UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TAWANNA M. ROBERTS, on behalf of herself and all others similarly situated, Plaintiff, vs. CAPITAL ONE, N.A., Defendant.	Case No. 1:16-cv-04841-LGS

DECLARATION OF ARTHUR OLSEN IN SUPPORT OF PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

I, Arthur Olsen, declare as follows:

1.   I have personal knowledge of the following and if called as a witness could and would testify competently thereto.

Scope of Work

2.   Based on my experience in the information technology ("IT") field and my prior work as a data management expert in other cases, I have been retained by Class Counsel to analyze the class data produced in connection with this action involving Capital One, N.A. ("Capital One" or "Defendant").

Qualifications and Background

3.   My qualifications and background are set forth in my consultant profile ("Profile") attached hereto as **Exhibit A**. As set forth in my Profile, I am the principal of my own IT consulting firm, Cassis Technology, LLC, and have over twenty years of professional experience in the IT field, specializing in the areas of data analysis, database development, and database administration and support.

4.   Prior to starting my own firm, I worked as a database engineer for Microsoft Corporation ("Microsoft"), and also worked under contract as a database administrator, developer, and administration support specialist for Hewlett-Packard Company ("Hewlett-Packard"). At Microsoft, I participated in the design, implementation and support of an extensive data warehousing solution for Microsoft's licensing division, managed and supported numerous databases throughout the company, and received Microsoft's award for operational excellence for my database-related work. At Hewlett-Packard, I served as the primary database administrator for both Oracle and SQL Server systems that supported multiple Hewlett-Packard divisions, and also served as the lead analyst in charge of compiling, analyzing, and processing data from various internal database systems throughout Hewlett-Packard for use in litigation support.

5.   In addition to my work for Microsoft and Hewlett-Packard, I have provided database services to several other large corporations, including, but not limited to, Cisco Systems, Inc., Tessera Technologies, Inc., and Marvell Technology Group. My responsibilities in that regard have included integrating various internal database systems for a variety of purposes, including but not limited to: (a) corporate financial reporting services; (b) Sarbanes-Oxley compliance; and (c) corporate mergers and acquisitions. I have also managed the development of data integration solutions for small to mid-size companies and developed a solution for integrating an automated process for the calculation of inventory reserves with Oracle Financials.

6.   Since 2008, I have extensive experience working on a number of litigation consulting projects involving financial institutions. For example, I previously provided trial testimony and was qualified as an expert witness in a consumer lawsuit against Wells Fargo relating to its overdraft practices and fees, which ultimately resulted in a judgment of over $200 million against Wells Fargo. *See Gutierrez v. Wells Fargo Bank*, N.A., 730 F. Supp. 2d 1080 (N.D. Cal. 2010). In its Order awarding restitution to the class members, the court found that I

had done a "professional and careful job" in connection with this work:

> This order finds that plaintiffs' expert Arthur Olsen has convincingly shown that it is entirely practical to re-run the computerized data in storage for each class members' account and determine how many overdrafts were added by the high-to-low practice for debit-card transactions during the class period. Indeed, he has already done so, using various alternate posting sequences. This has been done by him on an account-by-account, day-by-day, and transaction-by-transaction basis, using the bank's own real-world data. Court orders were needed to provide him access to this data, but after much work and time, this order finds that Expert Olsen has done a professional and careful job in laying out the impacts of various alternative posting protocols. This work has not only demonstrated the enormous impact of the high-to-low scheme, but it has demonstrated that it is possible, in considering relief and restitution, to add back to depositors' specific accounts the amounts that were wrongfully taken by Wells Fargo, using posting protocols that this order finds would have tracked the ordinary and reasonable expectations of depositors.

Id. at 1138.

