

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

*In re: Capital One Financial Corporation,
Affiliate Marketing Litigation*

Case No.: 1:25-cv-00023-AJT-WBP

This Document Relates To: *All Cases*

**CLASS COUNSEL’S CONSOLIDATED DECLARATION IN SUPPORT OF
PLAINTIFFS’ MOTION FOR ATTORNEYS’ FEES AND SERVICE AWARDS**

Norman E. Siegel, E. Michelle Drake, Douglas J. McNamara, and James J. Pizzirusso hereby declare as follows:

1. We were appointed by this Court to serve as Plaintiffs’ Interim Co-Lead Counsel (“Class Counsel”) in the above-captioned action on March 5, 2025. *See* ECF No. 112 (Pretrial Order #2). We have collectively led Plaintiffs’ efforts in this case since that time, and we make this Declaration in support of Plaintiffs’ Motion for Attorneys’ Fees and Class Representative Service Awards. We have personal knowledge of all matters addressed herein.

2. This Declaration focuses on the facts that bear on the Court’s determination of a reasonable fee, and, among other things, summarizes our work litigating and resolving this matter, our continued work on behalf of the Settlement Class since the Court ordered issuance of notice on December 18, 2025 (ECF No. 355), and our anticipated future work administering the Settlement. This Declaration also addresses the timekeeping protocol we developed and applied to all counsel, our efforts to efficiently allocate work, and the lodestar incurred in performing that work.

3. Finally, this Declaration addresses Plaintiffs’ request for service awards to the five Class Representatives.

Summary of the Litigation

4. The Settlement Agreement¹ was reached after ten months of hard-fought and productive litigation. In that time, Class Counsel completed a fact-intensive investigation into the technical architecture and operation of the Capital One Shopping Browser Extension, which was critical to every aspect of the case, from drafting the detailed allegations in the Consolidated Class Action Complaint to crafting the terms of the Settlement Agreement. Rigorous legal research and analysis was also required to support Plaintiffs' claims, which raise novel questions of law in the first case of its kind. Class Counsel successfully opposed Defendants' motion to dismiss Plaintiffs' Complaint pursuant to Federal Rule of Civil Procedure 12(b)(1) and survived most of Defendants' challenges to the legal viability of Plaintiffs' claims under Rule 12(b)(6). Class Counsel reviewed and produced hundreds of thousands of documents in a massive discovery effort, which also required extensive work with Plaintiffs' experts to understand Capital One's source code and structured data. Class Counsel took and defended more than a dozen depositions, including depositions of Defendants' designated corporate representatives, fact witnesses, third parties, and Plaintiffs. Throughout the discovery process, Class Counsel also briefed and argued numerous motions to compel or quash discovery. And before the case was resolved, Class Counsel produced full reports from two experts and briefed Plaintiffs' motion for class certification.

5. In recognition of these efforts, Class Counsel respectfully request an award of attorneys' fees and expenses in the combined amount of \$3,950,000, which Capital One has agreed to pay separately from the relief to the Settlement Class, subject to the Court's approval. *See* S.A. § 3.4.1. Class Counsel's requested fee, exclusive of \$673,292.82 in reasonable expenses, is

¹ Unless otherwise indicated, capitalized terms used herein have the same meaning as defined in the Settlement Agreement. *See* ECF No. 353-1 ("S.A.").

\$3,276,707.18, which represents only a small portion of Class Counsel’s total lodestar of \$9,248,584 (resulting in a negative multiplier of 0.35).

6. Class Counsel also request Service Awards for each of the five Settlement Class Representatives in the amount of \$10,000.

Factual and Procedural Background

7. This litigation arises from Plaintiffs’ allegations that the Capital One Shopping Browser Extension wrongfully diverts commissions earned by content creators, like Plaintiffs and Settlement Class Members, pursuant to standardized agreements with online merchants. *See* ECF No. 216 (“Pretrial Order No. 6”) at 1–6. The above-captioned action resulted from the consolidation of several cases filed against Capital One. *See* ECF Nos. 9, 20, 24, 39, 52, 74, 78, 79.

8. On March 5, 2025, after reviewing nearly 20 applications for plaintiffs’ leadership, the Court appointed the undersigned counsel as Class Counsel. *See* ECF No. 112. We associated with Steven T. Webster, a member of the Bar of this Court, to act as local counsel.

