

## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (the “Settlement Agreement”) is entered into by and between Plaintiffs Margaret Murr (“Murr”) and David Reign (“Reign”) (together, Plaintiffs”), for themselves and the Settlement Class Members (as defined below), on the one hand, and, on the other hand, Capital One Bank (USA), N.A., (“Capital One”). Plaintiffs and Capital One are referred to collectively in this Settlement Agreement as the “Parties.”

### **I. RECITALS**

**1.01** On August 30, 2013, Murr filed a class action in the Eastern District of Virginia against Capital One Bank (USA), N.A., captioned *Murr v. Capital One Bank (USA), N.A.*, C.A. No. 1:13-CV-1091-LMB-TCB (E.D. Va.). Murr’s Complaint alleged that Capital One failed to disclose certain information regarding minimum payments and the grace period for purchases in relation to its 0% APR special transfer offers. As a result, Murr alleged that Capital One breached its contract with Murr or, in the alternative, that Capital One committed fraud by not disclosing the contractual terms to her. The Complaint also alleged that Capital One violated the Truth In Lending Act, 15 U.S.C. § 1601 *et seq.*, the Fair Credit Billing Act, 15 U.S.C. § 1666 (on an individual basis only), and the Arizona Consumer Fraud Act, A.R.S. § 44-1521, *et seq.*

**1.02** Concurrently filed herewith, Murr’s complaint was amended to add Reign as an additional named plaintiff.

**1.03** The Parties agree that throughout the course of the Litigation, all Parties and their counsel complied with the provisions of Federal Rule of Civil Procedure 11.

**1.04** Capital One denies all material allegations contained in the Amended Complaint. Capital One specifically denies that it failed to follow the terms of its unambiguous contracts with Plaintiffs; that it made any affirmative misrepresentations to Plaintiffs; that it was required to make any additional disclosures or representations regarding its 0% APR special transfer offers; or that it violated the Truth In Lending Act, the Fair Credit Billing Act, and Arizona Consumer Fraud Act. Capital One further contends that the allegations contained in the Amended Complaint

are not amenable to certification in a litigation class. Nevertheless, given the risks, uncertainties, burden, and expense of continued litigation, Capital One has agreed to settle all claims alleged in the Amended Complaint on the terms set forth in this Agreement, subject to Court approval.

**1.05** This Settlement Agreement resulted from good faith, arm's-length settlement negotiations over many months, including three in-person mediation sessions before Magistrate Judge Theresa C. Buchanan. Plaintiffs and Capital One submitted detailed mediation submissions to Judge Buchanan setting forth their respective views as to the strengths of their cases before each mediation session. Capital One has also provided information confirming the business practice changes that it has developed and implemented related to 0% APR special transfer offers and grace periods on purchases.

**1.06** The Parties understand and agree that the execution of this Settlement Agreement constitutes the settlement and compromise of disputed claims. This Settlement Agreement is inadmissible as evidence against any of the Parties except to enforce the terms of the Settlement Agreement and is not an admission of wrongdoing or liability on the part of any Party to this Settlement Agreement. The Parties desire and intend to effect a full and final settlement of all existing disputes and claims as set forth herein.

**1.07** The Settlement contemplated by this Settlement Agreement is subject to preliminary approval and final approval by the Court, as set forth herein. This Settlement Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims, upon and subject to the terms and conditions hereof.

## **II. DEFINITIONS**

**2.01** "0% Offer" means a Capital One 0% APR special transfer offer.

**2.02** "Agreement" or "Settlement Agreement" means this Settlement Agreement and Release between Plaintiffs and Capital One and each and every exhibit attached hereto.

**2.03** "Capital One" refers collectively to Capital One Bank (USA), N.A.

**2.04** "CAFA Notice" refers to the notice required by the Class Action Fairness Act, 28

U.S.C. § 1715(b), to be provided by the Claims Administrator under Section 8.06.

**2.05** “Cash Award” means a monetary payment by means of a check to an eligible Settlement Class Member.

**2.06** “Claims Administration” means the activities of the Claims Administrator consistent with the terms of this Settlement.

**2.07** “Claims Administrator” means Dahl Administration.

**2.08** “Claim Form” means one of the claim forms to be submitted by Settlement Class members in substantially the form attached hereto as Exhibit A.

**2.09** “Claims Deadline” means ninety (90) calendar days after the Settlement Notice Date.

**2.10** “Claims Protocol” means the protocol for reviewing and approving Claim Forms, attached as Exhibit E hereto.

**2.10** “Class Counsel” means and includes:

- a. Blood Hurst & O’Reardon, LLP; and
- b. Scott+Scott, Attorneys at Law, LLP.

**2.11** “Class Notice” means any type of notice that has been or will be provided to the Settlement Class under this Agreement and any additional notice that might be ordered by the Court.

**2.12** “Class Period” means from August 1, 2008, through the Preliminary Approval Hearing date.

**2.13** “Class Representatives” means Plaintiffs Margaret Murr and David Reign.

**2.14** “Court” means the United States District Court for the Eastern District of Virginia and U.S. District Judge Leonie M. Brinkema.

**2.15** “Effective Date” means the date when the Judgment has become final as provided in Section 12.

**2.16** “Final Approval Hearing” means the hearing held by the Court to determine whether to finally approve the Settlement set forth in this Settlement Agreement as fair,

reasonable, and adequate.

**2.17** “Final Approval Order” means the order to be submitted to the Court in connection with the Final Approval Hearing, substantially in the form attached hereto as Exhibit C.

**2.18** “Funding Date” means five (5) business days after the Effective Date.

**2.19** “Grace-Period Effect” means the loss of a Settlement Class Member’s interest-free grace period on repaying purchases as a result of accepting a 0% Offer and carrying the resulting 0% balance on his or her Capital One credit card account.

**2.20** “This Litigation” means the action described by the Amended Complaint. *See Murr v. Capital One Bank (USA), N.A.*, C.A. No. 1:13-CV-1091-LMB-TCB (E.D. Va.).

**2.21** “Notice” means the notices to be provided to Settlement Class Members as set forth in Section 8 including, without limitation, Long Form Notice, Email Notice, Postcard Notice, and Internet Notice. The forms of the Long Form Notice, Email Notice, Postcard Notice, and Internet Notice are attached hereto as Exhibits B1, B2, B3, and B4 respectively.

**2.22** “Notice Databases” means the databases containing Settlement Class Members’ information Capital One has provided pursuant to Section 7.02.

**2.23** “Objection Deadline” means the date by which Settlement Class Members must file and serve objections to the Settlement and shall be no later than forty-five (45) calendar days before the date first set for the Final Approval Hearing.

**2.24** “Opt-Out Deadline” means the postmark date by which a Request for Exclusion must be submitted to the Settlement Administrator in order for a Settlement Class Member to be excluded from the Class, and shall be no later than forty-five (45) calendar days before the date first set for the Final Approval Hearing.

**2.25** “Payment-Allocation Effect” means any effect on the amount of interest paid on purchases caused by Capital One’s practices of considering the balance created by a Settlement Class Member’s acceptance of a 0% Offer in setting the amount of the Settlement Class Member’s monthly minimum payment, and of applying the minimum payment first to that

balance or another 0% balance before the purchase balance.

**2.26** “Plaintiffs’ Counsel” means the following counsel of record for Plaintiffs: Blood Hurst & O’Reardon, LLP; Scott+Scott, Attorneys at Law, LLP; Cuneo Gilbert & Laduca, LLP; and Morgan & Morgan, PA.

**2.27** “Preliminary Approval Order” means the proposed order to be submitted to the Court in connection with Motion for Preliminary Approval, in the form attached hereto as Exhibit D.

**2.28** “Qualified Account” means any Capital One credit card account through which a Settlement Class Member accepted a 0% Offer using an Access Check or No-Hassle Check from August 1, 2008, to the Preliminary Approval Date.

**2.29** “Released Claims” means the claims released in Section 14.

**2.30** “Released Parties” means Capital One Bank (USA) N.A., Capital One, N.A., Capital One Financial Corporation, Capital One Services, LLC, Capital One Services II, LLC, and each of their respective past, present, and future parents, subsidiaries, affiliated companies and corporations, and each of their respective past, present, and future directors, officers, managers, employees, general partners, limited partners, principals, agents, insurers, reinsurers, shareholders, attorneys, advisors, representatives, predecessors, successors, divisions, joint ventures, assigns, or related entities, and each of their respective executors, successors, assigns, and legal representatives.

**2.31** “Request for Exclusion” means the written submission submitted by a Settlement Class Member to opt out of the Settlement consistent with the terms of this Agreement.

**2.32** “Settlement” means the Settlement set forth in this Agreement between Plaintiffs and Capital One and each and every exhibit attached hereto.

**2.33** “Settlement Class” means and includes all persons within the United States who from August 1, 2008, to the Preliminary Approval Date accepted a 0% Offer using an Access Check or No-Hassle Check.

**2.34** “Settlement Class Members” means the Plaintiffs and those persons who are

members of the Settlement Class, as set forth in the Settlement Class as defined above, and who do not submit a timely and valid Request for Exclusion from the Settlement Class.

**2.35** “Settlement Notice Date” means ninety (90) calendar days after the Preliminary Approval Order is issued.

**2.36** “Settlement Website” means the Internet website operated by the Claims Administrator as described in Section 8.04.

### **III. ALL PARTIES RECOMMEND APPROVAL OF THE SETTLEMENT**

**3.01** Capital One’s Position on the Conditional Certification of Settlement Class. Capital One disputes that a litigation class would be manageable and further denies that a litigation class properly could be certified on the claims asserted in this Litigation. However, solely for purposes of avoiding the expense and inconvenience of further litigation, Capital One does not oppose the certification of the Settlement Class for the purposes of only this Settlement. Preliminary certification of the Settlement Class will not be deemed a concession that certification of a litigation class is appropriate, nor would Capital One be precluded from challenging class certification in further proceedings in this Litigation or in any other action if the Settlement Agreement is not finalized or finally approved. If the Settlement Agreement is not finally approved by the Court for any reason whatsoever, the certification of the Settlement Class will be void, and no doctrine of waiver, estoppel, or preclusion will be asserted in any litigated certification proceedings in this Litigation or any other judicial proceeding. No agreements made by or entered into by Capital One in connection with the Settlement Agreement may be used by Plaintiffs, any Settlement Class Member, or any other person to establish any of the elements of class certification in any litigated certification proceedings, whether in this Litigation or any other judicial proceeding.

**3.02** Plaintiffs’ Belief in the Merits of Case. Plaintiffs believe that the claims asserted in this Litigation have merit and that the evidence developed to date supports those claims. This Settlement will in no event be construed or deemed to be evidence of an admission or concession

on the part of Plaintiffs that there is any infirmity in the claims asserted by Plaintiffs or that there is any merit whatsoever to any of the contentions and defenses that Capital One has asserted.

**3.03 Plaintiffs Recognize the Benefits of Settlement.** Plaintiffs recognize and acknowledge, however, the expense and amount of time that would be required to continue to pursue this Litigation against Capital One, as well as the uncertainty, risk, and difficulties of proof inherent in prosecuting such claims on behalf of the Settlement Class. Plaintiffs have concluded that it is desirable that this Litigation and any Released Claims be fully and finally settled and released as set forth in this Settlement. Plaintiffs and Class Counsel believe that the Settlement set forth in this Agreement confers substantial benefits upon the Settlement Class and that it is in the best interests of the Settlement Class to settle as described herein.

**IV. SETTLEMENT TERMS AND BENEFITS TO THE SETTLEMENT CLASS**

**4.01 Capital One's 0% Offer Materials.** Since the time when Class Representative Murr received her 0% Offer, Capital One has further enhanced the disclosures in its 0% Offer materials addressing the Grace-Period Effect and the Payment-Allocation Effect, benefiting all Settlement Class Members.

**4.02 Monetary Consideration.** In addition to the business practice changes set forth in Section 4.01, for each Qualified Account Capital One will make the following monetary payments to Settlement Class Members, which will be distributed to Settlement Class Members as set forth in Section 9.03 by the Claims Administrator:

a. Capital One will pay a \$5.50 Cash Award to each Settlement Class Member who:

- accepted a 0% Offer under the Settlement Class Member's account using an Access Check or No-Hassle Check within the Class Period;
- did not accept any other 0% Offer in the same account using an Access Check or No-Hassle Check three months or more before or after accepting that 0% Offer; and

- paid interest on purchases as a result of either the Grace-Period Effect or Payment-Allocation Effect or both.

Provided that Capital One has current address information for these Settlement Class Members or that the Claims Administrator obtains updated address information pursuant to Section 8.02(a), they need not submit a claim to receive the Cash Award.

b. Capital One will pay a \$5.50 Cash Award to each Settlement Class Member who:

- accepted a 0% Offer under the Settlement Class Member's account using an Access Check or No-Hassle Check within the Class Period;
- accepted one or more additional 0% Offers in the same account using an Access Check or No-Hassle Check three months or more before or after accepting that 0% Offer;
- paid interest because of either the Grace-Period Effect or Payment-Allocation Effect; and
- submits a valid claim under Section 9 of this Agreement.

c. Capital One will pay a \$2.00 Cash Award to each Settlement Class Member who:

- accepted one or more 0% Offers under the Settlement Class Member's account using an Access Check or No-Hassle Check within the Class Period;
- did not pay interest because of either the Grace-Period Effect or Payment-Allocation Effect; and
- submits a valid claim under Section 9 of this Agreement.

**4.03** Minimum Monetary Payment. In no event will Capital One pay less than a total of \$3.125 million to the Settling Class Members. If the amounts that would be paid under Section 4.02 will not total at least \$3.125 million, given the number of claims submitted, then the individual payment amounts set forth in Section 4.02 will be increased on a pro rata basis to



increase the total to \$3.125 million.

**4.04** Eligibility for Cash Awards. Each Settlement Class Member who is entitled to a payment under Section 4.02(a) or who makes a valid and timely claim under Sections 4.02(b) and 4.02(c) will receive a Cash Award. Settlement Class Members who had multiple accounts will be entitled to receive one Cash Award for each account, with each account being analyzed separately to determine its treatment under Section 4.02.

## **V. ATTORNEYS' FEES AND COSTS**

**5.01** Attorneys' Fees and Costs. Capital One agrees to pay up to \$1,500,000 in attorneys' fees and costs to Class Counsel, or any lower amount otherwise ordered by the Court. Class Counsel agrees not to seek any additional award of attorney's fees beyond the amount stated here. Class Counsel will be entitled to payment of the fees on the Funding Date. The application for an award of attorneys' fees and costs will be made by Class Counsel on behalf of themselves and Plaintiff's Counsel. Class Counsel shall be responsible for allocating and distributing the attorneys' fees and costs award to Plaintiff's Counsel.

