. Constitution and California Constitutions.*

Judge Timothy J. Sullivan*, Robinson v. Nationstar Mortgage LLC* (Dec. 11, 2020) 8:14-cv-03667 (D. Md.):

> *The Class Notice provided to the Settlement Class conforms with the requirements of Fed. Rule Civ. Proc. 23, the United States Constitution, and any other applicable law, and constitutes the best notice practicable under the circumstances, by providing individual notice to all Settlement Class Members who could be identified through reasonable effort, and by providing due and adequate notice of the proceedings and of the matters set forth therein to the other Settlement Class Members. The Class Notice fully satisfied the requirements of Due Process.*

Judge Yvonne Gonzalez Rogers, *In re: Lithium Ion Batteries Antitrust Litigation* (Dec. 10, 2020) 4:13-md-02420, MDL No. 2420 (N.D. Cal.):

> *The proposed notice plan was undertaken and carried out pursuant to this Court's preliminary approval order prior to remand, and a second notice campaign thereafter. (See Dkt. No. 2571.) The class received direct and indirect notice through several methods – email notice, mailed notice upon request, an informative settlement website, a telephone support line, and a vigorous online campaign. Digital banner advertisements were targeted specifically to settlement class members, including on Google and Yahoo's ad networks, as well as Facebook and Instagram, with over 396 million impressions delivered. Sponsored search listings were employed on Google, Yahoo and Bing, resulting in 216,477 results, with 1,845 clicks through to the settlement website. An informational released was distributed to 495 media contacts in the consumer electronics industry. The case website has continued to be maintained as a channel for communications with class members. Between February 11, 2020 and April 23, 2020, there were 207,205 unique visitors to the website. In the same period, the toll-free telephone number available to class members received 515 calls.*

Judge Katherine A. Bacal, *Garvin v. San Diego Unified Port District* (Nov. 20, 2020) 37-2020-00015064 (Sup. Ct. Cal.):

> *Notice was provided to Class Members in compliance with the Settlement Agreement, California Code of Civil Procedure §382 and California Rules of Court 3.766 and 3.769, the California and United States Constitutions, and any other applicable law, and constitutes the best notice practicable under the circumstances, by providing notice to all individual Class Members who could be identified through reasonable effort, and by providing due and adequate notice of the proceedings and of the matters set forth therein to the other Class Members. The Notice fully satisfied the requirements of due process.*

Judge Catherine D. Perry*, Pirozzi, et al. v. Massage Envy Franchising, LLC* (Nov. 13, 2020) 4:19-cv-807 (E.D. Mo.):

> *The COURT hereby finds that the CLASS NOTICE given to the CLASS: (i) fairly and accurately described the ACTION and the proposed SETTLEMENT; (ii) provided sufficient information so that the CLASS MEMBERS were able to decide whether to accept the benefits offered by the SETTLEMENT, exclude themselves from the SETTLEMENT, or object to the SETTLEMENT; (iii) adequately described the time and manner by which CLASS MEMBERS could submit a CLAIM under the SETTLEMENT, exclude themselves from the SETTLEMENT, or object to the SETTLEMENT and/or appear at the FINAL APPROVAL HEARING; and (iv) provided the date, time, and place of the FINAL APPROVAL HEARING. The COURT hereby finds that the CLASS NOTICE was the best notice practicable under the circumstances, constituted a reasonable manner of notice to all class members who would be bound by the SETTLEMENT, and complied fully with Federal Rule of Civil Procedure Rule 23, due process, and all other applicable laws.*

Judge Robert E. Payne, *Skochin, et al. v. Genworth Life Insurance Company, et al.* (Nov. 12, 2020) 3:19-cv-00049 (E.D. Vir.):

> *For the reasons set forth in the Court's Memorandum Opinion addressing objections to the Settlement Agreement, . . . the plan to disseminate the Class Notice and Publication Notice, which the Court previously approved, has been implemented and satisfied the requirements of Fed. R. Civ. P. 23(c)(2)(B) and due process.*

Judge Jeff Carpenter*, Eastwood Construction LLC, et al. v. City of Monroe* (Oct. 27, 2020) 18-cvs-2692 and ***The Estate of Donald Alan Plyler Sr., et al. v. City of Monroe*** (Oct. 27, 2020) 19-cvs-1825 (Sup. Ct. N.C.):

> *Therefore, the Court GRANTS the Final Approval Motion, CERTIFIES the class as defined below for settlement purposes only, APPROVES the Settlement, and GRANTS the Fee Motion…*
> *The Settlement Agreement and the Settlement Notice are found to be fair, reasonable, adequate, and in the best interests of the Settlement Class, and are hereby approved pursuant to North Carolina Rule of Civil Procedure 23. The Parties are hereby authorized and directed to comply with and to consummate the Settlement Agreement in accordance with the terms and provisions set forth in the Settlement Agreement, and the Clerk of the Court is directed to enter and docket this Order and Final Judgement in the Actions.*

Judge M. James Lorenz, *Walters, et al. v. Target Corp.* (Oct. 26, 2020) 3:16-cv-1678 (S.D. Cal.):

> *The Court has determined that the Class Notices given to Settlement Class members fully and accurately informed Settlement Class members of all material elements of the proposed Settlement and constituted valid, due, and sufficient notice to Settlement Class members consistent with all applicable requirements. The Court further finds that the Notice Program satisfies due process and has been fully implemented.*

Judge Maren E. Nelson, *Harris, et al. v. Farmers Insurance Exchange and Mid Century Insurance Company* (Oct. 26, 2020) BC 579498 (Sup. Ct Cal.):

> *Distribution of Notice directed to the Settlement Class Members as set forth in the Settlement has been completed in conformity with the Preliminary Approval Order, including individual notice to all Settlement Class members who could be identified through reasonable effort, and the best notice practicable under the circumstances. The Notice, which reached 99.9% of all Settlement Class Members, provided due and adequate notice of the proceedings and of the matters set forth therein, including the proposed Settlement, to all persons entitled to Notice, and the Notice and its distribution fully satisfied the requirements of due process.*

Judge Vera M. Scanlon, *Lashambae v. Capital One Bank, N.A.* (Oct. 21, 2020) 1:17-cv-06406 (E.D.N.Y.):

> *The Class Notice, as amended, contained all of the necessary elements, including the class definition, the identifies of the named Parties and their counsel, a summary of the terms of the proposed Settlement, information regarding the manner in which objections may be submitted, information regarding the opt-out procedures and deadlines, and the date and location of the Final Approval Hearing. Notice was successfully delivered to approximately 98.7% of the Settlement Class and only 78 individual Settlement Class Members did not receive notice by email or first class mail.*
>
> *Having reviewed the content of the Class Notice, as amended, and the manner in which the Class Notice was disseminated, this Court finds that the Class Notice, as amended, satisfied the requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, and all other applicable law and rules. The Class Notice, as amended, provided to the Settlement Class in accordance with the Preliminary Approval Order was the best notice practicable under the circumstances and provided this Court with jurisdiction over the absent Settlement Class Members. See Fed. R. Civ. P. 23(c)(2)(B).*

Chancellor Walter L. Evans, *K.B., by and through her natural parent, Jennifer Qassis, and Lillian Knox-Bender v. Methodist Healthcare - Memphis Hospitals* (Oct. 14, 2020) CH-13-04871-1 (30th Jud. Dist. Tenn.):

> *Based upon the filings and the record as a whole, the Court finds and determines that dissemination of the Class Notice as set forth herein complies with Tenn. R. Civ. P. 23.03(3) and 23.05 and (i) constitutes the best practicable notice under the circumstances, (ii) was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of Class Settlement, their rights to object to the proposed Settlement, (iii) was reasonable and constitutes due, adequate, and sufficient notice to all persons entitled to receive notice, (iv) meets all applicable requirements of Due Process; (v) and properly provides notice of the attorney's fees that Class Counsel shall seek in this action. As a result, the Court finds that Class Members were properly notified of their rights, received full Due Process . . . .*

Judge Sara L. Ellis, *Nelson v. Roadrunner Transportation Systems, Inc.* (Sept. 15, 2020) 1:18-cv-07400 (N.D. Ill.):

> *Notice of the Final Approval Hearing, the proposed motion for attorneys' fees, costs, and expenses, and the proposed Service Award payment to Plaintiff have been provided to Settlement Class Members as directed by this Court's Orders,*
>
> *The Court finds that such Notice as therein ordered, constitutes the best possible notice practicable under the circumstances and constitutes valid, due, and sufficient notice to all Settlement Class Members in compliance with the requirements of Federal Rule of Civil Procedure 23(c)(2)(B).*

Judge George H. Wu, *Lusnak v. Bank of America, N.A.* (Aug. 10, 2020) CV 14-1855 (C.D. Cal.):

> *The Court finds that the Notice program for disseminating notice to the Settlement Class, provided for in the Settlement Agreement and previously approved and directed by the Court, has been implemented by the Settlement Administrator and the Parties. The Court finds that such Notice program, including the approved forms of notice: (a) constituted the best notice that is practicable under the circumstances; (b) included direct individual notice to all Settlement Class Members who could be identified through reasonable effort; (c) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the nature of the Lawsuit, the definition of the Settlement Class certified, the class claims and issues, the opportunity to enter an appearance through an attorney if the member so desires; the opportunity, the time, and manner for requesting exclusion from the Settlement Class, and the binding effect of a class judgment; (d) constituted due, adequate and sufficient notice to all persons entitled to notice; and (e) met all applicable requirements of Federal Rule of Civil Procedure 23, due process under the U.S. Constitution, and any other applicable law.*

Judge James Lawrence King, *Dasher v. RBC Bank (USA) predecessor in interest to PNC Bank, N.A.* (Aug. 10, 2020) 1:10-cv-22190 (S.D. Fla.) as part of ***In re: Checking Account Overdraft Litigation*** MDL No. 2036 (S.D. Fla.):

> *The Court finds that the members of the Settlement Class were provided with the best practicable notice; the notice was "reasonably calculated, under [the] circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Shutts, 472 U.S. at 812 (quoting Mullane, 339 U.S. at 314-15). This Settlement was widely publicized, and any member of the Settlement Class who wished to express comments or objections had ample opportunity and means to do so.*

Judge Jeffrey S. Ross, *Lehman v. Transbay Joint Powers Authority, et al.* (Aug. 7, 2020) CGC-16-553758 (Sup. Ct. Cal.):

> *The Notice approved by this Court was distributed to the Settlement Class Members in compliance with this Court's Order Granting Preliminary Approval of Class Action Settlement, dated May 8, 2020. The Notice provided to the Settlement Class Members met the requirements of due process and constituted the best notice practicable in the circumstances. Based on evidence and other material submitted in conjunction with the final approval hearing, notice to the class was adequate.*

Judge Jean Hoefer Toal, *Cook, et al. v. South Carolina Public Service Authority, et al.* (July 31, 2020) 2019-CP-23-6675 (Ct. of Com. Pleas. 13th Jud. Cir. S.C.):

> *Notice was sent to more than 1.65 million Class members, published in newspapers whose collective circulation covers the entirety of the State, and supplemented with internet banner ads totaling approximately 12.3 million impressions. The notices directed Class members to the settlement website and toll-free line for additional inquiries and further information. After this extensive notice campaign, only 78 individuals (0.0047%) have opted-out, and only nine (0.00054%) have objected. The Court finds this response to be overwhelmingly favorable.*

Judge Peter J. Messitte, *Jackson, et al. v. Viking Group, Inc., et al.* (July 28, 2020) 8:18-cv-02356 (D. Md.):

> *[T]he Court finds, that the Notice Plan has been implemented in the manner approved by the Court in its Preliminary Approval Order as amended. The Court finds that the Notice Plan: (i) constitutes the best notice practicable to the Settlement Class under the circumstances; (ii) was reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of this Lawsuit and the terms of the Settlement, their right to exclude themselves from the Settlement, or to object to any part of the Settlement, their right to appear at the Final Approval Hearing (either on their own or through counsel hired at their own expense), and the binding effect of the Final Approval Order and the Final Judgment, whether favorable or unfavorable, on all Persons who do not exclude themselves from the Settlement Class, (iii) due, adequate, and sufficient notice to all Persons entitled to receive notice; and (iv) notice that fully satisfies the requirements of the United States Constitution (including the Due Process Clause), Fed. R. Civ. P. 23, and any other applicable law.*

Judge Michael P. Shea, *Grayson, et al. v. General Electric Company* (July 27, 2020) 3:13-cv-01799 (D. Conn.):

> *Pursuant to the Preliminary Approval Order, the Settlement Notice was mailed, emailed and disseminated by the other means described in the Settlement Agreement to the Class Members. This Court finds that this notice procedure was (i) the best practicable notice; (ii) reasonably calculated, under the circumstances, to apprise the Class Members of the pendency of the Civil Action and of their right to object to or exclude themselves from the proposed Settlement; and (iii) reasonable and constitutes due, adequate, and sufficient notice to all entities and persons entitled to receive notice.*

Judge Gerald J. Pappert, *Rose v. The Travelers Home and Marine Insurance Company, et al.* (July 20, 2020) 19-cv-00977 (E.D. Pa.):

> *The Class Notice . . . has been given to the Settlement Class in the manner approved by the Court in its Preliminary Approval Order. Such Class Notice (i) constituted the best notice practicable to the Settlement Class under the circumstances; (ii) was reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency and nature of this Action, the definition of the Settlement Class, the terms of the Settlement Agreement, the rights of the Settlement Class to exclude themselves from the settlement or to object to any part of the settlement, the rights of the Settlement Class to appear at the Final Approval Hearing (either on their own or through counsel hired at their own expense), and the binding effect of the Settlement Agreement on all persons who do not exclude themselves from the Settlement Class, (iii) provided due, adequate, and sufficient notice to the Settlement Class; and (iv) fully satisfied all applicable requirements of law, including, but not limited to, Federal Rule of Civil Procedure 23 and the due process requirements of the United States Constitution.*

Judge Christina A. Snyder, *Waldrup v. Countrywide Financial Corporation, et al.* (July 16, 2020) 2:13-cv-08833 (C.D. Cal.):

> *The Court finds that mailed and publication notice previously given to Class Members in the Action was the best notice practicable under the circumstances, and satisfies the requirements of due process and FED. R. CIV. P. 23. The Court further finds that, because (a) adequate notice has been provided to all Class Members*

and (b) all Class Members have been given the opportunity to object to, and/or request exclusion from, the Settlement, it has jurisdiction over all Class Members. The Court further finds that all requirements of statute (including but not limited to 28 U.S.C. § 1715), rule, and state and federal constitutions necessary to effectuate this Settlement have been met and satisfied.

Judge James Donato, *Coffeng, et al. v. Volkswagen Group of America, Inc.* (June 10, 2020) 17-cv-01825 (N.D. Cal.):

The Court finds that, as demonstrated by the Declaration and Supplemental Declaration of Cameron Azari, and counsel's submissions, Notice to the Settlement Class was timely and properly effectuated in accordance with FED. R. CIV. P. 23(e) and the approved Notice Plan set forth in the Court's Preliminary Approval Order. The Court finds that said Notice constitutes the best notice practicable under the circumstances, and satisfies all requirements of Rule 23(e) and due process.

Judge Michael W. Fitzgerald*, Behfarin v. Pruco Life Insurance Company, et al.* (June 3, 2020) 17-cv-05290 (C.D. Cal.):

The Court finds that the requirements of Rule 23 of the Federal Rule of Civil Procedure and other laws and rules applicable to final settlement approval of class actions have been satisfied . . . .

This Court finds that the Claims Administrator caused notice to be disseminated to the Class in accordance with the plan to disseminate Notice outlined in the Settlement Agreement and the Preliminary Approval Order, and that Notice was given in an adequate and sufficient manner and complies with Due Process and Fed. R. Civ. P. 23.

Judge Nancy J. Rosenstengel, *First Impressions Salon, Inc., et al. v. National Milk Producers Federation, et al.* (Apr. 27, 2020) 3:13-cv-00454 (S.D. Ill.):

The Court finds that the Notice given to the Class Members was completed as approved by this Court and complied in all respects with the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process. The settlement Notice Plan was modeled on and supplements the previous court-approved plan and, having been completed, constitutes the best notice practicable under the circumstances. In making this determination, the Court finds that the Notice provided Class members due and adequate notice of the Settlement, the Settlement Agreement, the Plan of Distribution, these proceedings, and the rights of Class members to opt-out of the Class and/or object to Final Approval of the Settlement, as well as Plaintiffs' Motion requesting attorney fees, costs, and Class Representative service awards.

Judge Harvey Schlesinger, *In re: Disposable Contact Lens Antitrust Litigation* (CooperVision, Inc.) (Mar. 4, 2020) 3:15-md-02626 (M.D. Fla.):

The Court finds that the dissemination of the Notice: (a) was implemented in accordance with the Preliminary Approval Orders; (b) constitutes the best notice practicable under the circumstances; (c) constitutes notice that was reasonably calculated, under the circumstances, to apprise the Settlement Classes of (i) the pendency of the Action; (ii) the effect of the Settlement Agreements (including the Releases to the provided thereunder); (iii) Class Counsel's possible motion for an award of attorneys' fees and reimbursement of expenses; (iv) the right to object to any aspect of the Settlement Agreements, the Plan of Distribution, and/or Class Counsel's motion for attorneys' fees and reimbursement of expenses; (v) the right to opt out of the Settlement Classes; (vi) the right to appear at the Fairness Hearing; and (vii) the fact that Plaintiffs may receive incentive awards; (d) constitutes due, adequate, and sufficient notice to all persons and entities entitled to receive notice of the Settlement Agreement and (e) satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure and the United States Constitution (including the Due Process Clause).

Judge Amos L. Mazzant, *Stone, et al. v. Porcelana Corona De Mexico, S.A. DE C.V f/k/a Sanitarios Lamosa S.A. DE C.V. a/k/a Vortens* (Mar. 3, 2020) 4:17-cv-00001 (E.D. Tex.):

The Court has reviewed the Notice Plan and its implementation and efficacy, and finds that it constituted the best notice practicable under the circumstances and was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action and their right to object to the proposed settlement in full compliance with the requirements of applicable law, including the Due Process Clause of the United States Constitution and Rules 23(c) and (e) of the Federal Rules of Civil Procedure.

In addition, Class Notice clearly and concisely stated in plain, easily understood language: (i) the nature of the action; (ii) the definition of the certified Equitable Relief Settlement Class; (iii) the claims and issues of the

Equitable Relief Settlement Class; (iv) that a Settlement Class Member may enter an appearance through an attorney if the member so desires; (v) the binding effect of a class judgment on members under Fed. R. Civ. P. 23(c)(3).

Judge Michael H. Simon, ***In re: Premera Blue Cross Customer Data Security Breach Litigation*** (Mar. 2, 2020) 3:15-md-2633 (D. Ore.):

The Court confirms that the form and content of the Summary Notice, Long Form Notice, Publication Notice, and Claim Form, and the procedure set forth in the Settlement for providing notice of the Settlement to the Class, were in full compliance with the notice requirements of Federal Rules of Civil Procedure 23(c)(2)(B) and 23(e), fully, fairly, accurately, and adequately advised members of the Class of their rights under the Settlement, provided the best notice practicable under the circumstances, fully satisfied the requirements of due process and Rule 23 of the Federal Rules of Civil Procedure, and afforded Class Members with adequate time and opportunity to file objections to the Settlement and attorney's fee motion, submit Requests for Exclusion, and submit Claim Forms to the Settlement Administrator.

Judge Maxine M. Chesney, ***McKinney-Drobnis, et al. v. Massage Envy Franchising*** (Mar. 2, 2020) 3:16-cv-6450 (N.D. Cal.):

The COURT hereby finds that the individual direct CLASS NOTICE given to the CLASS via email or First Class U.S. Mail (i) fairly and accurately described the ACTION and the proposed SETTLEMENT; (ii) provided sufficient information so that the CLASS MEMBERS were able to decide whether to accept the benefits offered by the SETTLEMENT, exclude themselves from the SETTLEMENT, or object to the SETTLEMENT; (iii) adequately described the manner in which CLASS MEMBERS could submit a VOUCHER REQUEST under the SETTLEMENT, exclude themselves from the SETTLEMENT, or object to the SETTLEMENT and/or appear at the FINAL APPROVAL HEARING; and (iv) provided the date, time, and place of the FINAL APPROVAL HEARING. The COURT hereby finds that the CLASS NOTICE was the best notice practicable under the circumstances and complied fully with Federal Rule of Civil Procedure Rule 23, due process, and all other applicable laws.

Judge Harry D. Leinenweber, ***Albrecht v. Oasis Power, LLC d/b/a Oasis Energy*** (Feb. 6, 2020) 1:18-cv-1061 (N.D. Ill.):

The Court finds that the distribution of the Class Notice, as provided for in the Settlement Agreement, (i) constituted the best practicable notice under the circumstances to Settlement Class Members, (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of, among other things, the pendency of the Action, the nature and terms of the proposed Settlement, their right to object or to exclude themselves from the proposed Settlement, and their right to appear at the Final Approval Hearing, (iii) was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to be provided with notice, and (iv) complied fully with the requirements of Fed. R. Civ. P. 23, the United States Constitution, the Rules of this Court, and any other applicable law.

The Court finds that the Class Notice and methodology set forth in the Settlement Agreement, the Preliminary Approval Order, and this Final Approval Order (i) constitute the most effective and practicable notice of the Final Approval Order, the relief available to Settlement Class Members pursuant to the Final Approval Order, and applicable time periods; (ii) constitute due, adequate, and sufficient notice for all other purposes to all Settlement Class Members; and (iii) comply fully with the requirements of Fed. R. Civ. P. 23, the United States Constitution, the Rules of this Court, and any other applicable laws.

Judge Robert Scola, Jr., ***Wilson, et al. v. Volkswagen Group of America, Inc., et al.*** (Jan. 28, 2020) 17-cv-23033 (S.D. Fla.):

The Court finds that the Class Notice, in the form approved by the Court, was properly disseminated to the Settlement Class pursuant to the Notice Plan and constituted the best practicable notice under the circumstances. The forms and methods of the Notice Plan approved by the Court met all applicable requirements of the Federal Rules of Civil Procedure, the United States Code, the United States Constitution (including the Due Process Clause), and any other applicable law.

Judge Michael Davis, ***Garcia v. Target Corporation*** (Jan. 27, 2020) 16-cv-02574 (D. Minn.):

The Court finds that the Notice Plan set forth in Section 4 of the Settlement Agreement and effectuated pursuant to the Preliminary Approval Order constitutes the best notice practicable under the circumstances and shall constitute due and sufficient notice to the Settlement Class of the pendency of this case, certification of the Settlement Class for settlement purposes only, the terms of the Settlement Agreement, and the Final

Approval Hearing, and satisfies the requirements of the Federal Rules of Civil Procedure, the United States Constitution, and any other applicable law.

Judge Bruce Howe Hendricks, *In re: TD Bank, N.A. Debit Card Overdraft Fee Litigation* (Jan. 9, 2020) MDL No. 2613, 6:15-MN-02613 (D.S.C.):

The Classes have been notified of the settlement pursuant to the plan approved by the Court. After having reviewed the Declaration of Cameron R. Azari (ECF No. 220-1) and the Supplemental Declaration of Cameron R. Azari (ECF No. 225-1), the Court hereby finds that notice was accomplished in accordance with the Court's directives. The Court further finds that the notice program constituted the best practicable notice to the Settlement Classes under the circumstances and fully satisfies the requirements of due process and Federal Rule 23.

