



No. S198617  
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

DUNCAN CAMPBELL

PLAINTIFF

AND:

CAPITAL ONE FINANCIAL CORPORATION, CAPITAL ONE BANK (USA), NATIONAL  
ASSOCIATION, AND CAPITAL ONE BANK (CANADA BRANCH)

DEFENDANTS

Brought pursuant to the *Class Proceedings Act*, RSCB 1996, c 50

**ORDER MADE AFTER APPLICATION  
(Certification and Notice)**

BEFORE THE HONOURABLE JUSTICE RAMSAY ) JUNE 22, 2026

ON THE APPLICATION of the Plaintiff coming on for hearing in Vancouver, B.C. on  
June 22, 2026 and

ON BEING ADVISED that the parties have entered into a settlement agreement, subject  
to court approval;

AND UPON BEING ADVISED that the Parties consent to this Order, without any  
admission of liability by the Defendants;

AND UPON BEING ADVISED that Verita Global, LLC ("**Verita**") consents to being  
appointed as claims administrator and notice provider in accordance with the terms of this  
Order;

AND ON READING the materials filed, including the: (1) Settlement Agreement attached  
hereto as Schedule "1" (the "Settlement Agreement"); and (2) the Affidavit of  
Caleb Edwards, sworn June 3, 2026;

AND UPON HEARING the submissions of counsel;

THIS COURT ORDERS that:

1. This Order incorporates herein, and makes a part hereof, the Settlement Agreement. Unless otherwise provided herein, the definitions set out in the Settlement Agreement apply to this Order. In the event of any conflict between the Settlement Agreement and this Order, this Order shall prevail;
2. Schedule B to the Settlement Agreement may be filed in redacted form;
3. At the Approval Hearing to be held on September 22, 2026, this Court will decide:
  - a. whether to approve the Settlement Agreement as fair, reasonable and in the best interests of the Class Members;
  - b. whether to award an honorarium to the Plaintiff;
  - c. whether to approve the fee request of Class Counsel; and
  - d. any other matters as the Court may deem appropriate.
4. In the event that the Settlement Agreement is terminated in accordance with s. 15 thereof:
  - a. this Order shall be set aside, be of no further force or effect, and be without prejudice to any party, save for the provisions of this Order dealing with notice of certification and the collection of opt-outs;
  - b. the Settlement Agreement and all proceedings in connection therewith shall be null and void, except insofar as expressly provided in the Settlement Agreement, and without prejudice to the rights of the plaintiff and the Defendants;
  - c. the Settlement Agreement shall not be offered in evidence or used in the Litigation or any other proceeding and shall not be offered or be admissible in evidence against the Defendants or cited or referred to in any action or proceeding, except in an action or proceeding brought to enforce its terms;
  - d. a notice of the termination of the settlement will be given to the Settlement Class, and the Settlement Administrator will cause the notice of termination, in a form approved by the Court, with costs to be paid by the Defendants, to be published and disseminated as the Court directs; and

- e. each party to the within action shall be restored to his, her, or its respective position as it existed immediately prior to the execution of the Settlement Agreement.
5. This Order is without prejudice to the rights of the Defendants to terminate the Settlement Agreement as provided in ss. 14.1 and 15.2 of the Settlement Agreement;

**Notice**

6. Verita is hereby appointed as the Claims Administrator, with the duties and responsibilities as set out in the Settlement Agreement and in this Order;
7. The long form and short form Notices of Certification and the Settlement Approval Hearing substantially in the form attached hereto as Schedules "2" and "3", respectively, are hereby approved;
8. The Defendants shall make best efforts to provide the Claims Administrator with the names and last known email addresses of Settlement Class Members, as they can best be determined based on the Defendants' records, no later than fifteen (15) Business Days after the date on which this Order is entered;
9. Class Counsel shall provide the Claims Administrator with the Class Counsel registration data including names and last known email addresses of the Settlement Class Representative and any other Settlement Class Member who has reported identifying information to Class Counsel, no later than fifteen (15) Business Days after the date on which this Order is entered;
10. This Order is an order compelling the production of information to the Claims Administrator by the Defendants and Class Counsel within the meaning of applicable privacy laws;
11. Any information received by the Claims Administrator in connection with the Settlement Agreement that pertains to a particular Class Member shall be confidential and shall not be disclosed by the Claims Administrator to any other Class Member;

12. The Claims Administrator and Class Counsel shall disseminate Notice of Certification and the Settlement Approval Hearing in accordance with the Notice Plan attached as Schedule “4” hereto;
13. The form and manner of notice as set out in the Notice Plan and approved herein, are the best notice practicable under the circumstances, constitute sufficient notice to all persons entitled to notice, and satisfy the requirements of notice under s. 19 of the *Class Proceedings Act*;

### ***Claims Administrator***

14. The Claims Administrator shall be responsible for the following: (a) disseminating notice to the Class; (b) certifying by affidavit to the Court compliance with paragraphs 7 to 13 of this Order; (c) establishing a website for purposes of posting the Notice in English, the Settlement Agreement and related documents; (d) working with Class Counsel to create an opt-out form (the “Opt-Out Form”); (e) accepting and maintaining documents sent from Class Members, including receiving Opt-Out Forms and other documents relating to the settlement administration; (f) certifying by affidavit to the Court the number of requests to opt out within ten (10) days of the Opt-Out Deadline; and (h) all other responsibilities designated to the Claims Administrator in the Settlement Agreement;
15. The costs of the Claims Administrator in providing Notice of Certification and the Settlement Approval Hearing in accordance with the Notice Plan shall be paid by the Defendants in accordance with section 7.1 of the Settlement Agreement;
16. No person may bring any action or take any proceeding against the Claims Administrator or any of its employees, agents, partners, associates, representatives, in respect of the implementation of this Order or the administration of the Settlement Agreement, except with leave of this Court;

### ***Opt-Outs and Objections***

17. Any Class Member who wishes to be excluded from the Class shall provide a completed Opt-Out Form to the Claims Administrator in hard copy or electronic copy, to be received on or before September 11, 2026, which date will be inserted into the notice to be disseminated prior to publication;
18. All requests to opt-out shall include a complete Opt-Out Form;
19. Any person who validly opt outs of the Class shall be excluded from the Class, shall not be bound by the Settlement Agreement, shall have no rights with respect to the Settlement Agreement, and shall receive no payments as provided in the Settlement Agreement;

20. Any Class Member that does not provide a valid completed Opt-Out Form as set out in paragraphs 17 and 18 of this Order shall automatically be included in the Class.
21. Any Class Member who wishes to object to the Settlement shall deliver a written objection to the Claims Administrator no later than sixty (60) days after the Notice Date and the Claims Administrator shall file such written objections with the Court at least five (5) days before the date of the Approval Hearing;
22. All objections to the Settlement shall be made in writing and shall include the objector's name, a statement indicating the basis for the objector's belief that he, she or it is a Settlement Class Member, and the basis for the objection;
23. Unless otherwise ordered by this Court, an objection will not be considered by this Court at the Approval Hearing unless it complies with paragraphs 21 and 22 of this Order;

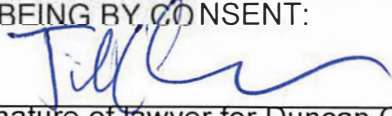
#### **No Admission of Liability**

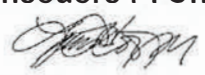
24. Nothing in this Order shall be deemed, construed, or interpreted to be an admission of any violation of any statute or law, or an admission of any wrongdoing or liability by the Defendants or any other Releasee, or an admission of the truth of any of the claims or allegations contained in this Action, its pleadings, or any other pleading filed in any other litigation; and

#### **Costs**

25. There will be no costs of this motion.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND  
CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE  
AS BEING BY CONSENT:

  
\_\_\_\_\_  
Signature of lawyer for Duncan Campbell  
**Theodore P. Charney**

  
\_\_\_\_\_  
Signature of lawyer for Capital One Financial Corporation, Capital One Bank  
(USA), National Association, and the Capital One Bank (Canada Branch)  
**Laura Cooper**

By the Court

Registrar

Digitally signed by  
Ramsay, J

## SCHEDULE 1: SETTLEMENT AGREEMENT

No. S-198617  
VANCOUVER REGISTRY

### IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

DUNCAN CAMPBELL

PLAINTIFF

AND:

CAPITAL ONE FINANCIAL CORPORATION, CAPITAL ONE BANK (USA), NATIONAL  
ASSOCIATION, AND CAPITAL ONE BANK (CANADA BRANCH)

DEFENDANTS

Brought pursuant to the *Class Proceedings Act*, RSCB 1996, c 50

### **SETTLEMENT AGREEMENT**

This Settlement Agreement is entered into in the Campbell Action (defined below) by and among the named Plaintiff, Duncan Campbell (the “**Plaintiff**” or “**Settlement Class Representative**”) and the Defendants, Capital One Financial Corporation, Capital One Bank (USA), National Association, and Capital One Bank (Canada Branch) (collectively, the “**Defendants**” or “**Capital One**”), by and through their respective counsel.

### **RECITALS**

Whereas:

- A. Unless otherwise defined, capitalized terms in these Recitals have the meaning ascribed to them in the Agreed Terms section of this Settlement Agreement.
- B. On July 29, 2019, Capital One announced that it had determined that there had been unauthorized access by an outside individual, later identified as Paige A. Thompson (“**Thompson**”), who obtained certain types of personal information of Capital One credit card applicants and Capital One credit card customers located in Canada.

- C. As a result of the unauthorized access, multiple putative class action lawsuits were filed against the Defendants in courts across the country, alleging that the Defendants failed to properly protect personal information in accordance with their duties, had inadequate data security, and delayed notifying potentially impacted individuals of the breach.
- D. On August 2, 2019, an action under the style of cause *Duncan Campbell and Capital One Financial Corporation, Capital One Bank (USA), National Association, and Capital One Bank (Canada Branch)* was filed in Supreme Court of British Columbia at Vancouver with court file number S-198617 (the “**Campbell Action**”).
- E. On August 10, 2021, an action under the style of cause *Duncan Campbell v. Paige A. Thompson* was filed in the Supreme Court of British Columbia at Vancouver with court file number S-217320 (the “**Thompson Action**”). The Thompson Action was assigned to the same justice who was managing the Campbell Action. On May 2, 2023, after noting Ms. Thompson in default, the plaintiff obtained an order for the assessment of damages against Ms. Thompson.
- F. Other proposed class actions were commenced in Canada. With the exception of *Michael Royer and Ala’a Abou-Khadra v. Capital One Bank (Canada Branch), et al.* (Quebec Superior Court File No. 500-06-001010-194), which remains pending before the courts of Quebec, each of these proposed class actions has either been dismissed, discontinued, or suspended or otherwise has not proceeded past commencement of the claim. A list of these proceedings is set out in Schedule A.
- G. On March 9, 2021, the Plaintiff filed a Notice of Application seeking certification of the Campbell Action as a multi-jurisdictional class proceeding under the *Class Proceedings Act, 1992*, RSBC 1996, c. 50 (the “**CPA**”) and appointing the Plaintiff as representative plaintiff for the Class. The Defendants filed materials opposing the application. On June 3, 2022, Justice Iyer certified the Campbell Action as a multi-jurisdictional class proceeding under the CPA, in *Campbell v. Capital One Financial Corporation*, 2022 BCSC 928.
- H. An appeal and cross-appeal were taken from the decision of the Application Judge by the Plaintiff and Defendants, respectively. The appeal and cross-appeal were heard on January 16-17, 2024, in Vancouver, British Columbia and were dismissed,

in *Campbell v. Capital One Financial Corporation*, 2024 BCCA 253.

- I. Starting in or about December 2023, prior to the hearing of the appeals, counsel for the Plaintiff and the Defendants in the Campbell Action conducted extensive arms-length negotiations over a period of two years regarding the substance and procedure of a possible national class settlement prior to entering into this Settlement Agreement.
- J. On or about November 18, 2025, the parties agreed to settle the Campbell Action.
- K. The Plaintiff, as well as Class Counsel, believe the Released Claims have merit. The Plaintiff and Class Counsel, however, recognize and acknowledge the expense and length of continued proceedings that would be necessary to prosecute the Released Claims against the Defendants through trial and appeals, and the importance of providing timely relief to Class Members. The Plaintiff and Class Counsel also have taken into account the evidence filed by the Defendants on the appeal (the “**Fresh Evidence**”) to the effect that that the hacker no longer possesses and did not disseminate the data, the uncertain outcome and risk of any litigation, especially in complex actions such as this litigation, as well as the difficulties and delays inherent in such litigation. The Plaintiff and Class Counsel are mindful of the inherent problems of proof under, and possible defences to, the Released Claims. The Plaintiff and Class Counsel believe that the Settlement confers substantial benefits upon the Class. Based on their evaluation of all of these factors, the Plaintiff and Class Counsel have determined that the Settlement is in the best interests of the Class.
- L. The Defendants deny any wrongdoing or liability to the Plaintiff and the Class. The Defendants believe they have meritorious defences to all of the claims raised in this litigation. These defences include, but are not limited to, Defendants’ position that Thompson never disseminated any of the data that was the subject of the unauthorized access – a position that the Defendants believe has only strengthened over time. Nevertheless, the Defendants recognize and acknowledge the expense and length of continued proceedings that would be necessary to defend the litigation through trial and appeals. In agreeing to enter into this Settlement, the Defendants also have taken into account the uncertain outcome and risk of any litigation, especially in complex actions such as this litigation, as well as the difficulties and delays inherent in such litigation.

- M. It is the intention of the Settling Parties to resolve the disputes and claims which they have between them as set forth below.

## **AGREED TERMS**

IT IS HEREBY AGREED, by and among the Settling Parties that, subject to approval of the Court, the Litigation and the Released Claims shall be fully and finally compromised, settled, and released, and that the Campbell Action will be dismissed with prejudice and without costs subject to and upon the terms and conditions described below.

### **I. DEFINITIONS**

1. In addition to words and terms defined elsewhere in this Settlement Agreement, the following words and terms shall have the definitions stated in this section.
  - A. **"Action"** or **"Litigation"** means the Campbell Action.
  - B. **"Administrative Expenses"** means all of the expenses incurred in the administration of this Settlement, including, without limitation, all expenses or costs associated with the Notice Plan and providing Notice to the Settlement Class, locating Settlement Class Members, processing claims, determining the eligibility of any person to be a Settlement Class Member, and administering, calculating and distributing the Net Settlement Fund to Settlement Class Members. Administrative Expenses also include all reasonable third-party fees and expenses incurred by the Claims Administrator in administering the terms of this Agreement.
  - C. **"Affiliates"** means current and former directors, officers, employees, lawyers, consultants, agents, insurers, reinsurers, related entities, Subsidiaries, Parents, predecessors, and Successors.
  - D. **"Agreement"** or **"Settlement Agreement"** means this Settlement Agreement, including its exhibits.
  - E. **"Annual Fee Class Member"** means Settlement Class Members that paid an annual credit card fee to one or more of the Defendants during the period July 31, 2013 to July 31, 2019 ("Annual Fee").

- F. **"Annual Fee Payment"** means the payment described in section 5.1 of this Settlement Agreement.
- G. **"Appeal Term"** means the time an appeal or other review expires or if any appeal or other review has been filed, the time it takes for the order appealed to be affirmed without material change or the appeal to be dismissed or otherwise disposed of, with no other appeal or other review pending, and the time for further appeals or other review having expired.
- H. **"Approval Date"** means the date on which the Court issues the Approval Order.
- I. **"Approval Hearing"** means the hearing to be held by the Court on a date to be scheduled to decide whether to approve the Settlement, whether to approve the fee request of Class Counsel, and any other matters as the Court may deem appropriate.
- J. **"Approval Order"** means the order of the Court, in the form attached as Exhibit B to this Settlement Agreement, approving the Settlement Agreement and the Settlement contemplated hereunder.
- K. **"Business Days"** means Monday, Tuesday, Wednesday, Thursday, and Friday, excluding holidays observed in British Columbia.
- L. **"CAD\$" or "Canadian Dollars"** means Canadian dollars, being the lawful currency of Canada.
- M. **"Certification and Notice Order"** means the order of the Court, in the form attached as Exhibit A to this Settlement Agreement, approving notice to the Class that the Action has been certified and notice of the hearing at which the Court will be asked to approve the Settlement.
- N. **"Claims Administrator"** means Verita Global, LLC.
- O. **"Claim Form"** means the document a Class Member must submit to the Claims Administrator to seek relief under section 3 (Category A Claims), section 4 (Category B Claims) and section 5 (Category C Claims) of this Settlement Agreement. The Claim Form shall be agreed upon by the Parties.

- P. **"Claims Period"** means the period of time that Class Members can submit claims to the Claims Administrator and, unless otherwise agreed between the Settling Parties, shall commence on the Effective Date and end six (6) months thereafter.
- Q. **"Claims Program"** means the claims program set out at section 8 of this Settlement Agreement.
- R. **"Class", "Class Members" or "Settlement Class Members"** means a member of the Settlement Class.
- S. **"Class Counsel"** means Charney Lawyers PC, 151 Bloor Street West, Suite 604, Toronto, Ontario, M5S 1S4 and Dusevic & Garcha, #210-4603 Kingsway, Burnaby, BC V5H 4M4.
- T. **"Conditions Precedent"** means the conditions to this Settlement set out in section 14 of this Settlement Agreement.
- U. **"Confidential Opt-Out Threshold"** means the threshold agreed to by the Parties, which is attached in redacted form as Schedule B to this Settlement Agreement.
- V. **"Court"** means the Supreme Court of British Columbia.
- W. **"Data Breach"** means the data breach alleged in the Campbell Action.
- X. **"Direct Notice"** means the form of notice described in section 7.2 of this Settlement Agreement.
- Y. **"Effective Date"** means the first Business Day after the conditions in section 15.1 of this Settlement Agreement have been satisfied, or where provided for, waived by the Defendants.
- Z. **"Entity"** means any corporation, partnership, limited liability company, association, trust, or other organization of any type.
- AA. **"Escrow Account"** means the account maintained by the Claims Administrator as described in section 2.2 of this Settlement Agreement.
- BB. **"Honorarium"** means compensation awarded and paid to the Settlement Class Representative in recognition of his role in this litigation, as set forth in section 10

of this Settlement Agreement.

- CC. **“Legal Fees and Disbursements”** means the fees and disbursements described in section 9.1 of this Settlement Agreement.
- DD. **“Net Settlement Fund”** means fund as defined in section 2.4 of this Settlement Agreement.
- EE. **“Non-SIN Class Member”** means any Settlement Class Member who is not a SIN Class Member.
- FF. **“Notice of Certification and the Settlement Approval Hearing”** means notice to the Class that the Action has been certified and notice of the hearing at which the Court will be asked to approve the Settlement.
- GG. **“Notice of Settlement Approval”** means notice that the Court has approved the Settlement, to be provided to Settlement Class Members via the Settlement Website.
- HH. **“Notices of the Data Breach”** or **“Notice Letter”** means the notices from the Defendants circulated to Class Members regarding the Data Breach.
- II. **“Notice Date”** means the first date on which Notice of Certification and the Settlement Approval Hearing is disseminated to Settlement Class Members.
- JJ. **“Notice Plan”** means the notice program set out in Exhibit C to this Settlement Agreement, which is to be administered by the Claims Administrator in accordance with the terms of section 7 of this Settlement Agreement and as approved by the Court.
- KK. **“Opt-Out Deadline”** means sixty (60) days from the Notice Date, the date by which a Class Member's valid opt-out form must be postmarked if such Class Member wishes to opt-out of the Settlement.
- LL. **“Out-of-Pocket Costs”** means documented out-of-pocket costs or expenditures that are fairly traceable to the Data Breach, as set forth in section 3 of this Settlement Agreement. Out-of-Pocket Costs may include, without limitation: fees or expenses incurred for, or as a result of, credit freezes; the cost of credit

monitoring or insurance; unreimbursed fraud losses or charges; professional fees incurred in connection with identity theft or falsified tax returns; and miscellaneous expenses such as notary, fax, postage, copying, mileage, and long-distance telephone charges.

