

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”), dated as of May 6, 2020, is entered into by Plaintiffs, Jacob Figueroa and Mary Jackson, individually and on behalf of the Settlement Class defined herein, and Defendant, Capital One, N.A. (“Capital One”). Plaintiffs and Capital One are each individually a “Party” and are collectively the “Parties.” The Parties hereby agree to the following terms in full settlement of the action entitled *Figueroa v. Capital One Bank*, No. 3:18-cv-00692-JM-BGS (S.D. Cal.) (the “Action”), subject to Final Approval, as defined below, by the United States District Court for the Southern District of California (“Court”).

I **RECITALS**

WHEREAS, on April 6, 2018, Plaintiffs filed the Action as a putative class action against Capital One in the United States District Court for the Southern District of California. Doc. 1.

WHEREAS, Capital One sought dismissal of the case. Doc. 9.

WHEREAS, Judge Miller denied the motion and ordered the Parties to engage in limited discovery to determine which documents actually formed the contract. Doc. 17.

WHEREAS, the Parties completed that discovery, which included the depositions of both Plaintiffs and a 30(b)(6) witness from Capital One, and Capital One then moved for partial summary judgment on Plaintiffs’ breach of contract claim. Doc. 38. Without hearing oral argument, Judge Miller issued an order denying the motion for summary judgment on October 17, 2019. Doc. 56.

WHEREAS, the Parties engaged in discovery after the summary judgment ruling, and continued to do so up until the time a settlement was reached;

WHEREAS, the Parties engaged in a full day mediation with JAMS Mediator Bruce Friedman on March 4, 2020, in Los Angeles, at which time they reached an agreement in principle to resolve this Action;

WHEREAS, the Parties filed a Notice of Settlement on March 6, 2020, confirming their agreement in principle and requesting that the Court stay all deadlines in the Action;

NOW THEREFORE, in light of the foregoing, for good and valuable consideration, the Parties agree that the Action shall be fully and finally compromised, settled, released, and dismissed with prejudice, subject to the terms and conditions of this Agreement and subject to Final Approval as set forth herein.

II TERMS OF THE SETTLEMENT

Section 1. Definitions

In addition to the terms defined elsewhere in this Agreement, the following capitalized terms used in this Agreement shall have the meanings specified below:

1.1 “Adjustments” means, collectively, the Class Representative Service Awards, the Fee & Expense Award, and the amount of the Administrative Costs.

1.2 “Administrative Costs” means all out-of-pocket costs and third-party expenses of the Settlement Administrator that are associated with providing notice of the Settlement to the Settlement Class, administering and distributing the Settlement Class Member Payments to Settlement Class Members, or otherwise administering or carrying out the terms of the Settlement, including but not limited to postage and telecommunications costs. Administrative Costs shall include the Settlement Administrator’s hourly charges for administering the Settlement and providing notice.

1.3 “Class Counsel” means Kaniel PLLC and Carlson Lynch, LLC.

1.4 “Class Period” is defined as follows:

- For Settlement Class Members whose accounts were established in Louisiana: the period from April 6, 2008 to June 30, 2020;
- For Settlement Class Members whose accounts were established in Connecticut, New York and New Jersey: the period from April 6, 2012 to June 30, 2020;
- For Settlement Class Members whose accounts were established in Virginia: the period from April 6, 2013 to June 30, 2020;
- For Settlement Class Members whose accounts were established in Texas: the period from April 6, 2014 to June 30, 2020;
- For Settlement Class Members whose accounts were established in the District of Columbia, Maryland, and Delaware: the period from April 6, 2015 to June 30, 2020.

1.5 “Class Representatives” means the Plaintiffs in the Action, if and when the Court appoints them as representatives of the Settlement Class.

1.6 “Class Representative Service Awards” means the service awards that Plaintiffs will seek for their service to the Settlement Class in an amount not to exceed \$10,000 each.

1.7 “Effective Date” shall mean the date when the last of the following has occurred: (1) the day following the expiration of the deadline for appealing Final Approval if no timely appeal is filed, or (2) if an appeal of Final Approval is taken, the date upon which all appeals (including any requests for rehearing or other appellate review), as well as all further appeals therefrom (including all petitions for certiorari) have been finally resolved without material change to the Final Approval Order, as determined by

Capital One, and the deadline for taking any further appeals has expired such that no future appeal is possible; or (3) such date as the Parties otherwise agree in writing.

1.8 “Fee & Expense Award” means the attorneys’ fees, costs and expenses that Class Counsel will seek from the Court as more fully described in Section 3.2.

1.9 “Final Approval” means entry of the Final Approval Order.

1.10 “Final Approval Hearing” means the date the Court holds a hearing on Plaintiffs’ motion seeking Final Approval.

1.11 “Final Approval Order” means the order the Court will enter granting Final Approval of the Settlement. The proposed Final Approval Order shall be in a form agreed upon by the Parties and shall be substantially in the form attached as an exhibit to the Motion for Final Approval. Final Approval Order also includes the orders, which may be entered separately, determining the amount of the Fee & Expense Award and the amount of any Class Representative Service Awards.

1.12 “First Amended Complaint” means the amended complaint filed in the Action on May 30, 2018.

1.13 “National Change of Address Database” means the change of address database maintained by the United States Postal Service.

