

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

PHILLIP DECOHEN,

\*

On his own behalf and on behalf of all  
Others similarly situated,

\*

Plaintiff,

\*

Case No. 1:10-cv-03157-WDQ

\*

v.

\*

CAPITAL ONE, N.A., *et al.*,

\*

Defendants.

\*

\* \* \* \* \*

**JOINT MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT, AND FOR  
APPROVAL OF THE FORM, MANNER AND ADMINISTRATION OF NOTICE**

Plaintiff, Phillip Decohen, and Defendant, Capital One N.A. (“Capital One”), by and through their undersigned counsel, respectfully move the Court for preliminary approval of a class-based Settlement between the Plaintiff and the Class he seeks to represent, and Capital One.

As set forth in the attached Order Preliminarily Approving Settlement, Certifying Class for Settlement Purposes, and with Respect to Notice, Settlement Hearing and Administration (the “Order”), the parties propose the following timetable unless altered by the Court by further order:

**Within ten (10)  
days after entry of the Order**

Capital One to provide a Class Member List  
to the Settlement Administrator and Class Counsel

**Within thirty (30) calendar  
days after entry of the Order**

Settlement Administrator to mail notice to Class

**Seventy-five (75) calendar days after entry of the Order**      Deadline for any member of the Class to serve Request for Exclusion or file and serve written opposition to the settlement

**April 4, 2014**      Deadline for Plaintiff and/or Capital One to file a response to any oppositions by a Class Member, to file a motion to finally approve the settlement and to file an attorneys' fees and costs petition and a motion for an incentive payment to the representative Plaintiff

**April 11, 2014  
At 10:00 a.m.**      Final hearing on the settlement

In support of this Motion, the parties rely upon the accompanying Memorandum of Law, which is incorporated by reference herein.

WHEREFORE, the parties request that the Court (1) preliminarily approve the proposed settlement, (2) certify the Class for settlement purposes, (3) appoint the undersigned attorneys for Plaintiff as Class Counsel, (4) approve the form of and direct notice to the Class, (5) order Capital One to provide confidential information and material pursuant to the Settlement Agreement; and (6) grant such further relief as justice demands.

**(Signatures on following page)**

Respectfully submitted,

/s/

Benjamin H. Carney (Bar No. 27984)

[bcarney@gordon-wolf.com](mailto:bcarney@gordon-wolf.com)

Martin E. Wolf (Bar No. 09425)

[mwolf@gordon-wolf.com](mailto:mwolf@gordon-wolf.com)

Gordon & Wolf, Chtd.

102 W. Pennsylvania Ave., Suite 402

Towson, Maryland 21204

Tel. (410) 825-2300

Fax. (410) 825-0066

Mark H. Steinbach, Bar No. 26538

[writemhs@gmail.com](mailto:writemhs@gmail.com)

Of Counsel to O'Toole Rothwell

1350 Connecticut Avenue, N.W., Ste 200

Washington, D.C. 20036

Tel. (202) 775-1550

Attorneys for Plaintiff and the Class

/s/

Bryan A Fratkin (*pro hac vice*)

[bfratkin@mcguirewoods.com](mailto:bfratkin@mcguirewoods.com)

McGuireWoods LLP

One James Center

901 E Cary St

Richmond, VA 23219

Tel. (804) 775-4352

Fax. (804) 698-2100

Jessica E. Morrison (Bar No. 26824)

[jmorrison@mcguirewoods.com](mailto:jmorrison@mcguirewoods.com)

Phillip C. Chang (*pro hac vice*)

[pchang@mcguirewoods.com](mailto:pchang@mcguirewoods.com)

McGuireWoods LLP

2001 K St NW Ste 400

Washington, DC 20006

Tel. (202) 857-1705

Fax. (202) 828-2976

Attorneys for Capital One

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

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

\* \* \* \* \*

**JOINT MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY  
APPROVAL OF SETTLEMENT, AND FOR APPROVAL OF THE FORM,  
MANNER AND ADMINISTRATION OF NOTICE**

Plaintiff, Phillip Decohen, and Defendant, Capital One, N.A. (“Capital One”) by and through their undersigned counsel, submit this summary memorandum in support of their Joint Motion for Preliminary Approval of Settlement, and for Approval of the Form, Manner and Administration of Notice. A final motion supporting the fairness of the proposed settlement will be submitted after the class members have received notice and have had an opportunity to object, comment or opt-out, and prior to the Court’s final settlement hearing.

**I. BACKGROUND**

This case is a class action brought on behalf of a Class against Capital One. The Complaint alleges that Capital One acquired certain installment sales contracts financing the purchases of automobiles in which the contract elected Maryland’s Credit Grantor Closed End Credit Provisions, Subtitle 10 of Title 12 of the Commercial Code (“CLEC”). The Complaint

further alleges that these contracts financed the sale of purported debt cancellation agreements, or GAP Agreements, which were defective under CLEC. Plaintiff asserted six claims for relief: (1) violation of the CLEC; (2) violation of Maryland's Consumer Protection Act; (3) violation of the Maryland Retail Installment Sales Act; (4) breach of contract; (5) declaratory and injunctive relief; and (6) unjust enrichment and restitution. Capital One has denied all of Plaintiff's claims and denies any wrongdoing and any liability to Plaintiff or to any putative class members in any amount.

## **II. PROPOSED SETTLEMENT**

Plaintiff and Capital One arrived at the proposed settlement in this case after: (1) vigorously contested litigation including an appeal to the U.S. Court of Appeals for the Fourth Circuit which was fully briefed and argued, and which resulted in a published opinion; (2) review of documents provided by government regulatory entities; (3) extensive research into the applicable law and factual issues; (4) intensive mediation over the course of nine months, overseen by the extensive and invaluable involvement and effort of the Honorable Susan K. Gauvey; and (4) lengthy and arduous face-to-face arms-length negotiations. Based upon the formal and informal discovery in this case and the representations of Capital One, approximately 2,200 consumers entered into CLEC contracts that were assigned to Capital One in which the consumers suffered a total loss and had financed a debt cancellation agreement.

Under the Settlement Agreement (a copy of which is attached as Exhibit 1 hereto), the parties agreed to resolve the claims of a Class of persons defined as follows (the "Settlement Class"):

All borrowers in up to 2,207 transactions who financed GAP Agreements which allow for the use of retail car guides in the calculation of the vehicle's value, where the borrowers suffered a total loss of the vehicle. This Settlement Class includes two

subclasses: (1) all borrowers in up to 1,500 transactions where no Remaining Loan Balance remained due on the account following the total loss and the application of the GAP Agreement (the “No Balance Subclass”); and, (2) all borrowers in up to 707 transactions where a Remaining Loan Balance remained due on the account following the total loss and the application of the GAP Agreement (the “Balance Subclass”).

Excluded from the Class are: (1) those individuals who now are or have ever been executives of the Defendant and the spouses, parents, siblings and children of all such individuals; (2) any individual whose Automobile Loan Account was not originated in the State of Maryland; (3) any individuals against whom a judgment has been granted in favor of Capital One on the account at issue on or before the date of the filing of the Complaint in this case; (4) any individual who was granted a discharge pursuant to the United States Bankruptcy Code, or state receivership laws prior to the date of Final Approval; and (5) any individual otherwise obligated on an Automobile Loan Account that was satisfied more than six months prior to the filing of the Complaint in this case.

The Settlement Agreement contains both equitable and monetary recovery for the Class. The Settlement Agreement, for example, requires Capital One to waive all outstanding balances and/or deficiencies that are owed in connection with the Class Members’ CLEC contracts and to dismiss any pending lawsuits based on such deficiencies or balances. The Settlement Agreement also requires Capital One to send requests to the credit reporting agencies that any balance on the Class members’ accounts be reported as zero and that the account should be reported as “paid as agreed.”

The Settlement Agreement also requires Defendants to pay the sum of \$3,050,000.00 into a Settlement Fund for the benefit of the Class. If the settlement is approved, the Settlement Fund will provide each Class member who made payments in excess of the principal amount financed on their automobile installment sale contract, by check, a refund based on the amount collected in excess of the principal amount financed of her or his loan, less a proportionate share of Class Counsel’s attorneys’ fees and expenses awarded by the Court. Those persons who had a

remaining balance on their loan account following the total loss of their vehicle and the application of their GAP Agreement but who did not pay in excess of their principal amount financed will receive \$200.

Accordingly, in total, the proposed Settlement provides a recovery for the Class with a monetary value in excess of \$3,000,000.00, even without considering the substantial benefit to the Class of the equitable relief provided by the Settlement.

The Settlement also provides for a streamlined process to provide this relief. In fact, it does not even require Class members to submit a claim form. All Class Members who do not opt out from the settlement will automatically receive their benefits should the Court finally approve the Settlement.

Recognizing that some Class Members can no longer be located, under the proposed Settlement, any monies in the Settlement Fund which remain unclaimed or undistributed from the Settlement Fund, after all Class Members eligible for monetary relief who can be located are paid, will be given to a *Cy Pres* fund and, in turn distributed, if approved by the Court, to Civil Justice, Inc. and the Just the Beginning Foundation, both non-profit institutions indirectly benefitting Class members.