Judge Margo K. Brodie, *In re: Payment Card Interchange Fee and Merchant Discount Antitrust Litigation* (Dec. 13, 2019) MDL No. 1720, 05-md-1720 (E.D.N.Y.):

The notice and exclusion procedures provided to the Rule 23(b)(3) Settlement Class, including but not limited to the methods of identifying and notifying members of the Rule 23(b)(3) Settlement Class, were fair, adequate, and sufficient, constituted the best practicable notice under the circumstances, and were reasonably calculated to apprise members of the Rule 23(b)(3) Settlement Class of the Action, the terms of the Superseding Settlement Agreement, and their objection rights, and to apprise members of the Rule 23(b)(3) Settlement Class of their exclusion rights, and fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, any other applicable laws or rules of the Court, and due process.

Judge Steven Logan, *Knapper v. Cox Communications, Inc.* (Dec. 13, 2019) 2:17-cv-00913 (D. Ariz.):

The Court finds that the form and method for notifying the class members of the settlement and its terms and conditions was in conformity with this Court's Preliminary Approval Order (Doc. 120). The Court further finds that the notice satisfied due process principles and the requirements of Federal Rule of Civil Procedure 23(c), and the Plaintiff chose the best practicable notice under the circumstances. The Court further finds that the notice was clearly designed to advise the class members of their rights.

Judge Manish Shah, *Prather v. Wells Fargo Bank, N.A.* (Dec. 10, 2019) 1:17-cv-00481 (N.D. Ill.):

The Court finds that the Notice Plan set forth in Section VIII of the Settlement Agreement and effectuated pursuant to the Preliminary Approval Order constitutes the best notice practicable under the circumstances and shall constitute due and sufficient notice to the Settlement Class of the pendency of this case, certification of the Settlement Class for settlement purposes only, the terms of the Settlement Agreement, and the Final Approval Hearing, and satisfies the requirements of the Federal Rules of Civil Procedure, the United States Constitution, and any other applicable law.

Judge Liam O'Grady, *Liggio v. Apple Federal Credit Union* (Dec. 6, 2019) 1:18-cv-01059 (E.D. Vir.):

The Court finds that the manner and form of notice (the "Notice Plan") as provided for in the this Court's July 2, 2019 Order granting preliminary approval of class settlement, and as set forth in the Parties' Settlement Agreement was provided to Settlement Class Members by the Settlement Administrator. . . The Notice Plan was reasonably calculated to give actual notice to Settlement Class Members of the right to receive benefits from the Settlement, and to be excluded from or object to the Settlement. The Notice Plan met the requirements of Rule 23(c)(2)(B) and due process and constituted the best notice practicable under the circumstances.

Judge Brian McDonald, *Armon, et al. v. Washington State University* (Nov. 8, 2019) 17-2-23244-1 (consolidated with 17-2-25052-0) (Sup. Ct. Wash.):

The Court finds that the Notice Program, as set forth in the Settlement and effectuated pursuant to the Preliminary Approval Order, satisfied CR 23(c)(2), was the best Notice practicable under the circumstances, was reasonably calculated to provide-and did provide-due and sufficient Notice to the Settlement Class of the pendency of the Litigation; certification of the Settlement Class for settlement purposes only; the existence and terms of the Settlement; the identity of Class Counsel and appropriate information about Class Counsel's then-forthcoming application for attorneys' fees and incentive awards to the Class Representatives; appropriate information about how to participate in the Settlement; Settlement Class Members' right to exclude themselves; their right to object to the Settlement and to appear at the Final Approval Hearing, through counsel if they desired; and appropriate

instructions as to how to obtain additional information regarding this Litigation and the Settlement. In addition, pursuant to CR 23(c)(2)(B), the Notice properly informed Settlement Class Members that any Settlement Class Member who failed to opt-out would be prohibited from bringing a lawsuit against Defendant based on or related to any of the claims asserted by Plaintiffs, and it satisfied the other requirements of the Civil Rules.

Judge Andrew J. Guilford, *In re: Wells Fargo Collateral Protection Insurance Litigation* (Nov. 4, 2019) 8:17-ml-02797 (C.D. Cal.):

Epiq Class Action & Claims Solutions, Inc. ("Epiq"), the parties' settlement administrator, was able to deliver the court-approved notice materials to all class members, including 2,254,411 notice packets and 1,019,408 summary notices.

Judge Paul L. Maloney, *Burch v. Whirlpool Corporation* (Oct. 16, 2019) 1:17-cv-00018 (W.D. Mich.):

[T]he Court hereby finds and concludes that members of the Settlement Class have been provided the best notice practicable of the Settlement and that such notice satisfies all requirements of federal and applicable state laws and due process.

Judge Gene E.K. Pratter, *Tashica Fulton-Green, et al. v. Accolade, Inc.* (Sept. 24, 2019) 2:18-cv-00274 (E.D. Pa.):

The Court finds that such Notice as therein ordered, constitutes the best possible notice practicable under the circumstances and constitutes valid, due, and sufficient notice to all Settlement Class Members in compliance with the requirements of Federal Rule of Civil Procedure 23(c)(2)(B).

Judge Edwin Torres, *Burrow, et al. v. Forjas Taurus S.A., et al.* (Sept. 6, 2019) 1:16-cv-21606 (S.D. Fla.):

Because the Parties complied with the agreed-to notice provisions as preliminarily approved by this Court, and given that there are no developments or changes in the facts to alter the Court's previous conclusion, the Court finds that the notice provided in this case satisfied the requirements of due process and of Rule 23(c)(2)(B).

Judge Amos L. Mazzant, *Fessler v. Porcelana Corona De Mexico, S.A. DE C.V f/k/a Sanitarios Lamosa S.A. DE C.V. a/k/a Vortens* (Aug. 30, 2019) 4:19-cv-00248 (E.D. Tex.):

The Court has reviewed the Notice Plan and its implementation and efficacy, and finds that it constituted the best notice practicable under the circumstances and was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action and their right to object to the proposed settlement or opt out of the Settlement Class in full compliance with the requirements of applicable law, including the Due Process Clause of the United States Constitution and Rules 23(c) and (e) of the Federal Rules of Civil Procedure.

In addition, Class Notice clearly and concisely stated in plain, easily understood language: (i) the nature of the action; (ii) the definition of the certified 2011 Settlement Class; (iii) the claims and issues of the 2011 Settlement Class; (iv) that a Settlement Class Member may enter an appearance through an attorney if the member so desires; (v) that the Court will exclude from the Settlement Class any member who requests exclusions; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Fed. R. Civ. P. 23(c)(3).

Judge Karon Owen Bowdre, *In re: Community Health Systems, Inc. Customer Data Security Breach Litigation* (Aug. 22, 2019) MDL No. 2595, 2:15-cv-222 (N.D. Ala.):

The court finds that the Notice Program: (1) satisfied the requirements of Fed. R. Civ. P. 23(c)(2)(B) and due process; (2) was the best practicable notice under the circumstances; (3) reasonably apprised Settlement Class members of the pendency of the Action and their right to object to the settlement or opt-out of the Settlement Class; and (4) was reasonable and constituted due, adequate and sufficient notice to all persons entitled to receive notice. Approximately 90% of the 6,081,189 individuals identified as Settlement Class members received the Initial Postcard Notice of this Settlement Action.

The court further finds, pursuant to Fed. R. Civ. P. 23(c)(2)(B), that the Class Notice adequately informed Settlement Class members of their rights with respect to this action.

Judge Christina A. Snyder, *Zaklit, et al. v. Nationstar Mortgage LLC, et al.* (Aug. 21, 2019) 5:15-cv-02190 (C.D. Cal.):

> *The Class Notice provided to the Settlement Class conforms with the requirements of Fed. Rule Civ. Proc. 23, the California and United States Constitutions, and any other applicable law, and constitutes the best notice practicable under the circumstances, by providing individual notice to all Settlement Class Members who could be identified through reasonable effort, and by providing due and adequate notice of the proceedings and of the matters set forth therein to the other Settlement Class Members. The notice fully satisfied the requirements of Due Process. No Settlement Class Members have objected to the terms of the Settlement.*

Judge Brian M. Cogan, *Luib v. Henkel Consumer Goods Inc.* (Aug. 19, 2019) 1:17-cv-03021 (E.D.N.Y.):

> *The Court finds that the Notice Plan, set forth in the Settlement Agreement and effectuated pursuant to the Preliminary Approval Order: (i) was the best notice practicable under the circumstances; (ii) was reasonably calculated to provide, and did provide, due and sufficient notice to the Settlement Class regarding the existence and nature of the Action, certification of the Settlement Class for settlement purposes only, the existence and terms of the Settlement Agreement, and the rights of Settlement Class members to exclude themselves from the Settlement Agreement, to object and appear at the Final Approval Hearing, and to receive benefits under the Settlement Agreement; and (iii) satisfied the requirements of the Federal Rules of Civil Procedure, the United States Constitution, and all other applicable law.*

Judge Yvonne Gonzalez Rogers, *In re: Lithium Ion Batteries Antitrust Litigation* (Aug. 16, 2019) 4:13-md-02420 MDL No. 2420 (N.D. Cal.):

> *The proposed notice plan was undertaken and carried out pursuant to this Court's preliminary approval order. [T]he notice program reached approximately 87 percent of adults who purchased portable computers, power tools, camcorders, or replacement batteries, and these class members were notified an average of 3.5 times each. As a result of Plaintiffs' notice efforts, in total, 1,025,449 class members have submitted claims. That includes 51,961 new claims, and 973,488 claims filed under the prior settlements.*

Judge Jon Tigar, *McKnight, et al. v. Uber Technologies, Inc., et al.* (Aug. 13, 2019) 3:14-cv-05615 (N.D. Cal.):

> *The settlement administrator, Epiq Systems, Inc., carried out the notice procedures as outlined in the preliminary approval. ECF No. 162 at 17-18. Notices were mailed to over 22 million class members with a success rate of over 90%. Id. at 17. Epiq also created a website, banner ads, and a toll free number. Id. at 17-18. Epiq estimates that it reached through mail and other formats 94.3% of class members. ECF No. 164 ¶ 28. In light of these actions, and the Court's prior order granting preliminary approval, the Court finds that the parties have provided adequate notice to class members.*

Judge Gary W.B. Chang, *Robinson v. First Hawaiian Bank* (Aug. 8, 2019) 17-1-0167-01 (Cir. Ct. of First Cir. Haw.):

> *This Court determines that the Notice Program satisfies all of the due process requirements for a class action settlement.*

Judge Karin Crump, *Hyder, et al. v. Consumers County Mutual Insurance Company* (July 30, 2019) D-1-GN-16-000596 (D. Ct. of Travis County Tex.):

> *Due and adequate Notice of the pendency of this Action and of this Settlement has been provided to members of the Settlement Class, and this Court hereby finds that the Notice Plan described in the Preliminary Approval Order and completed by Defendant complied fully with the requirements of due process, the Texas Rules of Civil Procedure, and the requirements of due process under the Texas and United States Constitutions, and any other applicable laws.*

Judge Wendy Bettlestone, *Underwood v. Kohl's Department Stores, Inc., et al.* (July 24, 2019) 2:15-cv-00730 (E.D. Pa.):

> *The Notice, the contents of which were previously approved by the Court, was disseminated in accordance with the procedures required by the Court's Preliminary Approval Order in accordance with applicable law.*

Judge Andrew G. Ceresia, J.S.C., *Denier, et al. v. Taconic Biosciences, Inc.* (July 15, 2019) 00255851 (Sup Ct. N.Y.):

> *The Court finds that such Notice as therein ordered, constitutes the best possible notice practicable under the circumstances and constitutes valid, due, and sufficient notice to all Settlement Class Members in compliance with the requirements of the CPLR.*

Judge Vince G. Chhabria, *Parsons v. Kimpton Hotel & Restaurant Group, LLC* (July 11, 2019) 3:16-cv-05387 (N.D. Cal.):

> *Pursuant to the Preliminary Approval Order, the notice documents were sent to Settlement Class Members by email or by first-class mail, and further notice was achieved via publication in People magazine, internet banner notices, and internet sponsored search listings. The Court finds that the manner and form of notice (the "Notice Program") set forth in the Settlement Agreement was provided to Settlement Class Members. The Court finds that the Notice Program, as implemented, was the best practicable under the circumstances. The Notice Program was reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of the Action, class certification, the terms of the Settlement, and their rights to opt-out of the Settlement Class and object to the Settlement, Class Counsel's fee request, and the request for Service Award for Plaintiff. The Notice and Notice Program constituted sufficient notice to all persons entitled to notice. The Notice and Notice Program satisfy all applicable requirements of law, including, but not limited to, Federal Rule of Civil Procedure 23 and the constitutional requirement of due process.*

Judge Daniel J. Buckley, *Adlouni v. UCLA Health Systems Auxiliary, et al.* (June 28, 2019) BC589243 (Sup. Ct. Cal.):

> *The Court finds that the notice to the Settlement Class pursuant to the Preliminary Approval Order was appropriate, adequate, and sufficient, and constituted the best notice practicable under the circumstances to all Persons within the definition of the Settlement Class to apprise interested parties of the pendency of the Action, the nature of the claims, the definition of the Settlement Class, and the opportunity to exclude themselves from the Settlement Class or present objections to the settlement. The notice fully complied with the requirements of due process and all applicable statutes and laws and with the California Rules of Court.*

Judge John C. Hayes III, *Lightsey, et al. v. South Carolina Electric & Gas Company, a Wholly Owned Subsidiary of SCANA, et al.* (June 11, 2019) 2017-CP-25-335 (Ct. of Com. Pleas., S.C.):

> *These multiple efforts at notification far exceed the due process requirement that the class representative provide the best practical notice. See Eisen v. Carlisle & Jacquelin, 417 U.S. 156, 94 S.Ct. 2140 (1974); Hospitality Mgmt. Assoc., Inc. v. Shell Oil, Inc., 356 S.C. 644, 591 S.E.2d 611 (2004). Following this extensive notice campaign reaching over 1.6 million potential class member accounts, Class counsel have received just two objections to the settlement and only 24 opt outs.*

Judge Stephen K. Bushong, *Scharfstein v. BP West Coast Products, LLC* (June 4, 2019) 1112-17046 (Ore. Cir., County of Multnomah):

> *The Court finds that the Notice Plan was effected in accordance with the Preliminary Approval and Notice Order, dated March 26, 2019, was made pursuant to ORCP 32 D, and fully met the requirements of the Oregon Rules of Civil Procedure, due process, the United States Constitution, the Oregon Constitution, and any other applicable law.*

Judge Cynthia Bashant, *Lloyd, et al. v. Navy Federal Credit Union* (May 28, 2019) 17-cv-1280 (S.D. Cal.):

> *This Court previously reviewed, and conditionally approved Plaintiffs' class notices subject to certain amendments. The Court affirms once more that notice was adequate.*

Judge Robert W. Gettleman, *Cowen v. Lenny & Larry's Inc.* (May 2, 2019) 1:17-cv-01530 (N.D. Ill.):

> *Notice to the Settlement Class and other potentially interested parties has been provided in accordance with the elements specified by the Court in the preliminary approval order. Adequate notice of the amended settlement and the final approval hearing has also been given. Such notice informed the Settlement Class members of all material elements of the proposed Settlement and of their opportunity to object or comment thereon or to exclude themselves from the Settlement; provided Settlement Class Members adequate instructions and a means to obtain additional information; was adequate notice under the circumstances; was valid, due, and sufficient notice to all Settlement Class [M]embers; and complied fully with the laws of the State of Illinois, Federal Rules of Civil Procedure, the United States Constitution, due process, and other applicable law.*

Judge Edward J. Davila, *In re: HP Printer Firmware Update Litigation* (Apr. 25, 2019) 5:16-cv-05820 (N.D. Cal.):

> *Due and adequate notice has been given of the Settlement as required by the Preliminary Approval Order. The Court finds that notice of this Settlement was given to Class Members in accordance with the Preliminary Approval Order and constituted the best notice practicable of the proceedings and matters set forth therein, including the Settlement, to all Persons entitled to such notice, and that this notice satisfied the requirements of Federal Rule of Civil Procedure 23 and of due process.*

Judge Claudia Wilken, *Naiman v. Total Merchant Services, Inc., et al.* (Apr. 16, 2019) 4:17-cv-03806 (N.D. Cal.):

> *The Court also finds that the notice program satisfied the requirements of Federal Rule of Civil Procedure 23 and due process. The notice approved by the Court and disseminated by Epiq constituted the best practicable method for informing the class about the Final Settlement Agreement and relevant aspects of the litigation.*

Judge Paul Gardephe, *37 Besen Parkway, LLC v. John Hancock Life Insurance Company (U.S.A.)* (Mar. 31, 2019) 15-cv-9924 (S.D.N.Y.):

> *The Notice given to Class Members complied in all respects with the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process and provided due and adequate notice to the Class.*

Judge Alison J. Nathan, *Pantelyat, et al. v. Bank of America, N.A., et al.* (Jan. 31, 2019) 16-cv-08964 (S.D.N.Y.):

> *The Class Notice provided to the Settlement Class in accordance with the Preliminary Approval Order was the best notice practicable under the circumstances, and constituted due and sufficient notice of the proceedings and matters set forth therein, to all persons entitled to notice. The notice fully satisfied the requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, and all other applicable law and rules.*

Judge Kenneth M. Hoyt, *Al's Pals Pet Card, LLC, et al. v. Woodforest National Bank, N.A., et al.* (Jan. 30, 2019) 4:17-cv-3852 (S.D. Tex.):

> *[T]he Court finds that the class has been notified of the Settlement pursuant to the plan approved by the Court. The Court further finds that the notice program constituted the best practicable notice to the class under the circumstances and fully satisfies the requirements of due process, including Fed. R. Civ. P. 23(e)(1) and 28 U.S.C. § 1715.*

Judge Robert M. Dow, Jr., *In re: Dealer Management Systems Antitrust Litigation* (Jan. 23, 2019) MDL No. 2817, 18-cv-00864 (N.D. Ill.):

> *The Court finds that the Settlement Administrator fully complied with the Preliminary Approval Order and that the form and manner of providing notice to the Dealership Class of the proposed Settlement with Reynolds was the best notice practicable under the circumstances, including individual notice to all members of the Dealership Class who could be identified through the exercise of reasonable effort. The Court further finds that the notice program provided due and adequate notice of these proceedings and of the matters set forth therein, including the terms of the Agreement, to all parties entitled to such notice and fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, 28 U.S.C. § 1715(b), and constitutional due process.*

Judge Federico A. Moreno, *In re: Takata Airbag Products Liability Litigation* (Ford) (Dec. 20, 2018) MDL No. 2599 (S.D. Fla.):

> *The record shows and the Court finds that the Class Notice has been given to the Class in the manner approved by the Court in its Preliminary Approval Order. The Court finds that such Class Notice: .(i) is reasonable and constitutes the best practicable notice to Class Members under the circumstances; (ii) constitutes notice that was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Action and the terms of the Settlement Agreement, their right to exclude themselves from the Class or to object to all or any part of the Settlement Agreement, their right to appear at the Fairness Hearing (either on their own or through counsel hired at their own expense) and the binding effect of the orders and Final Order and Final Judgment in the Action, whether favorable or unfavorable, on all persons and entities who or which do not exclude themselves from the Class; (iii) constitutes due, adequate, and sufficient notice to all persons or entities entitled to receive notice; and (iv) fully satisfied the requirements of the United States*

Constitution (including the Due Process Clause), FED. R. Civ. P. 23 and any other applicable law as well as complying with the Federal Judicial Center's illustrative class action notices.

Judge Herndon, *Hale v. State Farm Mutual Automobile Insurance Company, et al.* (Dec. 16, 2018) 3:12-cv-00660 (S.D. Ill.):

The Class here is estimated to include approximately 4.7 million members. Approximately 1.43 million of them received individual postcard or email notice of the terms of the proposed Settlement, and the rest were notified via a robust publication program "estimated to reach 78.8% of all U.S. Adults Aged 35+ approximately 2.4 times." Doc. 966-2 ¶¶ 26, 41. The Court previously approved the notice plan (Doc. 947), and now, having carefully reviewed the declaration of the Notice Administrator (Doc. 966-2), concludes that it was fully and properly executed, and reflected "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." See Fed. R. Civ. P. 23(c)(2)(B). The Court further concludes that CAFA notice was properly effectuated to the attorneys general and insurance commissioners of all 50 states and District of Columbia.

Judge Jesse M. Furman, *Alaska Electrical Pension Fund, et al. v. Bank of America, N.A., et al.* (Nov. 13, 2018) 14-cv-7126 (S.D.N.Y.):

The mailing and distribution of the Notice to all members of the Settlement Class who could be identified through reasonable effort, the publication of the Summary Notice, and the other Notice efforts described in the Motion for Final Approval, as provided for in the Court's June 26, 2018 Preliminary Approval Order, satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process, constitute the best notice practicable under the circumstances, and constitute due and sufficient notice to all Persons entitled to notice.

Judge William L. Campbell, Jr., *Ajose, et al. v. Interline Brands, Inc.* (Oct. 23, 2018) 3:14-cv-01707 (M.D. Tenn.):

The Court finds that the Notice Plan, as approved by the Preliminary Approval Order: (i) satisfied the requirements of Rule 23(c)(3) and due process; (ii) was reasonable and the best practicable notice under the circumstances; (iii) reasonably apprised the Settlement Class of the pendency of the action, the terms of the Agreement, their right to object to the proposed settlement or opt out of the Settlement Class, the right to appear at the Final Fairness Hearing, and the Claims Process; and (iv) was reasonable and constituted due, adequate, and sufficient notice to all those entitled to receive notice.

Judge Joseph C. Spero, *Abante Rooter and Plumbing v. Pivotal Payments Inc., d/b/a/ Capital Processing Network and CPN* (Oct. 15, 2018) 3:16-cv-05486 (N.D. Cal.):

[T]the Court finds that notice to the class of the settlement complied with Rule 23(c)(3) and (e) and due process. Rule 23(e)(1) states that "[t]he court must direct notice in a reasonable manner to all class members who would be bound by" a proposed settlement, voluntary dismissal, or compromise. Class members are entitled to the "best notice that is practicable under the circumstances" of any proposed settlement before it is finally approved by the Court. Fed. R. Civ. P. 23(c)(2)(B)…The notice program included notice sent by first class mail to 1,750,564 class members and reached approximately 95.2% of the class.

Judge Marcia G. Cooke, *Dipuglia v. US Coachways, Inc.* (*Sept. 28, 2018)* 1:17-cv-23006 (S.D. Fla.):

The Settlement Class Notice Program was the best notice practicable under the circumstances. The Notice Program provided due and adequate notice of the Case 1:17-cv-23006-MGC Document 66 Entered on FLSD Docket 09/28/2018 Page 3 of 7 4 proceedings and of the matters set forth therein, including the proposed settlement set forth in the Agreement, to all persons entitled to such notice and said notice fully satisfied the requirements of the Federal Rules of Civil Procedure and the United States Constitution, which include the requirement of due process.