- MM. **"Parent"** means, with respect to any Entity, any corporation or other entity that owns or controls, directly or indirectly, at least a majority of the securities or other interests that have by their terms ordinary voting power to elect a majority of the board of directors or others performing similar function of such Entity.
- NN. **"Parties"** means the Settlement Class Representative, on behalf of himself and the Settlement Class, and the Defendants.
- OO. **"Person"** means an individual or legal entity or their respective successors or assigns.
- PP. **"Release"** means the release, waiver and discharge of the Releasees by the Plaintiff and each Class Member from their or its Released Claims as set out in this Settlement Agreement.
- QQ. **"Released Claims"** means any and all claims, demands, actions, causes of action, and suits based in whole or in part on or related to or arising from any of the facts alleged or that could have been alleged in the Campbell Action, including the Data Breach and consequences thereof, or any act, omission or determination of Class Counsel or the Claims Administrator in connection with the administration of this Settlement, and includes all other claims, demands, actions, causes of action of any nature whatsoever, including, but not limited to, any claims for violation of federal, provincial, territorial, or other law (whether in contract, tort, or otherwise, including statutory and injunctive relief, common law, property, warranty, and equitable claims), and also including Unknown Claims that could be asserted by the Releasors against the Releasees in the Litigation, or in any other complaint, action, or litigation in any other court or forum, based upon or related to or arising from any of the facts alleged or that could have been alleged in the Campbell Action, including the Data Breach and consequences thereof, or the administration of this Settlement.
- RR. **"Releasees"** means jointly and severally, individually and collectively, the

Defendants and their respective current, former, and future, direct and indirect, Affiliates, Parents, Successors, Subsidiaries, divisions, insurers, reinsurers, partners, and all other persons, partnerships or corporations with whom any of the former have been, are now, or may be affiliated, and all of their respective past, present and future directors, officers, agents, employees, shareholders, lawyers, partners, trustees, servants and representatives and the predecessors, Successors, purchasers, executors, administrators and assigns of each of the foregoing.

- SS. **"Releasors"** means, jointly and severally, individually and collectively, the Plaintiff and the Settlement Class Members who have not opted out and their respective Successors, executors, administrators, trustees and assigns.
- TT. **"Settlement"** means the settlement of the Campbell Action by and between the Parties, and the terms thereof as stated in this Settlement Agreement.
- UU. **"Settlement Agreement"** means this Settlement Agreement.
- VV. **"Settlement Amount"** means \$35 million Canadian Dollars (CAD \$35 million), as described in section 2.1 of this Settlement Agreement.
- WW. **"Settlement Class"** means all Canadian residents, excluding Quebec residents, who applied for or were issued a Capital One credit card and who were notified by the Defendants that their information may have been compromised in the Data Breach.
- XX. **"Settlement Class Member"** means a member of the Settlement Class.
- YY. **"Settlement Fund"** means \$35 million Canadian Dollars (CAD \$35,000,000) paid in accordance with section 2.1 of this Settlement Agreement
- ZZ. **"Settlement Amount Deposit Date"** means the date on which the Defendants pay the Settlement Amount in accordance with Section 2.1 of this Settlement Agreement.
- AAA. **"Settlement Website"** means the public website maintained by Class Counsel that will provide information and key filings regarding the Settlement, including FAQs and other materials educating Class Members on the content of the

Settlement and the approval process.

BBB. **"Settling Parties"** means the Plaintiff and the Defendants.

CCC. **"SIN Class Members"** means a Settlement Class Member who received a Notice Letter indicating that their Social Insurance Number was part of the data affected in the Data Breach.

DDD. **"Subsidiaries"** means with respect to any Entity, any corporation, limited liability company, partnership or other entity of which such Entity owns or controls, directly or indirectly, at least a majority of the securities or other interests that have by their terms ordinary voting power to elect a majority of the board of directors or others performing similar functions with respect to such corporation, limited liability company, partnership or other entity.

EEE. **"Successor"** means, with respect to a natural person, that person's heir, and, with respect to an Entity, any other Entity that through merger, buyout, or any other means, acquires that Entity's duties, rights, obligations, debts, and assets.

FFF. **"Taxes and Tax-Related Expenses"** means: (i) any and all applicable taxes, duties and similar charges imposed by a government authority (including any estimated taxes, interest or penalties) arising in any jurisdiction, if any, with respect to the income or gains earned by or in respect of the Settlement Fund, including, without limitation, any taxes that may be imposed upon the Claims Administrator while it is held in the Escrow Account; (ii) any other taxes, duties and similar charges imposed by a government authority (including any estimated taxes, interest or penalties) relating to the Settlement Fund that the Claims Administrator determines are or will become due and owing, if any; and (iii) any and all expenses, liabilities and costs incurred in connection with the taxation of the Settlement Fund (including without limitation, expenses of tax counsel and accountants).

GGG. **"Third Party Misconduct"** means the third party conduct described in section 3.3 of this Settlement Agreement.

HHH. **"Unknown Claims"** means any and all Released Claims that any Releasor does not know to exist against any of the Releasees and that, if known, might have

affected their decision to enter into or to be bound by the terms of this Settlement. The Releasors acknowledge that they may hereafter discover facts in addition to or different from those that they now know or believe to be true concerning the subject matter of this Release, but nevertheless fully, finally, and forever settle and release any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, that may exist now, which may have already existed, or which may hereafter exist, based upon the alleged Data Breach as described in the Action, without regard to subsequent discovery or existence of such different or additional facts concerning each of the Releasees. The foregoing waiver includes, without limitation, an express waiver to the fullest extent permitted by law by the Plaintiff and the Class Members.

## II. SETTLEMENT CONSIDERATION

- 2.1 In consideration for the Release provided for by the Settlement and for the dismissal with prejudice and without costs of the Campbell Action, under the terms of this Settlement Agreement, the Defendants will, no more than ten (10) Business Days after the Effective Date (the “**Settlement Amount Deposit Date**”), pay \$35 million Canadian Dollars (CAD\$35,000,000) (the “**Settlement Amount**”) to the Claims Administrator and to Charney Lawyers PC as set out in 2.2 and 2.3 below.
- 2.2 Upon the Settlement Amount Deposit Date, the Settlement Amount, less court-approved Legal Fees and Disbursements, and applicable taxes on Legal Fees and Disbursements, and any court-approved Honorarium, will be paid to the Claims Administrator to be held in the Escrow Account.
- 2.3 Upon the Settlement Amount Deposit Date, court-approved Legal Fees and Disbursements, and applicable taxes on Legal Fees and Disbursements, and any court-approved Honorarium will be paid to Charney Lawyers PC by wire transfer.
- 2.4 As further described in this Agreement, the Settlement Fund shall be the sole source of monetary funds for the following:
  - (a) the Taxes and Tax-Related Expenses described in sections 2.8 and 2.9 of this Settlement Agreement;

- (b) the Legal Fees and Disbursements described in section 9 of this Settlement Agreement;
- (c) the Administrative Expenses for the Settlement Administration described in section 8 of this Settlement Agreement;
- (d) the Honorarium described in section 10 of this Settlement Agreement; and
- (e) the Claims, which will be paid out of the balance of the Settlement Fund remaining upon paying the amounts set out in sections 2.4(a) to (d) of this Settlement Agreement (the “**Net Settlement Fund**”).

2.5 The Claims Administrator, subject to such supervision and direction of the Court and/or counsel as may be necessary or as circumstances may require, shall administer and/or oversee distribution of the Net Settlement Fund.

2.6 The Claims Administrator is responsible for communicating with Settlement Class Members regarding the distribution of the Net Settlement Fund and amounts paid under the Settlement.

2.7 All funds held in the Escrow Account relating to the Settlement shall be deemed to be in the custody of the Court upon the Settlement Amount Deposit Date of the Settlement until such time as the funds shall be distributed to Settlement Class Members or otherwise disbursed pursuant to this Settlement Agreement and/or further order of the Court.

2.8 The Parties agree that the Claims Administrator shall be responsible for filing tax returns and any other tax reporting for or in respect of interest (or other income or gains) earned on the Settlement Fund and paying from the Settlement Fund any Taxes and Tax-Related Expenses owed with respect to the Settlement Fund.

2.9 All Taxes and Tax-Related Expenses relating to interest (or other income or gains) earned on the Settlement Fund shall be paid out of the Settlement Fund and without prior order of the Court, for the period the Settlement Fund is held in the Escrow Account by the Claims Administrator. Further, the Settlement

Fund shall indemnify and hold harmless the Parties and their counsel for Taxes and Tax-Related Expenses (including, without limitation, taxes payable by reason of any such indemnification payments).

- 2.10 The Parties and their respective counsel have made no representation or warranty with respect to the tax treatment by any Settlement Class Representative or any Settlement Class Member of any payment or transfer made pursuant to this Agreement or derived from or made pursuant to the Settlement Fund.
- 2.11 The Settlement Class Representative and each Settlement Class Member shall be solely responsible for the tax consequences to him, her, or it of the receipt of funds from the Settlement Fund pursuant to this Agreement.
- 2.12 Defendants and their counsel shall not have any responsibility for or liability whatsoever with respect to: (i) any act, omission, or determination of Class Counsel, the Claims Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement or otherwise; (ii) the management, investment, or distribution of the Settlement Fund; (iii) the formulation, design, or terms of the disbursement of the Settlement Fund; (iv) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by, or fluctuations in the value of the Settlement Fund; or (vi) the payment or withholding of any Taxes and Tax-Related Expenses incurred in connection with the taxation of the Settlement Fund or the filing of any returns. Defendants also shall have no obligation to communicate with Settlement Class Members and others regarding amounts paid under the Settlement.
- 2.13 The Settlement Class Representative and Class Counsel shall not have any liability whatsoever with respect to: (i) any act, omission or determination of the Claims Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement or otherwise; (ii) the management, investment, or distribution of the Settlement Fund; (iii) the formulation, design, or terms of the disbursement of the Settlement Fund; (iv) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by, or fluctuations in the

value of the Settlement Fund; or (vi) the payment or withholding of any Taxes and Tax-Related Expenses incurred in connection with the taxation of the Settlement Fund or the filing of any returns.

- 2.14 The Defendants, the Settlement Class Representative, Class Counsel and the Claims Administrator shall not have any liability whatsoever with respect to information collected and/or provided to the Claims Administrator in order to administer the Settlement. Once the Settlement Fund has been completely distributed (as provided for herein), the Claims Administrator shall destroy any information on Settlement Class Members provided to it by Class Counsel or the Defendant that remains in its possession.

### **III. CATEGORY A CLAIMS – Out-of-Pocket Costs**

- 3.1 Settlement Members who have Out-of-Pocket Costs may request payment of their Out-of-Pocket Costs by submitting a Claim Form (either in paper form or on the Settlement Website) to the Claims Administrator accompanied by an attestation for the Out-of-Pocket Costs incurred, and documentation of Out-of-Pocket Costs which should naturally exist and have been retained or are readily obtainable, as detailed on the Claim Form.
- 3.2 The Claims Administrator shall verify that each person who submits a Claim Form claiming Out-of-Pocket costs is a Settlement Class Member and shall have the sole discretion and authority to determine whether and to what extent a Claim Form reflects valid Out-of-Pocket Costs. To the extent the Claims Administrator determines a claim for Out-of-Pocket Costs is deficient, the Claims Administrator shall, within fifteen (15) days of making such a determination, notify the Settlement Class Member of the deficiencies and give the Settlement Class Member thirty (30) days to cure the deficiencies. The Claims Administrator shall have the sole discretion and authority to determine whether the Settlement Class Member has cured the deficient claim such that it reflects valid Out-of-Pocket Costs.
- 3.3 Out-of-Pocket Costs for preventative measures, such as obtaining credit monitoring services, insurance or credit freezes, shall be considered to be fairly traceable to the Data Breach if the Settlement Class Member attests that the

costs were incurred as a result of the Data Breach and the Administrator, in its sole discretion, is so satisfied. Out-of-Pocket Costs for unreimbursed losses related to identity theft, falsified tax returns, or other alleged wrongdoing (collectively “Third Party Misconduct”), or for attempting to remedy Third Party Misconduct, shall be considered to be due to the Data Breach if the Claims Administrator, in its sole discretion, concludes that the Third Party Misconduct is fairly traceable to the Data Breach. In exercising its discretion, the Claims Administrator shall take into account whether, (i) the Third Party Misconduct occurred within a reasonable period of time after the Data Breach, (ii) the Settlement Class Member states that he or she believes the Third Party Misconduct is connected to the Data Breach; and (iii) the Third Party Misconduct involved possible misuse of the type of personal information accessed in the Data Breach (i.e., name, address data, postal code, phone number, occupation, employer, date of birth, credit score, credit limit, account balance, payment history and contact information); and, for SIN Class Members, their Social Insurance Number.

- 3.4 Each Settlement Class Member who submits a Claim Form for valid Out-of-Pocket Costs (as determined by the Claims Administrator) shall receive a payment equal to the lesser of: (i) the amount of the Settlement Class Member’s valid Out-of-Pocket Costs; or (ii) CAD \$25,000.00.

#### **IV. CATEGORY B CLAIMS – Wasted Time and Inconvenience**

- 4.1 Settlement Class Members may request compensation for wasted time and inconvenience responding to the Data Breach by submitting a Claim Form (either in paper form or on the Settlement Website) to the Claims Administrator accompanied by an attestation in respect of the time spent responding to the Data Breach as detailed on the Claim Form.
- 4.2 The Claims Administrator shall verify that each person who submits a Claim Form for wasted time and inconvenience is a Settlement Class Member and shall have the sole discretion and authority to determine whether and to what extent the Claim Form reflects wasted time and inconvenience responding to the Data Breach. To the extent the Claims Administrator determines a claim for wasted time and inconvenience is deficient, within fifteen (15) days of making such a

determination, the Claims Administrator shall notify the Settlement Class Member of the deficiencies and give the Settlement Class Member thirty (30) days to cure the deficiencies. The Claims Administrator shall have the sole discretion and authority to determine whether the Settlement Class Member has cured the deficient claim such that it reflects valid losses actually incurred.

- 4.3 Non-SIN Class Members claiming for wasted time and inconvenience shall be eligible to receive CAD \$25 for each hour spent responding to the Data Breach, not to exceed 5 hours or CAD \$125.
- 4.4 SIN Class Members claiming for wasted time and inconvenience shall be eligible to receive CAD \$25 for each hour spent responding to the Data Breach, not to exceed 8 hours or CAD \$200.
- 4.5 Settlement Class Members who submit a claim for wasted time and inconvenience which is approved by the Claims Administrator shall be eligible to receive an additional payment for wasted time and inconvenience of CAD \$75.

## **V. CATEGORY C CLAIMS – Annual Fee Claims**

- 5.1 Annual Fee Class Members shall be eligible to receive an amount of up to CAD \$50 (“**Annual Fee Payment**”) upon submission of a valid Annual Fee claim, which shall include an attestation as to the fees incurred (as determined by the Claims Administrator).
- 5.2 The Claims Administrator shall verify that each person who submits a Claim Form for an Annual Fee Payment is a Settlement Class Member and an Annual Fee Class Member by comparing the Annual Fee Claim Form to the customer records provided by Capital One as defined in section 7.5. To the extent the Claims Administrator determines a claim for an Annual Fee Payment is deficient, the Claims Administrator shall, within fifteen (15) days of making such a determination, notify the Settlement Class Member of the deficiencies and give the Settlement Class Member thirty (30) days to cure the deficiencies. The Claims Administrator shall have the sole discretion and authority to determine whether the Settlement Class Member has cured the deficient claim such that it reflects valid Annual Fees.

## VI. DISTRIBUTION OF NET SETTLEMENT FUND

- 6.1 In the event that the total of the Category A, B and C Claims exceeds the Net Settlement Fund, then all claims will be paid to Settlement Class Members on a *pro rata* basis. For avoidance of doubt, Settlement Class Members' *pro rata* shares shall be calculated by reducing each Settlement Class Member's claim in proportion to the amount that the total claims exceed the Net Settlement Fund (e.g., if the Net Settlement Fund is equal to 75% of the total claims, then each Settlement Class Member shall receive 75% of their successful claim).
- 6.2 In the event there is a residue which exceeds the total of all claims as assessed, the residue shall be allocated on a *pro rata* basis (proportionally) to all Settlement Class Members whose claims were at least partially approved, with such amount not to exceed an additional CAD \$750 per Settlement Class Member.
- 6.3 If after payment of all claims and payment of the residue as contemplated in section 6.2, there remains a residue in the Net Settlement fund, then any remaining amounts in the Net Settlement Fund are to be paid *cy-près* to one or more charities and/or academic institutions agreed upon by the Parties. In the event that the Parties cannot agree, they will seek directions from the court.
- 6.4 The Net Settlement Fund described in section 2.4 of this Settlement Agreement shall be the sole source of monetary funds for the relief set forth in this Settlement Agreement.

## VII. CLASS NOTICE, OPT-OUTS, AND OBJECTIONS

- 7.1 Notice of Certification and the Settlement Approval Hearing shall be disseminated pursuant to the order approving the Notice Plan. All costs of the Notice of Certification and the Settlement Approval Hearing and Notice Plan including the fees and disbursements of the Claims Administrator, shall be borne by the Defendants.
- 7.2 The Claims Administrator is responsible for distributing the Notice of Certification and the Settlement Approval Hearing in accordance with the Notice Plan which plan will generally comprise: direct email notice to Settlement Class Members (the "**Direct Notice**"); and publication of advertisements with a maximum size of

¼ page in an English-language paper (with national circulation which may or may not include Quebec) to be selected by Class Counsel and a social media campaign designed by the Claims Administrator.

- 7.3 Subject to compliance with the privacy laws of Canada, the Defendants shall make best efforts to provide the Claims Administrator with the names and last known email addresses of Settlement Class Members as they can best determine based on their records, no later than fifteen (15) Business Days after the date on which the Court enters the order approving the Notice Plan. To the extent that Capital One has reasonably available names or other identifying information about Settlement Class Members, but not email addresses, those names and other identifying information shall also be provided to the Claims Administrator for use in verifying the identity of Settlement Class Members to whom emailed notice is not sent, but who respond to either publication notice and/or the Settlement Website, upon request following such responses. The order approving the Notice Plan shall provide that the Court authorizes the Defendants to disclose the Settlement Class Members' information contemplated in this section 7.3 and section 7.5 of this Settlement Agreement.
- 7.4 Class Counsel shall provide the Claims Administrator with the Class Counsel registration data including names and last known email addresses of the Settlement Class Representative and any other Settlement Class Member who has reported identifying information to Class Counsel, no later than fifteen (15) Business Days after the date on which the Court enters the order approving the Notice Plan. The order approving the Notice Plan shall provide that the Court authorizes Class Counsel to disclose the Settlement Class Members' information contemplated in this section 7.4 of this Settlement Agreement.
- 7.5 Defendants shall make best efforts to locate and provide the Claims Administrator with records related to all Annual Fee Class Members sufficient to allow the Claims Administrator to determine that a class member is an Annual Fee Class Member.
- 7.6 The Notice of Certification and the Settlement Approval Hearing shall explain the procedure for Settlement Class Members to opt-out and exclude themselves from the Settlement Class by notifying the Claims Administrator in writing via opt-

out form, postmarked no later than the Opt-Out Deadline.

7.7 The opt-out form shall include a section:

- (a) requiring Settlement Class Members to confirm and acknowledge they will be excluded from receiving any compensation from the Settlement and by opting out do not wish to participate as a Settlement Class Member; and
- (b) requiring an explanation for opting out.