### **III. THE SETTLEMENT IS APPROPRIATE FOR PRELIMINARY APPROVAL**

This is a class action maintained under Rule 23 of the Federal Rules of Civil Procedure which should be preliminarily approved to permit notice to be sent to Class members about the existence of the proposed settlement, to advise them of their rights, and to schedule a final fairness hearing. At this stage of the settlement process, the Court need only take a preliminary look at the settlement agreement to insure that it is within “the range of possible approval.” In *Horton v. Merrill Lynch, Pierce, Fenner & Smith*, 855 F. Supp. 825 (E.D.N.C. 1994) (citing *In*

*Re Mid-Atlantic Toyota Antitrust Litigation*, 564 F. Supp. 1379 (D. Md. 1983)), the court defined the appropriate protocol:

... the courts generally have followed a two-step procedure. First, the court conducts a preliminary approval or pre-notification hearing to determine whether the proposed settlement is “within the range of possible approval” or, in other words, whether there is “probable cause” to notify the class of the proposed settlement. Second, assuming that the court grants preliminary approval and notice is sent to the class, the court conducts a “fairness” hearing, at which all interested parties are afforded an opportunity to be heard on the proposed settlement. The ultimate purpose of the fairness hearing is to determine if the proposed settlement is “fair, reasonable, and adequate.”

*Id.* at 827 (citations omitted). *See also Manual for Complex Litigation (Fourth)* § 21.632 at 320 n. 976 (2004) (endorsing the “range of possible approval” standard for preliminary approval).

Together with the equitable remedies in the Settlement Agreement, the parties believe that the proposed class-wide settlement in this case is a favorable and reasonable settlement based upon the claims and the defenses available to the Class and Capital One. As a result, the parties respectfully submit that the Settlement is favorable for the class and most certainly is in “the range of possible approval.”

#### **IV. THE PROPOSED NOTICE IS APPROPRIATE**

Following preliminary approval, Class Members must be given notice concerning the nature of the settlement and of their rights. In particular, FED. R. CIV. P. 23(e) requires that:

(1)(A) The court must approve any settlement, voluntary dismissal, or compromise of the claims, issues, or defenses of a certified class.

(B) The court must direct notice in a reasonable manner to all class members who would be bound by a proposed settlement, voluntary dismissal, or compromise.

These objectives will be satisfied by dissemination of notices in the manner proposed by this



Motion.<sup>1</sup> In the settlement context, notice shall advise the class of their right to exclude themselves from the action, but at the same time afford maximum flexibility for the courts, consonant with due process safeguards. *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96 (2d Cir. 2005) (notice adequate where it appries class members of the basic terms of settlement and their options regarding the proceedings); *see also Manual of Complex Litigation (Fourth)* § 21.312 at 293-96 (2004); 4 H. Newberg & A. Conte, *Newberg on Class Actions* § 11:53 (4th ed. 2002).

The parties have agreed upon a form and manner of notice to class members which maximizes notice to class members of the proposed settlement and, if desired, their right to participate in the settlement approval process. As set forth in the Settlement Agreement, Capital One will construct and compile a Class Member List, which will be verified by the Settlement Administrator and Class Counsel. Further, the Settlement Administrator will conduct a search with an information broker for class members whose last known address proves to be out of date.

**V. PROPOSED PROCEDURE FOR PROVIDING NOTICE TO THE CLASS**

The parties jointly propose the following procedure for notice in this case:

1. The parties have agreed to request that the Court approve Strategic Claims Services, Inc. (“SCS”) of Media, Pennsylvania to serve as the Settlement Administrator. SCS has significant and extensive experience administering and managing class action settlements. SCS will effect the Notice to the Class and distribute the Settlement Fund to the class following final approval.

2. In consultation with Class Counsel and Capital One, in addition to the normal mailing, the Settlement Administrator will conduct a search using a competent information

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<sup>1</sup> The proposed form of notice, agreed upon by the parties, is attached hereto as Exhibit 2, and the same proposed form of notice is attached to the parties’ proposed Order as Exhibit B.

broker to ensure that any mailed Notice which is returned for the reason that the address is incorrect will have a second notice sent to the new address, if the new address is different from the first.

The result of this procedure is that notice will be provided to virtually all of the persons who are members of the Class. The parties believe that the proposed method of notice and distribution described above is likely to reach each class member who can reasonably be found.

#### **VI. CONFIDENTIAL MATERIAL**

The parties have agreed to treat confidential material and information pursuant to paragraph 15 (“Confidential Information or Confidential Material”) of the Settlement Agreement and in compliance with any and all applicable federal and state laws. Further, any and all confidential information and material will be used solely for the purpose of providing the settlement benefits offered by the Settlement Agreement and otherwise implementing the settlement, and for no other purpose whatsoever. Accordingly, the parties request that the Court order Capital One to produce to the Settlement Administrator and Class Counsel confidential information or material pursuant to paragraph 15 of the Settlement Agreement as part of the Court’s Order Preliminarily Approving Settlement.

#### **VII. CONCLUSION**

For the reasons stated herein, the parties respectfully submit that this Court should grant the Motion for Preliminary Approval, and approve the form and manner of notice to the class.

Respectfully submitted,

/s/

Benjamin H. Carney (Bar No. 27984)

[bcarney@gordon-wolf.com](mailto:bcarney@gordon-wolf.com)

Martin E. Wolf (Bar No. 09425)

[mwolf@gordon-wolf.com](mailto:mwolf@gordon-wolf.com)

Gordon & Wolf, Chtd.

102 W. Pennsylvania Ave., Suite 402

Towson, Maryland 21204

Tel. (410) 825-2300

Fax. (410) 825-0066

Mark H. Steinbach, Bar No. 26538

[writemhs@gmail.com](mailto:writemhs@gmail.com)

Of Counsel to O'Toole Rothwell

1350 Connecticut Avenue, N.W., Ste 200

Washington, D.C. 20036

Tel. (202) 775-1550

Attorneys for Plaintiff and the Class

/s/

Bryan A Fratkin (*pro hac vice*)

[bfratkin@mcguirewoods.com](mailto:bfratkin@mcguirewoods.com)

McGuireWoods LLP

One James Center

901 E Cary St

Richmond, VA 23219

Tel. (804) 775-4352

Fax. (804) 698-2100

Jessica E. Morrison (Bar No. 26824)

[jmorrison@mcguirewoods.com](mailto:jmorrison@mcguirewoods.com)

Phillip C. Chang (*pro hac vice*)

[pchang@mcguirewoods.com](mailto:pchang@mcguirewoods.com)

McGuireWoods LLP

2001 K St NW Ste 400

Washington, DC 20006

Tel. (202) 857-1705

Fax. (202) 828-2976

Attorneys for Capital One

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

PHILLIP DECOHEN,

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On his own behalf and on behalf of all  
Others similarly situated,

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Plaintiff,

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Case No. 1:10-cv-03157-WDQ

v.

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CAPITAL ONE, N.A., *et al.*,

\*

Defendants.

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**SETTLEMENT AGREEMENT**

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

**I. RECITALS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

## **II. TERMS OF THE SETTLEMENT**

### **12. Definitions:**

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

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

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

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

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

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

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

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

(h) “Capital One” means Capital One, N.A.

(i) “Capital One’s Counsel” means McGuireWoods LLP.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**13. Settlement Class.**

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

(a) The class shall be defined as follows:

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

the total loss and the application of the GAP Agreement (the “No Balance Subclass”); and, (2) all borrowers in up to 707 transactions where a Remaining Loan Balance remained due on the account following the total loss and the application of the GAP Agreement (the “Balance Subclass”).

Excluded from the Class are: (1) those individuals who now are or have ever been executives of the Defendant and the spouses, parents, siblings and children of all such individuals; (2) any individual whose Automobile Loan Account was not originated in the State of Maryland; (3) any individuals against whom a judgment has been granted in favor of Capital One on the account at issue on or before the date of the filing of the Complaint in this case; (4) any individual who was granted a discharge pursuant to the United States Bankruptcy Code, or state receivership laws prior to the date of Final Approval; and (5) any individual otherwise obligated on an Automobile Loan Account that was satisfied more than six months prior to the filing of the Complaint in this case.

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

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

**14. Class Counsel.**

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

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

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

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

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

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

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

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

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

**16. Class Relief.**

(a) Deficiency Balances and Credit Reporting.

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

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



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

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

(b) Payment.

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

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

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

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

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

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

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

(iii) Checks.

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

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

$$\frac{(([\text{Total Amount of Settlement Fund}] - [\text{Attorney's Fees and Costs}]) \times 0.95^1) - [\$200 \times \text{total number of Balance Subclass Transactions where no Excess Payment was made}]$$
$$[\text{Total Excess Payments to Capital One in All Balance Subclass Transactions}]$$

x

$$[\text{Excess Payment to Capital One in Individual Balance Subclass Transaction}]$$

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

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

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

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

$$\frac{([\text{Total Amount of Settlement Fund}] - [\text{Attorneys' Fees and Costs}]) \times 0.05^2}{[\text{Total Number of No Balance Subclass Transactions}]}$$

[Total Number of No Balance Subclass Transactions]

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

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

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

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

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

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

**17. Settlement Administrator.**

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

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

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

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

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

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

**19. Cy Pres.**

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



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

**20. Cooperation.**

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

**21. Incentive Payment.**

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

**22. Releases.**

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

**(a) Plaintiffs' Release.**

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

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

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

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

(c) Bar to Future Suits.