1.14 “Net Settlement Fund” means the Settlement Amount, less the Adjustments.

1.15 “Out of Network ATM Balance Inquiry Fee” or “OON ATM Balance Inquiry Fee” means the fee Capital One charged accountholders when using an out of network ATM to conduct a balance inquiry.

1.16 “Objection Deadline” means one hundred thirty (130) days after Preliminary Approval (or other date as ordered by the Court).

1.17 “Opt-Out Deadline” means one hundred thirty (130) days after Preliminary Approval (or other date as ordered by the Court).

1.18 “Preliminary Approval” means entry of the Preliminary Approval Order.

1.19 “Preliminary Approval Order” means the order entered by the Court granting Preliminary Approval of the Settlement, a proposed form of which is attached as *Exhibit D* hereto.

1.20 “Settlement” means the settlement of the Action by the Parties and the terms thereof contemplated by this Agreement.

1.21 “Settlement Administrator” means BrownGreer PLC.

1.22 “Settlement Class” means all Capital One accountholders in the United States who, within the Class Period, incurred at least one OON ATM Balance Inquiry Fee. Excluded from the Settlement Class is Capital One, its parents, subsidiaries, affiliates, officers and directors; all accountholders who make a timely election to be excluded; and all judges assigned to this litigation and their immediate family members.

1.23 “Settlement Class Member” means a person who falls within the definition of the Settlement Class and did not opt out of the Settlement and who is entitled to the benefits of the Settlement.

1.24 “Settlement Class Member Payment” means an award to a Settlement Class Member of funds from the Net Settlement Fund.

1.25 “Settlement Class Notices” means the notices given to the Settlement Class, which includes *Exhibits A, B, and C*, attached hereto.

1.26 “Settlement Amount” means the \$13,000,000 payable by Capital One to establish the Settlement Fund.

1.27 “Settlement Fund” means the \$13,000,000 cash fund created by the deposit of the Settlement Amount.

1.28 “Settlement Fund Account” means the account into which Capital One will deposit the Settlement Amount.

1.29 “Settlement Website” means the website that the Settlement Administrator will establish as a means for Settlement Class members to obtain notice of and information about the Settlement, through and including hyperlinked access to this Agreement, the First Amended Complaint, the Long Form Notice (attached hereto as *Exhibit A*), Plaintiffs’ motion seeking Preliminary Approval, the Preliminary Approval Order, Plaintiffs’ motion seeking Final Approval, the Final Approval Order (should one issue), and such other documents as the Parties agree to post or that the Court orders posted on the website. The URL of the Settlement Website shall be www.ATMBalanceInquiryFeeSettlement.com, or such other URL as Class Counsel and Capital One agree upon in writing. The Settlement Website shall not include any advertising, and shall not bear or include the Capital One logo or Capital One trademarks.

Section 2. The Settlement

2.1 Conditional Certification of the Settlement Class

(a) Solely for purposes of this Settlement, the Parties agree to certification of the Settlement Class under Federal Rules of Civil Procedure.

2.2 Settlement Benefits

(a) *Business Practice Changes.* Within three (3) months of the Effective Date, Capital One shall revise its checking account disclosures to clearly disclose the circumstances in which OON ATM Balance Inquiry Fees will be assessed. True and correct portions of the revised disclosures which address Capital One's ATM OON Balance Inquiry Fees is attached hereto as *Exhibit E*.

(b) *Monetary Relief*

(1) *Settlement Amount.* Capital One has agreed to pay \$13,000,000 in cash for the benefit of the Settlement Class; and

(2) *Escrow Account.* Within fifteen (15) days following Preliminary Approval, Capital One shall deposit the Settlement Amount into the Settlement Fund Account, which shall be held in an account selected by the Settlement Administrator.

(3) *Calculation of Settlement Class Member Payments.* Each Settlement Class Member who has incurred an OON ATM Balance Inquiry Fee during the Class Period shall be entitled to receive a Settlement Class Member Payment from the Net Settlement Fund. Each Settlement Class Member Payment shall be equal to the Settlement Class Member's *pro rata* share of the Net Settlement fund based on the total number of OON ATM Balance Inquiry Fees paid by the Settlement Class Member. The methodology for calculating the *pro rata* share of each Settlement Class Member is discussed at Section 2.6, *infra*.

(4) *Complete Relief.* In exchange for the releases described below, Capital One agrees to make the business practice changes described in Section 2.2(a) and to pay the Settlement Amount. The Parties agree that in no event shall Capital One be responsible for any payments, costs, expenses, or claims beyond this amount. No portion of the Settlement Amount shall revert to Capital One, except where the Settlement is terminated pursuant to the terms of the Agreement.

2.3 Releases.

(a) *Settlement Class Member Release.* Upon the Effective Date, Plaintiffs and each Settlement Class Member, including any present, former, and future spouses, as well as the present, former, and future heirs, executors, estates, administrators, representatives, agents, attorneys, partners, successors, predecessors, beneficiaries, bankruptcy trustees, guardians, tenants in common, tenants by entireties, and assigns of each of them, shall release, waive, and forever discharge Capital One and each of its present, former, and future parents, predecessors, successors, subsidiaries, assigns, assignees, affiliates, conservators, divisions, departments, subdivisions, owners, partners, principals, trustees, creditors, shareholders, joint venturers, co-venturers, officers, and directors (whether acting in such capacity or individually), attorneys, vendors, insurers, accountants, nominees, agents (alleged, apparent, or actual), representatives, employees, managers, administrators, and each person or entity

acting or purporting to act for them or on their behalf (collectively, “Capital One Releasees”) from any and all claims that arise from or relate to the conduct alleged in the Action (“Released Capital One Claims”).