7.   I was also the principal data and damages expert for Plaintiffs in the massive multi-district litigation *In re: Checking Account Overdraft Litigation*, MDL No. 2036 ("Overdraft MDL"). In connection with my work in the Overdraft MDL, I have analyzed historical transaction data from over thirty of the largest banks in the United States, including but not limited to: Bank of America, BancorpSouth, Capital One, Comerica, Compass, Great Western, JPMorgan Chase, PNC, RBS Citizens, TD Bank, Union Bank, and US Bank, in order to advise the Court on the feasibility of using such data to ascertain damaged class members and to calculate individual damages for those class members. In each case, I was able to perform these tasks, and I have submitted numerous declarations in support of class certification motions describing my findings and conclusions. In each of those cases, using algorithms that I developed, I was able to programmatically ascertain class members and calculate damages using the bank's own data.

8.   In addition to performing analyses relating to re-sequencing of transactions from high-to-low, over the last five years I have been retained on numerous occasions to perform similar analyses in cases where the claimed improper practice was charging overdraft fees based on

available balance rather than ledger or collected balance. I have been able to successfully perform those analyses in both the litigation and settlement context using full customer data by writing code that ascertained each class member that was harmed by the practice and the total amount of harm caused by that practice. This includes performing damage calculations and/or providing opinions relied on by the Courts in contested proceedings such as *In re: TD Bank, N.A. Debit Card Overdraft Litigation*, MDL No. 2613, Case No. 6:15-MN-02613-BHH (United States District Court for the District of South Carolina, Greenville Division); *Hernandez v. Point Loma Credit Union*, Case No.: 37-2013-00053519-CU-BT-CTL (Superior Court of the State of California, County of San Diego); and *Gunter v. United Federal Credit Union*, Case No.: 3:15-cv-00483-MMD-WGC (United States District Court for the District of Nevada).

9.   Additionally, I have reviewed the computer systems utilized by a number of credit unions and banks, and have analyzed data originating from those systems for purposes of programmatically ascertaining class members and calculating damages for settlement distributions in sufficient funds cases, including, but not limited to, *Fernandez v. Altura Credit Union*, Case No.: RIC1610873 (Superior Court of the State of California, County of Riverside); *Ramirez v. Baxter Credit Union*, Case No. 3:16-cv-03765-SI, (United States District Court for the Norther District of California); *Manwaring v. Golden 1 Credit Union*, Case No.: 34-2013-00142667 (Superior Court of the State of California, County of Sacramento); *Moralez v. Kern Schools Federal Credit Union*, Case No. BCV-15-100538-SPC (Superior Court of the State of California, County of Kern); *Fry v. MidFlorida Credit Union*, Case No. 8:15-CV-2743 RAL TGW (United States District Court for the Middle District of Florida, Tampa Division); and *Ketner v. State Employees Credit Union of Maryland, Inc.*, Case No. 1:15-CV-03594-CCB (United States District Court for the District of Maryland).

10.   In addition to having successfully used financial institution data to calculate harm

in re-sequencing claims of high-to-low posting of transactions and posting claims of improper use

of available balance rather than ledger or collected balance to determine if a transaction is an

overdraft transaction, I have performed damage calculations on customer data in cases with claims

nearly identical to the claims being made in this case.   Specifically, I have performed analyses

utilizing customer transaction data in order to identify overdraft fees that were assessed on ATM

and debit card transactions that were originally authorized when the account's available balance

was positive and therefore sufficient at that time to cover the underlying transaction.   It is those

overdraft fees that are claimed to have been unlawfully assessed by Capital One.

Analysis

6.   In connection with the present action, I have reviewed the class data that Capital

One produced in this case ("Class Data").   The Class Data was sufficient to cover the various class

periods in this case ("Class Periods").   Specifically: (a) for Settlement Class Members who

established Accounts in Connecticut, Louisiana, New Jersey, and New York, the period August

16, 2010 through November 7, 2018; (b) for Settlement Class Members who established Accounts

in Virginia, the period June 22, 2011 through November 7, 2018; (c) for Settlement Class Members

who established Accounts in Texas, the period June 22, 2012 through November 7, 2018; and (d)

for Settlement Class Members who established Accounts in Delaware, Maryland, and Washington

D.C., the period June 22, 2013 through November 7, 2018.[1]

7.   The Class Data contained detailed information regarding all overdraft fees assessed

by Capital One during the Class Period.   Among other things, the information included account

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[1] I previously provided an expert report in this case providing an opinion in support of the motion
for class certification, which at the time did not include all of the Class Data that I understand was
provided to me pursuant to the proposed settlement the parties have reached.

numbers, the date of each overdraft fee, the amount of each overdraft fee, and both the end-of-day

ledger balance and the end-of-day collected balance. It also included hold data which included

information about pre-authorized debit card transactions, including the date when the transaction

was authorized (and the corresponding hold went into effect) and when the transaction posted (and

the corresponding hold was released).