9. As Class Counsel, we were generally responsible for coordinating the activities of Plaintiffs during pretrial proceedings, including, but not limited to: formulating the proposed litigation schedule; determining how and through which counsel to present to the Court and opposing parties the position of Plaintiffs on all matters arising during pretrial proceedings; determining and coordinating how discovery would be conducted on behalf of Plaintiffs, including written discovery and depositions; conducting settlement negotiations on behalf of Plaintiffs and entering into settlement agreements; entering into stipulations with opposing counsel as necessary for the conduct of the litigation; preparing and distributing periodic status reports to the parties and the Court; and maintaining adequate time and disbursement records. *See* ECF No. 94 (Pretrial

Order #1).

10. Immediately following the Court's appointment as Class Counsel, we prepared a detailed proposed discovery plan, which was exchanged with Capital One pursuant to Pretrial Order #1 (ECF No. 94 ¶ 8) on March 17, 2025. We further conferred with counsel for Capital One to reach an agreement on a proposed schedule for the litigation, negotiated an ESI protocol, crafted and negotiated search terms for ESI discovery, and negotiated a protective order. *See* ECF Nos. 123, 136, 137, 139, 140.

Pleadings and Dispositive Motion Practice

11. On March 25, 2025, following extensive factual investigation, legal research, and careful vetting and selection of dedicated named Plaintiffs, Class Counsel filed an 86-page Amended Consolidated Class Action Complaint (the "Complaint") against Capital One. ECF No. 121. The Complaint asserted common law claims for unjust enrichment, tortious interference, and conversion, as well as statutory claims for violations of the Computer Fraud and Abuse Act ("CFAA"), New York General Business Law § 349, California's Unfair Competition Law, California's Comprehensive Computer Data Access & Fraud Act, and Pennsylvania's Computer Offenses Law.

12. On April 16, 2025, Capital One filed a Motion to Dismiss the Complaint in its entirety. ECF Nos. 142–43. Capital One challenged Plaintiffs' Article III standing pursuant to Federal Rule of Civil Procedure 12(b)(1), arguing that Plaintiffs failed to allege a cognizable injury fairly traceable to the Browser Extension, and moved to dismiss each of Plaintiffs' common law and statutory claims under Rule 12(b)(6), characterizing the claims as nothing more than a "competitive dispute." *See* ECF No. 143 at 2. Plaintiffs opposed the Motion to Dismiss, ECF No. 180, and briefing concluded in less than a month, ECF No. 191.

13. On May 14, 2025, the Court heard extensive argument on the Motion to Dismiss, ECF No. 196, and on June 2, the Court entered an Order denying Capital One's Motion, in part, allowing Plaintiffs' unjust enrichment, tortious interference, and CFAA claims to advance, while dismissing their conversion claim and the other statutory claims. ECF No. 216 at 12–33.

Discovery Practice

14. We engaged in an intensive discovery effort to prepare this case for expedited class certification briefing.

15. Plaintiffs' initial discovery requests included twenty-nine (29) Rule 30(b)(6) topics, eight (8) interrogatories, and thirty-four (34) requests for the production of documents. We filed a motion to compel Capital One's responses to these initial requests on April 25, 2025. *See* ECF No. 168. Over the course of the litigation, Plaintiffs served several additional rounds of written discovery and dozens of third-party subpoenas.

16. We also answered Defendants' written discovery requests, which required extensive collection and review of Plaintiffs' electronic documents. We coordinated and assisted Plaintiffs with answering Defendants' interrogatories, arranged searches of Plaintiffs' electronic devices, and assisted them in identifying, collecting, and reviewing documents responsive to Defendants' document requests.

17. Plaintiffs produced roughly 107,000 documents, totaling 1,025,000 pages, after collecting and reviewing documents from five custodians and a total of 80 ESI sources.

18. We reviewed over 20,000 documents produced by Defendants, and took nearly a dozen depositions of Defendants' fact witnesses, corporate representatives, and third parties.

19. We also prepared and produced all but one of the five Plaintiffs for their depositions during August and September 2025.

20. Throughout the foregoing offensive and defensive discovery efforts, we briefed and successfully argued multiple motions to compel related to, *inter alia*, Capital One’s production of source code and structured data. ECF Nos. 168, 171, 194, 195, 199, 212, 226, 283, 293.

