UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

IN RE: CAPITAL ONE 360 SAVINGS ACCOUNT INTEREST RATE LITIGATION	Case No. 1:24-md-03111-DJN-WBP

DECLARATION OF CHET B. WALDMAN IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

1. I am a partner in the law firm of Wolf Popper LLP ("Wolf Popper"). I was appointed Plaintiffs' Lead Counsel and Interim Class Counsel for the putative class and subclasses in this matter pursuant to Pretrial Order No.1 filed June 24, 2024 (ECF 6). I am a member in good standing of the Bar of the State of New York and am admitted pro hac vice before this Court. I have personal knowledge of the matters set forth herein. I respectfully submit this Declaration, together with the attached Exhibits, in support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement.

2. Attached as Exhibit 1 to this Declaration is a true and correct copy of the Settlement Agreement and Release ("Agreement" or "Settlement Agreement), and exhibits thereto, dated December 12, 2025.[1]

A. Background

3. On July 10, 2023, Plaintiff Scott Savett, represented by Wolf Popper, filed a putative class action complaint against Capital One in the United States District Court for the Eastern District of Virginia. *See* No. 1:23-cv-890, ECF 1. Plaintiff filed an Amended Class Action Complaint on September 15, 2023 and a Second Amended Class Action Complaint on October

[1] Capitalized terms not previously defined are used as defined in the Settlement Agreement.

19, 2023, adding additional plaintiffs and additional consumer protection claims and subclasses. *See Savett* Action, ECF 9, 19.

4. On February 26, 2024, thirteen Plaintiffs, also represented by Wolf Popper, filed a related putative class action in the same district, seeking to represent the same nationwide class as in the *Savett* Action, plus subclasses from eight more states. *See Hopkins v. Capital One*, N.A., No. 1:24-cv-00292 (E.D. Va.), ECF 1 (the "*Hopkins* Action"). On March 15, 2024, Plaintiffs in the *Hopkins* Action filed an Amended Class Action Complaint, adding two more plaintiffs and two more subclasses. *See Hopkins* Action, ECF 4.

5. Thereafter, additional related cases alleging the same wrongdoing against Capital One were filed by different plaintiffs in other federal courts. *See Sim v. Capital One Financial Corp.*, No. 2:24-cv-01222 (C.D. Cal. Feb. 14, 2024); *Pitts v. Capital One Financial Corp.*, No. 3:24-cv-00047 (S.D. Ohio Feb. 19, 2024); *Port v. Capital One, N.A.*, No. 3:24-cv-01006 (D.N.J. Feb. 21, 2024); *Bellantoni v. Capital One Financial Corp.*, No. 1:24-cv-01558 (E.D.N.Y. Mar. 1, 2024).

6. On March 20, 2024, Capital One made an application before the Judicial Panel on Multidistrict Litigation ("JPML") to consolidate *Savett*, *Hopkins*, and the related cases. *See In Re: Capital One 360 Savings Account Interest Rate Litig.*, J.P.M.L. Case No. 3111, ECF 1. Plaintiffs in *Savett* and *Hopkins* did not oppose consolidation, and the petition was granted on June 7, 2024. *See id.* ECF 22.

7. On April 16, 2024, prior to consolidation, Wolf Popper and counsel for the related cases (Shamis & Gentile, P.A.; Edelsberg Law, PA; Ahdoot & Wolfson, PC; Kaliel Gold PLLC) (collectively the "JPA Firms") executed a Joint Prosecution Agreement ("JPA"), providing that counsel would work cooperatively to prosecute this litigation under the leadership of Wolf Popper.

See ECF 5-2 ¶¶ 3(a)-(b). On June 24, 2024, this Court appointed me as Plaintiffs' Lead Counsel and Interim Class Counsel, and Matthew B. Kaplan of The Kaplan Law Firm as Plaintiffs' Local Counsel. ECF 6.

8. On July 1, 2024, Plaintiffs filed their operative Consolidated Amended Complaint. ECF 10. The Consolidated Amended Complaint alleges that Capital One deceptively created a high-yield savings account called "360 Performance Savings," and concealed from its existing customers that this new, otherwise identical account had replaced their "360 Savings" account as Capital One's high-yield savings account offering. The Consolidated Amended Complaint asserted claims for breach of contract (the covenant of good faith and fair dealing), violations of various state consumer protection statutes, unjust enrichment, and promissory estoppel.

9. On July 26, 2024, Capital One filed a motion to dismiss the Consolidated Amended Complaint. ECF 29, 30. On August 23, 2024, Plaintiffs opposed the motion. ECF 39. On November 12, 2024, the Court denied Defendant's motion to dismiss in substantial part. ECF 49.

10. Thereafter, Plaintiffs and their counsel engaged in intensive, demanding, and complex discovery in this matter, as described below.

11. On September 27, 2024, Plaintiffs and Defendants served their Initial Disclosures. Defendants served Amended Initial Disclosures on January 16, 2025, March 26, 2025, and April 2, 2025.

12. On August 23, 2024, Plaintiffs served their First Set of Interrogatories and First Set of Requests for Production. Defendants responded on November 6, 2024 and produced documents shortly thereafter. Following meet and confer efforts, Defendants provided supplemental responses to Plaintiffs' First Set of Interrogatories on January 10, 2025, and March 7, 2025.

13. On October 7, 2024, Defendants served interrogatories and requests for production

of documents to all twenty-six Plaintiffs. Plaintiffs responded on November 6, 2024 and made an initial production of documents.

14. On November 27, 2024, Plaintiffs served their Second Set of Interrogatories. Defendants responded on December 27, 2024. On December 13, 2024, Plaintiffs served their Third Set of Interrogatories. Defendants responded on January 13, 2025. On February 11, 2025, Plaintiffs sent Defendants a deposition notice under Rule 30(b)(6). On March 5, 2025, Plaintiffs sent Defendants an amended deposition notice. On April 7, 2025, Plaintiffs served their Fourth Set of Interrogatories, their Second Set of Requests for Production, and Requests for Admission.

15. In total, Plaintiffs' counsel reviewed approximately 75,000 documents (roughly two million pages) produced on a rolling basis by Capital One and third parties.

