

**CANADIAN CREDIT CARD FEES CLASS ACTION
NATIONAL SETTLEMENT AGREEMENT**

Made on April 1, 2015

(the "Execution Date")

Between

**COBURN AND WATSON'S METROPOLITAN HOME DBA METROPOLITAN
HOME, HELLO BABY EQUIPMENT INC., JONATHON BANCROFT-SNELL,
1739793 ONTARIO INC., 9085-4886 QUEBEC INC., PETER BAKOPANOS,
MACARONIES HAIR CLUB AND LASER CENTER INC. OPERATING AS
FUZE SALON**

(the "Plaintiffs")

and

**CAPITAL ONE FINANCIAL CORPORATION and CAPITAL ONE BANK
CANADA (CANADA BRANCH).**

(Collectively, "Capital One")

TABLE OF CONTENTS

RECITALS	1
SECTION 1 - DEFINITIONS	4
SECTION 2 - SETTLEMENT APPROVAL	16
2.1 Best Efforts	16
2.2 Motions Certifying or Authorizing the Canadian Proceedings and Approving Notice	17
2.3 Agreement on Form of Orders	18
2.4 Pre-Motion Confidentiality	18
2.5 Sequence of Motions	19
SECTION 3 - SETTLEMENT BENEFITS	20
3.1 Payment of Settlement Amount	20
3.2 Taxes and Interest	20
3.3 Cooperation	21
SECTION 4 - DISTRIBUTION OF SETTLEMENT AMOUNT AND INTEREST	27
4.1 Distribution Protocol	27
4.2 No Responsibility for Administration or Fees	27
SECTION 5 - RELEASES, DISMISSALS AND STAYS	28
5.1 Release of Releasees	28
5.2 Covenant Not To Sue	29
5.3 No Further Claims	30
5.4 Dismissal of the Canadian Proceedings	31
5.5 Stay of the Additional Class Proceedings	31
5.6 Settlement of Quebec Proceeding	31
5.7 Claims Against Other Entities Reserved	31
5.8 No Assistance to Other Plaintiffs	32
5.9 Releases and Covenants	32
SECTION 6 - BAR ORDER AND OTHER CLAIMS	33
6.1 British Columbia, Alberta, Saskatchewan and Ontario Bar Order	33
6.2 Quebec Waiver or Renunciation of Solidarity Order	36
6.3 Material Term	38
SECTION 7 - EFFECT OF SETTLEMENT	38
7.1 No Admission of Liability	38
7.2 Agreement Not Evidence	39
7.3 No Further Litigation	39
SECTION 8 - CERTIFICATION OR AUTHORIZATION FOR SETTLEMENT ONLY	40
8.1 Settlement Class and Common Issue	40
8.2 Certification or Authorization Without Prejudice	41
SECTION 9 - NOTICE TO SETTLEMENT CLASS	41
9.1 Notices Required	41
9.2 Form and Distribution of Notices	41

9.3 Notice of Distribution.....	41
SECTION 10 - ADMINISTRATION AND IMPLEMENTATION	42
10.1 Mechanics of Administration	42
10.2 Settlement Class Member Information and Assistance.....	42
SECTION 11 - CLASS COUNSEL FEES AND ADMINISTRATION EXPENSES	43
SECTION 12 - TERMINATION OF SETTLEMENT AGREEMENT	44
12.1 Right of Termination	44
12.2 If Settlement Agreement is Terminated	46
12.3 Allocation of Monies in the Trust Account Following Termination	47
12.4 Survival of Provisions After Termination.....	48
SECTION 13 - MISCELLANEOUS	48
13.1 Releasees Have No Liability for Administration	48
13.2 Motions for Directions	48
13.3 Further Acts	49
13.4 Publicity	49
13.5 Headings, etc.	50
13.6 Computation of Time	50
13.7 Ongoing Jurisdiction	51
13.8 Governing Law	51
13.9 Entire Agreement	51
13.10 Amendments and Waivers	52
13.11 Binding Effect	52
13.12 Counterparts	52
13.13 Negotiated Agreement.....	53
13.14 Language	53
13.15 Transaction	53
13.16 Recitals	54
13.17 Schedules.....	54
13.18 Notice	54
13.19 Acknowledgements	55
13.20 Authorized Signatures	56

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RECITALS

A. WHEREAS the Plaintiffs have commenced the Canadian Proceedings in the Courts and allege that the Defendants, including Capital One, participated in the Alleged Conspiracy, and the Plaintiffs claim class-wide damages allegedly caused as a result of the Alleged Conspiracy, as well as equitable relief;

B. AND WHEREAS Capital One, through its participation in the MasterCard network, received Interchange Fees in Canada during the Class Period;

C. AND WHEREAS Capital One believes that it is not liable in respect of the Alleged Conspiracy, and believes it has good and reasonable defences in respect of the claims advanced in the Canadian Proceedings;

D. AND WHEREAS Capital One does not admit through the execution of this Settlement Agreement any allegation of unlawful conduct as alleged in the Canadian Proceedings or at all;

E. AND WHEREAS the Parties agree that neither this Settlement Agreement nor any statement made in the negotiations thereof shall be deemed or construed to be an admission by or evidence against Capital One or evidence of the truth of any of the Plaintiffs' allegations against Capital One, which Capital One expressly denies;

F. AND WHEREAS, despite its belief that it is not liable in respect of the Alleged Conspiracy and that it has good and reasonable defences in respect of the claims advanced in the Canadian Proceedings, Capital One has negotiated and entered into this Settlement Agreement to avoid the further expense, inconvenience, and distraction of burdensome and protracted litigation of the

Canadian Proceedings and any other present or future litigation arising out of the facts that gave rise to them, to avoid the risks inherent in uncertain, complex and protracted litigation and to achieve final resolutions of all claims asserted or which could have been asserted against the Releasees by the Plaintiffs on their own behalf and on behalf of the classes they seek to represent in relation to the Alleged Conspiracy;

G. AND WHEREAS Capital One expressly reserves its rights to contest or appeal certification or authorization of other related or unrelated proceedings and assert that the actions herein would not be appropriately certified or authorized in the absence of this Settlement Agreement, and that this Settlement Agreement does not constitute in any way a precedent to support the certification or authorization of classes of this nature;

H. AND WHEREAS counsel for the Releasees have engaged in extensive arm's-length settlement discussions and negotiations with Class Counsel in respect of this Settlement Agreement;

I. AND WHEREAS as a result of these settlement discussions and negotiations, Capital One and the Plaintiffs have entered into this Settlement Agreement, which embodies all of the terms and conditions of settlement between Capital One and the Plaintiffs, both individually and on behalf of the Settlement Class, subject to approval of all Courts;

J. AND WHEREAS as part of this resolution, Capital One has agreed to pay the Settlement Amount for the benefit of the Settlement Class;

K. AND WHEREAS the Plaintiffs have agreed to accept the Settlement Amount, in part, because of the value of the Settlement Amount paid under this Settlement Agreement and the

value of the early cooperation Capital One agrees to render or make available to the Plaintiffs and/or Class Counsel pursuant to this Settlement Agreement, as well as the attendant risks of litigation in light of the potential defences that may be asserted by Capital One;

L. AND WHEREAS the Plaintiffs and Class Counsel recognize the heightened benefits of Capital One's early cooperation in respect of the Canadian Proceedings, which continue to be defended by the Non-Settling Defendants;

M. AND WHEREAS the Plaintiffs and Class Counsel have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiffs' claims, and having regard to the proposed dismissal of the Canadian Proceedings against Capital One, the value of the Settlement Amount and the early cooperation to be provided by Capital One, the burdens and expense associated with prosecuting the Canadian Proceedings, including the risks and uncertainties associated with motions, trials and appeals, the Plaintiffs and Class Counsel have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Plaintiffs and the classes they seek to represent in each of the Canadian Proceedings;

N. AND WHEREAS the Plaintiffs and the Settlement Class intend to fully and completely settle and resolve the claims advanced in the Canadian Proceedings as against the Releasees on the Effective Date pursuant to this Settlement Agreement;

O. AND WHEREAS the Parties therefore wish to, and hereby do, finally resolve on a nationwide basis, without admission of liability, all of the Canadian Proceedings as against the Releasees;

P. AND WHEREAS for the purposes of settlement only and contingent on approvals by the Courts as provided for in this Settlement Agreement, the Parties have consented to certification or authorization of the Canadian Proceedings as class proceedings and have consented to the Settlement Class and the Common Issue in each of the Canadian Proceedings;

Q. AND WHEREAS the Plaintiffs assert that they are adequate class representatives for the Settlement Class and will seek to be appointed representative plaintiffs in their respective Canadian Proceedings;

R. AND WHEREAS for the purposes of settlement only and conditional on approvals by the Courts as provided for in this Settlement Agreement, the Plaintiffs have consented to a dismissal of the Canadian Proceedings as against Capital One;

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Canadian Proceedings as against Capital One be settled and dismissed with prejudice and without costs, subject to the approval of the Courts, on the following terms and conditions:

SECTION 1 - DEFINITIONS

For the purpose of this Settlement Agreement only, including the Recitals and Schedules hereto:

(1) *Acquirers* mean those persons entering into contracts with Merchants for the provision of MasterCard Credit Card services and charging Merchant Discount Fees, including Interchange Fees, in Canada.

(2) *Additional Class Proceedings* means the proceeding commenced by 1023926 Alberta Ltd. in the form of an action filed in the Alberta Court, File No. 1203 10620 (Edmonton Registry), filed on July 13, 2012, as amended on September 18, 2012, the proceeding commenced by The Crown & Hand Pub Ltd. in the form of an action filed in the Saskatchewan Court, Court File No. 1206 of 2012, filed on July 12, 2012, as amended on November 14, 2012 and any future proceeding commenced prior to the Final Order in respect of the Alleged Conspiracy or relating to any conduct alleged, or which could have been alleged, against Capital One by the Plaintiffs in the Canadian Proceedings.

(3) *Administration Expenses* mean all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiffs, Class Counsel or otherwise for the approval, implementation and operation of this Settlement Agreement, including the costs of Notices and claims administration, but excluding Class Counsel Fees.

(4) *Alberta Court* means the Alberta Court of Queen's Bench.

(5) *Alberta MasterCard Settlement Class* means all Alberta resident persons who, during the Class Period, accepted payments for the supply of goods or services by way of MasterCard Credit Cards pursuant to the terms of Merchant Agreements, except the Excluded Persons.

(6) *Alberta Proceeding* means the proceeding commenced by Macaronies Hair Club and Laser Center Inc., operating as Fuze Salon, in the form of an action filed in the Alberta Court, File No. 1203 18531 (Edmonton Registry), filed on December 14, 2012.

(7) *Alleged Conspiracy* means the alleged unlawful conspiracy by the Defendants to fix, maintain, increase or control Merchant Discount Fees, including Interchange Fees, paid by

Merchants who accepted payment by Visa Credit Cards or MasterCard Credit Cards in Canada during the Class Period, contrary to Part VI of the *Competition Act* and the common law (including the Civil Code of Quebec).

(8) *Approval Hearings* means the hearing of the motions brought by Class Counsel for the approval of the terms provided for in this Settlement Agreement in each of the Courts.

(9) *BofA Settlement* means the settlement that has been negotiated with Bank of America Corporation, and which is proceeding through the approval process;

(10) *BofA's Settlement's Confidential Opt Out Threshold* means the threshold agreed to in the BofA Settlement.

(11) *BC Court* means the Supreme Court of British Columbia.

(12) *BC MasterCard Settlement Class* means all British Columbia resident persons who, during the Class Period, accepted payments for the supply of goods or services by way of MasterCard Credit Cards pursuant to the terms of Merchant Agreements, except the Excluded Persons.

(13) *BC Proceeding* means the proceeding commenced by Coburn and Watson's Metropolitan Home dba Metropolitan Home in the form of an action filed in the BC Court (Vancouver registry), Court File No. VLC-S-S-112003, filed on March 28, 2011, as amended.

(14) *Canadian Proceedings* mean the BC Proceeding, the Alberta Proceeding, the Saskatchewan Proceeding, the Ontario Proceeding and the Quebec Proceeding.

(15) *Capital One* means Capital One Financial Corporation and Capital One Bank (Canada Branch).

(16) *Capital One Documents* means any Documents provided by Capital One to Class Counsel pursuant to section 3.2 of this Settlement Agreement.

(17) *Capital One Opt Out* means (a) any Person who validly opts out of each of the Canadian Proceedings within the time provided for in the first Notice of Certification for settlement purposes that is published that provides for opt outs in relation to Capital One in each of the Canadian Proceedings and/or (b) any Person who commenced accepting MasterCard Credit Cards after the date of the first such Notice and who later validly opts out of the Canadian Proceedings in relation to Capital One following a subsequent Notice issued to the Settlement Class as contemplated by section 5.3(2) of this Settlement Agreement. For clarity, Capital One Opt Out does not include Persons who subsequently opt out of the Canadian Proceedings and who had the opportunity to opt out pursuant to either of the Notices described in (a) and (b) above and failed to do so.

(18) *Certification Hearings* mean the hearings of the motions brought by Class Counsel for the certification or authorization of the Canadian Proceedings as class proceedings as against Capital One in each of the Courts.

(19) *Claims Administrator* means a Person proposed by Class Counsel and appointed by the Courts to administer this Settlement Agreement, including any claims process, in accordance with the provisions of this Settlement Agreement and any Distribution Protocol, and any employees of such Person.

(20) *Class Counsel* means Camp Fiorante Matthews Mogerman, Branch MacMaster LLP and Consumer Law Group.

(21) *Class Counsel Fees* means the fees, disbursements, costs, and other applicable taxes or charges of Class Counsel, including any applicable GST, HST, PST or QST.