21. Plaintiffs enlisted three experts, including two testifying experts, to analyze and opine on the Browser Extension’s source code, Defendants’ structured data, and the affiliate marketing industry. We worked closely with these experts to review and analyze Defendants’ structured data and source code, which proved crucial to developing the evidence necessary to settle the case.

22. Plaintiffs’ experts spent dozens of hours reviewing Capital One’s source code, and Plaintiffs’ counsel and staff spent over a hundred hours identifying and analyzing contracts relevant to the proffered opinions of Plaintiffs’ industry expert.

23. Plaintiffs’ consulting experts also attended numerous depositions in the case to assist us on technical matters outside our expertise.

24. Two of Plaintiffs’ experts also submitted full reports in support of Plaintiffs’ Motion for Class Certification.

Class Certification

25. Less than three months after the Court’s ruling on Capital One’s Motion to Dismiss, Plaintiffs filed their Motion for Class Certification, seeking certification of a nationwide class of affiliate marketers whose commissions were allegedly wrongfully diverted when the Browser Extension performed a “redirect” without a consumer first manually activating the Extension. ECF No. 314. Plaintiffs’ Motion for Class Certification was still pending when the Parties filed a Notice of Settlement on September 18, 2025, indicating they had reached an agreement in principle to settle the case. ECF No. 335.

Mediation and Settlement

26. Parallel to the litigation of the case, the Parties engaged in extensive arm's-length settlement negotiations, beginning in August 2025. The negotiations were overseen by former United States Magistrate Judge, the Hon. Jay C. Gandhi (Ret.). The negotiations included a full day, in-person mediation session on August 28, 2025, followed by weeks of extensive and hard-fought negotiations facilitated by Judge Gandhi. On or about September 18, 2025, the Parties executed a binding term sheet, which was later superseded by the Settlement Agreement.

27. The Parties' settlement negotiations were professional throughout, but they were marked by significant factual and legal disputes impacting the value of the case. Our hard work through discovery and motion practice—particularly our efforts to obtain access to and analyze Capital One's source code and structured data—helped to frame the key issues for both sides and position the case for settlement.² With Judge Gandhi's assistance, the Parties were ultimately able to reach a resolution.

28. At all times, the negotiations were conducted at arm's length, and free of collusion of any kind. Attorneys' fees and service awards were not discussed in any manner until the Parties had reached agreement on the material terms of the Settlement.

Terms of the Settlement

29. The Settlement represents an excellent result for the Settlement Class, particularly in light of the significant litigation risks and uncertainties that could have foreclosed any recovery.

30. The Settlement Class is defined as follows:

² Class Counsel and Plaintiffs' experts expended significant time and resources to gain access to and analyze Capital One's structured data and source code. Those efforts were necessary to understand how the Browser Extension operates and allowed Plaintiffs to successfully negotiate Capital One's Business Practice Commitments, which are discussed in full detail in § 3.5 of the Settlement Agreement.

All persons (including entities) in the United States who participated in an affiliate commission program with an online merchant that also partnered with Capital One Shopping during the Class Period, and who were involved in a transaction in which Capital One Shopping was also involved. Excluded from the Settlement Class are the entities listed in Exhibit H to the Settlement Agreement.

S.A. § 1.46.

31. Excluded from the Settlement Class are (i) Capital One, any entity in which Capital One has a controlling interest, and Capital One’s officers, directors, legal representatives, Successors, Subsidiaries, and assigns; (ii) any judge, justice, or judicial officer presiding over the Action and the members of their immediate families and judicial staff; and (iii) any individual who timely and validly opts out of the Settlement Class.

Business Practice Commitments

32. A central goal of the litigation was securing Capital One’s agreement to implement and maintain (for a period of at least two years) certain business practice changes (“Business Practice Commitments”) designed to ensure the Browser Extension continues to comply with stand-down rules and policies established by the affiliate networks and merchants Capital One partners with. The Business Practice Commitments include establishing a formal and periodic review process to monitor the Browser Extension’s compliance with those rules and policies. *Id.* § 3.5. Capital One will evaluate whether any change made for a particular merchant or affiliate network should be implemented globally (i.e., across multiple merchants or affiliate networks, if consistent with those merchants’ or networks’ stand-down rules). *Id.* And Capital One will also identify an “ombudsman” to serve as a point of contact for merchants, affiliate networks, and publishers to raise concerns with Capital One about its compliance with the terms of the Settlement. *Id.* Moreover, these Commitments are enforceable in this Court, with the prevailing party in any such dispute being entitled to attorneys’ fees and costs. *Id.*

Monetary Relief

33. In addition to the benefits conferred by the Business Practice Commitments, Settlement Class Members will have two alternative means of obtaining compensation: (1) “Proof Payment”; or (2) “Alternative Payment.” S.A. §§ 3.2, 4.4.