Judge Beth Labson Freeman, *Gergetz v. Telenav, Inc.* (Sept. 27, 2018) 5:16-cv-04261 (N.D. Cal.):

The Court finds that the Notice and Notice Plan implemented pursuant to the Settlement Agreement, which consists of individual notice sent via first-class U.S. Mail postcard, notice provided via email, and the posting of relevant Settlement documents on the Settlement Website, has been successfully implemented and was the best notice practicable under the circumstances and: (1) constituted notice that was reasonably calculated, under the circumstances, to apprise the Settlement Class Members of the pendency of the Action, their right to object to or to exclude themselves from the Settlement Agreement, and their right to appear at the Final Approval Hearing; (2) was reasonable and constituted due, adequate, and sufficient notice to all persons

entitled to receive notice; and (3) met all applicable requirements of the Federal Rules of Civil Procedure, the Due Process Clause, and the Rules of this Court.

Judge M. James Lorenz, *Farrell v. Bank of America, N.A.* (Aug. 31, 2018) 3:16-cv-00492 (S.D. Cal.):

The Court therefore finds that the Class Notices given to Settlement Class members adequately informed Settlement Class members of all material elements of the proposed Settlement and constituted valid, due, and sufficient notice to Settlement Class members. The Court further finds that the Notice Program satisfies due process and has been fully implemented.

Judge Dean D. Pregerson, *Falco, et al. v. Nissan North America, Inc., et al.* (July 16, 2018) 2:13-cv-00686 (C.D. Cal.):

Notice to the Settlement Class as required by Rule 23(e) of the Federal Rules of Civil Procedure has been provided in accordance with the Court's Preliminary Approval Order, and such Notice by first-class mail was given in an adequate and sufficient manner, and constitutes the best notice practicable under the circumstances, and satisfies all requirements of Rule 23(e) and due process.

Judge Lynn Adelman, *In re: Windsor Wood Clad Window Product Liability Litigation* (July 16, 2018) MDL No. 2688, 16-md-02688 (E.D. Wis.):

The Court finds that the Notice Program was appropriately administered, and was the best practicable notice to the Class under the circumstances, satisfying the requirements of Rule 23 and due process. The Notice Program, constitutes due, adequate, and sufficient notice to all persons, entities, and/or organizations entitled to receive notice; fully satisfied the requirements of the Constitution of the United States (including the Due Process Clause), Rule 23 of the Federal Rules of Civil Procedure, and any other applicable law; and is based on the Federal Judicial Center's illustrative class action notices.

Judge Stephen K. Bushong, *Surrett, et al. v. Western Culinary Institute, et al.* (June 18, 2018) 0803-03530 (Ore. Cir. County of Multnomah):

This Court finds that the distribution of the Notice of Settlement was effected in accordance with the Preliminary Approval/Notice Order, dated February 9, 2018, was made pursuant to ORCP 32 D, and fully met the requirements of the Oregon Rules of Civil Procedure, due process, the United States Constitution, the Oregon Constitution, and any other applicable law.

Judge Jesse M. Furman, *Alaska Electrical Pension Fund, et al. v. Bank of America, N.A., et al.* (June 1, 2018) 14-cv-7126 (S.D.N.Y.):

The mailing of the Notice to all members of the Settlement Class who could be identified through reasonable effort, the publication of the Summary Notice, and the other Notice distribution efforts described in the Motion for Final Approval, as provided for in the Court's October 24, 2017 Order Providing for Notice to the Settlement Class and Preliminarily Approving the Plan of Distribution, satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process, constitute the best notice practicable under the circumstances, and constitute due and sufficient notice to all Persons entitled to notice.

Judge Brad Seligman, *Larson v. John Hancock Life Insurance Company (U.S.A.)* (May 8, 2018) RG16813803 (Sup. Ct. Cal.):

The Court finds that the Class Notice and dissemination of the Class Notice as carried out by the Settlement Administrator complied with the Court's order granting preliminary approval and all applicable requirements of law, including, but not limited to California Rules of Court, rule 3.769(f) and the Constitutional requirements of due process, and constituted the best notice practicable under the circumstances and sufficient notice to all persons entitled to notice of the Settlement.

[T]he dissemination of the Class Notice constituted the best notice practicable because it included mailing individual notice to all Settlement Class Members who are reasonably identifiable using the same method used to inform class members of certification of the class, following a National Change of Address search and run through the LexisNexis Deceased Database.

Judge Federico A. Moreno, *Masson v. Tallahassee Dodge Chrysler Jeep, LLC* (May 8, 2018) 17-cv-22967 (S.D. Fla.):

> *The Settlement Class Notice Program was the best notice practicable under the circumstances. The Notice Program provided due and adequate notice of the proceedings and of the matters set forth therein, including the proposed settlement set forth in the Agreement, to all persons entitled to such notice and said notice fully satisfied the requirements of the Federal Rules of Civil Procedure and the United States Constitution, which include the requirement of due process.*

Chancellor Russell T. Perkins, *Morton v. GreenBank* (Apr. 18, 2018) 11-135-IV (20th Jud. Dist. Tenn.):

> *The Notice Program as provided or in the Agreement and the Preliminary Amended Approval Order constituted the best notice practicable under the circumstances, including individual notice to all Settlement Class members who could be identified through reasonable effort. The Notice Plan fully satisfied the requirements of Tennessee Rule of Civil Procedure 23.03, due process and any other applicable law.*

Judge James V. Selna, *Callaway v. Mercedes-Benz USA, LLC* (Mar. 8, 2018) 8:14-cv-02011 (C.D. Cal.):

> *The Court finds that the notice given to the Class was the best notice practicable under the circumstances of this case, and that the notice complied with the requirements of Federal Rule of Civil Procedure 23 and due process.*
>
> *The notice given by the Class Administrator constituted due and sufficient notice to the Settlement Class, and adequately informed members of the Settlement Class of their right to exclude themselves from the Settlement Class so as not to be bound by the terms of the Settlement Agreement and how to object to the Settlement.*
>
> *The Court has considered and rejected the objection . . . [regarding] the adequacy of the notice plan. The notice given provided ample information regarding the case. Class members also had the ability to seek additional information from the settlement website, from Class Counsel or from the Class Administrator*

Judge Thomas M. Durkin, *Vergara, et al., v. Uber Technologies, Inc.* (Mar. 1, 2018) 1:15-cv-06972 (N.D. Ill.):

> *The Court finds that the Notice Plan set forth in Section IX of the Settlement Agreement and effectuated pursuant to the Preliminary Approval Order constitutes the best notice practicable under the circumstances and shall constitute due and sufficient notice to the Settlement Classes of the pendency of this case, certification of the Settlement Classes for settlement purposes only, the terms of the Settlement Agreement, and the Final Approval Hearing, and satisfies the requirements of the Federal Rules of Civil Procedure, the United States Constitution, and any other applicable law. Further, the Court finds that Defendant has timely satisfied the notice requirements of 28 U.S.C. Section 1715.*

Judge Federico A. Moreno, *In re: Takata Airbag Products Liability Litigation* (Honda & Nissan) (Feb. 28, 2018) MDL No. 2599 (S.D. Fla.):

> *The Court finds that the Class Notice has been given to the Class in the manner approved by the Court in its Preliminary Approval Order. The Court finds that such Class Notice: (i) is reasonable and constitutes the best practicable notice to Class Members under the circumstances; (ii) constitutes notice that was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Action and the terms of the Settlement Agreement, their right to exclude themselves from the Class or to object to all or any part of the Settlement Agreement, their right to appear at the Fairness Hearing (either on their own or through counsel hired at their own expense) and the binding effect of the orders and Final Order and Final Judgment in the Action, whether favorable or unfavorable, on all persons and entities who or which do not exclude themselves from the Class; (iii) constitutes due, adequate, and sufficient notice to all persons or entities entitled to receive notice; and (iv) fully satisfied the requirements of the United States Constitution (including the Due Process Clause), FED R. CIV. R. 23 and any other applicable law as well as complying with the Federal Judicial Center's illustrative class action notices.*

Judge Susan O. Hickey, *Larey v. Allstate Property and Casualty Insurance Company* (Feb. 9, 2018) 4:14-cv-04008 (W.D. Kan.):

> *Based on the Court's review of the evidence submitted and argument of counsel, the Court finds and concludes that the Class Notice and Claim Form was mailed to potential Class Members in accordance with the provisions of the Preliminary Approval Order, and together with the Publication Notice, the automated toll-free telephone number, and the settlement website: (i) constituted, under the circumstances, the most effective and practicable notice of the pendency of the Lawsuit, this Stipulation, and the Final Approval*

Hearing to all Class Members who could be identified through reasonable effort; and (ii) met all requirements of the Federal Rules of Civil Procedure, the requirements of due process under the United States Constitution, and the requirements of any other applicable rules or law.

Judge Muriel D. Hughes, *Glaske v. Independent Bank Corporation* (Jan. 11, 2018) 13-009983 (Cir. Ct. Mich.):

The Court-approved Notice Plan satisfied due process requirements . . . The notice, among other things, was calculated to reach Settlement Class Members because it was sent to their last known email or mail address in the Bank's files.

Judge Naomi Reice Buchwald, *Orlander v. Staples, Inc.* (Dec. 13, 2017) 13-CV-0703 (S.D.N.Y.):

The Notice of Class Action Settlement ("Notice") was given to all Class Members who could be identified with reasonable effort in accordance with the terms of the Settlement Agreement and Preliminary Approval Order. The form and method of notifying the Class of the pendency of the Action as a class action and the terms and conditions of the proposed Settlement met the requirements of Federal Rule of Civil Procedure 23 and the Constitution of the United States (including the Due Process Clause); and any other applicable law, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

Judge Lisa Godbey Wood, *T.A.N. v. PNI Digital Media, Inc.* (Dec. 1, 2017) 2:16-cv-132 (S.D. Ga.):

Notice to the Settlement Class Members required by Rule 23 has been provided as directed by this Court in the Preliminary Approval Order, and such notice constituted the best notice practicable, including, but not limited to, the forms of notice and methods of identifying and providing notice to the Settlement Class Members, and satisfied the requirements of Rule 23 and due process, and all other applicable laws.

Judge Robin L. Rosenberg, *Gottlieb v. Citgo Petroleum Corporation* (Nov. 29, 2017) 9:16-cv-81911 (S.D. Fla):

The Settlement Class Notice Program was the best notice practicable under the circumstances. The Notice Program provided due and adequate notice of the proceedings and of the matters set forth therein, including the proposed settlement set forth in the Settlement Agreement, to all persons entitled to such notice and said notice fully satisfied the requirements of the Federal Rules of Civil Procedure and the United States Constitution, which include the requirement of due process.

Judge Donald M. Middlebrooks, *Mahoney v. TT of Pine Ridge, Inc.* (Nov. 20, 2017) 9:17-cv-80029 (S.D. Fla.):

Based on the Settlement Agreement, Order Granting Preliminary Approval of Class Action Settlement Agreement, and upon the Declaration of Cameron Azari, Esq. (DE 61-1), the Court finds that Class Notice provided to the Settlement Class was the best notice practicable under the circumstances, and that it satisfied the requirements of due process and Federal Rule of Civil Procedure 23(e)(1).

Judge Gerald Austin McHugh, *Sobiech v. U.S. Gas & Electric, Inc., i/t/d/b/a Pennsylvania Gas & Electric, et al.* (Nov. 8, 2017) 2:14-cv-04464 (E.D. Pa.):

Notice has been provided to the Settlement Class of the pendency of this Action, the conditional certification of the Settlement Class for purposes of this Settlement, and the preliminary approval of the Settlement Agreement and the Settlement contemplated thereby. The Court finds that the notice provided was the best notice practicable under the circumstances to all persons entitled to such notice and fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure and the requirements of due process.

Judge Federico A. Moreno, *In re: Takata Airbag Products Liability Litigation* (BMW, Mazda, Toyota, & Subaru) (Nov. 1, 2017) MDL No. 2599 (S.D. Fla.):

[T]he Court finds that the Class Notice has been given to the Class in the manner approved in the Preliminary Approval Order. The Class Notice: (i) is reasonable and constitutes the best practicable notice to Class Members under the circumstances; (ii) constitutes notice that was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Action and the terms of the Settlement Agreement, their right to exclude themselves from the Class or to object to all or any part of the Settlement Agreement, their right to appear at the Fairness Hearing (either on their own or through counsel hired at their own expense), and the binding effect of the orders and Final Order and Final Judgment in the Action, whether

favorable or unfavorable, on all persons and entities who or which do not exclude themselves from the Class; (iii) constitutes due, adequate, and sufficient notice to all persons or entities entitled to receive notice; and (iv) fully satisfied the requirements of the United States Constitution (including the Due Process Clause), Federal Rule of Civil Procedure 23 and any other applicable law as well as complying with the Federal Judicial Center's illustrative class action notices.

Judge Charles R. Breyer, *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices and Products Liability Litigation* (May 17, 2017) MDL No. 2672 (N.D. Cal.):

The Court is satisfied that the Notice Program was reasonably calculated to notify Class Members of the proposed Settlement. The Notice "apprise[d] interested parties of the pendency of the action and afford[ed] them an opportunity to present their objections." Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950). Indeed, the Notice Administrator reports that the notice delivery rate of 97.04% "exceed[ed] the expected range and is indicative of the extensive address updating and re-mailing protocols used." (Dkt. No. 3188-2 ¶ 24.)

Judge Rebecca Brett Nightingale, *Ratzlaff, et al. v. BOKF, NA d/b/a Bank of Oklahoma, et al.* (May 15, 2017) CJ-2015-00859 (Dist. Ct. Okla.):

The Court-approved Notice Plan satisfies Oklahoma law because it is "reasonable" (12 O.S. § 2023(E)(I)) and it satisfies due process requirements because it was "reasonably calculated, under [the] circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Shutts, 472 U.S. at 812 (quoting Mullane, 339 U.S. at 314-15).

Judge Joseph F. Bataillon, *Klug v. Watts Regulator Company* (Apr. 13, 2017) No. 8:15-cv-00061 (D. Neb.):

The court finds that the notice to the Settlement Class of the pendency of the Class Action and of this settlement, as provided by the Settlement Agreement and by the Preliminary Approval Order dated December 7, 2017, constituted the best notice practicable under the circumstances to all persons and entities within the definition of the Settlement Class, and fully complied with the requirements of Federal Rules of Civil Procedure Rule 23 and due process. Due and sufficient proof of the execution of the Notice Plan as outlined in the Preliminary Approval Order has been filed.

Judge Yvonne Gonzalez Rogers, *Bias v. Wells Fargo & Company, et al.* (Apr. 13, 2017) 4:12-cv-00664 (N.D. Cal.):

The form, content, and method of dissemination of Notice of Settlement given to the Settlement Class was adequate and reasonable and constituted the best notice practicable under the circumstances, including both individual notice to all Settlement Class Members who could be identified through reasonable effort and publication notice.

Notice of Settlement, as given, complied with the requirements of Rule 23 of the Federal Rules of Civil Procedure, satisfied the requirements of due process, and constituted due and sufficient notice of the matters set forth herein.

Notice of the Settlement was provided to the appropriate regulators pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715(c)(1).

Judge Carlos Murguia, *Whitton v. Deffenbaugh Industries, Inc., et al.* (Dec. 14, 2016) 2:12-cv-02247 and ***Gary, LLC v. Deffenbaugh Industries, Inc., et al.*** 2:13-cv-02634 (D. Kan.):

The Court determines that the Notice Plan as implemented was reasonably calculated to provide the best notice practicable under the circumstances and contained all required information for members of the proposed Settlement Class to act to protect their interests. The Court also finds that Class Members were provided an adequate period of time to receive Notice and respond accordingly.

Judge Yvette Kane, *In re: Shop-Vac Marketing and Sales Practices Litigation* (Dec. 9, 2016) MDL No. 2380 (M.D. Pa.):

The Court hereby finds and concludes that members of the Settlement Class have been provided the best notice practicable of the Settlement and that such notice satisfies all requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, and all other applicable laws.

Judge Timothy D. Fox, *Miner v. Philip Morris USA, Inc.* (Nov. 21, 2016) 60CV03-4661 (Ark. Cir. Ct.):

> *The Court finds that the Settlement Notice provided to potential members of the Class constituted the best and most practicable notice under the circumstances, thereby complying fully with due process and Rule 23 of the Arkansas Rules of Civil Procedure.*

Judge Eileen Bransten, *In re: HSBC Bank USA, N.A.,* as part of *In re: Checking Account Overdraft Litigation* (Oct. 13, 2016) 650562/2011 (Sup. Ct. N.Y.):

> *This Court finds that the Notice Program and the Notice provided to Settlement Class members fully satisfied the requirements of constitutional due process, the N.Y. C.P.L.R., and any other applicable laws, and constituted the best notice practicable under the circumstances and constituted due and sufficient notice to all persons entitled thereto.*

Judge Jerome B. Simandle, *In re: Caterpillar, Inc. C13 and C15 Engine Products Liability Litigation* (Sept. 20, 2016) MDL No. 2540 (D.N.J.):

> *The Court hereby finds that the Notice provided to the Settlement Class constituted the best notice practicable under the circumstances. Said Notice provided due and adequate notice of these proceedings and the matters set forth herein, including the terms of the Settlement Agreement, to all persons entitled to such notice, and said notice fully satisfied the requirements of Fed. R. Civ. P. 23, requirements of due process and any other applicable law.*

Judge Marcia G. Cooke, *Chimeno-Buzzi v. Hollister Co. and Abercrombie & Fitch Co.* (Apr. 11, 2016) 14-23120 (S.D. Fla.):

> *Pursuant to the Court's Preliminary Approval Order, the Settlement Administrator, Epiq Systems, Inc. [Hilsoft Notifications], has complied with the approved notice process as confirmed in its Declaration filed with the Court on March 23, 2016. The Court finds that the notice process was designed to advise Class Members of their rights. The form and method for notifying Class Members of the settlement and its terms and conditions was in conformity with this Court's Preliminary Approval Order, constituted the best notice practicable under the circumstances, and satisfied the requirements of Federal Rule of Civil Procedure 23(c)(2)(B), the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1715, and due process under the United States Constitution and other applicable laws.*

Judge Yvonne Gonzalez Rogers, *In re: Lithium Ion Batteries Antitrust Litigation* (Mar. 22, 2016) 4:13-md-02420 MDL No. 2420 (N.D. Cal.):

> *From what I could tell, I liked your approach and the way you did it. I get a lot of these notices that I think are all legalese and no one can really understand them. Yours was not that way.*

Judge Christopher S. Sontchi, *In re: Energy Future Holdings Corp, et al.* (July 30, 2015) 14-10979 (Bankr. D. Del.):

> *Notice of the Asbestos Bar Date as set forth in this Asbestos Bar Date Order and in the manner set forth herein constitutes adequate and sufficient notice of the Asbestos Bar Date and satisfies the requirements of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.*

Judge David C. Norton, *In re: MI Windows and Doors Inc. Products Liability Litigation* (July 22, 2015) MDL No. 2333, 2:12-mn-00001 (D.S.C.):

> *The court finds that the Notice Plan, as described in the Settlement and related declarations, has been faithfully carried out and constituted the best practicable notice to Class Members under the circumstances of this Action, and was reasonable and constituted due, adequate, and sufficient notice to all Persons entitled to be provided with Notice.*
>
> *The court also finds that the Notice Plan was reasonably calculated, under the circumstances, to apprise Class Members of: (1) the pendency of this class action; (2) their right to exclude themselves from the Settlement Class and the proposed Settlement; (3) their right to object to any aspect of the proposed Settlement (including final certification of the Settlement Class, the fairness, reasonableness, or adequacy of the proposed Settlement, the adequacy of the Settlement Class's representation by Named Plaintiffs or Class Counsel, or the award of attorney's and representative fees); (4) their right to appear at the fairness hearing (either on their own or through counsel hired at their own expense); and (5) the binding and*

preclusive effect of the orders and Final Order and Judgment in this Action, whether favorable or unfavorable, on all Persons who do not request exclusion from the Settlement Class. As such, the court finds that the Notice fully satisfied the requirements of the Federal Rules of Civil Procedure, including Federal Rule of Civil Procedure 23(c)(2) and (e), the United States Constitution (including the Due Process Clause), the rules of this court, and any other applicable law, and provided sufficient notice to bind all Class Members, regardless of whether a particular Class Member received actual notice.

Judge Robert W. Gettleman, *Adkins, et al. v. Nestlé Purina PetCare Company, et al.* (June 23, 2015) 1:12-cv-02871 (N.D. Ill.):

Notice to the Settlement Class and other potentially interested parties has been provided in accordance with the notice requirements specified by the Court in the Preliminary Approval Order. Such notice fully and accurately informed the Settlement Class members of all material elements of the proposed Settlement and of their opportunity to object or comment thereon or to exclude themselves from the Settlement; provided Settlement Class Members adequate instructions and a variety of means to obtain additional information; was the best notice practicable under the circumstances; was valid, due, and sufficient notice to all Settlement Class members; and complied fully with the laws of the State of Illinois, Federal Rules of Civil Procedure, the United States Constitution, due process, and other applicable law.

Judge James Lawrence King, *Steen v. Capital One, N.A.* (May 22, 2015) 2:10-cv-01505 (E.D. La.) and 1:10-cv-22058 (S.D. Fla.) as part of ***In re: Checking Account Overdraft Litigation***, MDL No. 2036 (S.D. Fla.):

The Court finds that the Settlement Class Members were provided with the best practicable notice; the notice was reasonably calculated, under [the] circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Shutts, 472 U.S. at 812 (quoting Mullane, 339 U.S. at 314-15). This Settlement with Capital One was widely publicized, and any Settlement Class Member who wished to express comments or objections had ample opportunity and means to do so. Azari Decl. ¶¶ 30-39.

Judge Rya W. Zobel, *Gulbankian et al. v. MW Manufacturers, Inc.* (Dec. 29, 2014) 1:10-cv-10392 (D. Mass.):

This Court finds that the Class Notice was provided to the Settlement Class consistent with the Preliminary Approval Order and that it was the best notice practicable and fully satisfied the requirements of the Federal Rules of Civil Procedure, due process, and applicable law. The Court finds that the Notice Plan that was implemented by the Claims Administrator satisfies the requirements of FED. R. CIV. P. 23, 28 U.S.C. § 1715, and Due Process, and is the best notice practicable under the circumstances. The Notice Plan constituted due and sufficient notice of the Settlement, the Final Approval Hearing, and the other matters referred to in the notices. Proof of the giving of such notices has been filed with the Court via the Azari Declaration and its exhibits.

Judge Edward J. Davila, *Rose v. Bank of America Corporation, et al.* (Aug. 29, 2014) 5:11-cv-02390 and 5:12-cv-0400 (N.D. Cal.):

The Court finds that the notice was reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of this action, all material elements of the Settlement, the opportunity for Settlement Class Members to exclude themselves from, object to, or comment on the settlement and to appear at the final approval hearing. The notice was the best notice practicable under the circumstances, satisfying the requirements of Rule 23(c)(2)(B); provided notice in a reasonable manner to all class members, satisfying Rule 23(e)(1)(B); was adequate and sufficient notice to all Class Members; and, complied fully with the laws of the United States and of the Federal Rules of Civil Procedure, due process and any other applicable rules of court.