(22) *Class Period* means March 23, 2001 to the latest date of the last final judgment or order issued with respect to the claims against any of the Defendants in the Canadian Proceedings, including an order approving final settlement of those claims, or any end date of the Class Period provided therein.

(23) *Common Issue* means: Did Capital One conspire with others to fix, maintain, increase or control Interchange Fees paid by Merchants who accepted payment by MasterCard Credit Cards in Canada during the Class Period?

(24) *Courts* mean the BC Court, the Alberta Court, the Saskatchewan Court, the Ontario Court and the Quebec Court (each a "Court").

(25) *Defendant(s)* means, individually or collectively, the individuals or entities now or in the future named as a defendant or respondent in the Canadian Proceedings.

(26) *Distribution Protocol* means a plan to be developed by Class Counsel for distributing the Settlement Amount and accrued interest, in whole or part, as approved by the Courts.

(27) *Document(s)* has the meaning given to that term in rule 1-1(1) of the *British Columbia Supreme Court Civil Rules*.

(28) *Effective Date* means the date immediately when the Final Orders have been received from the Courts approving this Settlement Agreement.

(29) *Excluded Capital One Documents* means any Capital One Documents that are subject to solicitor-client privilege, litigation privilege, attorney-client privilege, work product doctrine, common interest privilege, joint defence privilege or any other privilege, or which would require Capital One to breach any order, regulatory directive, regulatory policy, regulatory agreement or law of any jurisdiction.

(30) *Excluded Person(s)* means each Defendant, the directors and officers of each Defendant, the subsidiaries or affiliates of each Defendant, the entities in which each Defendant or any of that Defendant's subsidiaries or affiliates have a controlling interest and the legal representatives, heirs, successors and assigns of each of the foregoing.

(31) *Execution Date* means the date the Parties execute this Settlement Agreement.

(32) *Final Order* means a final order made by a Court in respect of the approval of this Settlement Agreement once the time to appeal such order has expired without any appeal being taken, if an appeal lies, or once there has been affirmation of the approval of this Settlement Agreement upon a final disposition of all appeals.

(33) *Interchange Fees* mean interchange fees collected by Issuers arising from transactions made under the terms of the MasterCard Network Rules in Canada.

(34) *Issuers* means the banks or other financial institutions which issued MasterCard Credit Cards in Canada;

- (35) *MasterCard* means MasterCard International Incorporated and MasterCard Canada, Inc..
- (36) *MasterCard Credit Cards* mean credit cards issued by Issuers of MasterCard credit cards in Canada.
- (37) *MasterCard Network Rules* means the MasterCard Worldwide MasterCard Rules, as amended.
- (38) *Merchant Agreements* mean agreements entered into between Acquirers and Merchants which impose Merchant Discount Fees, including Interchange Fees, on Merchants whenever they accept payment from customers by way of MasterCard Credit Cards.
- (39) *Merchant Discount Fees* mean fees paid by Merchants arising from the use of MasterCard Credit Cards in Canada.
- (40) *Merchants* mean all persons or entities resident in Canada who accept payments from customers by way of MasterCard Credit Cards in exchange for the supply of goods or services.
- (41) *Non-Settling Defendant(s)* means any Defendant that is not a Releasee under this Agreement or the BofA Settlement and includes any Defendant that terminates its own settlement agreement in accordance with its terms or whose settlement otherwise fails to take effect for any reason, whether or not such settlement agreement is in existence at the date of execution of this Settlement Agreement.
- (42) *Notice of Certification/Authorization and Settlement Hearing* means the form or forms of notice, agreed to by the Plaintiffs and Capital One, or such other form or forms as may be approved by the Courts, which informs the Settlement Class of: (i) the principal elements of this

Settlement Agreement; (ii) the certification or authorization of the Canadian Proceedings for settlement purposes; (iii) the dates and locations of the Approval Hearings..

(43) *Notice of Claims Procedure* means any form or forms of notice, agreed to by the Plaintiffs and Capital One, or such other form or forms as may be approved by the Courts, which informs the Settlement Class of: (i) the approval of this Settlement Agreement; and (ii) the process by which the Settlement Class Members may apply to obtain compensation from the Settlement Amount.

(44) *Notices* mean (i) Notice of Certification/Authorization and Settlement Hearing; (ii) Notice of Claims Procedure; (iii) notice of termination of this Settlement Agreement if it is terminated after notice provided for in accordance with (i) above or otherwise ordered by the Courts; and (iv) any other notice that may be required by the Courts.

(45) *Ontario Court* means the Ontario Superior Court of Justice.

(46) *Ontario MasterCard Settlement Class* means all Canadian resident persons who, during the Class Period, accepted payments for the supply of goods or services by way of MasterCard Credit Cards pursuant to the terms of Merchant Agreements, except the BC MasterCard Settlement Class, the Alberta MasterCard Settlement Class, the Saskatchewan MasterCard Settlement Class, the Quebec MasterCard Settlement Class, and Excluded Persons. For greater certainty, any legal person established for a private interest and any, partnership resident in Quebec, which at any time between December 17, 2009 and December 17, 2010 had under its direction or control more than 50 persons bound to it by contract of employment, and any legal person established for a public interest resident in Quebec, shall be included in this Ontario MasterCard Settlement Class.

(47) *Ontario Proceeding* means the proceeding commenced by Jonathon Bancroft-Snell and 1739793 Ontario Inc. in the form of a Statement of Claim filed in the Ontario Court (Toronto registry), Court File No. CV-11-426591CP (Toronto), filed on May 16, 2011.

(48) *Parties* mean the Plaintiffs and Capital One (each a "Party").

(49) *Person(s)* means an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, trustee, executor, beneficiary, unincorporated association, government or any political subdivision or agency thereof, and any other business or legal entity and their heirs, predecessors, successors, representatives, or assignees.

(50) *Plaintiffs* mean the plaintiffs in the Canadian Proceedings, and any other Person who may in the future be added or substituted as a plaintiff to any of the Canadian Proceedings.

(51) *Proportionate Liability* means the proportion of any judgment that, had they not settled, the Courts would have apportioned to the Releasees and shall also be deemed to include any amount that a Releasee would have been liable to pay to a Non-Settling Defendant as indemnification or contribution in the absence of this settlement and the bar orders contained herein.

(52) *Quebec Court* means the Superior Court of Quebec.

(53) *Quebec MasterCard Settlement Class* means all natural persons, legal persons established in the private interest and partnerships, resident in Quebec, who, during the Class Period, accepted payments for the supply of goods or services by way of MasterCard Credit Cards pursuant to the terms of Merchant Agreements, except the Excluded Persons and any legal

persons established for a private interest and any partnerships which at any time between December 17, 2009 and December 17, 2010 had under its direction or control more than 50 persons bound to it by contract of employment.

(54) *Quebec Proceeding* means the proceeding commenced by 9085-4886 Quebec Inc. and Peter Bakopanos, in the form of a Motion to authorize the bringing of a class action and to ascribe the status of representative in the Quebec Superior Court, Court File No. 500-06-000549-101 (District of Montreal), filed on December 17, 2010, as amended.

(55) *Released Claims* mean any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages whenever incurred, damages of any kind including compensatory, punitive or other damages, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses (including Administration Expenses), penalties, and lawyers' fees (including Class Counsel Fees), known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or contingent, and liquidated or unliquidated, in law, under statute or in equity, that Releasors, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have, relating in any way to any conduct occurring anywhere, from the beginning of time to the date hereof or to the end of the Class Period, whichever is later, in respect of the Alleged Conspiracy or relating to any conduct alleged (or which could have been alleged) in the Canadian Proceedings including, without limitation, any such claims which have been asserted, would have been asserted, or could have been asserted, directly or indirectly, whether in Canada or elsewhere, as a result of or in connection with the Alleged Conspiracy, or as a result of or in connection with any other alleged unlawful horizontal or vertical anticompetitive conduct in connection with the payment of Merchant Discount Fees,

including Interchange Fees. However, Capital One acknowledges that this release does not include any benefits that may accrue to the Settlement Class as a result of final injunctive or declaratory relief ordered relating to the MasterCard or Visa Network Rules and/or in relation to rates of Interchange Fees, that may be issued in the Canadian Proceedings.

(56) *Releasee(s)* mean, jointly and severally, individually and collectively, Capital One and all of their and its respective present and former, direct and indirect, parents, subsidiaries, divisions, affiliates, partners, insurers, and all other Persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and all of their and its respective past, present and future officers, directors, employees, agents, shareholders, attorneys, trustees, servants and representatives (subject to such particular inclusions or exclusions of individuals as may be specified in writing by Capital One in its sole discretion prior to the Effective Date); and the predecessors, successors, heirs, executors, administrators and assigns of each of the foregoing, excluding always the Non-Settling Defendants and any affiliates of the Non-Settling Defendants.

(57) *Releasors* mean, jointly and severally, individually and collectively, the Plaintiffs and the Settlement Class Members and their respective present, former, and future direct and indirect parents, affiliates, subsidiaries, officers, directors, attorneys, servants, predecessors, successors, trustees, representatives, heirs, executors, administrators, insurers, and assigns of each of the foregoing.

(58) *Saskatchewan Court* means the Saskatchewan Court of Queen's Bench.

(59) *Saskatchewan MasterCard Settlement Class* means all Saskatchewan resident persons who, during the Class Period, accepted payments for the supply of goods or services by way of

MasterCard Credit Cards pursuant to the terms of Merchant Agreements, except the Excluded Persons.

(60) *Saskatchewan Proceeding* means the proceeding commenced by Hello Baby Equipment Inc. in the form of a Statement of Claim filed in the Saskatchewan Court of Queen's Bench, Court File No. 133 of 2013, filed on January 24, 2013.

(61) *Settled Defendants* means Bank of America Group, all of their and its respective present and former, direct and indirect, parents, subsidiaries, divisions, affiliates, partners, insurers, and all other Persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and all of their and its respective past, present and future officers, directors, employees, agents, shareholders, attorneys, trustees, servants and representatives; and the predecessors, successors, heirs, executors, administrators and assigns of each of the foregoing, excluding always the Non-Settling Defendants and any affiliates of the Non-Settling Defendants.

(62) *Settlement Agreement* means this agreement, including the Recitals and Schedules.

(63) *Settlement Amount* means the all-inclusive sum of CAD \$4.25 million.

(64) *Settlement Class* means all Persons included in the BC MasterCard Settlement Class, the Alberta MasterCard Settlement Class, the Saskatchewan MasterCard Settlement Class, the Ontario MasterCard Settlement Class, and the Quebec MasterCard Settlement Class.

(65) *Settlement Class Member(s)* means a member of the Settlement Class who has not validly opted-out of the Settlement Class in accordance with the order of the Courts, as applicable.

(66) *Trust Account* means an interest bearing trust account at a Canadian Schedule 1 bank under the control of Class Counsel for the benefit of the Settlement Class Members.

(67) *US Proceeding* means *In re Payment Card Interchange Fee & Merchant Discount Antitrust Litigation*, MDL Docket No. 1720.

(68) *Visa* means Visa Canada Corporation and Visa Inc.

(69) *Visa Credit Cards* mean credit cards issued by Issuers of Visa credit cards in Canada.

SECTION 2- SETTLEMENT APPROVAL

2.1 Best Efforts

(1) The Parties shall use their best efforts to: (i) effectuate this Settlement Agreement, including obtaining the approval of the Courts, and to secure the prompt, complete and final dismissal with prejudice, or where applicable a declaration of settlement, of the Canadian Proceedings; (ii) stay the Additional Class Proceedings as against the Releasees named as Defendants in the Canadian Proceedings, and (iii) secure the prompt, complete and final dismissal of the Canadian Proceedings with prejudice against Capital One. The Parties shall also make best efforts to take the steps outlined below in a manner that would allow the notices to be issued and the settlement approval hearings to be held in conjunction with the notices and hearings in the BofA Settlement, including amending the notices and opt out forms to accommodate a joint hearing to approve the three settlements.

2.2 Motions Certifying or Authorizing the Canadian Proceedings and Approving Notice

(1) At a time mutually agreed to by the Plaintiffs and Capital One after this Settlement Agreement is executed, the Plaintiffs shall bring motions before the Courts for orders certifying or authorizing each of the Canadian Proceedings as a class proceeding as against Capital One for settlement purposes and approving the Notice of Certification/Authorization and Settlement Hearing.

(2) The BC order certifying the BC Proceeding as a class proceeding referred to in section 2.2(1) shall be substantially in the form set out in Schedule A.

(3) The Alberta, Saskatchewan, Ontario and Quebec orders certifying or authorizing the Alberta Proceeding, the Saskatchewan Proceeding, the Ontario Proceeding and the Quebec Proceeding shall be agreed upon by the Parties and shall mirror the substance and, where possible, the form of the BC order referred to in section 2.2(2), taking into account the rules and practices of each province and any changes required by the Courts of each province that are acceptable to the parties.

(4) Following receipt of any orders referred to in sections 2.2(2) or 2.2(3) and the expiration of the applicable opt-out period(s) provided for in those or prior orders (as the case may be), and at a time mutually agreed to by the Parties, the Plaintiffs shall bring motions before the Courts for orders approving this Settlement Agreement.

(5) The BC order approving this Settlement Agreement referred to in section 2.2(4) shall be substantially in the form set out in Schedule B.

(6) The Alberta, Saskatchewan, Ontario and Quebec orders approving this Settlement Agreement referred to in section 2.2(4) shall be agreed upon by the Parties and shall mirror the substance and, where possible, the form of the BC order referred to in section 2.2(5), taking into account the rules and practices of each province and any changes required by the Courts of each province that are acceptable to the parties.