34. **Proof Payments.** Capital One agrees to pay a Proof Payment to each Settlement Class Member who submits a Proof Payment Claim Form with sufficient information to demonstrate that the Settlement Class Member has at least one (1) transaction in the Capital One Shopping Data³ posted on or after November 1, 2023,⁴ that qualifies under the agreed-upon list of rules and parameters mutually developed by the Parties. These rules and parameters are formal queries designed to identify instances where Capital One received a commission in connection with a sale in which another affiliate’s link was clicked prior to a click on Capital One’s affiliate link.⁵ *Id.* § 4.4.3.1. If a Settlement Class Member’s affiliate data is associated only with transactions that were posted prior to November 1, 2023, they are not eligible for a Proof Payment. They ***are***, however, still eligible for an Alternative Payment, so long as they submit the information set forth below. *Id.* § 4.4.3.1.

35. For each qualifying transaction posted on or after November 1, 2023 identified in

³ The Capital One Shopping Data includes structured data through the date of the Preliminary Approval Order. *See* S.A. §§ 1.8, 1.54.

⁴ Capital One changed the way it maintained data about affiliate links preceding its own as of November 1, 2023. The Parties disagree about the extent to which reliable information can be reconstructed for the period prior to November 1, 2023, but have agreed, for purposes of this Settlement, that only data on or after November 1, 2023, will be used to determine eligible transactions for Proof Payments.

⁵ The query that will be used to identify eligible transactions in the data is reflected in Exhibit B to the Term Sheet. The Parties agree that Exhibit B to the Term Sheet reflects highly confidential information containing Capital One’s trade secrets, and that it shall not be filed with the Court unless directed to be filed by the Court (and then, the Parties shall seek leave to file Exhibit B under seal).

the Capital One Shopping Data, Settlement Class Members will be entitled to receive 100% of the amount of any commission(s) received by Capital One Shopping. This amount shall not be capped in any way. To obtain a Proof Payment, Settlement Class Members are required to submit trade names, publisher IDs or affiliate IDs, affiliate links (both short- and long-form), or click IDs.

36. In layperson's terms, in order to be eligible for a Proof Payment, there must be sufficient indication in the data that Capital One received a commission in connection with a transaction where a consumer clicked on the Claimant's affiliate link prior to clicking on Capital One's affiliate link, and Capital One's receipt of that commission may have been inconsistent with industry standards.

37. **Alternative Payments.** Settlement Class Members who submit an Alternative Payment Claim Form, or who submit a Proof Payment Claim Form that is deemed invalid or insufficient, shall receive an Alternative Payment of \$20, so long as the Settlement Class Member has submitted information with their Claim Form sufficient to demonstrate that an identifier of theirs is present in a URL within the page_view data (such as a publisher ID, affiliate ID, affiliate link, or trade name) of the Capital One Shopping Data, and evidence indicating that both Capital One and the Settlement Class Member partner with the same merchant through affiliate networks that Capital One Shopping also partners with. *Id.* § 4.4.3.2.

38. In layperson's terms, in order to be eligible for an Alternative Payment, there must be sufficient indication of the Claimant's affiliate information in Capital One's data.

39. Should a Settlement Class Member provide invalid or insufficient information in their initial claim submission, the administrator will send the Settlement Class Member a deficiency notice, allowing them 14 days to submit additional information to establish their entitlement to a Proof Payment or Alternative Payment. *Id.* § 4.4.4.2.

Plaintiffs' Motion for Attorneys' Fees

40. Subject to the Court's approval, Capital One has agreed to pay Class Counsel's attorneys' fees and expenses, separately from the relief to the Settlement Class, in a combined amount not to exceed \$3,950,000. S.A. § 3.4.1.

41. The requested fee, exclusive of \$673,292.82 in reasonable expenses, is \$3,276,707.18, which represents only a small portion of Class Counsel's total lodestar of \$9,248,584 (resulting in a negative multiplier of 0.35).