**5.02** Class Representative Service Award. Plaintiffs will apply for class representative service awards. The purpose of such awards shall be to compensate Plaintiffs for efforts and risks taken by them on behalf of the Settlement Class. Capital One will pay the service awards approved by the Court in addition to the benefits that Plaintiffs are entitled to receive as a Settlement Class Member. Capital One will pay the service awards on the Funding Date.

**5.03** Settlement Independent of Award of Fees, Costs and Service Award. The payment of attorneys' fees and costs set forth in Sections 5.01 is subject to and dependent upon the Court's approval of the Settlement as fair, reasonable, adequate, and in the best interests of Settlement Class Members. However, this Settlement is not dependent or conditioned upon the Court's approving such payments. In the event the Court awards less than the amounts specified in Section 5.01, this Settlement will continue to be effective and enforceable by the Parties. If the Court does not award the full amount of unopposed, requested attorneys' fees and costs, then the

Minimum Monetary Payment amount set forth in Section 4.03 will be increased by the same amount that the requested attorneys' fees and costs are reduced.

## **VI. PRELIMINARY APPROVAL**

**6.01** Order of Preliminary Approval. As soon as practicable after the execution of this Agreement, Plaintiffs will move the Court for entry of the Preliminary Approval Order in substantially the form attached as Exhibit D. Pursuant to the motion for preliminary approval, Plaintiffs will request that the Court:

- a. conditionally certify the Settlement Class for purposes of this Settlement only and appoint Class Counsel as counsel for the Settlement Class for settlement purposes only;
- b. preliminarily approve the Settlement and this Agreement as fair, adequate, and reasonable, and within the reasonable range of possible final approval;
- c. appoint Blood, Hurst & O'Reardon, LLP and Scott+Scott, Attorneys at Law LLP as Class Counsel;
- d. approve the forms of Notice and find that the notice program set forth herein constitutes the best notice practicable under the circumstances, and satisfies due process and Rule 23 of the Federal Rules of Civil Procedure;
- e. set the date and time for the Final Approval Hearing, which may be continued by the Court from time to time without the necessity of further notice; and
- f. set the Claims Deadline, the Objection Deadline, and the Opt-Out Deadline.

## **VII. ADMINISTRATION AND NOTIFICATION PROCESS**

**7.01** Third-Party Claims Administrator. The Parties have jointly selected a Claims Administrator. The Claims Administrator will be responsible for all matters relating to the administration of this Settlement, as set forth herein. Those responsibilities include, but are not limited to, giving notice, obtaining new addresses for returned email and mail, setting up and maintaining the Settlement Website and toll-free telephone number, fielding inquiries about the

Settlement, processing claims, acting as a liaison between Settlement Class Members and the Parties regarding claims information, approving claims, rejecting any Claim Form where there is evidence of fraud (as determined by the Claims Administrator under policies and procedures developed by the Claims Administrator and approved by the Parties), directing the mailing of Cash Awards to Settlement Class Members, and any other tasks reasonably required to effectuate the foregoing. The Claims Administrator will provide monthly updates on the claims status to counsel for all Parties.

**7.02** Notice Databases. To facilitate the notice and claims administration process, Capital One has provided to the Claims Administrator, in an electronically searchable and readable format, Notice Databases which include the names, last known email address, last known mailing addresses, truncated account numbers, and telephone numbers for all known members of the Settlement Class, as such information is contained in Capital One's reasonably available computerized account records. If any of the terms of this Settlement relating to the Claims Administrator's services would unreasonably hinder or delay such processes or make them more costly, the Claims Administrator will so advise the Parties, and the Parties will accommodate the Claims Administrator to the extent necessary to carry out the intent of this Settlement Agreement. Any personal information relating to members of the Settlement Class provided to the Claims Administrator or Class Counsel pursuant to this Settlement will be provided solely for the purpose of providing notice to members of the Settlement Class and allowing them to recover under this Settlement; will be kept in strict confidence; will not be disclosed to any third party; and will not be used for any other purpose. The Claims Administrator shall return the Notice Databases to Capital One within ninety (90) days after the Effective Date.

**7.03** Payment of Notice and Claims Administration Costs. Capital One will pay the reasonable costs of Notice and Claims Administration as they are incurred and invoiced by the Claims Administrator. The Claims Administrator will provide to the Parties an estimate of the amount of costs required to email and mail Notice, establish the Settlement Website, and establish a toll-free telephone number, as well as any other initial administration costs to the Parties.

Capital One will pay the estimated amount to the Claims Administrator within ten (10) business days after the entry of the Preliminary Approval Order. After that upfront payment of administration costs by Capital One, the Claims Administrator will bill Capital One monthly for the reasonable additional costs of Claims Administration. Any amounts paid by Capital One for the estimated costs of Claims Administration which are not incurred by the Claims Administrator will be used for other Claims Administration costs, or will be deducted from future billings by the Claims Administrator. The Claims Administrator will maintain detailed records of the amounts spent on the administration of the Settlement and will provide those to the Parties monthly.

### **VIII. NOTICES**

**8.01** Timing of Class Notice. Class Notice will be provided to all persons in the Settlement Class within ninety (90) calendar days following entry of the Preliminary Approval Order as described herein.

**8.02** E-Mailing or Mailing of Settlement Notice. The Claims Administrator will send the Settlement Notice via: (i) electronic mail, to the most recent email address as reflected in Capital One's reasonably available computerized account records, to all persons in the Settlement Class for whom such records exist, provided Capital One and the Claims Administrator each believe such electronic mail address will reach the Class Member and will likely be viewed by the Class Member and who have not opted out of receiving electronic mail from Capital One, in accordance with Capital One's currently existing email opt-out policies; or (ii) first class mail, to the most recent mailing address as reflected in Capital One's reasonably available computerized account records, for those persons in the Settlement Class for whom Capital One does not have an email address (as reflected in reasonably available computerized account records) and/or who have opted out of receiving emails from Capital One, in accordance with Capital One's currently existing email opt-out policies, and to those persons in the Settlement Class whose emails are undeliverable.

a. Address Confirmation. The last known address of persons in the

Settlement Class will be subject to confirmation or updating as follows: (a) the Claims Administrator will check each address against the United States Post Office National Change of Address Database before the initial mailing; (b) the Claims Administrator will conduct a reasonable search to locate an updated address for any person in the Settlement Class whose Settlement Notice is returned as undeliverable; (c) the Claims Administrator will update addresses based on any forwarding information received from the United States Post Office; and (d) the Claims Administrator will update addresses based on any requests received from persons in the Settlement Class.

b. Re-Mailing of Returned Settlement Notices. The Claims Administrator will promptly re-mail any Notices that are returned as non-deliverable with a forwarding address to such forwarding address. For all returned mail, the Claims Administrator will perform data searches and other reasonable steps to attempt to obtain better contact information on the Settlement Class Member.

**8.03** Internet Notice. The Claims Administrator will design and conduct a nationwide publication Internet-based notice program utilizing Internet banner advertisements substantially in the form of Exhibit B4 hereto and which will include a hyperlink to the Settlement Website. The nationwide Internet-based notice program will be initiated no later than the Settlement Notice Date.

**8.04** Settlement Website. By the Settlement Notice Date, the Claims Administrator will maintain and administer a dedicated Settlement Website ([www.CapitalOneZeroPercentSettlement.com](http://www.CapitalOneZeroPercentSettlement.com)) containing class information and related documents, court filings, along with information necessary to file a claim, and an electronic version of the Claim Form members can download, complete, and submit electronically at the Settlement Website. At a minimum, such documents will include the Settlement Agreement and attached exhibits, E-mail Notice, Mail Notice, a downloadable Claim Form for anyone wanting to print a hard copy and mail in the Claim Form, and when filed, the Preliminary Approval Order, memorandum in support of motion for final approval, and memorandum in support of an award of attorneys' fees and reimbursement

of costs, and the Final Approval Order. The Website will be taken down and rendered inaccessible by 240 calendar days after the first pro rata distribution.

**8.05** Toll-Free Telephone Number. Within ten (10) business days of the issuance of the Preliminary Approval Order, the Claims Administrator will set up a toll-free telephone number for receiving toll-free calls related to the Settlement. That telephone number will be maintained until thirty (30) calendar days after the Claims Deadline. After that time, and for a period of ninety (90) calendar days thereafter, a recording will advise any caller to the toll-free telephone number that the Claims Deadline has passed and the details regarding the Settlement may be reviewed on the related Settlement Website.

**8.06** CAFA Notice. The Claims Administrator will be responsible for serving the required CAFA Notice within ten (10) calendar days after the filing of the Preliminary Approval Motion.

## **IX. CLAIMS PROCESS**

**9.01** Cash Awards Without Claims. Settlement Class Members who are entitled to a Cash Award under Section 4.02(a) and for whom Capital One has current address information need not submit a claim to receive a settlement check. The Claims Administrator will distribute settlement checks to these Settlement Class Members as set forth in Section 9.03.

**9.02** Conditions for Submitting a Claim. Settlement Class Members who are entitled to make a claim under Section 4.02(b) or 4.02(c) must submit by the Claims Deadline a valid and timely Claim Form, which will contain the information set forth in Exhibit A attached hereto. If a Settlement Class Member who is entitled to make a claim under Section 4.02(b) or 4.02(c) fails to fully complete a Claim Form, the Claim Form will be invalid. Any Settlement Class Member who has submitted or submits a materially incomplete or inaccurate Claim Form will be permitted to re-submit a Claim Form within fourteen (14) calendar days after the sending of notice of the defect by the Claims Administrator. Class Counsel will be kept apprised of the volume and nature of defective claims and allowed to communicate with Settlement Class Members as they deem

appropriate to cure such deficiencies.

**9.03**    Mailing of Settlement Checks.

a.        First phase. Settlement checks will be sent to qualified Settlement Class Members by the Claims Administrator via U.S. mail no later than twenty-five (25) calendar days after the Funding Date. If any settlement checks are returned, the Claims Administrator will attempt to obtain a new mailing address for that Settlement Class Member by taking the steps described in Section 8.02. If, after a second mailing, the settlement check is again returned, no further efforts need be taken by the Claims Administrator to resend the check. The Claims Administrator will advise Class Counsel and counsel for Capital One of the names of the Settlement Class Members whose checks are returned by the postal service as soon as practicable. Each settlement check will be negotiable for ninety (90) calendar days after it is issued. Upon request by a claimant, the Claims Administrator may re-issue settlement checks, provided that such re-issued checks will be negotiable for forty-five (45) calendar days after the date of re-issuance.

b.        Second phase. After the negotiation period for all checks issued and re-issued in the first phase has expired, the Claims Administrator will use the amount of money represented by the uncashed checks to fund additional efforts to reissue, deliver, and pay settlement checks to the Settlement Class Members who did not cash their earlier checks. The Claims Administrator will take the steps that are, in its discretion, most likely to result in the remaining funds being received by Settlement Class Members. All actions of the Claims Administrator in this phase will be paid out of the money represented by the uncashed checks. The Claims Administrator will keep attempting to distribute the funds until the combined costs of its actions and the additional money received by Settlement Class Members reduces the money remaining after the first phase to less than \$500, at which point it will be used to offset other costs of class administration.

**X. OPT-OUTS AND OBJECTIONS**

**10.01 Opting Out of the Settlement.** Any members of the Settlement Class who wish to exclude themselves from the Settlement Class must advise the Claims Administrator by providing a written Request for Exclusion. The Request for Exclusion must be postmarked no later than the Opt-Out Deadline. In the Request for Exclusion, the Settlement Class Member must state his or her full name and address, and must state that he or she wishes to be excluded from the Settlement. Any member of the Settlement Class who submits a valid and timely Request for Exclusion will not be a Settlement Class Member and will not be bound by the terms of this Agreement. Settlement Class Members who do not properly and timely submit a Request for Exclusion will be bound by this Agreement and the Judgment, including the releases in Section 14 below.

**10.02 Reporting on Opt Outs.** The Claims Administrator will provide the Parties with copies of each Request for Exclusion it receives and will provide a list of each Settlement Class Member who timely and validly opted out of the Settlement in its declaration filed with the Court, as required by Section 11.01.

**10.03 Objections.** Any Settlement Class Member who intends to object to the fairness of this Settlement must deliver to the Class Counsel identified in the Class Notice and to Capital One's Counsel, and file with the Court, a written Objection by the Objection Deadline.

a. In the written Objection, the Settlement Class Member must include: (1) a heading which refers to the Litigation, *Murr v. Capital One Bank (USA), N.A.*, Case No. 1:13-cv-1091 LMB/TCB (E.D. Va.); (2) his or her full name, telephone number, and residential address (the objector's actual residential address must be included); (3) if represented by counsel, the full name, telephone number, and address of all counsel; (4) all of the reasons for his or her Objection; (5) whether he or she intends to appear at the Final Approval Hearing on his or her own behalf or through counsel; (6) a statement that he or she is a Settlement Class Member; and (7) the objector's dated, handwritten signature (an electronic signature or attorney's signature are not sufficient). Any documents supporting the Objection must also be attached to the Objection.



If any testimony is to be given in support of the Objection, the names of all persons who will testify must be set forth in the Objection.

b. Any Settlement Class Member who fails to comply with the provisions of Section 10.03 shall waive and forfeit any and all rights he or she may have to appear separately and object, and shall be bound by all the terms of this Settlement and by all proceedings, orders and judgment, including, but not limited to the Release in this action.

c. The Parties will have the right to take discovery, including a deposition, of any objector to assess the objector's standing, motives, and intent.

**10.04** Appearance of Objectors at Final Approval Hearing. Any Settlement Class Member who has timely filed a complying Objection under Section 10.03 may appear at the Final Approval Hearing, either in person or through an attorney hired at the Settlement Class Member's own expense, to object to the fairness, reasonableness, or adequacy of this Agreement or the Settlement. Settlement Class Members or their attorneys who intend to make an appearance at the Final Approval Hearing must deliver a notice of intention to appear to the Class Counsel identified in the Class Notice and to Capital One's Counsel, and file said notice with the Court, no later than the Objection Deadline.

## **XI. FINAL APPROVAL AND JUDGMENT ORDER**

**11.01** No later than fourteen (14) calendar days prior to the Final Approval Hearing, the Claims Administrator will file with the Court and serve on counsel for all Parties a declaration stating that the Notice required by the Agreement has been completed in accordance with the terms of the Preliminary Approval Order.