Judge James A. Robertson, II, *Wong, et al. v. Alacer Corp.* (June 27, 2014) CGC-12-519221 (Sup. Ct. Cal.):

Notice to the Settlement Class has been provided in accordance with the Preliminary Approval Order. Based on the Declaration of Cameron Azari dated March 7, 2014, such Class Notice has been provided in an adequate and sufficient manner, constitutes the best notice practicable under the circumstances and satisfies the requirements of California Civil Code Section 1781, California Civil Code of Civil Procedure Section 382, Rules 3.766 of the California Rules of Court, and due process.

Judge John Gleeson, *In re: Payment Card Interchange Fee and Merchant Discount Antitrust Litigation* (Dec. 13, 2013) MDL No. 1720, 05-md-01720 (E.D.N.Y.):

> *The Class Administrator notified class members of the terms of the proposed settlement through a mailed notice and publication campaign that included more than 20 million mailings and publication in more than 400 publications. The notice here meets the requirements of due process and notice standards… The objectors' complaints provide no reason to conclude that the purposes and requirements of a notice to a class were not met here.*

Judge Lance M. Africk, *Evans, et al. v. TIN, Inc., et al.* (July 7, 2013) 2:11-cv-02067 (E.D. La.):

> *The Court finds that the dissemination of the Class Notice… as described in Notice Agent Lauran Schultz's Declaration: (a) constituted the best practicable notice to Class Members under the circumstances; (b) constituted notice that was reasonably calculated, under the circumstances…; (c) constituted notice that was reasonable, due, adequate, and sufficient; and (d) constituted notice that fully satisfied all applicable legal requirements, including Rules 23(c)(2)(B) and (e)(1) of the Federal Rules of Civil Procedure, the United States Constitution (including Due Process Clause), the Rules of this Court, and any other applicable law, as well as complied with the Federal Judicial Center's illustrative class action notices.*

Judge Edward M. Chen, *Marolda v. Symantec Corporation* (Apr. 5, 2013) 3:08-cv-05701 (N.D. Cal.):

> *Approximately 3.9 million notices were delivered by email to class members, but only a very small percentage objected or opted out . . . The Court . . . concludes that notice of settlement to the class was adequate and satisfied all requirements of Federal Rule of Civil Procedure 23(e) and due process. Class members received direct notice by email, and additional notice was given by publication in numerous widely circulated publications as well as in numerous targeted publications. These were the best practicable means of informing class members of their rights and of the settlement's terms.*

Judge Ann D. Montgomery, *In re: Zurn Pex Plumbing Products Liability Litigation* (Feb. 27, 2013) MDL No. 1958, 08-md-1958 (D. Minn.):

> *The parties retained Hilsoft Notifications ("Hilsoft"), an experienced class-notice consultant, to design and carry out the notice plan. The form and content of the notices provided to the class were direct, understandable, and consistent with the "plain language" principles advanced by the Federal Judicial Center.*
>
> *The notice plan's multi-faceted approach to providing notice to settlement class members whose identity is not known to the settling parties constitutes "the best notice [*26] that is practicable under the circumstances" consistent with Rule 23(c)(2)(B).*

Magistrate Judge Stewart, *Gessele, et al. v. Jack in the Box, Inc.* (Jan. 28, 2013) 3:10-cv-960 (D. Ore.):

> *Moreover, plaintiffs have submitted [a] declaration from Cameron Azari (docket #129), a nationally recognized notice expert, who attests that fashioning an effective joint notice is not unworkable or unduly confusing. Azari also provides a detailed analysis of how he would approach fashioning an effective notice in this case.*

Judge Carl J. Barbier, *In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010* *(Medical Benefits Settlement)* (Jan. 11, 2013) MDL No. 2179 (E.D. La.):

> *Through August 9, 2012, 366,242 individual notices had been sent to potential [Medical Benefits] Settlement Class Members by postal mail and 56,136 individual notices had been e-mailed. Only 10,700 mailings—or 3.3%—were known to be undeliverable. (Azari Decl. ¶¶ 8, 9.) Notice was also provided through an extensive schedule of local newspaper, radio, television and Internet placements, well-read consumer magazines, a national daily business newspaper, highly-trafficked websites, and Sunday local newspapers (via newspaper supplements). Notice was also provided in non-measured trade, business and specialty publications, African-American, Vietnamese, and Spanish language publications, and Cajun radio programming. The combined measurable paid print, television, radio, and Internet effort reached an estimated 95% of adults aged 18+ in the Gulf Coast region an average of 10.3 times each, and an estimated 83% of all adults in the United States aged 18+ an average of 4 times each. (Id. ¶¶ 8, 10.) All notice documents were designed to be clear, substantive, and informative. (Id. ¶ 5.)*

The Court received no objections to the scope or content of the [Medical Benefits] Notice Program. (Azari Supp. Decl. ¶ 12.) The Court finds that the Notice and Notice Plan as implemented satisfied the best notice practicable standard of Rule 23(c) and, in accordance with Rule 23(e)(1), provided notice in a reasonable manner to Class Members who would be bound by the Settlement, including individual notice to all Class Members who could be identified through reasonable effort. Likewise, the Notice and Notice Plan satisfied the requirements of Due Process. The Court also finds the Notice and Notice Plan satisfied the requirements of CAFA.

Judge Carl J. Barbier, *In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010* *(Economic and Property Damages Settlement)* (Dec. 21, 2012) MDL No. 2179 (E.D. La.):

The Court finds that the Class Notice and Class Notice Plan satisfied and continue to satisfy the applicable requirements of Federal Rule of Civil Procedure 23(c)(2)(b) and 23(e), the Class Action Fairness Act (28 U.S.C. § 1711 et seq.), and the Due Process Clause of the United States Constitution (U.S. Const., amend. V), constituting the best notice that is practicable under the circumstances of this litigation. The notice program surpassed the requirements of Due Process, Rule 23, and CAFA. Based on the factual elements of the Notice Program as detailed below, the Notice Program surpassed all of the requirements of Due Process, Rule 23, and CAFA.

The Notice Program, as duly implemented, surpasses other notice programs that Hilsoft Notifications has designed and executed with court approval. The Notice Program included notification to known or potential Class Members via postal mail and e-mail; an extensive schedule of local newspaper, radio, television and Internet placements, well-read consumer magazines, a national daily business newspaper, and Sunday local newspapers. Notice placements also appeared in non-measured trade, business, and specialty publications, African-American, Vietnamese, and Spanish language publications, and Cajun radio programming. The Notice Program met the objective of reaching the greatest possible number of class members and providing them with every reasonable opportunity to understand their legal rights. See Azari Decl. ¶¶ 8, 15, 68. The Notice Program was substantially completed on July 15, 2012, allowing class members adequate time to make decisions before the opt-out and objections deadlines.

The media notice effort alone reached an estimated 95% of adults in the Gulf region an average of 10.3 times each, and an estimated 83% of all adults in the United States an average of 4 times each. These figures do not include notice efforts that cannot be measured, such as advertisements in trade publications and sponsored search engine listings. The Notice Program fairly and adequately covered and notified the class without excluding any demographic group or geographic area, and it exceeded the reach percentage achieved in most other court-approved notice programs.

Judge Alonzo Harris, *Opelousas General Hospital Authority, A Public Trust, D/B/A Opelousas General Health System and Arklamiss Surgery Center, L.L.C. v. FairPay Solutions, Inc.* (Aug. 17, 2012) 12-C-1599 (27th Jud. D. Ct. La.):

Notice given to Class Members and all other interested parties pursuant to this Court's order of April 18, 2012, was reasonably calculated to apprise interested parties of the pendency of the action, the certification of the Class as Defined for settlement purposes only, the terms of the Settlement Agreement, Class Members rights to be represented by private counsel, at their own costs, and Class Members rights to appear in Court to have their objections heard, and to afford persons or entities within the Class Definition an opportunity to exclude themselves from the Class. Such notice complied with all requirements of the federal and state constitutions, including the Due Process Clause, and applicable articles of the Louisiana Code of Civil Procedure, and constituted the best notice practicable under the circumstances and constituted due and sufficient notice to all potential members of the Class as Defined.

Judge James Lawrence King, *Sachar v. Iberiabank Corporation* (Apr. 26, 2012) as part of ***In re: Checking Account Overdraft*** MDL No. 2036 (S.D. Fla):

The Court finds that the Notice previously approved was fully and properly effectuated and was sufficient to satisfy the requirements of due process because it described "the substantive claims . . . [and] contained information reasonably necessary to [allow Settlement Class Members to] make a decision to remain a class member and be bound by the final judgment." In re: Nissan Motor Corp. Antitrust Litig., 552 F.2d 1088, 1104-05 (5th Cir. 1977). The Notice, among other things, defined the Settlement Class, described the release as well as the amount and method and manner of proposed distribution of the Settlement proceeds, and informed Settlement Class Members of their rights to opt-out or object, the procedures for doing so, and the time and place of the Final Approval Hearing. The Notice also informed Settlement Class

Members that a class judgment would bind them unless they opted out, and told them where they could obtain more information, such as access to a full copy of the Agreement. Further, the Notice described in summary form the fact that Class Counsel would be seeking attorneys' fees of up to 30 percent of the Settlement. Settlement Class Members were provided with the best practicable notice "reasonably calculated, under [the] circumstances, to apprise them of the pendency of the action and afford them an opportunity to present their objections." Mullane, 339 U.S. at 314. The content of the Notice fully complied with the requirements of Rule 23.

Judge Bobby Peters, *Vereen v. Lowe's Home Centers* (Apr. 13, 2012) SU10-cv-2267B (Ga. Super. Ct.):

The Court finds that the Notice and the Notice Plan was fulfilled, in accordance with the terms of the Settlement Agreement, the Amendment, and this Court's Preliminary Approval Order and that this Notice and Notice Plan constituted the best practicable notice to Class Members under the circumstances of this action, constituted due and sufficient Notice of the proposed Settlement to all persons entitled to participate in the proposed Settlement, and was in full compliance with Ga. Code Ann § 9-11-23 and the constitutional requirements of due process. Extensive notice was provided to the class, including point of sale notification, publication notice and notice by first-class mail for certain potential Class Members.

The affidavit of the notice expert conclusively supports this Court's finding that the notice program was adequate, appropriate, and comported with Georgia Code Ann. § 9-11-23(b)(2), the Due Process Clause of the Constitution, and the guidance for effective notice articulate in the FJC's Manual for Complex Litigation, 4th.

Judge Lee Rosenthal, *In re: Heartland Payment Systems, Inc. Customer Data Security Breach Litigation* (Mar. 2, 2012) MDL No. 2046 (S.D. Tex.):

*The notice that has been given clearly complies with Rule 23(e)(1)'s reasonableness requirement… Hilsoft Notifications analyzed the notice plan after its implementation and conservatively estimated that notice reached 81.4 percent of the class members. (Docket Entry No. 106, ¶ 32). Both the summary notice and the detailed notice provided the information reasonably necessary for the presumptive class members to determine whether to object to the proposed settlement. See Katrina Canal Breaches, 628 F.3d at 197. Both the summary notice and the detailed notice "were written in easy-to-understand plain English." In re: Black Farmers Discrimination Litig., — F. Supp. 2d —, 2011 WL 5117058, at *23 (D.D.C. 2011); accord AGGREGATE LITIGATION § 3.04(c).15 The notice provided "satisf[ies] the broad reasonableness standards imposed by due process" and Rule 23. Katrina Canal Breaches, 628 F.3d at 197.*

Judge John D. Bates, *Trombley v. National City Bank* (Dec. 1, 2011) 1:10-cv-00232 (D.D.C.) as part of ***In re: Checking Account Overdraft Litigation*** MDL No. 2036 (S.D. Fla.):

The form, content, and method of dissemination of Notice given to the Settlement Class were in full compliance with the Court's January 11, 2011 Order, the requirements of Fed. R. Civ. P. 23(e), and due process. The notice was adequate and reasonable, and constituted the best notice practicable under the circumstances. In addition, adequate notice of the proceedings and an opportunity to participate in the final fairness hearing were provided to the Settlement Class.

Judge Robert M. Dow, Jr., *Schulte v. Fifth Third Bank* (July 29, 2011) 1:09-cv-06655 (N.D. Ill.):

The Court has reviewed the content of all of the various notices, as well as the manner in which Notice was disseminated, and concludes that the Notice given to the Class fully complied with Federal Rule of Civil Procedure 23, as it was the best notice practicable, satisfied all constitutional due process concerns, and provided the Court with jurisdiction over the absent Class Members.

Judge Ellis J. Daigle, *Williams v. Hammerman & Gainer Inc.* (June 30, 2011) 11-C-3187-B (27th Jud. D. Ct. La.):

Notices given to Settlement Class members and all other interested parties throughout this proceeding with respect to the certification of the Settlement Class, the proposed settlement, and all related procedures and hearings—including, without limitation, the notice to putative Settlement Class members and others more fully described in this Court's order of 30th day of March 2011 were reasonably calculated under all the circumstances and have been sufficient, as to form, content, and manner of dissemination, to apprise interested parties and members of the Settlement Class of the pendency of the action, the certification of the Settlement Class, the Settlement Agreement and its contents, Settlement Class members' right to be represented by private counsel, at their own cost, and Settlement Class members' right to appear in Court

to have their objections heard, and to afford Settlement Class members an opportunity to exclude themselves from the Settlement Class. Such notices complied with all requirements of the federal and state constitutions, including the due process clause, and applicable articles of the Louisiana Code of Civil Procedures, and constituted the best notice practicable under the circumstances and constituted due and sufficient notice to all potential members of the Settlement Class.

Judge Stefan R. Underhill, *Mathena v. Webster Bank, N.A.* (Mar. 24, 2011) 3:10-cv-01448 (D. Conn.) as part of ***In re: Checking Account Overdraft Litigation*** MDL No. 2036 (S.D. Fla.):

The form, content, and method of dissemination of Notice given to the Settlement Class were adequate and reasonable, and constituted the best notice practicable under the circumstances. The Notice, as given, provided valid, due, and sufficient notice of the proposed settlement, the terms and conditions set forth in the Settlement Agreement, and these proceedings to all persons entitled to such notice, and said notice fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process.

Judge Ted Stewart, *Miller v. Basic Research, LLC* (Sept. 2, 2010) 2:07-cv-00871 (D. Utah):

Plaintiffs state that they have hired a firm specializing in designing and implementing large scale, unbiased, legal notification plans. Plaintiffs represent to the Court that such notice will include: 1) individual notice by electronic mail and/or first-class mail sent to all reasonably identifiable Class members; 2) nationwide paid media notice through a combination of print publications, including newspapers, consumer magazines, newspaper supplements and the Internet; 3) a neutral, Court-approved, informational press release; 4) a neutral, Court-approved Internet website; and 5) a toll-free telephone number. Similar mixed media plans have been approved by other district courts post class certification. The Court finds this plan is sufficient to meet the notice requirement.

Judge Sara Loi, *Pavlov v. Continental Casualty Co.* (Oct. 7, 2009) 5:07-cv-2580 (N.D. Ohio):

As previously set forth in this Memorandum Opinion, the elaborate notice program contained in the Settlement Agreement provides for notice through a variety of means, including direct mail to each class member, notice to the United States Attorney General and each State, a toll free number, and a website designed to provide information about the settlement and instructions on submitting claims. With a 99.9% effective rate, the Court finds that the notice program constituted the "best notice that is practicable under the circumstances," Fed. R. Civ. P. 23(c)(2)(B), and clearly satisfies the requirements of Rule 23(c)(2)(B).

Judge James Robertson, *In re: Department of Veterans Affairs (VA) Data Theft Litigation* (Sept. 23, 2009) MDL No. 1796 (D.D.C.):

The Notice Plan, as implemented, satisfied the requirements of due process and was the best notice practicable under the circumstances. The Notice Plan was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the action, the terms of the Settlement, and their right to appear, object to or exclude themselves from the Settlement. Further, the notice was reasonable and constituted due, adequate and sufficient notice to all persons entitled to receive notice.

LEGAL NOTICE CASES

Hilsoft has served as a notice expert for planning, implementation and/or analysis in the following partial list of cases:

Yamagata et al. v. Reckitt Benckiser LLC	N.D. Cal., No. 3:17-cv-03529
Thompson et al. v. Community Bank, N.A. **(Overdraft)**	N.D.N.Y., No. 8:19-cv-0919
Silveira v. M&T Bank	C.D. Cal., No. 2:19-cv-06958
In re Toll Roads Litigation; Borsuk et al. v. Foothill/Eastern Transportation Corridor Agency, et al. **(OCTA Settlement)**	C.D. Cal., No. 8:16-cv-00262
In Re: Toll Roads Litigation **(3M/TCA Settlement)**	C.D. Cal., No. 8:16-cv-00262

Pearlstone v. Wal-Mart Stores, Inc. **(Sales Tax)**	C.D. Cal., No. 4:17-cv-02856
Zanca, et al. v. Epic Games, Inc. **(Fortnite or Rocket League Video Games)**	Sup Ct. Wake Cnty., N.C., No. 21-CVS-534
In re: Flint Water Cases	E.D. Mich., No. 5:16-cv-10444
Kukorinis, et al. v. Walmart, Inc.	S.D. Fla., No. 1:19-cv-20592
Grace v. Apple, Inc.	N.D. Cal., No. 17-CV-00551
Alvarez v. Sirius XM Radio Inc.	C.D. Cal., No. 2:18-cv-8605
In re: Pre-Filled Propane Tank Antitrust Litigation	W.D. Mo., No. MDL No. 2567, No. 14-2567
In re: Disposable Contact Lens Antitrust Litigation **(ABB Concise Optical Group, LLC)**	M.D. Fla., No. 3:15-md-02626
Bally v. State Farm Insurance Company	N.D. Cal., No. 3:18-cv-04954
Morris v. Provident Credit Union **(Overdraft)**	Sup. Ct. Cal. Cty. of San Fran., No. CGC-19-581616
Pennington v. Tetra Tech, Inc. et al.	N.D. Cal., No. 3:18-cv-05330
Maldonado et al. v. Apple Inc, et al.	N.D. Cal., No. 3:16-cv-04067
UFCW & Employers Benefit Trust v. Sutter Health, et al.	Sup. Ct. of Cal., Cnty of San Fran., No. CGC 14-538451 Consolidated with CGC-18-565398
Fitzhenry v. Independent Home Products, LLC **(TCPA)**	D.S.C., No. 2:19-cv-02993
In re: Hyundai and Kia Engine Litigation and Flaherty v. Hyundai Motor Company, Inc., et al.	C.D. Cal., Nos. 8:17-CV-00838 & 18-cv-02223
Sager, et al. v. Volkswagen Group of America, Inc., et al.	D.N.J., No. 18-cv-13556
Bautista v. Valero Marketing and Supply Company	N.D. Cal., No. 3:15-cv-05557
Snee Farm Lakes Homeowner's Association Inc. v. The Commissioners of Public Works for the Town of Mount Pleasant d/b/a Mount Pleasant Waterworks	Ct. of Com. Pleas., S.C., No. 2018-CP-10-2764
Richards, et al. v. Chime Financial, Inc.	N.D. Cal., No. 4:19-cv-06864
In re: Health Insurance Innovations Securities Litigation	M.D. Fla., No. 8:17-cv-02186
Fox, et al. v. Iowa Health System d.b.a. UnityPoint Health **(Data Breach)**	W.D. Wis., No. 18-cv-327
Smith v. Costa Del Mar, Inc.	M.D. Fla., No. 3:18-cv-1011
Al's Discount Plumbing, et al. v. Viega, LLC **(Building Products)**	M.D. Pa., No. 19-cv-00159
The Weinstein Company Holdings, LLC	Bankr. D. Del., No. 18-10601
Rose v. The Travelers Home and Marine Insurance Company, et al.	E.D. Pa., No. 19-cv-00977
Paris et al. v. Progressive American Insurance Company, et al.	S.D. Fla., No. 19-cv-21761
Chinitz v. Intero Real Estate Services	N.D. Cal., No. 5:18-cv-05623
Eastwood Construction LLC, et al. v. City of Monroe ***The Estate of Donald Alan Plyler Sr., et al. v. City of Monroe***	Sup. Ct. N.C., Nos. 18-CVS-2692 & 19-CVS-1825

Garvin v. San Diego Unified Port District	Sup. Ct. Cal., No. 37-2020-00015064
Consumer Financial Protection Bureau v. Siringoringo Law Firm	C.D. Cal., No. 8:14-cv-01155
Robinson v. Nationstar Mortgage LLC	D. Md., No. 8:14-cv-03667
Drazen v. GoDaddy.com, LLC* and *Bennett v. GoDaddy.com, LLC (TCPA)	S.D. Ala., No. 1:19-cv-00563
In re: Libor-Based Financial Instruments Antitrust Litigation	S.D.N.Y., MDL No. 2262, No. 1:11-md-2262
***Izor v. Abacus Data Systems, Inc.* (TCPA)**	N.D. Cal., No. 19-cv-01057
Cook, et al. v. South Carolina Public Service Authority, et al.	Ct. of Com. Pleas. 13th Jud. Cir. S.C., No. 2019-CP-23-6675
K.B., by and through her natural parent, Jennifer Qassis, and Lillian Knox-Bender v. Methodist Healthcare - Memphis Hospitals	30th Jud. Dist. Tenn., No. CH-13-04871-1
In re: Roman Catholic Diocese of Harrisburg	Bank. Ct. M.D. Pa., No. 1:20-bk-00599
Denier, et al. v. Taconic Biosciences, Inc.	Sup Ct. N.Y., No. 00255851
***Robinson v. First Hawaiian Bank* (Overdraft)**	Cir. Ct. of First Cir. Haw., No. 17-1-0167-01
Burch v. Whirlpool Corporation	W.D. Mich., No. 1:17-cv-00018
***Armon, et al. v. Washington State University* (Data Breach)**	Sup. Ct. Wash., No. 17-2-23244-1 consolidated with No. 17-2-25052-0
Wilson, et al. v. Volkswagen Group of America, Inc., et al.	S.D. Fla., No. 17-cv-23033
***Prather v. Wells Fargo Bank, N.A.* (TCPA)**	N.D. Ill., No. 1:17-cv-00481
In re: Wells Fargo Collateral Protection Insurance Litigation	C.D. Cal., No. 8:17-ml-02797
Ciuffitelli, et al. v. Deloitte & Touche LLP, et al.	D. Ore., No. 3:16-cv-00580
Coffeng, et al. v. Volkswagen Group of America, Inc.	N.D. Cal., No. 17-cv-01825
***In re: Disposable Contact Lens Antitrust Litigation* (CooperVision, Inc.)**	M.D. Fla., No. 3:15-md-02626
Audet, et al. v. Garza, et al.	D. Conn., No. 3:16-cv-00940
Hyder, et al. v. Consumers County Mutual Insurance Company	D. Ct. of Travis County Tex., No. D-1-GN-16-000596
Fessler v. Porcelana Corona De Mexico, S.A. DE C.V f/k/a Sanitarios Lamosa S.A. DE C.V. a/k/a Vortens	E.D. Tex., No. 4:19-cv-00248
In re: TD Bank, N.A. Debit Card Overdraft Fee Litigation	D.S.C., MDL No. 2613, No. 6:15-MN-02613
Liggio v. Apple Federal Credit Union	E.D. Vir., No. 1:18-cv-01059
***Garcia v. Target Corporation* (TCPA)**	D. Minn., No. 16-cv-02574
Albrecht v. Oasis Power, LLC d/b/a Oasis Energy	N.D. Ill., No. 1:18-cv-1061
McKinney-Drobnis, et al. v. Massage Envy Franchising	N.D. Cal., No. 3:16-cv-6450