16. In addition, throughout the discovery process, Plaintiffs' counsel accomplished the following:

- Negotiating a detailed (1) discovery plan, (2) protective order, and (3) protocol for exchange of electronically stored information ("ESI"), with the assistance and oversight of the Special Master. *See* ECF 43-46.
- Responding to Capital One's discovery requests to all twenty-six of the Plaintiffs, each comprising 27 requests for production (or 702 total requests across all Plaintiffs) and 19 interrogatories (495 across all Plaintiffs, including one additional interrogatory specific to one Plaintiff).
- Resolving numerous, ongoing discovery disputes through meet and confer negotiations with Capital One, pertaining to issues including custodians, search terms, document repositories, deposition logistics, and the sufficiency and scope of both Capital One's and Plaintiffs' respective discovery responses.

- Serving and negotiating responses to five non-party subpoenas to Capital One vendors, four of whom provided relevant and helpful documents.
- Defending the depositions of all twenty-six Plaintiffs, both remotely and in locations across the country.
- Preparing for depositions of twenty of Capital One's current and former employees, and taking seven of those depositions prior to the parties' agreement to settle.
- Completing expert discovery (including reports and depositions for six experts between the Parties).

B. Settlement Negotiations

17. On March 12, 2025, after submitting lengthy mediation statements with accompanying exhibits, the parties' Counsel attended a lengthy mediation session before the Court-appointed Special Master, Craig Seebald, and the experienced and respected Robert Meyer of JAMS. *See* ECF 95 at 2. The mediation session was unsuccessful.

18. On April 18, 2025, the parties' Counsel attended a second lengthy mediation session with Mr. Seebald and Mr. Meyer. *See id*. At the end of the all-day mediation session, the parties reached a tentative, arms' length settlement, facilitated by Mr. Seebald and Mr. Meyer.

19. Thereafter, the parties held two additional remote mediation sessions with Mr. Seebald and Mr. Meyer on May 28, 2025, and May 30, 2025, to negotiate provisions of the Settlement Agreement on which the parties had reached an impasse.

20. On June 6, 2025, the parties entered into a settlement agreement (the "Previous Agreement").

21. After the Court rejected the Previous Agreement at the final approval hearing on November 6, 2025, the parties engaged in further negotiations via email and videoconference, and

participated in several videoconference meetings with the Special Master and attorneys from the N.Y. Attorney General's office. These negotiations ultimately resulted in the Settlement Agreement dated December 12, 2025 (the "new Settlement").

C. The New Settlement

22. Based on this Court's statements at the Final Approval Hearing on November 6, 2025, and in my experience and opinion, the new Settlement is fair and in the best interest of the Settlement Class Members and meets all of the indicia of fairness, such that it merits the Court's preliminary approval.

23. As argued previously (*see*, *e.g.*, ECF 162 n.18 & ECF 197 at 20), Plaintiffs estimate based on the parties' expert damages analyses that the Settlement Fund, by itself, represents between approximately 14% and 57% of what Settlement Class Members could have obtained in the aggregate for their historical losses if Plaintiffs were successful through trial and appeal. According to information from Capital One, at the time of the Previous Settlement, approximately three quarters of the Settlement Class Members (comprising 85% of the class-wide damages) remained in the 360 Savings account (and therefore would benefit from the new Settlement's prospective relief).

24. Class Counsel and the JPA Firms (collectively "Plaintiffs' Counsel") have distinguished experience litigating and resolving complex consumer class actions, having done so throughout the country. Plaintiffs' Counsel believe, based on their evaluation and experience, that the new Settlement provides fair and adequate relief, and indeed that it is an excellent result for the Settlement Class. Plaintiffs' Counsel will continue to competently represent the interests of the Settlement Class.

25. Wolf Popper is among the most experienced class action law firms in the country

and has a long history of obtaining landmark results for the class members in those cases. Courts throughout the United States have repeatedly recognized Wolf Popper as adequate and qualified class counsel in class actions, and as a law firm that has achieved significant recoveries on behalf of class members.

26. Since the inception of this litigation, Wolf Popper and The Kaplan Law Firm, along with the JPA Firms, have vigorously prosecuted this action for the benefit of Plaintiffs and the proposed Settlement Class. Wolf Popper's efforts have included, among other things: (i) conducting an extensive investigation into the claims underlying this Action; (ii) drafting the initial complaint and a comprehensive Consolidated Amended Complaint after advocating in the MDL proceeding for the transfer of all cases filed around the country, after the initial complaint was filed, to this District; (iii) negotiating a detailed discovery plan, protective order, and protocol for ESI, with assistance and oversight of the Special Master; (iv) briefing, and largely defeating, Defendants' motion to dismiss; (v) briefing, and defeating, Defendants' motion to certify a question to the Virginia Supreme Court; (vi) diligently pursuing factual discovery from Defendants and reviewing approximately seventy-five thousand documents spanning approximately two million pages; (vii) responding to written discovery from Defendants and producing documents in response; (viii) serving and negotiating responses to five non-party subpoenas to Capital One vendors; (ix) defending twenty-six depositions of the named Plaintiffs; (x) preparing for depositions of twenty of Capital One's current and former employees, and taking seven of those depositions prior to the parties' agreement to settle; (xi) retaining, and working with, three experts who filed reports, and engaging in expert discovery that included producing and reviewing documents, defending Plaintiffs' three experts at their depositions, taking the depositions of Defendants' three experts, and drafting briefs in support of three Daubert motions relating to

Defendants' expert witnesses, as well as three briefs in opposition to Defendants' motions to exclude Plaintiffs' experts; (xii) supervising dedicated teams of experienced attorneys and staff to prosecute the claims on behalf of Plaintiffs and the Settlement Class; (xiii) drafting and filing briefs in support of Plaintiffs' Motion for Class Certification.

27. Each Plaintiff has worked diligently in the interests of the Settlement Class, and have, among other things: (a) responded to Defendants' interrogatories, produced documents, and sat for lengthy depositions; (b) demonstrated their knowledge about the case and their duties and responsibilities as Class Representatives; and (c) regularly kept in contact with their attorneys about the litigation.

28. Of the twenty-six named Plaintiffs, twenty-two named Plaintiffs agreed in their engagement letters that their counsel could seek a fee of up to 33% of any common fund resulting from any settlement or verdict, while the four remaining Named Plaintiffs have engagement letters with counsel other than Wolf Popper that are silent on the issue.

C. New Notice Plan

29. The proposed New Notice Plan, as set forth in the Declaration of Cameron R. Azari, Esq. Regarding New Notice Plan dated December 22, 2025 provides for notice via email or direct mail to all 360 Savings accountholders using contact information from Capital One's records.