8.   The first step was to identify the universe of ATM and debit card transactions that

resulted in overdraft fees. This was done by searching through the Class Data for overdraft fees

that were assessed on ATM and debit card transactions based on the relevant transaction codes.

Those fees were then limited to the time periods covered by the various Class Periods, which was

based on the posting date of the fee and the State associated with each account. The result of this

step was a list of ATM and debit card transactions that *may have been* authorized to a positive

available balance, wand therefore at issue in this case ("Eligible Transaction(s)").

9.   For each Eligible Transaction, the next step was to determine the date and time of

authorization. This information was found in the hold data that was included in the Class Data.

Specifically, the hold data was searched for an authorization record for each Eligible Transaction

based on the account number, the post date, and the authorization amount.

10.   The next step was to determine the starting collected balance for each Eligible

Transaction. Specifically, for each Eligible Transaction, the starting collected balance was set to

the end-of-day collected balance from the previous banking day. Of note is the fact that collected

balance is the ledger balance (or the actual account balance) minus any credit holds (*i.e.,* holds

placed on funds previously deposited to the account but not yet made available to the account

holder).

11.   For example, suppose that an Eligible Transaction posted on Wednesday and that

after matching to the hold data, it was determined that the authorization date and time was Tuesday

at 1:00 PM. In that case, the starting collected balance was the end-of-day collected balance from Monday.

12.   The next step was to determine the debit holds that were in place at the time of authorization for each Eligible Transaction. Specifically, the hold data that was included in the Class Data was searched for any transactions that were authorized before any given Eligible Transaction but had not yet been released. Similarly, the teller transactions were also searched in order to identify any transactions that: (a) were made in person at a teller prior to an Eligible Transaction; (b) had not yet posted to the account during nightly batch processing; and (c) affected the running available balance, either positively (in the case of a deposit) or negatively (in the case of a withdrawal).
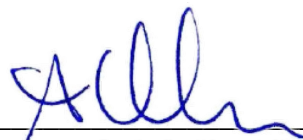
13.   Finally, the available balance at the time of authorization was determined for each Eligible Transaction. The formula for this calculation was the starting collected balance minus any debit holds that were in place at the time of authorization and plus or minus any applicable teller transactions.

14.   Based on the data provided, I identified the Capital One accounts in which at least one overdraft fee was assessed on an ATM or debit card transaction during the various Class Periods that had been previously authorized into a positive available balance. Further, had this case gone to trial, the aggregate amount that would have likely been awarded had Plaintiff prevailed on a class-wide basis is $50,517,226.

15.   It is my understanding that the results of my analysis identifying the accounts subjected to the overdraft fees at issue were provided to Capital One and ultimately the settlement administrator to determine the total number of class members, accounting for the possibility that one individual might have more than one account within my calculations.

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I declare under penalty of perjury under the laws of the United States of America and the

State of New York that the foregoing is true and correct.

Executed this 31st day of August 2020, at Seattle, Washington.

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Arthur Olsen

EXHIBIT A

IT CONSULTANT PROFILE: ARTHUR OLSEN

BACKGROUND

Specializing in the areas of data analysis, database development, and database administration, Mr. Olsen has nearly 20 years of professional IT experience. He has a strong background in both Oracle and Microsoft database technologies, with a focus in developing large-scale applications and designing reporting solutions for publicly traded corporations. Additionally, he has had valuable experience in analyzing and processing massive amounts of data for use in litigation support.

SKILLS

- Considerable experience compiling, analyzing and processing data in support of corporate and class-action litigation.

- Extensive training and experience creating functional designs and logical data models.