In re: Optical Disk Drive Products Antitrust Litigation	N.D. Cal., MDL No. 2143, No. 3:10-md-2143
Stone, et al. v. Porcelana Corona De Mexico, S.A. DE C.V f/k/a Sanitarios Lamosa S.A. DE C.V. a/k/a Vortens	E.D. Tex., No. 4:17-cv-00001
***In re: Kaiser Gypsum Company, Inc., el al.* (Asbestos)**	Bankr. W.D. N.C., No. 16-31602
***Kuss v. American HomePatient, Inc., et al.* (Data Breach)**	M.D. Fla., No. 8:18-cv-2348
Lusnak v. Bank of America, N.A.	C.D. Cal., No. 14-cv-1855
In re: Premera Blue Cross Customer Data Security Breach Litigation	D. Ore., No. 3:15-md-2633
***Elder v. Hilton Worldwide Holdings, Inc.* (Hotel Stay Promotion)**	N.D. Cal., No. 16-cv-00278
***Grayson, et al. v. General Electric Company* (Microwaves)**	D. Conn., No. 3:13-cv-01799
Harris, et al. v. Farmers Insurance Exchange and Mid Century Insurance Company	Sup. Ct Cal., No. BC 579498
***Lashambae v. Capital One Bank, N.A.* (Overdraft)**	E.D.N.Y., No. 1:17-cv-06406
***Trujillo, et al. v. Ametek, Inc., et al.* (Toxic Leak)**	S.D. Cal., No.3:15-cv-01394
***Cox, et al. v. Ametek, Inc., et al.* (Toxic Leak)**	S.D. Cal., No. 3:17-cv-00597
Pirozzi, et al. v. Massage Envy Franchising, LLC	E.D. Mo., No. 4:19-CV-807
***Lehman v. Transbay Joint Powers Authority, et al.* (Millennium Tower)**	Sup. Ct. Cal., No. GCG-16-553758
In re: FCA US LLC Monostable Electronic Gearshift Litigation	E.D. Mich., MDL No. 2744 & No. 16-md-02744
Dasher v. RBC Bank (USA) predecessor in interest to PNC Bank, N.A.*, as part of *In re: Checking Account Overdraft	S.D. Fla., No. 1:10-CV-22190, as part of MDL No. 2036
Behfarin v. Pruco Life Insurance Company, et al.	C.D. Cal., No. 17-cv-05290
In re: Renovate America Finance Cases	Sup. Ct, Cal., County of Riverside, No. RICJCCP4940
***Nelson v. Roadrunner Transportation Systems, Inc.* (Data Breach)**	N.D. Ill., No. 1:18-cv-07400
Skochin, et al. v. Genworth Life Insurance Company, et al.	E.D. Vir., No. 3:19-cv-00049
***Walters, et al. v. Target Corp.* (Overdraft)**	S.D. Cal., No. 3:16-cv-1678
Jackson, et al. v. Viking Group, Inc., et al.	D. Md., No. 8:18-cv-02356
Waldrup v. Countrywide Financial Corporation, et al.	C.D. Cal., No. 2:13-cv-08833
Burrow, et al. v. Forjas Taurus S.A., et al.	S.D. Fla., No. 1:16-cv-21606
Henrikson v. Samsung Electronics Canada Inc.	Ontario Sup. Ct., No. 2762-16cp
In re: Comcast Corp. Set-Top Cable Television Box Antitrust Litigation	E.D. Pa., No. 2:09-md-02034
Lightsey, et al. v. South Carolina Electric & Gas Company, a Wholly Owned Subsidiary of SCANA, et al.	Ct. of Com. Pleas., S.C., No. 2017-CP-25-335

Rabin v. HP Canada Co., et al.	Quebec Ct., Dist. of Montreal, No. 500-06-000813-168
McIntosh v. Takata Corporation, et al.; Vitoratos, et al. v. Takata Corporation, et al.; and Hall v. Takata Corporation, et al.	Ontario Sup Ct., No. CV-16-543833-00CP; Quebec Sup. Ct of Justice, No. 500-06-000723-144; & Court of Queen's Bench for Saskatchewan, No. QBG. 1284 or 2015
Di Filippo v. The Bank of Nova Scotia, et al. **(Gold Market Instrument)**	Ontario Sup. Ct., No. CV-15-543005-00CP & No. CV-16-551067-00CP
Adlouni v. UCLA Health Systems Auxiliary, et al.	Sup. Ct. Cal., No. BC589243
Lloyd, et al. v. Navy Federal Credit Union	S.D. Cal., No. 17-cv-1280
Luib v. Henkel Consumer Goods Inc.	E.D.N.Y., No. 1:17-cv-03021
Zaklit, et al. v. Nationstar Mortgage LLC, et al. **(TCPA)**	C.D. Cal., No. 5:15-cv-02190
In re: HP Printer Firmware Update Litigation	N.D. Cal., No. 5:16-cv-05820
In re: Dealer Management Systems Antitrust Litigation	N.D. Ill., MDL No. 2817, No. 18-cv-00864
Mosser v. TD Bank, N.A. and Mazzadra, et al. v. TD Bank, N.A.**, as part of *In re: Checking Account Overdraft***	E.D. Pa., No. 2:10-cv-00731, S.D. Fla., No. 10-cv-21386 and S.D. Fla., No. 1:10-cv-21870, as part of S.D. Fla., MDL No. 2036
Naiman v. Total Merchant Services, Inc., et al. **(TCPA)**	N.D. Cal., No. 4:17-cv-03806
In re: Valley Anesthesiology Consultants, Inc. Data Breach Litigation	Sup. Ct. Cal., No. CV2016-013446
Parsons v. Kimpton Hotel & Restaurant Group, LLC **(Data Breach)**	N.D. Cal., No. 3:16-cv-05387
Stahl v. Bank of the West	Sup. Ct. Cal., No. BC673397
37 Besen Parkway, LLC v. John Hancock Life Insurance Company (U.S.A.)	S.D.N.Y., No. 15-cv-9924
Tashica Fulton-Green, et al. v. Accolade, Inc.	E.D. Pa., No. 2:18-cv-00274
In re: Community Health Systems, Inc. Customer Data Security Breach Litigation	N.D. Ala., MDL No. 2595, No. 2:15-CV-222
Al's Pals Pet Card, LLC, et al. v. Woodforest National Bank, N.A., et al.	S.D. Tex., No. 4:17-cv-3852
Cowen v. Lenny & Larry's Inc.	N.D. Ill., No. 1:17-cv-01530
Martin v. Trott **(MI - Foreclosure)**	E.D. Mich., No. 2:15-cv-12838
Knapper v. Cox Communications, Inc. **(TCPA)**	D. Ariz., No. 2:17-cv-00913
Dipuglia v. US Coachways, Inc. **(TCPA)**	S.D. Fla., No. 1:17-cv-23006
Abante Rooter and Plumbing v. Pivotal Payments Inc., d/b/a/ Capital Processing Network and CPN **(TCPA)**	N.D. Cal., No. 3:16-cv-05486
First Impressions Salon, Inc., et al. v. National Milk Producers Federation, et al.	S.D. Ill., No. 3:13-cv-00454
Raffin v. Medicredit, Inc., et al.	C.D. Cal., No. 15-cv-4912

Gergetz v. Telenav, Inc. **(TCPA)**	N.D. Cal., No. 5:16-cv-04261
Ajose, et al. v. Interline Brands Inc. **(Plumbing Fixtures)**	M.D. Tenn., No. 3:14-cv-01707
Underwood v. Kohl's Department Stores, Inc., et al.	E.D. Pa., No. 2:15-cv-00730
Surrett, et al. v. Western Culinary Institute, et al.	Ore. Cir., County of Multnomah, No. 0803-03530
Vergara, et al., v. Uber Technologies, Inc. **(TCPA)**	N.D. Ill., No. 1:15-CV-06972
Watson v. Bank of America Corporation, et al.; ***Bancroft-Snell et al. v. Visa Canada Corporation, et al.;*** ***Bakopanos v. Visa Canada Corporation, et al.;*** ***Macaronies Hair Club and Laser Center Inc. operating as Fuze Salon v. BofA Canada Bank, et al.;*** ***Hello Baby Equipment Inc. v. BofA Canada Bank and others (Visa and Mastercard Canadian Interchange Fees)***	Sup. Ct. of B.C., No. VLC-S-S-112003; Ontario Sup. Ct., No. CV-11-426591; Sup. Ct. of Quebec, No. 500-06-00549-101; Ct. of QB of Alberta, No. 1203-18531; Ct. of QB of Saskatchewan, No. 133 of 2013
In re: Takata Airbag Products Liability Litigation **(OEMs – BMW, Mazda, Subaru, and Toyota)**	S.D. Fla., MDL No. 2599
In re: Takata Airbag Products Liability Litigation **(OEMs – Honda and Nissan)**	S.D. Fla., MDL No. 2599
In re: Takata Airbag Products Liability Litigation **(OEM – Ford)**	S.D. Fla., MDL No. 2599
Poseidon Concepts Corp., et al. **(Canadian Securities Litigation)**	Ct. of QB of Alberta, No. 1301-04364
Callaway v. Mercedes-Benz USA, LLC **(Seat Heaters)**	C.D. Cal., No. 8:14-cv-02011
Hale v. State Farm Mutual Automobile Insurance Company, et al.	S.D. Ill., No. 3:12-cv-0660
Farrell v. Bank of America, N.A. **(Overdraft)**	S.D. Cal., No. 3:16-cv-00492
In re: Windsor Wood Clad Window Products Liability Litigation	E.D. Wis., MDL No. 2688, No. 16-MD-02688
Wallace, et al, v. Monier Lifetile LLC, et al.	Sup. Ct. Cal., No. SCV-16410
In re: Parking Heaters Antitrust Litigation	E.D.N.Y., No. 15-MC-0940
Pantelyat, et al. v. Bank of America, N.A., et al. **(Overdraft / Uber)**	S.D.N.Y., No. 16-cv-08964
Falco et al. v. Nissan North America, Inc., et al. **(Engine – CA & WA)**	C.D. Cal., No. 2:13-cv-00686
Alaska Electrical Pension Fund, et al. v. Bank of America N.A., et al. **(ISDAfix Instruments)**	S.D.N.Y., No. 14-cv-7126
Larson v. John Hancock Life Insurance Company (U.S.A.)	Sup. Ct. Cal., No. RG16813803
Larey v. Allstate Property and Casualty Insurance Company	W.D. Kan., No. 4:14-cv-04008
Orlander v. Staples, Inc.	S.D.N.Y., No. 13-cv-0703
Masson v. Tallahassee Dodge Chrysler Jeep, LLC (TCPA)	S.D. Fla., No. 1:17-cv-22967
Gordon, et al. v. Amadeus IT Group, S.A., et al.	S.D.N.Y., No. 1:15-cv-05457
Alexander M. Rattner v. Tribe App., Inc., and ***Kenneth Horsley v. Tribe App., Inc.***	S.D. Fla., Nos. 1:17-cv-21344 & 1:14-cv-2311

Sobiech v. U.S. Gas & Electric, Inc., i/t/d/b/a Pennsylvania Gas & Electric, et al.	E.D. Pa., No. 2:14-cv-04464
Mahoney v. TT of Pine Ridge, Inc.	S.D. Fla., No. 9:17-cv-80029
***Ma, et al. v. Harmless Harvest Inc.* (Coconut Water)**	E.D.N.Y., No. 2:16-cv-07102
Reilly v. Chipotle Mexican Grill, Inc.	S.D. Fla., No. 1:15-cv-23425
The Financial Oversight and Management Board for Puerto Rico as representative of Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy)	D. Puerto Rico, No. 17-04780
In re: Syngenta Litigation	4th Jud. Dist. Minn., No. 27-CV-15-3785
T.A.N. v. PNI Digital Media, Inc.	S.D. Ga., No. 2:16-cv-132
Lewis v. Flue-Cured Tobacco Cooperative Stabilization Corporation (n/k/a United States Tobacco Cooperative, Inc.)	N.C. Gen. Ct of Justice, Sup. Ct. Div., No. 05 CVS 188, No. 05 CVS 1938
McKnight, et al. v. Uber Technologies, Inc., et al.	N.D. Cal., No. 14-cv-05615
***Gottlieb v. Citgo Petroleum Corporation* (TCPA)**	S.D. Fla., No. 9:16-cv-81911
***Farnham v. Caribou Coffee Company, Inc.* (TCPA)**	W.D. Wis., No. 16-cv-00295
***Jacobs, et al. v. Huntington Bancshares Inc., et al.* (FirstMerit Overdraft Fees)**	Ohio C.P., No. 11CV000090
***Morton v. Greenbank* (Overdraft Fees)**	20th Jud. Dist. Tenn., No. 11-135-IV
***Ratzlaff, et al. v. BOKF, NA d/b/a Bank of Oklahoma, et al.* (Overdraft Fees)**	Dist. Ct. Okla., No. CJ-2015-00859
***Klug v. Watts Regulator Company* (Product Liability)**	D. Neb., No. 8:15-cv-00061
***Bias v. Wells Fargo & Company, et al.* (Broker's Price Opinions)**	N.D. Cal., No. 4:12-cv-00664
***Greater Chautauqua Federal Credit Union v. Kmart Corp., et al.* (Data Breach)**	N.D. Ill., No. 1:15-cv-02228
***Hawkins v. First Tennessee Bank, N.A., et al.* (Overdraft Fees)**	13th Jud. Cir. Tenn., No. CT-004085-11
***In re: Volkswagen "Clean Diesel" Marketing, Sales Practices and Product Liability Litigation* (Bosch Settlement)**	N.D. Cal., MDL No. 2672
In re: HSBC Bank USA, N.A.	Sup. Ct. N.Y., No. 650562/11
***Glaske v. Independent Bank Corporation* (Overdraft Fees)**	Cir. Ct. Mich., No. 13-009983
MSPA Claims 1, LLC v. IDS Property Casualty Insurance Company	11th Jud. Cir. Fla, No. 15-27940-CA-21
In re: Lithium Ion Batteries Antitrust Litigation	N.D. Cal., MDL No. 2420, No. 4:13-MD-02420
Chimeno-Buzzi v. Hollister Co. and Abercrombie & Fitch Co.	S.D. Fla., No. 14-cv-23120
Small v. BOKF, N.A.	D. Colo., No. 13-cv-01125
***Forgione v. Webster Bank N.A.* (Overdraft Fees)**	Sup. Ct. Conn., No. X10-UWY-CV-12-6015956-S

Swift v. BancorpSouth Bank*, as part of *In re: Checking Account Overdraft	N.D. Fla., No. 1:10-cv-00090, as part of S.D. Fla, MDL No. 2036
Whitton v. Deffenbaugh Industries, Inc., et al. ***Gary, LLC v. Deffenbaugh Industries, Inc., et al.***	D. Kan., No. 2:12-cv-02247 D. Kan., No. 2:13-cv-02634
In re: Citrus Canker Litigation	11th Jud. Cir., Fla., No. 03-8255 CA 13
In re: Caterpillar, Inc. C13 and C15 Engine Products Liability Litigation	D.N.J., MDL No. 2540
In re: Shop-Vac Marketing and Sales Practices Litigation	M.D. Pa., MDL No. 2380
Opelousas General Hospital Authority, A Public Trust, D/B/A Opelousas General Health System and Arklamiss Surgery Center, L.L.C. v. FairPay Solutions, Inc.	27th Jud. D. Ct. La., No. 12-C-1599
Opelousas General Hospital Authority v. PPO Plus, L.L.C., et al.	27th Jud. D. Ct. La., No. 13-C-5380
Russell Minoru Ono v. Head Racquet Sports USA	C.D. Cal., No. 2:13-cv-04222
Kerry T. Thibodeaux, M.D. (A Professional Medical Corporation) v. American Lifecare, Inc.	27th Jud. D. Ct. La., No. 13-C-3212
Gattinella v. Michael Kors (USA), Inc., et al.	S.D.N.Y., No. 14-civ-5731
***In re: Energy Future Holdings Corp., et al.* (Asbestos Claims Bar Notice)**	Bankr. D. Del., No. 14-10979
Dorothy Williams d/b/a Dot's Restaurant v. Waste Away Group, Inc.	Cir. Ct., Lawrence Cnty, Ala., No. 42-cv-2012- 900001.00
Kota of Sarasota, Inc. v. Waste Management Inc. of Florida	12th Jud. Cir. Ct., Sarasota Cnty, Fla., No. 2011-CA-008020NC
Steen v. Capital One, N.A.*, as part of *In re: Checking Account Overdraft	E.D. La., No. 2:10-cv-01505 and 1:10-cv-22058, as part of S.D. Fla., MDL No. 2036
Childs, et al. v. Synovus Bank, et al.*, as part of *In re: Checking Account Overdraft	S.D. Fla., MDL No. 2036
***In re: MI Windows and Doors Inc. Products Liability Litigation* (Building Products)**	D.S.C., MDL No. 2333
Given v. Manufacturers and Traders Trust Company a/k/a M&T Bank*, as part of *In re: Checking Account Overdraft	S.D. Fla., MDL No. 2036
Scharfstein v. BP West Coast Products, LLC	Ore. Cir., County of Multnomah, No. 1112-17046
Adkins, et al. v. Nestlé Purina PetCare Company, et al.	N.D. Ill., No. 1:12-cv-02871
Smith v. City of New Orleans	Civil D. Ct., Parish of Orleans, La., No. 2005-05453
***Hawthorne v. Umpqua Bank* (Overdraft Fees)**	N.D. Cal., No. 11-cv-06700
Gulbankian, et al. v. MW Manufacturers, Inc.	D. Mass., No. 1:10-cv-10392
***Costello v. NBT Bank* (Overdraft Fees)**	Sup. Ct. Del Cnty., N.Y., No. 2011-1037
In re American Express Anti-Steering Rules Antitrust Litigation (II) (Italian Colors Restaurant)	E.D.N.Y., MDL No. 2221, No. 11-MD-2221

Wong, et al. v. Alacer Corp. **(Emergen-C)**	Sup. Ct. Cal., No. CGC-12-519221
Mello et al. v. Susquehanna Bank**, as part of *In re: Checking Account Overdraft***	S.D. Fla., MDL No. 2036
In re: Plasma-Derivative Protein Therapies Antitrust Litigation	N.D. Ill., No. 09-CV-7666
Simpson v. Citizens Bank **(Overdraft Fees)**	E.D. Mich., No. 2:12-cv-10267
George Raymond Williams, M.D., Orthopedic Surgery, a Professional Medical, LLC, et al. v. Bestcomp, Inc., et al.	27th Jud. D. Ct. La., No. 09-C-5242-B
Simmons v. Comerica Bank, N.A.**, as part of *In re: Checking Account Overdraft***	S.D. Fla., MDL No. 2036
McGann, et al., v. Schnuck Markets, Inc. **(Data Breach)**	Mo. Cir. Ct., No. 1322-CC00800
Rose v. Bank of America Corporation, et al. **(TCPA)**	N.D. Cal., Nos. 5:11-cv-02390 & 5:12-cv-0400
Johnson v. Community Bank, N.A., et al. **(Overdraft Fees)**	M.D. Pa., No. 3:12-cv-01405
National Trucking Financial Reclamation Services, LLC, et al. v. Pilot Corporation, et al.	E.D. Ark., No. 4:13-cv-00250
Price v. BP Products North America	N.D. Ill., No. 12-cv-06799
Yarger v. ING Bank	D. Del., No. 11-154-LPS
Glube, et al. v. Pella Corporation, et al. **(Building Products)**	Ont. Super. Ct., No. CV-11-4322294-00CP
Fontaine v. Attorney General of Canada **(Mistassini Hostels Residential Schools)**	Qué. Super. Ct., No. 500-06-000293-056 & No. 550-06-000021-056
Miner v. Philip Morris Companies, Inc., et al. **(Light Cigarettes)**	Ark. Cir. Ct., No. 60CV03-4661
Williams v. SIF Consultants of Louisiana, Inc., et al.	27th Jud. D. Ct. La., No. 09-C-5244-C
Opelousas General Hospital Authority v. Qmedtrix Systems, Inc.	27th Jud. D. Ct. La., No. 12-C-1599-C
Evans, et al. v. TIN, Inc., et al. **(Environmental)**	E.D. La., No. 2:11-cv-02067
Anderson v. Compass Bank**, as part of *In re: Checking Account Overdraft***	S.D. Fla., MDL No. 2036
Casayuran v. PNC Bank**, as part of *In re: Checking Account Overdraft***	S.D. Fla., MDL No. 2036
Eno v. M & I Marshall & Ilsley Bank **as part of *In re: Checking Account Overdraft***	S.D. Fla., MDL No. 2036
Blahut v. Harris, N.A.**, as part of *In re: Checking Account Overdraft***	S.D. Fla., MDL No. 2036
In re: Zurn Pex Plumbing Products Liability Litigation	D. Minn., MDL No. 1958, No. 08-md-1958
Saltzman v. Pella Corporation **(Building Products)**	N.D. Ill., No. 06-cv-4481
In re: Payment Card Interchange Fee and Merchant Discount Antitrust Litigation **(Mastercard & Visa)**	E.D.N.Y., MDL No. 1720, No. 05-MD-1720
RBS v. Citizens Financial Group, Inc.**, as part of *In re: Checking Account Overdraft***	S.D. Fla., MDL No. 2036

