

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is made and entered into this 15th day of March, 2019, by and among: (1) Plaintiff, Chris Lashambae, individually and on behalf of the Settlement Class as defined herein; and (2) Capital One, N.A. (“Capital One” or the “Bank”). As provided herein, Plaintiff, Class Counsel, and Capital One hereby agree that, in consideration of the promises and covenants set forth in this Agreement and upon entry by the Court of a Final Approval Order, all claims of Plaintiff and the Settlement Class Members, as defined below, against Capital One in the action titled *Lashambae v. Capital One Bank, N.A.*, No. 1:17-cv-06406 (E.D.N.Y.) (the “Action”) shall be settled and compromised upon the terms and conditions contained herein.

I. RECITALS

1. On November 3, 2017, Plaintiff Chris Lashambae filed a class action complaint (the “Complaint”) in the United States District Court for the Eastern District of New York seeking monetary damages from Capital One based on its allegedly unfair and misleading assessment of overdraft fees arising from non-recurring transactions for Lyft rides by customers who did not opt into Capital One’s Debit Card Overdraft Services, as defined below. The causes of action asserted in the Complaint are for breach of contract and violation of New York General Business Law § 349.

2. On March 14, 2018, Capital One filed a pre-motion letter seeking to file a motion to dismiss the Complaint. Plaintiff filed a response to Capital One’s pre-motion letter on March 21, 2018, and the Court held a pre-motion conference on May 22, 2018. At the pre-motion conference, the Court determined that a motion for summary judgment was the preferred course of action and granted Capital One permission to file a motion for summary judgment.

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3. On August 9, 2018, Capital One served its Motion for Summary Judgment upon Plaintiff.

4. Over the next two months, the Parties continued to vigorously litigate the case and engaged in tailored discovery as permitted by the Court. During this time, the Parties also began to discuss resolution of the Action.

5. In November 2018, after months of arm's-length, good faith discussions, the Parties reached an agreement on the material terms of a settlement and signed a binding Settlement Term Sheet, which memorialized, subject to negotiation and execution of this Agreement and subject to Preliminary Approval and Final Approval by the Court as required by Rule 23 of the Federal Rules of Civil Procedure, the Parties' good faith intention to fully, finally and forever resolve, discharge and release all rights and claims of Plaintiff and the Settlement Class Members in exchange for Capital One's agreement to pay the sum of Three Hundred Twenty Thousand Six Hundred Thirty-Three Dollars (\$320,633.00) to create a common fund for the benefit of the Settlement Class, as further detailed below.

6. Class Counsel has fully analyzed and evaluated the facts and underlying events related to the subject matter of the claims and has carefully analyzed the applicable legal principles. After taking into account the substantial risks of continued litigation and the likelihood that the Action, if not settled now, will be protracted and expensive, Class Counsel is satisfied that the terms and conditions of this Agreement are fair, reasonable, adequate, and equitable, and that a settlement of the Action is in the best interests of the Settlement Class.

7. The Parties agree that this Settlement Agreement shall not be deemed or construed to be an admission or evidence of any violation of any federal or state statute, rule or regulation, or principle of common law or equity, or of any liability or wrongdoing whatsoever, or of the truth

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of any of the claims asserted in the Action, or of the infirmity of any of the defenses that have been raised or could be raised by Capital One.

8. NOW THEREFORE, IT IS HEREBY AGREED THAT, in consideration of the covenants and agreements set forth herein, the Action shall be fully and finally settled and released, subject to judicial approval as required under Rule 23 of the Federal Rules of Civil Procedure, under the following terms and conditions:

II. DEFINED TERMS

In addition to the terms defined at various points within this Agreement, the following Defined Terms apply throughout this Agreement and the attached exhibits:

9. “**Account**” means any consumer checking account maintained by Capital One in the United States and its territories.

10. “**Action**” means the putative class action lawsuit entitled *Lashambae v. Capital One Bank, N.A.*, No. 1:17-cv-06406, pending in the United States District Court for the Eastern District of New York.

11. “**Administration Expenses**” means any and all fees, costs, and charges incurred, charged, or invoiced by the Settlement Administrator relating to the administration of the Settlement, including the costs of notice to the Settlement Class.

12. “**Agreement**,” “**Settlement**,” or “**Settlement Agreement**” means this Settlement Agreement and Release and the settlement embodied in this Settlement Agreement and Release, including all attached Exhibits.

13. “**Capital One Counsel**” means Morrison & Foerster LLP.

14. “**Class Counsel**” means Tycko & Zavareei LLP; Kopelowitz Ostrow P.A.; and Reese LLP.

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15. “**Class Member List**” means a list of persons who, according to Capital One’s business records, fall within the definition of the Settlement Class.

16. “**Class Notice**” means the court approved notice, substantially in the form attached as Exhibit A.

17. “**Class Period**” means the period from May 1, 2013, through and including March 30, 2020, the date of Preliminary Approval of the Settlement.

18. “**Class Representative**” or “**Plaintiff**” means Chris Lashambae.

19. “**Closed Account**” means an Account that is not open as of the date that the Net Settlement Fund is distributed to the Settlement Class Members, according to the Bank’s records.

20. “**Court**” means the United States District Court for the Eastern District of New York.

21. “**Debit Card Overdraft Service**” means the service by which Capital One, with the account holder’s affirmative consent, and at its sole discretion, may authorize and pay a one-time debit card or ATM transaction when the account holder has insufficient funds to cover the transaction and may charge an overdraft fee when the transaction is paid.

22. “**Effective Date**” means five (5) business days after the following have occurred: (i) the Court has entered a Final Approval Order and judgment approving the Settlement of the Action in a manner consistent with the terms of this Agreement, and (ii) either the time period to appeal the Final Approval Order and judgment has expired without any appeal having been filed, or an appeal that has been filed has been finally resolved in the appellate court of last resort without any right to appeal or seek further review from another appellate court.

23. “**Escrow Account**” means the escrow account created and administered by the Settlement Administrator for the purpose of holding the Settlement Funds.

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24. “**Fee and Expense Award**” means such funds as may be approved and awarded by the Court to Class Counsel for the attorneys’ fees and costs incurred in connection with the Action and Settlement.

25. “**Fee Application**” means Class Counsel’s application for the Fee and Expense Award.

26. “**Final Approval Hearing**” means the hearing at or after which the Court will determine whether to finally approve the Settlement.

27. “**Final Approval Order**” means the proposed final order and final judgment to be submitted to and entered by the Court in connection with the Final Approval Hearing, the proposed form of which is attached hereto as Exhibit D.

28. “**Lyft**” refers to Lyft, Inc.

29. “**Lyft Overdraft Fee**” means the overdraft fee assessed for a Lyft transaction that was coded as recurring and triggered an overdraft fee on an Account during the Class Period where the account holder was not-opted in to Capital One’s Debit Card Overdraft Service.

30. “**Net Settlement Fund**” means the Settlement Fund minus any Fee and Expense Award; and Service Award; and all Administration Expenses.

31. “**Notice Plan**” means the court approved method and process of disseminating the Class Notice and notice of the Settlement.

32. “**Open Account**” means an Account that is open as of the date that the Net Settlement Fund is distributed to the Settlement Class Members, according to the Bank’s records.

33. “**Opt-Out and Objection Deadline**” means **August 7, 2020**, the date that is one hundred thirty (130) days after entry of the Preliminary Approval Order, or any other date set by the Court by which a Class Member must opt-out of the Settlement or make any objection to the

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proposed Settlement, the Fee Application, and/or the Service Award Application, in accordance with the procedures set forth herein and/or in any order of the Court.

34. **“Parties”** means, collectively, Capital One, the Plaintiff, and the Settlement Class.

35. **“Preliminary Approval Hearing”** means the hearing, should the Court require one, at or after which the Court will determine whether to preliminarily approve the Settlement and authorize the distribution of the Class Notice.

36. **“Preliminary Approval Order”** means the order to be submitted to and entered by the Court in connection with the motion for preliminary approval, the proposed form of which is attached hereto as Exhibit C.

37. **“Released Claims”** means the claims and matters released in Paragraphs 85 to 87 of this Settlement Agreement.

38. **“Released Parties”** means the individuals and entities released in Paragraphs 85 to 87 of this Settlement Agreement.

