IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Northern Division)

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| PHILLIP DECOHEN, | * | |
| On his own behalf and on behalf of all Others similarly situated, | * | |
| Plaintiff, | * | Case No. 1:10-cv-03157-WDQ |
| v. | * | |
| CAPITAL ONE, N.A., *et al.*, | * | |
| Defendants. | * | |

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**SETTLEMENT AGREEMENT**

This Settlement Agreement ("Agreement") is entered into on this 20th day of December 2013, by Plaintiff, Phillip Decohen ("Representative Plaintiff"), acting individually and on behalf of the Class defined below, and Defendant, Capital One, N.A. ("Capital One"), by and through their undersigned counsel, in the above captioned lawsuit. This settlement is subject to preliminary and final approval by the Court.

## I. RECITALS

1. This class action lawsuit ("Complaint") was filed by the Representative Plaintiff in the Circuit Court for Baltimore County, on September 29, 2010, on behalf of the following putative Class:

> All persons whose credit contracts include a charge for the cost of a phony GAP Agreement.

Excluded from the Class were (a) those individuals who now are or have ever been executives of the Defendants and the spouses, parents, siblings and children of all such

individuals; (b) any individuals against whom a judgment has been granted on the account at issue on or before the date of the filing of this Complaint; (c) any individual who was granted a discharge pursuant to the United States Bankruptcy Code or state receivership laws after the date of his or her Credit Contract; (d) all persons whose Credit Contracts were originated more than twelve (12) years prior to the filing of this Complaint; and (e) any individual otherwise obligated on a Credit Contract which elects CLEC that was satisfied more than six months prior to the filing of the Complaint.

2. Capital One removed the case to the United States District Court for the District of Maryland on or about November 8, 2010. The Complaint, which is hereby incorporated by reference, alleges, *inter alia*, that Capital One financed so-called GAP Agreements in numerous transactions governed by Maryland's Credit Grantor Closed End Credit Provisions, Md. Code Ann., Com. Law §§ 12-1001 through 12-1029 ("CLEC"). The Complaint alleges that these GAP Agreements are marketed as agreements that provide for cancellation of the remaining loan balance in the event of theft or total destruction of the collateral for the loan after application of the proceeds of any casualty insurance maintained on the collateral. However, the Complaint alleges that the GAP Agreements sold and financed in the transactions of the Representative Plaintiff and the Class did not satisfy CLEC's definition of "debt cancellation agreements." For example, the Complaint alleges that the Representative Plaintiff purchased and financed a GAP Agreement as part of his financing contract, which elected CLEC as governing law, and which was assigned to Capital One – but when the Representative Plaintiff suffered a total loss of his vehicle, and after application of his GAP Agreement, Capital One asserted that the Representative Plaintiff still owed more than $1,500 on his account. The Complaint asserted counts for violation of CLEC (Count I), violation of Maryland's Consumer Protection Act

(Count II), violation of Maryland's Retail Installment Sales Act (Count III), breach of contract (Count IV), declaratory and injunctive relief (Count V), and restitution and unjust enrichment (Count VI).

3. In response to the Complaint, Capital One filed a motion to dismiss all counts of the Complaint, which is hereby incorporated by reference. That motion to dismiss argued, *inter alia*, that the GAP Agreement sold and financed in Representative Plaintiff's transaction complied with CLEC, and that in any event, the National Bank Act ("NBA") preempted Plaintiffs' claims. The Court, on July 26, 2011, dismissed Plaintiff's claims against Capital One, holding that although the Representative Plaintiff's GAP Agreement could not be financed under CLEC, NBA preemption required dismissal of Plaintiff's claims. On appeal, the U.S. Court of Appeals for the Fourth Circuit reversed the decision of the district court and vacated the judgment against Plaintiff as to the CLEC and breach of contract claims. *Decohen v. Capital One, N.A.*, 703 F.3d 216, 221 (4th Cir. 2012).

4. The Parties have engaged in protracted litigation in this case. The Parties litigated this case through motions to dismiss, and fully briefed and argued an appeal resulting in the published decision cited above. Class Counsel and Capital One conducted extensive analysis of the facts and research into the applicable law with respect to the claims and defenses and with respect to class certification issues. The Parties conducted informal discovery, including exchanging information and documents regarding the transactions of the putative Class. Class Counsel reviewed documentation provided by Capital One and other sources relevant to the issues raised in the Complaint, and interviewed potential witnesses.

5. The Parties also conducted extensive settlement discussions. These were lengthy, arduous, and intense arms-length negotiations; which took place over approximately nine

months, and which included two days of in-person mediation with the extensive and invaluable efforts of Magistrate Judge Susan K. Gauvey.

6. The Parties recognize and acknowledge the benefits of settling this case, in exchange for the good and valuable consideration set forth below, for an agreed upon Settlement Class consisting of borrowers of up to 2,207 transactions who financed GAP Agreements which allow for the use of retail car guides in the calculation of the vehicle's value, where the borrowers suffered a total loss of the vehicle. This Settlement Class includes: (1) up to 1,500 transactions where no Remaining Loan Balance remained due on the account following the total loss and the application of the GAP Agreement; and, (2) up to 707 transactions where a Remaining Loan Balance remained due on the account following the total loss and the application of the GAP Agreement, as defined more fully below.