Gessele, et al. v. Jack in the Box, Inc.	D. Ore., No. 3:10-cv-960
Vodanovich v. Boh Brothers Construction **(Hurricane Katrina Levee Breaches)**	E.D. La., No. 05-cv-4191
In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010 **(Medical Benefits Settlement)**	E.D. La., MDL No. 2179
In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010 **(Economic & Property Damages Settlement)**	E.D. La., MDL No. 2179
Marolda v. Symantec Corporation **(Software Upgrades)**	N.D. Cal., No. 3:08-cv-05701
Opelousas General Hospital Authority v. FairPay Solutions	27th Jud. D. Ct. La., No. 12-C-1599-C
Fontaine v. Attorney General of Canada **(Stirland Lake and Cristal Lake Residential Schools)**	Ont. Super. Ct., No. 00-CV-192059 CP
Nelson v. Rabobank, N.A. **(Overdraft Fees)**	Sup. Ct. Cal., No. RIC 1101391
Case v. Bank of Oklahoma**, as part of** ***In re: Checking Account Overdraft***	S.D. Fla., MDL No. 2036
Harris v. Associated Bank**, as part of** ***In re: Checking Account Overdraft***	S.D. Fla., MDL No. 2036
Wolfgeher v. Commerce Bank**, as part of** ***In re: Checking Account Overdraft***	S.D. Fla., MDL No. 2036
McKinley v. Great Western Bank**, as part of** ***In re: Checking Account Overdraft***	S.D. Fla., MDL No. 2036
Lawson v. BancorpSouth **(Overdraft Fees)**	W.D. Ark., No. 1:12cv1016
LaCour v. Whitney Bank **(Overdraft Fees)**	M.D. Fla., No. 8:11cv1896
Sachar v. Iberiabank Corporation**, as part of** ***In re: Checking Account Overdraft***	S.D. Fla., MDL No. 2036
Williams v. S.I.F. Consultants **(CorVel Corporation)**	27th Jud. D. Ct. La., No. 09-C-5244-C
Gwiazdowski v. County of Chester **(Prisoner Strip Search)**	E.D. Pa., No. 2:08cv4463
Williams v. Hammerman & Gainer, Inc. **(SIF Consultants)**	27th Jud. D. Ct. La., No. 11-C-3187-B
Williams v. Hammerman & Gainer, Inc. **(Risk Management)**	27th Jud. D. Ct. La., No. 11-C-3187-B
Williams v. Hammerman & Gainer, Inc. **(Hammerman)**	27th Jud. D. Ct. La., No. 11-C-3187-B
Gunderson v. F.A. Richard & Assocs., Inc. **(First Health)**	14th Jud. D. Ct. La., No. 2004-002417
Delandro v. County of Allegheny **(Prisoner Strip Search)**	W.D. Pa., No. 2:06-cv-00927
Mathena v. Webster Bank, N.A.**, as part of** ***In re: Checking Account Overdraft***	D. Conn, No. 3:10-cv-01448, as part of S.D. Fla., MDL No. 2036
Vereen v. Lowe's Home Centers **(Defective Drywall)**	Ga. Super. Ct., No. SU10-CV-2267B
Trombley v. National City Bank**, as part of** ***In re: Checking Account Overdraft***	D.D.C., No. 1:10-CV-00232, as part of S.D. Fla., MDL No. 2036

Schulte v. Fifth Third Bank **(Overdraft Fees)**	N.D. Ill., No. 1:09-cv-06655
Satterfield v. Simon & Schuster, Inc. **(Text Messaging)**	N.D. Cal., No. 06-CV-2893
In re: Heartland Data Payment System Inc. Customer Data Security Breach Litigation	S.D. Tex., MDL No. 2046
Coyle v. Hornell Brewing Co. **(Arizona Iced Tea)**	D.N.J., No. 08-CV-2797
Holk v. Snapple Beverage Corporation	D.N.J., No. 3:07-CV-03018
Weiner v. Snapple Beverage Corporation	S.D.N.Y., No. 07-CV-08742
Gunderson v. F.A. Richard & Assocs., Inc. **(Cambridge)**	14th Jud. D. Ct. La., No. 2004-002417
Miller v. Basic Research, LLC **(Weight-loss Supplement)**	D. Utah, No. 2:07-cv-00871
In re: Countrywide Customer Data Breach Litigation	W.D. Ky., MDL No. 1998
Boone v. City of Philadelphia **(Prisoner Strip Search)**	E.D. Pa., No. 05-CV-1851
Little v. Kia Motors America, Inc. **(Braking Systems)**	N.J. Super. Ct., No. UNN-L-0800-01
Opelousas Trust Authority v. Summit Consulting	27th Jud. D. Ct. La., No. 07-C-3737-B
Steele v. Pergo **(Flooring Products)**	D. Ore., No. 07-CV-01493
Pavlov v. Continental Casualty Co. **(Long Term Care Insurance)**	N.D. Ohio, No. 5:07-cv-2580
Dolen v. ABN AMRO Bank N.V. **(Callable CD's)**	Ill. Cir. Ct., Nos. 01-L-454 & 01-L-493
In re: Department of Veterans Affairs (VA) Data Theft Litigation	D.D.C., MDL No. 1796
In re: Katrina Canal Breaches Consolidated Litigation	E.D. La., No. 05-4182

Hilsoft-cv-146

Attachment 2

Epiq Notice Plan

In re: Capital One Consumer Data Security Breach Litigation

MDL No. 1:19md2915 (AJT-JFA)
(E.D. Va.)

January 31, 2022

INTRODUCTION

Hilsoft Notifications, is a firm that specializes in designing, developing, analyzing, and implementing large-scale, un-biased, legal notification plans. Hilsoft Notifications is a business unit of Epiq.[1] Epiq is a leading provider of legal notice services for large-scale class action and bankruptcy matters. We specialize in providing quality, expert, notice plan development – designing notice programs that satisfy due process requirements and withstand judicial scrutiny. Epiq has been retained by defendants and/or plaintiffs for more than 500 cases, including more than 45 MDL cases, with notices appearing in more than 53 languages and in almost every country, territory and dependency in the world. For more than 25 years, Epiq's notice plans have been approved and upheld by courts.

The Notice Plan proposed here for *In re: Capital One Consumer Data Security Breach Litigation*, Case No. 1:19-md-02915-AJT-JFA in the United States District Court for the Eastern District of Virginia was developed based on Epiq's prior experience and research into the notice issues in this case. Our team of experts have analyzed and propose the most effective method practicable of providing notice to the Settlement Class.

The Notice Plan will provide the best practicable notice under the circumstances of this case, conform to all aspects of Federal Rule of Civil Procedure, Rule 23 regarding notice, comport with the guidance for effective notice articulated in the Manual for Complex Litigation 4th Ed. and FJC guidance, and exceed the requirements of due process, including its "desire to actually inform" requirement.

In 2010, the Federal Judicial Center issued a Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide. This Guide states that, "the lynchpin in an objective determination of the adequacy of a proposed notice effort is whether all the notice efforts together will reach a high percentage of the class. It is reasonable to reach between 70–95%." Here, we have developed a Notice Plan that will readily achieve a reach within that standard with individual notice and supplemental media notice.

Settlement Class Member Composition

The Settlement Class in this case is defined as the approximately 98 million U.S. residents identified by Capital One whose information was accessed in the Data Breach that Capital One announced on July 29, 2019, as reflected in the Class List. Excluded from the Settlement Class are (i) Capital One, any entity in which Capital One has a controlling interest, and Capital One's officers, directors, legal representatives, Successors, Subsidiaries, and assigns; (ii) any judge, justice, or judicial officer presiding over the Action and the members of their immediate families and judicial staff; and (iii) any individual who timely and validly opts out of the Settlement Class.

On July 29, 2019, Capital One announced that it had been the victim of a criminal cyberattack in which the attacker was able to gain unauthorized access to information relating to approximately 98 million individuals in the United States stored in Capital One's cloud environment hosted by Amazon. The information included in the data breach included names, addresses, zip codes, phone numbers, email addresses, dates of birth, self-reported

[1] All references to Epiq within this Notice Plan include Hilsoft Notifications.

income, Social Security numbers of approximately120,000 people, linked bank account numbers of approximately 80,000 people, credit scores, credit limits, credit balances, payment history, and fragments of transaction data.

NOTICE PLAN OVERVIEW

This Notice Plan describes in detail the process for implementing and executing a plan to notify Settlement Class Members of, among other things, (i) the Settlement, (ii) the availability and process for claiming benefits under the Consumer Settlement Benefits Plan, and (iii) the procedure for Settlement Class Members to object to the Settlement and request exclusion from the Settlement.

The Notice Plan includes the following components to be handled by Epiq as the Settlement Administrator:

- Direct Mail Notice – individual email notice and/or mailed postcard notice;
- Digital Notice – paid notice on *Google Display Network*, *Facebook*, *Instagram*, and *Twitter*;
- Internet Sponsored Search – paid notice on *Google*, *Yahoo!*, and *Bing;* and
- Settlement Website – access to forms of notice.

The Notice Plan individual notice efforts alone will reach at least 90% of the identified Settlement Class. The digital notice, internet sponsored search, and a Settlement website will further enhance the notice efforts and provide the Settlement Class with additional exposure to notice. These efforts are consistent with other, similar court approved notice plans.

INDIVIDUAL NOTICE

Defendant Capital One will provide to Epiq a Class List that includes Settlement Class Members' full names, current addresses, and email addresses (to the extent available) as reflected in Capital One's records. Capital One will separately identify those Settlement Class Members with compromised social security numbers or bank account information. For records without an associated email address, Epiq will work with a third party to perform "reverse look-ups" to find associated email addresses for each record that may be available in publicly available databases.

The proposed Notice Plan provides for first sending individual notice via email ("Email Notice") to all identified Settlement Class Members with a valid email address (either provided by Capital One or appended via the reverse look-up process). For those records with an associated physical address for whom a valid email address is not provided or cannot be determined, or the email address is undeliverable after multiple attempts, a Postcard Notice will be mailed via United States Postal Service ("USPS") first class mail.

All Email and Postcard Notices will include a unique identifying number for each identified Settlement Class Member to allow for more secure online claim processing and the efficient processing of any returned paper Claim Forms.

Individual Email Notice

An Email Notice will be sent via email to all identified Settlement Class Members for whom a valid email address is available or can be appended via the reverse look-up process. Industry standard best practices will be followed for the Email Notice efforts. The Email Notice will be drafted in such a way that the subject line, the sender, and the body of the message overcome SPAM filters and ensure readership to the fullest extent reasonably practicable. For instance, the Email Notice will use an embedded html text format. This format will provide easy to read text without graphics, tables, images, attachments, and other elements that would increase the likelihood that the message could be blocked by Internet Service Providers (ISPs) and/or SPAM filters. The Email Notices will be sent from an IP address known to major email providers as one not used to send bulk "SPAM" or "junk" email blasts. Each Email Notice will be transmitted with a digital signature to the header and content of the Email Notice, which will allow ISPs to programmatically authenticate that the Email Notices are from our authorized mail servers. Each Email Notice will also be transmitted with a unique message identifier. The Email Notice will include embedded links to the Settlement Website, the Claim Form, and the Long Form Notice. By clicking the links, recipients will be able to easily file an online claim, access the Long Form Notice, Settlement Agreement, and other information about the Settlement.

If the receiving email server cannot deliver the message, a "bounce code" will be returned along with the unique message identifier. For any Email Notice for which a bounce code is received indicating that the message was undeliverable for reasons such as an inactive or disabled account, the recipient's mailbox was full, technical autoreplies, etc., at least two additional attempts will be made to deliver the Notice by email.

Individual Direct Mail Notice

A Postcard Notice will be sent to all identified Settlement Class Members with an associated physical address for whom a valid email address is not available or the email address is undeliverable after multiple attempts. The Postcard Notice will be sent via USPS first class mail. The Postcard Notice clearly and concisely summarizes the case and the legal rights of the Settlement Class Members. The Postcard Notice will also direct the recipients to the Settlement website where they can access additional information.

Prior to sending the Postcard Notice, all mailing addresses will be checked against the National Change of Address ("NCOA") database maintained by the USPS to ensure Settlement Class Member address information is up-to-date and accurately formatted for mailing.[2] In addition, the addresses will be certified via the Coding Accuracy Support System (CASS) to ensure the quality of the zip code, and will be verified through Delivery Point

[2] The NCOA database is maintained by the USPS and consists of approximately 160 million permanent change-of-address (COA) records consisting of names and addresses of individuals, families, and businesses who have filed a change-of-address with the Postal Service™. The address information is maintained on the database for 48 months and reduces undeliverable mail by providing the most current address information, including standardized and delivery point coded addresses, for matches made to the NCOA file for individual, family, and business moves.

Validation (DPV) to verify the accuracy of the addresses. This address updating process is standard for the industry and for the majority of promotional mailings that occur today.

Postcard Notices returned as undeliverable will be re-mailed to any new address available through USPS information, for example, to the address provided by the USPS on returned pieces for which the automatic forwarding order has expired, but which is still during the period in which the USPS returns the piece with the address indicated, or to better addresses that may be found using a third-party lookup service. Upon successfully locating better addresses, Postcard Notices will be promptly remailed.

PAID NOTICE MEDIA PROGRAM

Individual notice in the form of email and/or mailed notice will be utilized to reach the vast majority of Settlement Class Members. In addition, the Notice Plan will provide targeted, supplemental notice to the Settlement Class. Paid media will serve to reinforce and remind Settlement Class Members who receive direct mail notice as well as reach some adults who may be a Settlement Class Member, but did not receive individual direct notice. The Notice Plan targets media notice to both Capital One cardholders and all adults 18 years old or older in the United States.

Demographics

In selecting media to target to the Settlement Class, demographics were analyzed. According to MRI-Simmons[3] syndicated media research, people who have a Capital One card have the following demographics:

- 48.7% men / 51.3% women
- 51.2% are aged 18-49
- Mean household income is approximately $107K
- 22.1% have a household income over $150K
- 56.2% are currently married
- 35.8% have graduated college or received a post-graduate degree
- Capital One credit card owners are also 8% more likely to have graduated college or received a post-graduate degree than the average adult
- 72.0% own a home and they are 5% more likely to own a home than the average adult
- Mean value of owned home is approximately $315K
- 76.3% are White, 13.6% are Black, and 3.8% are Asian

[3] MRI-Simmons is a leading source of publication readership and product usage data for the communications industry. MRI-Simmons is the new name for the joint venture of GfK Mediamark Research & Intelligence, LLC ("MRI") and Simmons Market Research. MRI-Simmons offers comprehensive demographic, lifestyle, product usage and exposure to all forms of advertising media collected from a single sample. As the leading U.S. supplier of multimedia audience research, the company provides information to magazines, televisions, radio, Internet, and other media, leading national advertisers, and over 450 advertising agencies—including 90 of the top 100 in the United States. MRI-Simmons's national syndicated data is widely used by companies as the basis for the majority of the media and marketing plans that are written for advertised brands in the U.S.

- 9% are Veterans of the U.S. Armed Forces
- 52.1% are employed full time, 12.1% are employed part time, and 21.5% are retired

Digital Notice

According to MRI-Simmons syndicated media research, 94% of all adults and 96% of adults with a Capital One card in the United States are online. Additionally, 83% of all adults use social media and 85% of adults with a Capital One card use social media. Ads will run across display, social and search networks on mobile, desktop and tablet devices.[4]

Display Banner Notices

Targeted digital display advertising will be used to reach potential Settlement Class Members who are not actively seeking information about the case or who may be unaware of the Settlement. Multiple Banner Notice ad unit sizes across the *Google Display Network* will target both adults aged 18+ in the United States as well as those with specific affinities for Capital One in the United States.

- Use of advanced algorithms from *Google Display Network* will help to identify consumer audience targets that match the Settlement Class.
    - In-Market Audiences allow Banner Notices to be targeted to connect with consumers who are actively researching or comparing products and services across *Google Display Network* publisher and partner sites.
    - Custom Affinity Audiences allow Banner Notices to be targeted to specific website content, here meaning websites, blogs, etc. that include banking, finance and credit and lending content.
- Approximately 57 million total display Banner Notice impressions will be delivered nationwide[5].
- Banner Notices will run for 30 days.
- Users who click the Banner Notices will also be retargeted to increase frequency and effectiveness of the campaign.
- Banner Notices will include a headline and urge readers to click to the Settlement website for additional information.

Google
DISPLAY NETWORK

[4] MRI-Simmons 2021 Survey of the American Consumer®.
[5] The third-party ad management platform, ClickCease, will be used to audit any digital Banner Notice ad placements. This type of platform tracks all Banner Notice ad clicks to provide real-time ad monitoring, fraud traffic analysis, blocks clicks from fraudulent sources, and quarantines dangerous IP addresses. This helps reduce wasted, fraudulent or otherwise invalid traffic (*e.g.*, ads being seen by 'bots' or non-humans, ads not being viewable, etc.).

Social Networks

Facebook, *Instagram*, and *Twitter* will play a central role in the digital notice campaigns. According to Statista research, over 223 million adults in the United States used social media in 2020.[6] Of those social media networks, *Facebook* is the most popular in the United States based on monthly active users. As with display advertising, Banner Notices will be targeted to both adults aged 18+ in the United States as well as adults with an interest in Capital One in the United States. The Banner Notices will be displayed on all three social networks. More than 59 million impressions will run over 30 days. Banner Notices will link directly to the Settlement website for additional information.

Internet Sponsored Search

Social media and display notice efforts will be supplemented by a search campaign designed to reach Settlement Class Members who are searching for information online relating to the Settlement.

Search campaigns on *Google*, *Yahoo!*, and *Bing* will bid on dozens of case-related keywords such as "Capital One Data Breach" and "Capital One Settlement". Exact search terms will be developed with counsel at the time of the buy. All sponsored search ads will link directly to the Settlement website.

NOTICE MATERIALS

Epiq has reviewed the proposed notices to ensure that all notices, including print and digital advertisements, feature plain language, and will be easily understandable by Settlement Class Members. The proposed notices are clear, concise, substantive, and informative. All forms of notice will include the address of the Settlement website and the toll-free telephone number. By calling the toll-free telephone number, Settlement Class Members will be able to contact the Settlement Administrator to request a notice, listen to answers to frequently asked questions ("FAQs") about the Settlement, and/or speak to a live operator.

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[6] Statista, founded in 2007, is a leading provider of worldwide market and consumer data and is trusted by thousands of companies around the world for data. Statista.com consolidates statistical data on over 80,000 topics from more than 22,500 sources and makes it available in German, English, French and Spanish.

SETTLEMENT WEBSITE

A dedicated Settlement website with an easy to remember domain name will be created and maintained for the Settlement. The website address will be prominently displayed in the notices and digital notices will link directly to the Settlement website. Relevant documents, including the Long Form Notice (in English and Spanish), Claim Form, Settlement Agreement, Complaint(s), Motion for Preliminary Approval, Preliminary Approval Order once entered by the Court, and after filing, Motion for Attorneys' Fees and Costs, and Motion for Final Approval will be posted on the Settlement website. Settlement Class Members will be able to file a Claim Form electronically on the Settlement website. In addition, the Settlement website will include relevant dates, answers to FAQs, instructions for how Settlement Class Members may opt-out (request exclusion) from or object to the Settlement, contact information for the Settlement Administrator, and other case-related information.

NOTICE IMPLEMENTATION DECLARATION

After the Notice Plan has been implemented, Epiq will provide a notice implementation declaration for filing with the Court that will detail the successful implementation of all the notice elements provided in the Notice Plan and the settlement administration results to date. Attachments to the notice implementation declaration will include the appropriate details as well as any verifications of performance of the direct mail notice efforts and the paid notice portion of the Notice Plan.

CONCLUSION

The Notice Plan will provide the best practicable notice under the circumstances of this case, conform to all aspects of Federal Rule of Civil Procedure, Rule 23 regarding notice, comport with the guidance for effective notice articulated in the Manual for Complex Litigation 4th Ed. and FJC guidance, and exceed the requirements of due process, including its "desire to actually inform" requirement. The Notice Plan individual efforts alone will reach at least 90% of the identified Settlmeent Class. The digital notice, internet sponsored search, and a Settlement website will further enhance the notice efforts and provide the Settlement Class with additional exposure to notice. These efforts are consistent with other similar court approved notice plans.

EXHIBIT 6

EXHIBIT 6

PROPOSED NOTICES:

LONG FORM NOTICE

EMAIL NOTICE - GENERAL

EMAIL NOTICE – CLAIMANTS WHOSE SOCIAL SECURITY NUMBERS OR LINKED BANK ACCOUNT NUMBERS WERE ACCESSED

POSTCARD NOTICE

LONG FORM NOTICE

This is a Court approved Legal Notice.

In re: Capital One Inc. Customer Data Security Breach Litigation,
MDL No. 1:19md2915 (AJT/JFA)

CAPITAL ONE DATA BREACH CLASS ACTION SETTLEMENT

IF YOUR INFORMATION WAS ACCESSED IN THE 2019 CAPITAL ONE DATA BREACH, YOU ARE ELIGIBLE FOR BENEFITS FROM A CLASS ACTION SETTLEMENT

A class action settlement has been proposed in a case against Capital One Financial Corporation, Capital One, N.A., and Capital One Bank (USA), N.A. ("Capital One"), and against Amazon.com, Inc., and Amazon Web Services, Inc. ("Amazon") (together "Defendants"), relating to a data breach that Capital One announced in July 2019 (the "Data Breach"). If you are a Settlement Class Member, there will be benefits available to you from the proposed settlement. **The easiest way to submit a claim under the settlement is online at www.CapitalOneSettlement.com**. If you are unsure of whether you are eligible for benefits, visit the website or call **1-855-604-1811.**

In addition to other benefits, the proposed settlement requires Capital One to establish a "Settlement Fund" of $190 million. The settlement relief includes:

- Cash Payment for Out-of-Pocket Losses: The Settlement Fund will be used to reimburse verifiable unreimbursed costs or expenditures that a Settlement Class Member actually incurred and believes are fairly traceable to the Data Breach. This includes costs incurred as a result of identity theft or identity fraud, falsified tax returns, or other alleged misuse of a Settlement Class Member's personal information; and costs incurred on or after March 22, 2019 associated with placing or removing a credit freeze on a credit file, obtaining credit reports, credit monitoring or other products related to detection or remediation of identity theft, and other related miscellaneous expenses such as notary, fax, postage, copying, mileage, and long-distance telephone charges ("Out-of-Pocket Losses").
- Cash Payment for Lost Time: The Settlement Fund will be used to reimburse for time spent remedying fraud, identity theft, or other misuse of a Settlement Class Member's personal information that he or she believes is fairly traceable to the Data Breach, and for time spent taking preventative measures to avoid losses relating to the Data Breach ("Lost Time"). Lost Time related to a qualifying claim for Out-of-Pocket Losses may be supported by a certification for up to 15 hours. Lost Time not related to a qualifying claim for Out-of-Pocket Losses may be supported by a certification for up to 5 hours. The "Reimbursement Rate" for Lost Time shall be the greater of $25 per hour or, if the Settlement Class Member took time off work, the Settlement Class Member's documented hourly wage.
- Identity Defense Services: All Settlement Class Members are eligible to enroll in at least three (3) years of Identity Defense Services offered at no cost through Pango. The services include dark web monitoring for your personal information, identity monitoring with authentication alerts, lost wallet protection, security freeze capability, a $1 million identity theft insurance

policy with no deductible, and other features discussed below ("Identity Defense Services"). If a Settlement Class Member's Social Security number or linked bank account number was accessed in the Data Breach, their Identity Defense Services will also include Three-Bureau Credit Monitoring with instant alerts and a monthly credit score. You can make a claim for both cash payments and Identity Defense Services.