39. **“Service Award”** means such funds as may be awarded by the Court to the Plaintiff in recognition of his time and effort expended in pursuing the Action and in fulfilling his obligations and responsibilities as the Class Representative.

40. **“Service Award Application”** means Class Counsel’s application for a service award to the Class Representative.

41. **“Settlement Administrator”** means Epiq Class Action & Claim Solutions, Inc. or such other third-party administrator as may be agreed to by the Parties and approved by the Court to administer the Settlement, including providing the Class Notice pursuant to the terms and conditions of this Agreement.

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42. “**Settlement Amount**” means the sum of Three Hundred Twenty Thousand Six Hundred Thirty-Three Dollars (\$320,633.00) which shall be used to make payments to Settlement Class Members; any Fee and Expense Award; any Service Award; and, Administration Expenses.

43. “**Settlement Class**” means all Capital One consumer checking account holders in the United States and its territories who were charged a Lyft Overdraft Fee during the Class Period.

44. “**Settlement Class Member**” means a person on the Class Member List who does not opt out and is not excluded from the Settlement pursuant to the procedures set forth in this Agreement.

45. “**Settlement Fund**” means the Settlement Amount and any interest that may accrue on that amount while it is held in the Escrow Account.

46. “**Settlement Share**” means the payment to a Settlement Class Member from the Net Settlement Fund. Each Settlement Class Member’s Settlement Share will be calculated consistent with Paragraph 79 below.

III. CERTIFICATON OF THE SETTLEMENT CLASS

47. **Type of Class**. For purposes of settlement, Plaintiff shall ask the Court to certify the Settlement Class under Federal Rule of Civil Procedure 23(b)(3).

48. **Certification**. The Parties stipulate and agree, solely for the purposes of settlement and the proceedings contemplated herein, that a class shall be certified in the Action in accordance with the definition of the “Settlement Class” set forth above, and that Class Counsel shall be appointed as counsel for the Settlement Class. The certification of the Settlement Class shall be binding only with respect to the Settlement set forth in this Agreement. If the Court declines to approve the Settlement, or if the Court changes the Settlement Class composition or the terms of the Settlement in any way not acceptable to Capital One after reasonable consultation with Class Counsel, or if certification of the Settlement Class or approval of the Settlement is reversed, or if

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certification of the Settlement Class or approval of the Settlement is materially changed upon appeal or review in any way not acceptable to Capital One after reasonable consultation with Class Counsel, Capital One shall have the right to terminate the Settlement pursuant to Section XV.

49. **Status of Certification if Settlement Not Approved or Terminated.** In the event the Settlement is not finally approved by the Court, or the Settlement is terminated for any reason, the certification of the Settlement Class will be void, no doctrine of waiver, estoppel, or preclusion will be asserted in any litigated certification proceedings in the Action, and the Action shall revert to its status as existed prior to the execution of this Agreement. In that event, this Agreement shall not be admissible to establish any fact relevant to class certification or any alleged liability, or for any other purpose, and the Parties' agreement to resolve the Action shall be inadmissible pursuant to Federal Rule of Evidence 408.

IV. PRELIMINARY APPROVAL OF THE SETTLEMENT

50. **Preliminary Approval.** On or before March 1, 2019, the Class Representative, through Class Counsel, shall file a motion for preliminary approval. The motion shall request entry of the Preliminary Approval Order. The motion for preliminary approval shall request that the Court: (a) provisionally certify the Settlement Class in the Action for settlement purposes only; (b) appoint Plaintiff as Class Representative of the Settlement Class; (c) appoint Class Counsel; (d) appoint the Settlement Administrator; (e) schedule a Final Approval Hearing; (f) approve Class Notice; and, (g) approve the objection and exclusion procedures for Settlement Class members. Capital One and Capital One Counsel shall not oppose the motion and may file a joinder in the request for preliminary approval.

51. **CAFA Notice.** Capital One, at its own expense, shall serve or cause to be served a notice of the proposed Settlement, in conformance with the Class Action Fairness Act, 28 U.S.C. § 1715(c).

V. IDENTIFYING MEMBERS OF THE SETTLEMENT CLASS

52. **Discovery.** Capital One has already provided Class Counsel with the number of Accounts included within the Settlement Class and the total number and amount of Lyft Overdraft Fees Capital One assessed during the Class Period based on Capital One's diligent investigation of its records.

53. **Providing Class Member List.** Within thirty (30) days of entry of the Preliminary Approval Order, Capital One shall provide to the Settlement Administrator the Class Member List in an electronic format. In preparing the Class Member List, Capital One may rely on its reasonably available electronic records and is only obligated to provide the last known mailing addresses as they presently exist in its business records. The Class Member List shall include:

- a. the names of all persons who, according to Capital One's business records, fall within the definition of the Settlement Class;
- b. the number of relevant Lyft Overdraft Fee(s) incurred by each Settlement Class member;
- c. their last known mailing address;
- d. their email address;
- e. the last four digits of their account number; and,
- f. an indication whether, according to Capital One's business records, the person's account is an Open Account or a Closed Account.

VI. OBLIGATIONS OF SETTLEMENT ADMINISTRATOR

54. **Selection of Settlement Administrator.** The Parties have agreed that Plaintiff and Class Counsel shall request that the Court appoint Epiq Class Action & Claims Solution, Inc. as the Settlement Administrator. Subject to Court approval, Epiq Class Action & Claims Solution,

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Inc. will administer the Settlement. All Administration Expenses shall be paid from the Settlement Fund.

55. **Preserving Confidentiality of Customer Information.** Because the Class Member List will be provided to the Settlement Administrator solely for purposes of providing Class Notice and cash benefits and processing opt out requests, the Settlement Administrator will execute a confidentiality and non-disclosure agreement with Capital One and Capital One Counsel. Capital One, Class Counsel (on its own behalf and on behalf of the Class Representative and the Settlement Class), Capital One Counsel, and the Settlement Administrator will agree that the Settlement Administrator will maintain the Class Member List and other information provided to it by or on behalf of Capital One, including information derived therefrom, in a confidential manner, and that the Settlement Administrator will not provide such Class Member List or other information to any other person, including Class Counsel and the Class Representative, without the prior written consent of Capital One. The Settlement Administrator will ensure that any information provided to it by the Settlement Class, Capital One Counsel, or Capital One will be secure and used solely for the purpose of effecting this Settlement.

56. **Settlement Administrator's Obligations.** The Settlement Administrator shall be responsible for all of the following:

- a. Preparing, printing, and disseminating Class Notice to the Settlement Class;
- b. Promptly furnishing to Class Counsel and Capital One Counsel copies of any requests for exclusion, objections, or other written or electronic communications from the Settlement Class;
- c. Keeping track of requests for exclusion and objections to the Settlement, including maintaining the original envelope in which they were mailed, and within five (5)

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business days after the close of the opt-out or objection period, informing Class Counsel and Capital One Counsel in writing of the total number of such requests and objections received in response to the Class Notice;

d. Preparing and mailing settlement checks to each Settlement Class Member with Closed Accounts, and providing Capital One with a report of the amounts to be credited to Settlement Class Members with Open Accounts, in accordance with this Agreement;

e. Performing any tax reporting duties required by this Agreement and federal, state, or local law;

f. Referring to Class Counsel all inquiries by the Settlement Class regarding matters not specified herein;

g. Maintaining adequate records of all its activities, including the dates of each mailing of Class Notices, returned mail, and other communications and attempted written or electronic communications with the Settlement Class;

h. Confirming in writing its completion of the administration of the Settlement;

i. Preparing a final report summarizing the amounts paid to Settlement Class Members, requests for exclusion, and objections submitted;

j. Providing a declaration to Class Counsel to be filed with the Court identifying Capital One consumer checking account holders who requested exclusion from the Settlement, objected to the Settlement and/or plan on attending the Final Approval Hearing, along with a copy of the requested exclusion, objection to the Settlement, and/or plan to attend;

- k. Maintaining the Settlement Website; and,
- l. Such other tasks as Class Counsel and Capital One Counsel mutually agree, or the Court requires.