- Proficient in the wide range of database development and administration technologies including: Microsoft SQL Server; Oracle RDBMS; and Teradata RDBMS.

- Relevant experience designing, implementing and maintaining large scale database solutions on Oracle and SQL Server, including both online transaction based systems and data warehouses.

- Reporting specialist with experience developing custom reporting solutions based on financial systems such as Microsoft Dynamics and Oracle Financials, as well as custom applications.

AWARDS

- Award for Operational Excellence | Microsoft
  Recognized for outstanding contribution to the design and implementation of the data warehousing solution for the Microsoft Licensing division.

CERTIFICATIONS

- Oracle Certified Professional
- Certified Oracle Database Administrator

EXPERIENCE

Data Expert: Litigation Specialist | retained by various law firms

- Data expert supporting massive multi-district class action litigation, (MDL No. 2036 – *In Re: Checking Account Overdraft Litigation*).

- Processed and analyzed data in support of class action litigation, (*Arnett v. Bank of America, N.A.*, D. Or. Case No. 3:11-CV-01372).

- Processed and analyzed data in support of class action litigation, (*Sheila I. Hofstetter et. al. v. JP Morgan Chase Bank, N.A.*, N.D. Cal. Case No. CV-10-1313 WHA).

- Processed and analyzed data in support of class action litigation, (*Veronica Gutierrez et. al. v. Wells Fargo Bank, N.A.*, N.D. Cal. Case No. 07-05923 WHA), that resulted in a $203 million class restitution award.

Database Engineer: Reporting Specialist | under contract at various clients

- Developed a custom Chart of Accounts management solution that integrates with Microsoft Great Plains for small to mid-size companies.

- Designed and implemented several custom financial reporting solutions, including one for a Fortune 500 company, based on Microsoft Business Intelligence, MOSS, and Excel Services.

- Architected a solution for a large corporation that integrated with Oracle Financials and automated the process of calculating inventory reserves.

Database Administrator, Developer & Litigation Support Specialist | under contract at Hewlett Packard, Cupertino, CA

- Primary Database Administrator responsible for both Oracle and SQL Server support for three divisions, including 20+ applications spread out over a total of 30+ development, test and production servers.

- Lead analyst responsible for compiling, analyzing and processing data from various systems throughout HP for use in litigation support.

- Participated as the principal authority in the composition and implementation of SQL Server database standards across the three divisions, including security models, backup and recovery plans, programming standards, and general database naming conventions.

Database Engineer | Microsoft Licensing, Inc., Reno, NV

- Participated in the design, implementation and support of an extensive data warehousing solution for Microsoft's licensing division. System included nearly twenty data sources and several thousand end users, including select customers who accessed the system remotely via the Internet.

- Developed numerous DTS packages to pull delta information from various source systems, process and denormalize data and push it to one of several data repositories.

- Created and documented plans for database maintenance, backup and recovery, and high availability.

Database Engineer | under contract at Microsoft Corporation, Redmond, WA

- Lone Oracle database administrator and general Oracle resource for all teams associated with an enterprise level online end user billing system, including: Management, Development, Testing, Production Support and Infrastructure.

- Primary owner of a 24 x 7 production database that resided on a DEC Alpha failover cluster.

- Designed replication model using Oracle replication to satisfy extensive reporting requirements.

- Tuned SQL statements as written by members of the development team. Developed PL/SQL triggers, stored procedures, SQL scripts and NT scripts as needed to enhance applications and to correct problems as discovered.

- Acted as liaison between Microsoft and Oracle for all technical issues related to the databases, and between Microsoft and Digital for all technical issues related specifically to the Alpha cluster.

EDUCATION

- Microsoft Internal Training – Redmond, WA | March 2000
  Instructor led SQL Server training, including courses on Database Architecture and Administration, Database Tuning, and Microsoft's TSQL

- ARIS Education Center – Bellevue, WA | June 1996
  Oracle DBA Program, including courses on Relational Database Design, Database Architecture and Administration, SQL and PL/SQL, Application Tuning, Database Tuning, and Advanced Database Concepts

- University of Washington – Seattle, WA | June 1989
  BA in Business Administration with a concentration in Finance.