- Restoration Services: All Settlement Class Members (regardless of whether they enroll in Identity Defense Services or submit a claim for Out-of-Pocket Losses or Lost Time) will be entitled to utilize Restoration Services offered through Pango for a period of at least three (3) years ("Restoration Services"). This coverage is a separate benefit and permits all Settlement Class Members to have access to U.S.-based fraud resolution specialists who can assist with important tasks such as placing fraud alerts with the credit bureaus, disputing inaccurate information on credit reports, scheduling calls with creditors and other service providers, and working with law enforcement and government agencies to dispute fraudulent information.
- Capital One Business Practices Changes: Capital One has agreed to implement and/or maintain certain business practices changes relating to its information security program. A description of those Business Practices Changes are available on the settlement website.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT		DEADLINE
File a claim for Out-of-Pocket Losses or Lost Time	You must submit a claim in order to receive reimbursement for Out-of-Pocket Losses and/or Lost Time under the settlement. For more detailed information, see Questions 6-7.	**DATE**
File a claim for Identity Defense Services	You must take action in order to receive the free Identity Defense Services offered under the settlement. To maximize protection provided by this service, you should file a claim by **DATE** [Claims Deadline]. You may also enroll later at any time the service is active (at least 3 years). For more detailed information, see Question 8.	**DATE**
Access to Restoration Services	You may access Restoration Services after the settlement becomes final, whether or not you make a claim under the settlement. For more detailed information, see Question 9.	**No deadline. Services will be available for at least 3 years.**

Exclude yourself from the settlement	You can exclude yourself from the settlement by informing the Settlement Administrator that you want to "opt-out" of the settlement. If the settlement becomes final, this is the only option that allows you to retain your rights to separately sue Capital One or Amazon for claims related to the Data Breach. If you opt-out, you may not make a claim for benefits under the settlement. For more detailed information, see Question 19.	**DATE**
Object or comment on the settlement	You may object to the settlement by writing to explain to the Court why you don't think the settlement should be approved. If you object, you will remain a Settlement Class Member, and if the settlement is approved, you will be eligible for the benefits of the settlement and give up your right to sue Capital One or Amazon on certain claims described in the Settlement Agreement, which is available at www.CapitalOneSettlement.com. For more detailed information, see Question 20.	**DATE**
Do nothing	If you do nothing, you can still sign up for Identity Defense Services after the Effective date, and access Restoration Services, but will not be entitled to any other benefits provided under the settlement. If the settlement becomes final, you will give up your rights to sue Capital One or Amazon separately for claims relating to the Data Breach or to continue to pursue any such claims you have already filed.	

What this Notice Contains

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BASIC INFORMATION AND OVERVIEW

1. What is this notice, and why did I get it?

A Court authorized this notice to inform you how you may be affected by this proposed settlement. This notice describes the lawsuit, the general terms of the proposed settlement and what it may mean to you. This notice also explains how to participate in, or exclude yourself from, the settlement if your information was accessed in the Capital One Data Breach.

For information on how to determine if you are a Settlement Class Member, and therefore eligible for benefits under this settlement, see Question 5.

2. What is this lawsuit about?

In July 2019, Capital One announced that it had been the victim of a criminal cyberattack on its systems. The attacker gained unauthorized access to the personal information of approximately 98 million U.S. consumers. The specific information accessed for each person included some combination of people's names, addresses, zip codes/postal codes, phone numbers, email addresses, dates of birth, self-reported income, credit scores, credit limits, balances, payment history, contact data, and/or fragments of transaction data from a total of 23 days during 2016, 2017 and 2018. In addition, about 120,000 Social Security numbers and 80,000 linked bank account numbers were accessed.

Numerous lawsuits were brought on behalf of consumers whose personal information was accessed as a result of the Data Breach. Judge Anthony J. Trenga of the U.S. District Court for the Eastern District of Virginia is overseeing these lawsuits. These lawsuits are known as *In re: Capital One Inc. Customer Data Security Breach Litigation*, MDL No. 1:19md2915 (AJT/JFA). The consumers who sued are called the "Plaintiffs." Capital One and Amazon are the "Defendants." Plaintiffs claim that Defendants did not adequately protect consumers' personal information. The most recent version of the lawsuit, which describes the specific legal claims alleged by the Plaintiffs, is available at www.CapitalOneSettlement.com. Defendants denied any wrongdoing and denied that the information accessed by the attacker had been made public or disseminated by the attacker. No court or other judicial entity has made any judgment or other determination of any wrongdoing by Capital One or Amazon.

3. Why is this a class action?

In a class action, one or more people called "class representatives" sue on behalf of themselves and other people with similar claims. All of these people together are the "class" or "class members." Because this is a class action settlement, even persons who did not file their own lawsuit can obtain benefits provided under the settlement, except for those individuals who exclude themselves from the settlement class by the deadline.

4. Why is there a settlement?

The Court has not decided in favor of Plaintiffs or Defendants. Instead, both sides agreed to a settlement after a lengthy mediation process overseen by a neutral mediator. Settlements avoid the costs and uncertainty of a trial and related appeals, while more quickly providing benefits to members of the settlement class. The class representatives appointed to represent the class and the attorneys for the settlement class ("Class Counsel," see Question 16) believe that the settlement is in the best interests of the Settlement Class Members.

WHO IS PART OF THE SETTLEMENT

5. How do I know if I am part of the settlement?

You are a Settlement Class Member if you are among the approximately 98 million U.S. residents identified by Capital One whose information was accessed in the Capital One Data Breach. All identified Class Members were emailed or mailed notice of the proposed Settlement, so if you received a notice, you are a likely member of the Settlement Class.

You can also confirm you are a Settlement Class Member, and eligible for benefits, by:

- Visiting the secure web page **https://www.CapitalOneSettlement.com**; or
- Calling **1-855-604-1811**.

Excluded from the settlement are:

- Officers and directors of Capital One and Amazon;
- The presiding judge and any judicial staff involved in the lawsuit; and
- Any Class Member who opts-out (*see* Question 19).

THE SETTLEMENT BENEFITS

6. What does the settlement provide?

Capital One will pay $190,000,000 into a Settlement Fund. The Settlement Fund will be used to:

- Make cash payments for Out-of-Pocket Losses and Lost Time (*see* Question 7);
- Purchase Identity Defense Services (*see* Question 8);
- Purchase Restoration Services for all Settlement Class Members, regardless of whether they make a claim (*see* Question 9);
- Pay the costs of notifying Settlement Class Members and administering the Settlement;

- Pay service awards to Settlement Class Representatives and any other Settlement Class Member who was deposed in the action, as approved by the Court (*see* Question 18);

- Pay attorneys' fees, costs, and expenses, as approved by the Court (*see* Question 17).

Capital One has also agreed to implement and/or maintain certain business practices relating to its information security program (*see* Question 10). A description of these business practices commitments is available in the Settlement Agreement, which is available at www.CapitalOneSettlement.com.

7. How will the settlement compensate me for identity theft I have already suffered or money I have already paid to protect myself?

Settlement Benefit: Payment for Unreimbursed Out-of-Pocket Losses: If you spent money to deal with fraud or identity theft that you believe was fairly traceable to the Data Breach, or to protect yourself from future harm as a result of the Data Breach, then you can submit a claim for reimbursement up to $25,000 (including your claim for Lost Time). Out-of-Pocket Losses that are eligible for reimbursement may include, without limitation, the following:

- Money spent on or after March 22, 2019, associated with placing or removing a security freeze on your credit report with any credit reporting agency;

- Money spent on credit monitoring or identity theft protection on or after March 22, 2019;

- Unreimbursed costs, expenses, losses or charges you paid on or after March 22, 2019, because of identity theft or identity fraud, falsified tax returns, or other alleged misuse of your personal information that you believe was fairly traceable to the Data Breach;

- Other miscellaneous expenses related to any Out-Of-Pocket Loss that you believe were fairly traceable to the Data Breach such as notary, fax, postage, copying, mileage, and long-distance telephone charges; and

- Professional fees incurred in connection with addressing identity theft, fraud, or falsified tax returns that you believe was fairly traceable to the Data Breach.

This list provides examples only, and other losses or costs that you believe are fairly traceable to the Data Breach may also be eligible for reimbursement.

To claim reimbursement for Out-of-Pocket Losses, you must also provide "Reasonable Documentation." Reasonable Documentation means documentation supporting your claim, including, but not limited to credit card statements, bank statements, invoices, telephone records, and receipts. Except as expressly provided in this notice, personal certifications, declarations, or affidavits from the claimant do not constitute Reasonable Documentation but may be included to provide clarification, context or support for other submitted Reasonable Documentation.

The Settlement Administrator will decide if your claim for Out-of-Pocket Losses is valid. Only valid claims will be paid. The deadline to file a claim for Out-of-Pocket Losses is **[CLAIMS DEADLINE]**.

Settlement Benefit: Cash Payment for Lost Time: If you spent time (i) remedying fraud, identity theft, or other alleged misuse of your personal information that you believe is fairly traceable to the Data Breach, or (ii) taking preventative measures (time placing or removing security freezes on your credit report, or purchasing credit monitoring or identity protection) on or after March 22, 2019, then you may make a claim for reimbursement for Lost Time at a Reimbursement Rate of the greater of $25 per hour or, if you took time off work, your documented hourly wage.

For Lost Time related to qualifying Out-of-Pocket Losses, you may receive reimbursement for up to 15 hours at your Reimbursement Rate. For Lost Time not related to qualifying Out-of-Pocket Losses ("Self-Certified Time"), you may receive reimbursement for up to 5 hours at the Reimbursement Rate. To make a claim for Lost Time, you must provide a description of (i) the actions taken in response to the Data Breach in dealing with misuse of your information or taking preventative measures and (ii) the time associated with those actions. You must certify that the description is truthful. Valid claims for Lost Time will be reimbursed in 15-minute increments.

The deadline to file a claim for Lost Time is **[CLAIMS DEADLINE]**.

8. How will the settlement help protect me against future identity theft and fraud?

Settlement Benefit: Identity Defense Services: The settlement provides a way to help protect yourself from unauthorized use of your personal information. Settlement Class Members may submit a claim to enroll in at least three (3) years of Identity Defense Services, provided through Pango, at no cost. These services include the following features:

- Dark web monitoring for your Social Security number, date of birth, address, driver's license number, passport number, payment cards, email addresses, and other information;
- Identity monitoring with authentication alerts;
- Lost wallet protection;
- Security freeze capability in multiple categories: Credit–-Experian, Equifax, TransUnion and Innovis; Specialty Finance—Sage Stream, Clarity DATAX and CoreLogic; Closed Checking and Savings accounts—Chex Systems; Utilities—NCTUE
- $1 million in no-deductible insurance provided by a third-party insurer to cover certain costs related to identity theft or fraud;
- U.S.-based customer support specially trained in identity theft and fraud discovery and remediation; and
- Insight & Tips for members on the user dashboard.

If your Social Security number or linked bank account number was accessed in the Data Breach, your Identity Defense Services will also include:

- Three-bureau Credit Monitoring with instant alerts; and
- A Monthly Credit Score.

To maximize protection offered by this service, you should make a claim for Identity Defense Services by [CLAIMS DEADLINE]. You may later enroll in the free Identity Defense Services at any time while the service is active, which will be at least 3 years. Free Identity Defense Services will end on the same date regardless of when you enroll. The term of the Identity Defense Services may be extended if there are funds remaining in the Settlement Fund after the payment of all other benefits and costs provided by the settlement. See Question 11.

If you submit a valid claim form and elect to enroll in Identity Defense Services, you will receive enrollment instructions by email after approval of the settlement. You may make a claim for both reimbursement for Out-of-Pocket Losses and/or Lost Time and Identity Defense Services.

9. How will the settlement help me deal with identity theft or fraud if it happens?

Settlement Benefit: Free Restoration Services: All Settlement Class Members, even those who do not enroll in Identity Defense Services or do not submit a claim, will be entitled to utilize Restoration Services offered through Pango. This coverage is a separate benefit and provides all Settlement Class Members access to US-based fraud resolution specialists who can assist with important tasks such as placing fraud alerts with the credit bureaus, disputing inaccurate information on credit reports, scheduling calls with creditors and other service providers, and working with law enforcement and government agencies to dispute fraudulent information. All Settlement Class Members may access these free Restoration Services after the settlement becomes final, even if you never make a claim from this settlement, by going to www.CapitalOneSettlement.com, or calling toll free 1-855-604-1811.

10. Will the settlement include changes to Capital One's data security program?

Settlement Benefit: Data Security Business Practices Commitments by Capital One: Capital One has agreed to adopt, pay for, implement, and maintain extensive Business Practices Commitments related to information security for a period of at least two (2) years. A description of these Business Practices Commitments is available in the Settlement Agreement, which is available at www.CapitalOneSettlement.com.

11. What happens if there are leftover settlement funds?

The Settlement Fund will be used to pay claims for Out-of-Pocket Losses and Lost Time, for Identity Defense Services and Restoration Services, and for administrative and notice costs, and for service awards for Settlement Class Representatives and any other Settlement Class Member deposed in the case and attorneys' fees, costs, and expenses as approved by the Court.

- If settlement funds still remain after these payments, up to two (2) additional years of Identity Defense Services may be provided to Settlement Class Members who claimed Identity Defense Services, and the period for Restoration Services for all Settlement Class Members will be extended by the same period. Settlement Class Members may enroll in Identity Defense Services during the extended period.

- If settlement funds still remain, payments will be increased on a *pro rata* basis to Settlement Class Members submitting valid claims.

- Any remaining settlement funds resulting from the failure of Settlement Class Members to timely negotiate a settlement check or to timely provide required tax information such that a settlement check should issue, shall be distributed to Settlement Class Members, or as otherwise ordered by the Court, but no money will be returned to Capital One.

12. What happens if the Settlement Fund runs out of money?

If the payments described in Question 11 exceed the Settlement Fund, the cash payments will be reduced on a *pro rata* basis.

HOW TO GET SETTLEMENT BENEFITS

13. How do I file a claim for Identity Defense Services, Out-of-Pocket Losses, or Lost Time?

To file a claim for Identity Defense Services or for reimbursement for Out-of-Pocket Losses or Lost Time you will need to file a claim form. The easiest way to submit a claim form is online, by filling out the form at www.CapitalOneSettlement.com. You can also download a paper claim form and return a completed claim form by mail.

The deadline to file a claim for Out-of-Pocket Losses or Lost Time fairly traceable to the Data Breach is **[CLAIMS DEADLINE]** (this is the last day to file online and the postmark deadline for mailed claims). **To maximize protection offered by Identity Defense Services, you should make a claim for Identity Defense Services by [CLAIMS DEADLINE].** You may later enroll in Identity Defense Services at any time the service is active (at least 3 years)**, however all memberships in the free Identity Defense Services will end on the same date regardless of when you enroll.**

14. When and how will I receive the benefits I claim from the settlement?

Identity Defense Services claimed by Settlement Class Members will begin, and payments for valid claims for Out-of-Pocket Losses and/or Lost Time will be made, after the Court enters a final judgment and the settlement becomes final. This may take several months or more; please be patient. Periodic updates will be posted on the Settlement Administrator's website.

If you make a valid claim for Identity Defense Services, the Settlement Administrator will send you information on how to activate your Identity Defense Services once the settlement is final.

Payments for valid claims for Out-of-Pocket Losses and/or Lost Time will be made by the Settlement Administrator in the manner you select (various digital payment options or a paper check).

LEGAL RIGHTS RESOLVED THROUGH THE SETTLEMENT

15. What am I giving up to stay in the settlement class?

If you make a claim under the settlement, or if you do nothing, you will be releasing all of your legal claims relating to the Data Breach against Capital One and Amazon when the settlement becomes final. By releasing your legal claims, you are giving up the right to file, or to continue to pursue, separate legal claims against or seek further compensation from Capital One or Amazon for any harm related to the Data Breach or the claims alleged in the lawsuits—whether or not you are currently aware of those claims.

Unless you exclude yourself from the settlement (see Question 19), all of the decisions by the Court will bind you. That means you will be bound to the terms of the settlement and accompanying court orders, and cannot bring a lawsuit or be part of another lawsuit against Capital One or Amazon regarding the Data Breach.

Paragraph 2.34 of the Settlement Agreement defines the claims that will be released by Settlement Class Members who do not exclude themselves from the settlement. You can access the Settlement Agreement and read the specific details of the legal claims being released at www.CapitalOneSettlement.com.

If you have any questions, you can contact the Settlement Administrator (*see* Question 21).

THE LAWYERS REPRESENTING YOU

16. Do I have a lawyer in this case?

Yes. The Court appointed the following attorneys to represent you and other Settlement Class Members as "Class Counsel."

Norman E. Siegel
STUEVE SIEGEL HANSON LLP
460 Nichols Road, Suite 200
Kansas City, MO 64112

Karen Hanson Riebel
LOCKRIDGE GRINDAL NAUEN P.L.L.P.
100 Washington Avenue South
Suite 2200
Minneapolis, MN 55401

John A. Yanchunis
MORGAN & MORGAN COMPLEX LITIGATION GROUP
201 N. Franklin Street, 7th Floor
Tampa, FL 33602

You will not be charged by these lawyers for their work on the case. If you want to be represented by your own lawyer, you may hire one at your own expense.

If you have questions about making a claim, please contact the Settlement Administrator (*see* Question 21).

17. How will these lawyers be paid?

Class Counsel have undertaken this case on a contingency-fee basis, meaning they have paid for all of the expenses in the case and have not been paid any money in relation to their work on this case. Accordingly, Class Counsel will ask the Court to award them attorneys' fees of up to 35% of the Settlement Fund and reimbursement for costs and expenses to be paid from the Settlement Fund. The Court will decide the amount of fees and costs and expenses to be paid. You will not have to separately pay any portion of these fees yourself. Class Counsel's request for attorneys' fees and costs (which must be approved by the Court) will be filed by **[DATE]** and will be available to view on the settlement website at www.CapitalOneSettlement.com.

18. Will the class representatives receive any additional money?

The class representatives in this action are listed in the Settlement Agreement, which is available at www.CapitalOneSettlement.com. Capital One and Amazon also took the depositions of an additional set of class members pursuant to a court order. Class Counsel will ask the Court to award the class representatives and the other class members deposed in the case "service awards" of $5,000 each for the time that they spent, and the risks that they undertook, in bringing this lawsuit on behalf of the class. This amount will have to be approved by the Court. Any amount approved by the Court will be paid from the Settlement Fund.

EXCLUDING YOURSELF FROM THE SETTLEMENT

19. How do I exclude myself from the settlement?

If you are a member of the settlement class but do not want to remain in the class, you may exclude yourself from the class (also known as "opting out"). If you exclude yourself, you will lose any

right to participate in the settlement, including any right to receive the benefits outlined in this notice.

If you decide on this option, you may keep any rights you have, if any, against Capital One and/or Amazon and you may file your own lawsuit against Capital One and/or Amazon based upon the same legal claims that are asserted in this lawsuit, but you will need to find your own attorney at your own cost to represent you in that lawsuit. If you are considering this option, you may want to consult an attorney to determine your options.

IMPORTANT: You will be bound by the terms of the Settlement Agreement unless you submit a timely and signed written request to be excluded from the settlement. To exclude yourself from the settlement you must mail a "request for exclusion," postmarked no later than **[DATE]**, to:

Capital One Settlement Administrator
Attn: Exclusion
P.O. Box 4518
Portland, OR 97208-4518

This statement must contain the following information:

(1) The name of this action (*In re: Capital One Inc. Customer Data Security Breach Litigation*, MDL No. 1:19md2915 (AJT/JFA));

(2) Your full name and current address;

(3) Your personal signature (lawyer's signature is not sufficient);

(4) A statement clearly indicating your intent to be excluded from the settlement; and

(5) A statement that your request for exclusion applies only to you, the one Settlement Class Member whose personal signature appears on the request. (Requests seeking exclusion on behalf of more than one Settlement Class Member shall be deemed invalid by the Settlement Administrator.)

If you do not comply with these procedures and the deadline for exclusions, you will lose any opportunity to exclude yourself from the settlement class, and your rights will be determined in this lawsuit by the Settlement Agreement if it is approved by the Court.

OBJECTING OR COMMENTING ON THE SETTLEMENT

20. How do I tell the Court that I like or don't like the settlement?

If you are a Settlement Class Member, you have the right to tell the Court what you think of the settlement. You can object to the settlement if you don't think it is fair, reasonable, or adequate, and you can give reasons why you think the Court should not approve it. You can't ask the Court to order a larger settlement; the Court can only approve or deny the settlement as it is.

To object, you must send a written objection stating that you object to the settlement. Your objection must include:

(1) The case name and number of this action (*In re: Capital One Inc. Customer Data Security Breach Litigation*, Case No. MDL No. 1:19md2915 (AJT/JFA));

(2) Your full name and current address and telephone number, and if you are represented by counsel, those of your counsel;

(3) A statement whether the objection applies only to you, to a specific subset of the class, or to the entire class;

(4) A statement of the specific grounds for the objection; and

(5) A statement of whether you intend to appear at the Final Approval Hearing, and if so, whether personally or through counsel.

Additionally, if you are represented by a lawyer and your lawyer intends to speak at the Final Approval Hearing, your written objection must include:

(6) A detailed description of any evidence you may offer at the Final Approval Hearing; and

(7) Copies of any exhibits you may introduce at the Final Approval Hearing.

To be considered by the Court, your written objection must be filed electronically with the Court by [**DATE**] or mailed, postmarked no later than [**DATE**], to the following address:

Clerk of the Court
United States District Court Eastern District of Virginia,
Alexandria Division
401 Courthouse Square
Alexandria, VA 22314

If you do not comply with these procedures and the deadline for objections, you may lose any opportunity to have your objection considered at the Final Approval Hearing or otherwise to contest the approval of the settlement or to appeal from any orders or judgments entered by the Court in connection with the proposed settlement. You will still be eligible to receive settlement benefits if the settlement becomes final even if you object to the settlement.

The Court has scheduled a Final Approval Hearing to listen to and consider any concerns or objections from Settlement Class Members regarding the fairness, adequacy, and reasonableness of the terms of the Settlement Agreement. That hearing is currently scheduled to take place on **[DATE and TIME]** before the Honorable Anthony J. Trenga, at the United States District Court for the Eastern District of Virginia located in Courtroom ___ of the United States Courthouse, 401

Courthouse Square, Alexandria, Virginia 22314. This hearing date and time may be moved. Please refer to the settlement website, www.CapitalOneSettlement.com for notice of any changes.

GETTING MORE INFORMATION

21. Where can I get more information?

If you have questions about this notice or the settlement, you may go to the settlement website at www.CapitalOneSettlement.com. You can also contact the Settlement Administrator at **1-855-604-1811** or by mailing a letter to Capital One Data Breach Class Action Settlement Administrator, P.O. Box 4518, Portland, OR 97208-4518 for more information or to request that a copy of this document be sent to you in the mail. If you wish to communicate directly with Class Counsel, you may contact them (contact information noted above in Question 16). You may also seek advice and guidance from your own private lawyer at your own expense, if you wish to do so.

This notice is only a summary of the lawsuit and the settlement. Other related documents can be accessed through the settlement website. If you have questions about the proposed settlement, or wish to receive a copy of the Settlement Agreement but do not have access to the Internet to download a copy online, you may contact the Settlement Administrator. The Court cannot respond to any questions regarding this notice, the lawsuit, or the proposed settlement.

Please do not contact the Court, its Clerk, Capital One, or Amazon.

EMAIL NOTICE - GENERAL

Email Notice

Para el notificación en Español visitor nuestro sitio web.

Court Approved Legal Notice
MDL No. 1:19md2915 (AJT/JFA)
A federal court has authorized this Notice. This is not a solicitation from a lawyer.