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

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

### **III. PROCEDURES FOR EFFECTUATING SETTLEMENT**

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

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

### **IV. CONDITIONS OF SETTLEMENT**

25. **Opt-Out Option.**

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

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

**26. Dismissal of Lawsuit.**

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

**27. Approval of the Court.**

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

**28. Termination of Agreement.**

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

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

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

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

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

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

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

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

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

**VI. MISCELLANEOUS PROVISIONS**

**33. No Press Release.**

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

**34. Best Efforts.**

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

35. **Amendments.**

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

36. **Time Periods.**

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

37. **Entire Agreement.**

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

38. **Plaintiffs' Authority.**

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

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

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

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

**40. Counterparts and Signatures.**

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

**41. Binding Nature.**

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

**42. Construing Agreement.**

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



43. **Waiver.**

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

44. **Applicable Law.**

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

45. **Contrary to Law.**

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

46. **Jurisdiction.**

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

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

Date: December 10, 2013

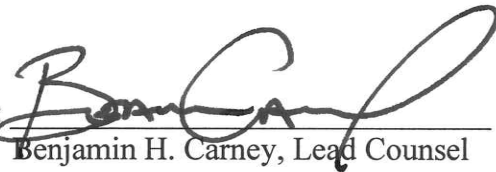
FOR REPRESENTATIVE PLAINTIFF

AND

FOR THE SETTLEMENT CLASS:

FOR THE DEFENDANT

CAPITAL ONE, N.A.:

By:   
Benjamin H. Carney, Lead Counsel

By: \_\_\_\_\_  
\_\_\_\_\_, Authorized Agent

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

Date: December \_\_, 2013

FOR REPRESENTATIVE PLAINTIFF

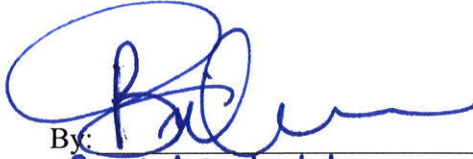
AND

FOR THE SETTLEMENT CLASS:

FOR THE DEFENDANT

CAPITAL ONE, N.A.:

By: \_\_\_\_\_  
Benjamin H. Carney, Lead Counsel

By:  \_\_\_\_\_  
Brent M. Timberlake Authorized Agent

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

PHILLIP DECOHEN,

\*

On his own behalf and on behalf of all  
Others similarly situated,

\*

\*

Plaintiff,

\*

Case No. 1:10-cv-03157-WDQ

v.

\*

CAPITAL ONE, N.A., *et al.*,

\*

Defendants.

\*

\* \* \* \* \*

MAILED NOTICE

**NOTICE OF PENDENCY OF CLASS ACTION,  
PROPOSED SETTLEMENT, AND HEARING**

**PLEASE READ THIS NOTICE CAREFULLY IN ITS ENTIRETY. YOUR RIGHTS MAY BE AFFECTED BY THE SETTLEMENT OF THIS LAWSUIT NOW PENDING IN THIS COURT.**

NOTICE IS HEREBY GIVEN pursuant to RULE 23 of the FEDERAL RULES OF CIVIL PROCEDURE and pursuant to Order of the U.S. District Court for the District of Maryland, to the following Class:

All borrowers in up to 2,207 transactions who financed GAP Agreements which allow for the use of retail car guides in the calculation of the vehicle's value, where the borrowers suffered a total loss of the vehicle. This Settlement Class includes two subclasses: (1) all borrowers in up to 1,500 transactions where no Remaining Loan Balance remained due on the account following the total loss and the application of the GAP Agreement (the "No Balance Subclass"); and, (2) all borrowers in up to 707 transactions where a Remaining Loan Balance remained due on the account following the total loss and the application of the GAP Agreement (the "Balance Subclass").

Excluded from the Class are: (1) those individuals who now are or have ever been executives of the Defendant and the spouses, parents, siblings and children of all such individuals; (2) any individual whose Automobile Loan Account was not originated in the State of Maryland; (3) any individuals against whom a judgment has been granted in favor of Capital One on the account at issue on or before the date of the filing of the Complaint in this case; (4) any individual who was granted a discharge pursuant to the United States Bankruptcy Code, or state receivership laws prior to the date of Final Approval; and (5) any individual otherwise obligated on an Automobile Loan Account that was satisfied more than six months prior to the filing of the Complaint in this case.

This notice is sent to you in the belief that you are a member of the above-defined Class.

**This is not a lawsuit against you.** This case is a class action brought on behalf of a class of consumers against Capital One, N.A. ("Capital One"). Here is some basic information as your legal rights may have been affected when your vehicle was repossessed.

**Read this notice carefully. Your rights and options are explained in this notice.**

## I. THE LAWSUIT

This proposed Settlement involves a lawsuit – *Decohen v. Capital One, N.A.* – currently pending in the U.S. District Court of Maryland, Civil Action No. 1:10-cv-03157-WDQ. The lawsuit was brought by Phillip Decohen (the “Representative Plaintiff”) as a proposed class action.

The Complaint alleges that Capital One acquired installment sales contracts for the purchases of automobiles from Maryland automobile dealers, which financed debt cancellation agreements or GAP Agreements that could not be financed under Maryland law. Based on these allegations, Representative Plaintiff filed a lawsuit asserting six claims for relief: (1) violation of the CLEC; (2) violation of Maryland’s Consumer Protection Act; (3) violation of the Maryland Retail Installment Sales Act; (4) breach of contract; (5) declaratory and injunctive relief; and, (6) unjust enrichment and restitution.

Capital One has denied all of Plaintiff’s claims and denies any wrongdoing and any liability to Plaintiff or to any putative class members in any amount. Capital One contends that Representative Plaintiff’s claims have no merit and that, if the lawsuit were to proceed, it would prevail at trial.

This settlement was reached as the result of arms-length negotiations, including extensive mediation proceedings spanning nine months before U. S. Magistrate Judge Susan K. Gauvey. The settlement requires approval by the Court, and this Notice advises you of the proposed settlement so that you can consider your legal rights.

The parties arrived at this settlement before the Court determined whether class certification was appropriate. Accordingly, there has been no finding that Capital One violated any law in its conduct toward Class Members. Capital One has not admitted to any liability. This Settlement is a compromise of disputed claims and is not an indication of liability of any

sort. Neither the Settlement nor this Notice is not to be construed as an admission or concession of liability by Capital One.

Counsel for the Representative Plaintiff and the Class (“Class Counsel”) have investigated the facts and the applicable law regarding the matters raised in the lawsuit. The issues before the Court are complex and there is uncertainty as to the outcome of the lawsuit. Class Counsel believe that the claims raised in the lawsuit have merit, but recognize that there is a risk that no class would be certified, leaving the Class Members no means for recovery without filing their own separate lawsuits. Therefore, the Representative Plaintiff, on behalf of all others similarly situated, has entered into a Settlement Agreement with Capital One made as of December 20, 2013, (the “Settlement Agreement”). The Court has given its preliminary approval of the Settlement Agreement. If the Court grants final approval of the Agreement, it will fully and finally resolve the claims asserted by the Representative Plaintiff against Capital One, on behalf of himself and anyone else in the Class. **THIS NOTICE AFFECTS YOU BECAUSE IT IS BELIEVED THAT YOU ARE A MEMBER OF THE CLASS.**

## **II. CLASS ACTION**

The parties have agreed and the Court has ordered that, for settlement purposes only, this lawsuit may be maintained as a class action, subject to final and permanent approval at the conclusion of the settlement process. If final approval does not occur, or if either party withdraws from the proposed settlement, the lawsuit will return to the same status as before the Settlement Agreement was signed.

## **III. COUNSEL FOR THE CLASS**

The Court has appointed individuals from the following law firms as Class Counsel:

Benjamin H. Carney  
Martin E. Wolf  
Gordon & Wolf, Chtd.  
102 W. Pennsylvania Ave., Suite 402

Towson, Maryland 21204

Mark H. Steinbach  
Of Counsel to O'Toole Rothwell  
1350 Connecticut Avenue, N.W., Ste 200  
Washington, D.C. 20036

#### **IV. THE PROPOSED SETTLEMENT**

On December 20, 2013, Plaintiff and Capital One, through their respective counsel, entered into a Settlement Agreement that, if finally approved, will result in the dismissal with prejudice and release of all claims that were or could have been asserted by the Representative Plaintiff or any other Class Member against Capital One in connection with their automobile installment sales contracts. The Settlement Agreement is subject to final approval by the Court. The Settlement Agreement contains all the terms of the settlement. It is available for your inspection at the Office of the Clerk, U.S. District Court for the District of Maryland, Baltimore Division, 101 W. Lombard Street, Baltimore, MD 21201, during normal business hours, and can also be downloaded at [www.capitalonegapsettlement.com](http://www.capitalonegapsettlement.com).

#### ***Certification of Settlement Class***

The Court has certified preliminarily, for settlement purposes, the Class defined above. The Court will hold a final fairness hearing on class certification on April 11, 2014, at 10:00 a.m.

#### ***Equitable Relief***

The Settlement Agreement requires Capital One to waive all outstanding balances and/or deficiencies that are owed in connection with the Class Members' CLEC contracts and to dismiss any pending lawsuits based on such deficiencies or balances. The Settlement Agreement also requires Capital One to send requests to the credit reporting agencies that any balance on the Class members' accounts be reported as zero and that the account should be



reported as “paid as agreed.”

***Settlement Fund***

Capital One will pay the sum of \$3,050,000.00 into a Settlement Fund pursuant to the Settlement Agreement. If the settlement is approved, the Settlement Fund will be used to provide a payment to those Class Members who made payments in excess of the principal amount financed stated in their automobile installment sales contract, or who had a balance remaining on their account following the application of their GAP Agreement. Payments from the Settlement Fund will be made by check after deduction of a proportionate share for Class Counsel’s attorneys’ fees and expenses awarded by the Court. The precise amount individual recoveries will depend on the amount, if any, that was paid to Capital One in excess of the principal amount financed.