7. Capital One denies the material allegations made against it in the Complaint and denies any and all liability or wrongdoing with respect to any and all facts and claims alleged in the Complaint and further denies that the Representative Plaintiff and Settlement Class have suffered any damages.

8. The Parties recognize and acknowledge the benefits of settling this case. The Parties recognize that the outcome of this Action is uncertain, and that a final resolution through the litigation process would likely require protracted adversary litigation and additional appeals, and have taken into account the difficulties and delays inherent in such litigation. Accordingly, the Parties and their respective counsel have agreed to resolve the Action as a settlement class action according to the terms of this Agreement. Further, Class Counsel has determined that the settlement on behalf of the settlement class is fair and reasonable and in the best interest of the Plaintiffs, and Representative Plaintiff Phillip Decohen concurs in that determination. Class

Counsel and Representative Plaintiff believe that this Agreement is fair, reasonable, and adequate.

9. This Agreement does not constitute, is not intended to constitute, and will not under any circumstances be deemed to constitute, an admission by either party as to the merits, validity, or accuracy, or lack thereof, of any of the allegations, claims, or defenses in this Action. The Agreement provides for certification of a conditional Settlement Class, even though the Court has not yet determined whether the Action could properly be brought as a class action, and Capital One maintains that class certification for trial purposes would not be proper under Federal Rule of Civil Procedure 23. Moreover, this Agreement does not constitute a waiver of any claims, defenses, or affirmative defenses that each party may be entitled to assert in any future litigation unrelated to the "Automobile Loan Accounts," as that term is defined below, including the applicable statute of limitations. Accordingly, Capital One, solely for the purpose of avoiding the burden, expense, risk, and uncertainty of continuing these proceedings, and for the purpose of putting to rest the controversies engendered by the Action, desires to settle the Action on the terms and conditions set forth herein.

10. Plaintiff recommends that Strategic Claims Services ("SCS") of Media, Pennsylvania (hereinafter the "Settlement Administrator"), be appointed by the Court to serve as the Settlement Administrator, and Capital One will not object to the recommendation, subject to completing a satisfactory interview with SCS. The Settlement Administrator is responsible to report both to the Court and to the Parties as more fully set forth in this Agreement.

11. Now, therefore, in consideration of the covenants and agreements set forth herein, it is hereby stipulated and agreed by the undersigned, on behalf of the Representative Plaintiff, the Settlement Class, and Capital One, that the Action and all claims of the Representative

Plaintiff and the Settlement Class be settled, compromised, and dismissed on the merits and with prejudice as to Capital One, subject to Court approval as required by Federal Rule of Civil Procedure 23, on the terms and conditions set forth herein.

## II. TERMS OF THE SETTLEMENT

12. **Definitions**:

As used herein in the "Definitions" section, the plural of any defined term includes the singular thereof and the singular of any defined term includes the plural thereof as the case may be.

(a) "Action" means and refers to the action entitled *Phillip Decohen v. Capital One, N.A., et al.*, United States District Court for the District of Maryland, Civil No. 10-cv-03157-WDQ.

(b) "Agreement" shall mean this settlement document, including all exhibits and any amendments to this Agreement as finally approved by the Court.

(c) "Automobile Loan Accounts" means motor vehicle loan accounts between Capital One and a borrower, which qualifies the borrower for membership in the Settlement Class as defined in Paragraph 13 and definition (v) below.

(d) "Class Counsel" or "Counsel for Representative Plaintiff" means Benjamin H. Carney and Martin E. Wolf of Gordon & Wolf, Chtd., and Mark H. Steinbach, Of Counsel to O'Toole, Rothwell.

(e) "Class Member List" shall mean the list of class members that is to be compiled by Capital One and certified by the Settlement Administrator.

(f) "Complaint" means the class action lawsuit filed by Representative Plaintiff in the Circuit Court for Baltimore County, on September 29, 2010, and removed to federal court.

(g) "Confidential Information" or "Confidential Material" means the Class Member List, all documents and things provided to Class Counsel by Capital One during the course of the Action that have been marked "Confidential," whether by formal discovery or otherwise, and including all documents and things as described in Paragraph 15 of this Agreement.

(h) "Capital One" means Capital One, N.A.

(i) "Capital One's Counsel" means McGuireWoods LLP.

(j) "Court" shall mean the United States District Court for the District of Maryland, Northern Division.

(k) "Effective Date" shall mean the earliest of: (i) the date of final approval of the settlement, if no person objects to or intervenes in the settlement; (ii) the date on which the Court's judgment becomes final, *i.e.*, thirty (30) days after the date the Court finally approves the settlement, if no appeal by a Class member is filed; (iii) the date of the final affirmance on appeal; or (iv) the date of the final dismissal of any appeal.

(l) "Final Approval" means the Order, approving the Settlement and certifying the Settlement Class and dismissing with prejudice all claims raised by the Representative Plaintiff and the Settlement Class in this case consistent with the Settlement.

(m) "Notice of Proposed Class Action Settlement" means the written notice to Settlement Class Members approved by the Court in the Preliminary Order.

(n) "Parties" means the Representative Plaintiff, the Settlement Class, and Capital One.

(o) "Person" means an individual, corporation, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government, or any political subdivision or agency thereof, and any business or legal entity and their spouses, heirs, predecessors, successors, representatives, or assignees.

(p) "Preliminary Approval Date" means the date the Court enters the Preliminary Order.