If Your Information was Accessed in the 2019 CAPITAL ONE DATA BREACH, You are Eligible for Benefits From a Class Action Settlement

Your Unique Claim Number: _____

A proposed Settlement has been reached with Capital One over the data breach that Capital One announced on July 29, 2019, where Capital One's computer network system was the target of an external criminal-cyberattack that began in March 2019 (the "Data Breach"). Plaintiffs claim that Capital One and its cloud computing provider Amazon Web Services ("Amazon") did not adequately protect their personal information. Defendants deny any wrongdoing. No judgment or determination of wrongdoing has been made.

Who is Included? You received this email because records indicate you are included in this Settlement as a Class Member. The Class includes the approximately 98 million U.S. residents identified by Capital One whose information was accessed in the Data Breach.

What does the Settlement Provide? Capital One will establish a $190 Million Settlement Fund that will be used to pay for cash payments of up to $25,000 for reimbursement of Out-of-Pocket Losses and Lost Time that you believe are fairly traceable to the Data Breach, at least three years of free Identity Defense Services, at least three years of free Restoration Services, attorneys' fees, costs, and expenses, and costs of notice and administration. Capital One has also agreed to adopt, pay for, implement, and maintain extensive Business Practices Commitments related to information security for a period of at least two (2) years. All cash payments may be adjusted *pro rata* depending on the number of Class Members that participate in the Settlement.

How To Get Benefits: You must submit a Claim Form, including any required documentation. (You do not need to file a Claim to access the Restoration Services.) The earliest deadline to file a Claim Form is **Month XX, 2022**. You can easily file a Claim online at www.CapitalOneSettlement.com/claim. You can also get a paper Claim Form at the website or by calling toll free 1-855-604-1811, and file by mail. **When filing your Claim use your unique Claim Number (located at the top of this email).**

Your Other Options. If you file a Claim Form, object to the Settlement and attorneys' fees and expenses, or do nothing, you are choosing to stay in the Settlement Class. You will be legally bound by all orders of the Court and you will not be able to start, continue or be part of any other lawsuit against Capital One, Amazon, or related parties about the Data Breach. If you don't want to be legally bound by the Settlement or receive any benefits from it, you must exclude yourself by **Month XX, 2022**. If you do not exclude yourself, you may object to the Settlement and attorneys' fees and expenses by **Month XX, 2022**. The Court has scheduled a hearing in this case for **Month XX, 2022**, to consider whether to approve the Settlement, attorneys' fees of up to 35% of the Settlement Fund plus costs and expenses, Service Awards of up to $5,000 for the

Class Representatives and other class members deposed in the case, as well as any objections. You or your own lawyer, if you have one, may ask to appear and speak at the hearing at your own cost, but you do not have to.

How can I get More Information? For complete information about all of your rights and options, as well as Claim Forms, the Long Form Notice and Settlement Agreement, visit www.CapitalOneSettlement.com, or call 1-855-604-1811.

NOTICE AUTHORIZED BY: United States District Court for the Eastern District of Virginia

EMAIL NOTICE - CLAIMANTS WHOSE SOCIAL SECURITY NUMBERS OR LINKED BANK ACCOUNT NUMBERS WERE ACCESSED

Email Notice

Para el notificación en Español visitor nuestro sitio web.

Court Approved Legal Notice
MDL No. 1:19md2915 (AJT/JFA)
A federal court has authorized this Notice. This is not a solicitation from a lawyer.

If Your Information was Accessed in the 2019 CAPITAL ONE DATA BREACH, You are Eligible for Benefits From a Class Action Settlement

Your Unique Claim Number: _____

A proposed Settlement has been reached with Capital One over the data breach that Capital One announced on July 29, 2019, where Capital One's computer network system was the target of an external criminal-cyberattack that began in March 2019 (the "Data Breach"). Plaintiffs claim that Capital One and its cloud computing provider Amazon Web Services ("Amazon") did not adequately protect their personal information. Defendants deny any wrongdoing. No judgment or determination of wrongdoing has been made.

Who is Included? You received this email because records indicate you are included in this Settlement as a Class Member and that your Social Security number or linked bank account number was among the data accessed. The Class includes the approximately 98 million U.S. residents identified by Capital One whose information was accessed in the Data Breach.

What does the Settlement Provide? Capital One will establish a $190 Million Settlement Fund that will be used to pay for cash payments of up to $25,000 for reimbursement of Out-of-Pocket Losses and Lost Time that you believe are fairly traceable to the Data Breach, at least three years of free Identity Defense Services, at least three years of free Restoration Services, attorneys' fees, costs, and expenses, and costs of notice and administration. Because your Social Security number or linked bank account number was compromised, your free Identity Defense Services will be enhanced to include 3-Bureau Credit Monitoring and a Monthly Credit Score. Capital One has also agreed to adopt, pay for, implement, and maintain extensive Business Practices Commitments related to information security for a period of at least two (2) years. All cash payments may be adjusted *pro rata* depending on the number of Class Members that participate in the Settlement.

How To Get Benefits: You must submit a Claim Form, including any required documentation. (You do not need to file a Claim to access the Restoration Services.) The earliest deadline to file a Claim Form is **Month XX, 2022**. You can easily file a Claim online at www.CapitalOneSettlement.com/claim. You can also get a paper Claim Form at the website or by calling toll free 1-855-604-1811, and file by mail. **When filing your Claim use your unique Claim Number (located at the top of this email).**

Your Other Options. If you file a Claim Form, object to the Settlement and attorneys' fees and expenses, or do nothing, you are choosing to stay in the Settlement Class. You will be legally bound by all orders of the Court and you will not be able to start, continue or be part of any other lawsuit against Capital One, Amazon, or related parties about the Data Breach. If you don't want to be legally bound by the Settlement or receive any benefits from it, you must exclude yourself

by **Month XX, 2022**. If you do not exclude yourself, you may object to the Settlement and attorneys' fees and expenses by **Month XX, 2022**. The Court has scheduled a hearing in this case for **Month XX, 2022**, to consider whether to approve the Settlement, attorneys' fees of up to 35% of the Settlement Fund plus costs and expenses, Service Awards of up to $5,000 for the Class Representatives and other class members deposed in the case, as well as any objections. You or your own lawyer, if you have one, may ask to appear and speak at the hearing at your own cost, but you do not have to.

How can I get More Information? For complete information about all of your rights and options, as well as Claim Forms, the Long Form Notice and Settlement Agreement, visit www.CapitalOneSettlement.com, or call 1-855-604-1811.

NOTICE AUTHORIZED BY: United States District Court for the Eastern District of Virginia

POSTCARD NOTICE

In re Capital One Customer Data Security Litigation
P.O. Box 4518
Portland, OR 97208-4518

Unique Identification Number:

<<ACCOUNT>>

Court Approved Legal Notice
MDL No. 1:19md2915 (AJT/JFA)

If Your Information was Accessed in the 2019 CAPITAL ONE DATA BREACH, You are Eligible for Benefits From a Class Action Settlement

A federal court has authorized this Notice. This is not a solicitation from a lawyer.

Para el notificación en Español visitor nuestro sitio web.

<<MAIL ID>>

<<Name1>>
<<Name2>>
<<Address1>>
<<Address2>>
<<CITY>> <<ST>> <<ZIP>>
<<COUNTRY >>

A proposed Settlement has been reached with Capital One over the data breach that Capital One announced on July 29, 2019, where Capital One's computer network system was the target of an external criminal-cyberattack that began in March 2019 (the "Data Breach"). Plaintiffs claim that Capital One and its cloud computing provider Amazon Web Services ("Amazon") did not adequately protect their personal information. Defendants deny any wrongdoing. No judgment or determination of wrongdoing has been made.

Who is Included? Records indicate you are included in this Settlement as a Class Member. The Class includes the approximately 98 million U.S. residents identified by Capital One whose information was accessed in the Data Breach.

What does the Settlement Provide? Capital One will establish a $190 Million Settlement Fund that will be used to pay for cash payments of up to $25,000 for reimbursement of Out-of-Pocket Losses and Lost Time that you believe are fairly traceable to the Data Breach, at least three years of free Identity Defense Services, at least three years of free Restoration Services, attorney fees, costs, and expenses, and costs of notice and administration. Capital One has also agreed to adopt, pay for, implement, and maintain extensive Business Practices Commitments related to information security for a period of at least two (2) years. All cash payments may be adjusted *pro rata* depending on the number of Class Members that participate in the Settlement.

How To Get Benefits: You must submit a Claim Form, including any required documentation. (You do not need to file a Claim to access the Restoration Services.) The deadline to file a Claim Form is **Month XX, 2022**. You can easily file a Claim online at www.CapitalOneSettlement.com. You can also get a paper Claim Form at the website or by calling toll free 1-855-604-1811, and file by mail. **When filing your Claim use your unique Claim Number (printed on the front of this Notice).**

Your Other Options. If you file a Claim Form, object to the Settlement and attorneys' fees and expenses, or do nothing, you are choosing to stay in the Settlement Class. You will be legally bound by all orders of the Court and you will not be able to start, continue or be part of any other lawsuit against Capital One, Amazon, or related parties about the Data Breach. If you don't want to be legally bound by the Settlement or receive any benefits from it, you must exclude yourself by **Month XX, 2022**. If you do not exclude yourself, you may object to the Settlement and attorneys' fees and expenses by **Month XX, 2022**. The Court has scheduled a hearing in this case for **Month XX, 2022**, to consider whether to approve the Settlement, attorneys' fees of up to 35% of the Settlement Fund plus costs and expenses, Service Awards of up to $5,000 for the Class Representatives and other class members deposed in the case, as well as any objections. You or your own lawyer, if you have one, may ask to appear and speak at the hearing at your own cost, but you do not have to. For complete information about all of your rights and options, as well as Claim Forms, the Long Form Notice and Settlement Agreement, visit www.CapitalOneSettlement.com, or call 1-855-604-1811.

EXHIBIT 7

Must be postmarked or submitted online NO LATER THAN Month Day, 2022

CAPITAL ONE SETTLEMENT ADMINISTRATOR
P.O. BOX 4518
PORTLAND, OR 97208-4518
WWW.CAPITALONESETTLEMENT.COM

Capital One Data Breach Claim Form

SETTLEMENT BENEFITS – WHAT YOU MAY GET

If you are a U.S. resident whose information was accessed in the Capital One data breach announced on July 29, 2019, you may submit a claim.

The easiest way to submit a claim is online at www.CapitalOneSettlement.com, or you can complete and mail this claim form to the mailing address above.

You may submit a claim for one or more of these benefits:

Identity Defense Services: Use the claim form to request free Identity Defense Services.

Cash Reimbursement. Use the claim form to request money for one or more of the following:

1. **Reimbursement for Money You Spent.** If you spent unreimbursed money trying to avoid or recover from fraud or identity theft that you believe is fairly traceable to the Capital One data breach (out-of-pocket losses), you can be reimbursed up to $25,000 (including any claim for lost time). You must submit documents supporting your claim.

2. **Reimbursement for Lost Time.** If you spent time trying to avoid or recover from fraud or identity theft that you believe is fairly traceable to the Capital One data breach, you can get the greater of $25 per hour or your documented hourly wage for up to 5 total hours, or up to 15 total hours if you provide supporting documents demonstrating a valid claim for out-of-pocket losses.

Restoration Services are an additional benefit that is separate from Identity Defense Services. No claim is required for Restoration Services, which can assist with fraud resolution**.** U.S. residents whose information was accessed in the Capital One data breach will be able to access Restoration Services for a period of at least 3 years once the settlement is final. More information is available at www.CapitalOneSettlement.com.

*** * ***

Claims must be submitted online or mailed by [DATE]. Use the address at the top of this form for mailed claims.

Please note: the settlement administrator may contact you to request additional documents to process your claim. Your cash benefit may decrease depending on the number and amount of claims filed.

For more information and complete instructions visit **www.CapitalOneSettlement.com.**

Please note that Settlement benefits will be distributed after the Settlement is approved by the Court and becomes final.

Your Information

We will use this information to contact you and process your claim. It will not be used for any other purpose. If any of the following information changes, you must promptly notify us by emailing info@CapitalOneSettlement.com.

1. NAME (REQUIRED)	First	Middle Initial	Last
2. ALTERNATIVE NAME(S) (IF ANY):			
3. MAILING ADDRESS (REQUIRED):	Street Address		
	Apt. No.		
	City		
	State		
	Zip		
4. PHONE NUMBER:			
5. EMAIL ADDRESS:			
6. YEAR OF BIRTH (REQUIRED)			

Free Identity Defense Services

You may be eligible to receive free Identity Defense Services.

You can receive free Identity Defense Services for at least three years. These services include:

- Dark web monitoring for your Social Security number, date of birth, address, driver's license number, passport number, payment cards, email addresses, and other information;
- Identity monitoring with authentication alerts;
- Lost wallet protection;
- Security freeze capability in multiple categories: Credit – Experian, Equifax, TransUnion and Innovis; Specialty Finance – Sage Stream, Clarity DATAX and CoreLogic; Closed Checking and Savings accounts – Chex Systems; and Utilities – NCTUE
- $1 million dollars in no-deductible insurance provided by a third-party insurer to cover certain costs related to identity theft or fraud;
- U.S.-based customer support specially trained in identity theft and fraud discovery and remediation; and
- Insight & tips for members on the user dashboard.

If your Social Security number or linked bank account number was impacted in the Data Breach, you received a notice of that fact from Capital One in 2019, and your Identity Defense Services will also include:

- Three-bureau Credit Monitoring with instant alerts; and
- a Monthly Credit Score.

Please select Option 1 if you want the Free Identity Defense Services for which you are eligible.

☐ **Option 1, Identity Defense Services:** I want to receive free Identity Defense Services.

If you select this option, you will be sent instructions and an activation code after the settlement is final to your email address or home address. You won't be "upsold" any services by enrolling or otherwise asked to submit any payment for these services now or in the future.

Cash Payment: Money You Lost or Spent (Out-of-Pocket Losses)

If you lost or spent money trying to prevent or recover from fraud or identity theft that you believe is fairly traceable to the Capital One data breach and have not been reimbursed for that money (Out-of-Pocket Losses), you can receive reimbursement for up to $25,000 total, including your claim for Lost Time, if any.

It is important for you to send documents that show what happened and how much you lost or spent, so that you can be reimbursed.

To look up more details about how cash payments work, visit **www.CapitalOneSettlement.com** or call toll-free 1-855-604-1811. You will find more information about the types of costs and losses that can be paid back to you, what documents you need to attach, and how the Settlement Administrator decides whether to approve your payment. *By filling out the boxes below, you are certifying that the money you spent doesn't relate to other data breaches.*

Loss Type and Examples of Documents	**Amount and Date**	**Description of Loss or Money Spent and Supporting Documents** (Identify what you are attaching, and why it's related to the Capital One breach)
Costs for freezing or unfreezing your credit report on or after 3/22/2019 *Examples: Receipts, notices, or account statements reflecting payment for a credit freeze*	$ Date:	_____ _____ _____ _____
Credit monitoring and identity theft protection purchased between 3/22/2019 and the date of your claim submission *Examples: Receipts or statements for credit monitoring services*	$ Date:	_____ _____ _____ _____ _____
Costs, expenses, and losses due to identity theft, fraud, or misuse of your personal information on or after 3/22/2019 and fairly traceable to the Capital One data breach *Examples: Account statement with unauthorized charges highlighted; police reports; IRS documents; FTC Identity Theft Reports; letters refusing to refund fraudulent*	$ Date:	_____ _____ _____ _____ _____ _____ _____

charges; credit monitoring services you purchased		
Professional fees paid to address identity theft on or after 3/22/2019 and fairly traceable to the Capital One data breach *Examples: Receipts, bills, and invoices from accountants, lawyers, or others*	$ Date:	_____ _____ _____ _____ _____
Other expenses such as notary, fax, postage, copying, mileage, and long-distance telephone charges related to the data breach *Examples: Phone bills, receipts, detailed list of places you traveled (i.e. police station, IRS office), reason why you traveled there (i.e. police report or letter from IRS re: falsified tax return) and number of miles you traveled*	$ Date:	_____ _____ _____ _____ _____ _____ _____

Cash Payment: Lost Time

If you spent time trying to recover from fraud or identity theft that you believe is fairly traceable to the data breach, or if you spent time trying to avoid fraud or identity theft because of the data breach (placing or removing credit freezes on your credit files or purchasing credit monitoring services), complete the chart below. You can be compensated at the greater of $25 per hour or, if you took time off work, your documented hourly wage.

If your claim for Lost Time is related to a valid, documented claim for Out-of-Pocket Losses, you may claim up to **15 hours.** You **must** describe the actions you took in response to the data breach and the time each action took.

If your claim for Lost Time is NOT related to a valid, documented claim for Out-of-Pocket Losses, but WAS time you spent trying to recover from fraud or identity theft that you believe is fairly traceable to the data breach, or time you spent to avoid fraud or identity theft because of the data breach, you may claim up to **5 hours.** You **must** describe the actions you took in response to the data breach.

By filling out the boxes below, you are certifying that the time you spent doesn't relate to other data breaches.

Reimbursement Rate for Lost Time

Your Reimbursement Rate for approved Lost Time will be $25/hour unless you took time off work, and you provide documentation showing that your wage rate is higher than $25/hour. Documents showing a wage rate higher than $25/hour could include a recent paystub or other printed payroll documentation.

Please select either Option 1 or Option 2 below, but not both.

- ☐ **Option 1, Standard $25/hour Reimbursement Rate:**

  If you select this option, you do not need to provide documentation of your wage rate.

- ☐ **Option 2, Reimbursement Rate higher than $25/hour:** I certify that my hourly wage rate is $_____/hour and that I took time off work to respond to the data breach. In support of this certification, I provide the following documentation:

_____

_____

Approx. Date(s)	Number of Hours and Minutes	Supporting Documentation? (Y/N)	Explanation of Lost Time (Identify what you did and why)
			_____ _____ _____ _____ _____
			_____ _____ _____ _____ _____
			_____ _____ _____ _____ _____

How You Would Like to Receive Your Cash Payment

If you made a claim for a cash payment in this claim form, after the settlement is approved, you will receive an email at the email address you have provided, prompting you to select how you would like to be paid. You can receive your payment via a variety of digital options such as digital debit card or PayPal, or you can elect to receive a check.

Signature

I affirm under the laws of the United States that the information I have supplied in this claim form and any copies of documents that I am sending to support my claim are true and correct to the best of my knowledge.

I understand that I may be asked to provide more information by the claims administrator before my claim is complete.

Signature:	**Dated:**
Print Name:	

EXHIBIT 8

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

IN RE: CAPITAL ONE CONSUMER DATA SECURITY BREACH LITIGATION	)	MDL No. 1:19md2915 (AJT/JFA)

This Document Relates to the Consumer Cases

DECLARATION OF GERALD THOMPSON ON BEHALF OF PROPOSED PROVIDER OF IDENTITY DEFENSE SERVICES AND RESTORATION SERVICES

I, Gerald Thompson, declare as follows:

1. I am the Executive Vice President Global Cyber Group for Intersections, LLC d/b/a Pango ("Pango"). I have worked at Pango since 2015 and am intimately familiar with the company and its products. I have personal knowledge of the matters stated herein and, if called upon, I could and would competently testify thereto. I submit this Declaration in support of Plaintiffs' Motion for Preliminary Approval and to Direct Notice of Proposed Settlement to The Class.

2. Intersections, LLC was founded in 1995 as Intersections Inc. and was one of the first companies to offer identity protection and remediation to consumers in the United States. Since that time, Pango under white label brands and through its own brands, has protected more than 47 million citizens in the United States and more than 2.2 million families. Pango has distributed its services through a focused distribution network of large U.S. financial institutions and large enterprise companies since its founding, and has serviced both large and small data breach populations over the past 14 years.

3. Pango is a long-standing, well capitalized, and experienced company that is fully capable of providing the services. Companies choose Pango because Pango has the requisite experience and knowledge to service any breach population with seamless onboarding, excellent

customer service, and attention to detail. Since 2010, Pango has serviced more than 1,700 data breaches for large and small businesses. In 2021 the company serviced some of the largest data breach incidents including 2 national health care providers and was awarded the 3 largest data breach contracts for servicing affected consumers.

4. Pango is willing and able to be appointed by the Court as the provider of Identity Defense Services and Restoration Services, as those terms are defined in the Proposed Consumer Settlement Benefits Plan. For Identity Defense Services, Pango will provide Settlement Class Members a service called Identity Defense Plus. This service provides the following features to detect and remediate potential identity theft and fraud:

- Dark web monitoring for your Social Security number, date of birth, address, driver's license number, passport number, payment cards, e-mail address, and other information;
- Identity monitoring with authentication alerts;
- Lost wallet protection;
- Security freeze capability in multiple categories: Credit – Experian, Equifax, TransUnion and Innovis; Specialty Finance – Sage Stream, Clarity DATAX and CoreLogic; Closed Checking and Savings accounts – Chex Systems; and Utilities – NCTUE
- $1 million dollars in no-deductible insurance provided by a third-party insurer to cover certain costs related to identity theft or fraud;
- U.S.-based customer support specially trained in identity theft and fraud discovery and remediation; and
- Insight & tips for members on the user dashboard.

5. In addition, a more comprehensive service, Identity Defense Total, will be provided by Pango to Settlement Class Members whose Social Security number or linked bank account number was accessed in the Data Breach. This service includes all of the benefits of Identity Defense Plus, with the following features: credit monitoring from all three credit bureaus and a Monthly Credit Score.

6. The retail cost of buying the same Identity Defense Services would be $60.00 per person per year for Identity Defense Plus service and $180.00 per person per year for Identity Defense Total service.

7. Pango will provide these services for at least 38 months after the Effective Date (as that term is defined by the Settlement) to all Settlement Class Members who timely make a claim for the services or who seek to enroll directly with Pango during the period of the services.

8. Pango will also make available to all Settlement Class Members, even those who do not enroll Identity Defense Services or do not submit a claim, a Restoration Service for at least three years. The Restoration Service will give Settlement Class Members fraud resolution and identity restoration support. This coverage is a separate benefit and gives all Settlement Class Members access to Pango' specifically trained U.S.-based fraud resolution specialists who can assist with important tasks such as placing fraud alerts with the credit bureaus, disputing inaccurate information on credit reports, scheduling calls with creditors and other service providers, and working with law enforcement and government agencies to dispute fraudulent information.

9. If requested by Settlement Class Counsel to extend the two Services using funds that are remaining from the Settlement Fund, Pango will provide additional Identity Defense Services and Restoration Services for an extended period which shall be determined by the amount of money left in the Settlement Fund that is allocated for this purpose. Settlement Class Members will be entitled to enroll in Identity Defense Services (and to access Restoration Services) throughout the period of any extension of service.

10. At the end of the service period, Pango will not automatically extend the services to Settlement Class Members. No later than 30 days before the end of the services, Pango will contact the enrolled Settlement Class Members to inform them that the services will terminate.

11. Pango will provide Settlement Class Counsel with quarterly updates as to the number of Settlement Class Members who have enrolled in Identity Defense Services.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed this 31st day of January, 2022, in New Jersey.

Gerald Thompson

Gerald Thompson
Executive Vice President Global Cyber Group
Intersections, LLC d/b/a Pango