(b) *Unknown Claims.* With respect to the Released Capital One Claims, Plaintiffs and the Settlement Class Members shall be deemed to have, and by operation of the Settlement shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code (to the extent it is applicable, or any other similar provision under federal, state or local law to the extent any such provision is applicable), which reads:

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

Thus, subject to and in accordance with this Agreement, even if the Plaintiffs and/or Settlement Class Members may discover facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of the Released Capital One Claims, Plaintiffs and each Settlement Class Member, upon entry of Final Approval of the Settlement, shall be deemed to have and by operation of the Final Approval Order, shall have, fully, finally, and forever settled and released all of the Released Capital One Claims. This is true whether such claims are known or unknown, suspected, or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law, or rule, without regard to the subsequent discovery or existence of such different or additional facts.

(c) *No Release By Capital One.* Nothing in this Agreement shall operate or be construed to release any claims or rights that Capital One has to recover any past, present, or future amounts that may be owed by Plaintiffs or by any Settlement Class Member on his/her accounts, loans or debts with Capital One, pursuant to the terms and conditions of such accounts, loans, or any other debts. Likewise, nothing in this Agreement shall operate or be construed to release any defenses or rights of set-off that Plaintiffs or any Settlement Class Member has, other than with respect to the Released Capital One Claims, in the event Capital One and/or its assigns seeks to recover any past, present, or future amounts that may be owed by Plaintiffs or by any Settlement Class Member on his/her accounts, loans, or other debts with Capital One, pursuant to the terms and conditions of such accounts, loans, or other debts.

2.4 Notice Procedures

(a) *Settlement Administrator.* The Parties have jointly selected BrownGreer PLC as the Settlement Administrator of the Settlement. Class Counsel will oversee the Settlement Administrator. The Settlement Administrator shall perform the duties, tasks, and responsibilities associated with providing notice and administering the Settlement. The Administrative Costs will be paid out of the Settlement Fund.

(b) *Provision of Information to Settlement Administrator.* Within fifteen (15) business days of Preliminary Approval, Capital One will provide the Settlement Administrator with the following information, which will be kept strictly confidential between the Settlement Administrator and Capital One, for each Settlement Class Member: (i) name; (ii) last known e-mail address if available; (iii) last known mailing address; (iv) account number, or some sort of unique identifier that can be used to identify each separate Settlement Class Member; and (v) the date and amounts of OON ATM Balance Inquiry Fees incurred by each Settlement Class Member during the Class Period. The Settlement Administrator shall use the data provided by Capital One to make the calculations required by the Settlement, and the Settlement Administrator shall share the calculations with Class Counsel. The Settlement Administrator shall use this information solely for the purpose of administering the Settlement.

(c) *Settlement Class Notices.* Within seventy (70) days of Preliminary Approval, or by the time specified by the Court, the Settlement Administrator shall send or make available the Settlement Class Notices in the forms attached hereto as *Exhibits A, B, and C*, or in such form as is approved by the Court, to the Settlement Class.

(1) The Settlement Administrator shall send the “Email Notice,” attached hereto as *Exhibit B*, to all Settlement Class Members for whom Capital One has provided the Settlement Administrator with an e-mail address. For jointly held accounts, Email Notices will be addressed to all accountholders and sent to the first accountholder listed on the account.

(2) The Settlement Administrator shall send the “Postcard Notice,” attached hereto as *Exhibit C*, to all Settlement Class Members for whom Capital One has not provided an email address and to all Settlement Class Members to whom the Settlement Administrator sent the Email Notice via email but for whom the Settlement Administrator receives one “hard” bounce or three “soft” bounces for undeliverable email. The Postcard Notice shall be mailed after the Settlement Administrator updates mailing addresses provided by Capital One with the National Change of Address database. For jointly held accounts, Postcard Notices will be addressed to all accountholders and mailed to the first accountholder listed on the account.

(3) For purposes of calculating direct notice reach for consideration at the Final Approval Hearing, it will be conclusively presumed that the intended recipients received the Settlement Class Notices if the Settlement Administrator did not receive an email bounce-back message and if mailed Settlement Class Notices

have not been returned to the Settlement Administrator as undeliverable within seven (7) days before the Opt-Out Deadline. For purposes of identifying Settlement Class Members reached by notice and, therefore, eligible to receive a Settlement Class Member Payment, it will be conclusively presumed that the intended recipients received the Settlement Class Notices if the Settlement Administrator did not receive an email bounce-back message and if mailed Settlement Class Notices have not been returned to the Settlement Administrator as undeliverable by the Effective Date.