2.3 Agreement on Form of Orders

(1) It is a fundamental term of this Settlement Agreement that the Plaintiffs and Capital One must agree on the form and content of the orders to be sought pursuant to section 2.2 (“collectively, the “Certification and Approval Orders”), including the form of Notice of Certification/Authorization and Settlement Hearing, and that the issued Certification and Approval Orders and the Notice of Certification/Authorization and Settlement Hearing must be consistent with the terms of this Settlement Agreement. The form and content of the Certification and Approval Orders shall be considered a material term of this Settlement Agreement and the failure of any Court to approve the form and content of the Certification and Approval Orders substantially in the form agreed upon shall give rise to a right of termination pursuant to section 12 of this Settlement Agreement.

2.4 Pre-Motion Confidentiality

(1) Until the first of the motions required by section 2.2(1) is brought, the Parties shall keep all of the terms of this Settlement Agreement, and any information or Documents related thereto, confidential and shall not disclose them without the prior written consent of counsel for Capital One and Class Counsel, as the case may be, except as required for the purposes of financial reporting or the preparation of financial records (including tax returns and financial statements)

or as otherwise required by law.

(2) Notwithstanding section 2.4(1), at any time after the execution of this Settlement Agreement, Capital One may elect to disclose this Settlement Agreement to the Non-Settling Defendants or for insurance purposes provided the recipient has agreed to act in accordance with section 2.4(1). If Capital One elects to disclose this Settlement Agreement to any of the Non-Settling Defendants, it will provide immediate notice of this fact to the Class Counsel.

2.5 Sequence of Motions

(1) At any time as mutually agreed to by the Plaintiffs and Capital One after this Settlement Agreement is executed, the Plaintiffs may bring motions before the Courts to request that the Courts hold joint hearings to consider any of the motions required by this Settlement Agreement pursuant to the *Canadian Bar Association's Canadian Judicial Protocol for the Management of Multijurisdictional Class Actions*.

(2) If no such request is made, or if the Courts do not agree to hold joint hearings, the Parties agree that, unless they agree otherwise, or unless any Court orders otherwise, any motions required by this Settlement Agreement shall be heard first by the BC Court. The Parties may take steps to schedule parallel motions in Alberta, Saskatchewan, Ontario and Quebec before any BC hearing, but, if necessary, Class Counsel may seek an adjournment of these hearings to permit the BC Court to render its decision on the motions.

SECTION 3 - SETTLEMENT BENEFITS

3.1 Payment of Settlement Amount

(1) Within thirty (30) days of the Execution Date, Capital One agrees to pay the Settlement Amount in full satisfaction of: (i) all payment obligations under this Settlement Agreement; and (ii) the Released Claims against the Releasees.

(2) None of the Releasees shall have any obligation to pay any amount other than the Settlement Amount, for any reason, pursuant to or in furtherance of this Settlement Agreement.

(3) Once the Settlement Amount is paid by Capital One to Class Counsel in accordance with Section 3.1(1), that sum will be received by Class Counsel in trust in full satisfaction of all payment obligations under this Settlement Agreement and in full satisfaction the Released Claims against the Releasees.

(4) Class Counsel shall maintain the Trust Account as provided for in this Settlement Agreement. Class Counsel shall not pay out all or part of the monies in the Trust Account, except in accordance with this Settlement Agreement or in accordance with an order of the Courts obtained after notice to Capital One, and in any event, after all appeal rights have either lapsed or been exhausted.

3.2 Taxes and Interest

(1) Except as hereinafter provided, all interest earned on the Settlement Amount shall accrue to the benefit of the Settlement Class and shall become and remain part of the Trust Account.

(2) Subject to section 3.2(3) and (4), all taxes payable on any interest which accrues on the Settlement Amount in the Trust Account or otherwise in relation to the Settlement Amount shall be the responsibility of the Settlement Class. Class Counsel shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Amount in the Trust Account, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned on the Settlement Amount shall be paid from the Trust Account.

(3) Capital One shall have no responsibility to make any filings relating to the Trust Account and will have no responsibility to pay tax on any income earned by the Settlement Amount or pay any taxes on the monies in the Trust Account, unless this Settlement Agreement is terminated, in which case the interest earned on the Settlement Amount in the Trust Account or otherwise shall be paid to Capital One who, in such case, shall be responsible for the payment of all taxes on such interest.

(4) Class Counsel hereby indemnifies, defends, and holds harmless Capital One from and against any harm or injury suffered by reason of the use, misuse, erroneous disbursement, or other action taken or failure to act by Class Counsel with the Settlement Amount or funds in the Trust Account not strictly in accordance with the provisions of this Settlement Agreement or any order of the Courts.

3.3 Cooperation

(1) To the extent not previously provided to the Plaintiffs, and subject to the limitations set forth in this Settlement Agreement, Capital One agrees to provide cooperation to Class Counsel,

as specifically set forth below, which cooperation the Parties acknowledge and agree is a material term of this Settlement Agreement.

(2) Within thirty (30) days after the Effective Date, or at a time mutually agreed upon by Class Counsel and Capital One, Capital One shall provide to Class Counsel:

- (a) A written statement that it has no objection to Class Counsel obtaining any Documents that Capital One has produced in the US Proceeding. To the extent a court order permitting disclosure of the documents produced by Capital One in the US Proceedings is required, Capital One will not oppose an application by Class Counsel in the US Proceedings to permit their disclosure. In addition, upon a single request by the Plaintiffs or Class Counsel, Capital One will provide for the authentication of any identified Capital One business records in this production, so identified by Class Counsel, to the extent such business records can be authenticated;
- (b) any Capital One Documents in Capital One's possession relevant to the issues raised in the Canadian Proceedings, including any MasterCard Canadian transaction data between March 28, 2001 and the Effective Date, but excluding any Excluded Capital One Documents, to the extent that such Capital One Documents are not protected against disclosure pursuant to any confidentiality obligations, court orders, or third party consent rights; and
- (c) any third party Documents in Capital One's possession or control relevant to the issues raised in the Canadian Proceedings but excluding any Excluded Capital One Documents, to the extent that such third party Documents are not protected

against disclosure pursuant to any confidentiality obligations, court orders, or third party consent rights.

(3) The parties agree that the requirement set out in subsection 3.3(2)(b) and (c) will be satisfied upon Capital One providing to Class Counsel those Documents already produced by Capital One in *The Commissioner of Competition v. Visa Canada Corporation and MasterCard et al*, Case No. CT-2010-010 either in the form produced to the Commissioner of Competition or redacted to the extent required by law, as well as the following documents, either in the form in which they presently exist or redacted to the extent required by law:

- (a) a document or report that will show the total interchange fees earned by Capital One in relation to Canadian transactions during the Class Period; and
- (b) a document or report that will show the total volume (in dollars) of credit card transactions during the Class Period.

(4) If Capital One has in its possession any Documents produced by third parties relevant to the issues raised in the Canadian Proceedings that cannot be disclosed pursuant to confidentiality obligations, court orders, or third party consent rights, Capital One will reasonably consider making any requests necessary to obtain consent or authorization for the release of such Documents. If such consent or authorization is withheld, Capital One will reasonably consider allowing the Plaintiffs to, at their own expense, assert any rights Capital One has to permit production of such Documents to the Plaintiffs, provided that in no case shall Capital One be required to advance or respond to contested proceedings to provide to Class Counsel Documents that are relevant to issues raised in the Canadian Proceedings.

(5) In the event that the Plaintiffs make an application to intervene or request Documents relevant to the Canadian Proceedings produced in the US Proceeding, Capital One will consent to any such application.

(6) In connection with any Documents produced by Capital One pursuant to this Settlement Agreement (including pursuant to a bar order which grants a Non-Settling Defendant an ability to apply for: (i) documentary or oral discovery from Capital One; (ii) service of a request to admit or production on Capital One; or (iii) production of a witness at a hearing or trial), Capital One shall be at liberty to designate such Documents as "Confidential" or "Highly Confidential" pursuant to the Consent Order made in the BC Proceeding dated September 17, 2012 (the "BC Protective Order") or any other order which may be obtained. Prior to, or at the same time as the approval of this Settlement Agreement, Class Counsel shall make best efforts to obtain, in each of the other Canadian Proceedings, a protective/confidentiality order in substantially the same form as the BC Protective Order. To the extent that it is not possible to obtain a protective order in the form of the BC Protective Order at the time of approval of this Settlement Agreement and Documents produced by Capital One are later required for use in the Canadian Proceedings other than the BC Proceeding, Class Counsel shall seek at that time, on a contested basis if necessary and on notice to Capital One, protective orders similar in substance to the BC Protective Order, so that any Documents produced by Capital One to Class Counsel under this Settlement Agreement, for use in the Canadian Proceedings, which qualify as Confidential or Highly Confidential, may be produced subject to a protective order. This Settlement Agreement shall be contingent on Class Counsel obtaining, in each of the other Canadian Proceedings, a protective/confidentiality order in substantially the same form as BC Protective Order or such

other form as the parties may agree. It is understood that this condition is for the sole benefit of Capital One and may be waived by Capital One.

(7) Capital One will make reasonable efforts to facilitate access to a person having knowledge of the issues raised in the Canadian Proceedings for a meeting to speak to Class Counsel for a period of 6 hours or less.

(8) In the event that the Courts approve a bar order which grants a Non-Settling Defendant an ability to apply for: (i) documentary or oral discovery from Capital One; (ii) service of a request to admit or production on Capital One; or (iii) production of a witness at a hearing or trial, then such ability to apply shall extend to the Plaintiffs.

(9) It is understood and agreed that the Plaintiffs and Class Counsel shall not, without the express written consent of Capital One, directly or indirectly, use or disclose any information or Documents provided by Capital One for any purpose other than the investigation or prosecution of the claims in the Canadian Proceedings, nor, except as expressly permitted herein, share with any other Persons, including, but not limited to, any Settlement Class Members or any counsel or plaintiffs in any other action on behalf of Merchants, any information or Capital One Documents obtained in connection with this Settlement Agreement, except in the event that a court in Canada expressly orders such information or Documents to be disclosed. In no circumstances, however, may the Plaintiffs, Settlement Class Members and/or Class Counsel apply for or consent to such an order, and promptly upon becoming aware of an application for such an order, Class Counsel shall immediately notify Capital One of the application so that Capital One may intervene in such proceedings. The disclosure restrictions set forth in this subsection do not apply to otherwise publicly available Documents and information.

(10) It is understood and agreed that any Capital One Documents may be confidential and may be designated as confidential in accordance with and subject to the terms of any protective order(s) issued in the US Proceeding or confidentiality order(s) issued in the Canadian Proceedings, and the Plaintiffs, Settlement Class Members and Class Counsel agree to comply with the terms of such order(s), even if they or any of them are not parties to the US Proceeding.

(11) Upon the final judgment or order being entered by a Court against the Defendants in the Canadian Proceedings, including an order denying the certification or authorization of the Canadian Proceedings as class proceedings, if requested by Capital One, the Plaintiffs, Class Members and/or Class Counsel shall return to Capital One or destroy, and provide Capital One with a written confirmation by Class Counsel of such destruction, all Documents or other materials provided to the Plaintiffs or Class Counsel by Capital One pursuant to this Settlement Agreement. Nothing contained in this subparagraph shall be construed to require the Plaintiffs or Class Counsel to return any of their work product.

(12) The provisions set forth in this Settlement Agreement are the exclusive means by which the Plaintiffs, Settlement Class Members and Class Counsel may obtain discovery, information or Documents from Capital One or their current or former officers, directors or employees. The Plaintiffs, Settlement Class Members and Class Counsel agree that they shall not pursue any other means of discovery against, or seek to compel, other than at trial, the evidence of Capital One or their current or former officers, directors, employees, agents, or counsel, whether in Canada or elsewhere and whether under the rules or laws of this or any other Canadian or foreign jurisdiction.

(13) A material factor influencing the decision by Capital One to execute this Settlement Agreement is its desire to limit the burden and expense of this litigation. Accordingly, Class Counsel agree to exercise good faith in seeking cooperation from Capital One and to avoid seeking information that is unnecessary, cumulative or duplicative and agree otherwise to avoid imposing undue, unreasonable or disproportionate burden or expense on Capital One.

SECTION 4 - DISTRIBUTION OF SETTLEMENT AMOUNT AND INTEREST

4.1 Distribution Protocol

(1) At a time within the discretion of Class Counsel, Class Counsel will seek orders from the Courts approving a Distribution Protocol.

4.2 No Responsibility for Administration or Fees

(1) Class Counsel shall bear all risks related to the investment of the monies in the Trust Account. Capital One shall not have any responsibility, financial obligations or liability whatsoever with respect to the investment, distribution or administration of monies in the Trust Account including, but not limited to, Administration Expenses and Class Counsel Fees and any responsibility or liability as a result of any decrease or depreciation of the value of the Trust Account, howsoever caused, including but not limited to, a decrease or depreciation in the value of any investments purchased and/or held in the Trust Account.

(2) All funds held by Class Counsel shall be considered to be in *custodia legis* of the Courts and shall remain subject to the jurisdiction of the Courts until such time as such funds have been distributed pursuant to this Settlement Agreement and/or further order of the Courts.

(3) Class Counsel hereby indemnifies, defends, and holds harmless Capital One and its respective directors, officers and employees from and against any harm or injury suffered by reason of the use, misuse, erroneous disbursement, or other action taken or failure to act by Class Counsel with the Settlement Amount or monies in the Account not strictly in accordance with the provisions of this Settlement Agreement or any implementing order of the Courts.

SECTION 5 - RELEASES, DISMISSALS AND STAYS

5.1 Release of Releasees

(1) Upon the Effective Date, and in consideration of payment of the Settlement Amount and for other valuable consideration set forth in this Settlement Agreement, the Releasers shall be deemed to and do hereby forever and absolutely release, acquit and discharge the Releasees from the Released Claims. The Parties shall use their best efforts to have the terms of the release contemplated herein incorporated into the orders obtained from the Courts approving this Settlement Agreement. The Plaintiffs and Settlement Class Members acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true with respect to the subject matter of this Settlement Agreement, and that it is their intention to release fully, finally and forever all Released Claims (including, without limitation, anything that might be based on additional or different facts later discovered), and in furtherance of such intention, this release shall be and remain in effect notwithstanding the discovery or existence of any such additional or different facts.