(q) "Preliminary Order" means the Order, preliminarily approving the terms and conditions of this Agreement, provisionally certifying the Settlement Class, and approving the proposed notices to Settlement Class Members.

(r) "Released Party" or "Released Parties" means Capital One, its parent company, and each direct and indirect subsidiary, affiliate, division, successors, assignors, assignees, and/or assigns thereof, and their past or present employees, associates, agents, representatives, attorneys, officers, shareholders, control persons, advisors, and directors.

(s) "Remaining Loan Balance" shall have the same meaning as this phrase is defined in Md. Code Ann. § 12-1001(l).

(s) "Representative Plaintiff" shall mean the named Plaintiff Phillip Decohen.

(t) "Settlement" means this Agreement and any amendments to this Agreement as finally approved by the Court.

(u) "Settlement Administrator" shall mean Strategic Claims Services, Inc. of Media, Pennsylvania ("SCS").

(v) "Settlement Class," and "Settlement Class Members," shall mean only those persons meeting the class defined in paragraph 13, below, who have not timely excluded themselves from this settlement as prescribed herein.

(w) "Settlement Fund" shall mean the sum that Capital One will pay to settle this Action.

13. **Settlement Class**.

In consideration for the complete and final settlement of the Action, and for settlement purposes only, the Parties hereby stipulate and agree that this lawsuit is maintainable as a settlement class action under Rule 23 (b)(3) of the Federal Rules of Civil Procedure. Capital One reserves the right to contest any motion to certify a class for any purpose other than settlement of the Action. Any Settlement Class Member who does not effectively exclude himself or herself under the procedures described in this Agreement shall, on Final Approval, become a member of the Settlement Class.

(a) The class shall be defined as follows:

> All borrowers in up to 2,207 transactions who financed GAP Agreements which allow for the use of retail car guides in the calculation of the vehicle's value, where the borrowers suffered a total loss of the vehicle. This Settlement Class includes two subclasses: (1) all borrowers in up to 1,500 transactions where no Remaining Loan Balance remained due on the account following

> the total loss and the application of the GAP Agreement (the "No Balance Subclass"); and, (2) all borrowers in up to 707 transactions where a Remaining Loan Balance remained due on the account following the total loss and the application of the GAP Agreement (the "Balance Subclass").
>
> Excluded from the Class are: (1) those individuals who now are or have ever been executives of the Defendant and the spouses, parents, siblings and children of all such individuals; (2) any individual whose Automobile Loan Account was not originated in the State of Maryland; (3) any individuals against whom a judgment has been granted in favor of Capital One on the account at issue on or before the date of the filing of the Complaint in this case; (4) any individual who was granted a discharge pursuant to the United States Bankruptcy Code, or state receivership laws prior to the date of Final Approval; and (5) any individual otherwise obligated on an Automobile Loan Account that was satisfied more than six months prior to the filing of the Complaint in this case.

(b) The Parties agree that this lawsuit may proceed as a class action for settlement purposes, and agree to the Class definition, set forth above, for the purposes of this Settlement and its implementation. If this Settlement fails to be approved or otherwise fails to be consummated, Capital One reserves all rights to object to the maintenance of this lawsuit as a class action and any representation or concession made in this Agreement shall not be considered law of the case or any form of estoppel in this or any other proceeding. If this Agreement is approved, no representation or concession made in connection with the Settlement or in this Agreement shall be considered to have *res judicata* or collateral estoppel effect or to give rise to any form of estoppel or waiver in any other proceeding except proceedings to enforce this Agreement. Further, neither this Agreement nor any document referred to herein nor any action taken to carry out this Agreement is, or may be construed as, or may be used as, an admission or

concession on any point of fact or law, or of any alleged fault, wrongdoing, or liability whatsoever.

14. **Class Counsel**.

The Parties agree that Benjamin H. Carney and Martin E. Wolf of Gordon & Wolf, Chtd., and Mark H. Steinbach, Of Counsel to O'Toole, Rothwell, may be appointed Class Counsel, without prejudice to Capital One's right to contest appointment of some or all of them as Class Counsel in the event that this Agreement is not fully implemented in accordance with its terms. If this Agreement is not approved or otherwise fails to be fully implemented, Capital One reserves all of its rights to object to any subsequent motion to appoint class counsel in this action.

15. **Confidential Information or Confidential Material (collectively "Confidential Material")**.

The Parties agree to treat the Confidential Material, including but not limited to the Class Member List, the account information and data referenced in the Class Member List, and the account files and information, as confidential and to use the Confidential Material solely for the purpose of providing the settlement benefits offered by this Agreement to Settlement Class Members and otherwise implementing the terms of this Agreement, and for no other purpose whatsoever.

The Class Member List, the account information and data referenced in the Class Member list, and the account files and information will be exchanged in accordance and compliance with any and all applicable federal and state laws. The Parties will seek the Court's Order to produce Confidential Material as part of the Preliminary Approval of the Settlement.