7.8 Each written request for exclusion must set forth the name of the individual seeking exclusion and can only request exclusion for that one individual.

7.9 Settlement Class Members must sign the opt-out form and provide contact information, including address, telephone number, and email.

7.10 If the reason provided for opting-out suggests to the Claims Administrator that a Settlement Class Member does not understand the opt-out process or the effect of participating in the Settlement (for example the Settlement Class Member states she is opting out because the class member erroneously believes there is a financial cost to participating in the settlement) then the Claims Administrator shall contact the Settlement Class Member and determine whether the member intended to validly opt-out.

7.11 The Notice of Certification and the Settlement Approval Hearing shall explain the procedure for Settlement Class Members to object to the Settlement. Written objections are to be provided no later than sixty (60) days after the Notice Date and filed with the Court five (5) days before the Approval Hearing. The written objection must include the objector's name, a statement indicating the basis for the objector's belief that he, she, or it is a Member of the Settlement Class and the basis for objecting.

## **VIII. ADMINISTRATION OF SETTLEMENT – CLAIMS PROGRAM**

8.1 Class Counsel will retain Verita Global to be the Claims Administrator to administer this Settlement and the Claims Program.

- 8.2 The Defendants shall have the option to withdraw from this Settlement Agreement, and to render it null and void, if the number of Class Members excluding themselves from the Settlement by opting out before the Opt-Out Deadline exceeds the Confidential Opt-Out Threshold.
- 8.3 The Claims Administrator shall perform the functions specified in this Settlement Agreement and Exhibit A, including, but not limited to, overseeing administration of the Settlement Fund; providing Notice of Certification and the Settlement Approval Hearing in accordance with the Notice Plan; establishing and operating the Settlement Website and a toll-free number; administering the Claims processes; and distributing compensation.
- 8.4 The duties of the Claims Administrator, in addition to other responsibilities that are described in this Agreement, include:
- (a) obtaining from Defendants, pursuant to section 7.3 of this Settlement Agreement, the names and last known email addresses, to the extent reasonably available, of Settlement Class Members;
  - (b) obtaining from Capital One, pursuant to section 7.3 of this Settlement Agreement, information to the extent reasonably available, necessary to establish a reasonably practical procedure to verify Settlement Class Members;
  - (c) obtaining from Capital One, pursuant to section 7.5 of this Settlement Agreement, information to the extent reasonably available, sufficient to establish whether the Class Member paid an annual fee;
  - (d) effecting the Notice Plan in accordance with the procedures set forth in section 7 of this Settlement Agreement;
  - (e) providing Notice of Settlement Approval on the Settlement Website in accordance with sections 11.3 and 11.4 of this Settlement Agreement;
  - (f) establishing and maintaining a post office box for mailed written notifications of exclusion from the Settlement Class;
  - (g) establishing and maintaining the Settlement Website that, among other

things, allows Settlement Class Members to submit claims electronically;

- (h) establishing and maintaining a toll-free telephone line for Settlement Class Members to call with Settlement-related inquiries, and answering the questions of Settlement Class Members who call with or otherwise communicate such inquiries;
- (i) responding to any mailed or emailed Settlement Class Member inquiries;
- (j) mailing to Settlement Class Members who request it paper copies of the Notice of Certification and the Settlement Approval Hearing, and/or Claim Forms;
- (k) processing all written notifications of exclusion from the Settlement Class;
- (l) providing a report, no later than ten (10) days after the deadline for Settlement Class Members to exclude themselves from the Settlement, to Class Counsel and Defendants' counsel that details the total number of written notifications of exclusion received to date and other pertinent information, including the reason for opting-out as requested by Class Counsel and Defendants' counsel;
- (m) in advance of the Approval Hearing, preparing affidavits to submit to the Court that: (i) attest to implementation of the Notice Plan in accordance with the Certification and Notice Order; and (ii) identify each Settlement Class Member who timely and properly provided written notification of exclusion from the Settlement Class;
- (n) pursuant to sections 3, 4 and 5 of this Settlement Agreement, at the close of the Claims Period, providing monetary payment, either electronically or by mail, to Settlement Class Members for Out-of-Pocket Costs, wasted time and inconvenience, and Annual Fee Payments;
- (o) providing monthly reports and a final report to Class Counsel that summarize the number and amount of claims since the prior reporting

period, the total number and amount of claims received to date, the number and amount of any claims approved and denied since the prior reporting period, the total number and amount of claims approved and denied to date, and other pertinent information as requested by Class Counsel;

- (p) within a reasonable period of time following the conclusion of the Claims Program, if requested, providing, on a confidential basis, a summary to Class Counsel and to counsel for the Defendants of the number of claims approved and particulars of the amounts paid by category from the Settlement Amount and copies of all invoices issued by the claims administrator, together with the breakdown of costs incurred and fees billed by the Claims Administrator;
- (q) paying from the Escrow Account the amounts described in section 2.4 (a), (c) and (e) of this Settlement Agreement; and
- (r) performing any function related to Settlement administration on the instruction of Class Counsel, including, but not limited to, verifying that payments have been distributed in accordance with sections 3, 4 and 5 of this Settlement Agreement.

8.5 The decisions of the Claims Administrator in respect of claims submitted through the Claims Program, including but not limited to all Category A, B, and C Claims, are final and binding and there shall be no right of appeal or judicial review from the decisions of the Claims Administrator.

## **IX. CLASS COUNSEL FEES AND DISBURSEMENTS**

- 9.1 Class Counsel will seek in its fee approval materials a fee of 25% of the Settlement Fund, reimbursement of all disbursements and applicable taxes (the “**Legal Fees and Disbursements**”) or such other terms as the Court at the approval hearing may direct.
- 9.2 The Notice of Certification and the Settlement Approval Hearing will state that it is proposed that the Legal Fees and Disbursements will be paid to Class Counsel subject to Court approval at the Approval Hearing.

- 9.3 The amounts owing to Class Counsel for Legal Fees and Disbursements will be paid to Charney Lawyers PC on the Settlement Amount Deposit Date in accordance with section 2.3 of this Settlement Agreement.

#### **X. HONORARIUM FOR THE PLAINTIFF**

- 10.1 Plaintiff intends to seek an Honorarium in the amount of CAD \$5,000, subject to Court approval.
- 10.2 Any Honorarium approved by the Court will be paid out of the Settlement Fund to Class Counsel in trust in accordance with the Court's order.

#### **XI. SETTLEMENT APPROVAL PROCESS**

##### *Approval Hearing*

- 11.1 The Plaintiff will bring on the Approval Hearing as soon as is reasonably possible after the Opt-Out Deadline has expired, provided that, before that hearing, the Conditions Precedent in section 14.1 of this Settlement Agreement are satisfied or waived by the Defendants.
- 11.2 At the Approval Hearing, the Court will decide whether to approve the Settlement and whether to approve the Legal Fees and Disbursements requested of Class Counsel and any other matters as the court may deem appropriate.

##### *Notice of Settlement Approval*

- 11.3 Notice of Settlement Approval shall be disseminated to Class Members after the Effective Date via the Settlement Website.
- 11.4 Notice of Settlement Approval shall inform Class Members of when the Claims Period starts and ends and shall encourage them to make claims.
- 11.5 All costs of Notice of Settlement Approval, including the fees and disbursements of the Claims Administrator, shall be paid from the Settlement Fund.

## **XII. RELEASED CLAIMS**

### *Class Members' Claims*

- 12.1 Upon the Effective Date, the Releasors shall be deemed to have, and by operation of the Approval Order shall have, released, waived, and discharged the Releasees from the Released Claims.

### *Total Satisfaction of Released Claims*

- 12.2 Any benefits offered or obtained pursuant to the Settlement Agreement are in full, complete, and total satisfaction of all of the Released Claims against the Releasees, the benefits are sufficient and adequate consideration for each and every term of this Release, and this Release shall be irrevocably binding upon Class Members who do not opt-out of the Settlement Class.

### *Release Not Conditioned on Claim or Payment*

- 12.3 The Release shall be effective with respect to all Class Members, regardless of whether those Class Members ultimately file a claim or receive compensation under this Settlement Agreement.

### *Basis for Entering Release*

- 12.4 Class Counsel acknowledge that they have conducted sufficient independent investigation to enter into this Settlement Agreement and that they execute this Settlement Agreement freely, voluntarily, and without being pressured or influenced by, or relying on any statements, representations, promises, or inducements made by the Releasees or any person or entity representing the Releasees, other than as set forth in this Settlement Agreement.

### *No Further Claims*

- 12.5 The Releasors shall not institute, continue, provide assistance for or maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any action, suit, cause of action, claim or demand against any Releasees, or against any other Person who may claim contribution or indemnity or other claims over relief from any

Releasees, in respect of any Released Claim, as the case may be. It is agreed that the Settlement may be pleaded as a complete defence to any such proceeding instituted by a Releasor.

- 12.6 Neither Class Counsel nor any member of their respective law firms may directly or indirectly participate, be involved in, or in any way assist with respect to any potential claim, claim made, or action commenced by, any Person which relates to or arises from the matters that were raised or could have been raised in the Litigation.

#### *Dismissal of Action*

- 12.7 Upon the Effective Date, the Action shall be dismissed with prejudice and without costs.

### **XIII. AGREEMENT TO COOPERATE TO EFFECTUATE SETTLEMENT**

- 13.1 Counsel for the Parties warrant and represent that they are expressly authorized by the Parties whom they represent to negotiate this Settlement Agreement. The person signing this Settlement Agreement on behalf of each Party warrants that he/she is authorized to sign this Settlement Agreement on behalf of that Party.
- 13.2 The Parties and their respective counsel will cooperate with each other, act in good faith, and use their best efforts to effect the implementation of the Settlement Agreement.
- 13.3 In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement Agreement, the Parties may seek the assistance of the Court to resolve such disagreement.
- 13.4 The Parties further agree to make all reasonable efforts to ensure the timely and expeditious administration and implementation of the Settlement Agreement and to minimize the costs and expenses incurred therein.

#### **XIV. CONDITIONS PRECEDENT**

- 14.1 This Settlement Agreement is conditional on the number of Class Members excluding themselves from the Settlement before the Opt-Out Deadline not exceeding the Confidential Opt-Out Threshold.
- 14.2 The Defendants may, at their sole discretion, waive the Conditions Precedent in paragraph 14.1 of the Settlement Agreement on notice to Class Counsel, which conditions are for the sole benefit of the Defendants.

#### **XV. EFFECTIVE DATE AND TERMINATION**

- 15.1 The Effective Date of the Settlement shall be the first Business Day after all of the following conditions have occurred:
- (a) the Defendants and Class Counsel execute this Agreement;
  - (b) Notice of Certification and the Settlement Approval Hearing is provided to the Class Members consistent with the order directing Notice;
  - (c) the Court enters the Approval Order, without material change to the Parties' agreed-upon proposed final approval order and judgment attached to this Settlement Agreement as Exhibit B;
  - (d) the Approval Order has become final because the Appeal Term has expired; and
  - (e) the Conditions Precedent have been satisfied or waived by the Defendants in accordance with section 14 of this Settlement Agreement.
- 15.2 In the event that the Court declines to enter the Approval Order, or the conditions in section 15.1 of this Settlement Agreement are not all satisfied, or where provided for, waived by the Defendants, the Defendants may at their sole discretion terminate this Agreement on five (5) Business Days written notice from counsel for the Defendants to Class Counsel.
- 15.3 In the event this Settlement Agreement is terminated pursuant to section 15.2, costs and fees incurred by the Claims Administrator in providing Notice of

Certification and the Settlement Approval Hearing in accordance with the Notice Plan will be paid by the Defendants.

- 15.4 Except as otherwise provided herein, in the event the Settlement is terminated pursuant to section 15.2 of this Settlement Agreement, the Parties, including Settlement Class Members, shall be deemed to have reverted to their respective status in the Campbell Action immediately prior to the execution of this Settlement Agreement and, except as otherwise expressly provided, the Parties shall proceed in all respects as if this Settlement Agreement had not been entered. In addition, the Parties agree that in the event the Settlement is terminated this Settlement Agreement shall become null and void.
- 15.5 Except as otherwise provided herein, in the event the Settlement is terminated pursuant to section 15.2 of this Settlement Agreement, a notice of the termination will be given to the Settlement Class. Class Counsel will cause the notice of termination, in a form approved by the Court, with costs to be borne by the Defendants, to be published and disseminated as the Court directs.
- 15.6 If this Settlement is terminated or otherwise fails to take effect for any reason, and notwithstanding sections 15.3 and 15.4 of this Settlement Agreement, the provisions of sections 15.3, 15.4, 15.5, 15.6, 17.6 and 17.11 of this Settlement Agreement shall survive and remain in full force and effect.

## **XVI. MODIFICATION OF THE AGREEMENT**

- 16.1 The terms and provisions of this Settlement Agreement may be amended, modified, or expanded by written agreement of the Parties and approval of the Court; provided, however, after entry of the Approval Order, the Parties may by written agreement effect such amendments, modifications, or expansions of this Settlement Agreement (including all exhibits hereto) without further notice to the Class or approval by the Court if such changes are consistent with the Court's Approval Order and do not limit the rights of Class Members under this Settlement Agreement.

## **XVII. MISCELLANEOUS PROVISIONS**

### *Effect of Exhibits*

- 17.1 The exhibits to this Settlement Agreement are an integral part of the Settlement and are expressly incorporated and made a part of this Settlement Agreement.

### *Recitals and Schedules*

- 17.2 The recitals to this Settlement Agreement, and the Schedules attached hereto, form part of this Settlement Agreement.

### *Governing Law*

- 17.3 The Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein.

### *Computation of Time*

- 17.4 Where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days. Only in the case where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.
- 17.5 In the event that any date or deadline set forth in this Settlement Agreement falls on a weekend or holiday, such a date or deadline shall be on the first business day thereafter.

### *No Admission*

- 17.6 This Settlement Agreement is for settlement purposes only. Neither the fact of, nor any provision contained in this Settlement Agreement, nor any action taken hereunder, shall constitute, or be construed as, any admission of the validity of any claim or any fact alleged in the Litigation or of any wrongdoing, fault, violation of law, or liability of any kind on the part of Capital One or any admissions by Capital One of any claim or allegation made in any action or proceeding against Capital One. If this Settlement Agreement is terminated and

becomes null and void, the class action portions of this Settlement shall have no further force and effect with respect to any party to the Litigation and shall not be offered in evidence or used in the Litigation or any other proceeding. This Settlement Agreement shall not be offered or be admissible in evidence against Capital One or cited or referred to in any action or proceeding, except in an action or proceeding brought to enforce its terms. Information provided by Capital One to the Plaintiff and Class Counsel in connection with settlement negotiations is for settlement purposes only and shall not be used or disclosed for any other purpose whatsoever.

#### *Entire Agreement*

- 17.7 This Settlement Agreement represents the entire agreement and understanding among the Settling Parties and supersedes all prior proposals, negotiations, agreements, and understandings relating to the subject matter of this Settlement Agreement. The Settling Parties acknowledge, stipulate, and agree that no covenant, obligation, condition, representation, warranty, inducement, negotiation, or understanding concerning any part or all of the subject matter of this Settlement Agreement has been made or relied on except as expressly set forth in this Settlement Agreement. No modification or waiver of any provisions of this Settlement Agreement shall in any event be effective unless the same shall be in writing and signed by the person against whom enforcement of the Settlement Agreement is sought.

#### *Counterparts*

- 17.8 This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original as against any party who has signed it, and all of which shall be deemed a single agreement.

#### *Arm's-Length Negotiations*

- 17.9 The Settling Parties have negotiated all of the terms and conditions of this Settlement Agreement at arm's length. All terms, conditions, and Exhibits in their exact form are material and necessary to this Settlement Agreement and have been relied upon by the Settling Parties in entering into this Settlement Agreement. All Settling Parties have participated in the drafting of this

Settlement Agreement and it is not to be construed in favor of or against any of the Settling Parties.

#### *Continuing Jurisdiction*

- 17.10 The Court shall retain continuing and exclusive jurisdiction over the Parties to this Settlement Agreement, including all Class Members, for the purpose of the administration, interpretation and enforcement of this Settlement Agreement.

#### *Confidentiality*

- 17.11 This Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions, and proceedings associated with this Settlement Agreement are to be kept confidential and not disclosed until the Settlement Agreement is filed with the Court on such date as the Parties may agree upon, except for the disclosure of information which is reasonably necessary for the claims administrator, for a bona fide accounting or tax purpose, or as may be required pursuant to the order or direction of any court, tribunal, regulatory authority or governmental body, or as may be required by law.

#### *Dispute Resolution*

- 17.12 Any dispute between Class Counsel and the Defendants regarding the interpretation of any provision of this Settlement Agreement (other than those which the Settlement Agreement provides shall be resolved otherwise) shall be presented to a mediator to be agreed upon by Class Counsel and the Defendants. If the matter cannot be resolved at mediation, the matter may be referred to the Court for determination.

#### *Binding Effect of Settlement Agreement*

- 17.13 This Settlement Agreement shall be binding upon and inure to the benefit of the Settling Parties and their representatives, Successors, and assigns.

#### *Material Term*

- 17.14 Without in any way limiting the ability of the Parties to assert that other terms in

this Settlement Agreement are material terms, the Releases contemplated in section 12 of this Settlement Agreement and the Conditions Precedent contemplated in section 14 of this Settlement Agreement shall be considered material terms of the Settlement Agreement and the failure of the Court to approve the Releases and/or Conditions Precedent shall give rise to a right of termination pursuant to Part XV of this Settlement Agreement.

#### *Nullification*

- 17.15 In the event any one or more of the provisions contained in this Settlement Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions if the Defendants and Class Counsel, on behalf of the Settling Parties, mutually elect to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Settlement Agreement.

#### *Extensions of Time*

- 17.16 The Settling Parties may agree upon a reasonable extension of time for deadlines and dates reflected in this Settlement Agreement, without further notice (subject to Court approval as to Court dates).

#### *Service or Notice*

- 17.17 Whenever, under the terms of this Settlement Agreement, a person is required to provide service or written notice to the Defendants or Class Counsel, such service or notice shall be directed to the individuals and addresses specified below, unless those individuals or their successors give notice to the other Settling Parties in writing:

For the Plaintiff and Class:

Charney Lawyers P.C.  
151 Bloor St W #604,  
Toronto, ON M5S 2C7

Theodore P. Charney  
Caleb Edwards

Tel: 416 964 7950 ext. 245

E-mail: [tcharney@charneylawyers.com](mailto:tcharney@charneylawyers.com)

For the Defendants:

Fasken Martineau DuMoulin LLP  
Bay Adelaide Centre, 333 Bay St. #2400,  
Toronto, ON M5H 2T6

550 Burrard St #2900,  
Vancouver, BC V6C 0A3

Laura F. Cooper  
Alex Cameron  
Vera Toppings

Tel: 416-865-5471  
E-mail: [lcooper@fasken.com](mailto:lcooper@fasken.com)

*Authority to Execute Settlement Agreement*

- 17.18 Each counsel or other person executing this Settlement Agreement or its exhibits on behalf of any party hereto warrants that such person has the authority to do so.

*[EXECUTION PAGE FOR A SETTLEMENT AGREEMENT BETWEEN THE PARTIES]*

IN WITNESS HEREOF, the Settling Parties have caused this Settlement Agreement to be executed, by their duly authorized lawyers, as of May 19, 2026.

On Behalf of the Defendants,  
Capital One Financial Corporation,  
Capital One, National Association, as successor-by-merger  
to Capital One Bank (U.S.A.), National Association,<sup>1</sup> and  
Capital One Bank (Canada Branch).