***Distribution of Remainder of Settlement Fund***

Any monies that remain unclaimed or undistributed will not revert back to Capital One. Instead, they will be distributed to a Court-approved non-profit 501(c)(3) institution.

***Cost of Administration***

The administrative costs associated with distributing the notice to Class Members and the administration of the settlement will be paid by Capital One. The Court has appointed Strategic Claims Services, Inc. as the Settlement Administrator.

***Attorneys’ Fees and Class Representative Award***

Class Counsel have prosecuted this litigation, including an appeal to the U.S. Court of Appeals for the Fourth Circuit, without receiving any attorneys’ fees to date, and without any assurance of receiving fees, except in the event of a successful judgment or settlement. Class

Counsel also have advanced all of the costs necessary to prosecute this litigation. Given these circumstances, Class Counsel will ask the Court to award them fees and expenses to be paid from the Settlement Fund. The total benefit of the settlement to the Class includes not only the \$3,050,000.00 paid by Capital One into the Settlement Fund, but also substantial amounts in waived deficiencies and balances of Class members, plus an unknown but significant value attributable to Capital One's agreement to report all Class Members' accounts as "paid as agreed." Pursuant to the Settlement Agreement, Class Counsel will ask the Court to award their reimbursable costs from the Settlement Fund, plus up to one-third of the Settlement Fund as fees. The Court will conduct a hearing on the amount of attorneys' fees and expenses at a later date as part of the process of final approval of the settlement.

The Representative Plaintiff also intends to apply for an award in the amount of \$10,000 as compensation for his services in acting as the Class Representative in the lawsuit. Capital One has agreed to pay this amount to the Representative Plaintiff separate from the Settlement Fund – it will not diminish the relief to be obtained by other Class Members in any way. This award must still be approved by the Court.

#### ***Entry of Final Judgment and Release***

The Settlement Agreement is subject to final approval by the Court. If the settlement is approved, the Class Members will be bound by the terms of the settlement and any orders from the Court related to the settlement, including dismissal with prejudice of all claims in the litigation against Capital One. If the settlement is approved, the Court will enter a judgment dismissing all claims against Capital One with prejudice. Under the terms of the Settlement Agreement, the Class Members will release Capital One with respect to the claims that were raised or could have been raised that relate to or arise out of the facts and circumstances

pertaining to the automobile installment sales contracts at issue in this case. The release is intended to resolve all matters related or pertaining to the automobile installment sales contracts involved in this case as between Class Members and Capital One, its parent company, and each direct and indirect subsidiary, affiliate, division, successors, assignors, assignees, and/or assigns thereof, and their past or present employees, associates, agents, representatives, attorneys, officers, shareholders, control persons, advisors, and directors. The full text of the release is contained in the Settlement Agreement.

## **V. REASONS FOR SETTLEMENT**

The Representative Plaintiff on the one hand, and Capital One on the other hand, have agreed on all of the terms of the proposed settlement through extensive arms-length negotiations between Class Counsel and counsel for Capital One. The Representative Plaintiff has entered into the proposed settlement after weighing the benefits of the settlement against the probabilities of success or failure in the lawsuit and against any delays that would result if the lawsuit proceeded to trial, and after trial, to appeal.

The Representative Plaintiff and Class Counsel have concluded that the proposed settlement is fair, reasonable and adequate. It provides substantial benefits to the Class, resolves complex issues without further prolonged litigation, provides the Class with significant individual and aggregate benefits, and is in the best interests of the Class.

Although Capital One denies any wrongdoing or liability whatsoever, Capital One believes that it is in its best interests to settle this lawsuit on the terms set forth in the Settlement Agreement in order to avoid the further expense and inconvenience in connection with the lawsuit.

## **VI. RIGHTS AND OPTIONS OF CLASS MEMBERS**

You will be a member of the Class unless you request to be excluded (see below for information on how to exclude yourself from this settlement). Your interests as a member of the Class will be represented by the Representative Plaintiff and by the above-listed Class Counsel. You will not be billed for their services. Class Counsel will receive a fee only if the Court approves the Settlement Agreement, and the fee award will be set by the Court and paid from the Settlement Fund.

As a Class Member, you will be bound by any judgment or other final disposition of this case, including the release of claims and dismissal of the lawsuit with prejudice as provided in the Settlement Agreement. A summary of the effect of the Settlement Agreement, including the releases of claims, is outlined in Sections IV and IX of this notice.

You may file an objection to the settlement, and/or seek to appear, by yourself or through counsel, at the final approval hearing to be held in this case. You also may retain your own counsel to represent you at your own cost, and seek to appear individually or intervene in the case. Please consult Sections VII and VIII for important deadlines and other requirements for objections, appearances, and intervention.

You may request exclusion and "opt-out" from the Class. If you elect to be excluded from the Class, you will not be bound by any judgment or settlement of the lawsuit, nor will you receive any of the benefits of this class action, including the payment to you of any money or any non-monetary benefits. You will retain and be free to pursue any claims that you may have on your own behalf. If you wish to exclude yourself from the Class, you **must** mail a written request for exclusion to the Settlement Administrator, Strategic Claims Services, P.O. Box \_\_\_\_\_, \_\_\_\_\_. Requests for exclusion do not need to be in any particular format, except that the request must state that you intend to "opt-out" or request

"exclusion" from the Class, must be signed personally, and must contain the full name, current address, and telephone number of the person requesting exclusion. The written request for exclusion must be sent by U.S. mail, first class and postage prepaid, postmarked on or before \_\_\_\_\_, 2014.

## **VII. FINAL APPROVAL HEARING**

A final approval hearing will be held on the 11<sup>th</sup> day of April, 2014, at 10:00 a.m. before the Honorable William D. Quarles, U.S. District Court for the District of Maryland, Northern Division, 101 W. Lombard Street, Baltimore, MD 21201, for the purpose of determining whether the proposed settlement is fair, reasonable, and adequate and therefore should be finally approved. The hearing will also determine whether to award attorneys' fees and other expenses to Class Counsel, whether to provide an additional award to the Representative Plaintiff as provided in the Settlement Agreement, and whether to enter a final judgment and dismiss the lawsuit. The hearing may be continued or adjourned without further notice other than announcement at the final approval hearing. The settlement may be approved with modifications, and without further notice, if consented to by the Representative Plaintiff and Capital One and their respective counsel in accordance with the terms of the Settlement Agreement.

**MEMBERS OF THE CLASS WHO DO NOT OBJECT TO THE SETTLEMENT OR ANY OTHER MATTER TO BE CONSIDERED AT THE FINAL APPROVAL HEARING NEED NOT ATTEND THE FINAL APPROVAL HEARING OR TAKE ANY FURTHER ACTION.**

## **VIII. RIGHT TO OBJECT TO SETTLEMENT, REQUEST INTERVENTION AND/OR APPEAR AT THE FINAL APPROVAL HEARING**

If you do not exclude yourself from the Class, you may object to any aspect of the proposed settlement. If you do not exclude yourself from the Class, you also may seek to intervene in the case as a party. Any Class Member who objects to all or part of the proposed

settlement and wants the Court to consider his or her objection, or who seeks intervention, must file such objection, or request for intervention, and all supporting briefs or other papers with the Clerk of the Court on or before \_\_\_\_\_, 2014 at the following address: Office of the Clerk, U.S. District Court for the District of Maryland, Baltimore Division, 101 W. Lombard Street, Baltimore, MD 21201.

Any objection to the Settlement Agreement must set forth the full name, current address and telephone number of the person making objection and must include: (a) a written statement of the position that the objector wishes to assert; (b) a written statement of the grounds therefore; and (c) copies of any papers, briefs, or other documents that the objector wishes to submit in support of his/her position. Any request for intervention must be by motion and must be otherwise in compliance with Rule 24 of the Federal Rules of Civil Procedure. Copies of the objection and/or intervention and supporting papers must also be mailed or hand-delivered to Class Counsel, Benjamin H. Carney, GORDON & WOLF, CHTD., 102 West Pennsylvania Avenue, Suite 402, Baltimore, MD 21204 and to the designated Counsel for Capital One, Bryan A. Fratkin, McGuireWoods LLP, One James Center., 901 E Cary St., Richmond, VA 23219. Any Class Member who intends to appear personally (or through separate counsel if a timely and proper Entry of Appearance is filed) at the final approval hearing for any reason whatsoever must file with the Clerk of the Court, at the address listed above, a Notice of Intention to Appear, in no particular form. The Notice of Intent to Appear shall be filed on or before \_\_\_\_\_, and copies of the Notice of Intention to Appear must be mailed or hand delivered to Class Counsel and to Counsel for Capital One, at the addresses listed above. Any Class Member who does not file and serve a Notice of Intention to Appear will be prohibited from speaking at the final approval hearing concerning this settlement. Any Class Member who does not file an objection in the time and manner described above is forever prohibited from

raising any objection to such matters in the event that the settlement is approved. Any Class Member who does not file a request for intervention in the time and manner described above is forever prohibited from seeking intervention in this lawsuit.