Further, except to the extent authorized by this Agreement, the Parties agree that they will not disclose the Confidential Material to any third party, except pursuant to a Court order and in compliance with all federal and state laws. Nothing in this Agreement shall be deemed or

construed to prevent the Parties from sharing Confidential Material with the Settlement Administrator, or prevent Class Counsel from sharing information concerning a Class Member's account with that Class Member and only that Class Member and her or his agents. The Settlement Administrator or any third party shall execute a "Certification of Agreement Regarding Confidential Material", attached hereto as Exhibit A, and the terms and provisions of this Paragraph shall become binding upon the Settlement Administrator and any third party and their successors. A "Certification of Agreement Regarding Confidential Material" shall not be required to be signed by a Class Member in order for the Parties to communicate information about that Class Member's account to that Class Member.

No later than one-hundred ten (110) days after the Effective Date, Class Counsel will return to Capital One all Confidential Material except that each attorney serving as Class Counsel may retain a copy of the Class Member List. Class Counsel may retain the Class Member List for a period of no longer than five (5) years unless further obligated pursuant to an ongoing attorney-client relationship or Court order. After a period of five (5) years, Class Counsel shall return or destroy the Class Member List to Capital One's Counsel unless it is obligated to retain the Class Member List, in whole or in part, pursuant to an ongoing attorney-client relationship or Court order. If Capital One, upon written request by Capital One's Counsel, inquires about the destruction or return of the Class Member List, Class Counsel will provide written notice that it has destroyed or will return the Class Member List. If Class Counsel determines that it is required by an ongoing attorney-client relationship or Court order to retain the Class Member List, Class Counsel shall provide Capital One's Counsel with written notice of its retention of the Class Member List and identify the basis for such retention.

If this Agreement is terminated or canceled pursuant to Paragraph 28 below, or if the class is decertified pursuant to Paragraph 30 below, Class Counsel and the Settlement Administrator shall be required to return to Capital One all Confidential Material, including, but not limited to the Class Member List within five (5) days of a request by Capital One to do so, specifying the information to be returned, following termination, cancellation, or decertification.

For all Confidential Material that must be returned to Capital One pursuant to this paragraph, no later than one-hundred ten (110) days after the Effective Date, Class Counsel will certify under oath that they, their employees, agents and consultants, did not retain any copies or summaries or compilations or indices of such information. Notwithstanding any contrary language in this Agreement, the provisions of this paragraph shall survive any termination or modification of this Agreement and shall continue to be binding regardless of whether or not the Settlement is fully implemented. The Parties also will not use any of the Confidential Material learned or obtained in the Action for any purpose other than providing the settlement benefits offered by this Agreement to Settlement Class Members and otherwise implementing the terms of this Agreement after the Effective Date.

16. **Class Relief.**

(a) Deficiency Balances and Credit Reporting.

Subject to and upon entry of the Final Approval and further Order of the Court, Capital One will, for each and every Settlement Class Member:

(i) waive all outstanding balances and/or deficiencies that are owed in connection with the Settlement Class Members' Automobile Loan Accounts and dismiss, with prejudice, any pending lawsuits grounded upon an alleged deficiency or balance due with respect to any of those Automobile Loan Accounts; and

(ii) take reasonable steps with the three (3) Credit Reporting Agencies (*i.e.*, Equifax, Experian and TransUnion, referred to hereafter jointly as "the CRAs") to request that any balance on the Automobile Loan Account be reported as zero and that the account should be reported as "paid as agreed." However, it is understood and agreed that: (i) the CRAs are independent companies, and not affiliated with Capital One; (ii) Capital One cannot and does not guarantee that, when, or how the CRAs will act upon the requests; (iii) Capital One is not responsible for assuring or compelling any CRA action as it may take the CRAs sixty (60) to ninety (90) days to update; and (iv) Capital One will not be liable to any Settlement Class Member for the failure by one or more of the CRAs to properly take action, provided Capital One took appropriate steps to advise the CRAs pursuant to this Agreement. However, if after a reasonable period of time, one or more of the CRAs fail to update information as requested by Capital One, Class Counsel or any individual Settlement Class Member may request that Capital One resubmit the request to one or more CRAs, Capital One's obligation being limited to not more than two resubmissions to each CRA for each Settlement Class Member. Within thirty (30) days of receipt of such a request, Capital One will resubmit a request to the CRAs to update information. Any such request to resubmit by a Settlement Class Member should be made in writing and sent by certified mail to Capital One's Counsel at the following address:

McGuireWoods LLP
Attn: Phillip C. Chang
2001 K Street, NW
Suite 400
Washington, DC 20006

(b) Payment.

Subject to the approval and further Orders of the Court, Capital One agrees to pay the sum of $3,050,000 into a Settlement Fund for the benefit of certain Settlement Class

Members, as follows. Capital One shall pay $2,900,000 for benefit of the Balance Subclass and $150,000 for benefit of the No Balance Subclass. Members of the Balance Subclass are entitled to a cash payment (calculated as described below) from $2,900,000 of the Settlement Fund minus a proportionate share of attorneys' fees and costs. Members of the No Balance subclass are entitled to a cash payment (calculated as described below) from $150,000 of the Settlement Fund, minus a proportionate share of attorneys' fees and costs.