VII. DISSEMINATION OF CLASS NOTICE

57. **Class Notice.** Following the entry of the Preliminary Approval Order, the Settlement Administrator shall provide timely Class Notice in the manner and form approved and directed by the Court. Class Notice shall include: a description of the material terms of the Settlement; a date by which persons in the Settlement Class may opt-out of the Settlement Class; a date by which persons in the Settlement Class may object to the Settlement; the date upon which the Final Approval Hearing will occur and the address of the Settlement Website at which persons in the Settlement Class may access this Agreement and other related documents and information. Class Counsel and Capital One Counsel shall insert the correct dates and deadlines in the Notice before the Notice Plan commences, based upon those dates and deadlines set by the Court upon entry of the Preliminary Approval Order. Notices provided under or as part of the Notice Plan shall not bear or include the Capital One logo or trademarks, the return address of Capital One, the Capital One colors, or otherwise be styled so as to appear to originate from Capital One.

58. **Emailed Class Notice.** By no later than sixty (60) days of entry of the Preliminary Approval Order (the “Notice Deadline”), the Settlement Administrator shall email the Class Notice to each member of the Settlement Class on the Class List for whom Capital One has an email address, at the email address listed for them on the Class List. Should the Settlement Administrator learn (through an email bounce-back or otherwise) that the email address in Capital One’s records is invalid, the Settlement Administrator will send Mailed Notice to that member of the Settlement Class.

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59. **Mailed Class Notice.** For each member of the Settlement Class for whom an attempted emailed Class Notice is returned or bounced back as undeliverable or for whom Capital One does not have an email address, the Settlement Administrator will mail, via first-class mail postcard, the Class Notice at the address identified in Capital One's records, within seventy-five (75) days of the entry of the Preliminary Approval Order. The Settlement Administrator will request that Capital One provide all necessary contact information necessary to facilitate the plan to mail the Class Notice, including the most recent mailing addresses on file. Before mailing postcards, the Settlement Administrator will verify and update the mailing addresses received through the United States Postal Service's National Change of Address database to maximize address accuracy.

60. **Notice Re-Mailing Process.** Next, the Settlement Administrator will perform reasonable address traces for all postcards that are returned as undeliverable and will promptly, no later than one hundred and five (105) days after entry of the Preliminary Approval Order, re-mail the Class Notice postcards to those members of the Settlement Class whose original mailed postcards were returned as undeliverable and whose new addresses were identified as of that time through address traces ("the Notice Re-mailing Process").

61. **Settlement Website.** Prior to the dissemination and mailing of the Class Notice to any member of the Settlement Class, the Settlement Administrator shall establish a website, which will contain the Class Notice and inform members of the Settlement Class of the relevant dates and deadlines and related information. The website shall include, in .pdf downloadable format, the following: (i) the Class Notice; (ii) Long-form Notice, (iii) the entered Preliminary Approval Order; (iv) this Agreement (including all of its Exhibits), (v) the Complaint; and (vi) any other materials agreed upon by the Parties and/or required by the Court.

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62. **Long-form Notice.** A detailed “Long-form Notice,” substantially in the form attached as Exhibit B, will be available on the Settlement Website. The Long-form Notice will provide more detailed information about the Settlement and the Settlement process.

63. **Completion of the Notice Plan.** The Notice Plan (which is comprised of the Emailed Notice, Mailed Notice, and the Notice Re-mailing Process detailed in Paragraphs 58-60) shall be completed no later than one hundred and five (105) days after the entry of the Preliminary Approval Order. Within seven (7) days after the date the Settlement Administrator completes the Notice Re-mailing Process, the Settlement Administrator shall provide to Class Counsel and Capital One Counsel a declaration that confirms that the Notice Plan was completed in a timely manner. Class Counsel shall file that declaration with the Court as an exhibit to or in conjunction with Plaintiff’s motion for Final Approval of the Settlement.

VIII. OPT-OUT PROCEDURES

64. **Opt-Out Notice.** In the event a member of the Settlement Class wishes to be excluded from the Settlement and not to be bound by this Agreement, that person must, prior to the Opt-Out and Objection Deadline, sign and mail a notice of intention to opt-out of the Settlement to the Settlement Administrator. The notice must be postmarked on or before the Opt-Out and Objection Deadline and must be in writing and:

- a. identify the case name *Lashmbae v. Capital One Bank, N.A.*, No. 1:17-cv-06406 (E.D.N.Y.);
- b. state the account holder’s name, address, and telephone number;
- c. the last four digits of their account number;
- d. a clear request that the individual would like to “opt-out” or be “excluded,” by use of those or other words clearly indicating a desire to no longer participate in the Settlement; and

e. include the member's signature.

65. **Effect of Opting-Out.** Any member of the Settlement Class who timely and properly requests exclusion in compliance with Paragraph 64 will thereafter be excluded from the Settlement Class, not become a Settlement Class Member, will not have any rights under this Settlement, will not be entitled to receive a Settlement Share, and will not be bound by this Settlement Agreement or the Final Approval Order. No person may request to be excluded from the Settlement Class through "mass" or "class" opt-outs.

66. **Effect of Opting-Out for Joint Accounts.** If an Account has more than one account holder, and if one account holder excludes himself or herself from the Settlement Class, then all account holders on that account shall be deemed to have opted out of the Settlement with respect to that account and no account holder shall be entitled to a payment under this Settlement.

67. **Notice Regarding Opt-Out Requests.** The Class Notice shall provide that requests to opt-out of the Settlement that are submitted by U.S. mail must be mailed to the Settlement Administrator and postmarked by the Opt-Out and Objection Deadline or be forever barred.

68. **Providing Opt-Out Requests to Counsel.** Within five (5) business days after the Opt-Out and Objection Deadline, the Settlement Administrator shall provide Class Counsel and Capital One Counsel with the information regarding requests for exclusion that is required under Paragraph 56, confirming which opt-outs are timely and untimely. Class Counsel shall provide the information required in Paragraph 56(j) to the Court at least five (5) business days before the Final Approval Hearing.

IX. OBJECTIONS TO THE SETTLEMENT

69. **Objections.** Any Settlement Class Member (other than the Class Representative) may object to this Agreement, the Fee Application, or the Service Award Application. Settlement

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Class Members may object to the Settlement in writing. To object to the Settlement in writing, Settlement Class Members must sign and mail a letter, prior to the Opt-Out and Objection Deadline, that states their intention to object to the Settlement to the Settlement Administrator. For an objection to be considered by the Court, the objection must be postmarked on or before the Opt-Out and Objection Deadline, as specified in the Notice. For an objection to be considered by the Court, the objection must also set forth:

- a. The name of the Action, Lashambae v. Capital One Bank, N.A., No. 1:17-cv-06406 (E.D.N.Y.);
- b. The objector's full name, address, and telephone number;
- c. The last four digits of their account number;
- d. The reason(s) the objector claims to be a Settlement Class Member;
- e. All grounds for the objection, accompanied by any legal support for the objection known to the objector or his or her counsel;
- f. The identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement or fee application;
- g. The identity of all counsel representing the objector who will appear at the Final Approval Hearing;
- h. A list of all persons who will be called to testify at the Final Approval Hearing in support of the objection;
- i. A statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and
- j. The objector's signature (an attorney's signature is not sufficient).

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70. **Waiver of Objection.** Any Settlement Class Member who does not provide a timely and written objection shall be deemed to have waived any objection and shall forever be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the proposed Settlement, the Fee Application, the Fee and Expense Award, Service Award Application or the Service Award.

71. **Responses to Objections.** Class Representative, Class Counsel and/or Capital One may file responses to any written objections no later than fifteen (15) days prior to the Final Approval Hearing.

X. FINAL APPROVAL

72. **Final Approval.** Within one hundred forty-five (145) days of entry of the Preliminary Approval Order, or on the date designated by the Court, Plaintiff shall move the Court for a Final Approval Order, which shall specifically include provisions that: (a) the Court has personal jurisdiction over all Settlement Class Members, the Court has subject matter jurisdiction over the claims asserted in the Action, and that venue is proper; (b) finally approve the Settlement pursuant to Rule 23 of the Federal Rules of Procedure; (c) find that the Class Notice as distributed was the best notice practicable under the circumstances and fully satisfied the requirements of Due Process and Federal Rule of Civil Procedure 23; (d) find that the notice provided under the Class Action Fairness Act complied with 28 U.S.C. § 1715; (e) approve the plan of distribution of the Settlement Amount and interest accrued thereon and authorize the Parties to implement the terms of the Settlement; (f) finally certify the Settlement Class pursuant to Federal Rules of Civil Procedure 23(b)(3) and (g) confirm that Plaintiff and the Settlement Class Members have released all Released Claims and are permanently barred and enjoined from asserting, commencing, prosecuting, or continuing any of the Released Claims against the Released Parties; (h) retain jurisdiction relating to the administration, consummation, validity, enforcement, and interpretation

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of this Agreement, the Final Approval Order, any final order approving the Fee and Expense Award and Service Awards, and for any other necessary purpose; and (i) enter a judgment that dismisses the Action with prejudice, without costs to any Party, except as provided in the Agreement, and subject to the Court's continuing jurisdiction over the Parties and the Settlement Fund for the purpose of enforcement of the terms of the Settlement Agreement.