**IF YOU DO NOT OBJECT TO THE SETTLEMENT, AND DO NOT WISH TO BE HEARD ON ANY OTHER MATTER TO BE PRESENTED TO THE COURT AT THE FINAL APPROVAL HEARING, YOU NEED TAKE NO FURTHER ACTION IN ORDER TO BE ENTITLED TO PARTICIPATE IN THE SETTLEMENT.**

**IF YOU HAVE MOVED AND/OR CHANGED YOUR MAILING ADDRESS SINCE ENTERING INTO YOUR VEHICLE FINANCING CONTRACT, HOWEVER, YOU WILL NEED TO ADVISE CLASS COUNSEL OF THE FACT BY WRITING TO ONE OF THEM AT THE ADDRESSES REFERENCED IN THIS NOTICE.**

#### **IX. SCOPE OF SETTLEMENT PROPOSAL**

If the settlement is approved, the terms of the Settlement Agreement, including the releases outlined in Section IV of this Notice, will be final and binding upon, and shall inure to the benefit of: (a) all Class Members, except those who request timely and proper exclusion from the Class; (b) any heir, executor, administrator, representative, assignee, or other party standing in the shoes of any Class; (c) Capital One, as well as its parent company, and each direct and indirect subsidiary, affiliate, division, successors, assignors, assignees, and/or assigns thereof, and their past or present employees, associates, agents, representatives, attorneys, officers, shareholders, control persons, advisors, and directors; and (d) all beneficiaries of the release stated in the Settlement Agreement.

#### **X. INFORMATION THAT YOU MUST INCLUDE IN ANY DOCUMENT THAT YOU SEND REGARDING THE CASE**

In sending any document to the Court, to Class Counsel, to the Settlement Administrator, or to Counsel for Capital One, it is important that both your envelope and any document inside contain the following case name and identifying number: *Decohen v. Capital*

*One, N.A.*, Civil Action No. 1:10-cv-03157-WDQ. In addition, you must include your full name, address, and telephone number at which you can be reached.

#### **XI. FOR MORE INFORMATION**

If you have any questions concerning the matters dealt with in this notice, please direct your inquiries in writing to one of the following Class Counsel representing the Class:

Benjamin H. Carney  
Martin E. Wolf  
Gordon & Wolf, Chtd.  
102 W. Pennsylvania Ave., Suite 402  
Towson, Maryland 21204

Mark H. Steinbach  
Of Counsel to O'Toole Rothwell  
1350 Connecticut Avenue, N.W., Ste 200  
Washington, D.C. 20036

#### **XII. PLEADINGS AND OTHER RECORDS**

You may review the Complaint, Settlement Agreement, and Preliminary Approval Order in this case at [www.capitalonegapsettlement.com](http://www.capitalonegapsettlement.com). The pleadings and other records in this litigation may be examined and copied during regular office hours at the Office of the Clerk, U.S. District Court for the District of Maryland, Baltimore Division, 101 W. Lombard Street, Baltimore, MD 21201. **PLEASE DO NOT TELEPHONE THE CLERK'S OFFICE OR THE JUDGE'S CHAMBERS.**

DATE: \_\_\_\_\_, 2014.

Clerk of Court,  
U.S. District Court for the District of Maryland



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

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

\* \* \* \* \*

**ORDER PRELIMINARILY APPROVING SETTLEMENT,  
CERTIFYING CLASS FOR SETTLEMENT PURPOSES,  
APPOINTING CLASS COUNSEL AND SETTLEMENT ADMINISTRATOR,  
AND SETTING SCHEDULE WITH RESPECT TO NOTICE,  
SETTLEMENT HEARING AND ADMINISTRATION**

After review and consideration of the Settlement Agreement (the “Agreement”) dated December 20, 2013, relating to claims raised against Defendant Capital One N.A. (“Capital One” or “Defendant”), and upon joint application of Plaintiff, Phillip Decohen (“Representative Plaintiff”) and Capital One, with good cause appearing, THIS COURT FINDS and ORDERS as follows:

1. The terms of the Agreement, and the Settlement provided for therein, are preliminarily approved as fair, reasonable and adequate, subject to further consideration thereof at the Settlement Hearing described at Paragraph 21 of this Order.

2. The definitions set forth in the Agreement are hereby incorporated by reference into this Order.

3. The Court has subject matter and personal jurisdiction over the Parties, including all Class Members.

4. For purpose of this Settlement and without prejudice to Capital One's right to contest class certification in the event that the proposed Settlement is not fully implemented, the Court hereby certifies the following class ("Class") in accordance with the Agreement, and pursuant to Fed.R.Civ.P. 23(a) and Fed.R.Civ.P. 23(b)(3):

All borrowers in up to 2,207 transactions who financed GAP Agreements which allow for the use of retail car guides in the calculation of the vehicle's value, where the borrowers suffered a total loss of the vehicle. This Settlement Class includes two subclasses: (1) all borrowers in up to 1,500 transactions where no Remaining Loan Balance remained due on the account following the total loss and the application of the GAP Agreement (the "No Balance Subclass"); and, (2) all borrowers in up to 707 transactions where a Remaining Loan Balance remained due on the account following the total loss and the application of the GAP Agreement (the "Balance Subclass").

Excluded from the Class are: (1) those individuals who now are or have ever been executives of the Defendant and the spouses, parents, siblings and children of all such individuals; (2) any individual whose Automobile Loan Account was not originated in the State of Maryland; (3) any individuals against whom a judgment has been granted in favor of Capital One on the account at issue on or before the date of the filing of the Complaint in this case; (4) any individual who was granted a discharge pursuant to the United States Bankruptcy Code, or state receivership laws prior to the date of Final Approval; and (5) any individual otherwise obligated on an Automobile Loan Account that was satisfied more than six months prior to the filing of the Complaint in this case.

5. For settlement purposes only and without prejudice to Capital One's right to contest class certification in the event that the proposed Settlement is not fully implemented, the Court finds, pursuant to the Agreement, that the prerequisites of FED. R. CIV. P. 23(a) and FED. R. CIV. P. 23(b)(3) have been satisfied:

Rule 23. Class Actions.

- (a) Prerequisites. One or more members of a class may sue or be sued as representative parties on behalf of all members only if:
- (1) the class is so numerous that joinder of all members is impracticable;
  - (2) there are questions of law or fact common to the class;
  - (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
  - (4) the representative parties will fairly and adequately protect the interests of the class.
- (b) Types of Class Actions. A class action may be maintained if Rule 23(a) is satisfied and if:

\* \* \*

- (3) the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

6. For the purpose of this preliminary approval and all matters relating to the Settlement of this Action, and without prejudice to Capital One's right to contest the appointment of Representative Plaintiff as the representative of the Class and/or the appointment of Class Counsel in the event that the proposed Settlement is not fully implemented, until further order of the Court, Plaintiff Phillip Decohen shall be the Representative of the Class and Representative Plaintiff's counsel of record are appointed as counsel for the Class ("Class Counsel"). The law firms representing the Class and who shall comprise Class Counsel are:

Benjamin H. Carney  
Martin E. Wolf  
Gordon & Wolf, Chtd.  
102 W. Pennsylvania Ave., Suite 402  
Towson, Maryland 21204

Mark H. Steinbach  
Of Counsel to O'Toole Rothwell  
1350 Connecticut Avenue, N.W., Ste 200  
Washington, D.C. 20036

7. Strategic Claims Services, 600 North Jackson Street, Suite 3, Media, PA 19063, (“Settlement Administrator”), is hereby appointed to serve as Settlement Administrator, subject to the execution and filing with the Court of the Certification attached as Exhibit A to this Order.

8. Pursuant to the terms of paragraph 17 of the Agreement, Defendant is hereby Ordered to prepare and provide to the Settlement Administrator a Class Member List within ten (10) days of the entry of this Order and Ordered to provide Confidential Material pursuant to paragraph 15 (“Confidential Information or Confidential Material”) of the Agreement. Defendant is further Ordered to make the deposit of the Settlement Fund pursuant to paragraph 16(b)(i) of the Agreement within ten (10) business days of the entry of this Order.

9. The Settlement Administrator shall comply with the provisions of paragraphs 15 and 17 of the Agreement, maintain the confidentiality of the Class Member List, the Class Member account data or information and the Class Member account files referenced in paragraph 17 of the Agreement, and shall use the information contained in the Class Member List and the Class Member account files referenced in paragraph 17 of the Agreement solely for purposes of implementing this Settlement and for no other purposes whatsoever.

10. The parties, Capital One’s Counsel, and Class Counsel shall comply with the provisions of paragraph 15 of the Agreement, which are hereby incorporated, as such requirements pertain to the parties, Capital One’s Counsel, and Class Counsel.

11. Within thirty (30) calendar days of the entry of this Order, pursuant to the procedures detailed in the Agreement, the Settlement Administrator shall provide notice of this

Settlement and of the Settlement Hearing to all potential Class Members by mailing to each person identified as a Potential Class Member on the Class Member List a copy of the Notice of Pendency of Class Action, Proposed Settlement and Hearing (the “Class Notice”), substantially in the form attached as Exhibit B to this Order. If any Class Notices are returned because of an incorrect or invalid address, the Settlement Administrator is ordered to take the actions set forth in paragraph 17 of the Agreement. In order to assist in the notice process, for all persons whose first notice of the Settlement and Settlement Hearing in this case is returned as undeliverable, within five (5) days of receiving the returned notice, the Class Administrator shall request in writing from Defendant the social security numbers for those Class Members, and Defendant is further Ordered to use its best efforts to provide social security numbers for those persons to the Settlement Administrator and Class Counsel within five (5) days of the Settlement Administrator’s request, and shall provide said social security numbers in no event later than ten (10) days after the Settlement Administrator’s request. The parties, Capital One’s Counsel and Class Counsel shall maintain the confidentiality of any such social security numbers pursuant to paragraph 15 of the Agreement.