(i) Deposit of Settlement Fund. No later than ten (10) business days after Preliminary Approval of the Settlement, or otherwise upon Order of the Court, Capital One agrees to deposit the Settlement Fund in a Certificate of Deposit or an interest bearing account at a bank or depository institution designated by Class Counsel. This Certificate of Deposit or account will require the signature of Class Counsel, the Settlement Administrator, and a representative of Capital One or its counsel to authorize the release of funds. All interest accrued on the funds deposited under this section shall be added to the Settlement Fund. In the event that this Settlement is not approved by the Court, this Agreement is terminated pursuant to Paragraph 28, or the Court does not give Final Approval, Capital One may withdraw and retain all monies, including all accrued interest, from the aforesaid account without any further action by the Court. The Representative Plaintiff, the Settlement Class, and Class Counsel agree that if the Settlement is not approved by the Court or the Agreement is terminated, and upon written notice to return the Settlement Fund to Capital One, Class Counsel will timely execute within ten (10) business days, and cause the Settlement Administrator to

execute within ten (10) business days whatever documentation is necessary to disburse the Settlement Fund to Capital One in accordance with Capital One's written instructions.

(ii) Contribution of Settlement Fund. The following adjustments shall be made to and subtracted proportionately from the Settlement Fund:

A. Class Counsel's attorneys' fees in such amount as may be allowed and approved by the Court. Class Counsel agree not to seek an award of attorney's fees in excess of one-third (33 1/3%) of the Settlement Fund and Capital One agrees not to oppose or comment negatively on a motion for attorneys' fees of up to one-third (33 1/3%) of the Settlement Fund plus reasonable costs. Capital One, however, shall retain, and does not waive, any rights of appeal it may have otherwise with respect to an award of attorney's fees under this section that exceeds one-third (33 1/3%) of the Settlement Fund; and,

B. Payment of Class Counsel's costs and expenses of litigation.

(iii) Checks.

A. Distribution Formula. For each transaction in the Balance Subclass in which Capital One or its agents was paid an amount in excess of the principal amount owing on the Automobile Loan Account (collectively hereinafter referred to as the "Excess Payments to Capital One"), the Class member(s) in that transaction

shall receive a proportionate payment from the Settlement Fund in accordance with the following formula:

(([Total Amount of Settlement Fund] – [Attorney's Fees and Costs]) x 0.95[1]) – [$200 x total number of Balance Subclass Transactions where no Excess Payment was made]

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[Total Excess Payments to Capital One in All Balance Subclass Transactions]

x

[Excess Payment to Capital One in Individual Balance Subclass Transaction]

= Payment to Class Member(s) in the Individual Balance Subclass Transaction

For each transaction in the Balance Subclass in which Excess Payments to Capital One were not made, the Class member(s) in each transaction shall receive a cash payment of $200.

For each transaction in the No Balance Subclass, the Class members in each transaction shall receive a proportionate payment from the Settlement Fund in accordance with the following formula:

[1] The $2,900,000 portion of the settlement fund allocated to Balance Subclass transactions represents 95% of the total $3,050,000 Settlement Fund, which is the source of the 0.95 multiplier.

([Total Amount of Settlement Fund] – [Attorneys' Fees and Costs]) x 0.05[2]
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[Total Number of No Balance Subclass Transactions]

= Payment to Class Member(s) in each Individual No Balance Subclass Transaction

B. Method of Distribution. Payment to each Settlement Class Member shall be in the form of a check drawn on the Settlement Fund, and issued by the Settlement Administrator, which shall be made payable to "[Name of Settlement Class Member]" or, if unclaimed, "the Settlement Fund," within thirty (30) days after the Effective Date. The Settlement Administrator shall also distribute the funds set forth in Paragraph 16 (b)(ii) (litigation expenses and attorney's fees) on or within five (5) days after the Effective Date.

C. The Settlement Fund shall not be required to make multiple payments to co-borrowers who are entitled to relief under this Agreement on account of the same loan contract, but in such cases, shall make only one payment in the name of the co-borrowers, for each transaction, jointly to all such co-borrowers, and Capital One shall have no liability to any co-borrower arising from any claim regarding the division of such funds among co-borrowers.

[2] The $150,000 portion of the settlement fund allocated to No Balance Subclass transactions represents 5% of the total $3,050,000 Settlement Fund, which is the source of the 0.05 multiplier.

D. Each check issued pursuant to this Agreement shall be void if not negotiated within ninety (90) days after its date of issue, and shall contain a legend to such effect. Checks that are not negotiated within ninety (90) days after their date of issue shall not be reissued.

E. All payments that are unclaimed by Settlement Class Members, including all returned checks and all checks not cashed within ninety (90) days after the date of issue, shall revert to the Settlement Fund, and be distributed to the *cy pres* recipient as described in Paragraph 19.

17. **Settlement Administrator**.

Plaintiff recommends Strategic Claims Services ("SCS") of Media, Pennsylvania, be appointed by the Court to serve as the Settlement Administrator. Capital One does not object to that recommendation, subject to completing a satisfactory interview with SCS. The Settlement Administrator, in consultation with counsel for the Parties, will determine the number and identity of the Settlement Class Members under the class and subclass definitions, and compile a Settlement Class Member List, identifying the subclass for each Class member. The Parties will seek the Court's Order to produce the Class Member List as part of the Preliminary Approval of the Settlement. To assist in this process, Capital One agrees to provide to the Settlement Administrator and Class Counsel, within ten (10) days after the Preliminary Approval Date, a Class Member List in readable electronic form. For each Settlement Class Member, Capital One shall provide the: (a) name (including the name(s) of any co-borrower(s); (b) last known address; (c) date of credit contract; (d) date of total loss payment; (e) the principal amount financed by the