**11.02** If the Court issues the Preliminary Approval Order, and all other conditions precedent to the Settlement have been satisfied, no later than sixty (60) and seven (7) calendar days prior to Final Approval Hearing opening and reply memorandum shall be filed, respectively, requesting that the Court enter the Final Approval Order in substantially the form attached as Exhibit C and addressing any Objections submitted to the Settlement.

**11.03** At the Final Approval Hearing, the Court will consider and determine whether the provisions of this Agreement should be approved; whether the Settlement should be finally approved as fair, reasonable, and adequate; whether any Objections to the Settlement should be overruled; whether the fee award, expense award, and service award to the Class Representatives should be approved and in what amounts; and whether a Judgment finally approving the Settlement should be entered.

**11.04** This Agreement is subject to and conditioned upon the issuance by the Court of a Final Approval Order which grants final approval of this Agreement, enters a final Judgment, and:

- a. finds that the Notice provided satisfies the requirements of due process and Federal Rules of Civil Procedure Rule 23(e)(1);
- b. finds that Settlement Class Members have been adequately represented by the Class Representatives and Class Counsel;
- c. finds that the Settlement Agreement is fair, reasonable, and adequate with respect to the Settlement Class, that each Settlement Class Member will be bound by this Agreement, including the releases in Sections 14.01 and 14.02 and the covenant not to sue in Section 14.04, and that this Settlement Agreement should be and is approved;
- d. dismisses on the merits and with prejudice all claims of the Settlement Class Members asserted in the Litigation;
- e. permanently enjoins each and every Settlement Class Member from bringing, joining, or continuing to prosecute any Released Claims against Capital One or any of the Released Parties; and
- f. retains jurisdiction of all matters relating to the interpretation, administration, implementation, effectuation, and enforcement of this Settlement Agreement.

## **XII. FINAL JUDGMENT**

**12.01** The judgment entered at the Final Approval Hearing will be deemed final:

a. Thirty (30) calendar days after entry of the Judgment approving the Settlement if no document is filed within that time seeking appeal, review, or rehearing of the Judgment; or

b. If any such document is filed, then five (5) business days after the date upon which all appellate and/or other proceedings resulting from such document have been finally terminated in such a manner as to permit the Judgment to take effect in substantially the form described in Section 11.04.

### **XIII. CONFIRMATORY DISCOVERY**

**13.01** Class Counsel hereby represent that they have conducted discovery to confirm the accuracy of the information provided to them during the course of the Litigation and the Parties' settlement negotiations. The purpose of that discovery was to confirm: (a) the total number of Settlement Class Members, *i.e.*, those persons within the United States who accepted a 0% Offer using an Access Check or No-Hassle Check during the class period, and the process used to determine that number; (b) changes to Capital One's business practices as described in Section 4.01; and (c) to ascertain and evaluate the class claims and potential obstacles to certification as well as other factors relevant to the Settlement. This discovery is to be used solely for purposes of this Settlement and, consistent with Sections 16.01 and 16.02 below, may not be used for any purpose in the event this Agreement is terminated or is not fully and finally approved by the Court.

### **XIV. RELEASE OF CLAIMS**

**14.01** Released Claims. Upon the Effective Date of this Settlement Agreement, Plaintiffs and each Settlement Class Member, as well as their respective assigns, heirs, executors, administrators, successors, and agents: (i) shall be deemed to have, and by operation of the Final Judgment shall have fully, finally, and forever released and discharged the Released Parties from each and every one of the Released Claims; (ii) shall forever be enjoined from prosecuting any Released Claims; and (iii) agree and covenant not to sue on the basis of any Released Claims or to

assist any third-party in commencing or maintaining any such suit related to any Released Claims. The release does not apply to members of the Settlement Class who opt out of the Settlement by submitting a valid and timely Request for Exclusion. "Released Claims" means any and all claims, causes of action, suits, obligations, debts, demands, agreements, promises, liabilities, damages, losses, controversies, costs, expenses, and attorneys' fees of any nature whatsoever, whether based on any federal law, state law, common law, territorial law, foreign law, contract, rule, regulation, any regulatory promulgation (including, but not limited to, any opinion or declaratory ruling), common law, or equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, punitive or compensatory, as of the date of the Final Approval Order, that arise out of or relate in any way to the Grace-Period Effect or the Payment-Allocation Effect in connection with a Capital One 0% Offer accepted from August 1, 2008, to the Preliminary Hearing Date as alleged in the Amended Complaint.

**14.02** "Capital One's Released Claims" means all claims, including "Unknown Claims" as defined in paragraph 14.03, that any of the Released Parties may have against Plaintiffs, Settlement Class Members, or Class Counsel relating to the institution, prosecution or settlement of this Litigation or the Released Claims, except for claims to enforce any of the terms of this Settlement Agreement. Upon the Effective Date of this Settlement Agreement, each of the Released Parties: (i) shall be deemed to have, and by operation of the Final Judgment shall have fully, finally, and forever released and discharged Plaintiffs, Class Counsel, and each and all of the Settlement Class Members from each and every one of the Capital One's Released Claims; (ii) shall forever be enjoined from prosecuting any one of the Capital One's Released Claims; and (iii) agree and covenant not to sue on the basis of any of Capital One's Released Claims or to assist any third-party in commencing or maintaining any such suit related to any of Capital One's Released Claims. This release in no way affects Capital One's right to collect on debt that Plaintiffs or Settlement Class Members owe to Capital One.

**14.03** Waiver of Unknown Claims. Without limiting the foregoing, the Released Claims

specifically extend to claims that Plaintiffs, Settlement Class Members, and the Released Parties do not know or suspect to exist in their favor at the time that the Settlement and the releases contained therein become effective. This Section constitutes a waiver, without limitation as to any other applicable law, of Section 1542 of the California Civil Code, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

**14.04** Plaintiffs, the Released Parties, and the Settlement Class Members understand and acknowledge the significance of these waivers of California Civil Code Section 1542 and similar federal and state statutes, case law, rules, or regulations relating to limitations on releases. In connection with such waivers and relinquishment, Plaintiffs, the Released Parties, and the Settlement Class Members acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts that they now know or believe to be true with respect to the subject matter of the Settlement, but that it is their intention to release fully, finally, and forever all Released Claims and Capital One's Released Claims with respect to the Released Parties, Plaintiffs, Settlement Class Members, and Plaintiffs' Counsel and in furtherance of such intention, the releases of the Released Claims and Capital One's Released Claims will be and remain in effect notwithstanding the discovery or existence of any such additional or different facts.

**14.05** Covenant Not To Sue. Plaintiffs agree and covenant, and each Settlement Class Member will be deemed to have agreed and covenanted, not to sue any Released Party with respect to any of the Released Claims, or otherwise to assist others in doing so, and agree to be forever barred from doing so, in any court of law or equity or any other forum.

## **XV. TERMINATION OF AGREEMENT**

**15.01** Either Plaintiffs or Capital One May Terminate the Agreement. Plaintiffs and

Capital One will each have the right to unilaterally terminate this Agreement by providing written notice of his, her, their, or its election to do so (“Termination Notice”) to all other Parties hereto within ten (10) business days of any of the following occurrences:

a. the Court rejects, materially modifies, materially amends or changes, or declines to issue a Preliminary Approval Order or a Final Approval Order with respect to the Settlement Agreement;

b. an appellate court reverses the Final Approval Order and the Settlement Agreement is not reinstated without material change by the Court on remand;

c. any court incorporates into, or deletes or strikes from, or modifies, amends, or changes, the Preliminary Approval Order, the Final Approval Order, or the Settlement Agreement in a way that Plaintiffs or Capital One reasonably consider material, unless such modification or amendment is accepted in writing by all Parties, except that, as provided above, the Court’s approval of attorneys’ fees and costs, or their amount, is not a condition of the Settlement;

d. the Effective Date does not occur; or

e. any other ground for termination provided for elsewhere in this Agreement occurs.

**15.02** Revert to Status Quo If Plaintiffs or Capital One Terminates. If either Plaintiffs or Capital One terminate this Agreement as provided in Section 15.01, the Agreement will be of no force and effect and the Parties’ rights and defenses will be restored, without prejudice, to their respective positions as if this Agreement had never been executed, and any orders entered by the Court in connection with this Agreement will be vacated. However, any payments made to the Claims Administrator for services rendered to the date of termination will not be refunded to Capital One.

## **XVI. NO ADMISSION OF LIABILITY**

**16.01** Capital One denies any liability or wrongdoing of any kind associated with the

alleged claims in the Amended Complaint. Capital One has denied and continues to deny each and every material factual allegation and all claims asserted against them in the Litigation. Nothing herein will constitute an admission of wrongdoing or liability, or of the truth of any allegations in the Litigation. Nothing herein will constitute an admission by Capital One that the Litigation is properly brought on a class or representative basis, or that classes may be certified, other than for settlement purposes. To this end, the Settlement of the Litigation, the negotiation and execution of this Agreement, and all acts performed or documents executed pursuant to or in furtherance of the Settlement: (i) are not and will not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or liability on the part of Capital One or of the truth of any of the allegations in the Litigation; (ii) are not and will not be deemed to be, and may not be used as an admission or evidence of any fault or omission on the part of Capital One in any civil, criminal, or administrative proceeding in any court, arbitration forum, administrative agency, or other tribunal; and (iii) are not and will not be deemed to be and may not be used as an admission of the appropriateness of these or similar claims for class certification.

**16.02** Pursuant to Federal Rule of Evidence Rule 408 and any similar provisions under the laws of any state, neither this Agreement nor any related documents filed or created in connection with this Agreement will be admissible in evidence in any proceeding, except as necessary to approve, interpret, or enforce this Agreement.

## **XVII. MISCELLANEOUS**

**17.01** Entire Agreement. This Agreement and the exhibits hereto constitute the entire agreement between the Parties, other than the separate settlement agreement between Capital One and Murr resolving her individual claims under the Fair Credit Billing Act. No representations, warranties, or inducements have been made to any of the Parties, other than those representations, warranties, and inducements contained in this Agreement.

**17.02** Governing Law. This Agreement will be governed by the laws of the Commonwealth of Virginia.

**17.03** Future Changes in Laws of Regulations. To the extent Congress, the OCC, the CFPB, or any other relevant regulatory authority promulgates different requirements under the Truth In Lending Act or any other law or regulation that would govern the business practice changes to be implemented by Capital One under this Settlement Agreement, those laws and regulatory provisions will control. However, the Settlement will remain in full force and effect with respect to all other terms and provisions, including the releases provided in Section 14 of this Settlement Agreement.

**17.04** Jurisdiction. The Court will retain continuing and exclusive jurisdiction over the Parties to this Agreement, including the Plaintiffs and all Settlement Class Members, for purposes of the administration and enforcement of this Agreement.

**17.05** No Construction Against Drafter. This Agreement was drafted jointly by the Parties and, in construing and interpreting this Agreement, no provision of this Agreement will be construed or interpreted against any Party based upon the contention that this Agreement or a portion of it was purportedly drafted or prepared by that Party.

**17.06** Resolution of Disputes. The Parties will cooperate in good faith in the administration of this Settlement and agree to use their best efforts to promptly file a Motion for Preliminary Approval with the Court and to take any other actions required to effectuate this Settlement. Any unresolved dispute regarding the administration of this Agreement will be decided by the Court or by a mediator upon agreement of the Parties.

**17.07** Counterparts. This Agreement may be signed in counterparts and the separate signature pages executed by the Parties and their counsel may be combined to create a document binding on all of the Parties and together will constitute one and the same instrument.

**17.08** Time Periods. The time periods and dates described herein are subject to Court approval and may be modified upon order of the Court or written stipulation of the Parties.

**17.09** Authority. Each person executing this Settlement Agreement on behalf of any of the Parties hereto represents that such person has the authority to so execute this Agreement.

**17.10** No Oral Modifications. This Agreement may not be amended, modified, altered,



or otherwise changed in any manner, except by a writing signed by all of the duly authorized agents of Capital One and Plaintiffs. Amendments and modifications may be made without additional notice to the Settlement Class Members unless such notice is required by the Court.

**17.11 Publicity and Confidentiality.** Until one year after the Effective Date, Plaintiffs and Capital One agree that they will not initiate any publicity of the Settlement and will not respond to requests by any media (whether print, online, or any traditional or non-traditional form) about the Settlement or this Agreement except by providing information materially consistent with this Settlement Agreement, including the Notice. Notice of the Settlement will be delivered exclusively through the notice process set forth in Section 8, above. Nothing in this Section will prohibit Plaintiffs or their counsel from communicating with Settlement Class Members concerning any inquiries they may have regarding this Litigation or the Settlement.

**17.12 The Litigation Was Brought and Defended in Good Faith.** The Parties to this Settlement Agreement intend the Settlement to be a final and complete resolution of all disputes asserted or which could be asserted by any Party with respect to the Litigation, the Settled Claims and Capital One's Released Claims. Accordingly, Plaintiffs and Plaintiffs' Counsel and Capital One and Capital One's Counsel agree not to assert in any judicial proceeding that the Litigation was brought by Plaintiffs or defended by Capital One in bad faith or without a reasonable basis. The Parties further agree not to assert in any judicial proceeding that any party violated Rule 11 of the Federal Rules of Civil Procedure. The Parties agree that the amount paid and the other terms of the Settlement were negotiated at arm's-length in good faith by the Parties, and reflect a settlement that was reached voluntarily after consultation with experienced legal counsel.

**17.13 Notices.** Unless otherwise stated herein, any notice to the Parties required or provided for under this Agreement will be in writing and may be sent by electronic mail, fax, or hand delivery, postage prepaid, as follows:

If to Class Counsel:

Timothy G. Blood  
tblood@bholaw.com

Thomas J. O'Reardon II  
toreardon@bholaw.com  
Blood Hurst & O'Reardon LLP  
701 B Street, Suite 1700  
San Diego, CA 92101  
Telephone: (619) 338-1100

Joseph P. Guglielmo.  
jguglielmo@scott-scott.com  
Scott+Scott, Attorneys at Law, LLP  
405 Lexington Avenue, 40<sup>th</sup> Floor  
New York, NY 10174  
Telephone: (212) 223-6444

If to counsel for Capital One:

Aaron D. Van Oort  
aaron.vanoort@faegrebd.com  
Eileen M. Hunter  
eileen.hunger@faegrebd.com  
FAEGRE BAKER DANIELS  
2200 Wells Fargo Center  
90 South Seventh Street  
Minneapolis, Minnesota 55402-3901  
Telephone: (612) 766-7000

IN WITNESS WHEREOF, the Parties hereto have caused this Settlement Agreement to be executed, dated as of 12/19, 2014.