DocuSigned by:

*Laura Cooper*

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\_\_\_\_\_  
Laura F. Cooper

Fasken Martineau DuMoulin LLP

On Behalf of the Plaintiff, Duncan Campbell

Signed by:

*Theodore P. Charney*

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Theodore P. Charney  
Charney Lawyers PC

DocuSigned by:

*Kinda Garcha*

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Kinda Garcha

Dusevic & Garcha

<sup>1</sup> On October 1, 2022, Capital One Financial Corporation completed the merger of its wholly-owned subsidiary Capital One Bank (USA), National Association with and into Capital One, National Association, a wholly-owned subsidiary of Capital One, with Capital One, National Association as the surviving entity.

**EXHIBIT A**

No. S198617  
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

DUNCAN CAMPBELL

PLAINTIFF

AND:

CAPITAL ONE FINANCIAL CORPORATION, CAPITAL ONE BANK (USA), NATIONAL  
ASSOCIATION, AND CAPITAL ONE BANK (CANADA BRANCH)

DEFENDANTS

Brought pursuant to the *Class Proceedings Act*, RSCB 1996, c 50

**ORDER MADE AFTER APPLICATION  
(Certification and Notice)**

BEFORE THE HONOURABLE JUSTICE RAMSAY ) April XX, 2026

ON THE APPLICATION of the Plaintiff coming on for hearing in Vancouver, B.C. on [xx]  
and

ON BEING ADVISED that the parties have entered into a settlement agreement, subject  
to court approval;

AND UPON BEING ADVISED that the Parties consent to this Order, without any  
admission of liability by the Defendants;

AND UPON BEING ADVISED that Verita Global, LLC ("**Verita**") consents to being  
appointed as claims administrator and notice provider in accordance with the terms of this  
Order;

AND ON READING the materials filed, including the: (1) Settlement Agreement attached  
hereto as Schedule "1" (the "Settlement Agreement"); (2) [list to come]

AND UPON HEARING the submissions of counsel;

THIS COURT ORDERS that:

1. This Order incorporates herein, and makes a part hereof, the Settlement Agreement. Unless otherwise provided herein, the definitions set out in the Settlement Agreement apply to this Order. In the event of any conflict between the Settlement Agreement and this Order, this Order shall prevail;
2. Schedule B to the Settlement Agreement may be filed in redacted form;
3. At the Approval Hearing to be held on [date], this Court will decide:
  - a. whether to approve the Settlement Agreement as fair, reasonable and in the best interests of the Class Members;
  - b. whether to award an honorarium to the Plaintiff;
  - c. whether to approve the fee request of Class Counsel; and
  - d. any other matters as the Court may deem appropriate.
4. In the event that the Settlement Agreement is terminated in accordance with s. 15 thereof:
  - a. this Order shall be set aside, be of no further force or effect, and be without prejudice to any party, save for the provisions of this Order dealing with notice of certification and the collection of opt-outs;
  - b. the Settlement Agreement and all proceedings in connection therewith shall be null and void, except insofar as expressly provided in the Settlement Agreement, and without prejudice to the rights of the plaintiff and the Defendants;
  - c. the Settlement Agreement shall not be offered in evidence or used in the Litigation or any other proceeding and shall not be offered or be admissible in evidence against the Defendants or cited or referred to in any action or proceeding, except in an action or proceeding brought to enforce its terms;
  - d. a notice of the termination of the settlement will be given to the Settlement Class, and the Settlement Administrator will cause the notice of termination, in a form approved by the Court, with costs to be paid by the Defendants, to be published and disseminated as the Court directs; and

- e. each party to the within action shall be restored to his, her, or its respective position as it existed immediately prior to the execution of the Settlement Agreement.
- 5. This Order is without prejudice to the rights of the Defendants to terminate the Settlement Agreement as provided in ss. 14.1 and 15.2 of the Settlement Agreement;

**Notice**

- 6. Verita is hereby appointed as the Claims Administrator, with the duties and responsibilities as set out in the Settlement Agreement and in this Order;
- 7. The long form and short form Notices of Certification and the Settlement Approval Hearing substantially in the form attached hereto as Schedules "2" and "3", respectively, are hereby approved;
- 8. The Defendants shall make best efforts to provide the Claims Administrator with the names and last known email addresses of Settlement Class Members, as they can best be determined based on the Defendants' records, no later than fifteen (15) Business Days after the date on which this Order is entered;
- 9. Class Counsel shall provide the Claims Administrator with the Class Counsel registration data including names and last known email addresses of the Settlement Class Representative and any other Settlement Class Member who has reported identifying information to Class Counsel, no later than fifteen (15) Business Days after the date on which this Order is entered;
- 10. This Order is an order compelling the production of information to the Claims Administrator by the Defendants and Class Counsel within the meaning of applicable privacy laws, and satisfies the requirements of applicable privacy laws. The Defendants and Class Counsel are released from any and all obligations pursuant to applicable privacy laws in relation to the communication of any personal and/or private information to the Claims Administrator in accordance with the Settlement Agreement;
- 11. Any information received by the Claims Administrator in connection with the Settlement Agreement that pertains to a particular Class Member shall be confidential and shall not be disclosed by the Claims Administrator to any other Class Member;
- 12. The Claims Administrator and Class Counsel shall disseminate Notice of Certification and the Settlement Approval Hearing in accordance with the Notice Plan attached as Schedule "4" hereto;

13. The form and manner of notice as set out in the Notice Plan and approved herein, are the best notice practicable under the circumstances, constitute sufficient notice to all persons entitled to notice, and satisfy the requirements of notice under s. 19 of the *Class Proceedings Act*;

#### ***Claims Administrator***

14. The Claims Administrator shall be responsible for the following: (a) disseminating notice to the Class; (b) certifying by affidavit to the Court compliance with paragraphs 7 to 13 of this Order; (c) establishing a website for purposes of posting the Notice in English, the Settlement Agreement and related documents; (d) working with Class Counsel to create an opt-out form (the "Opt-Out Form"); (e) accepting and maintaining documents sent from Class Members, including receiving Opt-Out Forms and other documents relating to the settlement administration; (f) certifying by affidavit to the Court the number of requests to opt out within ten (10) days of the Opt-Out Deadline; and (h) all other responsibilities designated to the Claims Administrator in the Settlement Agreement;
15. The costs of the Claims Administrator in providing Notice of Certification and the Settlement Approval Hearing in accordance with the Notice Plan shall be paid by the Defendants in accordance with section 7.1 of the Settlement Agreement;
16. No person may bring any action or take any proceeding against the Claims Administrator or any of its employees, agents, partners, associates, representatives, in respect of the implementation of this Order or the administration of the Settlement Agreement, except with leave of this Court;

#### ***Opt-Outs and Objections***

17. Any Class Member who wishes to be excluded from the Class shall provide a completed Opt-Out Form to the Claims Administrator in hard copy or electronic copy, to be received on or before [date], which date will be inserted into the notice to be disseminated prior to publication;
18. All requests to opt-out shall include a complete Opt-Out Form;
19. Any person who validly opt outs of the Class shall be excluded from the Class, shall not be bound by the Settlement Agreement, shall have no rights with respect to the Settlement Agreement, and shall receive no payments as provided in the Settlement Agreement;

20. Any Class Member that does not provide a valid completed Opt-Out Form as set out in paragraphs 17 and 18 of this Order shall automatically be included in the Class.
21. Any Class Member who wishes to object to the Settlement shall deliver a written objection to the Claims Administrator no later than sixty (60) days after the Notice Date and the Claims Administrator shall file such written objections with the Court at least five (5) days before the date of the Approval Hearing;
22. All objections to the Settlement shall be made in writing and shall include the objector's name, a statement indicating the basis for the objector's belief that he, she or it is a Settlement Class Member, and the basis for the objection;
23. Unless otherwise ordered by this Court, an objection will not be considered by this Court at the Approval Hearing unless it complies with paragraphs 21 and 22 of this Order;

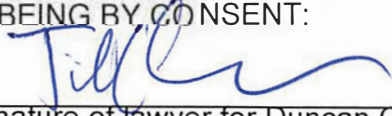
#### **No Admission of Liability**

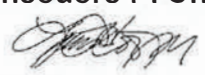
24. Nothing in this Order shall be deemed, construed, or interpreted to be an admission of any violation of any statute or law, or an admission of any wrongdoing or liability by the Defendants or any other Releasee, or an admission of the truth of any of the claims or allegations contained in this Action, its pleadings, or any other pleading filed in any other litigation; and

#### **Costs**

25. There will be no costs of this application.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND  
CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE  
AS BEING BY CONSENT:

  
\_\_\_\_\_  
Signature of lawyer for Duncan Campbell  
**Theodore P. Charney**

  
\_\_\_\_\_  
Signature of lawyer for Capital One Financial Corporation, Capital One Bank  
(USA), National Association, and the Capital One Bank (Canada Branch)  
**Laura Cooper**

By the Court

Registrar

\_\_\_\_\_

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

DUNCAN CAMPBELL

PLAINTIFF

AND:

CAPITAL ONE FINANCIAL CORPORATION, CAPITAL ONE BANK (USA), NATIONAL  
ASSOCIATION, AND CAPITAL ONE BANK (CANADA BRANCH)

DEFENDANTS

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**ORDER MADE AFTER APPLICATION**

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**CHARNEY LAWYERS**  
604-151 Bloor St W  
Toronto, ON M5S 2C7  
Telephone: (416) 964-7950  
Fax: (416) 964-7416

**EXHIBIT B**

No. S198617  
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

DUNCAN CAMPBELL

PLAINTIFF

AND:

CAPITAL ONE FINANCIAL CORPORATION, CAPITAL ONE BANK (USA), NATIONAL  
ASSOCIATION, AND CAPITAL ONE BANK (CANADA BRANCH)

DEFENDANTS

Brought pursuant to the *Class Proceedings Act*, RSCB 1996, c 50

**ORDER MADE AFTER APPLICATION  
(SETTLEMENT APPROVAL)**

BEFORE     THE HONOURABLE JUSTICE                      )     January XX, 2026  
                 Justice Ramsay

ON THE APPLICATION of the Plaintiff coming on for hearing in Vancouver, B.C. on [xx]  
for an Order approving the Settlement, the Legal Fees and Disbursements and the  
Honorarium; and

ON BEING ADVISED that the Parties have entered into a settlement agreement, subject  
to court approval;

AND BEING ADVISED that the Parties consent to this Order (except paragraphs 13 and  
14 regarding the approval of Legal Fees and Disbursements and the Honorarium, with  
respect to which the Defendants take no position), without any admission of liability by  
the Defendants;

AND ON READING the materials filed, including the (1) the Settlement Agreement  
attached hereto as Schedule "1" (the "**Settlement Agreement**"); (2) [list to come];

AND ON HEARING the submissions of counsel for the plaintiff and counsel for the Defendants, and reading the objections of those Class Members who submitted valid objections in writing, if applicable:

THIS COURT ORDERS that:

1. This Order incorporates herein, and makes a part hereof, the Settlement Agreement. Unless otherwise provided herein, the definitions set out in the Settlement Agreement apply to this Order. In the event of any conflict between the Settlement Agreement and this Order, this Order shall prevail;
2. The settlement of this class proceeding in accordance with the Settlement Agreement is fair, reasonable, and in the best interests of the Class and is hereby approved;
3. The Settlement Agreement shall be binding upon and inure to the benefit of the Settling Parties and their representatives, successors, and assigns;

#### **Notice of Order Approving the Settlement**

4. The Claims Administrator shall disseminate Notice of the Order Approving the Settlement, in the form attached as Schedule "1" hereto, via the Settlement Website;
5. Notice of the Order Approving the Settlement shall inform Class Members of when the Claims Period starts and ends, and shall encourage them to make claims;
6. All costs of Notice of the Order Approving the Settlement, including the fees and disbursements of the Claims Administrator, shall be paid from the Settlement Fund;

#### **Settlement Consideration**

7. The Defendants shall pay the amount of thirty-five million Canadian dollars (CAD\$ 35,000,000) (the "**Settlement Fund**") in consideration for the Releases provided for by the Settlement and for the dismissal of the Action with prejudice and without costs;
8. With the exception of the costs of providing Notice of Certification and the Settlement Approval Hearing in accordance with section 7 of the Settlement Agreement which shall be paid separately by the Defendants in accordance with section 7.1 of the Settlement Agreement, the Settlement Fund shall be all-inclusive and, without limiting the generality of the foregoing, shall be the sole source of monetary funds for the following:

- a. the Taxes and Tax-Related Expenses described in sections 2.8 and 2.9 of the Settlement Agreement;
  - b. the Legal Fees and Disbursements described in section 9 of the Settlement Agreement;
  - c. the Administrative Expenses for the Settlement administration described in section 8 of the Settlement Agreement;
  - d. the Honorarium described in section 10 of the Settlement Agreement; and
  - e. the claims, which will be paid out of the balance of the Settlement Fund remaining upon paying the amounts set out in sections 2.4(a) to (d) of the Settlement Agreement (the “**Net Settlement Fund**”).
9. The Defendants shall pay the Settlement Fund no more than ten (10) Business Days after the Effective Date as follows:
  - a. the Settlement Fund, less court-approved Legal Fees and Disbursements, and applicable taxes on Legal Fees and Disbursements, and any court-approved Honorarium, will be paid to the Claims Administrator to be held in the Escrow Account; and
  - b. court-approved Legal Fees and Disbursements, and applicable taxes on Legal Fees and Disbursements, and any court-approved Honorarium will be paid to Charney Lawyers PC by wire transfer.
10. The Claims Administrator, subject to such supervision and direction of the Court and/or counsel as may be necessary or as circumstances may require, shall administer and/or oversee distribution of the Net Settlement Fund in accordance with sections 3-6 of the Settlement Agreement;
11. The Claims Administrator shall be responsible for filing tax returns and any other tax reporting for or in respect of interest (or other income or gains) earned on the Settlement Fund and paying from the Settlement Fund any Taxes and Tax-Related Expenses owed with respect to the Settlement Fund;
12. The Plaintiff and each Settlement Class Member shall be solely responsible for the tax consequences to him, her, or it of the receipt of funds from the Settlement Fund pursuant to this Agreement;

13. The Defendants and their counsel shall not have any responsibility for or liability whatsoever with respect to: (i) any act, omission, or determination of Class Counsel, the Claims Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement or otherwise; (ii) the management, investment, or distribution of the Settlement Fund; (iii) the formulation, design, or terms of the disbursement of the Settlement Fund; (iv) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by, or fluctuations in the value of the Settlement Fund; or (vi) the payment or withholding of any Taxes and Tax-Related Expenses incurred in connection with the taxation of the Settlement Fund or the filing of any returns;
14. The Plaintiff and Class Counsel shall not have any liability whatsoever with respect to: (i) any act, omission or determination of the Claims Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement or otherwise; (ii) the management, investment, or distribution of the Settlement Fund; (iii) the formulation, design, or terms of the disbursement of the Settlement Fund; (iv) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by, or fluctuations in the value of the Settlement Fund; or (vi) the payment or withholding of any Taxes and Tax-Related Expenses incurred in connection with the taxation of the Settlement Fund or the filing of any returns;

### **Released Claims**

15. The Plaintiffs and each Class Member release, waive and forever discharge the Releasees from the Released Claims;
16. Any benefits offered or obtained pursuant to the Settlement Agreement are in full, complete, and total satisfaction of all of the Released Claims against the Releasees, the benefits are sufficient and adequate consideration for each and every term of this Release, and this Release shall be irrevocably binding upon Class Members who do not opt-out of the Settlement Class;
17. If a Class Member does not submit a Claim during the Claims Period, the Class Member shall be forever barred from participating in the Settlement Fund but shall, in all other respects, be bound by terms of this Order;
18. The Releasors shall not institute, continue, provide assistance for or maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any action, suit, cause of action, claim or demand against any Releasees, or against any other Person who may claim

contribution or indemnity or other claims over relief from any Releasees, in respect of any Released Claim, as the case may be;

19. Neither Class Counsel nor any member of their respective law firms may directly or indirectly participate, be involved in, or in any way assist with respect to any potential claim, claim made, or action commenced by, any Person which relates to or arises from the matters that were raised or could have been raised in the Litigation;
20. The Release shall be effective with respect to all Class Members, regardless of whether those Class Members ultimately file a claim or receive compensation under the Settlement Agreement;

### **Legal Fees and Disbursements and Honorarium**

21. A Class Counsel fee is hereby approved in the amount of [xx] million, plus disbursements of \$[xxx], plus taxes of \$[xxx];
22. The representative plaintiff, Duncan Campbell, shall be paid an honorarium of \$5,000 in accordance with the Settlement Agreement;

### **Administration**

23. Class Counsel, the Defendants and/or the Claims Administrator may make a motion to the Court for directions necessary to administer the settlement of this Action;
24. No person may bring any action or take any proceeding against the Claims Administrator or any of its employees, agents, partners, associates, representatives, in respect of the implementation of this Order or the administration of the Settlement Agreement, except with leave of this Court;
25. The Parties may, without further notice to the Settlement Class or further Order of the Court, amend, modify or expand the terms and provisions of the Settlement Agreement by written agreement provided any such changes are consistent with this Order and do not limit the rights of Settlement Class Members under the Settlement Agreement;

### **No Admission of Liability**

26. Neither the fact of, nor any provision contained in the Settlement Agreement, nor any action taken in implementing the Settlement Agreement, shall constitute, or be construed as, any admission of the validity of any claim or any fact alleged in the

litigation or of any wrongdoing, fault, violation of law, or liability of any kind on the part of Capital One or any admissions by Capital One of any claim or allegation made in any action or proceeding against Capital One; and

## **Dismissal**

27. The Action is hereby dismissed, with prejudice and without costs.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

---

Signature of lawyer for Duncan Campbell  
**Theodore P. Charney**

---

Signature of lawyer for Capital One Financial Corporation, Capital One Bank (USA), National Association, and the Capital One Bank (Canada Branch)  
**Laura Cooper**

By the Court

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Registrar

No. S198617  
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

DUNCAN CAMPBELL

PLAINTIFF

AND:

CAPITAL ONE FINANCIAL CORPORATION, CAPITAL ONE BANK (USA), NATIONAL  
ASSOCIATION, AND CAPITAL ONE BANK (CANADA BRANCH)

DEFENDANTS

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**ORDER MADE AFTER APPLICATION**

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**CHARNEY LAWYERS**  
604-151 Bloor St W  
Toronto, ON M5S 2C7  
Telephone: (416) 964-7950  
Fax: (416) 964-7416

## EXHIBIT C

### NOTICE PLAN NOTICE OF CERTIFICATION AND THE SETTLEMENT APPROVAL HEARING

#### ***General***

1. Unless otherwise provided herein, capitalized terms in this Notice Plan have the meanings ascribed to them in the Settlement Agreement.

#### ***Class Member Information***

2. The Defendants shall make best efforts to provide the Claims Administrator with the following information within fifteen (15) days of the Order approving Notice of Certification and the Settlement Approval Hearing (the “**Notice Order**”) being granted: (a) the names of all Class Members; and (b) any last known email addresses of Class Members (the “**Defendant Class Members List**”).
3. Class Counsel shall, within fifteen (15) days of the Notice Order, provide to the Claims Administrator the Class Counsel registration data, including the names and last known email addresses of the Plaintiff and any other Class Member who reported identifying information to Class Counsel (together with the Defendant Class Member List, the “**Class Member List**”).

#### ***Dissemination of Notice***

4. Within ten (10) days of receiving the Class Member List, the Claims Administrator shall cause the short form Notice of Certification and the Settlement Approval Hearing, attached as Exhibit A to the Notice Order (the “**Short Form Notice**”), to be sent in English via direct email to all Class Members with available email addresses.
5. Within five (5) days of the Notice Order being granted, Class Counsel shall place a copy of the long form Notice of Certification and the Settlement Approval Hearing, attached as Exhibit B to the Notice Order (the “**Long Form Notice**”), on the website: <https://www.charneylawyers.com/capital-one-privacy-breach-class-action/>.
6. Within five (5) days of the Notice Order being granted, the Claims Administrator shall place a copy of the Long Form Notice on the Settlement Website.
7. Within thirty (30) days of the Notice Order being granted, the Claims Administrator shall cause the Short Form Notice to be published in a 1/8th page advertisement with each of the following newspapers on at least one occasion: (a) National Post; and (b) Globe and Mail.
8. Within ten (10) days of the Opt-Out Deadline, the Claims Administrator shall file with the Court an affidavit(s): (a) confirming the publication and delivery of the Notice of Certification and the Settlement Approval Hearing in accordance with this

Notice Plan and the Notice Order; and (b) identifying each Class Member who delivered a valid opt-out form by the Opt-Out Deadline.