Class Member's account; (f) the amount paid on the Class Member's account; and (g) the amount (if any) paid in excess of the principal amount financed by the account. In preparing the Class Member List, Capital One shall use reasonable, good faith efforts to identify Settlement Class Members. Class Counsel may serve interrogatories regarding the size and composition of the Settlement Class and the methodology for compiling the Class Member List. In response, Capital One will provide an affidavit and documents identifying the size and composition of the Settlement Class and the methodology for compiling the Class Member List. Thereafter, the Parties will use their best efforts to resolve any issues concerning the size and composition of the Settlement Class and the methodology for compiling the Class Member List. Further, if after exhausting informal efforts among the Parties including the service of interrogatories and review of Capital One's responses to interrogatories, issues regarding size and composition remain, then Class Counsel may request the Court to order one or more depositions of a Capital One corporate designee in connection with the size and composition of the Settlement Class and the methodology for compiling the Class Member List.

The Settlement Administrator will certify and submit an affidavit to the Court and to counsel for the Parties concerning the Settlement Class Member List. The Settlement Administrator also will effect notice to the Settlement Class in a form and manner approved by the Court. The certified Settlement Class Member List will be in the form of a database described above. This detailed Settlement Class Member List shall be kept confidential by the Settlement Administrator and shall not be shared with any third party other than Class Counsel. The Settlement Administrator will conduct a search using a competent information broker on the Internet and/or a recognized credit bureau to ensure that any mailed notice which is returned for the reason that the address is incorrect will be researched and updated with new information, if

any, and a second notice sent. The Settlement Administrator shall not engage in additional efforts to locate a Settlement Class Member if a second notice is returned. The Settlement Administrator shall also be responsible for disbursing all funds from the Settlement Fund as set forth in Paragraph 16, above. For a period of two hundred and ten days (210) after the Preliminary Approval Date, or ninety (90) days after the Effective Date, whichever is longer, the Settlement Administrator shall maintain a post office box address to receive inquiries with respect to the Settlement.

18. **Cost of Administration of Settlement Fund**.

The Parties agree that Capital One shall pay to the Settlement Administrator the costs of notice to persons falling within the class defined in paragraph 13, above, and the administration of the Settlement.

19. **Cy Pres**.

The Parties have agreed that a *cy pres* fund will be created which includes any residue of the Settlement Fund remaining for any reason, including checks that are not negotiated or are returned and remain undeliverable after 90 days following the mailing of the checks to Settlement Class Members pursuant to this Agreement. The *cy pres* fund shall be donated, with the approval of the Court, to the Maryland Consumer Rights Coalition and Civil Justice, Inc. and the Just the Beginning Foundation (the "*cy pres* recipients"), to be split evenly. In the event that an alternative *cy pres* recipient is necessary, the Parties shall jointly agree on an alternative recipient. In no event shall the alternative *cy pres* recipient be an entity that advocates, finances, promotes, or facilitates litigation against the interests of Capital One or its parent, affiliated and/or subsidiary companies. The Settlement Administrator, 110 days after the checks are mailed to the Settlement Class Members under Paragraph 16(b)(iii) of this Agreement, shall

forward funds payable to the *cy pres* recipient to the escrow account of Gordon & Wolf. Class Counsel shall remit the funds to the *cy pres* recipients and provide proof of such payment to Capital One's counsel.

20. **Cooperation.**

The Parties and their respective counsel shall cooperate with the Settlement Administrator to the extent reasonably necessary to assist and facilitate the Settlement Administrator in carrying out its duties and responsibilities. The Parties and their respective counsel also shall reasonably cooperate with each other so that both sides may adequately monitor all aspects of this Agreement.

21. **Incentive Payment**.

Class Counsel will file, and Capital One agrees not to oppose, a motion that Capital One pay $10,000.00 as an incentive payment to the Representative Plaintiff. If approved by the Court, payment shall be made by Capital One to the Representative Plaintiff within ten (10) days of the Effective Date. The incentive payment shall be paid by Capital One separate from and in addition to the Settlement Fund and shall not reduce the amounts of those payments.

22. **Releases.**

This Agreement seeks the termination of this lawsuit between the Parties.

(a) Plaintiffs' Release.

Upon Final Approval, Representative Plaintiff and each Settlement Class Member, and each of their respective spouses, executors, representatives, heirs, successors, guardians, wards, agents and assigns, and all those who claim through them or who assert claims on their behalf shall be deemed to have fully released and forever discharged the Released Parties from any claim, right, demand, charge, complaint, action,

cause of action, obligation, or liability for actual or statutory damages, punitive damages, equitable relief, restitution or other monetary relief of any and every kind, including those based on CLEC, or any other federal, state, or local law, statute, regulation, or common law, whether known or unknown, suspected or unsuspected, under the law of any jurisdiction, which the Representative Plaintiff or any Settlement Class Member ever had, now have or may have in the future resulting from, arising out of: (a) any act, omission, event, incident, matter, dispute, or injury arising from the Automobile Loan Accounts financed by or assigned to Capital One; (b) any acts or omissions that were raised or could have been raised in the Action; and (c) any event, matter, dispute, or thing that in whole or in part, directly or indirectly, relates to or arises out of said events specified in (a) or (b) above.

(b) Capital One's Covenant Not to Sue the Settlement Class members.