XI. SETTLEMENT CONSIDERATION

73. **Payment of Settlement Amount.** In exchange for the releases described below and a final judgment in the Action pursuant to the terms of this Settlement Agreement, Capital One agrees to pay the Settlement Amount. The Parties agree that this sum represents the total amount that Capital One must pay to settle the claims of Settlement Class Members, and that in no event shall Capital One be responsible for any payments, costs, expenses, or claims beyond this Settlement Amount. No portion of the Settlement Amount shall revert to Capital One, except where the Settlement is terminated pursuant to the terms of the Agreement.

74. **Settlement Fund.** Within twenty-five (25) days after the entry of the Preliminary Approval Order, Capital One shall deposit the Settlement Amount into the Escrow Account. The Escrow Account shall be held in an interest-bearing bank account with a commercial bank with excess capital exceeding One Hundred Million Dollars and No Cents (\$100,000,000), with a rating of "A" or higher by S&P and in an account fully insured by the United States Government or FDIC.

75. **Treasury Regulations & Taxes.** All interest in the Escrow Account shall accrue to the benefit of the Settlement Class Members. The funds in the Escrow Account shall be deemed a "qualified settlement fund" within the meaning of Treasury Regulation § 1.468B-1 at all times after the creation of the Escrow Account. The Settlement Administrator shall be the "administrator" of the escrow fund and responsible for timely and properly filing all informational

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and other tax returns necessary or advisable with respect to the Escrow Account and Settlement Fund. All taxes owed by the qualified settlement fund shall be paid out of the Escrow Account. Capital One, Class Representative, Class Counsel or Capital One Counsel shall not have any liability or responsibility for any of the taxes. The Escrow Account shall indemnify and hold Capital One, Capital One Counsel, Class Representative, and Class Counsel harmless for all taxes (including, without limitation, taxes payable by reason of any such indemnification).

76. **Refund of Settlement Funds.** In the event that the Settlement is not approved, or is terminated, canceled, or fails to become effective for any reason, the remaining Settlement Funds (including accrued interest), less any Administration Expenses incurred and any taxes incurred or due and owing pursuant to this Agreement, shall be refunded to Capital One.

XII. DISTRIBUTION OF THE SETTLEMENT FUND AMONG CLASS MEMBERS

77. **Use of the Settlement Fund.** The Settlement Amount shall be used for the payment of: Administration Expenses; a Settlement Share to each of the Settlement Class Members; any Service Award to the Plaintiff as approved by the Court; any Fee and Expense Award as approved by the Court; and, any taxes owed by the qualified settlement fund (but not any taxes owed by individual Settlement Class Members). The Parties must approve any payment of costs or expenses under this paragraph, and such approval shall not be unreasonably withheld.

78. **Distribution Prior to the Effective Date.** The Settlement Administrator may apply to Class Counsel and Capital One Counsel for the payment from the Settlement Fund of Administration Expenses incurred prior to the Effective Date.

79. **Distribution upon the Effective Date.** Upon the Effective Date, the Settlement Administrator will calculate each Settlement Class Member's Settlement Share as follows:

- a. *First*, the Settlement Administrator will determine the total amount of Administration Expenses ("Total Administration Expenses") to be deducted from the

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Settlement Fund by calculating the sum of the following: (i) the Administration Expenses incurred by the Settlement Administrator as of the Effective Date; and (ii) all Administration Expenses to be incurred by the Settlement Administrator related to this Settlement.

b. *Second*, the Settlement Administrator shall calculate the amount of the Net Settlement Fund by subtracting from the Settlement Fund the sum of the following amounts: (i) Total Administration Expenses, (ii) any Service Awards, and (iii) any Fee and Expense Award.

c. *Third*, the Settlement Administrator shall divide the Net Settlement Fund by the total number of Lyft Overdraft Fees to create a “Per Lyft Overdraft Fee Amount.” Each Settlement Class Member’s Settlement Share shall equal the “Per Lyft Overdraft Fee Amount” multiplied by the number of Lyft Overdraft Fee(s) paid by that Settlement Class Member.

80. **Distribution After the Effective Date.**

a. Within five (5) business days after the Effective Date, any Service Award and Fee and Expense Award shall be paid out of the Escrow Account.

b. Within (10) ten business days after the Effective Date, Capital One will identify to the Settlement Administrator all Settlement Class Members with Open Accounts as of the Effective Date.

c. Within fifteen (15) business days after the Effective Date, the Settlement Administrator shall wire to Capital One, from the Escrow Account, an amount equal to the aggregate Settlement Share of all Settlement Class Members with Open Accounts. At the same time, the Settlement Administrator shall provide Capital One with a list of the

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amounts to be paid to Settlement Class Members with Open Accounts, in an electronic format, including each Settlement Class Member's name, address, last four digits of their account number and his or her Settlement Share. Capital One shall directly deposit the applicable Settlement Share into such Settlement Class Members' Open Accounts, within sixty (60) days of the Effective Date. If any such Settlement Class Member closes their deposit account before Capital One can deposit the Settlement Share, then Capital One shall deposit those Settlement Shares back in to the Escrow Account within seventy (70) days after the Effective Date, and those Settlement Class Members shall be paid by check by the Settlement Administrator in accordance with the procedures for making payments to Settlement Class Members with Closed Accounts. Capital One shall receive no compensation for performing these actions.

d. For Settlement Class Members with Closed Accounts, the Settlement Administrator shall mail each such Settlement Class Member a check in the amount of each applicable Settlement Share within sixty (60) days of the Effective Date. Payments to Settlement Class Members whose accounts were originally identified as an Open Account but were closed prior to deposit of the Settlement Share shall be made as soon as practicable. The checks shall indicate that they expire one hundred eighty (180) days after the date of issuance.

e. If a Settlement Class Member is deceased and a death certificate is provided to the Settlement Administrator prior to the Effective Date, that deceased Settlement Class Member will be entitled to a Settlement Share as follows. If their account is a Closed Account, the Settlement Administrator will pay the Settlement Share to the deceased Settlement Class Member's estate. If their account is an Open Account with one or more

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joint accountholders, Capital One will deposit the Settlement Share into that account, otherwise the deceased Settlement Class Member shall not be entitled to a Settlement Share.

f. In the event a check is returned to the Settlement Administrator because the address of the recipient is no long valid, i.e., the envelope is marked “Return to Sender” and does not contain a new forwarding address, the Settlement Administrator shall perform a standard skip trace, in the manner that the Settlement Administrator customarily performs skip traces, in an effort to attempt to ascertain the current address of the particular Settlement Class Member in question and, if such an address is ascertained, the Settlement Administrator will re-send the check as soon as possible thereafter. The Settlement Administrator shall make only one such additional attempt to identify current addresses and re-mail or re-issue a distribution check to those for whom an updated address was obtained.

g. Within thirty (30) days of the expiration of the last issued check, any funds remaining in the Escrow Account after all payments are made to satisfy the Service Award, Fee and Expense Award, Administration Expenses, and after the distribution of Settlement Shares as described in paragraphs 80(a) through 80(f), shall be distributed through a residual *cy pres* program. The residual *cy pres* recipient(s) shall be agreed upon by Capital One and Class Counsel, and approved by the Court. Any residual *cy pres* distribution shall be paid as soon as reasonably possible following the completion of distribution of funds to the Settlement Class Members.

h. The Parties shall have no responsibility or liability for any federal, state, or other taxes owed by Settlement Class Members as a result of, or that arise from, any

Settlement payments to Settlement Class Members or any other term or condition of this Agreement.