(2) Notwithstanding subsection 5.1(1), if, at any time between the date of the Final Order and the date of the final judgment or order being entered by the Courts as against the Defendants in the Canadian Proceedings, the Releasees acquire all or substantially all of the credit card

business of any one or more of the Non-Settling Defendants (the "Acquired Business"), the release shall not apply to any Interchange Fees collected in respect of the Acquired Business. For greater certainty, in such circumstances, the release shall continue to apply for Interchange Fees collected in respect of Capital One's existing credit card business at the time of any such acquisition but will not apply in relation to Interchange Fees collected in respect of the Acquired Business.

5.2 Covenant Not To Sue

(1) Notwithstanding section 5.1(1), for any Settlement Class Members resident in any province or territory where the release of one tortfeasor is a release of all other tortfeasors, the Releasors do not release the Releasees but instead covenant and undertake not to sue or make any claim in any way or to threaten, commence, participate in, or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims. The Parties agree that the Final Order entered by the Court shall also enjoin the Releasors from making or pursuing such additional claims.

(2) The Plaintiffs and Settlement Class Members acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true with respect to the subject matter of the Settlement Agreement, and that it is their intention to fully, finally and forever covenant and undertake not to sue or make any claim against the Releasees as set out in this Subsection 5.2(2), and in furtherance of such intention, this covenant not to sue shall be and remain in effect notwithstanding the discovery or existence of any such additional or different facts.

5.3 No Further Claims

(1) The Releasors shall not now or hereafter threaten, institute, prosecute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Persons, any action, suit, cause of action, claim, proceeding, complaint or demand against or collect or seek for recover from any Releasee or any other Persons who will or could bring or commence or continue any claim, crossclaim, claim over or any claim for contribution, indemnity, or other relief against any Releasee in respect of any Released Claim ~~or any matter related thereto~~, except for the continuation of the Canadian Proceedings against the Non-Settling Defendants or named or unnamed co-conspirators who are not Releasees, and are permanently barred and enjoined from doing so. Plaintiffs and Class Counsel acknowledge that Capital One considers it to be a material term of this Settlement Agreement that the Settlement Class Members will be bound by the releases provided for herein.

(2) For further certainty, the intention of the Releasors is to release all claims against Capital One by Settlement Class Members up to the later of the date of the last final judgment or order issued with respect to the claims against any of the Defendants in the Canadian Proceedings or any later date of release provided for in any final judgment or order against any of the Defendants in the Canadian Proceedings. The Releasors agree that a confirmation of the release of all claims against Capital One up to the date of any further settlement agreements with Non-Settling Defendants will be included as a term of any such settlement agreement. The Releasors further agree that if any Notice that provides for an opportunity to opt-out is issued to the Settlement Class in the future with respect to settlement with or judgment against the Non-Settling Defendants, the Releasors will use their best efforts to include in any such Notice as further notice to the Settlement Class that claims against Capital One and its related entities have

already been released and to provide an opportunity for any Persons who commenced accepting MasterCard Credit Cards after the date of the original Notice, and consequently have become members of the Settlement Class after the date of the original Notice, to opt out.

5.4 Dismissal of the Canadian Proceedings

(1) Class Counsel shall bring such motions as are necessary to dismiss the Canadian Proceedings with prejudice and without costs as against any and all Releasees that are Defendants in the Canadian Proceedings within 60 days of the Effective Date of this Settlement Agreement.

5.5 Stay of the Additional Class Proceedings

(1) The Additional Class Proceedings shall be stayed as against any and all Releasees that are Defendants in the Canadian Proceedings. Class Counsel shall bring such motions as are necessary to stay the Additional Class Proceedings and the Releasees shall not be responsible for any costs incurred or otherwise ordered in bringing or adjudicating such motions.

5.6 Settlement of Quebec Proceeding

(1) The Quebec Proceeding shall be settled, without costs and without reservation as against Capital One and any and all Releasees that are Defendants in the Quebec Proceeding, and the Parties shall sign and file a declaration of settlement out of court with the Quebec Court.

5.7 Claims Against Other Entities Reserved

(1) Except as provided herein, this Settlement Agreement does not settle, compromise, release or limit in any way whatsoever any claim by the Settlement Class Members against any

Person other than the Releasees.

5.8 No Assistance to Other Plaintiffs

(1) As of the Execution Date, the Plaintiffs, the Settlement Class Members and Class Counsel shall not, without the express written consent of Capital One, provide any direct or indirect assistance to any plaintiff or any plaintiff's counsel related to any proceeding alleging price fixing of Merchant Discount Fees, including Interchange Fees, against the Releasees, except in the event that a court in Canada expressly directs the Plaintiffs, the Settlement Class Members or Class Counsel to provide such assistance. In no circumstances, however, may the Plaintiffs, the Settlement Class Members and/or Class Counsel apply for or consent to such an order, and promptly upon becoming aware of an application for such an order, Class Counsel shall immediately notify Capital One of the application in order that Capital One or any Releasee may intervene in such proceedings.

5.9 Releases and Covenants

(1) The releases and covenants contemplated in this section shall be considered a material term of this Settlement Agreement and the failure of any Court to approve the releases, or of the Releasees to abide by the covenants, contemplated herein shall give rise to a right of termination pursuant to Section 12 of this Settlement Agreement.

SECTION 6 - BAR ORDER AND OTHER CLAIMS

6.1 British Columbia, Alberta, Saskatchewan and Ontario Bar Order

(1) The Plaintiffs in the British Columbia Proceeding, the Alberta Proceeding, the Saskatchewan Proceeding and the Ontario Proceeding shall seek a bar order from the BC Court, the Alberta Court, the Saskatchewan Court and the Ontario Court respectively, providing for the following:

- (a) All claims for contribution, indemnity or other claims over against a Releasee, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims which were or could have been brought in the Canadian Proceedings or otherwise, by any Non-Settling Defendant, a Settled Defendant, any named or unnamed co-conspirators who are not Releasees or any other Person or party, against a Releasee, or by a Releasee against any Non-Settling Defendant or any other Person or party (excepting (i) a claim by a Releasee against any Person excluded in writing from the definition of Releasees; (ii) a claim by a Releasee pursuant to a policy of insurance, provided any such claim involves no right of subrogation against any Non-Settling Defendant; (iii) a claim by a Capital One Opt Out; and (iv) a claim by a Non-Settling Defendant or any Person or party for contribution, indemnity or other claims over relating to Interchange Fees that have not been released pursuant to section 6.1(2)), are barred, prohibited and enjoined in accordance with the terms of the order.

- (b) Also for greater certainty, the bar order in Section 6.1(1) deals only with claims over and is not intended to bar *bona fide* independent and direct claims and causes of action between Capital One as a settling defendant and Visa as a Non-Settling Defendant, or between Capital One as a settling defendant and MasterCard as a Non-Settling Defendant, for relief other than that claimed by the Plaintiffs in the Canadian Proceedings, including *bona fide* independent and direct claims and causes of action that MasterCard may have against Capital One under the MasterCard Network Rules.
- (c) If any one of the BC Court, the Alberta Court, the Saskatchewan Court, the Ontario Court or other final adjudication determines that there is a right of contribution, indemnity or other claims over, whether in equity or in law, by statute or otherwise:
- (i) The members of the BC MasterCard Settlement Class, Alberta MasterCard Settlement Class, Saskatchewan MasterCard Settlement Class or Ontario MasterCard Settlement Class shall reduce or limit their claims against the Non-Settling Defendants (and/or named or unnamed co-conspirators who are not Releasees) to not be entitled to claim or recover from the Non-Settling Defendants and/or named or un-named co-conspirators who are not Releasees that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise;

- (ii) the Court shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the BC Proceeding, the Alberta Proceeding, the Saskatchewan Proceeding or the Ontario Proceeding, whether or not the Releasees remain in the Canadian Proceedings appear at the trial or other disposition and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the BC Proceeding, Alberta Proceeding, Saskatchewan Proceeding or Ontario Proceeding, and any determination by the Court in respect of the Proportionate Liability of the Releasees shall only apply in the BC Proceeding, Alberta Proceeding, Saskatchewan Proceeding or Ontario Proceeding and shall not be binding on the Releasees in any other proceedings.

- (d) A Non-Settling Defendant may, on motion to the BC Court, Alberta Court, Saskatchewan Court or Ontario Court brought on at least ten (10) days notice to counsel for Capital One, not to be brought unless and until the BC Proceeding, Alberta Proceeding, Saskatchewan Proceeding or Ontario Proceeding against the Non-Settling Defendants have been certified and all appeals or times to appeal from such certification have been exhausted, seek orders for the following:
 - (i) documentary discovery and an affidavit of documents in accordance with the relevant rules of civil procedure from Capital One;
 - (ii) oral discovery of a representative of Capital One, the transcript of which may be read in at trial;

- (iii) leave to serve a request to admit on Capital One in respect of factual matters; and/or
- (iv) the production of a representative of Capital One to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.

- (2) Capital One retains all rights to oppose such motion(s) brought under section 6.1(1)(d).
- (3) A Non-Settling Defendant may serve the motion(s) referred to in section 6.1(1)(d) on Capital One by service on counsel of record for Capital One in any of the Canadian Proceedings.
- (4) To the extent that an order is granted pursuant to section 6.1(1)(d) and discovery is provided to a Non-Settling Defendant, a copy of all discovery provided, whether oral or documentary in nature, shall promptly be provided by Capital One to the Plaintiffs and Class Counsel.

6.2 Quebec Waiver or Renunciation of Solidarity Order

- (1) The Plaintiffs and Capital One agree that the Quebec order approving this Settlement Agreement must include an order providing for the following:
 - (a) the Plaintiffs in Quebec and the members of the Quebec MasterCard Settlement Class expressly waive and renounce the benefit of solidarity against the Non-Settling Defendants with respect to the facts and deeds of the Releasees, and the Non-Settling Defendants are thereby released with respect to the Proportionate Liability of the Releasees proven at trial or otherwise, if any;

- (b) the Court shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the Quebec Proceeding, whether or not the Releasees appear at the trial or other disposition and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the Quebec Proceeding, and any determination by the Court in respect of the Proportionate Liability of the Releasees shall only apply in the Quebec Proceeding and shall not be binding on the Releasees in any other proceedings.
- (c) the Plaintiffs in Quebec and the members of the Quebec MasterCard Settlement Class shall henceforth only be able to claim and recover damages, including punitive damages, attributable to the conduct of and/or sales by the Non-Settling Defendants;
- (d) any action in warranty or other joinder of parties to obtain any contribution or indemnity from the Releasees or relating to the Released Claims shall be inadmissible and void in the context of the Quebec Proceeding,, provided that *bona fide* independent and direct claims and causes of action between Capital One as a settling defendant and Visa as a Non-Settling Defendant or between Capital One as a settling defendant and MasterCard as a Non-Settling Defendant are not precluded, including *bona fide* independent and direct claims and causes of action that MasterCard may have against Capital One under the MasterCard Network Rules; and
- (e) any future right by the Non-Settling Defendants to examine on discovery a representative of Capital One will be determined according to the provisions of

the *Code of Civil Procedure*, and Capital One shall reserve its right to oppose such an examination under the *Code of Civil Procedure* as a third party to the Quebec Proceedings.

6.3 Material Term

(1) The form and content of the orders contemplated in section 6 of this Settlement Agreement shall be considered a material term of this Settlement Agreement and the failure of any Court to approve the orders contemplated herein shall give rise to a right of termination pursuant to section 12 of this Settlement Agreement.

SECTION 7 - EFFECT OF SETTLEMENT

7.1 No Admission of Liability

(1) The Plaintiffs and Capital One expressly reserve all of their rights if this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason. Further, whether or not this Settlement Agreement is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, Documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed or interpreted to be an admission of any violation of any statute or law, or of any fault, omission, wrongdoing or liability by Capital One or by any Releasee, or of the truth of any of the claims or allegations contained in the Canadian Proceedings or any other pleading filed by the Plaintiffs or any other Settlement Class Member, including but not limited to those pleadings filed in the Additional Class Proceedings.

7.2 Agreement Not Evidence

(1) Whether or not it is terminated, this Settlement Agreement and anything contained herein, and any and all negotiations, Documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be referred to, offered as evidence or received in evidence in any present, pending or future civil, criminal or administrative action or proceeding, except: (a) by the Parties in a proceeding to approve or enforce this Settlement Agreement; (b) by a Releasee to defend against the assertion of a Released Claim; (c) by a Releasee in any insurance-related proceeding; or (d) as otherwise required by law or as provided in this Settlement Agreement.

7.3 No Further Litigation

(1) Except as provided in sections 7.3(2) and 7.3(4) of this Settlement Agreement, no Class Counsel, no Plaintiff, no Settlement Class Member, nor anyone currently or hereafter employed by, associated with, or a partner with Class Counsel, may directly or indirectly participate or be involved in or in any way assist with respect to any claim made or action commenced by any Person which relates to or arises from the Released Claims.

(2) Sections 5.8 and 7.3(1) of this Settlement Agreement, shall be inoperative to the extent that they require any lawyer who is a member of the Law Society of British Columbia (the "LSBC") to breach his or her obligations under Rule 4.7 of the LSBC's Professional Conduct Handbook by refraining from participation or involvement in any claim or action in a BC Court. This section shall not affect or render inoperative any other section or provision of this Settlement Agreement.