DATED: 12/19, 2014

Plaintiff Margaret Murr

Margaret Murr

DATED: \_\_\_\_\_, 2014

Plaintiff David Reign

\_\_\_\_\_

Thomas J. O'Reardon II  
toreardon@bholaw.com  
Blood Hurst & O'Reardon LLP  
701 B Street, Suite 1700  
San Diego, CA 92101  
Telephone: (619) 338-1100

Joseph P. Guglielmo.  
jguglielmo@scott-scott.com  
Scott+Scott, Attorneys at Law, LLP  
405 Lexington Avenue, 40<sup>th</sup> Floor  
New York, NY 10174  
Telephone: (212) 223-6444

If to counsel for Capital One:

Aaron D. Van Oort  
aaron.vanoort@faegrebd.com  
Eileen M. Hunter  
eileen.hunger@faegrebd.com  
FAEGRE BAKER DANIELS  
2200 Wells Fargo Center  
90 South Seventh Street  
Minneapolis, Minnesota 55402-3901  
Telephone: (612) 766-7000

IN WITNESS WHEREOF, the Parties hereto have caused this Settlement Agreement to be executed, dated as of \_\_\_\_\_, 2014.

DATED: \_\_\_\_\_, 2014

Plaintiff Margaret Murr

\_\_\_\_\_

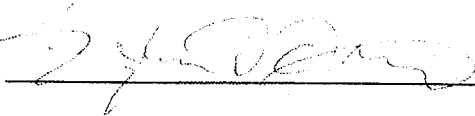
DATED: 12/19, 2014

Plaintiff David Reign

  
\_\_\_\_\_

DATED: 12/19, 2014

Capital One Bank (USA), N.A.; Capital One, N.A.;  
Capital One Financial Corporation; Capital One  
Services, LLC; and Capital One Services II, LLC

By: 


Name: Stephen Otero

Title: Managing Vice President, Chief Counsel

APPROVED AS TO FORM AND CONTENT:

DATED: 12/19, 2014

FAEGRE BAKER DANIELS

By: 

Aaron D. Van Oort  
Eileen M. Hunter  
Attorneys for Defendant Capital One

DATED: \_\_\_\_\_, 2014

BLOOD HURST & O'REARDON, LLP

By: \_\_\_\_\_

Timothy G. Blood  
Thomas J. O'Reardon II

DATED: \_\_\_\_\_, 2014

SCOTT+SCOTT, ATTORNEYS AT LAW, LLP

By: \_\_\_\_\_

Joseph P. Guglielmo

Class Counsel & Attorneys for Plaintiffs Murr  
and Reign

DATED: \_\_\_\_\_, 2014

Capital One Bank (USA), N.A.; Capital One, N.A.;  
Capital One Financial Corporation; Capital One  
Services, LLC; and Capital One Services II, LLC

By: \_\_\_\_\_

Name: Stephen Otero

Title: Managing Vice President, Chief Counsel

APPROVED AS TO FORM AND CONTENT:

DATED: \_\_\_\_\_, 2014

FAEGRE BAKER DANIELS

By \_\_\_\_\_

Aaron D. Van Oort  
Eileen M. Hunter  
Attorneys for Defendant Capital One

DATED: 12/19, 2014

BLOOD HURST & O'REARDON, LLP

By  \_\_\_\_\_

Timothy G. Blood  
Thomas J. O'Reardon II

DATED: \_\_\_\_\_, 2014

SCOTT+SCOTT, ATTORNEYS AT LAW, LLP

By \_\_\_\_\_

Joseph P. Guglielmo  
  
Class Counsel & Attorneys for Plaintiffs Murr  
and Reign

DATED: \_\_\_\_\_, 2014

Capital One Bank (USA), N.A.; Capital One, N.A.;  
Capital One Financial Corporation; Capital One  
Services, LLC; and Capital One Services II, LLC

By: \_\_\_\_\_

Name: Stephen Otero

Title: Managing Vice President, Chief Counsel

APPROVED AS TO FORM AND CONTENT:

DATED: \_\_\_\_\_, 2014

FAEGRE BAKER DANIELS

By \_\_\_\_\_

Aaron D. Van Oort  
Eileen M. Hunter  
Attorneys for Defendant Capital One

DATED: \_\_\_\_\_, 2014

BLOOD HURST & O'REARDON, LLP

By \_\_\_\_\_

Timothy G. Blood  
Thomas J. O'Reardon II

DATED: 12/19, 2014

SCOTT+SCOTT, ATTORNEYS AT LAW, LLP

By  \_\_\_\_\_

Joseph P. Guglielmo

Class Counsel & Attorneys for Plaintiffs Murr  
and Reign

# Exhibit A

**CAPITAL ONE ZERO PERCENT SETTLEMENT  
CASH AWARD CLAIM FORM**

**You can also file online at: [www.CapitalOneZeroPercentSettlement.com](http://www.CapitalOneZeroPercentSettlement.com)**

You must complete the required information below. **All claim forms must be postmarked or submitted online on or before \_\_\_\_\_, 2015.** If mailing, please return this claim form to:

CAPITAL ONE 0% CHECK SETTLEMENT  
C/O DAHL ADMINISTRATION  
PO BOX 3614  
MINNEAPOLIS MN 55403-0614

Please note, **Category One Class Members will receive a Cash Award automatically and do not need to submit a Claim Form.** Only Category Two and Three Class Members as described in the Class Notice need to complete this Claim Form to receive a Cash Award.

**CLAIMANT INFORMATION**

Name:					
Address:					
City:		State:		Zip Code:	
Telephone Number:	(     )	-	E-mail Address:		
Notice ID:					

**AFFIRMATION**

I affirm that I used one or more 0% Access Checks or No-Hassle Checks on one or more Capital One credit cards in the United States from August 30, 2008, through \_\_\_\_\_, 2014. I wish to remain in the lawsuit and receive all cash awards for which I am determined eligible.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**CLAIM FORMS MUST BE POSTMARKED OR SUBMITTED ONLINE BY [MONTH DAY], 2015  
QUESTIONS? CALL 1-855-853-4454 OR VISIT [www.CapitalOneZeroPercentSettlement.com](http://www.CapitalOneZeroPercentSettlement.com)**



# Exhibit B 1

LEGAL NOTICE BY ORDER OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA

If You Used a 0% Check On Your Capital One Credit Card, You May Be Entitled To Cash From A Class Action Settlement

Si ha aceptado una oferta de 0% de Capital One, usted puede tener derecho a dinero en efectivo de un acuerdo de demanda colectiva. Para información en español, visite la página web, www.[CapitalOneZeroPercentSettlement].com

The United States District Court for the Eastern District of Virginia authorized this notice. This is not a solicitation from a lawyer.

This Notice advises you of a proposed class action Settlement.<sup>1</sup> The Settlement concerns alleged interest charges resulting from using a 0% check on a Capital One credit card. Your legal rights are affected whether you act or don't act. You should read this Notice carefully.

Table with 2 columns: Option and Description. Options include: STAY IN THE LAWSUIT AND RECEIVE A CASH AWARD, EXCLUDE YOURSELF, and OBJECT.

Your rights and options – and the deadlines to exercise them – are explained in this notice.

The Court in charge of this case has not yet decided whether to approve the Settlement. Payments will be made if the Court approves the Settlement and after any appeals are resolved. Please be patient.

1 All capitalized terms used herein have the same meaning as the terms defined in the Settlement Agreement, a copy of which can be obtained at www.CapitalOneZeroPercentSettlement.com or at the public court records on file in this Litigation.

**WHAT THIS NOTICE CONTAINS**

BASIC INFORMATION..... - 3 -

WHO IS IN THE SETTLEMENT..... - 3 -

THE SETTLEMENT BENEFITS—WHAT YOU GET ..... - 4 -

THE LAWYERS REPRESENTING YOU ..... - 6 -

EXCLUDING YOURSELF FROM THE SETTLEMENT..... - 6 -

OBJECTING TO THE SETTLEMENT..... - 7 -

THE FINAL APPROVAL HEARING..... - 8 -

IF YOU DO NOTHING ..... - 8 -

GETTING MORE INFORMATION..... - 9 -

## BASIC INFORMATION

### 1. WHAT IS THIS LAWSUIT ABOUT?

Plaintiffs Margaret Murr and David Reign filed a class action lawsuit claiming that Capital One Bank (USA), N.A.'s ("Capital One" or "Defendant") policies and practices relating to certain interest and minimum payment charges after a credit card customer uses a 0% Access Check or No Hassle Check are deceptive, constitute a breach of contract, and violate the Truth in Lending Act, including the Credit Card Accountability Responsibility and Disclosure Act of 2009. Capital One denies all allegations and has asserted many defenses. The Settlement is not an admission of wrongdoing or an indication that any law was violated. This Notice is not an expression of any opinion by the Court as to the merits of the claims or defenses asserted in the lawsuit.

The Parties have agreed to settle the lawsuit on the terms explained in this notice.

### 2. WHY IS THIS A CLASS ACTION?

In a class action, one or more people, called Class Representatives (in this case, Margaret Murr and David Reign), sue on behalf of people who have similar claims. These people are referred to as the Class or as Class Members. One court resolves the issues for all Class Members, except for those who choose to exclude themselves from the Class. United States District Court Judge Leonie M. Brinkema is in charge of this class action.

### 3. WHY IS THERE A SETTLEMENT?

The Court did not decide in favor of Plaintiffs or Defendant. Instead, both sides agreed to the Settlement. That way, they avoid the cost of a trial, and settlement benefits go to the Class Members. The Class Representatives and the attorneys think the Settlement is best for the Class Members.

## WHO IS IN THE SETTLEMENT

To see if you are eligible for benefits, you first have to determine whether you are a Class Member.

### 4. WHO IS INCLUDED IN THE SETTLEMENT CLASS?

You are a Class Member if you used a 0% Access Check or No Hassle Check on your Capital One credit card in the United States from August 1, 2008, through \_\_\_\_\_, 2014.

The Class does not include the following persons or entities: those who submit a valid opt out request, Defendant and its officers, directors, and employees, and any Court personnel assigned to the action.

### 5. WHAT IS A 0% CHECK?

"0% Check" means either an Access Check or a No Hassle check that Capital One mailed to its credit card customers offering a 0% APR for a certain period of time in exchange for an upfront fee .

**THE SETTLEMENT BENEFITS—WHAT YOU GET****6. WHAT DOES THE SETTLEMENT PROVIDE?**

Under the Settlement, Capital One will provide checks to Class Members of either \$5.50 or \$2.00 depending on whether the Class Member is in Category 1, 2, or 3 as described below. Under the Settlement, Capital One will pay at least the full Cash Awards below to all eligible Class Members. This amount will be at a minimum \$3,125,000 to Class Members. Since the lawsuit was filed, Capital One has also enhanced the disclosures concerning the Grace-Period Effect and the Payment-Allocation Effect in its offers of 0% Checks.

In addition, Capital One has agreed to pay the costs of Notice to Class Members and settlement administration, for Court-approved awards of Plaintiffs' attorneys' fees and reimbursement of expenses incurred, and service awards to the Class Representatives (described below). The Settlement distribution process will be administered by an independent settlement administrator, Dahl Administration, (the "Claims Administrator") approved by the Court.

**7. HOW MUCH WILL MY PAYMENT BE?**

The amount of the Cash Award you may be entitled to under the proposed Settlement depends upon whether you fit within Category 1, 2, or 3 below. Class Members who used 0% Checks on multiple Capital One credit card accounts may fit within multiple categories and receive a Cash Award for each account. Additional information is provided in Section 4.02 of the Settlement Agreement, which is available at [www.CapitalOneZeroPercentSettlement.com](http://www.CapitalOneZeroPercentSettlement.com). Capital One's records will be used to confirm the category that you fit within:

<b>Category</b>	<b>Description</b>	<b>Payment Amount</b>	<b>How to Receive Payment?</b>
<b><u>One</u></b>	<b>Customers who used only one 0% Check on an account<sup>2</sup> and were charged interest on their purchase balance because of the 0% Check.</b>	<b>\$5.50</b>	<b>Do nothing. A check will automatically be sent to you once the Settlement becomes final.</b>
<b><u>Two</u></b>	<b>Customers who used more than one 0% Check on an account at least three months apart and were charged interest on their purchase balance because of the 0% Check.</b>	<b>\$5.50</b>	<b>Submit a completed Claim Form on or before _____, 2015, to <a href="http://www.CapitalOneZeroPercentSettlement.com">www.CapitalOneZeroPercentSettlement.com</a>, or by mail, as indicated in Section 8 below.</b>
<b><u>Three</u></b>	<b>Customers who used one or more 0% Checks but were not</b>	<b>\$2.00</b>	<b>Submit a completed Claim Form on or before _____, 2015, to <a href="http://www.CapitalOneZeroPercentSettlement.com">www.CapitalOneZeroPercentSettlement.com</a></b>

<sup>2</sup> Customers who used more than one 0% Check on an account, all within less than three months, are treated as if the used only one 0% Check for purposes of the Cash Awards.

	<p><b>charged interest on their purchase balance because of the 0% Check.</b></p>		<p><b>lement.com, or by mail, as indicated in Section 8 below.</b></p>
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**8. HOW CAN I GET A CASH PAYMENT?**

- **If you are a Category 1 Class Member as described above, you do not have to do anything to receive your Cash Award.** The Cash Award will be automatically sent to you after the Settlement becomes final.
- **If you are a Category 2 or 3 Class Member as described above, to receive your Cash Award you must complete and return a Claim Form on or before \_\_\_\_\_, 2015.** The Claim Form may be: (a) mailed to Capital One 0% Check Settlement, c/o Dahl Administration, P.O. Box 3614, Minneapolis, MN 55403-0614; or (b) submitted online at [www.CapitalOneZeroPercentSettlement.com](http://www.CapitalOneZeroPercentSettlement.com). A Claim Form (for Category 2 or 3 Class Members only) is included with this Notice. Claim Forms are also available online at [www.CapitalOneZeroPercentSettlement.com](http://www.CapitalOneZeroPercentSettlement.com) or by calling 1-855-853-4454. Category 1 Class Members do not need a Claim Form as the Cash Award will be sent to them automatically.

**9. WHEN WOULD I GET MY CASH PAYMENT?**

The Court will hold a hearing on **[date], 2015** at **[time]**, to decide whether to approve the Settlement. If the Court approves the Settlement, there may be appeals. The appeal process can take time, perhaps more than a year. Please be patient.