Lodestar Calculation

42. Class Counsel coordinated the substantial work in this case among their four respective law firms to prevent duplication of effort, and assigned work to associates and paralegals whenever possible and appropriate.

43. The total lodestar Class Counsel accrued in this case through December 31, 2025, was \$9,248,584, measured by the number of hours reasonably expended in the litigation multiplied by Class Counsel's reasonable hourly rates. Class Counsel have excluded time spent after December 31, 2025, which includes time spent on this application, as well as significant work on the notice and claims process.

44. The total lodestar represents 12,554 hours invested by Class Counsel in the litigation through December 31, 2025.

45. The total number of hours, broken down by Class Counsel's respective firms, is as follows: 1,794.60 hours (Cohen Milstein Sellers & Toll PLLC); 1,701.40 hours (Hausfeld LLP); 3,443.05 hours (Berger Montague); and 5,615.50 (Stueve Siegel Hanson LLP). Local Counsel Webster Book LLP expended 101.90 hours in this case.

46. Non-lead counsel for Plaintiffs submitted a total of 674 hours to Class Counsel,

which were submitted pursuant to Plaintiffs' time keeping protocol, resulting in an additional lodestar of \$503,001.

47. The hourly rates charged by Class Counsel have been approved by multiple courts in similar consumer class actions. *See, e.g., Brown*, 318 F.R.D. at 575 (finding hourly rates charged by class counsel, including Mr. Pizzirusso of Hausfeld LLP, "within the low range for rates charged by attorneys with similar levels of experience and credentials in Washington, D.C.") (*see also* Case No. 1:15-cv-00494-JCC-MSN, Doc. No. 105-4 at 3 (E.D. Va. Sept. 13, 2016) (reflecting Hausfeld LLP's approved rates)); *In Re Harvard Pilgrim Data Sec. Incident Litig.*, No. 1:23-cv-11211-NMG, Doc. No. 114 (D. Mass. Aug. 4, 2025) (same); *Reed v. PostMeds, Inc.*, No. 4:23-cv-05710-HSG, Doc. No. 116 (N.D. Cal. Jun. 17, 2025) (same); *In re James River Group Holdings, Ltd. Sec. Litig.*, 2024 WL 3649603, at *1 (E.D. Va. May 24, 2024) (approving attorneys' fee award, including rates charged by Cohen Milstein Sellers & Toll PLLC) (*see also* Case No. 3:21-cv-00444-DJN, Doc. No. 126-7 (E.D. Va. April 19, 2024) (reflecting Cohen Milstein's approved rates, ranging from \$945 to \$1,320)); *In re Cap. One Consumer Data Sec. Breach Litig.*, Case No. 1:19-MD-2915-AJT-JFA, 2022 WL 17176495, at *5 (E.D. Va. Nov. 17, 2022) (finding Stueve Siegel's and co-counsel's blended 2021 rates reasonable); *O'Dell v. Aya Healthcare*, 753 F. Supp. 3d 1155, 1161 (S.D. Cal. Oct. 15, 2024) (finding Stueve Siegel's 2024 rates "reasonable" in a contested fee application) (*see also* Case No. 3:22-cv-01151-CAB-MMP, Doc No. 107-2 (S.D. Cal. Aug. 19, 2024)); *Torretto v. Donnelley Fin. Sols., Inc.*, 2023 WL 123201, at *4 (S.D.N.Y. Jan. 5, 2023) (approving lodestar application based on Stueve Siegel's 2022 rates); *In re Equifax Inc., Customer Data Security Breach Litig.*, 2020 WL 256132, at *39 (N.D. Ga. March 17, 2020) (approving as reasonable Hausfeld, Cohen Milstein, and Stueve Siegel's 2019 rates up to \$935 and co-counsel's rates up to \$1,050), *aff'd in relevant part*, 999 F.3d 1247 (11th Cir. 2021); *Taylor v. Inflection*