(3) No Class Counsel, no Plaintiff, no Settlement Class Member, nor anyone currently or hereafter employed by, associated with, or a partner with Class Counsel may divulge to any Person for any purpose any information, including, without limitation, any cooperation materials and Documents provided pursuant to section 3.3, obtained in the course of the Canadian Proceedings or in connection with this Settlement Agreement or the negotiation and preparation of this Settlement Agreement, except to the extent such information is otherwise publicly available or otherwise ordered by a court in Canada.

(4) Section 7.3(1) does not apply to the involvement of any Person in the continued prosecution of the Canadian Proceedings against any Non-Settling Defendant or unnamed co-conspirators who are not Releasees.

SECTION 8 - CERTIFICATION OR AUTHORIZATION FOR SETTLEMENT ONLY

8.1 Settlement Class and Common Issue

(1) The Parties agree that the Canadian Proceedings shall be certified or authorized as class proceedings against Capital One solely for purposes of settlement of the Canadian Proceedings and the approval of this Settlement Agreement by the Courts.

(2) The Plaintiffs agree that, in the motions for certification or authorization of the Canadian Proceedings as class proceedings and for the approval of this Settlement Agreement, the only common issue that they will seek to define is the Common Issue and the only class that they will assert is the Settlement Class. The Plaintiffs acknowledge that Capital One agrees to the definition of the Common Issue for purposes of settlement only.

8.2 Certification or Authorization Without Prejudice

(1) In the event this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect, the Parties agree that any prior certification or authorization of the Canadian Proceedings, or any one of them, as a class proceeding, including the definition of the Settlement Class and the statement of the Common Issue, shall be without prejudice to any position that any of the Parties or any Releasee may later take on any issue in the Canadian Proceedings or any other litigation.

SECTION 9 - NOTICE TO SETTLEMENT CLASS

9.1 Notices Required

(1) The Settlement Class shall be given the Notices.

9.2 Form and Distribution of Notices

(1) The form and content of the Notices and the manner and extent of publication and distribution of the Notices shall be as agreed to by the Plaintiffs and Capital One, such agreement not to be unreasonably withheld, and approved by the Courts.

9.3 Notice of Distribution

(1) Except to the extent provided for in this Settlement Agreement, the Courts shall determine the form of notice in respect to the administration of this Settlement Agreement and any Distribution Protocol, on motions brought by Class Counsel.

SECTION 10 - ADMINISTRATION AND IMPLEMENTATION

10.1 Mechanics of Administration

(1) Except to the extent provided for in this Settlement Agreement, the mechanics of the implementation and administration of this Settlement Agreement and the Distribution Protocol shall be determined by the Courts on motions brought by Class Counsel.

10.2 Settlement Class Member Information and Assistance

(1) Capital One will make reasonable efforts to compile and provide to Class Counsel a list of the names, addresses of Settlement Class Members who paid Interchange Fees in respect of transactions incurred by persons using Capital One MasterCard Credit Cards in Canada, together with information regarding the total sum of any known Interchange Fees, paid on these transactions. Capital One may, but shall not be required to, extract this information from its existing records, or may produce it in the form in which it exists in its records. To the extent that this information is not in the possession of Capital One and cannot readily be assembled, reasonable efforts will include requesting this information from Visa and MasterCard. For greater certainty, reasonable efforts shall not require Capital One to commence legal proceedings or incur other significant costs in connection with requesting this information.

(2) The information required by section 10.2(1) shall be delivered to Class Counsel within one hundred and twenty (120) business days of the Execution Date, or such other date that has been agreed upon by the Parties and ordered by the Courts.

(3) Class Counsel may only use the information provided under section 10.2(2):

- (a) to facilitate the dissemination of the Notices;
 - (b) to advise the Settlement Class Members of any subsequent settlement agreement reached in the Canadian Proceedings, any related approval hearings, and any other major steps in the Canadian Proceedings;
 - (c) to facilitate the claims administration process with respect to this Settlement Agreement and any other settlement agreement achieved in the Canadian Proceedings; and
 - (d) as otherwise authorized in (but subject to the terms of) section 3.3.
- (4) If this Settlement Agreement is terminated, all information and Documents provided by Capital One pursuant to section 10.2(1) shall be returned or destroyed forthwith, no record of the information so provided shall be retained by Class Counsel or by any Person to whom Class Counsel has provided such information, in any form whatsoever, and the information so provided may not be used or disclosed, directly or indirectly, in any form or manner by Class Counsel or by any Person to whom Class Counsel has disclosed such information.

SECTION 11 - CLASS COUNSEL FEES AND ADMINISTRATION EXPENSES

- (1) Class Counsel shall pay the costs of the Notices of this Settlement Agreement from the Trust Account.
- (2) Class Counsel may seek the Courts' approval to pay Class Counsel Fees and Administration Expenses contemporaneously with seeking approval of this Settlement

Agreement, or at such other time as they shall determine in their sole discretion. Capital One will not oppose such motions.

(3) Except as provided in sections 11(1) and 11(2), Class Counsel Fees and any Administration Expenses may only be paid out of the Trust Account after the Effective Date.

(4) The Releasees shall not be liable for any fees, disbursements or taxes, including but not limited to any fees, disbursements or taxes of Class Counsel's, the Plaintiffs' or any Settlement Class Member's respective lawyers, experts, advisors, agents, or representatives.

SECTION 12 - TERMINATION OF SETTLEMENT AGREEMENT

12.1 Right of Termination

(1) Capital One or the Plaintiffs, in their respective sole discretion, have the option to terminate this Settlement Agreement in the event that:

- (a) the BofA's Settlement's Confidential Opt Out Threshold is met;
- (b) the releases and covenants contemplated in sections 5 and 6 are not abided by;
- (c) the form and content of any of the orders or Notices departs materially from the form and content of the orders and Notices as agreed upon by the Plaintiffs and Capital One;
- (d) the form and content of any of the Final Orders approved by the Courts departs materially from the form and content of the orders agreed upon by the Plaintiffs and Capital One under section 2.3(1) of this Settlement Agreement;

- (e) any Court declines to approve this Settlement Agreement or any material term or part hereof;
- (f) any Court declines to dismiss the Canadian Proceedings or stay the Additional Class Proceedings against Capital One;
- (g) any Court approves this Settlement Agreement in a materially modified form; or
- (h) any orders approving this Settlement Agreement made by the Courts do not become Final Orders.

(2) To exercise a right of termination under section 12.1(1), a terminating party shall deliver a written notice of termination pursuant to this Settlement Agreement within fifteen (15) business days of the fact of the condition being met becoming known to the terminating party. Upon delivery of such a written notice, this Settlement Agreement shall be terminated and, except as provided for in section 12.4, shall be null and void and have no further force or effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation.

(3) Any order, ruling or determination made by any Court that is not substantially in the form and content of the respective Final Orders, as agreed upon by the Plaintiffs and Capital One in accordance with section 2.3(1), shall be deemed to be a material modification of this Settlement Agreement and shall provide a basis for the termination of this Settlement Agreement, provided however that Capital One may agree to waive this provision.

(4) Any order, ruling or determination made by any Court with respect to Class Counsel Fees or any Distribution Protocol shall not be deemed to be a material modification of all, or a part, of

this Settlement Agreement and shall not provide any basis for the termination of this Settlement Agreement.

(5) In the event this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason, the Plaintiffs and Capital One agree that any prior certification or authorization of a Canadian Proceeding as a class proceeding, including the definitions of the Settlement Class and the Common Issue, shall be without prejudice to any position that any of the Parties or any Releasee may later take on any issue in the Canadian Proceedings or any other litigation.

(6) In the event this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason, the Plaintiffs and Capital One agree that any appearance, attendance, filing or other action or step taken by Capital One pursuant to or relating to this Settlement Agreement shall be without prejudice to any position that any Releasee may later take in respect of the jurisdiction of the Courts or any other court, including, without limitation, a motion to quash service *ex juris* or to otherwise challenge the jurisdiction of the Courts or any other court over any Releasee in the Canadian Proceedings or any other litigation.

12.2 If Settlement Agreement is Terminated

(1) If this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason it shall be null and void, have no further force and effect, shall not be binding, and shall not be used as evidence or otherwise in litigation, and:

- (a) no motion to certify or authorize any of the Canadian Proceedings as a class proceeding on the basis of this Settlement Agreement or to approve this Settlement Agreement, which has not been decided, shall proceed;
- (b) any order certifying or authorizing any of the Canadian Proceedings as a class proceeding on the basis of this Settlement Agreement or approving this Settlement Agreement shall be set aside and declared null and void and of no force or effect, and the Parties shall be estopped from asserting otherwise;
- (c) any prior certification or authorization of any of the Canadian Proceedings as class proceedings, including the definitions of the Settlement Class and the Common Issue, shall be without prejudice to any position that any of the Parties or Releasees may later take on any issue in any of the Canadian Proceedings or any other litigation; and
- (d) the Parties shall negotiate in good faith to determine a new timetable, if the Canadian Proceedings are to continue against any Releasees.

12.3 Allocation of Monies in the Trust Account Following Termination

- (1) Class Counsel shall pay to Capital One the Settlement Amount plus all accrued interest thereon, less the costs of the Notices, within thirty (30) business days of termination in accordance with this Settlement Agreement.
- (2) The Plaintiffs and Capital One expressly reserve all of their respective rights if this Settlement Agreement is terminated.

12.4 Survival of Provisions After Termination

(1) If this Settlement Agreement is terminated or otherwise fails to take effect for any reason, the provisions of sections 3.2, 7.1, 7.2, 8.2, 9, 10.2(4), 11(1), 11(4) and 12 shall survive the termination and continue in full force and effect. The definitions and Schedules shall survive only for the limited purpose of the interpretation of these surviving sections within the meaning of this Settlement Agreement, but for no other purposes. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

SECTION 13 - MISCELLANEOUS

13.1 Releasees Have No Liability for Administration

(1) The Releasees have no responsibility for and no liability whatsoever with respect to the administration, implementation or enforcement of this Settlement Agreement or the Distribution Protocol.

13.2 Motions for Directions

(1) Capital One or the Plaintiffs may apply to the Courts for directions in respect of the interpretation, implementation and administration of this Settlement Agreement.

(2) Class Counsel may apply to the Courts for directions in respect of any Distribution Protocol.

(3) All motions contemplated by this Settlement Agreement shall be on notice to the Plaintiffs and Capital One, except for those motions concerned solely with the implementation and administration of any Distribution Protocol.

13.3 Further Acts

(1) Without limiting the generality of any other provisions of this Settlement Agreement, until such time as the Courts have approved or refused to approve this Settlement Agreement: (i) none of the Plaintiffs, the Releasers and Class Counsel shall take any action or omit to take any action that is inconsistent with the purposes and scope of this Settlement Agreement; and (ii) none of the Releasees and their respective counsel shall take any action or omit to take any action that is inconsistent with the purposes and scope of this Settlement Agreement.

13.4 Publicity

(1) Except as otherwise required for the purposes of approving the settlement, the Plaintiffs and Capital One agree that:

- (a) the Parties shall not issue any press releases or other communication of any kind (with the media or otherwise) regarding this settlement, except those that may be agreed to by the Parties;
- (b) the Parties shall act in good faith to ensure that any public statements, comments or any communications of any kind about any descriptions of the settlement and the terms of this Settlement Agreement are balanced, fair and accurate;

- (c) the Parties shall not make any public statements, comments or any communications of any kind about any negotiations or information exchanged as part of the settlement process, except as may be required for the Parties to comply with any order of the Courts or as may be required under any applicable law or regulation.

13.5 Headings, etc.

- (1) In this Settlement Agreement:

- (a) the division of this Settlement Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement; and
- (b) the terms “this Settlement Agreement”, “hereof”, “hereunder”, “herein” and similar expressions refer to this Settlement Agreement and not to any particular section or other portion of this Settlement Agreement.

13.6 Computation of Time

- (1) In the computation of time in this Settlement Agreement, except where a contrary intention appears:

- (a) where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and

- (b) only in the case where the time for doing an act expires on a holiday, the act may be done on the next day that is not a weekend or statutory holiday.

13.7 Ongoing Jurisdiction

- (1) Each of the Courts shall retain exclusive jurisdiction over the proceeding commenced in its jurisdiction, the parties thereto, and Class Counsel Fees in that proceeding.
- (2) The Plaintiffs and Capital One agree that no Court shall make any order or give a direction in respect of any matter of shared jurisdiction unless that order or direction is conditional upon a complementary order or direction being made or given by the other Courts with which it shares jurisdiction over that matter.

13.8 Governing Law

- (1) This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of British Columbia, save for matters relating exclusively to the Quebec MasterCard Class Members, which matters shall be governed by and construed and interpreted in accordance with the laws of the Province of Quebec.

13.9 Entire Agreement

- (1) This Settlement Agreement, including the Recitals herein and the Schedules attached hereto, constitutes the entire agreement among the Parties, and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with

respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein.

13.10 Amendments and Waivers

(1) This Settlement Agreement may not be modified or amended except in writing and on consent of all Parties hereto and the Courts with jurisdiction over the matter to which the amendment relates must approve any such modification or amendment.

(2) The waiver of any rights conferred hereunder shall be effective only if made by written instrument of the waiving party and, any such waiver shall not be deemed or construed as a waiver of any other right, whether prior, subsequent, or contemporaneous, of this Settlement Agreement.

13.11 Binding Effect

(1) This Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiffs, the Settlement Class Members, the Releasors, the Releasees, and all of their successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiffs shall be binding upon all Releasors and each and every covenant and agreement made herein by Capital One shall be binding upon all of the Releasees.

13.12 Counterparts

(1) This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile or PDF signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

13.13 Negotiated Agreement

(1) This Settlement Agreement has been the subject of negotiations and discussions among the undersigned, each of which has been represented and advised by competent counsel, so that 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 Settlement Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, all have no bearing upon the proper interpretation of this Settlement Agreement.