**10. IN RETURN FOR THESE SETTLEMENT BENEFITS, WHAT AM I GIVING UP?**

If the Court approves the proposed Settlement and you do not request to be excluded from the Class, you must release (give up) all claims concerning the “Grace-Period Effect” and the “Payment-Allocation Effect” in connection with a Capital One 0% Check used from August 1, 2008, to \_\_\_\_\_ as covered by this Settlement, and the case will be dismissed on the merits and with prejudice.

“Grace-Period Effect” means the loss of a Class Member’s interest-free grace period on repaying purchases as a result of using a 0% Check and carrying the resulting 0% balance on a Capital One credit card account.

“Payment-Allocation Effect” means any effect on the amount of interest paid on purchases caused by Capital One’s practices of considering the balance created by a Class Member’s used of a 0% Check in setting the amount of the Class Member’s monthly minimum payment, and of applying the minimum payment first to that balance before the purchase balance.

**If you remain in the Class, you may not assert any of those claims in any other lawsuit or proceeding. This includes any other lawsuit or proceeding already in progress.** The judgment and orders entered in this case, whether favorable or unfavorable, will bind all Class Members who do not request to be excluded.

The full terms of the Release are contained in the Settlement Agreement that is available at [www.CapitalOneZeroPercentSettlement.com](http://www.CapitalOneZeroPercentSettlement.com), or at the public court records on file in this Litigation.

## THE LAWYERS REPRESENTING YOU

### 11. DO I HAVE A LAWYER IN THIS CASE?

The Court appointed the law firms of Blood Hurst & O'Reardon, LLP and Scott+Scott, Attorneys at Law, LLP to represent you and other Class Members. These lawyers are called Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense and enter an appearance through your own counsel.

### 12. HOW WILL THE LAWYERS BE PAID?

Class Counsel will ask the Court to award attorneys' fees and costs not to exceed \$1,500,000. The awards will be paid by Capital One and will not impact the amount of the Cash Awards that Class Members will receive. Defendant has agreed to not to oppose these awards.

Class Counsel will petition the Court for service awards of up to \$7,500 for Plaintiff Margaret Murr and \$1,500 for Plaintiff David Reign. The purpose of such awards, if the Court chooses to award them, is to compensate these persons for efforts and risks taken on behalf of the Class. Defendant may oppose these awards.

## EXCLUDING YOURSELF FROM THE SETTLEMENT

### 13. HOW DO I GET OUT OF THE SETTLEMENT?

If you do not want a payment from this Settlement, and want to keep the right to sue or continue to sue Capital One on your own about the legal issues in this case, then you must take steps to get out. This is called excluding yourself – or is sometimes referred to as “opting out” of the Class.

If you do not want to be included in the Class and receive a Cash Award, you must send a letter stating that you want to be excluded. The letter *must* include: (a) your name; (b) your address; (c) your telephone number; (d) your signature; (e) a statement that you are a Settlement Class Member; and (f) the case name and number: *Murr v. Capital One Bank (USA), N.A.*, Case No. 1:13-cv-1091 LMB/TCB (E.D. Va.).

Your exclusion request must be postmarked on or before \_\_\_\_\_, and sent to the Claims Administrator at:

**CAPITAL ONE 0% CHECK SETTLEMENT  
C/O DAHL ADMINISTRATION  
PO BOX 3614  
MINNEAPOLIS MN 55403-0614**

You cannot exclude yourself on the phone or by fax or e-mail. If you ask to be excluded, you will not get any Cash Award, and you cannot object to the Settlement. However, you will not be legally bound by anything that happens in this lawsuit and you will keep your right to separately pursue claims against Capital One relating to the subject matter of this lawsuit.

### 14. IF I DON'T EXCLUDE MYSELF, CAN I SUE CAPITAL ONE FOR THE SAME THING LATER?

No. Unless you exclude yourself, you give up the right to sue Capital One for the claims that this Settlement resolves. You must exclude yourself from *this* Class to pursue your own lawsuit. Remember, your exclusion must be postmarked on or before [date].

**15. IF I EXCLUDE MYSELF, CAN I GET MONEY FROM THIS SETTLEMENT?**

No. If you exclude yourself, you will not receive any money. Do not send in a Claim Form if you exclude yourself. But you will not lose any right you may have to sue, continue to sue, or be part of a different lawsuit against Capital One about the legal issues in this case.

**OBJECTING TO THE SETTLEMENT**

You can tell the Court that you don't agree with the Settlement or some part of it.

**16. HOW DO I TELL THE COURT THAT I DO NOT LIKE THE SETTLEMENT?**

If you are a Class Member, you can object to the Settlement if you do not like any part of it and the Court will consider your views. To object, you must send a letter to the Court and the parties saying that you object to the Settlement in *Murr v. Capital One Bank (USA), N.A.*, Case No. 1:13-cv-1091 LMB/TCB (E.D. Va.). The letter *must* include the following information: (a) a heading which refers to the Litigation; (b) your full name, telephone number, email address and residential address (your actual residential address must be included); (c) if represented by counsel, the name, address and telephone number of all of your counsel; (d) a statement under penalty of perjury that you are a Class Member; (e) a statement whether you intend to appear at the Final Approval Hearing, either in person or through counsel; (f) all grounds for the objection, accompanied by any legal support for the objection known to you or your counsel; (g) copies of any papers, briefs, or other documents upon which the objection is based; and (i) your dated, handwritten signature (an electronic signature or signature of your attorney is not sufficient). The Parties will have the right to take discovery, including a deposition, of any objector to assess the objector's standing, motives, and intent.

*On or before [DATE], your objection must be delivered to these four different places:*

Clerk of the Court  
**United States District Court,  
Eastern District of Virginia**  
401 Courthouse Square  
Alexandria, VA 22314

Timothy G. Blood  
**Blood Hurst & O'Reardon, LLP**  
701 B Street, Suite 1700  
San Diego, CA 92101

Joseph P. Guglielmo  
**Scott+Scott, Attorneys at Law, LLP**  
**The Chrysler Building**  
405 Lexington Avenue, 40<sup>th</sup> Floor  
New York, NY 10174

Aaron D. Van Oort  
**Faegre Baker Daniels LLP**  
2200 Wells Fargo Center  
90 South Seventh Street  
Minneapolis, MN 55402



**17. WHAT IS THE DIFFERENCE BETWEEN OBJECTING AND EXCLUDING?**

Objecting is telling the Court that you do not like something about the Settlement. You can only object if you stay in the Class. Excluding yourself is telling the Court that you do not want to be part of the Class or the lawsuit. You cannot request exclusion *and* object to the Settlement. If you exclude yourself, you have no basis to object because the case no longer affects you. Class Members who exclude themselves may, if they wish, enter an appearance through their own counsel.

**THE FINAL APPROVAL HEARING**

The Court will hold a hearing to decide whether to approve the Settlement. You may attend, and you may ask to speak, but you do not have to.

**18. WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT?**

The Court will hold a Final Approval Hearing at [time] on [date] in the Courtroom of the Honorable Leonie M. Brinkema, United States District Court for the Eastern District of Virginia, Albert V. Bryan U.S. Courthouse, 401 Courthouse Square, Alexandria, VA 22314. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court will listen to people who have asked to speak at the hearing. After the hearing, the Court will decide whether to approve the Settlement. The Court may also consider Class Counsel’s request for attorneys’ fees and expenses, as well as the Class Representatives’ requests for service awards. We do not know how long it will take for the Court to render its decision.

**19. DO I HAVE TO COME TO THE HEARING?**

No. Class Counsel will answer any of the Court’s questions. You are, however, welcome to come at your own expense. If you submit an objection, you do not have to come to the Court to talk about it. As long as you delivered your written objection on time, the Judge will consider it. You may also pay your own lawyer to attend, but it is not necessary.

**20. MAY I SPEAK AT THE HEARING?**

You may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must file with the Court a “Notice of Intention to Appear.” Be sure to include your name, address, telephone number, and your signature. You may also be required to provide proof that you are a Class Member. Your Notice of Intention to Appear must be filed on or before [date], and must also be served on the Clerk of the Court, Class Counsel and Defense Counsel at the four addresses listed in paragraph 18 above. You cannot speak at the hearing if you exclude yourself.

**IF YOU DO NOTHING**

**21. WHAT HAPPENS IF I DO NOTHING AT ALL?**

If you do nothing, you will be part of the Class. If you are a Category 1 Class Member as described above, you will receive a Cash Award. If you are a Category 2 or 3 Class Member as described above, you will not receive a Cash Award unless you file a valid and timely Claim Form. You will not be able to start a lawsuit, continue

with a lawsuit, or be part of any other lawsuit against Defendant about the legal issues in this case.

## GETTING MORE INFORMATION

### 22. ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?

The Settlement Agreement contains the complete terms. You can get a copy of the Settlement Agreement at [www.CapitalOneZeroPercentSettlement.com](http://www.CapitalOneZeroPercentSettlement.com), or by reviewing the records on file in the court clerk's office, United States District Court, Eastern District of Virginia, 401 Courthouse Square, Alexandria, VA 22314. The Claim Form and other information can be reviewed and downloaded at [www.CapitalOneZeroPercentSettlement.com](http://www.CapitalOneZeroPercentSettlement.com).

**PLEASE DO NOT CALL OR WRITE TO THE COURT FOR INFORMATION OR ADVICE.**

# Exhibit B2

**Email Subject: Notice of Class Action Settlement**

**Email Text:**

**LEGAL NOTICE BY ORDER OF THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA**

**If You Used a 0% Check On Your Capital One  
Credit Card, You May Be Entitled To Cash  
From A Class Action Settlement**

*A federal court authorized this notice. This is not a solicitation from a lawyer.*

***Si ha aceptado una oferta de 0% de Capital One, usted puede tener derecho a dinero en efectivo de un acuerdo de demanda colectiva. Para información en español, visite la página web, [www.CapitalOneZeroPercentSettlement.com](http://www.CapitalOneZeroPercentSettlement.com)***

**What Is This About?**

You received this email because Capital One's records indicate that you may be affected by a Settlement of a class action lawsuit relating to your Capital One credit card. The United States District Court for the Eastern District of Virginia authorized this Notice. It is not a lawyer solicitation.

A Settlement has been proposed in a class action lawsuit about 0% Access Checks and No Hassle Checks used by Capital One credit card customers from August 30, 2008, through \_\_\_\_\_. The lawsuit, *Murr v. Capital One Bank (USA), N.A.*, Case No. 1:13-cv-1091 LMB/TCB (E.D. Va.), alleges that Capital One breached its contracts and violated consumer fraud laws and the Truth in Lending Act by requiring certain minimum payments and charging certain interest amounts on purchases after customers used the 0% Checks. Capital One denies all allegations and has asserted many defenses. The Settlement is not an admission of wrongdoing, and the Court has not determined whether any law was violated.

**Am I a Member of the Class?**

You are a Class Member if you used a 0% Access Check or No Hassle Check on your Capital One credit card in the United States from August 30, 2008, through \_\_\_\_\_. If you received this Class Notice, Capital One's records indicate you are a Class Member and may be entitled to compensation from the Settlement. To understand your rights, please read on.

**What Does the Settlement Provide?**

If the Settlement is approved, each Class Member is eligible to receive a cash payment from the Settlement, with the amount and process depending on whether you fit within Categories 1, 2, or 3 described below. Under the Settlement, Capital One will pay at least the full awards below to all eligible Class Members who comply with the Settlement terms. At a minimum, Capital One will pay \$3,125,000 in Class Member awards. Capital One has also enhanced the disclosures for its 0% Checks and has agreed to pay the costs of notice to Class Members, settlement administration, named plaintiff service awards in an amount selected by the Court not to exceed \$7,500, and Court-approved awards of plaintiffs' attorneys' fees and costs not to exceed \$1,500,000.

There are three categories of Class Members. According to Capital One's records, you are a Category [1/2/3] Class Member with respect to Account -XXXX [and a Category 1/2/3 Class Member with respect to Account -XXXX]:

(1) Category One is for customers who used only one 0% Check on an account and who were charged interest on their purchase balance because of the 0% check. Category One Class Members who stay in the Class will automatically be sent a check for \$5.50.

(2) Category Two is for customers who used more than one 0% Check on an account at least three months apart and were charged interest on their purchase balance because of the 0% Check. Category Two Class Members are entitled to a check for \$5.50 if they submit a completed Claim Form by \_\_\_\_\_, 2015. A Claim Form is attached to this Class Notice and is also available at [www.CapitalOneZeroPercentSettlement.com](http://www.CapitalOneZeroPercentSettlement.com). The Claim Form may be submitted online at that website or by mail to Capital One 0% Check Settlement, c/o Dahl Administration, P.O. Box 3614, Minneapolis, MN 55403-0614.

(3) Category Three is for customers who used one or more 0% Checks but were not charged interest on their purchase balance because of the 0% Checks. Category Three Class Members are entitled to a check for \$2.00 if they submit a completed Claim Form by \_\_\_\_\_, 2015. A Claim Form is attached to this Class Notice and is also available at [www.CapitalOneSettlement.com](http://www.CapitalOneSettlement.com). The Claim Form may be submitted online at that website or by mail to Capital One 0% Check Settlement, c/o Dahl Administration, P.O. Box 3614, Minneapolis, MN 55403-0614.

### **What are My Options?**

You have three options. **First**, you can remain in the Class and receive the benefits offered by the Settlement. If you do nothing, you will remain in the Class. Category 1 Class Members who remain in the Class will automatically receive checks for \$5.50. Category 2 Class Members who remain in the Class will receive checks for \$5.50 if they submit valid Claim Forms by the deadline. Category 3 Class Members who remain in the Class will receive checks for \$2.00 if they submit valid Claim Forms by the deadline. **Second**, you can exclude yourself from the Class by filing a valid request for exclusion on or before \_\_\_\_\_, 2015. **Third**, you can remain in the Class and receive the benefits offered by the Settlement, but object to any terms of the Settlement by filing a valid objection on or before \_\_\_\_\_, 2015. The Parties will have the right to take discovery, including a deposition, of any objector to assess the objector's standing, motives, and intent. Visit [www.CapitalOneZeroPercentSettlement.com](http://www.CapitalOneZeroPercentSettlement.com) for important information about these options.