30. The proposed New Notice Plan also provides for the implementation of a Settlement website. The Settlement Administrator has published, and will continue to publish, on the dedicated website notice, and other court filed documents providing comprehensive information about the Settlement. Attached as Exhibit 2 hereto is a true and correct copy of the Long Form Notice of Class Action Settlement.

31. As part of the New Notice Plan, the Settlement Administrator will send direct email

notice to Settlement Class Members with email addresses provided by Capital One. Attached as Exhibit 3 hereto is a true and correct copy of the Email Notice of Class Action Settlement.

32. In addition, the Settlement Administrator will mail postcard notices to the listed mailing addresses of Settlement Class Members held by Capital One, if those Settlement Class Members did not receive email notices in connection with the Previous Agreement. Attached as Exhibit 4 hereto is a true and correct copy of the Postcard Notice of Class Action Settlement.

33. The Settlement Administrator will also issue a press release regarding the new Settlement. Attached as Exhibit 5 hereto is a true and correct copy of the Informational Release.

34. Attached as Exhibit 6 hereto is a proposed Order Granting Preliminary Approval of Class Action Settlement.

35. Attached as Exhibit 7 hereto is a true and correct copy of the transcript of the final approval hearing on November 6, 2025 regarding the Previous Agreement.

36. I hereby declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 23rd day of December, 2025 in New York, New York.

/s/ *Chet B. Waldman*
Chet B. Waldman

Exhibit 1

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

IN RE CAPITAL ONE 360 SAVINGS ACCOUNT INTEREST RATE LITIGATION	Civil Action No. 1:24-MD-03111-DJN

SETTLEMENT AGREEMENT AND RELEASE

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release is made as of December 12, 2025, 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 360 Savings Account Interest Rate Litigation*, No. 1:24-md-03111-DJN (E.D. Va.) with the sole exception of the claims asserted by the Attorney General of the State of New York in *The People of the State of New York v. Capital One, N.A.*, No. 1:25-cv-01403 (E.D. Va.).

1. Recitals

1.1. Since February 2013, Capital One has offered to members of the general public savings accounts known as 360 Savings accounts.

1.2. In September 2019, Capital One began offering a new savings account called 360 Performance Savings and stopped offering new 360 Savings accounts to customers, though it continued to service existing 360 Savings accounts.

1.3. Between July 10, 2023, and March 1, 2024, seven putative class action lawsuits were filed against Capital One by current or former 360 Savings accountholders. These suits alleged that Capital One breached the contracts it had with 360 Savings accountholders and the implied covenant of good faith and fair dealing incorporated therein; that Capital One violated various state consumer-protection statutes; and that Capital One engaged in conduct making it liable for unjust enrichment and promissory estoppel. The claims asserted in the lawsuits arose from allegations that Capital One failed to raise interest rates on the 360 Savings account commensurate with rates paid on the 360 Performance Savings account, deceptively marketed the

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

360 Savings account, and failed to disclose (i) that 360 Savings was no longer Capital One's high-yield online savings account and (ii) the existence of the 360 Performance Savings account—and its higher interest rate—to 360 Savings accountholders.

1.4. On June 7, 2024, pursuant to 28 U.S.C. § 1407, the U.S. Judicial Panel on Multidistrict Litigation ("JPML") transferred the seven pending lawsuits to the Honorable David J. Novak in the Alexandria Division of the United States District Court for the Eastern District of Virginia for coordinated pretrial proceedings under the caption *In re: Capital One 360 Savings Account Interest Rate Litigation*, No. 1:24-md-03111-DJN (E.D. Va.).

1.5. On June 24, 2024, the Court appointed Class Counsel.

1.6. On July 1, 2024, Class Counsel filed the operative Complaint, which superseded the complaints that had been consolidated by the JPML and included additional claims, putative subclasses, and named plaintiffs who now comprise the Settlement Class Representatives. Capital One moved to dismiss the Complaint, and the Court granted in part and denied in part that motion by an order dated November 12, 2024.

1.7. On July 18, 2024, the Court appointed Mr. Craig P. Seebald, a distinguished attorney and partner at the firm of Vinson & Elkins, to serve as Special Master to oversee and manage discovery in the Action. The Court later expanded Special Master Seebald's duties to include facilitating settlement discussions between the Parties.

1.8. Beginning in October 2024 and continuing into 2025, Capital One and the Settlement Class Representatives engaged in far-reaching fact and expert discovery. Such discovery included extensive written discovery; nearly 40 depositions; the production of tens of thousands of documents spanning hundreds of thousands of pages; and the service of eight expert reports, three by Capital One and five by the Settlement Class Representatives. Capital One and

the Settlement Class Representatives met and conferred on numerous occasions regarding various discovery issues, litigated a discovery motion, and attended status conferences with the Court and Special Master Seebald.

1.9. In March and April 2025, the Parties engaged in comprehensive class certification and *Daubert* motions practice. Capital One and the Settlement Class Representatives filed a total of five *Daubert* motions challenging each other's disclosed experts, and each *Daubert* motion was opposed by the nonmovant. The Settlement Class Representatives sought certification of a nationwide class of all persons who had been Capital One 360 Savings accountholders at any time since Capital One launched 360 Performance Savings, as well as 17 state-specific subclasses of such persons. Capital One opposed the Settlement Class Representatives' motion for class certification, and the Parties' briefing on that motion spanned 130 pages.

1.10. Parallel to their litigation of the Action, the Parties engaged in arm's-length settlement negotiations beginning in March 2025. The Parties participated in two mediation sessions with Robert A. Meyer, a seasoned mediator and commercial litigator, and Special Master Seebald. The first mediation was held on March 12, 2025, and the second on April 18, 2025. The Parties also engaged in two additional Zoom conferences with the two mediators and submitted written position statements to resolve various issues. The first of these conferences took place on May 28, 2025, and the second one took place on May 30, 2025.

1.11. At the April 18, 2025 mediation, the Parties reached an agreement on the material terms of a settlement of the Action. The final terms of the compromise the Parties reached were set forth in the Previous Agreement.