(d) *Settlement Class Member Resources.* The Settlement Administrator will establish and maintain (1) the Settlement Website; (2) a PO Box to receive written correspondence from Settlement Class Members, including requests to be mailed a hard copy of the Long Form Notice, and undeliverable program mail; and (3) an automated toll-free telephone line for Settlement Class members that will provide pre-recorded answers to frequently asked questions and will permit Settlement Class Members to request to be mailed a hard copy of the Long Form Notice (collectively, the "Settlement Class Member Resources."). The Settlement Administrator will operate the Settlement Class Member Resources until at least one hundred twenty (120) days after Final Approval.

2.5 Opt-Outs and Objections.

As set forth below, Settlement Class Members shall have the right to opt-out of the Settlement Class and the Settlement and Settlement Class Members shall have the right to object to the Settlement.

(a) *Requirements for Opting-Out.* If a Settlement Class Member wishes to be excluded from the Settlement Class and the Settlement, that Settlement Class Member is required to submit to the Settlement Administrator at the address listed in the Settlement Class Notices, a written, signed, and dated statement that he or she is opting-out of the Settlement Class and understands that he or she will not receive a Settlement Class Member Payment from the Settlement of the Action. To be effective, this opt-out statement (i) must be postmarked by the Opt-Out Deadline; (ii) include the Settlement Class Member's name and Capital One account number(s); and (iii) must be personally signed and dated by the Settlement Class Member(s). If an Account has more than one accountholder, then all accountholders on that account shall be deemed to have opted-out of the Settlement with respect to that Account, and no accountholder shall be entitled to a Settlement Class Member Payment. The Settlement Administrator will, within seven (7) days of receiving any opt-out statement, provide counsel for the Parties with a copy of the opt-out statement. Any Settlement Class Member who does not timely and validly request exclusion shall be a Settlement Class Member and shall be bound by the terms of this Agreement. The Settlement Class will not include any individuals who send timely and valid opt-out statements, and individuals who opt-out are not entitled to receive a Settlement Class Member Payment under the Settlement.

(b) *Objections.* Any Settlement Class Member who has not submitted a timely opt-out form and who wishes to object to the fairness, reasonableness,

or adequacy of the Settlement must send a written objection to the Clerk of the Court and the Settlement Administrator by the Objection Deadline.

(1) To be valid and considered by the Court, an objection must (i) be postmarked no later than the Objection Deadline; (ii) be sent to the Clerk of Court and the Settlement Administrator, by first class mail and postmarked no later than the Objection Deadline; (iii) include the case name and case number and the objector's full name, address, telephone number, and signature; (iv) contain an explanation of the nature of the objection and citation to any relevant legal authority; (v) indicate the number of times the objector has objected to a class action settlement in the past five (5) years and the caption for any such case(s) and a copy of any orders related to or ruling upon the objector's prior objections issued by the trial and appellate courts in each case; (vi) identify any counsel representing the objector; (vii) identify the number of times in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the five (5) years preceding the date of the filed objection (including the caption of each case and a copy of any orders related to or ruling upon counsel's or counsel's law firm's prior objections within the preceding five (5) years)); and (viii) indicate whether the objector (whether *pro se* or through representation) intends to testify at the Final Approval Hearing.

(2) Plaintiffs and Capital One may file responses to any objections that are submitted. Any Settlement Class Member who timely files and serves an objection in accordance with this section may appear at the Final Approval Hearing, either in person or through an attorney. Failure to adhere to the requirements of this section will bar a Settlement Class Member from being heard at the Final Approval Hearing, either individually or through an attorney, unless the Court otherwise orders.

(3) The Parties shall have the right to take discovery, including via subpoenas *duces tecum* and depositions, from any objector consistent with the Federal Rules of Civil Procedure.

(c) *Waiver of Objections.* Except for Settlement Class Members who opt-out of the Settlement Class in compliance with the foregoing, all Settlement Class Members will be deemed to be members of the Settlement Class for all purposes under this Agreement, the Final Approval Order, and the releases set forth in this Agreement and, unless they have timely asserted an objection to the Settlement, shall be deemed to have waived all objections and opposition to its fairness, reasonableness, and adequacy.

2.6 Benefit Distribution.

(a) Within ten (10) days of Final Approval, the Settlement Administrator shall provide to Capital One a list of the Settlement Class Members who are entitled to receive Settlement Class Member Payments, along with the unique identifier associated with and the amount of the Settlement Class Member Payment due each such Settlement Class Member. The information provided by the Settlement Administrator shall be considered conclusive as to which individuals are entitled to receive Settlement Class Member Payments and as to the amounts.

(b) *Distribution of Settlement Class Member Payments.* Within ninety (90) days of the Effective Date, the Settlement Administrator shall send Settlement Class Member Payments to all eligible Settlement Class Members from the Settlement Fund Account. The amount of each payment shall be calculated using the following methodology as applied to data maintained in Capital One's business records, and shall be applied as consistently, sensibly, and conscientiously as reasonably possible recognizing and taking into consideration the nature and completeness of the data and the purpose of the computation:

- All Accounts will be identified in which Capital One's data reasonably supports the conclusion that an OON ATM Balance Inquiry Fee was assessed.
- The dollar amount of all such OON ATM Balance Inquiry Fees will be calculated ("Total Balance Inquiry Fees Amount").
- Each Settlement Class Member will receive a pro rata share of the Net Settlement Fund based on his/her Total Balance Inquiry Fees Amount.