13.14 Language

(1) The Parties acknowledge that they have required and consented that this Settlement Agreement and all related documents be prepared in English; les parties reconnaissent avoir exigé que la présente convention et tous les documents supportif ou connectif soient rédigés en Anglais. Nevertheless, Capital One shall prepare a French translation of this Settlement Agreement including the Schedules at their own expense. The Parties agree that such translation is for convenience only. In the event of any dispute as to the interpretation or application of this Settlement Agreement, only the English version shall be considered.

(2) The cost of translating the Notices, claims forms, or other documents referenced to or flowing from this Settlement Agreement into French and/or any other language shall, in the event such translation is required, be paid by Capital One.

13.15 Transaction

(1) This Settlement Agreement constitutes a transaction in accordance with Articles 2631

and following of the *Civil Code of Quebec*, and the Parties are hereby renouncing to any errors of fact, of law and/or of calculation.

13.16 Recitals

(1) The recitals to this Settlement Agreement are true and form part of this Settlement Agreement.

13.17 Schedules

(1) The Schedules annexed hereto form part of this Settlement Agreement.

13.18 Notice

(1) Any and all notices, requests, directives, or communications required by this Settlement Agreement shall be in writing and shall, unless otherwise expressly provided herein, be given personally, by express courier, by postage prepaid mail, by facsimile transmission, or by email PDF files, and shall be addressed as follows:

For the Plaintiffs and for Class Counsel in the Canadian Proceedings:

J. J. Camp, Q.C.

Ward Branch

CAMP FIORANTE MATTHEWS

BRANCH MACMASTER LLP

4th Floor, Randall Building

1410 - 777 Hornby Street

555 West Georgia Street

Vancouver, BC V7G 3E2

Vancouver, BC V6B 1Z6

Tel: 604-654-2966

Tel: 604-689-7555

Fax: 604-684-3429

Fax: 604-689-7554

Email: wbranch@branmac.com

Email: jjcamp@cfmlawyers.ca

Jeff Orenstein

CONSUMER LAW GROUP
4150 Ste.- Catherine St. W Suite 330
Montréal, QC H3Z 2Y5
Tel: 1-888-909-7863 ext. 220
Fax: (514) 868-9690
Email: jorenstein@clg.org

For Capital One:

Ken McEwan, Q.C.

HUNTER LITIGATION
CHAMBERS
Suite 2100, 1040 W. Georgia St.
Vancouver, BC V6E 4H1
Tel: 604-647-3536
Fax: 604-683-3558
Email:
kmcewan@litigationchambers.com

13.19 Acknowledgements

- (1) Each of the Parties hereby affirms and acknowledges that:
- (a) he, she or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood this Settlement Agreement;
 - (b) the terms of this Settlement Agreement and the effects thereof have been fully explained to him, her or the Party's representative by his, her or its counsel;
 - (c) he, she or the Party's representative fully understands each term of this Settlement Agreement and its effect; and

- (d) no Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party, beyond the terms of this Settlement Agreement, with respect to the first Party's decision to execute this Settlement Agreement.

13.20 Authorized Signatures

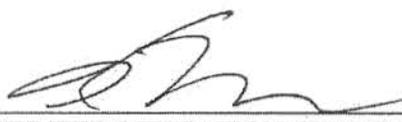
- (1) Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement on behalf of the Parties identified below their respective signatures.

Executed in counterparts on April 1, 2015.

WARD BRANCH for Branch Macmaster LLP,
the Plaintiffs

J.J. CAMP Q.C. for Camp Fiorante Matthews
and the Plaintiffs

JEFF ORENSTEIN for Consumer Law Group
and the Plaintiffs



HUNTER LITIGATION CHAMBERS for
Capital One

J. Kenneth McEwan, Q.C.
Barrister & Solicitor
Hunter Litigation Chambers
2100 - 1040 West Georgia Street
Vancouver, B.C. V6E 4H1
Telephone: 604-647-3536

- (d) no Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party, beyond the terms of this Settlement Agreement, with respect to the first Party's decision to execute this Settlement Agreement.

13.20 Authorized Signatures

- (1) Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement on behalf of the Parties identified below their respective signatures.

Executed in counterparts on April 1, 2015.

WARD BRANCH for Branch Macmaster LLP,
the Plaintiffs



J.J. CAMP Q.C. for Camp Fiorante Matthews
and the Plaintiffs

JEFF ORENSTEIN for Consumer Law Group
and the Plaintiffs



HUNTER LITIGATION CHAMBERS for
Capital One

J. Kenneth McEwan, Q.C.
Barrister & Solicitor
Hunter Litigation Chambers
2100 - 1040 West Georgia Street
Vancouver, B.C. V6E 4H1
Telephone: 604-647-3536

- (d) no Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party, beyond the terms of this Settlement Agreement, with respect to the first Party's decision to execute this Settlement Agreement.

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Executed in counterparts on April 1, 2015.

WARD BRANCH for Branch Macmaster LLP,
the Plaintiffs

J.J. CAMP Q.C. for Camp Fiorante Matthews
and the Plaintiffs



JEFF ORENSTEIN for Consumer Law Group
and the Plaintiffs



HUNTER LITIGATION CHAMBERS for
Capital One

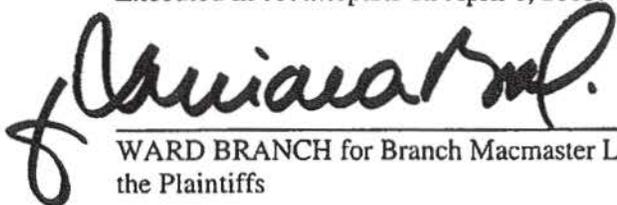
J. Kenneth McEwan, Q.C.
Barrister & Solicitor
Hunter Litigation Chambers
2100 - 1040 West Georgia Street
Vancouver, B.C. V6E 4H1
Telephone: 604-647-3536

- (d) no Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party, beyond the terms of this Settlement Agreement, with respect to the first Party's decision to execute this Settlement Agreement.

13.20 Authorized Signatures

- (1) Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement on behalf of the Parties identified below their respective signatures.

Executed in counterparts on April 1, 2015.



WARD BRANCH for Branch Macmaster LLP,
the Plaintiffs

J.J. CAMP Q.C. for Camp Fiorante Matthews
and the Plaintiffs

JEFF ORENSTEIN for Consumer Law Group
and the Plaintiffs



HUNTER LITIGATION CHAMBERS for
Capital One

J. Kenneth McEwan, Q.C.
Barrister & Solicitor
Hunter Litigation Chambers
2100 - 1040 West Georgia Street
Vancouver, B.C. V6E 4H1
Telephone: 604-647-3536

Capital One Round 1 Order

1. Except to the extent that they are modified by this Order, the definitions set out in **Schedule "A"** to this Order, apply to and are incorporated into this Order;
2. The within proceeding (the "BC Proceeding") is certified as a class proceeding only as against the defendant Capital One Bank (Canada Branch) (the "Settling Defendant"), for settlement purposes only;
3. The "BC MasterCard Settlement Class" is defined as:

All British Columbia resident persons who, during the Class Period, accepted payments for the supply of goods or services by way of MasterCard Credit Cards pursuant to the terms of Merchant Agreements, except the Excluded Persons;
4. Coburn and Watson's Metropolitan Home dba Metropolitan Home is appointed as the representative plaintiff for the BC MasterCard Settlement Class;
5. The BC Proceeding is certified on the basis that the following issue is common to the BC MasterCard Settlement Class:

Did the Settling Defendant conspire with others to fix, maintain, increase or control Interchange Fees paid by merchants who accepted payment by MasterCard Credit Cards in Canada during the Class Period?
6. Epiq Systems is appointed as the Opt-Out Administrator to receive opt-out requests;
7. Any member of the BC MasterCard Settlement Class who wishes to opt-out of the BC Proceeding must do so by sending a written election to opt-out to Epiq Systems in the form attached hereto as **Schedule "B"** at the address, by the means and within the time period specified in the Notice of Certification and Settlement Hearing (the "Pre-Approval Notice"), and Epiq Systems will provide counsel for all parties with copies of all valid elections to opt-out received by Epiq Systems;

8. Any member of the BC MasterCard Settlement Class who has validly opted-out of the BC Proceeding is not bound by the Capital One Settlement Agreement, and will not be entitled to receive any share of benefits payable in connection with the Capital One Settlement Agreement, and will cease to be a class member in the continuing action against the Non-Settling Defendants;
9. Any member of the BC MasterCard Settlement Class who has not validly opted-out of the BC Proceeding is bound by this Order and the Capital One Settlement Agreement, and will not be entitled to opt-out of the continuing action as against the Non-Settling Defendants;
10. Requests to opt-out of these proceedings must be sent to Epiq Systems postmarked on or before the date that is sixty (60) days after the first newspaper publication of the Pre-Approval Notice;
11. This Order is binding upon each member of the BC MasterCard Settlement Class who has not validly opted out of the BC Proceeding, including those persons who are minors or mentally incapable.
12. The form of the Pre-Approval Notice is hereby approved substantially in the form attached hereto as **Schedule "C"**;
13. The plan of dissemination for the Pre-Approval Notice (the "Plan of Dissemination") is hereby approved in the form attached hereto as **Schedule "D"**;
14. The Pre-Approval Notice shall be disseminated in accordance with the Plan of Dissemination approved as part of this Order and by any other additional means as may be ordered by any of the other Courts in the Canadian Proceedings; and
15. This Order, including without limiting the generality of the foregoing, the certification of the BC Proceeding against the Settling Defendant and the definitions of BC MasterCard Settlement Class, , Class Period and Common Issue, is without prejudice to any position a Non-Settling Defendant may take in

this or any other proceeding on any issue, including the issue of whether the BC Proceeding should be certified as a class proceeding as against the Non-Settling Defendants. For greater certainty, this Order, the Court's reasons in support of this Order and the certification of the BC Proceeding against the Settling Defendant for settlement purposes only are not binding on and shall have no effect on the continuing prosecution of the BC Proceeding or any other proceeding as against the Non-Settling Defendants.

16. This Order may be executed in counterpart, electronically or by facsimile.

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

Signature of Ward Branch
Counsel for the Plaintiff

Signature of Claire Hunter
Counsel for Capital One Bank (Canada Branch)

Signature of Mahmud Jamal
Counsel for BMO Financial Group

Signature of Michelle Maniago
Counsel for Bank of Nova Scotia

Signature of Katherine Kay
Counsel for Canadian Imperial Bank of Commerce

Signature of Mike Adlem
Counsel for Citigroup Inc.

Signature of Robert Staley
Counsel for Bank of America Corporation

Signature of Randy Sutton
Counsel for National Bank of Canada Inc.

Signature of Andrew Borrell
Counsel for Royal Bank of Canada

Signature of Jill Yates
Counsel for Toronto-Dominion Bank

Signature of Robert E. Kwinter
Counsel for Visa Canada Corporation

Signature of David Kent
Counsel for MasterCard International Incorporated

Signature of Chantal Chatelain
Counsel for Fédération des caisses
Desjardins du Québec

By the Court

Registrar

SCHEDULE "A" TO CAPITAL ONE ROUND 1 ORDER

Acquirers mean those persons entering into contracts with Merchants for the provision of MasterCard Credit Card services and charging Merchant Discount Fees, including Interchange Fees, in Canada;

Class Period means March 23, 2001 to the latest date of the last final judgment or order issued with respect to the claims against any of the Defendants in the Canadian Proceedings, including an order approving final settlement of those claims, or any end date of the Class Period provided therein;

Excluded Person(s) means each Defendant, the directors and officers of each Defendant, the subsidiaries or affiliates of each Defendant, the entities in which each Defendant or any of that Defendant's subsidiaries or affiliates have a controlling interest and the legal representatives, heirs, successors and assigns of each of the foregoing;

Interchange Fees mean interchange fees collected by Issuers arising from transactions made under the terms of the MasterCard Network Rules in Canada;

Issuers means the banks or other financial institutions which issued MasterCard Credit Cards in Canada;

MasterCard Credit Cards mean credit cards issued by Issuers of MasterCard credit cards in Canada;

MasterCard Network Rules means the MasterCard Worldwide MasterCard Rules, as amended;

Merchant Agreements mean standard agreements entered into between Acquirers and Merchants which impose Merchant Discount Fees, including Interchange Fees, on Merchants whenever they accept payment from customers by way of MasterCard Credit Cards;

Merchant Discount Fees mean fees paid by Merchants arising from the use of MasterCard Credit Cards in Canada;

Merchants mean all persons or entities resident in Canada who accept payments from customers by way of MasterCard Credit Cards in exchange for the supply of goods or services;

Non-Settling Defendant(s) means any Defendant that is not a Releasee under this Agreement, the BofA Settlement or the Citigroup Settlement, and includes any Defendant that terminates its own settlement agreement in accordance with its terms or whose settlement otherwise fails to take effect for any reason, whether or not such

settlement agreement is in existence at the date of execution of this Settlement Agreement;

Visa means Visa Canada Corporation; and

Visa Credit Cards mean credit cards issued by Issuers of Visa credit cards in Canada.

Schedule "B" to Capital One Round 1 Order
Credit Cards Class Actions
BofA and Capital One Opt-Out Form

For the purposes of this Opt-Out Form, the following definitions apply (additional definitions are found on the bottom of this page):

"BofA Settlement" means the settlement agreement made as between the Plaintiffs in the Credit Card Class Actions, the Defendant Bank of America Corporation and others, a copy of which is available at www.creditcardclassaction.com.

"Capital One Settlement" means the settlement agreement made as between the Plaintiffs in the Credit Card Class Actions, the Defendant Capital One Bank (Canada Branch) and others, a copy of which is available at www.creditcardclassaction.com.