XIII. PAYMENT OF SERVICE AWARD AND ATTORNEYS' FEES AND COSTS

81. **Service Award.** On or before fifteen (15) days after the Opt-Out and Objection Deadline, Class Counsel may file a Service Award Application with the Court requesting a Service Award from the Settlement Fund for the Class Representative not to exceed Five Thousand Dollars (\$5,000) for his service to the Settlement Class in addition to any other relief to which he is entitled as a Settlement Class Member. Capital One shall not oppose such application.

82. **Class Counsel's Attorneys' Fees and Costs.** On or before fifteen (15) days after the Opt-Out and Objection Deadline, Class Counsel shall file a Fee Application with the Court for an award from the Settlement Fund, not to exceed thirty percent (30%) of the Settlement Amount, Class Counsel may also apply for reimbursement for reasonable costs and expenses incurred in the Action. Capital One agrees not to oppose the Fee Application. Any Fee and Expense Award shall be paid from the Settlement Fund and out of the Escrow Account by the Settlement Administrator within five (5) business days after the Effective Date.

83. **Distribution of Fee and Expense Award.** Class Counsel is responsible for distributing any award of attorneys' fees and costs amongst Class Counsel. Capital One shall not be liable for any claims ensuing from distribution of attorneys' fees and costs.

84. **Settlement Not Conditioned Upon Fee and Expense or Service Award.** This Settlement is not conditioned upon the Court's approval of the fees or costs sought by Class Counsel or the service award sought by the Class Representative. If the amounts awarded by the Court are less than what was sought by Class Counsel and the Class Representative, the remaining provisions of this Settlement shall be binding and effective. Any appellate proceedings relating

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solely to the Fee and Expense Award and/or the Service Award shall not delay the effectuation of the Releases contained herein.

XIV. RELEASES

85. **Release**. Upon the Effective Date, and in consideration of the promises and covenants set forth in this Settlement Agreement, the Class Representative and each Settlement Class Member, and each of their respective spouses, children, executors, representatives, guardians, wards, heirs, estates, bankruptcy estates, bankruptcy trustees, successors, predecessors, attorneys, agents and assigns, and all those who claim through them or who assert claims (or could assert claims) on their behalf (“Releasing Parties”), will be deemed to have completely released and forever discharged Capital One, and its past and present parents, subsidiaries, affiliates, officers, directors, employees, attorneys, shareholders, agents, assigns, and third party suppliers and vendors (collectively, the “Released Parties”), from any claim, right, demand, charge, complaint, action, cause of action, obligation, or liability of any and every kind, including without limitation those known or unknown, from the beginning of the world until today, that arises out of common law, state law, or federal law, whether by Constitution, statute, contract, common law, or equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated (collectively, “Claims”) that: (a) arise from or relate to the conduct alleged in the Complaint; (b) arise out of, relate to, or are in connection with the assessment of Lyft Overdraft Fees or (c) arise out of, relate to, or are in connection with the administration of the Settlement (the “Released Claims”).

86. **Unknown Claims**. Without limiting the foregoing, the Released Claims specifically extend to claims that arise out of, relate to, or are in connection with the assessment of overdraft fees resulting from one-time, non-recurring Lyft transactions that the Class Representative and the Settlement Class Members do not know or suspect to exist in their favor at

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the time that the Settlement, and the releases therein, becomes effective. This paragraph constitutes a waiver by the Class Representative, and shall be deemed to be a waiver by all Settlement Class Members, of California Civil Code Section 1542 and any other similar statutes, laws, or legal principles of any state. California Civil Code Section 1542 provides:

Section 1542. General Release, extent. A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”

Plaintiff or any Settlement Class Member may hereafter discover facts other than or different from those that he/she knows or believes to be true with respect to the subject matter of the claims released, or the law applicable to such claims may change. Nonetheless, each of those individuals expressly agrees that, as of the Effective Date, he/she shall have automatically and irrevocably waived and fully, finally and forever settled and released any known or unknown, suspected or unsuspected, asserted or unasserted, liquidated or unliquidated, contingent or non-contingent claims with respect to all of the matters and conduct described in or subsumed by this Paragraph and Paragraph 85. Further, each of those individuals agrees and acknowledges that he/she shall be bound by this Agreement, including by the releases contained in this Paragraph and in Paragraph 85, and that all of their claims in the Action shall be dismissed with prejudice and released, whether or not such claims are concealed or hidden; without regard to subsequent discovery of different or additional facts and subsequent changes in the law; and even if he/she never receives actual notice of the Settlement or never receives a distribution of funds or credits from the Settlement.

87. **Named Plaintiff Release.** In addition to the releases made by Plaintiff and the members of the Settlement Class above, Plaintiff Chris Lashambae, including each and every one of his respective agents, representatives, attorneys, heirs, assigns, or any other person acting on his behalf or for his benefit, and any person claiming through him, makes the additional following

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general release of all claims, known or unknown, in exchange and consideration of the Settlement set forth in this Agreement. This named Plaintiff agrees to a general release of the Released Parties from all claims, demands, rights, liabilities, grievances, demands for arbitration, and causes of action of every nature and description whatsoever, known or unknown, pending or threatened, asserted or that might have been asserted, whether brought in tort or in contract, whether under state or federal or local law.

88. **Covenant Not To Sue.** Class Representative agrees and covenants, and each Settlement Class Member will be deemed to have agreed and covenanted, not to sue any of the Released Parties with respect to any of the Released Claims, and agree to be forever barred from doing so in any court of law or equity, arbitration proceeding, or any other forum.

89. **Judgment.** If the Settlement Agreement is finally approved, the Parties agree that Plaintiff will cause the Court to enter a judgment dismissing the claims in the Action, with the Parties to bear costs not otherwise awarded, and as set forth in the Final Approval Order.

XV. TERMINATION OF THE SETTLEMENT

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

91. **Termination.** This Settlement may be terminated by either Capital One or Class Counsel by serving on counsel for the opposing Party and filing with the Court a written notice of termination within ten (10) days after any of the following occurrences:

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- a. The Court rejects, materially modifies, materially amends or changes, or declines to preliminarily or finally approve the Settlement;
- b. An appellate court reverses the Final Approval Order, and the Settlement is not reinstated without material change by the Court on remand;
- c. Any court incorporates into, or deletes or strikes from, or modifies, amends, or changes, the Preliminary Approval Order, Final Approval Order, or the Settlement in a way that Capital One or Class Counsel seeking to terminate the Settlement reasonably considers material;
- d. The Effective Date does not occur; or
- e. Any other ground for termination provided for elsewhere in this Agreement.

92. **Termination Based on Percentage of Opt-Outs.** Capital One also shall have the right to terminate the Settlement by serving on Class Counsel and filing with the Court a notice of termination within ten (10) days of its receipt from the Settlement Administrator of the final opt-out report, if the number of persons in the Settlement Class who timely request exclusion from the Settlement Class equals or exceeds 2.5% of the Settlement Class.

93. **Refund Upon Termination.** In the event of a termination of the Settlement, any amounts remaining in the Escrow Account shall be remitted to Capital One, after payment of all outstanding Administration Expenses. Capital One shall have no right to seek reimbursement from Plaintiff or Class Counsel for any funds disbursed from the Escrow Account.

94. **Status of Action Upon Termination.** In the event of a termination of the Settlement pursuant to this Section, the Parties retain all of their pre-Settlement litigation rights and defenses, including Plaintiff's right to seek class certification and Capital One's right to oppose class certification.

XVI. MISCELLANEOUS PROVISIONS

95. **Binding Effect.** This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Releasing Parties and the Released Parties.

96. **Cooperation of Parties.** The Parties to this Agreement agree to cooperate in good faith to prepare and execute all documents, to seek Court approval, defend Court approval and to do all things reasonably necessary to complete and effectuate the Settlement described in this Agreement. This obligation of the Parties to support and complete the Settlement shall remain in full force and effect regardless of events that may occur, or court decisions that may be issued, in any other case in any court.

97. **Stay and Bar of Other Proceedings.** Pending determination of whether the Settlement should be granted final approval, the Parties agree not to pursue any claims or defenses otherwise available to them in the Action, and no Settlement Class member, either directly, on a representative basis, or in any other capacity, will commence or prosecute any action or proceeding against any of the Released Parties asserting any of the Released Claims, pending final approval of the Settlement.