(1) The Parties agree the foregoing allocation formula is exclusively for purposes of computing retrospectively, in a reasonable and efficient fashion, the Total Balance Inquiries Fees Amount of each Settlement Class Member and the amount of any distribution each Settlement Class Member should receive from the Net Settlement Fund. The fact that this allocation formula is used herein is not intended and shall not be used for any other purpose or objective whatsoever.

(2) Settlement Class Member Payments to current Capital One accountholders shall be made either by a direct deposit to those accountholders' accounts, or by mailed check in those circumstances where it is not feasible or reasonable to make the payment by a credit. Settlement Class Member Payments made to current accountholders by check will be cut and mailed by the Settlement Administrator with an appropriate legend, in a form approved by Class Counsel and Capital One, to indicate that it is from the Settlement Fund Account, and will be sent to the addresses that the Settlement Administrator identifies as valid. Checks shall be valid for one hundred and eighty (180) days.

(3) Settlement Class Member Payments to former Capital One accountholders will be made by check with an appropriate legend, in a form approved by Class Counsel and Capital One Counsel, to indicate that it is from the Settlement Fund Account. Checks will be cut and mailed by the Settlement Administrator and will be sent to the addresses that the Settlement Administrator identifies as valid. Checks shall be valid for one hundred and eighty (180) days.

(4) For jointly held accounts, direct deposits will be made where possible. Where not possible, checks for jointly held accounts will be payable to all accountholders, and will be mailed to the first accountholder listed on the account.

(5) In the event of any complications arising in connection with the issuance or cashing of a check, the Settlement Administrator shall provide written notice to Class Counsel and Capital One's Counsel. Absent specific instructions from Class Counsel and Capital One's Counsel, the Settlement Administrator shall proceed to

resolve the dispute using its best practices and procedures to ensure that the funds are fairly and properly distributed to the person or persons who are entitled to receive them.

(c) *Mailing Addresses.* Prior to mailing Settlement Class Member Payments, the Settlement Administrator shall attempt to update the last known addresses of the Settlement Class Members through the National Change of Address Database.

(1) For all mailed Notices that are returned as undeliverable, the Settlement Administrator shall use standard skip tracing devices to obtain forwarding address information and, if the skip tracing yields a different forwarding address, the Settlement Administrator shall re-mail the Notice to the address identified in the skip trace, as soon as reasonably practicable after the receipt of the returned mail.

(2) Settlement Class Member Payments returned with a forwarding address shall be re-mailed to the new address as soon as reasonably practicable. The Settlement Administrator shall not mail Settlement Class Member Check Payments to addresses from which Settlement Class Notices were returned as undeliverable under Section 2.6(d)(1).

(d) *Interest.* All interest on the funds in the Settlement Fund Account shall accrue to the benefit of the Settlement Class. Any interest shall not be subject to withholding and shall, if required, be reported appropriately to the Internal Revenue Service by the Settlement Administrator. The Settlement Administrator is responsible for the payment of all taxes on interest on the funds in the Settlement Fund Account.

(e) *Time for Depositing Settlement Class Member Payment Checks.* If a Settlement Class Member's Payment check is not deposited (or cashed) within one hundred eighty (180) days after the check is mailed, (a) the check will be null and void; and (b) the Settlement Class Member will be barred from receiving a further Settlement Class Member Payment under this Settlement.

(f) *Tax Obligations.* The Parties shall have no responsibility or liability for any federal, state, or other taxes owed by Settlement Class Members as a result of, or that arise from, any Settlement Class Member Payment, Debt Reduction Payment or any other term or condition of this Agreement.

(g) *Tax Reporting.* The Settlement Administrator shall prepare, send, file, and furnish all tax information reporting forms required for payments made from the Settlement Fund Account as required by the Internal Revenue Service pursuant to the Internal Revenue Code and related Treasury Regulations, including Form 1099s. The Parties hereto agree to cooperate with the Settlement Administrator, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions set forth in this section. Capital One makes no representations and it is understood and agreed that Capital One has made no representations as to the taxability of any portions of the settlement payments to any Settlement Class Member or Plaintiffs.

Section 3. Service Awards and Class Counsel's Fee & Expense Award

3.1 Class Representative Service Awards. Plaintiffs, through Class Counsel, shall each be entitled to apply to the Court for an award from the Settlement Fund for their participation in the Action and their service to the Settlement Class. Plaintiffs shall be entitled to apply for a Class Representative Service Award in an amount not exceeding \$10,000.00 each in recognition of his or her service to the Settlement Class. Capital One shall not oppose or appeal such applications that do not exceed these amounts. The Class Representative Service Awards shall be paid from the Settlement Fund.

3.2 Fee & Expense Award. The Parties consent to the Court appointing Class Counsel in this Action for purposes of the Settlement. Class Counsel shall be entitled to apply to the Court for an award from the Settlement Fund not to exceed 30% of the Settlement Amount to reimburse Class Counsel for attorneys' fees incurred in researching, preparing for, and litigating the Action, and Class Counsel may also apply for reimbursement for costs and expenses incurred in the Action. Capital One agrees not to oppose or appeal any such application that does not exceed 30% of the Settlement Value plus reimbursement for costs and expenses incurred in the Action.