1.12. Among other things, the Previous Agreement required Capital One to pay a total of four hundred twenty-five million United States Dollars ($425,000,000), composed of: (1) three

hundred million United States Dollars ($300,000,000) for a settlement fund, to be used to make pro rata cash payments to settlement class members based on the amount of interest they would have earned if their 360 Savings accounts had paid the same interest rate as 360 Performance Savings during the class period, as well as for notice costs, administrative costs, service awards approved by the Court, and attorneys' fees and expenses approved by the Court; and (2) one hundred twenty-five million United States Dollars ($125,000,000) to be paid prospectively as additional interest to settlement class members who maintained 360 Savings accounts after October 2, 2025.

1.13. Under the Previous Agreement, Capital One's obligation to pay additional interest of one hundred twenty-five million United States Dollars ($125,000,000) was to be subject to, and measured by, an accompanying obligation to pay a rate of interest on 360 Savings accounts that was at least two times the national average interest rate for savings accounts, as reported monthly by the FDIC. Capital One's obligation to pay this additional interest would have been discharged once the cumulative total of interest paid to 360 Savings accountholders reached one hundred twenty-five million United States Dollars ($125,000,000) above what Capital One would have paid if it had maintained the 360 Savings account interest rate at the FDIC's national average rate.

1.14. On June 6, 2025, Class Counsel filed a motion seeking preliminary approval of the Previous Agreement, conditional certification of a settlement class, appointment as Class Counsel, and approval of the Previous Agreement's notice plan.

1.15. On June 16, 2025, the Court issued an order preliminarily approving the Previous Agreement, provisionally certifying a settlement class, conditionally appointing Class Counsel, approving the Previous Agreement's notice plan, and scheduling a final approval hearing for November 6, 2025.

1.16. Following the preliminary approval hearing, Capital One provided notice to relevant governmental authorities as required by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715. The Settlement Administrator also provided notice to the provisionally certified settlement class in accordance with the terms of the Previous Agreement's notice plan, which identified five million one hundred seventy-eight thousand ninety-nine (5,178,099) unique settlement class members.

1.17. The deadline to object to the Previous Agreement and to request exclusion from the provisionally certified settlement class was October 2, 2025. As of that date, thirteen (13) members of the settlement class had filed objections to the Previous Agreement, and eighty-six (86) members of the settlement class had requested exclusion. Several additional objections were also filed after the deadline.

1.18. Before the final approval hearing, the attorneys general of the states of New York, Arizona, California, Colorado, Connecticut, Hawaii, Illinois, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, Ohio, Oregon, Rhode Island, and Washington filed an amicus brief opposing approval of the Previous Agreement.

1.19. The Court held a final approval hearing on November 6, 2025, at which Class Counsel, Capital One, the New York Attorney General, and objectors were heard.

1.20. On November 6, 2025, the Court denied final approval, finding that the Previous Agreement did not satisfy the requirements of Federal Rule of Civil Procedure 23(e). Upon denying final approval, the Court proposed to the Parties a revised settlement structure that the Court indicated it would be inclined to approve.

1.21. The Parties have now negotiated and agreed to terms, as set forth in this Settlement Agreement, that are materially consistent with the terms proposed by the Court.

1.22. Capital One denies all claims asserted against it in the Action, denies all allegations of wrongdoing and liability, and denies all material allegations of the Complaint.

1.23. 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.

1.24. 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, the following terms have the meanings specified below:

2.1. "Action" means the multidistrict litigation proceedings captioned *In re: Capital One 360 Savings Account Interest Rate Litigation*, No. 1:24-md-03111-DJN (E.D. Va.) and all the cases that have been filed in, transferred to, or otherwise assigned to the Court and included in the

multidistrict litigation proceedings, with the exception of *The People of the State of New York v. Capital One, N.A.*, No. 1:25-cv-01403 (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 or as otherwise ordered by the Court.

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, which the Parties understand and agree sets 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. "Attorneys' Fees" means any attorneys' fees that Class Counsel request the Court to approve for payment from the Settlement Fund as compensation for all plaintiffs' counsel's work in prosecuting and settling the Action.

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

2.7. "Capital One" means Capital One Financial Corporation and Capital One, National Association.

2.8. "Capital One's Counsel" means Capital One's counsel of record in the Action from the law firms of King & Spalding LLP and McGuireWoods LLP.

2.9. "Class Counsel" means Chet B. Waldman and the law firm of Wolf Popper LLP.

2.10. "Class Cash Payment" means the monetary amount paid to a Settlement Class Member pursuant to Section 5 of this Agreement to be paid from the Settlement Fund.

2.11. "Class List" means the list of Capital One 360 Savings accounts that were open at any time during the Class Period and all holders of such accounts, including any joint or co-holders of such 360 Savings accounts.

2.12. "Class Period" means September 18, 2019 through and including June 16, 2025.

2.13. "Complaint" means the Consolidated Amended Complaint, at Docket Entry Number 10, filed in the Action on July 1, 2024.

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

2.15. "Effective Date" means the date when all of the conditions set forth in Section 10.1 of this Agreement have occurred; provided, however, that Capital One has not exercised its right of termination under Section 10.2 of this Agreement.

2.16. "Email Notice" means the written email notice in a form to be agreed to by the Parties and submitted for Court approval at a future time.

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

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

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

2.20. "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.

2.21. "Final Approval Order and Judgment" means an order and corresponding judgment in a separate document as required by Federal Rule of Civil Procedure 58(a) that the Court enters after the Final Approval Hearing, which finally approves the Agreement, certifies the Settlement Class, dismisses the claims against Capital One with prejudice, and otherwise satisfies the settlement-related provisions of Federal Rule of Civil Procedure 23 in all respects.

2.22. "Individual Recognized Claim" means a Recognized Claim used to calculate Class Cash Payments as described in Section 5.2 below.

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

2.24. "Long Form Notice" means the written long form notice in a form to be agreed to by the Parties and submitted for Court approval at a future time.

2.25. "Net Settlement Fund Amount" means the amount remaining in the Settlement Fund (defined in Section 2.48 of this Agreement below) after deducting (i) Service Awards; (ii) Administrative Costs; (iii) Notice Costs; (iv) Expenses; and (v) Attorneys' Fees.

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

2.27. "Notice Date" means the date by which notice will be sent to the Settlement Class, which shall occur no later than eight (8) weeks prior to the Objection and Opt-Out Deadlines.

2.28. "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.

2.29. "Objection Deadline" means the deadline by which written objections to the Settlement must be filed with the Court as set forth in the Preliminary Approval Order. Such deadline shall be three (3) weeks prior to the Final Approval Hearing.

2.30. "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 three (3) weeks prior to the Final Approval Hearing.