### **Hearing on the Proposed Settlement**

The Court will hold a Final Approval Hearing on \_\_\_\_\_, 2015 at \_\_\_\_\_ (a.m./p.m.), to determine whether the proposed Settlement is fair, reasonable, and adequate, and to consider requests for attorneys' fees and expenses, as well as service awards for the named plaintiffs. The hearing date may be changed by the Court, and you should check [www.CapitalOneZeroPercentSettlement.com](http://www.CapitalOneZeroPercentSettlement.com) for updates. The Final Approval Hearing will take place at United States District Court for the Eastern District of Virginia, Albert V. Bryan U.S. Courthouse, 401 Courthouse Square, Alexandria, VA 22314. You may but do not have to attend the hearing.

To get additional information, including a copy of the Settlement Agreement, a detailed Notice of Settlement (which more completely describes the Settlement and your rights thereunder) and/or a claim form, visit [www.CapitalOneZeroPercentSettlement.com](http://www.CapitalOneZeroPercentSettlement.com) or call 1-855-853-4454.

# Exhibit B3

Murr v Capital One – Postcard Notice Category 1 – no claim form

**LEGAL NOTICE**

*A federal court authorized this Notice.  
This is not a solicitation from a lawyer.*

*Para información en español, visite la página web,  
[www.CapitalOneZeroPercentSettlement.com](http://www.CapitalOneZeroPercentSettlement.com)*

In the United States District Court  
for the Eastern District of Virginia  
Murr v. Capital One Bank (USA), N.A.  
Case No. 1:13-CV-1091

You received this card because Capital One's records indicate you used a 0% Access Check or No Hassle Check between August 30, 2008 and \_\_\_\_\_. A class action lawsuit alleges that Capital One breached its contracts and violated consumer fraud laws and the Truth in Lending Act by requiring certain minimum payments and charging certain interest amounts on purchases after customers used the 0% Checks. Capital One denies all allegations and has asserted many defenses. A Settlement has been proposed.

PRESORT  
FIRST CLASS  
U.S. POSTAGE  
PAID  
PERMIT NO. XX  
EAGAN, MN

CAPITAL ONE 0% CHECK SETTLEMENT  
C/O DAHL ADMINISTRATION  
PO BOX 3614  
MINNEAPOLIS MN 55403-0614



Postal Service: Please do not mark barcode  
ID: [00001234]

First Last  
Address1  
Address2  
City State Zip Code

Legal Notice

Legal Notice

**Am I a Member of the Class?** You are a Class Member if you used a 0% Check on your Capital One credit card in the United States from August 30, 2008, through \_\_\_\_\_. If you received this Class Notice, Capital One's records indicate you are a Class Member and may be entitled to compensation from the Settlement.

**What Does the Settlement Provide?** At a minimum, Capital One will pay \$3,125,000 in Cash Awards. Capital One has also enhanced the disclosures for its 0% Checks and has agreed to pay the costs of Class Notice, settlement administration, named plaintiff service awards, and Court-approved awards of plaintiffs' attorneys' fees and costs not to exceed \$1,500,000. According to Capital One's records, you are a Category 1 Class Member with respect to Account XXXX.

You will automatically be sent a check for \$5.50.

**Your other options.** If the proposed Settlement is approved by the Court, any legal claim you may have against Capital One related to the Grace-Period Effect or Payment-Allocation Effect from the 0% Checks will be released. If you do not wish to be bound by the terms of the Settlement, you must exclude yourself by \_\_\_\_\_, 2015. Or, you may formally object to the Settlement by \_\_\_\_\_, 2015. Visit the settlement website for information on how to do so. The Court will hold a hearing on [date], 2015 at [time], to decide whether to approve the Settlement and a request for attorneys' fees and costs of \$1,500,000 and awards of up to \$7,500 to the Class Representatives. You may but do not have to attend the hearing.

To read a more detailed description of the terms of the proposed Settlement, the full Notice and the proposed Settlement Agreement, which more fully describes your rights, visit the website, [www.CapitalOneZeroPercentSettlement.com](http://www.CapitalOneZeroPercentSettlement.com). You can also obtain more information or request that the detailed Notice be mailed to you by calling 1-855-853-4454.

Murr v Capital One – Postcard Notice with Postage Pre-paid Claim Form

**LEGAL NOTICE**

*A federal court authorized this Notice.  
This is not a solicitation from a lawyer.*

*Para información en español, visite la página web,  
[www.CapitalOneZeroPercentSettlement.com](http://www.CapitalOneZeroPercentSettlement.com)*

In the United States District Court  
for the Eastern District of Virginia  
Murr v. Capital One Bank (USA), N.A.  
Case No. 1:13-CV-1091

You received this card because Capital One's records indicate you used a 0% Access Check or No Hassle Check between August 30, 2008 and \_\_\_\_\_. A class action lawsuit alleges that Capital One breached its contracts and violated consumer fraud laws and the Truth in Lending Act by requiring certain minimum payments and charging certain interest amounts on purchases after customers used the 0% Checks. Capital One denies all allegations and has asserted many defenses. A Settlement has been proposed.

PRESORT  
FIRST CLASS  
U.S. POSTAGE  
PAID  
PERMIT NO. XX  
EAGAN, MN

CAPITAL ONE 0% CHECK SETTLEMENT  
C/O DAHL ADMINISTRATION  
PO BOX 3614  
MINNEAPOLIS MN 55403-0614



Postal Service: Please do not mark barcode  
ID: [00001234]

First Last  
Address1  
Address2  
City State Zip Code

Legal Notice

Legal Notice

**Am I a Member of the Class?** You are a Class Member if you used a 0% Check on your Capital One credit card in the United States from August 30, 2008, through \_\_\_\_\_. If you received this Class Notice, Capital One's records indicate you are a Class Member and may be entitled to compensation from the Settlement.

**What Does the Settlement Provide?** At a minimum, Capital One will pay \$3,125,000 in Cash Awards. Capital One has also enhanced the disclosures for its 0% Checks and has agreed to pay the costs of Class Notice, settlement administration, named plaintiff service awards, and Court-approved awards of plaintiffs' attorneys' fees and costs not to exceed \$1,500,000. According to Capital One's records, you are a Category [2/3] Class Member with respect to Account -XXXX [and a Category [2/3] Class Member with respect to Account -XXXX].

According to Capital One's records, you are entitled to a [\$5.50/\$2.00] award. To receive this cash award, you must file a claim using one of the following options no later than \_\_\_\_\_, 2015.

**Submit the Claim Form online at [www.CapitalOneZeroPercentSettlement.com](http://www.CapitalOneZeroPercentSettlement.com) or mail back the attached pre-paid card after completing the Claim Form on the backside.**

**Your other options.** If the proposed Settlement is approved by the Court, any legal claim you may have against Capital One related to the Grace-Period Effect or Payment-Allocation Effect from the 0% Checks will be released. If you do not wish to be bound by the terms of the Settlement, you must exclude yourself by \_\_\_\_\_, 2015. Or, you may formally object to the Settlement by \_\_\_\_\_, 2015. Visit the settlement website for information on how to do so. The Court will hold a hearing on [date], 2015 at [time], to decide whether to approve the Settlement and a request for attorneys' fees and costs of \$1,500,000 and awards of up to \$7,500 to the Class Representatives. You may but do not have to attend the hearing.

To read a more detailed description of the terms of the proposed Settlement, the full Notice and the proposed Settlement Agreement, which more fully describes your rights, visit the website, [www.CapitalOneZeroPercentSettlement.com](http://www.CapitalOneZeroPercentSettlement.com). You can also obtain more information or request that the detailed Notice be mailed to you by calling 1-855-853-4454.



Murr v Capital One – Postcard Notice with Postage Pre-paid Claim Form

NO POSTAGE  
NECESSARY  
IF MAILED  
IN THE  
UNITED STATES

**BUSINESS REPLY MAIL**  
FIRST-CLASS MAIL PERMIT NO. 4 FARIBAULT, MN

POSTAGE WILL BE PAID BY ADDRESSEE

**CAPITAL ONE 0% CHECK SETTLEMENT  
C/O DAHL ADMINISTRATION  
PO BOX 3614  
MINNEAPOLIS MN 55403-9803**

CAPITAL ONE 0% CHECK SETTLEMENT  
C/O DAHL ADMINISTRATION  
PO BOX 3614  
MINNEAPOLIS MN 55403-0614

NOTICE ID: [00001234]

CLAIMANT INFORMATION		
Name:		
Street Address or PO Box:		
City:	State:	Zip Code:
Telephone Number: (     )     -	E-mail Address:	
AFFIRMATION		
I affirm that I used one or more 0% Access Checks or No-Hassle Checks on one or more Capital One credit cards in the United States from August 30, 2008, through _____, 201_. I wish to remain in the lawsuit and receive all cash awards for which I am determined eligible.		
Signature: _____		Date: _____

**CLAIM FORMS MUST BE POSTMARKED OR SUBMITTED ONLINE BY [MONTH DAY], 2015  
QUESTIONS? CALL 1-855-853-4454 OR VISIT [www.CapitalOneZeroPercentSettlement.com](http://www.CapitalOneZeroPercentSettlement.com)**

# Exhibit B4

**If you used a Capital One 0% APR Access Check  
or No Hassle Check,  
you may be entitled to Settlement benefits.**

**CLICK HERE  
FOR MORE  
INFORMATION**

**If you used a Capital One 0%  
APR Access Check  
or No Hassle Check,**

a Class Action Lawsuit may affect  
your rights and you may be  
entitled for Settlement benefits.

**CLICK HERE  
FOR MORE INFORMATION**

# Exhibit C

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

MARGARET MURR and DAVID REIGN, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

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

Defendant.

Civil Action No.: 1:13-cv-1091 LMB/TCB

CLASS ACTION

JURY TRIAL DEMANDED

Judge: Hon. Leonie M. Brinkema

Courtroom:

Filed: August 30, 2013

**[PROPOSED] FINAL JUDGMENT AND ORDER APPROVING SETTLEMENT**

This matter came on for hearing on \_\_\_\_\_, 2015, at \_\_\_\_\_. The Court has considered the Settlement Agreement and Release filed on December 19, 2014 (“Settlement Agreement”), Dkt. No. \_\_\_\_, oral and/or written objections and comments received regarding the proposed Settlement, the record in the above-entitled lawsuit (“Litigation”) and the arguments and authorities of counsel. Good cause appearing,

IT IS HEREBY ADJUDGED AND DECREED THAT:

1. This Judgment incorporates by reference the definitions in the Settlement Agreement, including its exhibits, and all terms used herein shall have the same meanings as set forth in the Settlement Agreement unless set forth differently herein.

2. The Court has jurisdiction over the subject matter of this Litigation and all Parties to the Litigation, including all Settlement Class Members.

3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court hereby certifies the following Settlement Class for settlement purposes:

All persons within the United States who from August 1, 2008, to the Preliminary Approval Date accepted a 0% Offer using an Access Check or No-Hassle Check. Excluded from the Class are the following persons or entities: those who submit a

valid opt out request, Defendant and its officers, directors and employees, and any Court personnel assigned to the action.

4. Pursuant to Rule 23(c)(3) of the Federal Rules of Civil Procedure, all such persons who satisfy the Settlement Class definition above, except those Settlement Class Members who timely and validly excluded themselves from the Settlement Class, are Settlement Class Members bound by this Judgment.

5. Pursuant to Rule 23(a) of the Federal Rules of Civil Procedure, the Court finds that the Plaintiffs in the Litigation, Margaret Murr and David Reign, are members of the Settlement Class, their claims are typical of the Settlement Class, and they fairly and adequately protected the interests of the Settlement Class throughout the proceedings in the Litigation. Accordingly, the Court hereby appoints Margaret Murr and David Reign as Class Representatives.

6. The Court finds that the Settlement Class meets all requirements of Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure for certification of the class claims alleged in the complaint, including: (a) numerosity; (b) commonality; (c) typicality; (d) adequacy of the class representative and Class Counsel; (e) predominance of common questions of fact and law among the Class; and (f) superiority.

7. Having considered the factors set forth in Rule 23(g)(1) of the Federal Rules of Civil Procedure, the Court finds that Timothy G. Blood, of Blood Hurst & O'Reardon, LLP, and Joseph P. Guglielmo, of Scott+Scott, Attorneys at Law, LLP have fairly and adequately represented the Class for purposes of entering into and implementing the Settlement, and thus, hereby appoints Timothy G. Blood, of Blood Hurst & O'Reardon, LLP, and Joseph P. Guglielmo, of Scott+Scott, Attorneys at Law, LLP as Class Counsel for the Settlement Class.

8. The list of persons excluded from the Class because they submitted valid requests for exclusion ("Opt-Outs") is attached hereto as Exhibit A. Persons who submitted timely, completed Opt-Outs are not bound by this Judgment or the terms of the Settlement and may

pursue their own individual remedies against Defendant. However, such persons are not entitled to any rights or benefits provided to Settlement Class Members by the terms of the Settlement.

9. The Court directed that Class Notice be given to Settlement Class Members pursuant to the notice program proposed by the Parties and approved by the Court. In accordance with the Court's Preliminary Approval Order and the Court-approved notice program, the Claims Administrator caused the Class Notice to be disseminated as ordered. The Class Notice advised Settlement Class Members of the terms of the Settlement; of the Final Approval Hearing, and their right to appear at such hearing; of their rights to remain in, or opt out of, the Settlement Class and to object to the Settlement; procedures for exercising such rights; and the binding effect of this Judgment, whether favorable or unfavorable, to the Settlement Class.

10. The distribution of the Class Notice constituted the best notice practicable under the circumstances, and fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the requirements of due process, 28 U.S.C. §1715, and any other applicable law.

11. Pursuant to Rule 23(e)(2) of the Federal Rules of Civil Procedure, the Court finds after a hearing and based upon all submissions of the Parties and interested persons, the Settlement proposed by the Parties is fair, reasonable, and adequate. The terms and provisions of the Settlement Agreement are the product of lengthy, arm's-length negotiations conducted in good faith and with the assistance of the Hon. Theresa C. Buchanan. Approval of the Settlement will result in substantial savings of time, money and effort to the Court and the Parties, and will further the interests of justice.

12. All Settlement Class Members who have not timely and validly submitted Opt-Outs are thus Settlement Class Members who are bound by this Judgment and by the terms of the Settlement Agreement.

13. The Settlement, this Judgment, or the fact of the Settlement do not constitute any admission by any of the Parties of any liability, wrongdoing or violation of law, damages or lack thereof, or of the validity or invalidity of any claim or defense asserted in the Litigation.