***Costs of Providing Notice***

9. The Defendants shall pay the costs of providing notice to the Class in accordance with this Notice Plan.

## NOTICE PLAN – EXHIBIT A

### SHORT FORM NOTICE OF CERTIFICATION OF CAPITAL ONE DATA BREACH CLASS ACTION AND SETTLEMENT APPROVAL HEARING

**PLEASE READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR LEGAL RIGHTS.**

**NOTICE TO ALL CLASS MEMBERS:** If you are a Canadian resident outside of Québec who applied for or was issued a Capital One credit card and you received a letter from Capital One notifying you that your information may have been subject to unauthorized access in the Data Breach (described below), you are a **“Class Member”**.

This notice concerns the certification and the proposed settlement (the **“Settlement”**) of a class action lawsuit against Capital One Financial Corporation, Capital One Bank (USA), National Association and Capital One Bank (Canada Branch) (collectively, **“Capital One”**). The lawsuit arises from an incident involving unauthorized access by an outside individual to certain types of personal and other information of Capital One credit card applicants and Capital One customers located in Canada (the **“Data Breach”**). Capital One denies that it violated any laws and denies that it engaged in any wrongdoing. On June 3, 2022, the British Columbia court certified this action as a class proceeding. The parties have now reached a settlement, which is subject to court approval.

**This Notice addresses both the certification of the class action and the proposed settlement, and explains your rights, including your right to opt out. This Notice outlines the Settlement’s key terms, including benefits to Class Members, and the rights and obligations of all parties. If there is any conflict between this Notice and the Settlement Agreement, which is also accessible at [www.capitalone2019classaction.ca](http://www.capitalone2019classaction.ca), the Settlement Agreement governs. Terms that are defined in the Settlement Agreement have the same meaning in this Notice.**

**CERTIFICATION:** A class action was commenced in the Supreme Court of British Columbia seeking damages on behalf of Class Members relating to the Data Breach. This Notice is to inform you that the Supreme Court of British Columbia **certified this proceeding as a class action** on June 3, 2022.

**RIGHT TO OPT OUT:** If you wish to be excluded from this class action and not be bound by any order or settlement, you must complete the **Opt-Out Form** available at [www.capitalone2019classaction.ca](http://www.capitalone2019classaction.ca). If your opt-out form is not received by **[insert date]**, you will be a member of the class and bound by the settlement (if it is approved).

**PROPOSED SETTLEMENT:** The parties have entered into the Settlement Agreement. Capital One does not admit and denies any wrongdoing or liability. In order for the Settlement to become effective, it must be approved by the British Columbia Supreme Court (the **“Court”**). If the Court approves the Settlement Agreement, Capital One will pay \$35,000,000 (thirty-five million dollars), hereafter the **“Settlement Fund”**, to, among other things, settle the claims of the Class Members, to pay the Legal Fees and Disbursements and to pay the Administrative Expenses for Settlement administration, in return for a release of all claims made or that could have been made in the class action and a dismissal of the class action.

**COMPENSATION FOR CLASS MEMBERS:** In order to claim compensation in the settlement, Class Members must submit Claim Forms to the Claims Administrator, who will determine the amounts to be distributed to Class Members from the Settlement Fund, in full and final settlement of their claims. The amount remaining from the Settlement Fund, after deductions for Legal Fees and Disbursements and taxes thereon, Administrative Expenses for settlement administration, and any honorarium for the named Plaintiff (the **“Net Settlement Fund”**), shall be available for claims made in the following three categories:

- (a) **“Category A” claims for Out-of-Pocket Costs:** Class members may claim for out-of-pocket costs which are fairly traceable to the Data Breach including preventative measures (obtaining credit monitoring services, insurance or credit freezes) and unreimbursed losses related to identity theft, falsified tax returns, or other alleged wrongdoing. Each Class Member who submits a Claim Form for valid Out-of-Pocket Costs (as determined by the Claims Administrator) shall receive a payment for their valid Out-of-Pocket Costs to a maximum of \$25,000.00.
- (b) **“Category B” claims for Wasted Time and Inconvenience:** Class members may claim the amount of \$25 per hour for each hour spent responding to the Data Breach, not to exceed 5 hours or \$125 for class members whose SIN was not compromised in the Data Breach (**“Non-SIN Members”**), and up to 8 hours or \$200 for class members whose

## NOTICE PLAN – EXHIBIT A

SIN was compromised in the Data Breach (“**SIN Members**”). All class members who make valid Category B claims will be eligible to receive a “top-up” payment for wasted time and inconvenience of \$75 (bringing the maximum payable under Category B for Non-SIN Members to \$200 and for SIN Members to \$275; and

- (c) “**Category C**” claims for **Annual Credit Card Fees**: All Annual Fee Class Members (as defined in the settlement agreement) shall be eligible to receive an amount of up to \$50 upon submission of a valid claim.

**You cannot make a Claim until after the Settlement is approved.** You should monitor the Settlement Website and check it regularly at [www.capitalone2019classaction.ca](http://www.capitalone2019classaction.ca) for the latest information on the status of the Settlement and the details and deadline for making claims. **Once the claims period opens, you will have six months to make a claim.** Deadlines and relevant dates will be posted on the website once they are known.

### SETTLEMENT APPROVAL HEARING

The British Columbia Supreme Court will hold a settlement approval hearing at the courthouse at 800 Smithe Street, Vancouver, British Columbia on **[insert date]** to consider whether the proposed settlement is fair, reasonable and in the best interests of the Class (the “**Approval Hearing**”). Class Members and members of the public may attend virtually but are not required to do so. The details on how to attend remotely will be posted to [www.capitalone2019classaction.ca](http://www.capitalone2019classaction.ca).

As a Class Member, you are entitled, but not obligated, to express your opinions about the proposed settlement and whether it should be approved. If you wish to make a submission to the Court supporting or objecting to the proposed settlement, you must send your submissions in writing by email to the Claims Administrator, at [info@capitalone2019classaction.com](mailto:info@capitalone2019classaction.com) and ensure they are received no later than **[insert deadline]**. The Claims Administrator will provide all submissions to the Court, Class Counsel, and Capital One in advance of the Approval Hearing. Your written submissions should include:

- your name, address and telephone number;
- a brief statement indicating the basis for your belief that you are a Class Member;
- a brief statement of the reasons that you support or oppose the proposed settlement terms; and
- whether you plan to attend the Approval Hearing in person or virtually.

For further information regarding the Settlement Approval Hearing, please contact the Claims Administrator at [info@capitalone2019classaction.com](mailto:info@capitalone2019classaction.com).

### ADMINISTRATION COSTS AND LEGAL FEES

The Plaintiff entered into a contingency fee agreement with Class Counsel which provided that Class Counsel are to be paid only in the event of a successful settlement or judgment. Class Counsel will be asking that the Court approve legal fees of 25% of the Settlement Fund, plus disbursements and applicable taxes, in accordance with the contingency fee agreement. Class Counsel will also be asking that the Court approve an honorarium of \$5,000 to be awarded to the named Plaintiff in recognition of their role in this litigation.

**FOR FURTHER INFORMATION:** For questions regarding this Notice or the proposed Settlement, please contact Class Counsel by email as follows:

**Kateryna Galts**

**Charney Lawyers PC**

151 Bloor St. W., Suite 604

Toronto, ON M5S 1S4

Email: [info@charneylawyers.com](mailto:info@charneylawyers.com)

**Please note, due to the volume of inquiries, it may take up to five business days to receive a response. Please do not contact Capital One or the Court about this action.**

## **NOTICE PLAN – EXHIBIT A**

### **INTERPRETATION**

This Notice has been approved by the Court and contains a summary of some of the terms of the proposed settlement. If there is a conflict between the provisions of this Notice and the Settlement Agreement, the Settlement Agreement shall prevail.

## NOTICE PLAN - EXHIBIT B

### LONG FORM NOTICE OF CERTIFICATION OF CAPITAL ONE DATA BREACH CLASS ACTION AND SETTLEMENT APPROVAL HEARING

**PLEASE READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR LEGAL RIGHTS.**

**NOTICE TO ALL CLASS MEMBERS:** If you are a Canadian resident outside of Québec who applied for or was issued a Capital One credit card and you received a letter from Capital One notifying you that your information may have been subject to unauthorized access in the Data Breach (described below), you are a **“Class Member”**.

**CERTIFICATION:** A class action was commenced in the Supreme Court of British Columbia against Capital One Financial Corporation, Capital One Bank (USA), National Association and Capital One Bank (Canada Branch) (collectively, **“Capital One”**) seeking damages on behalf of Class Members in relation to a 2019 incident involving unauthorized access by an outside individual to certain types of personal and other information of Capital One credit card applicants and Capital One customers located in Canada (the **“Data Breach”**). This Notice is to inform you that the Supreme Court of British Columbia (the **“Court”**) **certified this proceeding as a class action** on June 3, 2022, and that the parties have entered into a proposed settlement as described below.

**PROPOSED SETTLEMENT:** The parties have entered into a settlement agreement (the **“Settlement Agreement”**) which is subject to court approval. Capital One does not admit and denies any wrongdoing or liability. The proposed Settlement will not become final unless and until it is approved by the Court following a settlement approval hearing to be held on **[insert date]** at the courthouse at 800 Smithe Street, Vancouver, British Columbia. You may attend the virtual settlement approval hearing but are not required to do so. Please check [www.capitalone2019classaction.ca](http://www.capitalone2019classaction.ca) for additional information, including how to attend the virtual settlement approval hearing.

**This Notice addresses both the certification of the class action and the proposed settlement, and explains your rights, including your right to opt out. This Notice summarizes the Settlement’s key terms, including benefits to Class Members, and the rights and obligations of all parties. If there is any conflict between this Notice and the Settlement Agreement, which is also accessible on the Settlement Website, the Settlement Agreement governs. Terms that are defined in the Settlement Agreement have the same meaning in this Notice.**

**You must now decide** whether you want to remain a member of the **certified class action** or whether you wish to exclude yourself by opting out and thereby preserve your right to individually sue Capital One for claims related to the Data Breach. If you decide to be part of the class action then you are part of the proposed Settlement, and if the Court approves the proposed Settlement, you will be entitled to the benefits described below. However, you will give up any right you may have, now or in the future, to sue Capital One for claims related to the Data Breach. If you decide to exclude yourself by “opting out” of the class action you will not be entitled to the benefits of the Settlement, but you will retain your right to sue Capital One for claims related to the Data Breach. Please read this Notice carefully before you make your decision. If you have any questions, please contact Class Counsel, identified below, or visit [www.capitalone2019classaction.ca](http://www.capitalone2019classaction.ca).

**RIGHT TO OPT OUT:** If you wish to be excluded from this class action, you must complete the **Opt-Out Form** (available at [www.capitalone2019classaction.ca](http://www.capitalone2019classaction.ca)) If your opt-out form is not received by **[insert date]**, you will be a member of the class and bound by the settlement (if it is approved).

#### **SUMMARY OF SETTLEMENT BENEFITS**

If the Court approves the Settlement Agreement, Capital One will pay \$35,000,000 (thirty-five million dollars), hereafter the **“Settlement Fund”**, to, among other things, settle the claims of the Class Members, pay the Legal Fees and Disbursements and pay the Administrative Expenses for Settlement administration, in exchange for a release of all claims made or that could have been made in the class action and a dismissal of the class action.

## NOTICE PLAN - EXHIBIT B

Class Members shall submit Claim Forms to the Claims Administrator, who will determine the amounts to be distributed to Class Members from the Settlement Fund, in full and final settlement of their claims. The amount remaining from the Settlement Fund, after deductions for Legal Fees and Disbursements and taxes thereon, Administrative Expenses for Settlement administration, and any honorarium for the named Plaintiff (the “**Net Settlement Fund**”), shall be available to fund claims made in the following three categories:

- (a) “**Category A**” claims for **Out-of-Pocket Costs**: Class Members may claim for out-of-pocket costs which are fairly traceable to the Data Breach including preventative measures (such as obtaining credit monitoring services, insurance or credit freezes) and unreimbursed losses related to identity theft, falsified tax returns, or other alleged wrongdoing. Each Class Member who submits a Claim Form for valid Out-of-Pocket Costs (as determined by the Claims Administrator) shall receive a payment for their valid Out-of-Pocket Costs to a maximum of \$25,000.00.
- (b) “**Category B**” claims for **Wasted Time and Inconvenience**: Class Members may claim the amount of \$25 per hour for each hour spent responding to the Data Breach, up to 5 hours or \$125 for class members whose SIN was not compromised in the Data Breach (“**Non-SIN Members**”), and up to 8 hours or \$200 for class members whose SIN was compromised in the Data Breach (“**SIN Members**”). All class members who make valid Category B claims will be eligible to receive a “top up” payment for wasted time and inconvenience of \$75 (bringing the maximum payable under Category B for Non-SIN Members to \$200 and for SIN Members to \$275); and
- (c) “**Category C**” claims for **Annual Credit Card Fees**: All Annual Fee Class Members (as defined in the Settlement Agreement) shall be eligible to receive an amount of up to \$50 upon submission of a valid claim.

You cannot make a claim until after the Settlement is approved and the claims period begins. You should monitor the Settlement Website and check it regularly at [www.capitalone2019classaction.ca](http://www.capitalone2019classaction.ca) for the latest information on the status of the Settlement and the details and deadline for making a claim. The claims period commencement date is described later in this notice.

Other limitations and qualifications may apply. Please consult the “Understanding the Settlement” section below or contact a lawyer or Class Counsel if you have questions.

### WHAT MUST YOU DO NOW

You must decide now if you want to be part of the proposed Class, so that if the Court approves the Settlement you can take advantage of the benefits described above, or whether you want to exclude yourself by “opting out” from the Class and retain your right to sue Capital One for claims related to the Data Breach. If you do not exclude yourself by “opting out”, you can still file an objection to the proposed Settlement. Your options, and how to exercise them, are described below.

| YOUR OPTIONS IN THIS SETTLEMENT AND HOW TO EXERCISE THEM   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                            |
|------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|
| I want to be part of the class and the proposed Settlement | You do not need to do anything right now, but you must make a claim under the Settlement once it is approved. If the Court approves the Settlement, you will be eligible to claim benefits through the procedures described below. However, you will give up your individual right to sue Capital One for claims related to the Data Breach. If the Court does not approve the settlement, then you will continue to be a class member and the action will continue to proceed to trial.                                                                                                                                                                                                                                                                                                                                                                        | No deadline                |
| I want to exclude myself from this Settlement              | If you do not want to be part of the class action or the Settlement, you can opt out by completing the Opt-Out Form, which is available at <a href="http://www.capitalone2019classaction.ca">www.capitalone2019classaction.ca</a> . You must send a copy of the completed Opt-Out Form electronically to <a href="http://www.capitalone2019classaction.ca">www.capitalone2019classaction.ca</a> or by email to <a href="mailto:info@capitalone2019classaction.com">info@capitalone2019classaction.com</a> . Your request must be sent via email no later than the deadline. If you choose to exclude yourself, you will not be entitled to any of the Settlement benefits, but you will keep your individual right to sue Capital One for claims related to the Data Breach. See <b>Question 10</b> below for additional details regarding the Opt-Out Process. | Deadline:<br>[insert date] |

## NOTICE PLAN - EXHIBIT B

|                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                     |                         |
|-----------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|
| I want to object or comment on the Settlement | The process you must follow for filing and serving objections is described below in the “Understanding the Settlement” section. You may also ask to speak in Court at the settlement approval hearing about the proposed Settlement if you file a timely objection and submit a timely notice of your intention to appear at the settlement approval hearing. Instructions are below in the “Understanding the Settlement” section. | Deadline: [insert date] |
|-----------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|

### UNDERSTANDING THE SETTLEMENT AND YOUR RIGHT TO OPT OUT OF THE CLASS

#### I. Basic Questions

##### 1. Why am I getting this Notice?

The Court authorized this Notice because this action was certified as a class action on June 3, 2022, and has settled subject to court approval. If you fall within the definition at the beginning of this form, you are a Class Member unless you exercise your right to opt out of the class action. If you opt out of the class action you reserve your right to sue Capital One for claims relating to the Data Breach but you will not receive the benefits of the proposed Settlement. The Notice explains the proposed Settlement and your right to opt out of the class action, and helps you understand all of your options before the Court decides whether or not to approve the Settlement.

Your receipt of Settlement benefits, including cash payments, depends on the Court’s final approval of the Settlement and the resolution of any appeals in favor of approval of the Settlement.

Please be patient and check the Settlement Website at [www.capitalone2019classaction.ca](http://www.capitalone2019classaction.ca) regularly. If you require any additional information regarding the proposed Settlement, please contact your lawyer or Class Counsel. Do not contact Capital One or the Court regarding the details of this Settlement.

##### 2. What is this lawsuit about?

This certified class action and proposed settlement resolves litigation against Capital One, alleging that Capital One experienced a data breach between March 12 and April 21, 2019 because they had inadequate data security measures in place to protect credit card holders’ personal information. The Plaintiff claims that he and other class members were injured as a result. Capital One denies that it has violated any law or engaged in any wrongdoing, and believes it has meritorious defenses to all of the claims raised in this litigation. The parties have agreed to resolve these matters before these issues are decided by the Court.

You can read the Amended Notice of Civil Claim by visiting [www.capitalone2019classaction.ca](http://www.capitalone2019classaction.ca).

##### 3. Why is there a Settlement?

A settlement is an agreement between a plaintiff (or multiple plaintiffs) and a defendant (or multiple defendants) to resolve a lawsuit. Settlements end all or part of a lawsuit without a trial and without the court or a jury ruling in favor of either side. All parties in the lawsuit agree to a settlement to avoid the cost and risk of further litigation, including a potential trial, and to afford class members benefits in exchange for releasing the defendant from liability. This proposed Settlement does not mean that Capital One broke any laws or did anything wrong, and the Court did not decide which side was right.

##### 4. How was this Settlement reached?

The Plaintiff and Capital One reached this Settlement after extensive arms-length negotiations regarding the substance and procedure of a possible national class action settlement excluding Quebec residents.

##### 5. What options do I have now?

You may exclude yourself from the Settlement by “opting out” of this class action. If you intend to remain in the class action, you may write to object to the Settlement, or you may do nothing.

Please consult the table on **page 2** on how to exercise each option, as well as the time by which you must do so.

## NOTICE PLAN - EXHIBIT B

### 6. What is a class action?

A class action is a representative action or lawsuit in which one or more plaintiffs (also called “representative plaintiffs”) sue a defendant(s) on behalf of other, unnamed people with similar claims. All of these people together are the “Class” or “Class Members.” If the Court certifies the proceeding as a class action, then the matter will go forward to trial unless it settles.

### 7. What am I giving up in exchange for receiving the Settlement’s benefits?

If the Settlement becomes final and you have not opted out, you will be eligible for the benefits described in this Notice. In exchange for having those benefits available to you, you will give up your right to sue Capital One for claims related to the Data Breach.