98. **Obligation To Meet And Confer.** Before filing any motion in the Court raising a dispute arising out of or related to this Agreement, the Parties shall consult with each other and certify to the Court that they have consulted.

99. **No Admissions.** Neither this Agreement nor the Final Approval Order to be entered pursuant to this Agreement is an admission or concession by any person or entity of any fault, omission, liability, or wrongdoing. Capital One expressly disclaims and denies any wrongdoing or liability whatsoever. Specifically, Capital One denies any wrongdoing or liability because, among other reasons, Capital One is entitled to rely on the merchant's coding of a

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transaction as being recurring or non-recurring, and it is undisputed that the transactions that are the subject of this dispute were coded by the relevant merchant as recurring. This Settlement, and any and all negotiations, statements, documents, and/or proceedings in connection with this Settlement, shall not be construed or deemed to be evidence of an admission or concession by Capital One of any liability or wrongdoing by Capital One or any of its affiliates, agents, representatives, vendors, or any other person or entity acting on its behalf with respect to the assessment of overdraft fees or that the case was properly brought as a class action, and shall not be construed or deemed to be evidence of an admission or concession that any person suffered compensable harm or is entitled to any relief with respect to Capital One's assessment of overdraft fees. Capital One may file this Agreement in any action or proceeding that may be brought against it in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

100. **Confidentiality**. The Class Member List shall be confidential and not disclosed to any person unless required by applicable disclosure laws, required to be disclosed to auditors or attorneys, or agreed to by the Parties. The Settlement Agreement and its terms shall be confidential and shall not be disclosed to any person unless required by applicable disclosure laws, required to be disclosed to auditors or attorneys, or agreed to by the Parties, until the filing of the Preliminary Approval Motion. Further, all agreements made and orders entered during the course of the litigation of the Action relating to the confidentiality of information shall survive this Agreement.

101. **Entire Agreement**. This Agreement constitutes a single, integrated written contract expressing the entire agreement of the Parties relative to the subject matter herein. No

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covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party hereto, except as provided for herein.

102. **Headings.** Captions, section headings and numbers have been set forth in this Agreement for convenience only and are not to be used in construing this Agreement. Any inconsistency between the headings used in this Agreement and the text of the paragraphs of this Agreement shall be resolved in favor of the text.

103. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though all Parties do not sign the same counterparts. Original signatures are not required. Any signature submitted by facsimile or through email of an Adobe PDF shall be deemed an original.

104. **Jurisdiction and Governing Law.** The Court shall retain jurisdiction over the implementation, enforcement and performance of this Agreement, which shall be construed in accordance with, and be governed by, the laws of the State of New York. The Court shall have exclusive jurisdiction over any suit, action, proceeding or dispute arising out of or relating to this Agreement that cannot be resolved by negotiation and agreement by counsel for the Parties. The Court shall retain jurisdiction with respect to the administration, consummation and enforcement of the Agreement and shall retain jurisdiction for the purpose of enforcing all terms of the Agreement. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice Plan and the Settlement Administrator. As part of their respective agreements to render services in connection with this Settlement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose.

105. **Notices.** All notices to counsel provided for herein shall be sent by email with a hard copy sent by overnight mail to:

As to Plaintiff and the Settlement Class:

Hassan Zavareei
hzavareei@tzlegal.com
TYCKO & ZAVAREEI LLP
1828 L Street, NW, Ste. 1000
Washington, DC 20036
Telephone: (202) 973-0900

As to Capital One:

Jessica Kaufman
jkaufman@mofo.com
MORRISON & FOERSTER LLP
250 W. 55th Street
New York, NY 10019
Telephone: (212) 468-8000

The notice recipients and addresses designated above may be changed by written notice. Upon the request of any of the Parties, the Parties agree to promptly provide each other with copies of objections, requests for exclusion, or other filings received as a result of the Notice Plan.

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

107. **Authority.** Any person executing this Agreement in a representative capacity represents and warrants that he or she is fully authorized to do so and to bind the Party on whose behalf he or she signs this Agreement to all of the terms and provisions of this Agreement.

108. **Agreement Mutually Prepared.** Neither Capital One nor Plaintiff, nor any of them, shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

109. **Independent Investigation and Decision to Settle.** The Parties understand and acknowledge that: (a) they have performed an independent investigation of the allegations of fact and law made in connection with the Action; and (b) even if they may hereafter discover facts in addition to, or different from, those that they now know or believe to be true with respect to the

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subject matter of the Action as reflected in this Agreement, that will not affect or in any respect limit the binding nature of this Agreement. Capital One has provided and is providing information that Plaintiff reasonably requested to identify persons in the Settlement Class and the alleged Lyft Overdraft Fee(s) they incurred. It is the Parties' intention to resolve their disputes in connection with the Action pursuant to the terms of this Agreement now and thus, in furtherance of their intentions, the Agreement shall remain in full force and effect notwithstanding the discovery of any additional facts or law, or changes in law, and this Agreement shall not be subject to rescission or modification by reason of any changes or differences in facts or law, subsequently occurring or otherwise.

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

111. **Deadlines.** If any of the dates or deadlines specified herein falls on a weekend or legal holiday, the applicable date or deadline shall fall on the next business day. All reference to "days" in this Agreement shall refer to calendar days, unless otherwise specified. The Parties reserve the right, subject to the Court's approval, to agree to any reasonable extensions of time that might be necessary to carry out any of the provisions of this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS HEREOF, the Parties hereto have caused this Agreement to be executed:

PLAINTIFF

Chris Lashambae

Chris Lashambae

Date: March ____, 2020

CAPITAL ONE, N.A.

Print Name:

Capacity:

Date: March ____, 2020

CLASS COUNSEL

Hassan Zavareei

Date: March ____, 2020

Jeff Ostrow

Date: March ____, 2020

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

If You Were Charged an Overdraft Fee by Capital One for a Lyft Transaction that Was Not Classified as a One-Time Debit Card Transaction, You May Be Eligible for a Payment from a Class Action Settlement.

A Federal Court authorized this notice. This is not a solicitation from a lawyer.

THIS NOTICE MAY AFFECT YOUR RIGHTS. PLEASE READ IT CAREFULLY.

- A Settlement has been reached in a class action lawsuit alleging that Capital One, N.A. (“Capital One”) improperly charged overdraft fees on one-time Lyft transactions to customers who did not opt into the Bank’s Debit Card Overdraft Service. Capital One denies any wrongdoing or liability. The Court has not decided who is right.
- Current and former holders of Capital One consumer checking Accounts who were not opted into Capital One’s Debit Card Overdraft Service at the time they were charged an overdraft fee by Capital One for a transaction with Lyft may be eligible for a payment or Account credit from the Settlement Fund.
- Your legal rights are affected whether you act or don’t act. Read this notice carefully. You may also obtain additional information, including the Final Approval Order and Judgment, by visiting: **[INSERT HYPERLINK]**.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
Do Nothing And Receive A Payment Or Account Credit	If you are entitled under the Settlement to a payment or Account credit, you do not have to do anything to receive it. If the Court approves the Settlement and it becomes final and effective, and you remain in the Settlement Class, you will automatically receive a payment or Account credit.
Exclude Yourself From The Settlement	If you exclude yourself from the Settlement, you will receive no benefit from the Settlement. This is the only option that allows you to retain your right to bring any other lawsuit against Capital One about the claims in this case.
Object	If you do not exclude yourself from the Settlement, you may write to the Court about why you do not like the terms of the Settlement.
Go to a Hearing	If you do not exclude yourself from the Settlement, you may ask to speak in Court about the fairness of the Settlement.

- These rights and options – **and the deadlines to exercise them** – are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. Payments and Account credits will be provided if the Court approves the Settlement and after any appeals are resolved. Please be patient.

**Questions? Call 1-800-XXX-XXXX
or visit www._____.com**

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**Questions? Call 1-800-XXX-XXXX or visit
www._____.com**

BASIC INFORMATION

1. Why is there a Notice?

A Court authorized this notice because you have a right to know about the proposed Settlement of this class action lawsuit and about all of your options before the Court decides whether to give final approval to the Settlement. This notice explains the lawsuit, the Settlement, and your legal rights.