12. The reasonable costs and expenses of printing, preparing and mailing the Class Notice, and the reasonable costs and expenses of the Settlement Administrator, and other related administrative expenses shall be borne by Defendant as set forth in paragraph 18 (“Cost of Administration of Settlement Fund”) of the Agreement.

13. Prior to the hearing described in paragraph 21 herein, Class Counsel shall serve and file a sworn statement of the Settlement Administrator evidencing compliance with the provisions of this Order concerning the mailing of the Class Notice after Capital One has reviewed the Settlement Administrator’s sworn statement.

14. Notice to potential Class Members in accordance with the provisions of the Agreement and paragraph 11 of this Order is hereby found to be: (a) the best Notice practicable under the circumstances; (b) due and sufficient notice of this Order to all persons affected by and/or entitled to participate in the Settlement; and (c) in full compliance with the notice requirement of FED. R. CIV. P. 23 and due process to all persons entitled to such Notice.

15. Any Class Member wishing to be excluded from the Class shall mail a request for exclusion (“Request for Exclusion” or “Opt-Out Form”), pursuant to paragraph 25 (“Opt-Out Option”) of the Agreement, to the Settlement Administrator, postmarked not later than seventy-five (75) days after entry of this Order. Requests for exclusion that do not include all required information and/or not transmitted as to the instructions set forth in the Notice will not be honored. Upon receipt, the Settlement Administrator shall immediately forward a copy of any Request for Exclusion to Class Counsel and to counsel for Capital One. Such request shall set forth: the name, address, and telephone number of the Class Member, and contain the words “opt-out,” “exclusion,” or other words clearly indicating an intent not to participate in the Settlement. Requests for exclusion shall be deemed to have been made in each and every capacity in which the person requesting the exclusion is acting. Any Class Member who does not properly and timely request exclusion shall be included in the Class and shall be bound by the determinations of the Court, and any Final Judgment entered in the Action, if this Settlement receives Final Approval from the Court. The specific date and deadline for requesting exclusion by a Class Member shall be set forth in the Class Notice.

16. Within ten (10) business days following the expiration of the last date for requesting exclusion (the “Exclusion Date”) the Settlement Administrator shall:

(a) Notify, in writing, Defendant's counsel and Class Counsel regarding the names of Class Members, if any, who request exclusion;

(b) File with the Court a sworn statement listing all persons who have submitted timely requests for exclusion; and

(c) Provide copies of all Requests for Exclusion received by it to Defendant's counsel and Class Counsel. The originals of all Requests for Exclusion shall be retained by the Settlement Administrator unless and until such originals are delivered to the Representative Plaintiff's counsel following the Effective Date.

17. To effectuate the Settlement and the Notice provided for herein, the Settlement Administrator shall lease and maintain a post office box of adequate size. Notice to the Class shall designate said post office box for Requests for Exclusion and for all purposes of communicating with the Settlement Administrator. The Settlement Administrator shall be responsible for the receipt of all Requests for Exclusion and other written communications from Class Members and shall preserve all such communications until administration is complete or further order of the Court. All written communications received from Class Members and all written responses to inquiries by Class Members relating to the Agreement and Settlement shall be available at all reasonable times for inspection and copying by Capital One's counsel and Representative Plaintiff's counsel, subject to further Order of the Court if issues of privilege or confidentiality arise. Notice to Class Members shall designate the Settlement Administrator as the person to whom Requests for Exclusion shall be sent.

18. In order to be deemed a Class Member entitled to participate in the Settlement as set forth in the Agreement, in the event that the Settlement is effected in accordance with all of the terms and conditions thereof, Class Members need not take any affirmative action, but shall not opt-out of, or request exclusion from the Settlement.

19. All other events contemplated under the Agreement to occur after this Order and before the hearing described in paragraph 21 of this Order shall be governed by the Agreement to the extent not inconsistent with this Order.

20. Memoranda in support of the Settlement, petitions for attorneys' fees and reimbursement of expenses by Representative Plaintiff's counsel, and requests for any Representative Plaintiff award shall be filed with the Clerk of the Court on or before April 4, 2014.

21. A hearing (the "Settlement Hearing") shall be held before the undersigned at 10:00 a.m. on April 11, 2014 in the U.S. District Court for the District of Maryland, 101 W. Lombard Street, Baltimore, Maryland 21201, to consider the fairness, reasonableness and adequacy of the proposed Settlement, the entry of any final Order or Judgment in the case, petitions for attorneys' fees and for reimbursement of expenses by Representative Plaintiff's counsel, and other related matters. This hearing may be postponed, adjourned or continued by Order of the Court without further notice to the Class.

22. Any Class Member who does not opt-out of the Settlement may appear at the Settlement Hearing in person or by counsel, if any appearance is filed and served as provided in the Class Notice, and will be heard to the extent allowed by the Court in support of, or in opposition to, the fairness, reasonableness and adequacy of the proposed Settlement, the entry of any final Order or Judgment in the case, petitions for attorneys' fees and for reimbursement of expenses by Representative Plaintiff's counsel, or other related matters. Provided, however, that no person shall be permitted to intervene or otherwise be heard in opposition to the proposed Settlement, and, if approved, the judgment entered thereon, or to the requested award of



attorneys' fees and reimbursement of expenses, and no papers or briefs submitted by any person shall be accepted or considered by the Court unless, not later than ninety (90) days of the mailing of the Notice, such person has:

- (a) filed with the Clerk of the Court a notice of such person's intention to intervene or otherwise appear together with a statement that indicates the basis for such intervention or opposition along with any supporting documentation;
- (b) served copies of such notice, statement and documentation, together with copies of any other papers or briefs that such person files with the Court, either in person or by mail, upon Representative Plaintiff's counsel, and upon Defendant's counsel at the following addresses:

To Representative Plaintiff's Counsel:

Benjamin H. Carney  
Gordon & Wolf, Chtd.  
102 W. Pennsylvania Ave., Suite 402  
Towson, Maryland 21204

To Defendants' Counsel:

Bryan A Fratkin  
McGuireWoods LLP  
One James Center  
901 E Cary St  
Richmond, VA 23219

- (c) otherwise complied with the Settlement Agreement and Notice for purposes of such hearing.

23. Any Class Member who does not make objection in the manner provided in this Order shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness or adequacy of the proposed Settlement as incorporated in the Agreement and to the award of attorneys' fees and costs to Class Counsel.

24. If the proposed Settlement is not implemented or if the Settlement is terminated for any reason whatsoever, the Settlement, and all proceedings in connection with the

Agreement, including, without limitation, all orders entered in connection with the proposed Settlement shall be without prejudice to the rights of the settling parties, and all Orders issued pursuant to this proposed Settlement shall be vacated. In such an event, the Settlement and all negotiations, proceedings and statements made in connection with the proposed Settlement, including without limitation the Agreement, shall be null, void and without effect. No evidence relating to such negotiations, proceedings, documents, or statements shall be used in any manner or for any purpose in any subsequent proceedings in this Action, or in any other proceeding between the settling parties, and this Action shall revert to its status immediately prior to the execution of the Agreement, including but not limited to its status as a putative class action.

25. The Court retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement. The Court may approve the Settlement with such modifications as may be agreed to by the Parties, if appropriate, without further notice to the Settlement Class.

IT IS SO ORDERED

Dated: \_\_\_\_\_, 2014.

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Hon. William D. Quarles  
Judge, U.S. District Court for the  
District of Maryland

## **EXHIBIT A**

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

PHILLIP DECOHEN,

\*

On his own behalf and on behalf of all  
Others similarly situated,

\*

Plaintiff,

\*

Case No. 1:10-cv-03157-WDQ

v.

\*

\*

CAPITAL ONE, N.A., *et al.*,

\*

Defendants.

\* \* \* \* \*

**ACCEPTANCE OF CONFIDENTIALITY UNDERTAKING**

The undersigned, an authorized representative of [redacted] hereby certifies that he has read the Settlement Agreement executed by the parties in the above captioned action and confirms that [redacted] agrees to adhere to and be bound by the confidentiality provisions in paragraph 15 of the Settlement Agreement. In addition, [redacted] understands and agrees that the terms of the confidentiality provision of paragraph 15 of the Settlement Agreement and this certification of confidentiality will remain binding on the parties and on [redacted] notwithstanding any modification or termination of the Settlement Agreement.

[redacted]

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

SUBSCRIBED AND SWORN to

Before me this \_\_\_ day of \_\_\_\_\_, 2014

\_\_\_\_\_  
Notary Public  
My Commission Expires:

## **EXHIBIT B**

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

PHILLIP DECOHEN,

\*

On his own behalf and on behalf of all  
Others similarly situated,

\*

\*

Plaintiff,

\*

Case No. 1:10-cv-03157-WDQ

v.

\*

CAPITAL ONE, N.A., *et al.*,

\*

Defendants.

\*

\* \* \* \* \*

MAILED NOTICE

**NOTICE OF PENDENCY OF CLASS ACTION,  
PROPOSED SETTLEMENT, AND HEARING**

**PLEASE READ THIS NOTICE CAREFULLY IN ITS ENTIRETY. YOUR RIGHTS MAY BE AFFECTED BY THE SETTLEMENT OF THIS LAWSUIT NOW PENDING IN THIS COURT.**

NOTICE IS HEREBY GIVEN pursuant to RULE 23 of the FEDERAL RULES OF CIVIL PROCEDURE and pursuant to Order of the U.S. District Court for the District of Maryland, to the following Class:

All borrowers in up to 2,207 transactions who financed GAP Agreements which allow for the use of retail car guides in the calculation of the vehicle's value, where the borrowers suffered a total loss of the vehicle. This Settlement Class includes two subclasses: (1) all borrowers in up to 1,500 transactions where no Remaining Loan Balance remained due on the account following the total loss and the application of the GAP Agreement (the "No Balance Subclass"); and, (2) all borrowers in up to 707 transactions where a Remaining Loan Balance remained due on the account following the total loss and the application of the GAP Agreement (the "Balance Subclass").