"Credit Card Class Actions" means the following five actions:

- *Watson v Bank of America Corporation et al*, SCBC No. VLC-S-S-112003 (Vancouver)
- *Bancroft-Snell et al v Visa Canada Corporation et al*, OSCJ No. CV-11-426591CP (Toronto)
- *9085-4886 Quebec Inc and Bakopanos v Visa Canada Corporation et al*, Superior Court of Quebec No. 500-06-000549-101 (Montreal)
- *Macaronies Hair Club and Laser Center Inc operating as Fuze Salon v BofA Canada Bank et al*, Alberta QB File No. 1203-18531 (Edmonton); and
- *Hello Baby Equipment Inc. v. BofA Canada Bank and others*, SK QB No. 133 of 2013 (Regina).

BECAUSE OF DIFFERENCES IN THE ORDERS MADE BY THE COURTS, THE CONSEQUENCE OF **NOT OPTING OUT** VARIES DEPENDING ON WHETHER YOU ARE A QUEBEC SETTLEMENT CLASS MEMBER OR NOT. GENERALLY SPEAKING, A QUEBEC SETTLEMENT CLASS MEMBER IS A SETTLEMENT CLASS MEMBER WHO RESIDES IN QUEBEC. QUEBEC SETTLEMENT CLASS MEMBERS WHO DO NOT OPT OUT NOW WILL PARTICIPATE IN THE BOFA SETTLEMENT BUT WILL HAVE ANOTHER OPPORTUNITY TO OPT OUT OF THE CONTINUING LITIGATION AGAINST THE OTHER DEFENDANTS IN THE FUTURE.

Consequences of Opting Out

By completing and returning this Opt-Out Form as set out below, you are choosing:

- 1) **not** to take part in any of the BofA Settlement and Capital One Settlement,
- 2) **not** to participate in the ongoing prosecution of the Credit Card Class Actions against the other defendants, AND
- 3) **not** to participate in any future settlements reached in the Credit Card Class Actions.

If you complete this Opt-Out Form you will not be bound by any of the BofA Settlement and Capital One Settlement or the releases in them, but you will also not be entitled to share in any of the proceeds that may become available to merchants as part of the BofA Settlement and the Capital One Settlement. You will also not be entitled to participate in the continued prosecution of the Credit Card Class Actions or future settlements.

Consequences of Not Opting Out

Quebec Settlement Class Members

If you do not complete and return this Opt-Out Form, you will be bound by the BofA Settlement and the Capital One Settlement, and the releases in them, and will be entitled to share in any of the proceeds that may become available to merchants as part of those settlements, but will have a further opportunity to opt out of the ongoing litigation against the other defendants if and when such litigation is authorized as a class action against some or all of those remaining defendants.

All Other Settlement Class Members:

The election to opt out by all other Settlement Class Members also operates in relation to future settlements and the ongoing litigation against the remaining defendants.

If you do not complete and return this Opt-Out Form, you will be bound by the BofA Settlement and the Capital One Settlement, and the releases in them, and will be entitled to share in any of the proceeds that may become available to merchants as part of those settlements, and the ongoing litigation against the other defendants. You will not have a further opportunity to opt out of the ongoing litigation against the other defendants if and when such litigation is authorized as a class action against some or all of those remaining defendants.

* * *

In order to be effective, this form must be fully completed and sent to the Opt-Out Administrator at the address set out below, and must be postmarked no later than DATE. Opt-Out Forms received after DATE will not be accepted.

For more information on the BofA Settlement Agreement and the ongoing Credit Card Class Actions, please visit www.creditcardclassaction.com

Name of business*: _____ (required)

* Provide the name of the person or legal entity accepting Visa or MasterCard credit cards. This is probably the name listed on the statements you receive from your payment processor.

Name of payment processor: _____ (required)

Your name: _____ (required)

Your address: _____ (required)

Your telephone number: (____) ____ - _____ (required)

Your email address: _____ (optional)

Declaration:

I declare that I have legal authority to bind the business named above, and I wish to opt-out of the BofA Settlement and the Capital One Settlement and, only if I reside outside of Quebec, of the ongoing Credit Card Class Actions. I understand that by submitting this Opt-Out Form I will not receive any benefits under any of the BofA Settlement and the Capital One Settlement but will not be bound by those settlements.

Signature

Date

Return completed Opt-Out Forms to:

<Epiq's info and designated recipient>

ADDITIONAL DEFINITIONS

Alberta MasterCard Settlement Class or **Alberta Visa Settlement Class** means all Alberta resident persons who, during the Class Period, accepted payments for the supply of goods or services by way of MasterCard Credit Cards or Visa Credit Cards, respectively, pursuant to the terms of Merchant Agreements, except the Excluded Persons.

BC MasterCard Settlement Class or **BC Visa Settlement Class** means all British Columbia resident persons who, during the Class Period, accepted payments for the supply of goods or services by way of MasterCard Credit Cards or Visa Credit Cards, respectively, pursuant to the terms of Merchant Agreements, except the Excluded Persons.

Excluded Person(s) means each Defendant, the directors and officers of each Defendant, the subsidiaries or affiliates of each Defendant, the entities in which each Defendant or any of that Defendant's subsidiaries or affiliates have a controlling interest and the legal representatives, heirs, successors and assigns of each of the foregoing.

Merchant Agreements mean standard agreements entered into between Acquirers and Merchants which impose Merchant Discount Fees, including Interchange Fees, on Merchants whenever they accept payment from customers by way of Visa or MasterCard Credit Cards.

Merchant Discount Fees mean fees paid by Merchants arising from the use of Visa or MasterCard Credit Cards in Canada.

Ontario MasterCard Settlement Class or **Ontario Visa Settlement Class** means all Canadian resident persons who, during the Class Period, accepted payments for the supply of goods or services by way of MasterCard Credit Cards or Visa Credit Cards, respectively, pursuant to the terms of Merchant Agreements, except the BC Settlement Class, the Alberta Settlement Class, the Saskatchewan Settlement Class, the Quebec Settlement Class, and Excluded Persons.

Quebec MasterCard Settlement Class or **Quebec Visa Settlement Class** means all Quebec resident persons who, during the Class Period, accepted payments for the supply of goods or services by way of MasterCard Credit Cards or Visa Credit Cards, respectively, pursuant to the terms of Merchant Agreements, except the Excluded Persons and any legal persons established for a private interest, partnership or association which at any time between December 17, 2009 and December 17, 2010 had under their direction or control more than 50 persons bound by it by contract of employment.

Settlement Class means all Persons included in the BC MasterCard Settlement Class, the BC Visa Settlement Class, the Alberta MasterCard Settlement Class, the Alberta Visa Settlement Class, the Saskatchewan MasterCard Settlement Class, the Saskatchewan Visa Settlement Class, the Ontario MasterCard Settlement Class, the Ontario Visa Settlement Class, the Quebec MasterCard Settlement Class and the Quebec Visa Settlement Class.

Schedule "C" to Capital One Round 1 Order

BOFA AND CAPITAL ONE NOTICE

Legal Notice

If you accepted Visa or MasterCard credit cards as payment for goods or services after March 23, 2001, your rights could be affected by proposed national class actions settlements with Bank of America and Capital One.

The Credit Card Actions

Class action lawsuits were commenced in British Columbia (the "BC Action"), Alberta, Saskatchewan, Quebec and Ontario (collectively, the "Credit Card Actions") against Visa Canada Corporation ("Visa"), MasterCard International Incorporated ("MasterCard") and certain banks which issue credit cards ("Issuing Banks") alleging each of Visa and MasterCard conspired with their issuing banks and Acquirers in setting the amount of interchange fees and imposing rules restricting merchants' ability to surcharge or refuse higher cost Visa and MasterCard credit cards ("Acquirer" is an organization or person that entered into a contract with a merchant for the provision of Visa Credit Card or MasterCard Credit Card services and charging Merchant Discount Fees, including Interchange fees in Canada). On March 27, 2014, the BC Action was certified as a class proceeding as against all defendants. This decision is currently under appeal.

The Settlements

Although Bank of America Corporation and BofA Canada Bank, formerly MBNA Canada Bank, affiliate of Bank of America Corporation (collectively, "BofA"), and Capital One Bank (Canada Branch) ("Capital One") deny liability, they have reached national settlements with the plaintiffs (the "BofA Settlement and the Capital One Settlement", respectively, or collectively, the "Settlements"), subject to approval of the courts in British Columbia, Alberta, Saskatchewan, Quebec and Ontario (the "Courts"). BofA will pay CAD \$7,750,000, and Capital One will pay \$ 4,250,000 (collectively, the "Settlement Amounts") for the benefit of the Settlement Class Members (see below) and provide cooperation that will assist with prosecuting the ongoing actions against the non-settling defendants in exchange for a full release of claims against them and their related entities.

If any of the Settlements are approved, the Class Lawyers will ask the Courts to approve the deduction of certain amounts (collectively, the "Court Approved Expenses") from the Settlement Amounts, including costs incurred to distribute this notice and process opt-out requests, comments and objections (see below), a counsel fee of up to 25% of the recovered amounts, and disbursements.

As the Credit Card Actions will continue as against the other defendants, it is proposed that the amounts remaining from the Settlement Amounts after deduction of all Court

Approved Expenses be held in trust for Settlement Class Members pending receipt of further settlements or awards that may justify a distribution effort, or conclusion of the Credit Card Actions. At such time, a distribution protocol will be created and submitted to the Courts for approval, and further notice will be provided to Settlement Class Members. If you would like to receive direct notice of any distribution efforts, please register at <registration website>, or contact one of the Class Lawyers listed below.

Certification/Authorization as Class Proceedings for Settlement Purposes

Separate and apart from the certification of the BC Action against all defendants, in order to implement the Settlements, the Courts have certified/authorized all of the Credit Card Actions as class proceedings against BofA and Capital One for settlement purposes only.

Who Are The Settlement Class Members?

You are a Settlement Class Member if you are a BofA Settlement Class Member and/or a Capital One Settlement Class Member.

You are a BofA Settlement Class Member and a Capital One Settlement Class Member if you accept or accepted MasterCard credit cards as payment for goods or services and incurred merchant discount fees, including interchange fees, in Canada since March 23, 2001.

You are a BofA Settlement Class Member if you accept or accepted Visa credit cards as payment for goods or services and incurred merchant discount fees, including interchange fees, in Canada since March 23, 2001.

All Settlement Class Members are affected by this notice, whether or not they have a claim or potential claim against BofA or Capital One.

Settlement Approval Hearings

Hearings to consider approval of the Settlements, a counsel fee of up to 25% of the recovered amounts, and disbursements payable from the Settlement Amounts will be heard on <date> at <BC time> (British Columbia), <date> at <AB time> (Alberta) , <date> at <SK time>(Saskatchewan), <date> at <QC time> (Quebec) and <date> at <ON time> (Ontario). Anyone can attend the hearings, but if you wish to speak to the Court, please advise the Opt-Out Administrator (Epiq Systems)*.

If you wish to provide written comment on or objection to the any of the Settlements, you must do so by delivering same to the Opt-Out Administrator* by <7 days before the first settlement approval hearing>. Comments or objections will be provided to the Court for consideration in whether to approve or reject the Settlements.

Participating in the Settlements or the Credit Card Actions

If you fall within the Settlement Class, including the Quebec Settlement Class (defined below), and wish to participate in the Settlements and in the Credit Card Actions, you do not need to do anything at this time.

Opting Out of the Class Proceedings

BECAUSE OF DIFFERENCES IN THE ORDERS MADE BY THE COURTS, THE CONSEQUENCES OF NOT OPTING OUT VARY DEPENDING ON WHETHER YOU ARE A QUEBEC SETTLEMENT CLASS MEMBER (A SUBGROUP OF THE SETTLEMENT CLASS) OR NOT.

You are a **Quebec Settlement Class Member** if you are a Quebec resident person who accepted Visa and/or MasterCard credit cards as payment for goods or services and incurred merchant discount fees, including interchange fees, in Canada, since March 23, 2001. Any legal persons established for a private interest, partnership or association which at any time between December 17, 2009 and December 17, 2010 had under its direction or control more than 50 persons bound to it by contract of employment are **not** Quebec Settlement Class Members.

The deadline to opt out of the Settlements or the class actions is **◆**, 2015.

Consequences of Opting Out

By opting out, you are choosing:

- 1) **not** to take part in any of the Settlements,
- 2) **not** to participate in the ongoing prosecution of the Credit Card Class Actions against the other defendants, **AND**
- 3) **not** to participate in any future settlements reached in the Credit Card Class Actions.

Settlement Class Members who opt out (including Quebec Settlement Class Members) will not be bound by any of the Settlements or the releases in the Settlements, but will also not be entitled to share in any of the proceeds that may become available to merchants as part of the Settlements. Settlement Class Members who opt out (including Quebec Settlement Class Members) will also not be entitled to participate in the continued prosecution of the Credit Card Class Actions or future settlements.

Consequences of Not Opting Out

- a) Quebec Settlement Class Members

Quebec Settlement Class Members who **do not opt out** will be bound by the Settlements and the releases in them, and will be entitled to share in any of the proceeds that may become available to merchants as part of the Settlements, but will have a further opportunity to opt out of the ongoing litigation against the other defendants if and when such litigation is authorized as a class action against some or all of those remaining defendants.

b) All Other Settlement Class Members

The election to opt out by all other Settlement Class Members also operates in relation to future settlements and the ongoing litigation against the remaining defendants.

Settlement Class Members who are not Quebec Settlement Class Members who **do not opt out** will be bound by the Settlements and the releases in them, and will be entitled to share in any of the proceeds that may become available to merchants as part of the Settlements, and the ongoing litigation against the other defendants. Settlement Class Members who are not Quebec Settlement Class Members who **do not opt out** will not have a further opportunity to opt out of the ongoing litigation against the other defendants if and when such litigation is authorized as a class action against some or all of those remaining defendants.