2.31. "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 a similar function, of such Entity.

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

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

2.34. "Postcard Notice" means the written postcard notice in a form to be agreed to by the Parties and submitted for Court approval at a future time.

2.35. "Preliminary Approval Order" means an order determining that the Court will likely be able to approve the Settlement under Federal Rule of Civil Procedure 23(e)(2) and certify the Settlement Class for purposes of entering a Judgment, and ordering that notice of the Settlement be provided to Settlement Class Members. 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. A proposed

version of the Preliminary Approval Order will be agreed to by the Parties and submitted for Court approval.

2.36. "Press Release" means the press release in a form to be agreed to by the Parties and submitted for Court approval at a future time.

2.37. "Previous Agreement" means the settlement agreement and release the Parties executed on June 6, 2025 and that was filed in the Action at Docket Entry 163-1.

2.38. "Recognized Claim" means the approximate difference between the interest paid on a 360 Savings account during the Class Period and the interest that would have paid on such an account had it been a 360 Performance Savings account, as described in Section 5.2 below.

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

2.40. "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 facts alleged in the Complaint or the Action, or any theories of recovery that were, or could have been, raised at any point in the Action.

2.41. "Released Plaintiff Parties" means the Settlement Class Representatives and their spouses and counsel, including Class Counsel.

2.42. "Service Awards" means any payments made, subject to Court approval, to Settlement Class Representatives in recognition of their role in litigating and settling this Action.

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

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

2.45. "Settlement Class" means the persons or Entities who maintained a Capital One 360 Savings account at any time during the Class Period (i.e., from September 18, 2019 through and including June 16, 2025), including joint and co-holders of 360 Savings accounts, as reflected in the Class List to be generated by Capital One. 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.

2.46. "Settlement Class Member" or "Member of the Settlement Class" means any person or Entity that is a member of the Settlement Class.

2.47. "Settlement Class Representatives" means the following plaintiffs and proposed class representatives named in the Complaint filed in the Action: Scott C. Savett, Jay Sim, Amber Terrell, Angela Uherbelau, Gwendolyn Wright, Elizabeth Zawacki, Sheryl Barnes, Alessandra Bellantoni, Ayal Brenner, Anthony Guest, Samuel Hans, Ronald Hopkins, Michael Krause, Steve

Lenhoff, Jerry Magaña, Seth Martindale, Jennie Meresak, Gregory Mishkin, Andrew Molloy, Jay Nagdimon, Neelima Panchang, Sailesh Panchang, Patrick Perger Jr., Shantell Pitts, Howard Port, and Jane Rossetti.

2.48. "Settlement Fund" means the four hundred twenty-five million United States Dollars ($425,000,000) that Capital One shall pay pursuant to Section 4.1 of this Agreement, plus any interest accrued on such amount between the time it is deposited into the Settlement Fund Account and its distribution.

2.49. "Settlement Fund Account" means the account described in Section 8.1 of this Agreement.

2.50. "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.

2.51. "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.

2.52. "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 or other Settlement Class Representatives' 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). "Taxes" shall be considered part of the Administrative Costs of the Settlement.

2.53. "Unclaimed Amounts" means (i) Class Cash Payments of less than five United States Dollars ($5.00) for which a Settlement Class Member does not elect payment via electronic means by the deadline specified in the Notice Plan and (ii) checks and electronic payments for Class Cash Payments that remain undeliverable or uncashed ninety (90) days after the Settlement Administrator completes all Class Cash Payments.

2.54. "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, her, or its favor as of the Effective Date and which, if known by him, her, or it might have affected his, her, or its 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, protections, 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. Conditions Precedent

3.1. Subject to Section 10.2, all of Capital One's obligations under this Agreement, including all monetary and non-monetary obligations, are contingent upon the satisfaction of the following conditions:

(i) The Attorney General of the State of New York must execute an agreement stating that, if and when the Court enters a Final Approval Order and Judgment, it will dismiss with prejudice its complaint against Capital One in the case captioned *People of the State of New York, by Letitia James, Attorney General of the State of New York v. Capital One N.A. and Capital One Financial Corp.*, Civil Action No. 1:25-cv-01403-DJN-WBP (E.D. Va.); and

(ii) Each of the Attorneys General of the States of Arizona, California, Colorado, Connecticut, Hawaii, Illinois, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, Ohio, Oregon, Rhode Island, and Washington must represent in writing that they:

a. Will not object to or otherwise oppose this Agreement or its Final Approval; and

b. Will not assert any claims, make any demands, or pursue any enforcement actions against Capital One related to the subject matter of this Action or the subject matter of the case captioned *People of the State of New York, by Letitia James, Attorney General of the State of New York v. Capital One N.A. and Capital One Financial Corp.*, Civil Action No. 1:25-cv-01403-DJN-WBP (E.D. Va.).

4. Settlement Fund

4.1. Capital One shall make a non-reversionary settlement payment of four hundred twenty-five million United States Dollars ($425,000,000). On July 1, 2025, Capital One deposited five million United States Dollars ($5,000,000) into the Settlement Fund Account to pay for Administrative Costs and Notice Costs. Capital One shall deposit the remaining balance of the

settlement payment (i.e., $420,000,000) into the Settlement Fund Account as follows: (i) within ten (10) Business Days of the Court entering a Preliminary Approval Order, Capital One shall pay three million five hundred thousand United States Dollars ($3,500,000) into the Settlement Fund Account to pay for additional Administrative Costs and Notice 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., $416,500,000).

4.2. 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) Class Cash Payments for the Settlement Class. Absent termination of this Settlement in accordance with Section 10.2, no funds deposited in the Settlement Fund shall revert to Capital One.

5. Payments to Settlement Class Members

5.1. All Settlement Class Members shall be entitled to receive a monetary Class Cash Payment from the Settlement Fund. Class Cash Payments of five United States Dollars ($5.00) or more shall be paid automatically without any requirement for Settlement Class Members to submit claims. Class Cash Payments of less than five United States Dollars ($5.00) shall be paid upon election by a Settlement Class Member for electronic payment, as set forth below.

5.2. Class Cash Payments shall be calculated as follows:

(i) The Settlement Administrator shall first determine the amount of each Individual Recognized Claim for each 360 Savings account that was open at any time during the Class Period. The Individual Recognized Claim amount shall be calculated as the approximate amount of additional interest that would have been earned on the account during the Class Period had the account received the interest rate of the 360 Performance Savings product.