## II. Who is in the Settlement?

### 8. How do I know if I am part of the Settlement?

You are a Class Member if you are a Canadian resident who applied for or was issued a Capital One credit card and you received a letter from Capital One notifying you that your information may have been subject to unauthorized access in the Data Breach. If Capital One notified you that your Social Insurance Number (“**SIN**”) was breached, you are a “**SIN Class Member**”. If Capital One did not notify you that your SIN was breached, you are a “**Non-SIN Class Member**”. If you paid an annual credit card fee to Capital One during the period July 31, 2013 to July 31, 2019, you are an “**Annual Fee Class Member**”.

## III. Understanding the Settlement

### 9. When will the Settlement get finally approved?

The Court has set a date of [insert date] for the Approval Hearing. The hearing will take place at 800 Smithe Street, Vancouver, British Columbia. At the hearing, the Court will consider arguments and evidence as to whether the Settlement is fair, reasonable, and in the best interest of the Class Members and whether Class Counsel’s fees, disbursements and taxes and the plaintiff’s proposed honorarium should be approved. We anticipate that the Court will decide whether to approve the Settlement at the Approval Hearing or soon after. You should monitor the Settlement Website for the latest information on the status of the Settlement.

### 10. What if I do not want to participate in the settlement?

If you do not want to participate in the Settlement, then you must opt out of the class action by completing the Opt-Out Form, which is available at [www.capitalone2019classaction.ca](http://www.capitalone2019classaction.ca) and send it back to the Claims Administrator.

You must send your completed Opt-Out Form electronically to [www.capitalone2019classaction.ca](http://www.capitalone2019classaction.ca) or via email to [info@capitalone2019classaction.com](mailto:info@capitalone2019classaction.com) no later than [insert date].

### 11. If I am part of the Settlement, can I sue Capital One for the same claims later?

No. Unless you opt out of the class action, you give up the right to sue Capital One for any claims relating to the Data Breach.

### 12. If I am not part of the Settlement, can I still get the benefits from the Settlement?

No. If you elect to opt out of the class action, you will not be entitled to any benefits under the Settlement.

### 13. If I opt out and pursue my own case, can I get a larger recovery?

If you opt out of the class action, you can sue Capital One individually in relation to the Data Breach. However, you

## NOTICE PLAN - EXHIBIT B

would not be guaranteed a larger recovery and may ultimately receive less than the benefits provided for under the Settlement. No result can be predicted with certainty, and all alternative legal actions take additional time and may be subject to offsets or deductions for lawyers' fees and costs. This Settlement is designed to provide benefits that are certain, not subject to the delay and risk of trial and appeal, and not reduced by fees or costs.

### 14. Do I have a lawyer in this case?

Yes. The Court appointed Charney Lawyers PC and Dusevic & Garcha as Class Counsel to represent you and the other Class Members.

Charney Lawyers PC  
150 Bloor Street West, Suite 604  
Toronto, ON M5S 1S4  
Phone: (416) 964-7950  
e-mail: [info@charneylawyers.com](mailto:info@charneylawyers.com)

Dusevic & Garcha,  
#210-4603 Kingsway,  
Burnaby, BC V5H 4M4

If you want to be represented by your own lawyer, you may hire one at your expense.

### 15. Who will pay the lawyers?

Class Counsel will be asking that the Court approve legal fees of 25% of \$35,000,000, plus disbursements and applicable taxes, in accordance with the contingency fee agreement.

Class Counsel will also be asking that the Court approve an honorarium of \$5,000 to be awarded to the named Plaintiff in recognition of the role he played as representative plaintiff in this litigation.

### 16. Can I tell the Court if I object to the settlement?

If you do not opt out of the class action, you are a Class Member and you (or your lawyer) may object in writing to the proposed Settlement. The Court will consider your views. If you wish to make a written submission to the Court indicating you are in favour of the Settlement or objecting to the Settlement you must send your submission in writing by email to the Claim Administrator at [info@capitalone2019classaction.com](mailto:info@capitalone2019classaction.com) and ensure they are received no later than [insert date]. The Claims Administrator will provide all submissions to the Court, Class Counsel, and Capital One in advance of the Approval Hearing. Your written submissions should include:

- your name, address, and telephone number;
- a brief statement indicating the basis for your belief that you are a Class Member;
- a brief statement of the reasons that you support or oppose the proposed settlement terms; and
- whether you plan to attend the settlement approval hearing

### 17. What is the difference between objecting to the Settlement and opting out of the class action ?

You can object to the settlement only if you participate in the class action. If you opt out of the class action, you thereby elect not to be part of the Settlement. You have no right to object to the Settlement because the case no longer affects you.

### 18. Do I have to attend the Settlement Approval Hearing?

No. Class Counsel will answer any questions the Court may have. You are welcome to attend at your own expense. If you timely file an objection, you do not have to come to Court to talk about it. As long as you submitted your written objection on time, the Court will consider it. You may also have your own lawyer attend at your expense, but it is not required.

## NOTICE PLAN - EXHIBIT B

### 19. How do I get more information?

This Long Form Class Notice summarizes the proposed Settlement. More details, including a copy of the Settlement Agreement, are available at [www.capitalone2019classaction.ca](http://www.capitalone2019classaction.ca). For more information you can contact the claims administrator.

You may also contact Class Counsel by email at:

**Kateryna Galts**  
**Charney Lawyers PC**  
150 Bloor Street West, Suite 604  
Toronto, ON M5S 1S4  
e-mail: [info@charneylawyers.com](mailto:info@charneylawyers.com)

If you contact Class Counsel it may take up to five business days to receive a response depending on the volume of calls. You may also contact the Claims Administrator by email at [info@capitalone2019classaction.com](mailto:info@capitalone2019classaction.com) or by phone at 888-808-9672 (toll free).

## IV. Details of Settlement Benefits

### 20. What benefits does the Settlement Provide?

As discussed above, the Settlement provides the following benefits to Class Members:

- A. **Category A Claims:** Cash reimbursement for valid out-of-pocket costs up to a maximum of \$25,000.00.
- B. **Category B Claims:** Cash payment for wasted time and inconvenience at \$25/hour up to a maximum of 5 hours for Non-SIN Members and 8 hours for SIN Members, plus a \$75 top-up payment for Non-SIN and SIN Members ; and
- C. **Category C Claims:** Refunds for annual credit card fee payments of up to \$50 for all annual credit card fee members.

You may claim in any and every category for which you qualify.

### 21. How do I submit a Category A Claim for Reimbursement of Out-of-Pocket Costs?

You may request payment of Out-of-Pocket Costs by claiming them on the Claim Form you submit (either in paper form or on the Settlement Website) to the Claims Administrator accompanied by an attestation for the Out-of-Pocket Costs incurred, and documentation of the Out-of-Pocket Costs which should naturally exist and have been retained or are readily obtainable, as detailed on the Claim Form.

The Claims Administrator shall verify that each person who submits a Claim Form claiming Out-of-Pocket costs is a Settlement Class Member and shall have the sole discretion and authority to determine whether and to what extent a Claim Form reflects valid Out-of-Pocket Costs. To the extent the Claims Administrator determines a claim for Out-of-Pocket Costs is deficient, the Claims Administrator shall, within fifteen (15) days of making such a determination, notify the Settlement Class Member of the deficiencies and give the Settlement Class Member thirty (30) days to cure the deficiencies. The Claims Administrator shall have the sole discretion and authority to determine whether the Settlement Class Member has cured the deficient claim such that it reflects valid Out-of-Pocket Costs.

Out-of-Pocket Costs for preventative measures, such as obtaining credit monitoring services, insurance or credit freezes, shall be considered to be fairly traceable to the Data Breach if the Settlement Class Member attests that the costs were incurred as a result of the Data Breach and the Administrator, in its sole discretion, is so satisfied. Out-of-Pocket Costs for unreimbursed losses related to identity theft, falsified tax returns, or other alleged wrongdoing (collectively "Third Party Misconduct"), or for attempting to remedy Third Party Misconduct, shall be considered to be due to the Data Breach if the Claims Administrator, in its sole discretion, concludes that the Third Party Misconduct is fairly traceable to the Data Breach. In exercising its discretion, the Claims Administrator shall take into account whether, (i) the Third Party Misconduct occurred within a reasonable period of time after the Data Breach, (ii) the Settlement

## NOTICE PLAN - EXHIBIT B

Class Member states that he or she believes the Third Party Misconduct is connected to the Data Breach; and (iii) the Third Party Misconduct involved possible misuse of the type of personal information accessed in the Data Breach (i.e., name, address data, postal code, phone number, occupation, employer, date of birth, credit score, credit limit, account balance, payment history and contact information); and, for SIN Class Members, their Social Insurance Number.

### 22. What benefits will I receive if I submit a Category A Claim Form for valid Out-of-Pocket Costs?

Each Settlement Class Member who submits a Claim Form for valid Out-of-Pocket Costs (as determined by the Claims Administrator) shall receive a payment equal to the lesser of: (i) the amount of the Settlement Class Member's valid Out-of-Pocket Costs; or (ii) \$25,000.00.

### 23. How do I submit a Category B Claim?

You may request payment for wasted time and inconvenience responding to the Data Breach by claiming it on the Claim Form you submit (either in paper form or on the Settlement Website) to the Claims Administrator accompanied by an attestation in respect of the time spent responding to the Data Breach as detailed on the Claim Form.

The Claims Administrator shall verify that each person who submits a Claim Form for wasted time and inconvenience is a Settlement Class Member and shall have the sole discretion and authority to determine whether and to what extent the Claim Form reflects wasted time and inconvenience responding to the Data Breach. To the extent the Claims Administrator determines a claim for wasted time and inconvenience is deficient, within fifteen (15) days of making such a determination, the Claims Administrator shall notify the Settlement Class Member of the deficiencies and give the Settlement Class Member thirty (30) days to cure the deficiencies. The Claims Administrator shall have the sole discretion and authority to determine whether the Settlement Class Member has cured the deficient claim such that it reflects valid losses actually incurred.

### 24. What benefits will I receive if I submit a Category B Claim?

Non-SIN Class Members claiming for wasted time and inconvenience shall be eligible to receive CAD\$25 per hour for each hour spent responding to the Data Breach, not to exceed 5 hours or CAD\$125. SIN Class Members claiming for wasted time and inconvenience shall be eligible to receive CAD\$25 per hour for each hour spent responding to the Data Breach, not to exceed 8 hours or CAD\$200. All Settlement Class Members who submit a claim for wasted time and inconvenience which is approved by the Claims Administrator shall be eligible to receive an additional payment for wasted time and inconvenience of CAD \$75.

### 25. How do I submit a Category C Claim for Annual Credit Card Fees?

The Claims Administrator shall verify that each person who submits a Claim Form for an Annual Fee is a Settlement Class Member and an Annual Fee Class Member by comparing the Annual Fee Claim Form to the customer records provided by Capital One. To the extent the Claims Administrator determines a claim for an Annual Fee Payment is deficient, the Claims Administrator shall, within fifteen (15) days of making such a determination, notify the Settlement Class Member of the deficiencies and give the Settlement Class Member thirty (30) days to cure the deficiencies. The Claims Administrator shall have the sole discretion and authority to determine whether the Settlement Class Member has cured the deficient claim such that it reflects valid Annual Fees.

### 26. What benefits will I receive if I submit a Category C Claim?

All Annual Credit Card Fee Class Members shall be eligible to receive an amount of up to \$50 ("Annual Fee Payment") upon submission of a valid Annual Fee claim (as determined by the Claims Administrator).

### 27. What happens if the total of all the approved claims submitted by Class Members (Category A, B and C Claims) exceed the Net Settlement Fund?

In the event that the total of the Category A, B and C Claims exceeds the Net Settlement Fund, then all claims will be paid to class members on a pro rata (proportionate) basis. Settlement Class Members' pro rata shares will be calculated by reducing each Settlement Class Member's claim in proportion to the amount that the total claims exceed

## NOTICE PLAN - EXHIBIT B

the Net Settlement Fund (e.g., if the Net Settlement Fund is equal to 75% of the total claims, then each Settlement Class Member shall receive 75% of their successful claim).

### 28. What happens if the total of all the approved claims submitted by Class Members (Category A,B and C Claims) is less than the Net Settlement Fund?

In the event there is a residue which exceeds the total of all Claims as assessed, the residue shall be allocated on a pro rata basis (proportionally) to all Settlement Class Members whose claims were at least partially approved, with such amount not to exceed an additional CAD \$750 per Settlement Class Member.

If after payment of all claims and payment of the residue there remains a sum of money in the Net Settlement fund, then any remaining amounts in the Net Settlement Fund are to be paid cy-près to one or more charities and/or academic institutions agreed upon by the Parties. In the event that the Parties cannot agree, they will seek directions from the court.

### 29. When and how will I receive the benefits I claim from the Settlement?

Payments for valid claims will be made after the claims administration process is completed. The claims administration process is estimated to take between six months and one year. Please be patient.

Cheques for valid Out-of-Pocket Costs, Wasted Time and Inconvenience and Annual Credit Card Fees will be mailed by the Claims Administrator to the mailing address that you provide or deposited by direct deposit to the bank account information that you provide on your Claim Form(s).

### 30. What happens if my contact information changes after I submit a Claim?

If, after you submit a claim form, you change your mailing address, email address, or banking information (if applicable), it is your responsibility to inform the Claims Administrator of your updated information. You may do so by contacting the Claims Administrator at [info@capitalone2019classaction.com](mailto:info@capitalone2019classaction.com) or call 888-808-9672.

## CLAIMING YOUR BENEFITS

If the Settlement is approved, you cannot submit a claim until on or after the Effective Date. The Effective Date is the first Business Day after the conditions in section 15.1 of the Settlement Agreement have been satisfied, or where provided for, waived by Capital One.

No claims will be processed until the Effective Date. Practically, the Effective Date will not be known until the date the Court approves the Settlement Agreement.

Once it is known, the Effective Date of the Settlement will be posted on [www.capitalone2019classaction.ca](http://www.capitalone2019classaction.ca). Please check the Website regularly for updates and news about when your Claims can be filed and processed. **You will have six months after the Effective Date to submit a claim.**

| PROCEDURE                                                                    |                                                                                                                                                                                                            |                                               |
|------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------|
| I want to submit a <b>Category A Claim</b> for Out-of-Pocket Costs           | You must make a claim in order to receive reimbursement for Out-of-Pocket Costs. For detailed information about how to submit a claim for Out-of-Pocket Costs, see <b>Question 21</b> .                    | Deadline: Six Months after the Effective Date |
| I want to submit a <b>Category B Claim</b> for Wasted Time and Inconvenience | You must make a claim in order to receive compensation for wasted time and inconvenience. For detailed information about how to submit a claim for wasted time and inconvenience, see <b>Question 23</b> . | Deadline: Six Months after the Effective Date |
| I want to submit a <b>Category C Claim</b> for an Annual Fee                 | You must make a claim in order to receive reimbursement for an Annual Fee. For detailed information about how to submit a claim for an Annual Credit Card Fee, see <b>Question 25</b> .                    | Deadline: Six Months after the Effective Date |

## **NOTICE PLAN - EXHIBIT B**

### **TIMELINE FOR RECEIVING BENEFITS**

Typically, the claims are paid once the claims administrator has approved or denied all of the submitted claims and the time period for submitting a claim has expired. The claims administration process is estimated to take between six months and one year. Please be patient.

### **CONTACT INFORMATION**

For questions about the claims administration please contact the Claims Administrator at [info@capitalone2019classaction.com](mailto:info@capitalone2019classaction.com), 888-808-9672 or visit [www.capitalone2019classaction.ca](http://www.capitalone2019classaction.ca).

For all other questions please contact Class Counsel by email at:

**Kateryna Galts**

**Charney Lawyers PC**

151 Bloor St. W., Suite 602

Toronto, ON M5S 1S4

Email: [info@charneylawyers.com](mailto:info@charneylawyers.com)

**Please note, due to the volume of inquiries, it may take up to five business days to receive a response. Please do not contact Capital One or the Court about this action.**

### **INTERPRETATION**

This Notice has been approved by the Court and contains a summary of some of the terms of the proposed Settlement. If there is a conflict between the provisions of this Notice and the Settlement Agreement, the Settlement Agreement shall prevail.

THIS NOTICE HAS BEEN AUTHORIZED BY THE BRITISH COLUMBIA SUPREME COURT.

## SCHEDULE A

No. S-198617  
VANCOUVER REGISTRY

### IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

DUNCAN CAMPBELL

PLAINTIFF

AND:

CAPITAL ONE FINANCIAL CORPORATION, CAPITAL ONE BANK (USA), NATIONAL  
ASSOCIATION, AND CAPITAL ONE BANK (CANADA BRANCH)

DEFENDANTS

Brought pursuant to the *Class Proceedings Act*, RSCB 1996, c 50

### OTHER CLASS ACTIONS COMMENCED AGAINST CAPITAL ONE IN CANADA

| Jurisdiction     | Title of Proceedings                                                                                                                                                                                                                                                                                  | Court File No.      |
|------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|
| Alberta          | <i>Anastasia Stacie Lehman, Mandy Dawn Fischer, and Donald Raymond Murphy v. Capital One Services (Canada) Inc., Capital One Financial Corporation, and Paige Thompson</i>                                                                                                                            | 1901-11132          |
| Alberta          | <i>Brian Hennings and Meagan Wozniuk v. Capital One Financial Corp.</i>                                                                                                                                                                                                                               | 1901-11704          |
| British Columbia | <i>Sukhpal Singh Gill v. Capital One Financial Corporation and Capital One Bank (Canada Branch)</i>                                                                                                                                                                                                   | S-198696            |
| British Columbia | <i>Theresa Botterell and Adam Botterell v. Capital One Bank (Canada Branch)</i>                                                                                                                                                                                                                       | S-199109            |
| Ontario          | <i>Rina Del Giudice and Daniel Wood v. Paige A. Thompson, Capital One Financial Corporation, Capital One Bank (Canada Branch), Capital One (Services) Canada Inc., Capital One, N.A., Capital One Bank (USA), N.A., Github, Inc., Amazon Web Services Inc., And Amazon Web Services (Canada) Inc.</i> | CV-19-00625030-00CP |
| Ontario          | <i>Timothy Charles Du Vernet v. Capital One Bank (Canada Branch), Capital One Financial Corporation, and Capital One Bank (USA) N.A.</i>                                                                                                                                                              | CV-19-00624627-00CP |

|          |                                                                                                                                                                                                                                                                                                    |                     |
|----------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|
| Ontario  | <i>Penny Stewart v. Capital One Bank (Canada Branch), Capital One Financial Corporation, and Capital One Bank (USA) N.A.</i>                                                                                                                                                                       | CV-19-00624717-00CP |
| Ontario  | <i>David Mark Slapinski v. Capital One Services (Canada) Inc., Capital One Financial Corporation, Capital One, N.A., Capital One Bank (USA), N.A., and Paige Thompson</i>                                                                                                                          | CV-19-00625262-00CP |
| Manitoba | <i>Kenneth Zaifman v. Paige A. Thompson, Capital One Financial Corporation, Capital One Bank (Canada Branch), Capital One (Services) Canada Inc., Capital One, N.A., Capital One Bank (USA) N.A., Github, Inc., Amazon Web Services Inc., and Amazon Web Services (Canada) Inc.</i>                | CI-21-01-30260      |
| Quebec   | <i>Michael Royer and Ala'a Abou-Khadra v. Capital One Bank (Canada Branch), Capital One Financial Corporation, Capital One Bank (USA), National Association, Amazon.com.ca, Inc., Amazon.com, Inc., Amazon Web Services Canada, Inc., Amazon Web Services, Inc., and Amazon Technologies, Inc.</i> | 500-06-001010-194   |
| Quebec   | <i>Simon Goulet v. Capital One Bank (Canada Branch), Capital One NA, and Capital One Financial Corporation</i>                                                                                                                                                                                     | 200-06-000232-192   |
| Quebec   | <i>Michael Forian-Zytynsky and Elisabeth Prass v. Capital One Bank and Capital One Financial Corporation</i>                                                                                                                                                                                       | 5-00-06-01012-190   |

**SCHEDULE B**

No. S-198617  
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

DUNCAN CAMPBELL

PLAINTIFF

AND:

CAPITAL ONE FINANCIAL CORPORATION, CAPITAL ONE BANK (USA), NATIONAL  
ASSOCIATION, AND CAPITAL ONE BANK (CANADA BRANCH)

DEFENDANTS

Brought pursuant to the *Class Proceedings Act*, RSCB 1996, c 50

**OPT-OUT THRESHOLD AGREEMENT BETWEEN:**

DUNCAN CAMPBELL

(the “**Plaintiff**”)

AND

CAPITAL ONE FINANCIAL CORPORATION, CAPITAL ONE BANK (USA), NATIONAL  
ASSOCIATION, AND CAPITAL ONE BANK (CANADA BRANCH)  
(the “**Defendants**”)

**WHEREAS** the Plaintiff, on behalf of himself and the Class, and the Defendants (collectively, the “**Parties**”) entered into a settlement agreement dated May 19, 2026 (“**Settlement Agreement**”);

**AND WHEREAS** unless otherwise provided herein, capitalized terms in this Opt-Out Threshold Agreement have the meanings ascribed to them in the Settlement Agreement;

**AND WHEREAS** sections 1(T) and 14.1 of the Settlement Agreement require the Parties to agree to an Opt-Out Threshold in a separate confidential document;

**NOW THEREFORE**, the Parties agree as follows:

1. The number of opt outs for the Opt-Out Threshold is [REDACTED]
2. The Defendants sole and absolute discretion to terminate the Settlement Agreement will be triggered if [REDACTED]

Counsel executing this document do hereby represent and warrant that they have authority to bind their respective clients to this Opt-Out Threshold Agreement.