(a) The Fee & Expense Award shall constitute full satisfaction of any obligation on the part of Capital One to pay any person, attorney, or law firm for costs, litigation expenses, attorneys' fees, or any other expense incurred on behalf of Plaintiffs or the Settlement Class in the Action.

(b) The Settlement Administrator shall pay the Class Representative Service Awards to Plaintiffs within ten (10) days of the Effective Date and the Fee & Expense Award to Class Counsel from the Settlement Fund within ten (10) days of Final Approval of the Settlement.

(c) In the event the Court approves the Settlement, but declines to award Class Representative Service Awards or Class Counsel's attorneys' fees or costs in the amount requested by Class Counsel, the Settlement will nevertheless be binding on the Parties to the extent permissible under applicable law.

(d) The Parties negotiated and reached agreement regarding attorneys' fees, expenses, and costs, and the Service Award, only after reaching agreement on all other material terms of this Settlement.

3.3 Qualified Settlement Fund. The funds in the Settlement Fund Account shall be deemed a "qualified settlement fund" within the meaning of United States Treasury Reg. § 1.468B-1 at all times since creation of the Settlement Fund Account. All taxes (including any estimated taxes, and any interest or penalties relating to them) arising with respect to the income earned by the Settlement Fund Account or otherwise, including any taxes or tax detriments that may be imposed upon Capital One, Capital One's counsel, Plaintiffs and/or Class Counsel with respect to income earned by the Settlement Fund Account for any period during which the Settlement Fund Account does

not qualify as a “qualified settlement fund” for the purpose of federal or state income taxes or otherwise (collectively “Taxes”), shall be paid out of the Settlement Fund Account. Capital One and Capital One’s counsel and Plaintiffs and Class Counsel shall have no liability or responsibility for any of the Taxes. The Settlement Fund Account shall indemnify and hold Capital One and Capital One’s counsel and Plaintiffs and Class Counsel harmless for all Taxes (including, without limitation, Taxes payable by reason of any such indemnification).

3.4 Residual. In the event that there is any residual in the Settlement Fund Account after the distributions required by this Agreement are completed, said funds shall in no circumstance revert to Capital One. At the election of Class Counsel and counsel for Capital One, and subject to the approval of the Court, the funds may be distributed to Settlement Class Members via a secondary distribution if economically feasible or through a residual *cy pres* organization, which will be an entity jointly agreed by the Parties and approved by the Court. Any residual secondary distribution or *cy pres* distribution shall be paid as soon as reasonably possible following the completion of distribution of funds to the Settlement Class Members.

Section 4. Settlement Approval

4.1 Preliminary Approval. On or before May 8, 2020, Plaintiffs will submit for the Court’s consideration a motion seeking Preliminary Approval of the Settlement and apply to the Court for entry of the Preliminary Approval Order. In the event the Court does not enter the Preliminary Approval Order in materially the same form as *Exhibit D*, Capital One has the right to terminate this Agreement and the Settlement and will have no further obligations under the Agreement unless Capital One waives in writing its right to terminate the Agreement due to any changes or deviations from the form of the Preliminary Approval Order. In Plaintiffs’ motion seeking Preliminary Approval, Plaintiffs shall request that the Court approve the Settlement Class Notices. The Court will ultimately determine and approve the content and form of the Settlement Class Notices to be distributed to Settlement Class Members.

The Parties further agree that in Plaintiffs’ motion seeking Preliminary Approval, Plaintiffs will request that the Court enter the following schedule governing the Settlement:

Event	Days after Entry of Preliminary Approval Order
Notice Complete	70 Days
Filing of Motion for Class Representative Service Awards and Fee & Expense Application	70 Days
Opt-Out Deadline	130 Days
Objection Deadline	130 Days

Filing of Motion for Final Approval	170 Days
Proposed Final Approval Hearing	200 Days (or when convenient for the Court)

4.2 Final Approval. Plaintiffs will submit for the Court's consideration, by the deadline set by the Court, a proposed Final Approval Order. The motion for Final Approval of this Settlement shall include a request that the Court enter the Final Approval Order and, if the Court grants Final Approval of the Settlement and incorporates the Agreement into the final judgment, that the Court dismiss the Action with prejudice, subject to the Court's continuing jurisdiction to enforce the Agreement.

(a) In the event that the Court does not enter the Final Approval Order in materially the same form as what the Parties propose, Capital One has the right to terminate this Agreement and the Settlement and will have no further obligations under the Agreement unless Capital One waives in writing its right to terminate the Agreement due to any material changes or deviations from the form of the Final Approval Order. Notwithstanding the foregoing, changes to the legal reasoning or analysis in the Final Approval Order that does not affect the substance of the Parties' agreement, the scope of the releases given, or any other obligations of the Parties in this Agreement, shall not be considered material changes or deviations permitting Capital One to terminate this Agreement.

(b) In the event that the Effective Date does not come to pass, the Final Approval Order is vacated or reversed or the Settlement does not become final and binding, the Parties agree that the Court shall vacate any dismissal with prejudice.