(ii) Once all Individual Recognized Claim amounts are established, the Settlement Administrator shall aggregate those amounts to calculate the total dollar amount of all Individual Recognized Claims (the "Class Claim Total").

(iii) Next, the Settlement Administrator shall divide each Individual Recognized Claim by the Class Claim Total to determine the fractional share of the Net Settlement Fund owed on each 360 Savings account.

(iv) Finally, the fractional share attributable to each Individual Recognized Claim shall be multiplied by the Net Settlement Fund to determine the dollar amount of the Class Cash Payment for each 360 Savings account.

5.3. To facilitate the Settlement Administrator's calculation of each Settlement Class Member's Class Cash Payment, Capital One will provide, within twenty-one (21) days of the Effective Date, data identifying each Capital One 360 Savings account open at any time during the Class Period; all holders of such accounts, including any joint or co-holders of such accounts (and information to identify the primary accountholder for each account); and the approximate amount of additional interest each 360 Savings account open during the Class Period would have earned during the Class Period if that account had received the interest rate paid on the 360 Performance Savings account.

5.4. The Settlement Administrator shall send all eligible Class Cash Payments within sixty (60) days of the Effective Date.

5.5. As part of the Notice Plan, Settlement Class Members shall be advised of the opportunity to elect to receive their Class Cash Payments via electronic means, including Venmo, PayPal, etc. Any Settlement Class Member may elect to receive their Class Cash Payment via electronic means by following the instructions provided in the notice materials. Additionally, any Settlement Class Member whose Class Cash Payment is less than five United States Dollars ($5.00) must elect payment by electronic means to receive a cash payment from the Settlement Fund (i.e., a Class Cash Payment). Such requirement shall be explained in the notice materials provided to the Settlement Class as part of the Notice Plan. Any Class Members who previously elected to receive their Class Cash Payments via electronic means in connection with the Previous Agreement will automatically be deemed to have elected to receive their Class Cash Payments via

the electronic means previously selected and need not again elect to receive their Class Cash Payment electronically.

5.6. For any Settlement Class Member whose Class Cash Payment is five United States Dollars ($5.00) or more and who does not elect the electronic payment option by the deadline disclosed in the Notice Plan, the Settlement Administrator shall mail their Class Cash Payment by check via U.S. Mail. For any Settlement Class Member whose Class Cash Payment is less than five United States Dollars ($5.00) and who does not elect the electronic payment option by the deadline disclosed in the Notice Plan, such Class member will not receive a Class Cash Payment and their Class Cash Payment shall be treated as an Unclaimed Amount subject to Section 5.9 below.

5.7. For purposes of the issuance of Class Cash Payments, the primary holder of a particular 360 Savings account along with any current or former joint or co-holders of that account shall be treated as one. Any Class Cash Payments for Settlement Class Members who are joint or co-holders of a 360 Savings account shall be issued payable to only the primary accountholder but shall be deemed to satisfy any rights or interest of any joint or co-owners of the account and shall be mailed to the last known address of the primary accountholder.

5.8. If any Class Cash Payments are undeliverable, the Settlement Administrator shall use reasonable efforts to resend the Class Cash Payments, including by attempting to identify updated contact information to facilitate resending via U.S. Mail or electronic means.

5.9. Unclaimed Amounts (i.e., Class Cash Payments of less than five United States Dollars ($5.00) for which a Settlement Class Member has not elected payment via electronic means by the deadline specified in the Notice Plan and checks and electronic payments for Class Cash Payments that remain undeliverable or uncashed ninety (90) days after the Settlement

Administrator completes all Class Cash Payments) shall be aggregated and provided in a second distribution to Settlement Class Members who claimed their electronic payment or cashed their check(s), based on such Settlement Class Members' pro rata share of such aggregated Unclaimed Amounts, and otherwise subject to the same terms stated herein related to the initial Class Cash Payment distributions. Any Unclaimed Amounts that cannot be redistributed cost effectively shall be paid to a cy pres recipient, which shall be a §501(c)(3) charitable organization approved by the Court.

5.10. Within fourteen (14) days after unclaimed, undeliverable, and uncashed amounts become Unclaimed Amounts under Section 5.9, the Settlement Administrator shall void all undeliverable and uncashed payments and notify the Parties of the aggregate total amount of Unclaimed Amounts.

6. The Interest Rate on Deposits in 360 Savings Accounts

6.1. Beginning no later than fourteen (14) days after the Effective Date, Capital One will (i) maintain and service both 360 Savings and 360 Performance Savings accounts for at least two years and (ii) pay the same rate of interest on deposits in, and apply the same terms and conditions relating to fees and minimum balances to, 360 Savings accounts and 360 Performance Savings accounts.

6.2. In lieu of complying with Section 6.1, Capital One will have the option of converting 360 Savings accounts into 360 Performance Savings accounts at any time.

6.3. Other than Section 6.1, nothing in this Agreement shall be construed as affecting the terms of the account agreements applicable to the 360 Savings account and the 360 Performance Savings account.

6.4. For the avoidance of doubt, nothing in this Agreement shall affect Capital One's right (i) to close any individual 360 Savings account or 360 Performance Savings account as set

forth in the governing account agreements or (ii) to engage in marketing efforts related to 360 Performance Savings.

7. Capital One's Total Monetary Liability

7.1. Excluding monetary costs to Capital One associated with performing its obligations under Section 6.1, Capital One shall in no event be obligated to pay more than four hundred twenty-five million United States Dollars ($425,000,000) in connection with the Settlement of the Action, including with respect to all Class Cash Payments, Attorneys' Fees and Expenses, Notice Costs, and Administrative Costs.

8. Settlement Fund Account

8.1. The Settlement Fund monies shall be held in the Settlement Fund Account, which shall be an interest-bearing account established at The Huntington National Bank.

8.2. 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.

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

8.4. 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.

8.5. As required by the Previous Agreement, the Settlement Administrator has applied 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 has provided Capital One with that employer identification number on a properly completed and signed IRS Form W-9.

8.6. 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.

8.7. 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).

8.8. Following its payment of the Settlement Fund monies as described in Section 4.1 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, or payment of the administrative, legal, accounting, or other costs occasioned by the use or administration of the Settlement Fund Account.

9. Presentation of Settlement to the Court

9.1. No later than twenty (20) days prior to the Preliminary Approval Hearing, the Settlement Class Representatives and Class Counsel shall file 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.