Excluded from the Class are: (1) those individuals who now are or have ever been executives of the Defendant and the spouses, parents, siblings and children of all such individuals; (2) any individual whose Automobile Loan Account was not originated in the State of Maryland; (3) any individuals against whom a judgment has been granted in favor of Capital One on the account at issue on or before the date of the filing of the Complaint in this case; (4) any individual who was granted a discharge pursuant to the United States Bankruptcy Code, or state receivership laws prior to the date of Final Approval; and (5) any individual otherwise obligated on an Automobile Loan Account that was satisfied more than six months prior to the filing of the Complaint in this case.

This notice is sent to you in the belief that you are a member of the above-defined Class.

**This is not a lawsuit against you.** This case is a class action brought on behalf of a class of consumers against Capital One, N.A. ("Capital One"). Here is some basic information as your legal rights may have been affected when your vehicle was repossessed.

**Read this notice carefully. Your rights and options are explained in this notice.**

## I. THE LAWSUIT

This proposed Settlement involves a lawsuit – *Decohen v. Capital One, N.A.* – currently pending in the U.S. District Court of Maryland, Civil Action No. 1:10-cv-03157-WDQ. The lawsuit was brought by Phillip Decohen (the “Representative Plaintiff”) as a proposed class action.

The Complaint alleges that Capital One acquired installment sales contracts for the purchases of automobiles from Maryland automobile dealers, which financed debt cancellation agreements or GAP Agreements that could not be financed under Maryland law. Based on these allegations, Representative Plaintiff filed a lawsuit asserting six claims for relief: (1) violation of the CLEC; (2) violation of Maryland’s Consumer Protection Act; (3) violation of the Maryland Retail Installment Sales Act; (4) breach of contract; (5) declaratory and injunctive relief; and, (6) unjust enrichment and restitution.

Capital One has denied all of Plaintiff’s claims and denies any wrongdoing and any liability to Plaintiff or to any putative class members in any amount. Capital One contends that Representative Plaintiff’s claims have no merit and that, if the lawsuit were to proceed, it would prevail at trial.

This settlement was reached as the result of arms-length negotiations, including extensive mediation proceedings spanning nine months before U. S. Magistrate Judge Susan K. Gauvey. The settlement requires approval by the Court, and this Notice advises you of the proposed settlement so that you can consider your legal rights.

The parties arrived at this settlement before the Court determined whether class certification was appropriate. Accordingly, there has been no finding that Capital One violated any law in its conduct toward Class Members. Capital One has not admitted to any liability. This Settlement is a compromise of disputed claims and is not an indication of liability of any



sort. Neither the Settlement nor this Notice is not to be construed as an admission or concession of liability by Capital One.

Counsel for the Representative Plaintiff and the Class (“Class Counsel”) have investigated the facts and the applicable law regarding the matters raised in the lawsuit. The issues before the Court are complex and there is uncertainty as to the outcome of the lawsuit. Class Counsel believe that the claims raised in the lawsuit have merit, but recognize that there is a risk that no class would be certified, leaving the Class Members no means for recovery without filing their own separate lawsuits. Therefore, the Representative Plaintiff, on behalf of all others similarly situated, has entered into a Settlement Agreement with Capital One made as of December 20, 2013, (the “Settlement Agreement”). The Court has given its preliminary approval of the Settlement Agreement. If the Court grants final approval of the Agreement, it will fully and finally resolve the claims asserted by the Representative Plaintiff against Capital One, on behalf of himself and anyone else in the Class. **THIS NOTICE AFFECTS YOU BECAUSE IT IS BELIEVED THAT YOU ARE A MEMBER OF THE CLASS.**

## **II. CLASS ACTION**

The parties have agreed and the Court has ordered that, for settlement purposes only, this lawsuit may be maintained as a class action, subject to final and permanent approval at the conclusion of the settlement process. If final approval does not occur, or if either party withdraws from the proposed settlement, the lawsuit will return to the same status as before the Settlement Agreement was signed.

## **III. COUNSEL FOR THE CLASS**

The Court has appointed individuals from the following law firms as Class Counsel:

Benjamin H. Carney  
Martin E. Wolf  
Gordon & Wolf, Chtd.  
102 W. Pennsylvania Ave., Suite 402

Towson, Maryland 21204

Mark H. Steinbach  
Of Counsel to O'Toole Rothwell  
1350 Connecticut Avenue, N.W., Ste 200  
Washington, D.C. 20036

#### **IV. THE PROPOSED SETTLEMENT**

On December 20, 2013, Plaintiff and Capital One, through their respective counsel, entered into a Settlement Agreement that, if finally approved, will result in the dismissal with prejudice and release of all claims that were or could have been asserted by the Representative Plaintiff or any other Class Member against Capital One in connection with their automobile installment sales contracts. The Settlement Agreement is subject to final approval by the Court. The Settlement Agreement contains all the terms of the settlement. It is available for your inspection at the Office of the Clerk, U.S. District Court for the District of Maryland, Baltimore Division, 101 W. Lombard Street, Baltimore, MD 21201, during normal business hours, and can also be downloaded at [www.capitalonegapsettlement.com](http://www.capitalonegapsettlement.com).

#### ***Certification of Settlement Class***

The Court has certified preliminarily, for settlement purposes, the Class defined above. The Court will hold a final fairness hearing on class certification on April 11, 2014, at 10:00 a.m.

#### ***Equitable Relief***

The Settlement Agreement requires Capital One to waive all outstanding balances and/or deficiencies that are owed in connection with the Class Members' CLEC contracts and to dismiss any pending lawsuits based on such deficiencies or balances. The Settlement Agreement also requires Capital One to send requests to the credit reporting agencies that any balance on the Class members' accounts be reported as zero and that the account should be

reported as “paid as agreed.”

### ***Settlement Fund***

Capital One will pay the sum of \$3,050,000.00 into a Settlement Fund pursuant to the Settlement Agreement. If the settlement is approved, the Settlement Fund will be used to provide a payment to those Class Members who made payments in excess of the principal amount financed stated in their automobile installment sales contract, or who had a balance remaining on their account following the application of their GAP Agreement. Payments from the Settlement Fund will be made by check after deduction of a proportionate share for Class Counsel’s attorneys’ fees and expenses awarded by the Court. The precise amount individual recoveries will depend on the amount, if any, that was paid to Capital One in excess of the principal amount financed.

### ***Distribution of Remainder of Settlement Fund***

Any monies that remain unclaimed or undistributed will not revert back to Capital One. Instead, they will be distributed to a Court-approved non-profit 501(c)(3) institution.

### ***Cost of Administration***

The administrative costs associated with distributing the notice to Class Members and the administration of the settlement will be paid by Capital One. The Court has appointed Strategic Claims Services, Inc. as the Settlement Administrator.

### ***Attorneys’ Fees and Class Representative Award***

Class Counsel have prosecuted this litigation, including an appeal to the U.S. Court of Appeals for the Fourth Circuit, without receiving any attorneys’ fees to date, and without any assurance of receiving fees, except in the event of a successful judgment or settlement. Class

Counsel also have advanced all of the costs necessary to prosecute this litigation. Given these circumstances, Class Counsel will ask the Court to award them fees and expenses to be paid from the Settlement Fund. The total benefit of the settlement to the Class includes not only the \$3,050,000.00 paid by Capital One into the Settlement Fund, but also substantial amounts in waived deficiencies and balances of Class members, plus an unknown but significant value attributable to Capital One's agreement to report all Class Members' accounts as "paid as agreed." Pursuant to the Settlement Agreement, Class Counsel will ask the Court to award their reimbursable costs from the Settlement Fund, plus up to one-third of the Settlement Fund as fees. The Court will conduct a hearing on the amount of attorneys' fees and expenses at a later date as part of the process of final approval of the settlement.

The Representative Plaintiff also intends to apply for an award in the amount of \$10,000 as compensation for his services in acting as the Class Representative in the lawsuit. Capital One has agreed to pay this amount to the Representative Plaintiff separate from the Settlement Fund – it will not diminish the relief to be obtained by other Class Members in any way. This award must still be approved by the Court.

#### ***Entry of Final Judgment and Release***

The Settlement Agreement is subject to final approval by the Court. If the settlement is approved, the Class Members will be bound by the terms of the settlement and any orders from the Court related to the settlement, including dismissal with prejudice of all claims in the litigation against Capital One. If the settlement is approved, the Court will enter a judgment dismissing all claims against Capital One with prejudice. Under the terms of the Settlement Agreement, the Class Members will release Capital One with respect to the claims that were raised or could have been raised that relate to or arise out of the facts and circumstances

pertaining to the automobile installment sales contracts at issue in this case. The release is intended to resolve all matters related or pertaining to the automobile installment sales contracts involved in this case as between Class Members and Capital One, its parent company, and each direct and indirect subsidiary, affiliate, division, successors, assignors, assignees, and/or assigns thereof, and their past or present employees, associates, agents, representatives, attorneys, officers, shareholders, control persons, advisors, and directors. The full text of the release is contained in the Settlement Agreement.