* * *

FOR MORE INFORMATION on the status of the approval hearings or on how to opt out of the Credit Card Actions, comment or object to any of the Settlements, or to view the Settlements and a list of other definitions that apply to this Notice, visit www.creditcardclassaction.com, which will be periodically updated with information on the Settlements approval process and the Credit Card Actions.

*For communications with the Opt-Out Administrator, Epiq Systems call <>, email <>, fax <> or write to <address>.

CLASS LAWYERS can be reached at info@creditcardclassaction.com and are:

- Branch MacMaster LLP at (604) 654-2999 (Luciana Brasil)
- Camp Fiorante Mathews Mogerman at (604) 689-7555 (David Jones)
- Consumer Law Group (for Quebec residents) at 1-888-909-7863 x220 (Jeff Orenstein)

This notice is approved by the Courts.

Schedule "D" to Capital One Round 1 Order

PLAN OF DISSEMINATION

Notice of Certification/Authorization and Settlement Approval Hearing in the Matter of Visa/MasterCard Class Action Litigation

The Plaintiffs propose that the Notice of Certification/Authorization and Settlement Approval Hearing (the "Pre-Approval Notice") shall be distributed in the following manner:

1. Published once in the following newspapers, in either English or French, as is appropriate for each newspaper, in a size no less than 1/6 page, and preferably in a business section (if available), subject to each having reasonable publication deadlines and costs:
 - (a) The Globe and Mail, national edition;
 - (b) National Post, national edition;
 - (c) Montreal La Presse; and
 - (d) Montreal The Gazette.
2. Published once in the following seven (7) industry magazines, in either English or French, as is appropriate for each magazine, subject to each having reasonable publication deadlines and costs:
 - (a) Retail Council of Canada's Canadian Retailer Magazine;
 - (b) Retail Council of Canada's Weekly e-Newsletter;
 - (c) Canadian Convenience Stores Association's C-Store Life;
 - (d) Canadian Restaurant and Foodservices News
 - (e) Grocery Business Magazine;
 - (f) Canadian Business (Profit Report) - E-News; and
 - (g) Canadian Business / PROFIT.
3. Sent to the following twenty (20) industry associations whose members accept Visa or MasterCard credit cards as a means of payment for goods or services, in either English or French, as is appropriate for each association, requesting voluntary distribution to their membership, including:
 - (a) Retail Council of Canada;

- (b) Canadian Federation of Independent Businesses (CFIB);
 - (c) Retail Merchants Association of Canada (Ontario) Inc.;
 - (d) Canadian Restaurant and Foodservices Association;
 - (e) Canadian Convenience Stores Association;
 - (f) Canadian Federation of Independent Grocers (CFIG);
 - (g) Food and Consumer Products of Canada;
 - (h) Canadian Association of Chain Drug Stores;
 - (i) Tourism Industry Association of Canada;
 - (j) Canadian Independent Petroleum Marketers Association;
 - (k) Canadian Jewellers Association;
 - (l) Small Business Matters;
 - (m) Canadian Wireless Telecommunications Association (CWTA);
 - (n) Canadian Association of Home and Property Inspectors;
 - (o) Canadian Parking Association;
 - (p) Association of Universities and Colleges of Canada;
 - (q) Automotive Retailers Association;
 - (r) Canadian Deals and Coupons Association;
 - (s) Canadian Cosmetic, Toiletry and Fragrance Association; and
 - (t) Canadian Franchise Association.
4. A copy will be posted in electronic format in English and in French on the websites of the Consortium Counsel.
 5. A copy will be provided to the CBA National Class Action Registry with a request that it be posted online.
 6. A copy will be sent to all persons who have contacted the Consortium Counsel and identified themselves as being potential class members.

Press Notice:

7. A Press Notice may be issued by the Plaintiff as a press release on the Canada Newswire. The wording of the Press Notice would require court approval before publication.

AND ON READING the pleadings and materials filed, including †;

AND ON BEING ADVISED that the Parties consent to this Order;

AND ON BEING ADVISED that the Non-Settling Defendants take no position on this Order;

THIS COURT ORDERS that:

1. The Settlement Agreement is incorporated into this Order in its entirety and forms part of this Order, and the definitions in the Settlement Agreement shall be applied in interpreting this Order;
2. In the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail;
3. The Settlement Agreement is fair, reasonable and in the best interests of the BC MasterCard Settlement Class (the "BC Settlement Class");
4. The Settlement Agreement is hereby approved pursuant to section 35 of the *Class Proceedings Act*, RSBC 1996, c 50 and shall be implemented in accordance with its terms and the terms of this Order;
5. This Order, including the Settlement Agreement is binding upon the representative plaintiff and all members of the BC Settlement Class who have not validly opted-out (collectively, the "BC Settlement Class Members, each a "BC Settlement Class Member"), and the Settling Defendant;
6. This Order, including the Settlement Agreement, is binding upon each BC Settlement Class Member including those persons who are minors or mentally incapable and the requirements of Rule 20-2 of the *Supreme Court Civil Rules* are dispensed with in respect of the BC Proceeding;
7. Upon the Effective Date, each BC Settlement Class Member shall consent to and shall be deemed to have consented to the dismissal as against the Releasees of any other actions or proceedings in BC he, she or it has commenced, without costs and with prejudice;
8. Upon the Effective Date, each other action or proceeding commenced in BC by any BC Settlement Class Member shall be and is hereby dismissed against the Releasees, without costs and with prejudice;
9. Upon the Effective Date, each Releasor who has not validly opted-out of the BC Proceeding has released and shall be conclusively deemed to have forever, finally and absolutely released the Releasees from the Released Claims;

10. Upon the Effective Date, each Releasor shall not now or hereafter threaten, institute, prosecute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim, proceeding, complaint or demand against, or collect or seek to recover from, any Releasee or any other person or persons who will or could bring or commence or continue any claim, crossclaim, claim over or any claim for contribution, indemnity or any other relief against any Releasee in respect of any Released Claim or any matter related thereto, except for the continuation of any proceedings against the Non-Settling Defendants or named or unnamed co-conspirators who are not Releasees, and are permanently barred and enjoined from doing so;
11. The use of the terms "Releasors" and "Released Claims" in this Order does not constitute a release of claims by those BC Settlement Class Members who are resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors;
12. Instead of releasing the claims against the Releasees, upon the Effective Date, each BC Settlement Class Member who is resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors covenants and undertakes not to sue or make any claim in any way nor to threaten, commence, participate in or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims;
13. All claims for contribution, indemnity or other claims over against a Releasee, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in the Canadian Proceedings or otherwise by any Non-Settling Defendant, a Settled Defendant, named or unnamed co-conspirators who are not Releasees or any other Person or party, against a Releasee, or by a Releasee against a Non-Settling Defendant, any named or unnamed co-conspirators, or any other Person or party who are not Releasees, are barred, prohibited and enjoined in accordance with the terms of this Order (unless such claim is made in respect of a claim by a Person who has validly opted-out of the BC Proceeding), except as set out in section 6.1(1)(a) of the Settlement Agreement;
14. If, in the absence of paragraph 13 of this Order, the Court or other final adjudication determines that there is a right of contribution, indemnity or other claims over, whether in equity or in law, by contract, statute or otherwise:
 - (a) The BC Settlement Class Members shall reduce or limit their claims against the Non-Settling Defendants and/or named or unnamed co-conspirators to not be entitled to claim or recover from the Non-Settling Defendants and/or named or unnamed co-conspirators that are not Releasees that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs

(including investigative costs claimed pursuant to s. 36 of the *Competition Act*) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise; and

- (b) This Court shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the BC Proceeding, whether or not the Releasees remain in the BC Proceeding or appear at the trial or other disposition, and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the BC Proceeding and any determination by this Court in respect of the Proportionate Liability of the Releasees shall only apply in the BC Proceeding and shall not be binding on the Releasees in any other proceedings;
15. That if, in the absence of paragraph 13 hereof, the Non-Settling Defendants would not have the right to make claims for contribution, indemnity or other claims over, whether in equity or in law, by statute or otherwise, from or against the Releasees, then nothing in this Order is intended to or shall limit, restrict or affect any arguments which the Non-Settling Defendants may make regarding the reduction of any assessment of damages, restitutionary award, disgorgement of profits or judgment against them in the B.C. Proceeding;
16. For greater certainty, the bar order in paragraphs 13 through 15 deals only with claims over and is not intended to bar *bona fide* independent and direct claims and causes of action arising by contract, statute or otherwise between the Settling Defendant and MasterCard as a Non-Settling Defendant for relief other than that claimed by the Plaintiff in the BC Proceeding, including *bona fide* independent and direct claims and causes of action that MasterCard may have against the Settling Defendant under the MasterCard Network Rules;
17. Subject to paragraph 13 hereof, a Non-Settling Defendant may, on motion to this Court brought on at least ten (10) days notice to counsel for the Settling Defendant, and not to be brought unless and until the BC Proceeding against the Non-Settling Defendants has been certified and all appeals or times to appeal from such certification have been exhausted, seek orders for the following:
- (a) Documentary discovery and an affidavit of documents in accordance with the *Supreme Court Civil Rules*, BC Reg 168/2009 from the Settling Defendant;
 - (b) Oral discovery of a representative of the Settling Defendant, the transcript of which may be read in at trial;
 - (c) Leave to serve a request to admit on the Settling Defendant in respect of factual matters; and/or

- (d) The production of a representative of the Settling Defendant to testify at trial, with such witnesses to be subject to cross-examination by counsel for the Non-Settling Defendants;
18. The Settling Defendant retains all rights to oppose such motion(s) brought under paragraph 17 of this Order and to seek such ancillary relief as they deem appropriate (including, without limitation, confidentiality protections and/or costs). Nothing in this Order is intended to interfere with the power of this Court to make such orders as to costs and other terms as it considers appropriate on any such motion;
 19. A Non-Settling Defendant may effect service of the motion(s) referred to in paragraph 17 above on the Settling Defendant by service on counsel of record for the Settling Defendant in the BC Proceeding;
 20. For purposes of enforcement of this Order and the Settlement Agreement, this Court will retain an ongoing supervisory role and the Settling Defendant acknowledges the jurisdiction of this Court and attorns to the jurisdiction of this Court solely for the purpose of implementing, administering and enforcing the Settlement Agreement and this Order subject to the terms and conditions set out in the Settlement Agreement and this Order;
 21. Except as provided herein, this Order does not affect any claims or causes of action that any BC Settlement Class Member has or may have against the Non-Settling Defendants or named or unnamed co-conspirators who are not Releasees in the BC Proceeding;
 22. No Releasee shall have any responsibility or liability relating to the administration of the Settlement Agreement or the Distribution Protocol or the administration, investment, or distribution of the Trust Account;
 23. Subject to the provisions of the Settlement Agreement, the Settlement Amount, plus accrued interest less any monies paid out pursuant to the Settlement Agreement, shall be held in trust for the benefit of the Settlement Class, pending further order of the Courts;
 24. The approval of the Settlement Agreement is contingent upon approval by the Alberta Court, the Saskatchewan Court, the Quebec Court and the Ontario Court and the terms of this Order shall not be effective unless and until the Settlement Agreement is approved by the Alberta Court, the Saskatchewan Court, the Quebec Court and the Ontario Court and the Ontario Proceeding, the Saskatchewan Proceeding, and the Alberta Proceeding have been dismissed with prejudice and without costs and the Quebec Proceeding has been declared settled out of court as against the Settling Defendants in the relevant proceeding by the Courts. If such orders are not secured in Alberta, Saskatchewan Quebec and Ontario, this Order shall be null and void and without prejudice to the rights of the Parties to proceed with the BC Proceeding and any agreement between

- the Parties incorporated in this Order shall be deemed in any subsequent proceedings to have been made without prejudice;
25. In the event that the Settlement Agreement is terminated in accordance with its terms, on motion made on notice to the Plaintiff or the Settling Defendant, as appropriate:
- (a) This Order shall be declared null and void and be without prejudice to any party; and
 - (b) Each party to the BC Proceeding shall be restored to his, her or its respective position in the BC Proceeding as it existed immediately prior to the execution of the Settlement Agreement.
26. On notice to the Court, but without further order of the Court, the Parties to the Settlement Agreement may agree to reasonable extensions of time to carry out any of the provisions in the Settlement Agreement;
27. The determination of the form of any additional notice to the Settlement Class Members regarding approval of the Settlement Agreement and/or claims filing process, and the approval of a plan of dissemination of any additional notice be and are hereby adjourned to be dealt with by further orders of the Courts;
28. Except as aforesaid, the BC Proceeding be and is hereby dismissed against the Settling Defendant without costs and with prejudice;

Endorsement of this Order

29. This Order may be endorsed in counterpart, electronically or by facsimile; and
30. Endorsement of this Order by the Non-Settling Defendants is dispensed with.

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

Signature of lawyer for the Plaintiff

WARD BRANCH for Branch Macmaster
LLP

Signature of lawyer for Capital One
Bank (Canada Branch)

• for Hunter Litigation Chambers

By the Court

Registrar

Court File No. VLC-S-S-112003
Vancouver Registry

In the Supreme Court of British Columbia

Between:

Coburn and Watson's Metropolitan Home dba
Metropolitan Home

Plaintiff

and:

Bank of America Corporation, BMO Financial Group, Bank of
Nova Scotia, Canadian Imperial Bank of Commerce, Capital
One Bank (Canada Branch), Citigroup Inc., Fédération des
caisses Desjardins du Québec, MasterCard International
Incorporated, National Bank of Canada Inc., Royal Bank of
Canada, Toronto-Dominion Bank, and Visa Canada
Corporation

Defendants

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

ORDER MADE AFTER APPLICATION

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