9.2. After entry by the Court of a Preliminary Approval Order, and no later than six (6) weeks prior to the Final Approval Hearing, the 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.

10. Effective Date and Termination

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

10.1.1. The Parties execute this Agreement;

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

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

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

10.1.5. 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.

10.2. 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) Individuals or Entities associated with more than 58,500 360 Savings accounts submit valid and timely requests to exclude themselves from the Settlement Class, as agreed to by the Parties and submitted to the Court;

(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;

(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; or

(vi) Any of the conditions precedent set forth in Section 3.1 is not satisfied.

10.3. If this Agreement is terminated under Section 10.2 above, the following shall occur:

10.3.1. 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 amount paid into the Settlement Fund by Capital One to date, 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;

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

10.3.3. Any Court orders approving certification of the Settlement Class and any other orders entered based upon 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

10.3.4. 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.

11. Duties of Settlement Administrator

11.1. 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 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, once approved by the Court), the duties of the Settlement Administrator shall include:

11.1.1. Providing notice to the Settlement Class in accordance with the Notice Plan;

11.1.2. Establishing and maintaining a Settlement website;

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

11.1.4. 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;

11.1.5. Paying Taxes;

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

11.1.7. 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;

11.1.8. No later than ten (10) days prior to the Final Approval Hearing, providing a final report to the Parties' Counsel summarizing the number of written requests for exclusion received, the number of written requests for exclusion determined to be valid and timely, and any other information requested by the Parties' Counsel;

11.1.9. After the Effective Date, processing and paying Class Cash Payments to Settlement Class Members, and attempting to resend any Class Cash Payments that are returned as undeliverable;

11.1.10. No later than ten (10) days 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

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

11.2. As specified in Section 4.2, 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 (aside from Capital One's paying of the Settlement Fund).

11.3. 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 once approved by the Court.

11.4. 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 once approved by the Court.

12. Notice Plan

12.1. 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 payment of the Class Cash Payments under the Settlement, and (iii) the procedure for Settlement Class Members to object to the Settlement or request exclusion from the Settlement.

12.2. The Notice Plan shall specify that notice shall be sent to all Settlement Class Members, regardless of whether a particular Settlement Class Member is a joint or co-accountholder on a 360 Savings account or has a joint or co-accountholder listed on his, her, or its 360 Savings account. In accordance with the Court's Order located at Docket Entry Number 278, Class Members for whom the Parties possess an identifiable and valid email address will receive Email Notices only. Class Members for whom the Parties do not possess a valid email address will receive Postcard Notices via U.S. mail, and if such joint or co-accountholders share the same residence/address, only one Notice will be sent for that account (addressed to all joint or co-accountholders).

12.3. The Notice Plan shall provide that the Settlement Administrator shall cause the Complaint, Long Form Notice, Postcard Notice, Email Notice, Press Release, this Settlement Agreement, the Preliminary Approval Order, and other relevant Settlement and Court documents to be available on the Settlement website. Any other content proposed to be included or displayed on the Settlement website shall be approved in advance by Class Counsel and Capital One's Counsel, which approval shall not be unreasonably withheld.

12.4. The Settlement Administrator shall be responsible for implementing and executing the Notice Plan using the Class List provided by Capital One in connection with the Previous Agreement, which includes each Settlement Class Member's full name, last known address, and last known email address (to the extent available) as reflected in Capital One's records.

12.4.1. The Parties agree that the Class List shall be used by the Settlement Administrator solely for the purpose of effectuating 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.

12.4.2. 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 Action.

12.4.3. The Class List shall be designated as "Highly Confidential" pursuant to the Stipulated Protective Order entered by the Court, Docket Entry Number 46.

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

12.4.5. The provisions regarding the compilation and treatment of the Class List described in Section 12.4 and its subsections are material terms of this Settlement Agreement.

12.5. As specified in Section 4.2, 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.

13. CAFA Notice

13.1. Capital One will serve any 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.

14. Covenants Not to Sue

14.1. The Class Representatives covenant and agree: (i) not to file, commence, prosecute, intervene in, or participate in the litigation of 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 or Entities 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.

15. Representations and Warranties

15.1. 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.

15.2. 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.

15.3. The Settlement Class Representatives represent and warrant that after the Final Approval Order and Judgment is granted, and the Effective Date has occurred, they have no surviving claim or cause of action against any of the Released Parties with respect to any of the Released Claims.

16. Releases

16.1. Release of Capital One Parties. 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 or Entity purporting to claim on their behalf, hereby expressly, generally, absolutely, and unconditionally release and discharge any and all Released Claims against the Released Capital One Parties, 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.

16.2. Release of Plaintiff Parties. As of the Effective Date, Capital One, and any of its current, former, and future Affiliates, Parents, Subsidiaries, representatives, officers, agents,

directors, employees, contractors, vendors, insurers, Successors, assigns, and attorneys hereby expressly, generally, absolutely, and unconditionally release and discharge the Released Plaintiff Parties from all claims and causes of actions of every nature and description, whether known or Unknown, that arise out of or relate in any way to the institution, prosecution, or settlement of the Action, except for claims relating to the enforcement of the Settlement or this Agreement.

16.3. 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.

16.4. The Parties agree that the Released Capital One Parties and Released Plaintiff Parties will suffer irreparable harm if any of them takes action inconsistent with Section 16 of this Agreement, 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.

16.5. Class Counsel and the Settlement Class Representatives shall ask the Court to dismiss with prejudice all claims, actions, or proceedings that are released pursuant to this

Agreement as of the Effective Date in connection with its motion seeking Final Approval of the Settlement.

16.6. For the avoidance of doubt, the releases described in Section 16 of this Agreement apply to all Settlement Class Members regardless of whether they hold a 360 Savings account individually or jointly with other joint or co-accountholders.

17. No Admission of Wrongdoing or Infirmity of Claims

17.1. This Agreement is made for the sole purpose of attempting to consummate a settlement of the Action 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 or weakness of any claim or defense.