Capital One hereby covenants and agrees that neither it nor any of its successors, assigns, agents or employees will sue or maintain any action at law or in equity against the Representative Plaintiff or the Settlement Class members that relates to or arises out of the subject Automobile Loan Accounts. This release excludes any and all claims that are unrelated to the factual allegations of the Complaint on behalf of the Settlement Class.

(c) Bar to Future Suits.

The release provided in this Agreement is intended to be and shall be construed to constitute a full and final release of the claims alleged in the Complaint on behalf of the Representative Plaintiff and the Settlement Class. Accordingly, Representative Plaintiff and the Settlement Class shall be enjoined from prosecuting any proceeding against

Released Parties with respect to the conduct, services, fees, charges, acts, or omissions of any Released Party relating to all matters within the scope of the release in this section. The Court shall retain jurisdiction to enforce judgment, releases, and bar to suits contemplated by the Settlement. It is further agreed that the Settlement may be pleaded as a complete defense to any proceeding subject to this section.

## III. PROCEDURES FOR EFFECTUATING SETTLEMENT

23. **Full and Final Settlement.** It is the intent and purpose of this Agreement to effect a full and final settlement of the Representative Plaintiff and the Settlement Class's claims against Capital One.

24. **Notice Order**. To that end, promptly after execution of this Agreement, the Representative Plaintiff, on behalf of the Settlement Class, the Settlement Class, and Capital One shall jointly move the Court for an order preliminarily approving the settlement and providing for notice to the Settlement Class of the pendency of the settlement and for the setting of a hearing for final approval of the Agreement.

## IV. CONDITIONS OF SETTLEMENT

25. **Opt-Out Option**.

Any potential Settlement Class Member may elect to be excluded from this Settlement and from the Settlement Class by opting out of the class. To be effective, the opt-out must be in writing and mailed or otherwise delivered to the Settlement Administrator and must be postmarked or delivered to the Settlement Administrator on or before the last day for mailing or delivering opt-out requests specified in the Notice of Proposed Class Settlement. Each Settlement Class Member who does not submit a valid request to opt-out shall become a member of the Settlement Class and be bound by the settlement and release provided in this Agreement.

The Settlement Administrator shall provide copies of all requests to opt-out to Class Counsel and Capital One's Counsel.

26. **Dismissal of Lawsuit.**

The Representative Plaintiff, on behalf of himself and the Settlement Class Members, shall file a Stipulation of Dismissal with Prejudice as to Capital One within thirty (30) days after the Effective Date of this Agreement in accordance with the terms of the Agreement. The Parties hereby stipulate to the entry of the Final Judgment as provided herein if the Court grants Final Approval of the Settlement.

27. **Approval of the Court**.

This Agreement is subject to final approval by the United States District Court for the District of Maryland. At or before the Final Approval hearing conducted after the approved notice to the Settlement Class, the Parties shall request that the Court grant Final Approval to the settlement and enter Final Judgment in accordance with this Agreement, in a form separately negotiated by the Parties or, in absence of an agreement, determined by the Court, approving this Agreement as final, fair, reasonable, adequate, and binding and dismissing the Action with prejudice. If these conditions do not occur, or if the Court does not approve this Agreement or enter the Orders requested herein, or if the Court enters the judgment provided for herein but either the judgment is materially modified or reversed upon appellate review, then this Agreement shall be canceled and terminated unless counsel for both sides, within ten (10) days from the receipt of a ruling or written notice of circumstances giving rise to termination, agree in writing to proceed with this Agreement.

28. **Termination of Agreement**.

This Agreement shall only be terminable: (a) at the option of the Representative Plaintiff or Capital One if the Court fails to approve the Settlement; (b) at the option of Capital One if more than ten percent (10%) of Class Members become opt-outs; (c) at the option of the Representative Plaintiff or Capital One if the Court materially modifies (or proposes to materially modify) this Agreement in order to approve the Settlement; or (d) upon the mutual agreement of the Representative Plaintiff, on the one hand, and Capital One, on the other hand. Any dispute as to the materiality of any modification or proposed modification of this Agreement by the Court shall be resolved by the Court.

29. **Effect of Termination of Agreement**.

If this Agreement is terminated or canceled pursuant to Paragraph 28 above, all obligations under this Agreement, except those found in Paragraph 15, shall cease to be of any force and effect, and all of the Parties hereto shall be deemed to have reverted to their respective positions status quo ante with respect to the Action as if the Settlement had not been entered into, preserving in that event all of their respective claims and defenses in this case. Further, the fact of this Settlement, that Capital One did not oppose the certification of any class under the Settlement, or that the Court preliminarily approved the certification of a settlement class, shall not constitute any admission, or be used as evidence in any way, of liability or that any class was appropriately certified for litigation or trial.

30. **Decertification of the Settlement Class if Settlement is Not Approved**.

If the Court does not grant final approval of Settlement, or if the Final Judgment is reversed in whole or in part on appeal, certification of the Settlement Class will be vacated and the Parties will be returned to their positions status quo ante with respect to the Action as if the

Settlement had not been entered into, preserving in that event all of their respective claims and defenses in this case. Further, the fact of this Settlement, that Capital One did not oppose the certification of any class under the Settlement, or that the Court preliminarily approved the certification of a settlement class, shall not constitute any admission of liability, or be used as evidence in any way, that any class was appropriately certified for litigation or trial.