Risk Sols., LLC, Case No. 20-cv-2266, Doc. No. 94 (D. Minn. Nov. 15, 2022) (granting motion for attorneys' fees, including Berger Montague's hourly rates, ranging from \$390 to \$980 for attorneys and \$240 to \$370 for support staff); *Rilley v. MoneyMutual, LLC*, Case No. No. 16-cv-4001, Doc. No. 342 (D. Minn. April 14, 2020) (granting motion for attorneys' fees based on the lodestar method and finding Berger Montague's hourly rates, ranging from \$198 to \$760 for attorneys and \$43 to \$305 for support staff, to be reasonable); *In re Domestic Drywall Antitrust Litig.*, 2018 WL 3439454, at *20 (E.D. Pa. July 17, 2018) (finding hourly rates charged by Berger Montague, among other firms, "well within the range of rates charged by counsel in this district in complex cases"); *Devlin v. Ferrandino & Son, Inc.*, 2016 WL 7178338, at *10 (E.D. Pa. Dec. 9, 2016) ("[T]he hourly rates for Class Counsel [including Berger Montague] are well within the range of what is reasonable and appropriate in this market").

48. At the outset of the case, Class Counsel implemented a rigorous timekeeping protocol. All law firms that filed complaints that were consolidated in this action were directed to submit contemporaneously recorded time and expenses incurred in the case to Class Counsel.

49. A copy of the timekeeping protocol established by Class Counsel is attached to this Declaration as **Exhibit A**.

50. Class Counsel received contemporaneous time submitted from all Plaintiffs' counsel on a monthly basis, pursuant to the timekeeping protocol. The complete time records are available for the Court's *in camera* review upon request.

51. The total recorded lodestar for all firms is \$9,751,585. Of this amount, \$9,248,584 (approximately 95%) was reported by Class Counsel. With respect to the lodestar submitted by non-lead firms, the time reflects work performed at the direction of Class Counsel (or, in some instances, was performed before appointment of Class Counsel but was determined to have

advanced the litigation).

52. A chart reflecting the lodestar for each firm is attached as **Exhibit B**.

53. Each Class Counsel attests that the rates charged by the lawyers and staff at their respective firms are reasonable, based on each person's position and experience level. Class Counsel capped the hourly rate of attorneys conducting first-level document review at the lawyer's regularly hourly rate or \$450, whichever was lower and regardless of the experience of the reviewer.

54. Each Class Counsel further affirms that (1) the rates submitted with this Declaration are based on rate scales each Class Counsel has submitted and Courts have approved in other contingency cases and (2) the rates reported here are the rates charged to hourly-paying clients of the Class Counsel firms that undertake hourly work.

55. Based on our collective experience and knowledge of the legal market, including the market for hiring lawyers engaged in complex litigation, the rates reflected in **Exhibit B** are comparable to or lower than the rates charged by other law firms with similar experience, expertise, and reputation, for similar services in the nation's leading legal markets.

56. Considering Class Counsel's lodestar of \$9,248,584, the requested fee reflects a negative multiplier of 0.35. Such a multiplier is well below accepted ranges for class actions generally, and well below ranges approved in similar cases within the Fourth Circuit. Further, the lodestar figure does not include the substantial amount of time that Class Counsel will be required to devote to achieving final approval of the Settlement, responding to any objections, overseeing the claims administration process, distribution of settlement funds to the Class, and litigating any appeals. These additional hours, for which Class Counsel will not receive any additional compensation, effectively reduce the multiplier, and should be considered in evaluating the

reasonableness of the fee request.

Results Achieved for the Class

57. The Settlement Agreement represents an excellent result for the Settlement Class, including both monetary benefits and meaningful nonmonetary relief.

58. The Business Practice Commitments secured by the Settlement ensure Capital One's continued compliance with industry rules and policies that require the Browser Extension to "stand down" when consumers reach a merchant's website via affiliate links posted by content creators like Plaintiffs and Settlement Class Members. These Business Practice Commitments are designed to prevent the Browser Extension from wrongfully diverting commissions and are enforceable in this Court through agreed-upon injunctive relief.

59. The prospective relief provided by Capital One's Business Practice Commitments therefore represents substantial and ongoing value for the Settlement Class.

60. The monetary relief secured by the Settlement includes (1) full cash compensation for any commission payments received by Capital One on purchases made by consumers referred by a Settlement Class Member's affiliate link (i.e., uncapped compensation for any commissions Settlement Class Members can demonstrate were taken by Capital One), and, in the event those transactions cannot be identified in the Capital One Shopping Data, (2) alternative payments, in the amount of \$20, are available to Settlement Class Members who partner with at least one merchant that also partners with Capital One and whose identifying information can be found in the Capital One Shopping Data.