14. The Court has considered the submissions by the Parties and all other relevant factors, including the result achieved and the efforts of Class Counsel in prosecuting the claims on behalf of the Settlement Class. Plaintiffs Murr and Reign participated in the Litigation, acted to protect the Settlement Class, and assisted their counsel. The efforts of Class Counsel have produced the Settlement, which was entered into in good faith, and which provides a fair, reasonable, adequate and certain result for the Settlement Class. Class Counsel have made application for an award of attorneys' fees and expenses in connection with the prosecution of the Litigation on behalf of themselves and the other Plaintiffs' Counsel. The fee and expense award requested is \$1,500,000. The Court hereby awards \$\_\_\_\_\_ as attorneys' fees and expenses to be paid by Defendant. The Court finds these amounts to be fair, reasonable, and justified under the circumstances. Class Counsel shall be responsible for distributing and allocating the attorneys' fees and expenses award to Plaintiffs' Counsel in their sole discretion. Further, Plaintiffs Murr and Reign are entitled to service awards of \$\_\_\_\_\_ and \$\_\_\_\_\_, respectively, to be paid by Defendant.

15. The Court hereby dismisses with prejudice the Litigation, and all Released Claims against each and all Released Persons and without costs to any of the Parties as against the others.

16. The Court finds that during the course of the Action, the Parties and their respective counsel at all times complied with the requirements of Federal Rule of Civil Procedure 11.

17. Without affecting the finality of this Judgment, the Court reserves jurisdiction over the implementation, administration and enforcement of this Judgment and the Settlement, and all matters ancillary thereto.

18. In the event that the Settlement does not become effective in accordance with the terms of the Settlement Agreement or the Effective Date does not occur, then this Judgment shall be rendered null and void to the extent provided by and in accordance with the Settlement Agreement and shall be vacated and, in such event, all orders entered and releases delivered in



connection herewith shall be null and void to the extent provided by and in accordance with the Settlement Agreement.

19. The Parties are hereby authorized without needing further approval from the Court, to agree to and adopt such modifications and expansions of the Settlement Agreement, including without limitation, the forms to be used in the claims process, which are consistent with this Judgment and do not limit the rights of Settlement Class Members under the Settlement Agreement. Without further order of the Court, the Parties may agree to reasonable extensions of time to carry out any of the provisions of the Settlement Agreement.

20. There is no just reason for delay in the entry of this Final Judgment and Order Approving Settlement and immediate entry by the Clerk of the Court is expressly directed pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

**IT IS SO ORDERED.**

DATED: \_\_\_\_\_

\_\_\_\_\_  
THE HON. LEONIE M. BRINKEMA  
UNITED STATES DISTRICT JUDGE

# Exhibit D

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

MARGARET MURR and DAVID REIGN, on  
behalf of themselves and all others similarly  
situated,

Plaintiffs,

v.

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

Defendant.

Civil Action No.: 1:13-cv-1091 LMB/TCB

CLASS ACTION

JURY TRIAL DEMANDED

Judge: Hon. Leonie M. Brinkema

Courtroom:

Filed: August 30, 2013

**[PROPOSED] ORDER PRELIMINARILY APPROVING CLASS ACTION  
SETTLEMENT, CONDITIONALLY CERTIFYING THE SETTLEMENT CLASS,  
PROVIDING FOR NOTICE AND SCHEDULING ORDER**

WHEREAS, in this action entitled *Murr v. Capital One Bank (USA), N.A.*, Case No. 1:13-cv-1091 LMB/TCB (E.D. Va.) (the “Action”), Plaintiffs Margaret Murr and David Reign (“Plaintiffs” or “Class Representatives”) and Defendant Capital One Bank (USA), N.A. (“Defendant” or “Capital One”) have entered into a Settlement Agreement and Release, filed December 19, 2014, after lengthy arm’s-length settlement discussions and extensive litigation;

AND, WHEREAS, the Court has received and considered the Settlement Agreement, including the accompanying exhibits;

AND, WHEREAS, the Parties have made an application, pursuant to Federal Rules of Civil Procedure, Rule 23(e), for an order preliminarily approving the settlement of this Action, and for its dismissal with prejudice upon the terms and conditions set forth in the Settlement Agreement;

AND, WHEREAS, all capitalized defined terms used herein shall have the same meanings as set forth in the Settlement Agreement unless set forth differently herein;

AND, WHEREAS, the Court has reviewed the Parties’ application for such order, and has found good cause for same.

**NOW, THEREFORE, IT IS HEREBY ORDERED:**

**I. THE SETTLEMENT CLASS IS CONDITIONALLY CERTIFIED**

1. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for Settlement purposes only, the Court hereby conditionally certifies the following Settlement Class:

All persons within the United States who from August 1, 2008, to the Preliminary Approval Date accepted a 0% Offer using an Access Check or No-Hassle Check. Excluded from the Class are the following persons or entities: those who submit a valid opt out request, Defendant and its officers, directors and employees, and any Court personnel assigned to the action.

2. With respect to the Settlement Class, the Court preliminarily finds the prerequisites for a class action under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been met, in that: (a) the Class is so numerous that joinder of all individual Settlement Class Members in the Action is impracticable; (b) there are questions of law and fact common to the Class and those common questions of law and fact predominate over any individual questions; (c) the claims of the Class Representatives are typical of the claims of the Settlement Class; (d) the Class Representatives and Class Counsel will fairly and adequately represent the interests of the Settlement Class; and (e) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court hereby appoints the Plaintiffs in the Action as Class Representatives of the Settlement Class.

4. Having considered the factors set forth in Rule 23(g)(1) of the Federal Rules of Civil Procedure, the Court hereby appoints Timothy G. Blood, of Blood Hurst & O'Reardon, LLP, and Joseph P. Guglielmo, of Scott+Scott, Attorneys at Law, LLP as Class Counsel to represent the Settlement Class.

**II. THE SETTLEMENT IS PRELIMINARILY APPROVED AND FINAL APPROVAL SCHEDULE SET**

5. The Court hereby preliminarily approves the Settlement Agreement and the terms and conditions of Settlement set forth therein, subject to further consideration at the Final Approval Hearing described below.

6. The Court has conducted a preliminary assessment of the fairness, reasonableness, and adequacy of the Settlement Agreement, and hereby finds that the Settlement falls within the range of reasonableness meriting possible final approval. The Court therefore preliminarily approves the proposed Settlement as set forth in the Settlement Agreement.

7. Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, the Court will hold a settlement hearing (the “Final Approval Hearing”) on \_\_\_\_\_, 2015, at \_\_\_\_\_ a.m./p.m., in the Courtroom of the Honorable Leonie M. Brinkema, United States District Court for the Eastern District of Virginia, Albert V. Bryan U.S. Courthouse, 401 Courthouse Square, Alexandria, VA 22314, for the following purposes:

(a) finally determining whether the Settlement Class meets all applicable requirements of Rule 23 of the Federal Rules of Civil Procedure, and thus, the Settlement Class claims should be certified for purposes of effectuating the Settlement; determining whether the proposed Settlement of the Litigation on the terms and conditions provided for in the Settlement Agreement is fair, reasonable and adequate and should be approved by the Court;

(b) considering the application of Class Counsel for an award of Attorneys’ Fees and Expenses as provided for under the Settlement Agreement;

(c) considering the application of Plaintiffs for service awards;

(d) considering whether the Court should enter the [Proposed] Final Judgment and Order Approving Settlement;

(e) considering whether the release by the Settlement Class Members of the Released Claims as set forth in the Settlement Agreement should be provided; and

(f) ruling upon such other matters as the Court may deem just and appropriate.

8. The Court may adjourn the Final Approval Hearing and later reconvene such hearing without further notice to the Settlement Class Members.

9. The Parties may further modify the Settlement Agreement prior to the Final Approval Hearing so long as such modifications do not materially change the terms of the

Settlement provided thereunder. The Court may approve the Settlement Agreement with such modifications as may be agreed to by the Parties, if appropriate, without further notice to Settlement Class Members.

10. Settlement Class Members must file and serve any objections to the proposed Settlement, which must include all of the information detailed in Section VI of this Order no later than forty-five (45) days prior to the date first set for the Final Approval Hearing, including any memorandum and/or submissions in support of said objection, which deadline will be set forth in the Class Notice.

11. Opening papers in support of the Settlement and any application for an award of Attorneys' Fees and Expenses and/or Plaintiffs' service awards must be filed with the Court at least sixty (60) days prior to the Final Approval Hearing. Reply papers, if any, must be filed with the Court at least seven (7) days prior to the Final Approval Hearing.

### **III. THE COURT APPROVES THE FORM AND METHOD OF CLASS NOTICE**

12. The Court approves, as to form and content, the proposed notices to be provided to Settlement Class Members as set forth in Section 8 of the Settlement Agreement, which consist of the Long Form Notice, Email Notice, Postcard Notice, and Internet Notice (collectively the "Class Notice"), which are attached collectively as Exhibit B to the Settlement Agreement.

13. The Court finds that the distribution of Class Notice substantially in the manner and form set forth in Paragraphs 15-16 of this Order and the Settlement Agreement meet the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process, is the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons entitled thereto.

14. The Court approves the designation of Dahl Administration, to serve as the Court-appointed Claims Administrator for the Settlement. The Claims Administrator shall disseminate Class Notice and supervise and carry out the notice procedure, the processing of Claims, and

other administrative functions, and shall respond to Class Member inquiries, as set forth in the Settlement Agreement and this Order under the direction and supervision of the Court.

15. The Court directs the Claims Administrator to establish a Settlement Website, making available copies of this Order, Class Notice, and Claim Forms that may be downloaded and submitted online or by mail, the Settlement Agreement and all Exhibits thereto, frequently asked questions, a toll-free hotline, and such other information as may be of assistance to Settlement Class Members or required under the Settlement Agreement. The Claim Forms shall be made available to Settlement Class Members through the Settlement Website and on the websites of Class Counsel, at their options, no later than the Notice Date as defined below, and continuously thereafter through the Claims Deadline.

16. The Claims Administrator is ordered to initiate dissemination of the Class Notice no later than ninety (90) calendar days after this Order is issued (the "Settlement Notice Date").

17. The costs of the Class Notice, processing of claims and Cash Awards, creating and maintaining the Settlement Website, and all other Notice and Claim Administration expenses shall be paid by Defendant in accordance with the applicable provisions of the Settlement Agreement.

18. The Claims Administrator will file with the Court, no later than fourteen (14) days prior to the Final Approval Hearing, proof that Notice was provided in accordance with the Settlement Agreement and this Order, as well as proof that the Notice was provided to the appropriate State and federal officials pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715.

**IV. PROCEDURE FOR SETTLEMENT CLASS MEMBERS TO PARTICIPATE IN THE SETTLEMENT**

19. All Settlement Class Members shall be bound by all determinations and judgments in the Litigation concerning the Settlement, whether favorable or unfavorable to the Settlement Class.

20. The Court approves the Parties' proposed form of the Claim Form. Unless otherwise provided in the Settlement Agreement as it relates to Settlement Class Members as described in Section 4.02(a) of the Settlement Agreement, any Settlement Class Member who wishes to receive a Cash Award from the Settlement shall complete a Claim Form in accordance with the instructions contained therein and submit it to the Claims Administrator no later than ninety (90) days after the Settlement Notice Date. Such deadline may be further extended without notice to the Settlement Class by Court order.

21. The Claims Administrator shall have the authority to accept or reject claims for Cash Awards in accordance with the Settlement Agreement, including the Claims Protocol.

22. The Claims Administrator shall send payment to Settlement Class Members for eligible Cash Awards or, as applicable, a letter explaining the rejection of the claim, within 30 days of the Effective Date or 30 days from the close of the Claims Deadline, whichever is later.

23. Any Settlement Class Member may enter an appearance in the Litigation, at his or her own expense, individually or through counsel. All Settlement Class Members who do not enter an appearance will be represented by Class Counsel.

**V. PROCEDURE FOR REQUESTING EXCLUSION FROM THE SETTLEMENT CLASS**

24. Any person falling within the definition of the Class may, upon his or her request, be excluded from the Settlement Class. Any such person must submit a completed Request for Exclusion to the Claims Administrator postmarked or delivered no later than forty-five (45) calendar days before the date first set for the Final Approval Hearing (the "Opt-Out Deadline"), as set forth in the Class Notice. The Request for Exclusion must include (a) the person's name; (b) the person's address; (c) the person's telephone number; (d) the person's signature; (d) a



statement that the person is a Settlement Class Member; and (f) the case name and number: *Murr v. Capital One Bank (USA), N.A.*, Case No. 1:13-cv-1091 LMB/TCB (E.D. Va.) Requests for Exclusion purportedly filed on behalf of groups of persons are prohibited and will be deemed to be void.

25. Any Settlement Class Member who does not send a completed, signed Request for Exclusion to the Clerk of the Court postmarked or delivered on or before the Opt-Out Deadline will be deemed to be a Settlement Class Member for all purposes and will be bound by all further orders of the Court in this Litigation and by the terms of the Settlement, if finally approved by the Court. The written Request for Exclusion must request exclusion from the Settlement Class, must be personally signed by the potential Settlement Class Member and include a statement indicating that the person is a member of the Settlement Class. All persons who submit valid and timely Requests for Exclusion in the manner set forth in the Settlement Agreement shall have no rights under the Settlement and shall not be bound by the Settlement Agreement or the Final Judgment and Order Approving Settlement.

26. A list reflecting all Requests for Exclusions shall be filed with the Court by Claims Administrator no later than fourteen (14) days before the Final Approval Hearing.