## V. APPLICATION FOR ATTORNEY'S FEES, COSTS AND DISBURSEMENTS

31. All attorney's fees, costs and disbursements on behalf of or by Class Counsel shall be paid in accordance with Paragraph 16 of this Agreement or in such manner as the Court may direct.

32. Capital One shall not be liable for any fees, costs or disbursements of Class Counsel apart from what is paid from the Settlement Fund, and what is otherwise agreed to under this Agreement.

## VI. MISCELLANEOUS PROVISIONS

33. **No Press Release.**

Neither Representative Plaintiff, Settlement Class Members, Class Counsel, nor Capital One shall issue a press release or other publicity or broadcasts concerning this Agreement to persons other than Settlement Class Members or persons directly related to this litigation.

34. **Best Efforts**.

The Parties agree that the terms of the Agreement reflect a good-faith, arms'-length settlement of disputed claims. The Parties consider the settlement effected by this Agreement to be fair and reasonable and will cooperate and use their best efforts to seek approval of the Agreement by the Court, including responding to any objectors, intervenors, or other persons or entities seeking to preclude the final approval of this Settlement Agreement.

35. **Amendments**.

This Agreement may be amended or modified only by a written instrument signed by Class Counsel and Capital One's counsel.

36. **Time Periods.**

The time periods and dates described in this Agreement with respect to the giving of notices and hearings are subject to Court approval and modification by the Court or by written stipulation of counsel for the Parties.

37. **Entire Agreement**.

The terms and conditions set forth in this Agreement constitute the complete and entire agreement among the Parties hereto relating to the subject matter of this Agreement, and no representations, warranties or inducements have been made to any Party concerning this Agreement or its exhibits other than the representations, warranties, and covenants contained and memorialized in such documents. The Parties further intend that this Agreement constitutes the complete and exclusive statements of its terms as between the Parties hereto.

38. **Plaintiffs' Authority**.

Class Counsel, on behalf of the Representative Plaintiff and the Settlement Class are expressly authorized to take all appropriate actions required or permitted to be taken by the Representative Plaintiff and the Settlement Class pursuant to this Agreement to effectuate its terms, and are also expressly authorized to enter into any modifications or amendments to this Agreement on behalf of the Representative Plaintiff and the Settlement Class.

39. **No Attempt by Parties to Object.**

The Representative Plaintiff and Class Counsel, and Capital One and Capital One's counsel, each represent and warrant that they have not nor will they solicit or support in any

fashion any effort by any person (natural or legal), including themselves, to object to the settlement under this Agreement, or to appeal the settlement under this Agreement. Moreover, Class Counsel shall not refer any Settlement Class Member to other counsel for the purpose of objecting to or opting out of, or appealing, this Settlement.

40. **Counterparts and Signatures**.

This Agreement may be executed in one or more counterparts. All executed counterparts shall be deemed to be one and the same instrument. Each person executing this Agreement warrants that such person has the full authority to do so. In addition, signatures sent in pdf format by email or by facsimile will constitute sufficient execution of this Agreement. Counsel for the Parties hereto shall exchange among themselves original executed counterparts and a complete set of original executed counterparts shall be filed with the United States District Court for the District of Maryland, Northern Division in connection with the motion to approve the settlement.

41. **Binding Nature**.

This Agreement shall be binding upon and inure to the benefit of, the respective heirs, successors, and assigns of the Parties, hereto.

42. **Construing Agreement**.

This Agreement shall not be construed more strictly against one party than another merely by virtue of the fact that it may have been drafted initially by counsel for one of the Parties. It is acknowledged that all Parties have contributed substantially to the preparation of this Agreement.

43. **Waiver.**

The waiver by one party of any provision or breach of this Agreement shall not be deemed a waiver of any other provision or breach of this Agreement.

44. **Applicable Law**.

All the terms of this Agreement shall be governed by and interpreted in accordance with the laws of the State of Maryland and applicable federal law.

45. **Contrary to Law.**

Nothing in this Agreement is believed to be contrary to law. If it is determined that any provision is in violation of any law, that provision shall be revised to the extent necessary to make such provision(s) legal and enforceable, and the invalidity of any provision shall not invalidate this Agreement or its remaining provisions. In such case, the Agreement shall be construed in such manner to give effect to the Parties' intents and purposes in executing this Agreement to the full extent permitted by law.

46. **Jurisdiction**.

The Parties hereto submit to the jurisdiction of the United States District Court for the District of Maryland, Northern Division for the purpose of implementing the settlement embodied in this Agreement, and consent to the jurisdiction of this Court following the Effective Date over any disputes which later arise in connection with the Agreement or actions taken pursuant to the Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives, as of the day and year written below.

Date: December 20, 2013

FOR REPRESENTATIVE PLAINTIFF

AND

FOR THE SETTLEMENT CLASS:

By: _____
Benjamin H. Carney, Lead Counsel

FOR THE DEFENDANT

CAPITAL ONE, N.A.:

By: _____
_____, Authorized Agent

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives, as of the day and year written below.

Date: December __, 2013

FOR REPRESENTATIVE PLAINTIFF

AND

FOR THE SETTLEMENT CLASS:

By: _____
Benjamin H. Carney, Lead Counsel

FOR THE DEFENDANT

CAPITAL ONE, N.A.:

By: _____
Brent H. Tumberlake, Authorized Agent