17.2. 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:

17.2.1. Shall not be offered or received against Capital One as evidence of or construed as or deemed to be evidence of any presumption, concession, or admission by Capital One 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 Action or in any litigation, or the deficiency of any defense that has been or could have been asserted in the Action or in any litigation, or of any liability, negligence, fault, breach of duty, or wrongdoing of Capital One;

17.2.2. Shall not be offered or received against Capital One 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 Capital One;

17.2.3. Shall not be offered or received against Capital One 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 Capital One, 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, Capital One may refer to it to effectuate the liability protection granted to it hereunder;

17.2.4. Shall not be construed against Capital One 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;

17.2.5. 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 Capital One have any merit, or that damages recoverable under the Action would not have exceeded the Settlement Fund, provided, however, that if this Agreement is approved by the Court, Capital One may refer to it to enforce the release of claims granted to it hereunder; and

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

17.3. 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.

17.4. Notwithstanding the foregoing, Capital One may use, offer, admit, or refer to this Agreement and to the Settlement reached herein where necessary to defend itself 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.

18. Opt-Outs

18.1. Any Settlement Class Member who wishes to be excluded from the Settlement Class must submit a written request for exclusion to the Settlement Administrator, postmarked no later than the Opt-Out Deadline, as specified in the Preliminary Approval Order.

18.2. The written request for exclusion must:

(i) Identify the case name of the Action;

(ii) Identify the name, telephone number, address, and email 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.

18.3. Opt-out requests seeking exclusion on behalf of more than one Settlement Class Member shall be deemed invalid in their entirety by the Settlement Administrator unless the request only seeks the exclusion of the Settlement Class Member making the request and any of his, her, or its joint or co-holders of a particular 360 Savings account.

18.4. 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 or appeal any aspect of the Settlement.

18.5. For purposes of requests for exclusion, all holders of a particular 360 Savings account shall be treated as one. Any valid request for exclusion made by one holder of a particular 360 Savings account shall apply to all holders of that account.

18.6. Any Settlement Class Member who does not submit a valid and timely request for exclusion in the manner described in this Agreement and in the notice provided pursuant to the Notice Plan and who is not excluded by virtue of Section 18.5 of this Agreement 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, unless otherwise ordered by the Court.

19. Objections

19.1. 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.

19.2. The written objection must include:

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

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

(iii) A statement of whether the objection applies only to the objector, to a specific subset of the Settlement Class, or to the entire Settlement 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.

19.3. 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.

19.4. 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, unless otherwise ordered by the Court.

20. Service Awards

20.1. The Settlement Class Representatives and Class Counsel shall submit a request to the Court for payment of any Service Awards, not to exceed ten thousand United States Dollars ($10,000), for each Settlement Class Representative. Any request for Service Awards must be filed with the Court at least six (6) weeks before the Final Approval Hearing. If approved by the Court, such Service Awards shall be paid 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 (aside from Capital One's paying of the Settlement Fund).

20.2. 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.

21. Attorneys' Fees and Expenses

21.1. Class Counsel shall submit a request to the Court for payment of any Attorneys' Fees and for reimbursement of any Expenses incurred in prosecuting and settling the Action. Any request for Attorneys' Fees and Expenses must be filed with the Court at least six (6) weeks before the Final Approval Hearing. If approved by the Court, such Attorneys' Fees and Expenses shall be paid 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 (aside from Capital One's paying of the Settlement Fund).

21.2. 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.

22. Confidentiality

22.1. 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 the Action.

23. Notices

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

Chet B. Waldman
Carl L. Stine
Philip M. Black
WOLF POPPER LLP
845 Third Avenue
12th Floor
New York, NY 10022
cwaldman@wolfpopper.com
cstine@wolfpopper.com
pblack@wolfpopper.com

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

David L. Balser
Jamie Dycus
John C. Toro
Robert D. Griest
KING & SPALDING LLP
1180 Peachtree Street, N.E.
Suite 1600
Atlanta, GA 30309
dbalser@kslaw.com
jdycus@kslaw.com
jtoro@kslaw.com
rgriest@kslaw.com

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

24. Miscellaneous Provisions

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

24.2. 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.

24.3. Contractual Agreement. The Parties understand and agree that all terms of this Agreement 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.

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

24.5. 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.

24.6. 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.

24.7. 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.

24.8. 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.

24.9. 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 of or compliance with 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.

24.10. 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 severable and shall not limit or affect the validity, legality, or enforceability of any other provision hereunder.

24.11. 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 the Parties' Counsel shall exchange among themselves original signed counterparts (which may include electronically signed counterparts).

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

24.13. 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.

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

24.15. 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.

24.16. 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 neutral 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."

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

24.18. 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 arm's-length negotiations.

24.19. 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.

24.20. Confidentiality of Discovery Material. The Parties, the Parties' Counsel, and any retained or consulting experts, agree that they remain subject to the terms of the Stipulated Protective Order entered by the Court, Docket Entry Number 46.

24.21. Non-Disparagement. Neither the Settlement Class Representatives nor Class Counsel shall make, publish, or state, or cause to be made, published, or stated, any defamatory or disparaging statement, writing, or communication pertaining to Capital One or its Affiliates, Parents, Subsidiaries, representatives, officers, agents, directors, employees, or attorneys. Similarly, Capital One shall not make, publish, or state, or cause to be made, published, or stated, any defamatory or disparaging statement, writing, or communication pertaining to any of the Settlement Class Representatives or their immediate families or Class Counsel.

24.22. No Government Third-Party Rights or Beneficiaries. Except as expressly provided for herein, no government agency or official can claim any rights or credit under this Agreement or Settlement, whether with respect to the alleged conduct that is the subject of the releases in Section 16 or the funds (or remainder of funds) paid or used in the Settlement.

24.23. 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: Chet B. Waldman
Date: December 12, 2025

Chet B. Waldman (admitted *pro hac vice*)*
Carl L. Stine (admitted *pro hac vice*)
Philip M. Black (admitted *pro hac vice*)
Matthew Insley-Pruitt (admitted *pro hac vice*)
Timothy D. Brennan (admitted *pro hac vice*)
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Local Counsel for Plaintiffs

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Miami, FL 33132
Email ashamis@shamisgentile.com

Edelsberg Law PA
Scott Edelsberg
Gabriel Mandler
20900 NE 30th Avenue, Suite 417
Aventura, FL 33180

Defendant Capital One Financial Corporation:

Name: Jamie Dycus
Title: King & Spalding LLP
Date: Attorney for Capital One Financial Corp.
December 12, 2025

Defendant Capital One, N.A.:

Name: Jamie Dycus
Title: King & Spalding LLP
Date: Attorney for Capital One, N.A.
December 12, 2025

Email: chris@edelsberglaw.com
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