## **VI. PROCEDURE FOR OBJECTING TO THE SETTLEMENT**

27. Any Settlement Class Member who desires to object either to the Settlement, the award of Attorneys' Fees and Expenses, or Plaintiffs' service awards must timely file with the Clerk of this Court and timely serve on the Parties' counsel identified below by hand or first-class mail a notice of the objection(s) and proof of membership in the Settlement Class and the grounds for such objections, together with all papers that the Settlement Class Member desires to submit to the Court no later than forty-five (45) days prior to the date first set for the Final Approval Hearing (the "Objection Deadline"). Settlement Class Members may not both object and opt out. If a Settlement Class Member submits both a Request for Exclusion and an objection, the Request for Exclusion will be controlling. To be considered by the Court, the objection must also contain all of the information listed in paragraph 28 below. The Court will

consider such objection(s) and papers only if such papers are received on or before the Objection Deadline provided in the Class Notice, by the Clerk of the Court and by Class Counsel and Defendant's counsel. Such papers must be sent to each of the following persons:

Timothy G. Blood  
tblood@bholaw.com  
Thomas J. O'Reardon II  
toreardon@bholaw.com  
Blood Hurst & O'Reardon LLP  
701 B Street, Suite 1700  
San Diego, CA 92101  
Telephone: (619) 338-1100

Joseph P. Guglielmo.  
jguglielmo@scott-scott.com  
Scott+Scott, Attorneys at Law, LLP  
The Chrysler Building  
405 Lexington Avenue, 40<sup>th</sup> Floor  
New York, NY 10174  
Telephone: (212) 223-6444

Aaron D. Van Oort  
aaron.vanoort@faegrebd.com  
Eileen M. Hunter  
eileen.hunger@faegrebd.com  
FAEGRE BAKER DANIELS  
2200 Wells Fargo Center  
90 South Seventh Street  
Minneapolis, Minnesota 55402-3901  
Telephone: (612) 766-7000

28. All objections must include: (a) a heading which refers to the Litigation, *Murr v. Capital One Bank (USA), N.A.*, Case No. 1:13-cv-1091 LMB/TCB (E.D. Va.); (b) the objector's full name, telephone number, email address, and address (the objector's actual residential address must be included); (c) if represented by counsel, the full name, telephone number, and address of all counsel; (d) a statement under penalty of perjury that he or she is a Settlement Class Member; (e) whether he or she intends to appear at the Final Approval Hearing on his or her own behalf or through counsel; (f) all grounds for the objection, accompanied by any legal support for the objection known to the objector or his or her counsel; (g) copies of any papers, briefs, or other documents upon which the objection is based; and (h) the objector's dated,

handwritten signature (an electronic signature or attorney's signature are not sufficient).

29. All objections must contain the information set forth in paragraph 27 above, and be filed with the Clerk and served on the Parties' counsel as set forth in paragraph 26 above no later than the Objection Deadline. Objections that do not contain all required information or received after the Objection Deadline will not be considered at the Final Approval Hearing. The Parties will have the right to take discovery, including a deposition, of any objector to assess the objector's standing, motives, and intent.

30. Counsel are hereby authorized to use all reasonable procedures in connection with approval and administration of the Settlement that are not materially inconsistent with this Order or the Settlement Agreement, including making, without further approval of the Court, minor changes to the form or content of the Notice and Claim Form and other exhibits that they jointly agree are reasonable and necessary. The Court reserves the right to approve the Settlement with such modifications, if any, as may be agreed by the Parties without further notice to the Settlement Class Members.

31. Attendance at the Final Approval Hearing is not necessary; however, any Settlement Class Member wishing to be heard orally with respect to approval of the Settlement, the application for an award of Attorneys' Fees and Expenses, or the application for Plaintiffs' service awards, is required to provide written notice of their intention to appear at the Final Approval Hearing no later than the Objection Deadline as set forth in the Class Notice, by filing a "Notice of Intention to Appear". The Notice of Intention to Appear must include the Settlement Class Member's name, address, telephone number, and signature and must be served as described in Paragraph 27 of this Order. Settlement Class Members who do not oppose the Settlement, the application for an award of Attorneys' Fees and Expenses, or the application for Plaintiffs' service awards need not take any action to indicate their approval. A person's failure to submit a written objection in accordance with the Objection Deadline and the procedure set forth in the Class Notice waives any right the person may have to object to the Settlement, the

award of Attorneys' Fees and Expenses, or Plaintiffs' service awards, or to appeal or seek other review of the Final Judgment and Order Approving Settlement.

**IT IS SO ORDERED.**

DATED: \_\_\_\_\_

\_\_\_\_\_  
THE HON. LEONIE M. BRINKEMA  
UNITED STATES DISTRICT JUDGE

# Exhibit E

## **Claims Protocol**

This Claims Protocol (the “Protocol”) is part of the Settlement Agreement (“Settlement”) and shall be used by the Claims Administrator to review and process those Claims submitted pursuant to the Settlement and otherwise implement the terms of the claim review and administration process. All capitalized terms used in this Protocol shall have the same meaning given them in the Settlement Agreement.

### **1. Claims Administrator’s Role and Duties**

- (a) The Parties have selected Dahl Administration to be the Claims Administrator. Dahl will be recommended to and approved by the Court.
- (b) The Claims Administrator must consent, in writing, to serve and shall abide by the obligations of the Settlement Agreement, this Protocol, and the Orders issued by the Court.
- (c) The Claims Administrator shall have access to information about the balance of the escrowed funds to perform calculations relating to: (i) the costs and expenses associated with disseminating the Class Notice; (ii) the costs and expenses associated with claims administration; and (iii) the total amount due to Settlement Class Members entitled to Cash Awards under the Settlement.
- (d) The Claims Administrator shall warrant that it knows of no reason why it cannot fairly and impartially administer the claim review process set forth in the Settlement Agreement. If the Claims Administrator, Defendant, or Class Counsel learns of a conflict of interest as to a Claim, that party shall give written notice to the other parties, who shall resolve any such circumstances by further written agreement. Any unresolved dispute over such conflict of interest shall be submitted to the Court for resolution. The Claims Administrator shall indemnify and defend the Parties and their counsel against any liability arising from the Claims Administrator’s breach of this provision.
- (e) The Claims Administrator shall keep a clear and careful record of all communications with Settlement Class Members, all claims decisions, all expenses, and all tasks performed in administering the Notice and claim review processes.
- (f) The Claims Administrator shall provide periodic reports to Class Counsel and Defendant’s Counsel regarding Class Notice distribution and Claim Form submissions beginning not later than one week after Class Notice is first disseminated and continuing on a weekly basis thereafter.
- (g) The actual cost of the Claims Administrator shall be paid, from time to time, as determined by submitted and approved invoices, by Defendant.
- (h) The Claims Administrator shall take all reasonable efforts to administer the Claims efficiently and avoid unnecessary fees and expenses. The Claims

Administrator shall only be reimbursed for fees and expenses supported by detailed and clear timesheets and receipts for costs. As soon as work commences, the Claims Administrator shall provide a detailed written accounting of all fees and expenses on a monthly basis to Class Counsel and Defendant's Counsel, and shall respond promptly to inquiries by these counsel concerning fees and expenses.

- (i) The Parties are entitled to observe and monitor the performance of the Claims Administrator to assure compliance with the Settlement Agreement and this Protocol. The Claims Administrator shall promptly respond to all inquiries and requests for information made by Defendant or its counsel or Class Counsel.

## **2. Providing and Submitting Claim Forms**

- (a) The Claim Form, which is in substantially the form attached as Exhibit A to the Settlement Agreement, shall be available as part of the Class Notice, accessible via hyperlink from the direct Email Notice, included on the direct Postcard Notice, on the Settlement Website, or by contacting the Claims Administrator. The Claim Form on the Settlement Website and the hard copy Claim Form shall be consistent in content.
- (b) The Claims Administrator shall establish and maintain the Settlement Website, which shall be easily accessible through commonly used Internet Service Providers for the submission of Claims. The Settlement Website shall provide information in English and Spanish. The Settlement Website shall be designed to permit Settlement Class Members to readily and easily submit Claims and obtain information about the Settlement Class Members' rights and options under the Settlement Agreement. The Settlement Website shall be maintained continuously until 240 calendar days after the first pro rata distribution.
- (c) The Claims Administrator shall also establish a toll-free telephone number that will have recorded information answering frequently asked questions about the Settlement Agreement, including, but not limited to, the instructions about how to request a Claim Form and/or Class Notice, as well as an option to reach a live operator. Live operators will also be made available.
- (d) No later than 75 days after an order granting preliminary approval of the Settlement, Capital One shall provide the Claims Administrator files that identify the names, last known mailing and email addresses, and contact phone numbers of Settlement Class Members, as well as their Qualifying Account numbers, and whether each Qualifying Account number fits within Category 1, 2, or 3 as described in the Long Form Notice and Section 4.02 of the Settlement Agreement. The Claims Administrator will return this file to Capital One within 90 days after the Effective Date. The Claims Administrator shall update the mailing addresses through the National Change of Address Database.

- (e) No later than 90 days after entry of the Preliminary Approval Order, the direct Email Notice and Postcard Notice (Exs. B(2) and B(3) to the Settlement Agreement) with the personalized information specified in the paragraph above, shall be mailed and/or emailed to Settlement Class Members. A Claim Form shall be included with such direct Notices (the “Initial Direct Notice”).
- (f) The Claims Administrator shall perform reasonable address traces for all direct notices returned as undeliverable from the Initial Direct Notice. No later than 35 days from the Initial Direct Notice, the Claims Administrator shall complete the re-sending of the direct Notice and Claim Form to those Settlement Class Members whose new addresses were identified as of that time through address traces (the “Notice Re-mailing Process”).
- (g) No later than 10 days from an order of granting preliminary approval, the Claims Administrator will post the Settlement Agreement, Notice, and Claim Form on the Settlement Website. The Settlement Agreement, Notice, and Claim Form shall remain available by these means until the Effective Date. The Claims Administrator shall also post any preliminary and final approval orders and related memoranda, as well as any attorney’s fee petition and related memoranda, on the Settlement Website.
- (h) The Class Notice and Claim Form shall also be sent via electronic mail to Settlement Class Members who so request.
- (i) No later than 7 days before the Final Approval Hearing, the Claims Administrator shall provide the Court with an affidavit attesting that Class Notice was disseminated pursuant to the Settlement Agreement.

### **3. Claim Form Review and Processing**

- (a) Settlement Class Members may timely submit a Claim to the Claims Administrator up to the Claims Deadline. Settlement Class Members shall be eligible for the relief provided in the Settlement Agreement, provided Settlement Class Members complete and timely postmark or submit online a valid Claim Form to the Claims Administrator by the Claims Deadline.
- (b) The Claims Administrator shall gather and review the Claim Forms received pursuant to the Settlement Agreement, and fulfill valid Claims.
  - (i) Settlement Class Members who submit a timely and valid Claim Form shall be designated as Authorized Claimants. The Claims Administrator shall examine the Claim Form before designating the Settlement Class Member as an Authorized Claimant to determine that the information on the Claim Form is reasonably complete and contains sufficient information to enable the mailing of the settlement payment to the Settlement Class Member.



- (ii) No Class Member is required to submit more than one Claim Form. If an Authorized Claimant has more than one Qualifying Account, the Authorized Claimant shall receive the applicable Cash Award for each of his or her Qualifying Accounts without the need to submit a separate Claim Form for each Qualifying Account. The Claims Administrator shall identify any Claim Forms that appear to seek relief on behalf of the same Qualifying Account (“Duplicative Claim Forms”). The Claims Administrator shall determine whether there is any duplication of Claims, if necessary by contacting the claimant(s) or their counsel. The Claims Administrator shall designate any such Duplicative Claims as invalid claims to the extent they allege the same damages or allege damages on behalf of the same Settlement Class Member.
  - (iii) The Claims Administrator shall exercise, in its discretion, all usual and customary steps to prevent fraud and abuse and take any reasonable steps to prevent fraud and abuse in the claim process. The Claims Administrator may, in its discretion, deny in whole or in part any claim to prevent actual or possible fraud or abuse.
  - (iv) By agreement of the Parties, the Parties can instruct the Claims Administrator to take whatever steps they deem appropriate to preserve the \$3,125,000 minimum guaranteed payout under the Settlement to Settlement Class Members to further the purposes of the Settlement Agreement if the Settlement Administrator identifies actual or possible fraud or abuse relating to the submission of Claims, including, but not limited to, denying in whole or in part any Claim to prevent actual or possible fraud or abuse.
  - (v) The Claims Administrator shall, in its discretion, following consultation and agreement with counsel, reasonable agreement not to be withheld, decide whether to accept Claim Forms submitted after the Claims Deadline.
- (c) The Claims Administrator shall provide periodic reports to Class Counsel and Defendant’s Counsel regarding the implementation of the Settlement Agreement and this Protocol.
  - (d) If a Claim Form cannot be processed without additional information, the Claims Administrator shall promptly send written communication that advises the claimant of the additional information and/or documentation needed to validate the claim. The claimant shall have twenty-eight (28) days from the date of the postmarked letter sent by the Claims Administrator to respond to the request from the Claims Administrator and the claimant shall be so advised.
    - (i) In the event the claimant timely provides the requested information, the Claim shall be deemed validated and shall be processed for payment.

- (ii) In the event the claimant does not timely provide the information, the Claim may be denied or reduced to the claim amount reasonably supported by the documentation without further communication with the claimant.
  - (iii) If a Claim is denied because the Claims Administrator determined that documentation was not sufficient to prove the Claim, the Claims Administrator shall provide a report to Class Counsel and Defendant's Counsel who shall meet and confer in an attempt to resolve these Claims. If Class Counsel reasonably recommends payment of the Claim and Defendant agrees (and Defendant's agreement shall not be unreasonably withheld), then the Claims Administrator shall be instructed to pay those Claims.
  - (iv) The Claims Administrator shall provide all information gathered in investigating Claims, including, but not limited to, copies of all correspondence and email and all notes of the Settlement Administrator, the decision reached, and all reasons supporting the decision, if requested by Class Counsel or Defendant's Counsel.
- (e) Settlement checks will be sent to qualified Settlement Class Members by the Claims Administrator via U.S. mail no later than twenty-five (25) calendar days after the Funding Date. If any settlement checks are returned, the Claims Administrator will attempt to obtain a new mailing address for that Settlement Class Member by taking the steps described in Section 8.02 of the Settlement Agreement. If, after a second mailing, the settlement check is again returned, no further efforts need be taken by the Claims Administrator to resend the check. The Claims Administrator will advise Class Counsel and Defendant's Counsel of the names of the Settlement Class Members whose checks are returned by the postal service as soon as practicable. Each settlement check will be negotiable for ninety (90) calendar days after it is issued. Upon request by an Authorized Claimant, the Claims Administrator may re-issue settlement checks, provided that such re-issued checks will not be negotiable beyond that date that is forty-five (45) calendar days after the date of issuance of the check to such claimant.
- (f) After the negotiation period for all checks issued and re-issued in the first phase has expired, the Claims Administrator will use the amount of money represented by the uncashed checks to fund additional efforts to reissue, deliver, and pay settlement checks to the Settlement Class Members who did not cash their earlier checks. The Claims Administrator will take the steps that are, in its discretion, most likely to result in the remaining funds being received by Settlement Class Members. All actions of the Claims Administrator in this phase will be paid out of the money represented by the uncashed checks. The Claims Administrator will keep attempting to distribute the funds until the combined costs of its actions and the additional money received by Settlement Class Members reduces the money remaining after the first phase to less than \$500, at which point it will be used to offset other costs of class administration.