Magistrate Judge Vera M. Scanlon of the U.S. District Court for the Eastern District of New York is overseeing the Settlement of this case. The case is known as Lashambae v. Capital One Bank, N.A., No. 1:17-cv-06406 (E.D.N.Y.) (the “Action”). The person who sued is called the “Plaintiff.” The Defendant is Capital One.

2. What is this lawsuit about?

The lawsuit alleges that Capital One improperly charged overdraft fees on one-time Lyft transactions to customers who did not opt into the Bank’s Debit Card Overdraft Service. The causes of action asserted in the complaint are for breach of contract and violation of New York General Business Law § 349. The complaint contains all of the allegations and claims asserted against Capital One and can be obtained from the Settlement Website, [\[INSERT HYPERLINK\]](#), or by making a written request to the Settlement Administrator following the instructions in Question 21 below.

Capital One denies the allegations asserted in the Action and maintains it did nothing wrong.

3. What do Account and Debit Card Overdraft Service mean?

“**Account**” means any consumer checking account maintained by Capital One in the United States and its territories.

“**Debit Card Overdraft Service**” means the service by which Capital One, with the account holder’s affirmative consent, and at its sole discretion, may authorize and pay a one-time debit card or ATM transaction when the account holder has insufficient funds to cover the transaction and may charge an overdraft fee when the transaction is paid.

4. Why is this a class action?

In a class action, one or more people, called class representatives (in this case, one Plaintiff Chris Lashambae), sue on behalf of themselves and other people who have similar claims. The people included in the class action are called the Settlement Class or Settlement Class members. One court resolves the issues for all Settlement Class members, except for those who timely exclude themselves from the Settlement Class.

5. Why is there a Settlement?

The Court has not decided in favor of either the Plaintiff or Capital One. Instead, both sides agreed to the Settlement. By agreeing to the Settlement, the Parties avoid the costs and uncertainty of a trial, and Settlement Class Members receive the benefits described in this notice. The Class Representative and his attorneys think the Settlement is best for everyone who is affected.

**Questions? Call 1-800-XXX-XXXX or visit
www._____.com**

WHO IS IN THE SETTLEMENT?

If you received notice of the Settlement from a postcard or email addressed to you, then you are in the Settlement Class. But even if you did not receive a postcard or email with Settlement notice, you may still be in the Settlement Class, as described below.

6. Who is included in the Settlement?

The Settlement Class includes all present and former Capital One consumer checking account holders in the United States and its territories who were not opted in to Capital One's Debit Card Overdraft Service for ATM and everyday debit card transactions, and who were charged overdraft fees **from May 1, 2013, through and including March 30, 2020**, the date of preliminary approval of the Settlement, on a Lyft transaction that was coded as recurring.

If this did not happen to you, you are not a member of the Settlement Class. You may contact the Settlement Administrator if you have any questions as to whether you are in the Settlement Class.

THE SETTLEMENT'S BENEFITS

7. What does the Settlement provide?

Capital One has agreed to establish a Settlement Fund of \$320,633 (also called the "Settlement Amount") from which Settlement Class Members will receive payments or Account credits. The amount of such payments or Account credits cannot be determined at this time. Your share of the Settlement Amount will depend on, among other things: (i) the number of Lyft Overdraft Fees that you paid; (ii) the amount of settlement administration costs, including the costs of notice; (iii) the amount awarded by the Court for attorneys' fees and costs and as service awards to the Class Representative; and (iv) the number of persons who exclude themselves from the Settlement Class.

The Settlement provides that Class Counsel may seek up to 30% of the Settlement Amount, or \$96,190, to reimburse Class Counsel for attorneys' fees, and that the Class Representative may seek \$5,000 as a Service Award.

8. How do I receive a payment or Account credit?

If you are in the Settlement Class and entitled to receive a payment, you do not need to do anything to receive a payment or Account credit. If the Court approves the Settlement and it becomes final and effective, you will automatically receive a payment or Account credit.

9. What am I giving up to stay in the Settlement Class?

Unless you exclude yourself from the Settlement Class, you cannot sue, continue to sue or be part of any other lawsuit against Capital One or the other Released Parties about the legal issues in this case or based on the conduct at issue in this case. Unless you exclude yourself, it also means that all of the decisions and judgments by the Court in this case will bind you. If you do nothing at all, you will be releasing Capital One and the other Released Parties from all of the claims described and identified in Section XIV of the Settlement Agreement. If you stay in the Settlement Class, you agree to the following releases set forth in Paragraphs 85 and 86 of the Settlement Agreement:

**Questions? Call 1-800-XXX-XXXX or visit
www._____.com**

Class Representative and the Settlement Class Members Provide the Following Releases In Exchange for Payment from the Settlement Fund: Upon the Effective Date, and in consideration of the promises and covenants set forth in this Settlement Agreement, the Class Representative and each Settlement Class Member, and each of their respective spouses, children, executors, representatives, guardians, wards, heirs, estates, bankruptcy estates, bankruptcy trustees, successors, predecessors, attorneys, agents and assigns, and all those who claim through them or who assert claims (or could assert claims) on their behalf (“Releasing Parties”), will be deemed to have completely released and forever discharged Capital One and each of its past and present parents, subsidiaries, affiliates, officers, directors, employees, attorneys, shareholders, agents, assigns, and third party suppliers and vendors (collectively, the “Released Parties”), from any claim, right, demand, charge, complaint, action, cause of action, obligation, or liability of any and every kind, including without limitation those known or unknown, from the beginning of the world until today, that arises out of common law, state law, or federal law, whether by Constitution, statute, contract, common law, or equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated (collectively, “Claims”) that: (a) arise from or relate to the conduct alleged in the Complaint; (b) arise out of, relate to, or are in connection with the assessment of Lyft Overdraft Fees or (c) arise out of, relate to, or are in connection with the administration of the Settlement (the “Released Claims”).

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want benefits from the Settlement, and you want to keep the right to sue or continue to sue Capital One on your own about the legal issues in this case or based on the conduct at issue in this case, then you must take steps to get out of the Settlement. This is called excluding yourself – or it is sometimes referred to as “opting-out” of the Settlement Class.

10. How do I get out of the Settlement?

To exclude yourself from the Settlement, you must send a letter that includes the following:

- The name of this case, which is *Lashambae v. Capital One Bank, N.A.*, No. 1:17-cv-06406;
- Your name, address, and telephone number;
- The last four digits of the account number of your Capital One Account;
- A clear request that you would like to “opt-out,” or be “excluded,” or other words clearly indicating that you do not want to participate in the Settlement; and,
- Your signature.

If an Account has more than one account holder, and if one account holder excludes himself or herself from the Settlement Class, then all account holders on that account will be deemed to have opted out of the Settlement with respect to that account.

You must mail your exclusion request, postmarked no later than **August 7, 2020**, to:

Lashambae Settlement Administrator
P.O. Box _____
Portland, OR 97208-3145

**Questions? Call 1-800-XXX-XXXX or visit
www._____.com**

11. If I do not exclude myself, can I sue Capital One for the same thing later?

No. Unless you exclude yourself, you give up the right to sue Capital One for the claims that the Settlement resolves. You must exclude yourself from this Settlement Class in order to try to pursue your own lawsuit.

12. If I exclude myself from the Settlement, can I still receive a payment?

No. If you exclude yourself from the Settlement you will not have any rights under this Settlement, will not be entitled to receive a payment or Account credit, and will not be bound by this Settlement Agreement or the Final Approval Order.

THE LAWYERS REPRESENTING YOU

13. Do I have a lawyer in this case?

The Court has appointed lawyers to represent you and others in the Settlement Class as “Class Counsel,” including:

Hassan Zavareei Annick Persinger Tycko & Zavareei LLP 2000 L Street, NW, Ste. 808 Washington, DC 20036	Jeff M. Ostrow Jonathan M. Streisfeld Kopelowitz Ostrow P.A. 1 West Las Olas Blvd. Ste. 500 Fort Lauderdale, FL 33301	Michael R. Reese Reese LLP 100 West 93rd Street, 16th Floor New York, NY 10025
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Class Counsel will represent you and others in the Settlement Class. You will not be charged for these lawyers. You may also represent yourself, or, if you want to be represented by your own lawyer, you may hire one at your own expense.