61. Based on our collective experience in complex litigation and the information gathered through discovery in this case—including our analysis of Capital One's structured data and source code and the estimate of the average amount of allegedly affected commissions

calculated by Plaintiffs' expert—we believe the Settlement benefits are well-tailored to the relief sought through the litigation.

Complexity of the Litigation

62. This case presented novel legal claims and questions of first impression, and the Settlement must also be viewed in light of the significant risks to Plaintiffs had they continued to litigate the case.

63. While we are confident in the strength of Plaintiffs' claims, there is a substantial risk that Plaintiffs' claims would not have survived, or survived in full, on a class-wide basis after a ruling on the Motion for Class Certification, motions for summary judgment, *Daubert* motions on damages methodologies and other issues, trial, and appeal.

64. Not only does the Settlement Agreement provide meaningful relief to the Settlement Class, but it also eliminates the risk of adverse rulings on class certification, summary judgment, at trial, and on appeal. Balanced against the many significant risks, the settlement value here provides an exceptional result for the Class and supports Class Counsel's request for attorneys' fees.

Skill and Efficiency of Representation

65. The undersigned respectfully submit that we have diligently served the Class and the Court in litigating this case and that the quality of representation delivered here is another significant factor supporting the requested fee.

66. As reflected by the leadership application process—which included nearly 20 applications for leadership—and this Court's Pretrial Order # 2 (ECF No. 112), we have substantial experience litigating complex class actions.

67. Together, we have litigated dozens of complex class actions on behalf of

consumers, which informed our representation of the Class here.

68. As demonstrated above, this case was heavily litigated, including review and production of hundreds of thousands of documents, more than a dozen depositions, and heavy discovery motion practice.

69. The quality of our representation is reflected in the substantial monetary and nonmonetary benefits secured by the Settlement Agreement.

70. Moreover, Capital One was represented by highly skilled and experienced litigators, from one of the country's leading defense firms, with extensive experience advising large corporate defendants in class action litigation.

71. Class Counsel's ability to match the resources of Defendants and their counsel is a significant indication of the quality of representation to the Class here and further supports the requested fee.

Risk of Nonpayment and Opportunity Costs

72. As discussed herein, this case presented unique challenges with respect to issues like causation, certification, damages, and Article III standing. Defendants spared no effort in attempting to defeat the case in its entirety, and the risk of no recovery was high.

73. As reflected in Class Counsel's total lodestar figure, and the total number of hours devoted to this litigation, the undersigned counsel and our respective law firms expended a large amount of time and out-of-pocket costs in the course of this litigation, thereby affecting our ability to devote time and resources to other matters.

74. Numerous potential adverse outcomes at different points in the case would have resulted in Class Counsel not recovering any of the substantial time, money, and effort that were needed to secure the Settlement.

75. Additionally, Class Counsel self-funded \$673,292.82 in total expenses to prosecute this case, which would not have been reimbursed absent a successful result. Those expenses are categorized in **Exhibit B**, with further detail available if requested by the Court.

76. In the face of these risks, we vigorously represented Plaintiffs and obtained a substantial recovery on behalf of the Class.

Objections to the Requested Fee

77. The Court-approved notice informed Settlement Class Members that Class Counsel would request attorneys' fees and service awards for the Class Representatives. *See* ECF No. 355. Although the deadline for objections is not until April 17, 2026, to date no objections have been submitted. We therefore anticipate responding to any objections prior to final approval.

Service Awards for Class Representatives

78. Consistent with the law in this Circuit, Plaintiffs also request approval for a \$10,000 service award for each of the five Settlement Class Representatives.

79. The five Settlement Class Representatives have fulfilled their duties to the Class admirably. They made themselves available to Class Counsel to assist with the investigation into their claims. They responded to discovery requests propounded by Defendants, including numerous interrogatories and document requests. Four of them sat for depositions. And they carefully considered and approved the terms of the Settlement Agreement as in the best interests of the Class, after extensive review and discussion with Class Counsel.

80. Accordingly, Class Counsel request service awards of \$10,000 for each of the five Settlement Class Representatives.

81. The Settlement Agreement is not conditioned on the Court's approval of this request. S.A. § 3.3.2.

We declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed this 18th day of March, 2026.

/s/ Norman E. Siegel
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Plaintiffs' Co-Lead Counsel

CERTIFICATE OF SERVICE

I hereby certify that on March 18, 2026, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notice of electronic filing to all counsel of record.

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