4.3 Effect of Disapproval. If the Settlement does not receive Final Approval or the Effective Date does not come to pass, Capital One shall have the right to terminate this Agreement and the Settlement and will have no further obligations under the Agreement unless Capital One waives in writing its right to terminate the Agreement under this section. In addition, the Parties agree that if this Agreement becomes null and void, Capital One shall not be prejudiced in any way from opposing class certification in the Action, and Plaintiffs and the Settlement Class Members shall not use anything in this Agreement, in any terms sheet, or in the Preliminary Approval Order or Final Approval Order to support a motion for class certification or as evidence of any wrongdoing by Capital One. No Party shall be deemed to have waived any claims, objections, rights or defenses, or legal arguments or positions, including but not limited to, claims or objections to class certification, or claims or defenses on the merits. Each Party reserves the right to prosecute or defend the Action in the event that this Agreement does not become final and binding.

4.4 Termination Based on Percentage of Opt-Outs. Capital One shall have the right to terminate the Settlement by serving on Class Counsel and filing with the Court a notice of termination within fifteen (15) days of the Opt-Out Deadline, if the

number of persons in the Settlement Class who timely request exclusion from the Settlement Class equals or exceeds 5% of the Settlement Class.

Section 5. No Admission of Liability

5.1 By Capital One. Capital One continues to dispute its liability for the claims alleged in the Action and maintains that its Out Of Network ATM Balance Inquiry Fee practices and representations concerning those practices complied, at all times, with applicable laws and regulations and the terms of the account agreements with its customers. Capital One does not admit any liability or wrongdoing of any kind, by this Agreement or otherwise. Capital One has agreed to enter into this Agreement to avoid the further expense, inconvenience, and distraction of burdensome and protracted litigation, and to be completely free of any further claims that were asserted or could possibly have been asserted in the Action.

5.2 By Class Counsel. Class Counsel believe that the claims asserted in the Action have merit, and they have examined and considered the benefits to be obtained under the proposed Settlement set forth in this Agreement, the risks associated with the continued prosecution of this complex, costly, and time-consuming litigation, and the likelihood of success on the merits of the Action. Class Counsel fully investigated the facts and law relevant to the merits of the claims, conducted significant discovery, and conducted independent investigation of the challenged practices. Class Counsel concluded that the proposed Settlement set forth in this Agreement is fair, adequate, reasonable, and in the best interests of the Settlement Class Members.

5.3 No Admission of Liability. Neither the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Settlement: (a) is or may be deemed to be, or may be used as, an admission of, or evidence of, the validity of any claim made by the Plaintiffs or Settlement Class Members, or of any wrongdoing or liability of the Released Parties; or (b) is or may be deemed to be, or may be used as, an admission of, or evidence of, any fault or omission of any of the Released Parties, in the Action or in any proceeding in any court, administrative agency, or other tribunal

Section 6. No Press Release

6.1 By Either Party. Neither Party shall issue any press release or shall otherwise initiate press coverage of the Settlement. If contacted, the Party may respond generally by saying that they are happy the Settlement was reached and that it was a fair and reasonable result.

Section 7. General Provisions

7.1 Cooperation. The Parties agree that they will cooperate in good faith to effectuate and implement the terms and conditions of this Settlement.

7.2 Extensions of Time. Unless otherwise ordered by the Court, the Parties may jointly agree to reasonable extensions of time to carry out any of the provisions of this Agreement.

7.3 Judicial Enforcement. If the Court enters the Final Approval Order, then the Court shall have continuing authority and jurisdiction to enforce the implementation and performance of this Agreement. The Court shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Agreement that cannot be resolved by negotiation and agreement by counsel for the Parties. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice Program and the Settlement Administrator. The Court shall retain jurisdiction over the enforcement of the Court's injunction barring and enjoining all Releasing Parties from asserting any of the Released Claims and from pursuing any Released Claims against Capital One or its affiliates at any time, including during any appear from the Final Approval Order. The Parties shall have the authority to seek enforcement of this Agreement and any of its aspects, terms, or provisions under any appropriate mechanism, including contempt proceedings. The Parties will confer in good faith prior to seeking judicial enforcement of this Agreement.

7.4 Effect of Prior Agreements. This Agreement constitutes the entire agreement and understanding of the Parties with respect to the Settlement of the Action, contains the final and complete terms of the Settlement of the Action and supersedes all prior agreements between the Parties regarding Settlement of the Action. The Parties agree that there are no representations, understandings, or agreements relating to the Settlement of the Action other than as set forth in this Agreement. Each Party acknowledges that it has not executed this Agreement in reliance upon any promise, statement, representation, or warranty, written or verbal, not expressly contained herein.

7.5 No Drafting Presumption. All Parties hereto have participated, through their counsel, in the drafting of this Agreement, and this Agreement shall not be construed more strictly against any one Party than the other Parties. Whenever possible, each term of this Agreement shall be interpreted in such a manner as to be valid and enforceable. Headings are for the convenience of the Parties only and are not intended to create substantive rights or obligations.

7.6 Notices. All notices to the Parties or counsel for the Parties required or desired to be given under this Agreement shall be in writing and sent by overnight mail as follows:

To Plaintiffs and the Settlement Class:

Jeffrey D. Kaliel KALIEL PLLC 1875 Connecticut Avenue NW 10th Floor Washington, DC 20009	Todd D. Carpenter CARLSON LYNCH 1350 Columbia Street Suite 603 San Diego, CA 92101
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To Capital One:

Hunter R. Eley
Evan M. Ladd
Doll Amir & Eley LLP
725 South Figueroa Street, Suite 3275
Los Angeles, CA 90017

The notice recipients and addresses designated above may be changed by written notice.