14. How will the lawyers be paid?

Class Counsel intends to request up to thirty percent (30%) of the Settlement Amount for attorneys’ fees, plus reimbursement of their expenses incurred in connection with researching, preparing for, prosecuting and litigating this case. The fees and expenses awarded by the Court will be paid out of the Settlement Fund. The Court will determine the amount of fees and expenses to award. Class Counsel will also request that a Service Award of up to \$5,000.00 for the Plaintiff be paid from the Settlement fund for his service to the entire Settlement Class as the Class Representative.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you do not agree with the Settlement or some part of it.

15. How do I tell the Court that I don’t like the Settlement?

If you are a Settlement Class Member, and you do not choose to “opt-out” or exclude yourself from the Settlement, you can object to any part of the Settlement, the Settlement as a whole, Class Counsel’s requests for fees and expenses and/or Class Counsel’s request for a Service Award for the Plaintiff.

**Questions? Call 1-800-XXX-XXXX or visit
www._____.com**

To object, you must submit a letter that includes the following:

- The name of this case, which is Lashambae v. Capital One Bank, N.A., No. 1:17-cv-06406 (E.D.N.Y.);
- Your full name, address and telephone number;
- The last four digits of your account number;
- The reason(s) you claim to be a Settlement Class Member;
- All grounds for the objection, accompanied by any legal support for the objection known to you or your counsel;
- The identity of all counsel who represent you, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement or fee application;
- The identity of all counsel representing you who will appear at the hearing that the Court has scheduled to determine whether to grant final approval to the Settlement and Class Counsel’s request for attorneys’ fees and a Service Award to Plaintiff (the “Final Approval Hearing”);
- A list of all persons who will be called to testify at the Final Approval Hearing in support of the objection;
- A statement confirming whether you intend to personally appear and/or testify at the Final Approval Hearing; and
- Your signature (an attorney’s signature is not sufficient)

You must submit your objection to the following addresses no later than **August 7, 2020**:

Clerk of the Court U.S. District Court, Eastern District of New York 225 Cadman Plaza East Brooklyn, NY 11201	Lashambae Settlement Administrator P.O. Box _____ Portland, OR 97208-3145	Hassan Zavareei Tycko & Zavareei LLP 2000 L Street, NW, Ste. 808 Washington, DC 20036	Jessica Kaufman Morrison & Foerster LLP 250 W. 55 th St. New York, NY 10019
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16. What’s the difference between objecting and excluding?

Objecting is telling the Court that you do not like something about the Settlement. You can object to the Settlement only if you do not exclude yourself from the Settlement. Excluding yourself from the Settlement is telling the Court that you don’t want to be part of the Settlement. If you exclude yourself from the Settlement, you have no basis to object to the Settlement because it no longer affects you.

THE COURT'S FINAL APPROVAL HEARING

The Court will hold the Final Approval Hearing to decide whether to approve the Settlement and the request for attorneys' fees and Service Awards for Plaintiff. You may attend and you may ask to speak, but you don't have to do so.

17. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing at **11:00 AM on October 1, 2020**, in the Courtroom of The Honorable Vera M. Scanlon, U.S. District Court for the Eastern District of New York, 225 Cadman Plaza East, Courtroom 13A South, Brooklyn, NY 11201. The hearing may be moved to a different date or time without additional notice, so it is a good idea to check **[INSERT HYPERLINK]** for updates. At this hearing, the Court will consider whether the Settlement is fair, reasonable and adequate. The Court will also consider any request by Class Counsel for an attorneys' Fees and Expense Award and for a Service Award for Plaintiff. If there are objections, the Court will consider them at this time. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take.

18. Do I have to come to the hearing?

No. Class Counsel will answer any questions the Court may have. But, you may come at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as you submitted your written objection on time, to the proper address, and it complies with the requirements set forth above, the Court will consider it. You may also pay your own lawyer to attend, but it's not necessary.

19. May I speak at the hearing?

Yes. If you wish to, you may attend and speak at the Final Approval Hearing. If you intend to object, then you must indicate your intention to speak at the Final Approval Hearing in your written objection (see Question 15). Your objection must state that it is your intention to appear at the Final Approval Hearing, and must identify any witnesses you may call to testify or exhibits you intend to introduce into evidence at the Final Approval Hearing. If you plan to have your attorney speak for you at the Final Approval Hearing, your objection must also include your attorney's name, address, and phone number. If you do not intend to object and wish to speak at the Final Approval Hearing, you may appear in person at the Final Approval Hearing and speak to the Court.

IF YOU DO NOTHING

20. What happens if I do nothing at all?

If you do nothing, you will still receive the benefits to which you are entitled. Unless you exclude yourself, you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Capital One relating to the legal issues in this case or the conduct alleged in the Complaint.

GETTING MORE INFORMATION

21. How do I get more information?

This Long-form Notice summarizes the proposed Settlement. More details can be found in the Settlement Agreement. You can obtain a copy of the Settlement Agreement at **[INSERT HYPERLINK]**. You may also write with questions to Lashambae Settlement Administrator, PO Box _____, Portland, OR 97208-3145, or call the toll-free number, 1-8XX-XXX-XXXX. Do not contact Capital One or the Court for information.

Questions? Call 1-800-XXX-XXXX or visit
www._____.com

(Postcard/Email Notice)

**If You Paid Capital One Overdraft Fees on Transactions with Lyft,
You May Be Eligible for a Payment from a Class Action Settlement.**

A Settlement has been reached in a class action lawsuit alleging that Capital One, N.A. (“Capital One”) improperly charged overdraft fees on one-time Lyft transactions to customers who did not opt into the Bank’s Debit Card Overdraft Service. Capital One denies any wrongdoing or liability. The Court has not decided who is right.

Who’s Included? Capital One’s records show that you are likely a member of the Settlement Class. The Settlement Class includes all present and former Capital One consumer checking account holders in the United States and its territories who were not opted in to Capital One’s Debit Card Overdraft Service for ATM and everyday debit card transactions, and who were charged overdraft fees, **between May 1, 2013 and March 30, 2020**, the date of preliminary approval of the Settlement, on a Lyft transaction that was coded as recurring.

What Are the Settlement Terms? Capital One has agreed to establish a Settlement Fund of \$320,633. Once the court approves the Settlement, as long as you did not opt out (further described below and on the Settlement Website), you will *automatically* receive a payment by check or Account credit for your portion of the Net Settlement Fund. There is no need to file a claim. The Net Settlement Fund will be divided among the Settlement Class Members, in accordance with the terms of the Settlement Agreement. The Net Settlement Fund is the amount after fees, costs, an award to the Class Representative and Administration Expenses are paid from the Settlement Fund of \$320,633. The Settlement provides that Class Counsel may seek up to 30% of the Settlement Amount, or \$96,190, to reimburse Class Counsel for attorneys’ fees, and that the Class Representative may seek \$5,000 as a Service Award.

Your Rights May Be Affected. If you do not want to be legally bound by the Settlement, you must exclude yourself from the Settlement Class by **August 7, 2020**. If you do not timely exclude yourself, you will release your claims against Capital One and related “Released Parties.” If you exclude yourself, which is sometimes called “opting out” of the Settlement Class, you will not get any automatic payment. If you stay in the Settlement Class, you may object to the Settlement in writing by **August 7, 2020**. The Long Form Notice, available at the Settlement Website listed below, explains how to exclude yourself or object.

The Fairness Hearing. The Court will hold a hearing at **11:00 AM on October 1, 2020** in the Courtroom of the Honorable Vera M. Scanlon, U.S. District Court for the Eastern District of New York, 225 Cadman Plaza East, Room 13 A, Brooklyn, NY 11201. At the hearing, the Court will consider whether to approve the Settlement and Class Counsel’s request for attorneys’ fees, plus expenses and the Class Representative’s Service Award. Unless you opt-out of the Settlement, you may appear at the hearing, but you are not required to attend. You may also hire your own attorney, at your own expense, to appear or speak for you at the hearing.

How Can I Get More Information? For more information about this lawsuit and your rights, including a detailed notice that explains how to exclude yourself from or object to the Settlement, as well as a Final Approval Order and Judgment, visit [\[INSERT HYPERLINK\]](#). You may also obtain a detailed notice by writing to Lashambae Settlement Administrator, [PO Box _____](#), Portland, OR 97208-2995. Para una notificación en Español, visite nuestro sitio de Web, [\[INSERT HYPERLINK\]](#).

[INSERT HYPERLINK]

1-800-000-0000