On Behalf of the Defendants,  
Capital One Financial Corporation,  
Capital One Bank, (USA) National  
Association and Capital One Bank  
(Canada Branch).

DocuSigned by:

*Laura Cooper*

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Laura F. Cooper  
Fasken Martineau DuMoulin LLP

On Behalf of the Plaintiff, Duncan Campbell

Signed by:

*Theodore P. Charney*

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Theodore P. Charney  
Charney Lawyers PC

DocuSigned by:

*Kinda Garcha*

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Kinda Garcha  
Dusevic & Garcha

## SCHEDULE 2: LONG FORM NOTICE

### LONG FORM NOTICE OF CERTIFICATION OF CAPITAL ONE DATA BREACH CLASS ACTION AND SETTLEMENT APPROVAL HEARING

**PLEASE READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR LEGAL RIGHTS.**

**NOTICE TO ALL CLASS MEMBERS:** If you are a Canadian resident outside of Québec who applied for or was issued a Capital One credit card and you received a letter from Capital One notifying you that your information may have been subject to unauthorized access in the Data Breach (described below), you are a **“Class Member”**.

**CERTIFICATION:** A class action was commenced in the Supreme Court of British Columbia against Capital One Financial Corporation, Capital One Bank (USA), National Association and Capital One Bank (Canada Branch) (collectively, **“Capital One”**) seeking damages on behalf of Class Members in relation to a 2019 incident involving unauthorized access by an outside individual to certain types of personal and other information of Capital One credit card applicants and Capital One customers located in Canada (the **“Data Breach”**). This Notice is to inform you that the Supreme Court of British Columbia (the **“Court”**) **certified this proceeding as a class action** on June 3, 2022, and that the parties have entered into a proposed settlement as described below.

**PROPOSED SETTLEMENT:** The parties have entered into a settlement agreement (the **“Settlement Agreement”**) which is subject to court approval. Capital One does not admit and denies any wrongdoing or liability. The proposed Settlement will not become final unless and until it is approved by the Court following a settlement approval hearing to be held on September 22, 2026 at the courthouse at 800 Smithe Street, Vancouver, British Columbia. You may attend the virtual settlement approval hearing but are not required to do so. Please check [www.capitalone2019classaction.ca](http://www.capitalone2019classaction.ca) for additional information, including how to attend the virtual settlement approval hearing.

**This Notice addresses both the certification of the class action and the proposed settlement, and explains your rights, including your right to opt out. This Notice summarizes the Settlement’s key terms, including benefits to Class Members, and the rights and obligations of all parties. If there is any conflict between this Notice and the Settlement Agreement, which is also accessible on the Settlement Website, the Settlement Agreement governs. Terms that are defined in the Settlement Agreement have the same meaning in this Notice.**

**You must now decide** whether you want to remain a member of the **certified class action** or whether you wish to exclude yourself by opting out and thereby preserve your right to individually sue Capital One for claims related to the Data Breach. If you decide to be part of the class action then you are part of the proposed Settlement, and if the Court approves the proposed Settlement, you will be entitled to the benefits described below. However, you will give up any right you may have, now or in the future, to sue Capital One for claims related to the Data Breach. If you decide to exclude yourself by “opting out” of the class action you will not be entitled to the benefits of the Settlement, but you will retain your right to sue Capital One for claims related to the Data Breach. Please read this Notice carefully before you make your decision. If you have any questions, please contact Class Counsel, identified below, or visit [www.capitalone2019classaction.ca](http://www.capitalone2019classaction.ca).

**RIGHT TO OPT OUT:** If you wish to be excluded from this class action, you must complete the **Opt-Out Form** (available at [www.capitalone2019classaction.ca](http://www.capitalone2019classaction.ca)) If your opt-out form is not received by September 11, 2026, you will be a member of the class and bound by the settlement (if it is approved).

#### **SUMMARY OF SETTLEMENT BENEFITS**

If the Court approves the Settlement Agreement, Capital One will pay \$35,000,000 (thirty-five million dollars), hereafter the **“Settlement Fund”**, to, among other things, settle the claims of the Class Members, pay the Legal Fees and Disbursements and pay the Administrative Expenses for Settlement administration, in exchange for a release of all claims made or that could have been made in the class action and a dismissal of the class action.

Class Members shall submit Claim Forms to the Claims Administrator, who will determine the amounts to be distributed to Class Members from the Settlement Fund, in full and final settlement of their claims. The amount remaining from the Settlement Fund, after deductions for Legal Fees and Disbursements and taxes thereon, Administrative Expenses for Settlement administration, and any honorarium for the named Plaintiff (the “**Net Settlement Fund**”), shall be available to fund claims made in the following three categories:

- (a) “**Category A**” claims for **Out-of-Pocket Costs**: Class Members may claim for out-of-pocket costs which are fairly traceable to the Data Breach including preventative measures (such as obtaining credit monitoring services, insurance or credit freezes) and unreimbursed losses related to identity theft, falsified tax returns, or other alleged wrongdoing. Each Class Member who submits a Claim Form for valid Out-of-Pocket Costs (as determined by the Claims Administrator) shall receive a payment for their valid Out-of-Pocket Costs to a maximum of \$25,000.00.
- (b) “**Category B**” claims for **Wasted Time and Inconvenience**: Class Members may claim the amount of \$25 per hour for each hour spent responding to the Data Breach, up to 5 hours or \$125 for class members whose SIN was not compromised in the Data Breach (“**Non-SIN Members**”), and up to 8 hours or \$200 for class members whose SIN was compromised in the Data Breach (“**SIN Members**”). All class members who make valid Category B claims will be eligible to receive a “top up” payment for wasted time and inconvenience of \$75 (bringing the maximum payable under Category B for Non-SIN Members to \$200 and for SIN Members to \$275); and
- (c) “**Category C**” claims for **Annual Credit Card Fees**: All Annual Fee Class Members (as defined in the Settlement Agreement) shall be eligible to receive an amount of up to \$50 upon submission of a valid claim.

You cannot make a claim until after the Settlement is approved and the claims period begins. You should monitor the Settlement Website and check it regularly at [www.capitalone2019classaction.ca](http://www.capitalone2019classaction.ca) for the latest information on the status of the Settlement and the details and deadline for making a claim. The claims period commencement date is described later in this notice.

Other limitations and qualifications may apply. Please consult the “Understanding the Settlement” section below or contact a lawyer or Class Counsel if you have questions.

## WHAT MUST YOU DO NOW

You must decide now if you want to be part of the proposed Class, so that if the Court approves the Settlement you can take advantage of the benefits described above, or whether you want to exclude yourself by “opting out” from the Class and retain your right to sue Capital One for claims related to the Data Breach. If you do not exclude yourself by “opting out”, you can still file an objection to the proposed Settlement. Your options, and how to exercise them, are described below.

| YOUR OPTIONS IN THIS SETTLEMENT AND HOW TO EXERCISE THEM   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                         |
|------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|
| I want to be part of the class and the proposed Settlement | You do not need to do anything right now, but you must make a claim under the Settlement once it is approved. If the Court approves the Settlement, you will be eligible to claim benefits through the procedures described below. However, you will give up your individual right to sue Capital One for claims related to the Data Breach. If the Court does not approve the settlement, then you will continue to be a class member and the action will continue to proceed to trial.                                                                                                                                                                                                                                                                                                                                                                        | No deadline             |
| I want to exclude myself from this Settlement              | If you do not want to be part of the class action or the Settlement, you can opt out by completing the Opt-Out Form, which is available at <a href="http://www.capitalone2019classaction.ca">www.capitalone2019classaction.ca</a> . You must send a copy of the completed Opt-Out Form electronically to <a href="http://www.capitalone2019classaction.ca">www.capitalone2019classaction.ca</a> or by email to <a href="mailto:info@capitalone2019classaction.com">info@capitalone2019classaction.com</a> . Your request must be sent via email no later than the deadline. If you choose to exclude yourself, you will not be entitled to any of the Settlement benefits, but you will keep your individual right to sue Capital One for claims related to the Data Breach. See <b>Question 10</b> below for additional details regarding the Opt-Out Process. | Deadline: Sept.11, 2026 |

|                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                     |                          |
|-----------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|
| I want to object or comment on the Settlement | The process you must follow for filing and serving objections is described below in the “Understanding the Settlement” section. You may also ask to speak in Court at the settlement approval hearing about the proposed Settlement if you file a timely objection and submit a timely notice of your intention to appear at the settlement approval hearing. Instructions are below in the “Understanding the Settlement” section. | Deadline: Sept. 11, 2026 |
|-----------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|

## UNDERSTANDING THE SETTLEMENT AND YOUR RIGHT TO OPT OUT OF THE CLASS

### I. Basic Questions

#### 1. Why am I getting this Notice?

The Court authorized this Notice because this action was certified as a class action on June 3, 2022, and has settled subject to court approval. If you fall within the definition at the beginning of this form, you are a Class Member unless you exercise your right to opt out of the class action. If you opt out of the class action you reserve your right to sue Capital One for claims relating to the Data Breach but you will not receive the benefits of the proposed Settlement. The Notice explains the proposed Settlement and your right to opt out of the class action, and helps you understand all of your options before the Court decides whether or not to approve the Settlement.

Your receipt of Settlement benefits, including cash payments, depends on the Court’s final approval of the Settlement and the resolution of any appeals in favor of approval of the Settlement.

Please be patient and check the Settlement Website at [www.capitalone2019classaction.ca](http://www.capitalone2019classaction.ca) regularly. If you require any additional information regarding the proposed Settlement, please contact your lawyer or Class Counsel. Do not contact Capital One or the Court regarding the details of this Settlement.

#### 2. What is this lawsuit about?

This certified class action and proposed settlement resolves litigation against Capital One, alleging that Capital One experienced a data breach between March 12 and April 21, 2019 because they had inadequate data security measures in place to protect credit card holders’ personal information. The Plaintiff claims that he and other class members were injured as a result. Capital One denies that it has violated any law or engaged in any wrongdoing, and believes it has meritorious defenses to all of the claims raised in this litigation. The parties have agreed to resolve these matters before these issues are decided by the Court.

You can read the Amended Notice of Civil Claim by visiting [www.capitalone2019classaction.ca](http://www.capitalone2019classaction.ca).

#### 3. Why is there a Settlement?

A settlement is an agreement between a plaintiff (or multiple plaintiffs) and a defendant (or multiple defendants) to resolve a lawsuit. Settlements end all or part of a lawsuit without a trial and without the court or a jury ruling in favor of either side. All parties in the lawsuit agree to a settlement to avoid the cost and risk of further litigation, including a potential trial, and to afford class members benefits in exchange for releasing the defendant from liability. This proposed Settlement does not mean that Capital One broke any laws or did anything wrong, and the Court did not decide which side was right.

#### 4. How was this Settlement reached?

The Plaintiff and Capital One reached this Settlement after extensive arms-length negotiations regarding the substance and procedure of a possible national class action settlement excluding Quebec residents.

#### 5. What options do I have now?

You may exclude yourself from the Settlement by “opting out” of this class action. If you intend to remain in the class action, you may write to object to the Settlement, or you may do nothing.

Please consult the table on **page 2** on how to exercise each option, as well as the time by which you must do so.

## 6. What is a class action?

A class action is a representative action or lawsuit in which one or more plaintiffs (also called “representative plaintiffs”) sue a defendant(s) on behalf of other, unnamed people with similar claims. All of these people together are the “Class” or “Class Members.” If the Court certifies the proceeding as a class action, then the matter will go forward to trial unless it settles.

## 7. What am I giving up in exchange for receiving the Settlement’s benefits?

If the Settlement becomes final and you have not opted out, you will be eligible for the benefits described in this Notice. In exchange for having those benefits available to you, you will give up your right to sue Capital One for claims related to the Data Breach.

## II. Who is in the Settlement?

### 8. How do I know if I am part of the Settlement?

You are a Class Member if you are a Canadian resident who applied for or was issued a Capital One credit card and you received a letter from Capital One notifying you that your information may have been subject to unauthorized access in the Data Breach. If Capital One notified you that your Social Insurance Number (“**SIN**”) was breached, you are a “**SIN Class Member**”. If Capital One did not notify you that your SIN was breached, you are a “**Non-SIN Class Member**”. If you paid an annual credit card fee to Capital One during the period July 31, 2013 to July 31, 2019, you are an “**Annual Fee Class Member**”.

## III. Understanding the Settlement

### 9. When will the Settlement get finally approved?

The Court has set a date of September 22, 2026 for the Approval Hearing. The hearing will take place at 800 Smithe Street, Vancouver, British Columbia. At the hearing, the Court will consider arguments and evidence as to whether the Settlement is fair, reasonable, and in the best interest of the Class Members and whether Class Counsel’s fees, disbursements and taxes and the plaintiff’s proposed honorarium should be approved. We anticipate that the Court will decide whether to approve the Settlement at the Approval Hearing or soon after. You should monitor the Settlement Website for the latest information on the status of the Settlement.

### 10. What if I do not want to participate in the settlement?

If you do not want to participate in the Settlement, then you must opt out of the class action by completing the Opt-Out Form, which is available at [www.capitalone2019classaction.ca](http://www.capitalone2019classaction.ca) and send it back to the Claims Administrator.

You must send your completed Opt-Out Form electronically to [www.capitalone2019classaction.ca](http://www.capitalone2019classaction.ca) or via email to [info@capitalone2019classaction.com](mailto:info@capitalone2019classaction.com) no later than September 11, 2026.

### 11. If I am part of the Settlement, can I sue Capital One for the same claims later?

No. Unless you opt out of the class action, you give up the right to sue Capital One for any claims relating to the Data Breach.

### 12. If I am not part of the Settlement, can I still get the benefits from the Settlement?

No. If you elect to opt out of the class action, you will not be entitled to any benefits under the Settlement.

### 13. If I opt out and pursue my own case, can I get a larger recovery?

If you opt out of the class action, you can sue Capital One individually in relation to the Data Breach. However, you

would not be guaranteed a larger recovery and may ultimately receive less than the benefits provided for under the Settlement. No result can be predicted with certainty, and all alternative legal actions take additional time and may be subject to offsets or deductions for lawyers' fees and costs. This Settlement is designed to provide benefits that are certain, not subject to the delay and risk of trial and appeal, and not reduced by fees or costs.

#### **14. Do I have a lawyer in this case?**

Yes. The Court appointed Charney Lawyers PC and Dusevic & Garcha as Class Counsel to represent you and the other Class Members.

Charney Lawyers PC  
150 Bloor Street West, Suite 604  
Toronto, ON M5S 1S4  
Phone: (416) 964-7950  
e-mail: [info@charneylawyers.com](mailto:info@charneylawyers.com)

Dusevic & Garcha,  
#210-4603 Kingsway,  
Burnaby, BC V5H 4M4

If you want to be represented by your own lawyer, you may hire one at your expense.

#### **15. Who will pay the lawyers?**

Class Counsel will be asking that the Court approve legal fees of 25% of \$35,000,000, plus disbursements and applicable taxes, in accordance with the contingency fee agreement.

Class Counsel will also be asking that the Court approve an honorarium of \$5,000 to be awarded to the named Plaintiff in recognition of the role he played as representative plaintiff in this litigation.

#### **16. Can I tell the Court if I object to the settlement?**

If you do not opt out of the class action, you are a Class Member and you (or your lawyer) may object in writing to the proposed Settlement. The Court will consider your views. If you wish to make a written submission to the Court indicating you are in favour of the Settlement or objecting to the Settlement you must send your submission in writing by email to the Claim Administrator at [info@capitalone2019classaction.com](mailto:info@capitalone2019classaction.com) and ensure they are received no later than September 11, 2026. The Claims Administrator will provide all submissions to the Court, Class Counsel, and Capital One in advance of the Approval Hearing. Your written submissions should include:

- your name, address, and telephone number;
- a brief statement indicating the basis for your belief that you are a Class Member;
- a brief statement of the reasons that you support or oppose the proposed settlement terms; and
- whether you plan to attend the settlement approval hearing

#### **17. What is the difference between objecting to the Settlement and opting out of the class action ?**

You can object to the settlement only if you participate in the class action. If you opt out of the class action, you thereby elect not to be part of the Settlement. You have no right to object to the Settlement because the case no longer affects you.

#### **18. Do I have to attend the Settlement Approval Hearing?**

No. Class Counsel will answer any questions the Court may have. You are welcome to attend at your own expense. If you timely file an objection, you do not have to come to Court to talk about it. As long as you submitted your written objection on time, the Court will consider it. You may also have your own lawyer attend at your expense, but it is not required.

## 19. How do I get more information?

This Long Form Class Notice summarizes the proposed Settlement. More details, including a copy of the Settlement Agreement, are available at [www.capitalone2019classaction.ca](http://www.capitalone2019classaction.ca). For more information you can contact the claims administrator.

You may also contact Class Counsel by email at:

**Kateryna Galts**  
**Charney Lawyers PC**  
150 Bloor Street West, Suite 604  
Toronto, ON M5S 1S4  
e-mail: [info@charneylawyers.com](mailto:info@charneylawyers.com)

If you contact Class Counsel it may take up to five business days to receive a response depending on the volume of calls. You may also contact the Claims Administrator by email at [info@capitalone2019classaction.com](mailto:info@capitalone2019classaction.com) or by phone at 888-808-9672 (toll free).

## IV. Details of Settlement Benefits

### 20. What benefits does the Settlement Provide?

As discussed above, the Settlement provides the following benefits to Class Members:

- A. **Category A Claims:** Cash reimbursement for valid out-of-pocket costs up to a maximum of \$25,000.00.
- B. **Category B Claims:** Cash payment for wasted time and inconvenience at \$25/hour up to a maximum of 5 hours for Non-SIN Members and 8 hours for SIN Members, plus a \$75 top-up payment for Non-SIN and SIN Members ; and
- C. **Category C Claims:** Refunds for annual credit card fee payments of up to \$50 for all annual credit card fee members.

You may claim in any and every category for which you qualify.

### 21. How do I submit a Category A Claim for Reimbursement of Out-of-Pocket Costs?

You may request payment of Out-of-Pocket Costs by claiming them on the Claim Form you submit (either in paper form or on the Settlement Website) to the Claims Administrator accompanied by an attestation for the Out-of-Pocket Costs incurred, and documentation of the Out-of-Pocket Costs which should naturally exist and have been retained or are readily obtainable, as detailed on the Claim Form.