## **V. REASONS FOR SETTLEMENT**

The Representative Plaintiff on the one hand, and Capital One on the other hand, have agreed on all of the terms of the proposed settlement through extensive arms-length negotiations between Class Counsel and counsel for Capital One. The Representative Plaintiff has entered into the proposed settlement after weighing the benefits of the settlement against the probabilities of success or failure in the lawsuit and against any delays that would result if the lawsuit proceeded to trial, and after trial, to appeal.

The Representative Plaintiff and Class Counsel have concluded that the proposed settlement is fair, reasonable and adequate. It provides substantial benefits to the Class, resolves complex issues without further prolonged litigation, provides the Class with significant individual and aggregate benefits, and is in the best interests of the Class.

Although Capital One denies any wrongdoing or liability whatsoever, Capital One believes that it is in its best interests to settle this lawsuit on the terms set forth in the Settlement Agreement in order to avoid the further expense and inconvenience in connection with the lawsuit.

## **VI. RIGHTS AND OPTIONS OF CLASS MEMBERS**

You will be a member of the Class unless you request to be excluded (see below for information on how to exclude yourself from this settlement). Your interests as a member of the Class will be represented by the Representative Plaintiff and by the above-listed Class Counsel. You will not be billed for their services. Class Counsel will receive a fee only if the Court approves the Settlement Agreement, and the fee award will be set by the Court and paid from the Settlement Fund.

As a Class Member, you will be bound by any judgment or other final disposition of this case, including the release of claims and dismissal of the lawsuit with prejudice as provided in the Settlement Agreement. A summary of the effect of the Settlement Agreement, including the releases of claims, is outlined in Sections IV and IX of this notice.

You may file an objection to the settlement, and/or seek to appear, by yourself or through counsel, at the final approval hearing to be held in this case. You also may retain your own counsel to represent you at your own cost, and seek to appear individually or intervene in the case. Please consult Sections VII and VIII for important deadlines and other requirements for objections, appearances, and intervention.

You may request exclusion and "opt-out" from the Class. If you elect to be excluded from the Class, you will not be bound by any judgment or settlement of the lawsuit, nor will you receive any of the benefits of this class action, including the payment to you of any money or any non-monetary benefits. You will retain and be free to pursue any claims that you may have on your own behalf. If you wish to exclude yourself from the Class, you **must** mail a written request for exclusion to the Settlement Administrator, Strategic Claims Services, P.O. Box \_\_\_\_\_, \_\_\_\_\_. Requests for exclusion do not need to be in any particular format, except that the request must state that you intend to "opt-out" or request

"exclusion" from the Class, must be signed personally, and must contain the full name, current address, and telephone number of the person requesting exclusion. The written request for exclusion must be sent by U.S. mail, first class and postage prepaid, postmarked on or before \_\_\_\_\_, 2014.

## **VII. FINAL APPROVAL HEARING**

A final approval hearing will be held on the 11<sup>th</sup> day of April, 2014, at 10:00 a.m. before the Honorable William D. Quarles, U.S. District Court for the District of Maryland, Northern Division, 101 W. Lombard Street, Baltimore, MD 21201, for the purpose of determining whether the proposed settlement is fair, reasonable, and adequate and therefore should be finally approved. The hearing will also determine whether to award attorneys' fees and other expenses to Class Counsel, whether to provide an additional award to the Representative Plaintiff as provided in the Settlement Agreement, and whether to enter a final judgment and dismiss the lawsuit. The hearing may be continued or adjourned without further notice other than announcement at the final approval hearing. The settlement may be approved with modifications, and without further notice, if consented to by the Representative Plaintiff and Capital One and their respective counsel in accordance with the terms of the Settlement Agreement.

**MEMBERS OF THE CLASS WHO DO NOT OBJECT TO THE SETTLEMENT OR ANY OTHER MATTER TO BE CONSIDERED AT THE FINAL APPROVAL HEARING NEED NOT ATTEND THE FINAL APPROVAL HEARING OR TAKE ANY FURTHER ACTION.**

## **VIII. RIGHT TO OBJECT TO SETTLEMENT, REQUEST INTERVENTION AND/OR APPEAR AT THE FINAL APPROVAL HEARING**

If you do not exclude yourself from the Class, you may object to any aspect of the proposed settlement. If you do not exclude yourself from the Class, you also may seek to intervene in the case as a party. Any Class Member who objects to all or part of the proposed

settlement and wants the Court to consider his or her objection, or who seeks intervention, must file such objection, or request for intervention, and all supporting briefs or other papers with the Clerk of the Court on or before \_\_\_\_\_, 2014 at the following address: Office of the Clerk, U.S. District Court for the District of Maryland, Baltimore Division, 101 W. Lombard Street, Baltimore, MD 21201.

Any objection to the Settlement Agreement must set forth the full name, current address and telephone number of the person making objection and must include: (a) a written statement of the position that the objector wishes to assert; (b) a written statement of the grounds therefore; and (c) copies of any papers, briefs, or other documents that the objector wishes to submit in support of his/her position. Any request for intervention must be by motion and must be otherwise in compliance with Rule 24 of the Federal Rules of Civil Procedure. Copies of the objection and/or intervention and supporting papers must also be mailed or hand-delivered to Class Counsel, Benjamin H. Carney, GORDON & WOLF, CHTD., 102 West Pennsylvania Avenue, Suite 402, Baltimore, MD 21204 and to the designated Counsel for Capital One, Bryan A. Fratkin, McGuireWoods LLP, One James Center., 901 E Cary St., Richmond, VA 23219. Any Class Member who intends to appear personally (or through separate counsel if a timely and proper Entry of Appearance is filed) at the final approval hearing for any reason whatsoever must file with the Clerk of the Court, at the address listed above, a Notice of Intention to Appear, in no particular form. The Notice of Intent to Appear shall be filed on or before \_\_\_\_\_, and copies of the Notice of Intention to Appear must be mailed or hand delivered to Class Counsel and to Counsel for Capital One, at the addresses listed above. Any Class Member who does not file and serve a Notice of Intention to Appear will be prohibited from speaking at the final approval hearing concerning this settlement. Any Class Member who does not file an objection in the time and manner described above is forever prohibited from



raising any objection to such matters in the event that the settlement is approved. Any Class Member who does not file a request for intervention in the time and manner described above is forever prohibited from seeking intervention in this lawsuit.

**IF YOU DO NOT OBJECT TO THE SETTLEMENT, AND DO NOT WISH TO BE HEARD ON ANY OTHER MATTER TO BE PRESENTED TO THE COURT AT THE FINAL APPROVAL HEARING, YOU NEED TAKE NO FURTHER ACTION IN ORDER TO BE ENTITLED TO PARTICIPATE IN THE SETTLEMENT.**

**IF YOU HAVE MOVED AND/OR CHANGED YOUR MAILING ADDRESS SINCE ENTERING INTO YOUR VEHICLE FINANCING CONTRACT, HOWEVER, YOU WILL NEED TO ADVISE CLASS COUNSEL OF THE FACT BY WRITING TO ONE OF THEM AT THE ADDRESSES REFERENCED IN THIS NOTICE.**

#### **IX. SCOPE OF SETTLEMENT PROPOSAL**

If the settlement is approved, the terms of the Settlement Agreement, including the releases outlined in Section IV of this Notice, will be final and binding upon, and shall inure to the benefit of: (a) all Class Members, except those who request timely and proper exclusion from the Class; (b) any heir, executor, administrator, representative, assignee, or other party standing in the shoes of any Class; (c) Capital One, as well as its parent company, and each direct and indirect subsidiary, affiliate, division, successors, assignors, assignees, and/or assigns thereof, and their past or present employees, associates, agents, representatives, attorneys, officers, shareholders, control persons, advisors, and directors; and (d) all beneficiaries of the release stated in the Settlement Agreement.

#### **X. INFORMATION THAT YOU MUST INCLUDE IN ANY DOCUMENT THAT YOU SEND REGARDING THE CASE**

In sending any document to the Court, to Class Counsel, to the Settlement Administrator, or to Counsel for Capital One, it is important that both your envelope and any document inside contain the following case name and identifying number: *Decohen v. Capital*

*One, N.A.*, Civil Action No. 1:10-cv-03157-WDQ. In addition, you must include your full name, address, and telephone number at which you can be reached.

#### **XI. FOR MORE INFORMATION**

If you have any questions concerning the matters dealt with in this notice, please direct your inquiries in writing to one of the following Class Counsel representing the Class:

Benjamin H. Carney  
Martin E. Wolf  
Gordon & Wolf, Chtd.  
102 W. Pennsylvania Ave., Suite 402  
Towson, Maryland 21204

Mark H. Steinbach  
Of Counsel to O'Toole Rothwell  
1350 Connecticut Avenue, N.W., Ste 200  
Washington, D.C. 20036

#### **XII. PLEADINGS AND OTHER RECORDS**

You may review the Complaint, Settlement Agreement, and Preliminary Approval Order in this case at [www.capitalonegapsettlement.com](http://www.capitalonegapsettlement.com). The pleadings and other records in this litigation may be examined and copied during regular office hours at the Office of the Clerk, U.S. District Court for the District of Maryland, Baltimore Division, 101 W. Lombard Street, Baltimore, MD 21201. **PLEASE DO NOT TELEPHONE THE CLERK'S OFFICE OR THE JUDGE'S CHAMBERS.**

DATE: \_\_\_\_\_, 2014.

Clerk of Court,  
U.S. District Court for the District of Maryland