7.7 Modifications. No modifications to this Agreement may be made without written agreement of all Parties and Court approval.

7.8 No Waiver. The waiver by any Party of any breach of this Agreement by another Party shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement.

7.9 No Third-Party Beneficiaries. This Agreement shall not inure to the benefit of any third party.

7.10 Integration. This Agreement constitutes a single, integrated written contract expressing the entire agreement of the Parties relative to the subject matter hereof. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party hereto, except as provided for herein.

7.11 No Conflict Intended. Any inconsistency between the hearings used this Agreement and the text of the paragraphs of this Agreement shall be resolved in favor of the text.

7.12 Execution in Counterparts. This Agreement may be executed in counterparts. Each signed counterpart together with the others shall constitute the full Agreement. Original signatures are not required. Any signature submitted by facsimile or through email of an Adobe PDF or through an electronic signature program (e.g. DocuSign) shall be deemed an original.

7.13 Authority. Class Counsel (for the Plaintiffs and the Settlement Class Members), and counsel for Capital One (for Capital One), represent and warrant that the persons signing this Agreement on their behalf have full power and authority to bind every person, partnership, corporation or entity included within the definitions of Plaintiffs and Capital One to all terms of this Agreement. Any person executing this Agreement in a representative capacity represents and warrants that he or she is fully authorized to do so and to bind the Party on whose behalf he or she signs this Agreement to all of the terms and provisions of this Agreement.

7.14 Independent Investigation and Decision to Settle. The Parties understand and acknowledge that they: (a) have performed an independent investigation of the allegations of fact and law made in connection with this Action; and (b) that even if

they may hereafter discover facts in addition to, or different from, those that they now know or believe to be true with respect to the subject matter of the Action as reflected in this Agreement, that will not affect or in any respect limit the binding nature of this Agreement. Capital One has provided and is providing information that Plaintiffs reasonably requested to identify Settlement Class Members and the alleged damages they incurred. Both Parties recognize and acknowledge that they and their experts reviewed and analyzed data for a subset of the time at issue and that they and their experts used extrapolation to make certain determinations, arguments, and settlement positions. The Parties agree that this Settlement is reasonable and will not attempt to renegotiate or otherwise void or invalidate or terminate the Settlement irrespective of what any unexamined data later shows. It is the Parties' intention to resolve their disputes in connection with this Action pursuant to the terms of this Agreement now and thus, in furtherance of their intentions, the Agreement shall remain in full force and effect notwithstanding the discovery of any additional facts or law, or changes in law, and this Agreement shall not be subject to rescission or modification by reason of any changes or differences in facts or law, subsequently occurring or otherwise

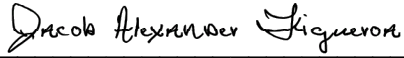
7.15 Deadlines. If any of the dates or deadlines specified herein falls on a weekend or legal holiday, the applicable date or deadline shall fall on the next business day.

7.16 Governing Law. This Agreement shall be construed in accordance with, and be governed by, the laws of the State of California, without regard to the principles thereof regarding choice of law.

7.17 Receipt of Advice of Counsel. Each Party acknowledges, agrees, and specifically warrants that he, she, or it has fully read this Agreement and the Releases contained herein, received independent legal advice with respect to the advisability of entering into this Agreement and the Releases, and the legal effects of this Agreement and the Releases, and fully understands the effect of this Agreement and the Releases.

[[SIGNATURES ON NEXT PAGE]]

PLAINTIFFS

DocuSigned by:

89EFCFDDC894CD
Jacob Figueroa

5/7/2020

Date

DocuSigned by:

89EFCFDDC894CD
Mary Jackson

5/7/2020


Date

DEFENDANT, CAPITAL ONE, N.A.

Title: _____

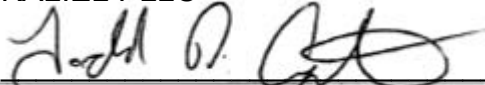
Date

CLASS COUNSEL

DocuSigned by:

F817E468E0B1427...
Jeffrey D. Kaniel, Esq.
KALIEL PLLC

5/8/2020

Date



Todd Carpenter, Esq.
CARLSON LYNCH

5/8/2020

Date

COUNSEL FOR CAPITAL ONE, N.A. COUNSEL - APPROVED AS TO FORM

Hunter Eley, Esq.
Doll Amir & Eley LLP

Date

PLAINTIFFS

Jacob Figueroa

Date

Mary Jackson

Date

DEFENDANT, CAPITAL ONE, N.A.

DocuSigned by:
Steve Otero
E9984B816AB2457...
Title: SVP & Chief Litigation Counsel

5/7/2020

Date

CLASS COUNSEL

Jeffrey D. Kaliel, Esq.
KALIEL PLLC

Date

Todd Carpenter, Esq.
CARLSON LYNCH

Date

COUNSEL FOR CAPITAL ONE, N.A. COUNSEL - APPROVED AS TO FORM

Hunter P. Eley

Hunter Eley, Esq.
Doll Amir & Eley LLP

May 07, 2020

Date