The Claims Administrator shall verify that each person who submits a Claim Form claiming Out-of-Pocket costs is a Settlement Class Member and shall have the sole discretion and authority to determine whether and to what extent a Claim Form reflects valid Out-of-Pocket Costs. To the extent the Claims Administrator determines a claim for Out-of-Pocket Costs is deficient, the Claims Administrator shall, within fifteen (15) days of making such a determination, notify the Settlement Class Member of the deficiencies and give the Settlement Class Member thirty (30) days to cure the deficiencies. The Claims Administrator shall have the sole discretion and authority to determine whether the Settlement Class Member has cured the deficient claim such that it reflects valid Out-of-Pocket Costs.

Out-of-Pocket Costs for preventative measures, such as obtaining credit monitoring services, insurance or credit freezes, shall be considered to be fairly traceable to the Data Breach if the Settlement Class Member attests that the costs were incurred as a result of the Data Breach and the Administrator, in its sole discretion, is so satisfied. Out-of-Pocket Costs for unreimbursed losses related to identity theft, falsified tax returns, or other alleged wrongdoing (collectively "Third Party Misconduct"), or for attempting to remedy Third Party Misconduct, shall be considered to be due to the Data Breach if the Claims Administrator, in its sole discretion, concludes that the Third Party Misconduct is fairly traceable to the Data Breach. In exercising its discretion, the Claims Administrator shall take into account whether, (i) the Third Party Misconduct occurred within a reasonable period of time after the Data Breach, (ii) the Settlement

Class Member states that he or she believes the Third Party Misconduct is connected to the Data Breach; and (iii) the Third Party Misconduct involved possible misuse of the type of personal information accessed in the Data Breach (i.e., name, address data, postal code, phone number, occupation, employer, date of birth, credit score, credit limit, account balance, payment history and contact information); and, for SIN Class Members, their Social Insurance Number.

## **22. What benefits will I receive if I submit a Category A Claim Form for valid Out-of-Pocket Costs?**

Each Settlement Class Member who submits a Claim Form for valid Out-of-Pocket Costs (as determined by the Claims Administrator) shall receive a payment equal to the lesser of: (i) the amount of the Settlement Class Member's valid Out-of-Pocket Costs; or (ii) \$25,000.00.

## **23. How do I submit a Category B Claim?**

You may request payment for wasted time and inconvenience responding to the Data Breach by claiming it on the Claim Form you submit (either in paper form or on the Settlement Website) to the Claims Administrator accompanied by an attestation in respect of the time spent responding to the Data Breach as detailed on the Claim Form.

The Claims Administrator shall verify that each person who submits a Claim Form for wasted time and inconvenience is a Settlement Class Member and shall have the sole discretion and authority to determine whether and to what extent the Claim Form reflects wasted time and inconvenience responding to the Data Breach. To the extent the Claims Administrator determines a claim for wasted time and inconvenience is deficient, within fifteen (15) days of making such a determination, the Claims Administrator shall notify the Settlement Class Member of the deficiencies and give the Settlement Class Member thirty (30) days to cure the deficiencies. The Claims Administrator shall have the sole discretion and authority to determine whether the Settlement Class Member has cured the deficient claim such that it reflects valid losses actually incurred.

## **24. What benefits will I receive if I submit a Category B Claim?**

Non-SIN Class Members claiming for wasted time and inconvenience shall be eligible to receive CAD\$25 per hour for each hour spent responding to the Data Breach, not to exceed 5 hours or CAD\$125. SIN Class Members claiming for wasted time and inconvenience shall be eligible to receive CAD\$25 per hour for each hour spent responding to the Data Breach, not to exceed 8 hours or CAD\$200. All Settlement Class Members who submit a claim for wasted time and inconvenience which is approved by the Claims Administrator shall be eligible to receive an additional payment for wasted time and inconvenience of CAD \$75.

## **25. How do I submit a Category C Claim for Annual Credit Card Fees?**

The Claims Administrator shall verify that each person who submits a Claim Form for an Annual Fee is a Settlement Class Member and an Annual Fee Class Member by comparing the Annual Fee Claim Form to the customer records provided by Capital One. To the extent the Claims Administrator determines a claim for an Annual Fee Payment is deficient, the Claims Administrator shall, within fifteen (15) days of making such a determination, notify the Settlement Class Member of the deficiencies and give the Settlement Class Member thirty (30) days to cure the deficiencies. The Claims Administrator shall have the sole discretion and authority to determine whether the Settlement Class Member has cured the deficient claim such that it reflects valid Annual Fees.

## **26. What benefits will I receive if I submit a Category C Claim?**

All Annual Credit Card Fee Class Members shall be eligible to receive an amount of up to \$50 ("Annual Fee Payment") upon submission of a valid Annual Fee claim (as determined by the Claims Administrator).

## **27. What happens if the total of all the approved claims submitted by Class Members (Category A, B and C Claims) exceed the Net Settlement Fund?**

In the event that the total of the Category A, B and C Claims exceeds the Net Settlement Fund, then all claims will be paid to class members on a pro rata (proportionate) basis. Settlement Class Members' pro rata shares will be calculated by reducing each Settlement Class Member's claim in proportion to the amount that the total claims exceed

the Net Settlement Fund (e.g., if the Net Settlement Fund is equal to 75% of the total claims, then each Settlement Class Member shall receive 75% of their successful claim).

**28. What happens if the total of all the approved claims submitted by Class Members (Category A,B and C Claims) is less than the Net Settlement Fund?**

In the event there is a residue which exceeds the total of all Claims as assessed, the residue shall be allocated on a pro rata basis (proportionally) to all Settlement Class Members whose claims were at least partially approved, with such amount not to exceed an additional CAD \$750 per Settlement Class Member.

If after payment of all claims and payment of the residue there remains a sum of money in the Net Settlement fund, then any remaining amounts in the Net Settlement Fund are to be paid cy-près to one or more charities and/or academic institutions agreed upon by the Parties. In the event that the Parties cannot agree, they will seek directions from the court.

**29. When and how will I receive the benefits I claim from the Settlement?**

Payments for valid claims will be made after the claims administration process is completed. The claims administration process is estimated to take between six months and one year. Please be patient.

Cheques for valid Out-of-Pocket Costs, Wasted Time and Inconvenience and Annual Credit Card Fees will be mailed by the Claims Administrator to the mailing address that you provide or deposited by direct deposit to the bank account information that you provide on your Claim Form(s).

**30. What happens if my contact information changes after I submit a Claim?**

If, after you submit a claim form, you change your mailing address, email address, or banking information (if applicable), it is your responsibility to inform the Claims Administrator of your updated information. You may do so by contacting the Claims Administrator at [info@capitalone2019classaction.com](mailto:info@capitalone2019classaction.com) or call 888-808-9672.

## CLAIMING YOUR BENEFITS

If the Settlement is approved, you cannot submit a claim until on or after the Effective Date. The Effective Date is the first Business Day after the conditions in section 15.1 of the Settlement Agreement have been satisfied, or where provided for, waived by Capital One.

No claims will be processed until the Effective Date. Practically, the Effective Date will not be known until the date the Court approves the Settlement Agreement.

Once it is known, the Effective Date of the Settlement will be posted on [www.capitalone2019classaction.ca](http://www.capitalone2019classaction.ca). Please check the Website regularly for updates and news about when your Claims can be filed and processed. **You will have six months after the Effective Date to submit a claim.**

| PROCEDURE                                                                    |                                                                                                                                                                                                            |                                               |
|------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------|
| I want to submit a <b>Category A Claim</b> for Out-of-Pocket Costs           | You must make a claim in order to receive reimbursement for Out-of-Pocket Costs. For detailed information about how to submit a claim for Out-of-Pocket Costs, see <b>Question 21</b> .                    | Deadline: Six Months after the Effective Date |
| I want to submit a <b>Category B Claim</b> for Wasted Time and Inconvenience | You must make a claim in order to receive compensation for wasted time and inconvenience. For detailed information about how to submit a claim for wasted time and inconvenience, see <b>Question 23</b> . | Deadline: Six Months after the Effective Date |
| I want to submit a <b>Category C Claim</b> for an Annual Fee                 | You must make a claim in order to receive reimbursement for an Annual Fee. For detailed information about how to submit a claim for an Annual Credit Card Fee, see <b>Question 25</b> .                    | Deadline: Six Months after the Effective Date |

### **TIMELINE FOR RECEIVING BENEFITS**

Typically, the claims are paid once the claims administrator has approved or denied all of the submitted claims and the time period for submitting a claim has expired. The claims administration process is estimated to take between six months and one year. Please be patient.

### **CONTACT INFORMATION**

For questions about the claims administration please contact the Claims Administrator at [info@capitalone2019classaction.com](mailto:info@capitalone2019classaction.com), 888-808-9672 or visit [www.capitalone2019classaction.ca](http://www.capitalone2019classaction.ca).

For all other questions please contact Class Counsel by email at:

**Kateryna Galts**

**Charney Lawyers PC**

151 Bloor St. W., Suite 602

Toronto, ON M5S 1S4

Email: [info@charneylawyers.com](mailto:info@charneylawyers.com)

**Please note, due to the volume of inquiries, it may take up to five business days to receive a response. Please do not contact Capital One or the Court about this action.**

### **INTERPRETATION**

This Notice has been approved by the Court and contains a summary of some of the terms of the proposed Settlement. If there is a conflict between the provisions of this Notice and the Settlement Agreement, the Settlement Agreement shall prevail.

THIS NOTICE HAS BEEN AUTHORIZED BY THE BRITISH COLUMBIA SUPREME COURT.

## SCHEDULE 3 – SHORT FORM NOTICE

### SHORT FORM NOTICE OF CERTIFICATION OF CAPITAL ONE DATA BREACH CLASS ACTION AND SETTLEMENT APPROVAL HEARING

**PLEASE READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR LEGAL RIGHTS.**

**NOTICE TO ALL CLASS MEMBERS:** If you are a Canadian resident outside of Québec who applied for or was issued a Capital One credit card and you received a letter from Capital One notifying you that your information may have been subject to unauthorized access in the Data Breach (described below), you are a **“Class Member”**.

This notice concerns the certification and the proposed settlement (the **“Settlement”**) of a class action lawsuit against Capital One Financial Corporation, Capital One Bank (USA), National Association and Capital One Bank (Canada Branch) (collectively, **“Capital One”**). The lawsuit arises from an incident involving unauthorized access by an outside individual to certain types of personal and other information of Capital One credit card applicants and Capital One customers located in Canada (the **“Data Breach”**). Capital One denies that it violated any laws and denies that it engaged in any wrongdoing. On June 3, 2022, the British Columbia court certified this action as a class proceeding. The parties have now reached a settlement, which is subject to court approval.

**This Notice addresses both the certification of the class action and the proposed settlement, and explains your rights, including your right to opt out. This Notice outlines the Settlement’s key terms, including benefits to Class Members, and the rights and obligations of all parties. If there is any conflict between this Notice and the Settlement Agreement, which is also accessible at [www.capitalone2019classaction.ca](http://www.capitalone2019classaction.ca), the Settlement Agreement governs. Terms that are defined in the Settlement Agreement have the same meaning in this Notice.**

**CERTIFICATION:** A class action was commenced in the Supreme Court of British Columbia seeking damages on behalf of Class Members relating to the Data Breach. This Notice is to inform you that the Supreme Court of British Columbia **certified this proceeding as a class action** on June 3, 2022.

**RIGHT TO OPT OUT:** If you wish to be excluded from this class action and not be bound by any order or settlement, you must complete the **Opt-Out Form** available at [www.capitalone2019classaction.ca](http://www.capitalone2019classaction.ca). If your opt-out form is not received by September 11, 2022, you will be a member of the class and bound by the settlement (if it is approved).

**PROPOSED SETTLEMENT:** The parties have entered into the Settlement Agreement. Capital One does not admit and denies any wrongdoing or liability. In order for the Settlement to become effective, it must be approved by the British Columbia Supreme Court (the **“Court”**). If the Court approves the Settlement Agreement, Capital One will pay \$35,000,000 (thirty-five million dollars), hereafter the **“Settlement Fund”**, to, among other things, settle the claims of the Class Members, to pay the Legal Fees and Disbursements and to pay the Administrative Expenses for Settlement administration, in return for a release of all claims made or that could have been made in the class action and a dismissal of the class action.

**COMPENSATION FOR CLASS MEMBERS:** In order to claim compensation in the settlement, Class Members must submit Claim Forms to the Claims Administrator, who will determine the amounts to be distributed to Class Members from the Settlement Fund, in full and final settlement of their claims. The amount remaining from the Settlement Fund, after deductions for Legal Fees and Disbursements and taxes thereon, Administrative Expenses for settlement administration, and any honorarium for the named Plaintiff (the **“Net Settlement Fund”**), shall be available for claims made in the following three categories:

- (a) **“Category A” claims for Out-of-Pocket Costs:** Class members may claim for out-of-pocket costs which are fairly traceable to the Data Breach including preventative measures (obtaining credit monitoring services, insurance or credit freezes) and unreimbursed losses related to identity theft, falsified tax returns, or other alleged wrongdoing. Each Class Member who submits a Claim Form for valid Out-of-Pocket Costs (as determined by the Claims Administrator) shall receive a payment for their valid Out-of-Pocket Costs to a maximum of \$25,000.00.
- (b) **“Category B” claims for Wasted Time and Inconvenience:** Class members may claim the amount of \$25 per hour for each hour spent responding to the Data Breach, not to exceed 5 hours or \$125 for class members whose SIN was not compromised in the Data Breach (**“Non-SIN Members”**), and up to 8 hours or \$200 for class members whose

SIN was compromised in the Data Breach ("**SIN Members**"). All class members who make valid Category B claims will be eligible to receive a "top-up" payment for wasted time and inconvenience of \$75 (bringing the maximum payable under Category B for Non-SIN Members to \$200 and for SIN Members to \$275; and

(c) "**Category C**" claims for **Annual Credit Card Fees**: All Annual Fee Class Members (as defined in the settlement agreement) shall be eligible to receive an amount of up to \$50 upon submission of a valid claim.

**You cannot make a Claim until after the Settlement is approved.** You should monitor the Settlement Website and check it regularly at [www.capitalone2019classaction.ca](http://www.capitalone2019classaction.ca) for the latest information on the status of the Settlement and the details and deadline for making claims. **Once the claims period opens, you will have six months to make a claim.** Deadlines and relevant dates will be posted on the website once they are known.

## **SETTLEMENT APPROVAL HEARING**

The British Columbia Supreme Court will hold a settlement approval hearing at the courthouse at 800 Smithe Street, Vancouver, British Columbia on September 22, 2026 to consider whether the proposed settlement is fair, reasonable and in the best interests of the Class (the "**Approval Hearing**"). Class Members and members of the public may attend virtually but are not required to do so. The details on how to attend remotely will be posted to [www.capitalone2019classaction.ca](http://www.capitalone2019classaction.ca).

As a Class Member, you are entitled, but not obligated, to express your opinions about the proposed settlement and whether it should be approved. If you wish to make a submission to the Court supporting or objecting to the proposed settlement, you must send your submissions in writing by email to the Claims Administrator, at [info@capitalone2019classaction.com](mailto:info@capitalone2019classaction.com) and ensure they are received no later than September 11, 2026. The Claims Administrator will provide all submissions to the Court, Class Counsel, and Capital One in advance of the Approval Hearing. Your written submissions should include:

- your name, address and telephone number;
- a brief statement indicating the basis for your belief that you are a Class Member;
- a brief statement of the reasons that you support or oppose the proposed settlement terms; and
- whether you plan to attend the Approval Hearing in person or virtually.

For further information regarding the Settlement Approval Hearing, please contact the Claims Administrator at [info@capitalone2019classaction.com](mailto:info@capitalone2019classaction.com).

## **ADMINISTRATION COSTS AND LEGAL FEES**

The Plaintiff entered into a contingency fee agreement with Class Counsel which provided that Class Counsel are to be paid only in the event of a successful settlement or judgment. Class Counsel will be asking that the Court approve legal fees of 25% of the Settlement Fund, plus disbursements and applicable taxes, in accordance with the contingency fee agreement. Class Counsel will also be asking that the Court approve an honorarium of \$5,000 to be awarded to the named Plaintiff in recognition of their role in this litigation.

**FOR FURTHER INFORMATION:** For questions regarding this Notice or the proposed Settlement, please contact Class Counsel by email as follows:

**Kateryna Galts**

**Charney Lawyers PC**

151 Bloor St. W., Suite 604

Toronto, ON M5S 1S4

Email: [info@charneylawyers.com](mailto:info@charneylawyers.com)

**Please note, due to the volume of inquiries, it may take up to five business days to receive a response. Please do not contact Capital One or the Court about this action.**

## **INTERPRETATION**

This Notice has been approved by the Court and contains a summary of some of the terms of the proposed settlement. If there is a conflict between the provisions of this Notice and the Settlement Agreement, the Settlement Agreement shall prevail.

## SCHEDULE 4: NOTICE PLAN

### NOTICE PLAN NOTICE OF CERTIFICATION AND THE SETTLEMENT APPROVAL HEARING

#### ***General***

1. Unless otherwise provided herein, capitalized terms in this Notice Plan have the meanings ascribed to them in the Settlement Agreement.

#### ***Class Member Information***

2. The Defendants shall make best efforts to provide the Claims Administrator with the following information within fifteen (15) days of the Order approving Notice of Certification and the Settlement Approval Hearing (the “**Notice Order**”) being granted: (a) the names of all Class Members; and (b) any last known email addresses of Class Members (the “**Defendant Class Members List**”).
3. Class Counsel shall, within fifteen (15) days of the Notice Order, provide to the Claims Administrator the Class Counsel registration data, including the names and last known email addresses of the Plaintiff and any other Class Member who reported identifying information to Class Counsel (together with the Defendant Class Member List, the “**Class Member List**”).

#### ***Dissemination of Notice***

4. Within ten (10) days of receiving the Class Member List, the Claims Administrator shall cause the short form Notice of Certification and the Settlement Approval Hearing, attached as Exhibit A to the Notice Order (the “**Short Form Notice**”), to be sent in English via direct email to all Class Members with available email addresses.
5. Within five (5) days of the Notice Order being granted, Class Counsel shall place a copy of the long form Notice of Certification and the Settlement Approval Hearing, attached as Exhibit B to the Notice Order (the “**Long Form Notice**”), on the website: <https://www.charneylawyers.com/capital-one-privacy-breach-class-action/>.
6. Within five (5) days of the Notice Order being granted, the Claims Administrator shall place a copy of the Long Form Notice on the Settlement Website.
7. Within thirty (30) days of the Notice Order being granted, the Claims Administrator shall cause the Short Form Notice to be published in a 1/8th page advertisement with each of the following newspapers on at least one occasion: (a) National Post; and (b) Globe and Mail.
8. Within ten (10) days of the Opt-Out Deadline, the Claims Administrator shall file with the Court an affidavit(s): (a) confirming the publication and delivery of the Notice of Certification and the Settlement Approval Hearing in accordance with this

Notice Plan and the Notice Order; and (b) identifying each Class Member who delivered a valid opt-out form by the Opt-Out Deadline.

***Costs of Providing Notice***

9. The Defendants shall pay the costs of providing notice to the Class in accordance with this Notice Plan.

No. S198617  
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

DUNCAN CAMPBELL

PLAINTIFF

AND:

CAPITAL ONE FINANCIAL CORPORATION, CAPITAL ONE BANK (USA), NATIONAL  
ASSOCIATION, AND CAPITAL ONE BANK (CANADA BRANCH)

DEFENDANTS

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**ORDER MADE AFTER APPLICATION**

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**CHARNEY LAWYERS**  
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