

NOTICE REGARDING CLASS ACTION SETTLEMENT

A federal court authorized this notice. This is not a solicitation from a lawyer.

- A Settlement has been reached in a class action lawsuit claiming that Capital One, N.A. (“Capital One”) breached its contract with checking Account Holders and improperly assessed and collected Overdraft Fees on certain transactions. Capital One maintains it did nothing wrong; however, it has agreed to settle the lawsuit to avoid the cost, delay, and uncertainty of litigation. The Court has not decided which side is right.
- A cash Settlement Fund of \$17 million has been established to pay Settlement Class Member Payments and any attorneys’ fees, costs, expenses, and Service Award ordered by the Court, as well as any Settlement Administration Costs in excess of \$750,000, which is the maximum amount of Settlement Administration Costs Capital One has also agreed to separately pay. Current and former Capital One customers who had a Capital One checking account(s) may be eligible for a Settlement Class Member Payment from the Settlement Fund.
- Your legal rights are affected whether you act or don’t act. Read this notice carefully.

| SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT | |
|--|---|
| Do Nothing And Receive A Payment Or Account Credit | If you are entitled under the Settlement to a payment or account credit, you do not have to do anything to receive it. If the Court approves the Settlement and it becomes final and effective, and you remain in the Settlement Class (<i>i.e.</i> , you do nothing and do not otherwise exclude yourself from the Settlement), you will automatically receive a payment or account credit. |
| Exclude Yourself From The Settlement Deadline: September 23, 2020 | Instead of doing nothing, you may ask to be excluded from the lawsuit. If you do so, you will receive no benefit from the Settlement, but you retain your right to sue on your own. |
| Object Deadline: September 23, 2020 | You may object to the terms of the Settlement Agreement and have your objections heard at the October 29, 2020 Final Approval Hearing. |

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

WHAT THIS NOTICE CONTAINS

BASIC INFORMATION PAGE 3

1. Why is there a Notice?
2. What is this lawsuit about?
3. What is an Overdraft fee?
4. Why is this a class action?
5. Why is there a Settlement?

WHO IS IN THE SETTLEMENT PAGE 4

6. Who is included in the Settlement?

THE SETTLEMENT'S BENEFITS PAGE 4

7. What does the Settlement provide?
8. How do I receive a payment or account credit?
9. What am I giving up to stay in the Settlement Class?

EXCLUDING YOURSELF FROM THE SETTLEMENT PAGE 5

10. How do I get out of the Settlement?
11. If I don't exclude myself, can I sue Capital One for the same thing later?
12. If I exclude myself from the Settlement, can I still receive a payment?

THE LAWYERS REPRESENTING YOU PAGES 5-6

13. Do I have a lawyer in this case?
14. How will the lawyers be paid?

OBJECTING TO THE SETTLEMENT PAGES 6-7

15. How do I tell the Court that I don't like the Settlement?
16. What's the difference between objecting and excluding?

THE COURT'S FINAL APPROVAL HEARING PAGES 7-8

17. When and where will the Court decide whether to approve the Settlement?
18. Do I have to come to the hearing?
19. May I speak at the hearing?

IF YOU DO NOTHING PAGE 8

20. What happens if I do nothing at all?

GETTING MORE INFORMATION PAGE 8

21. How do I get more information?

BASIC INFORMATION

1. Why is there a Notice?

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

The U.S. District Court for the Southern District of New York is overseeing this case. The case is known as *Tawanna Roberts v. Capital One, N.A.*, Case No. 16-cv-04841-LGS. The person who sued is called the “Plaintiff.” The Defendant is Capital One, N.A.

2. What is this lawsuit about?

The lawsuit claims that Capital One breached its contract with Account Holders and improperly assessed and collected Overdraft Fees on certain Debit Card Transactions.

The [Complaint](#) in this Action is posted on this website and contains all of the allegations and claims asserted against Capital One. Capital One maintains it did nothing wrong, but has agreed to settle the lawsuit to avoid the cost, delay, and uncertainty of litigation. The Court has not decided which side is right.

3. What is an Overdraft fee?

An Overdraft Fee means any fee or fees assessed on an Account Holder for items paid when the Account has insufficient funds.

4. Why is this a class action?

In a class action, one person, called a Class Representative (in this case, one Capital One customer who was assessed Overdraft Fees on certain Debit Card Transactions), sued on behalf of people who have similar claims.

All of the people who have claims similar to the Class Representative are members of the Settlement Class, except for those who exclude themselves from the class.

5. Why is there a Settlement?

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

WHO IS IN THE SETTLEMENT?

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

6. Who is included in the Settlement?

You are a member of the Settlement class if you are a current or former Capital One customer, with the exception of those with Capital One 360 accounts, who was charged an Overdraft Fee on a Debit Card Transaction that was authorized into a positive available balance, but settled against a negative balance, during the Class Period. Excluded from the Settlement Class is Capital One, its parents, subsidiaries, affiliates, officers and directors; all Settlement Class members who make a timely election to be excluded; and all judges assigned to this litigation and their immediate family members.

The Class Period means:

- a. for Settlement Class Members who established Accounts in Connecticut, the period from August 16, 2010, through November 7, 2018;
- b. for Settlement Class Members who established Accounts in Delaware, the period from June 22, 2013, through November 7, 2018;
- c. for Settlement Class Members who established Accounts in Louisiana, the period from August 16, 2010, through November 7, 2018;
- d. for Settlement Class Members who established Accounts in Maryland, the period from June 22, 2013, through November 7, 2018;
- e. for Settlement Class Members who established Accounts in New Jersey, the period from August 16, 2010, through November 7, 2018;
- f. for Settlement Class Members who established Accounts in New York, the period from August 16, 2010, through November 7, 2018;
- g. for Settlement Class Members who established Accounts in Texas, the period from June 22, 2012, through November 7, 2018;
- h. for Settlement Class Members who established Accounts in Virginia, the period from June 22, 2011, through November 7, 2018; and
- i. for Settlement Class Members who established Accounts in Washington DC, the period from June 22, 2013, through November 7, 2018.

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

THE SETTLEMENT'S BENEFITS

Questions? 1-888-312-0063 or visit www.CapitalOneOverdraftLitigation.com

7. What does the Settlement provide?

Capital One has agreed to establish a cash Settlement fund of \$17 million from which Settlement Class Members will receive payments or account credits. The amount of such payments or account credits cannot be determined at this time. However, it will be based on the number of Settlement Class Members and the amount of Relevant Overdraft Fees each Settlement Class Member was charged as a result of Capital One's assessment of Overdraft Fees on Debit Card Transactions that were authorized and approved into a positive available balance and were settled against a negative balance. In addition to the Settlement Fund, Capital One has agreed to separately pay Settlement Administration Costs up to a maximum of \$750,000. Pursuant to the Court's approval, the Settlement Fund will also be used to pay a Service Award for the Plaintiff, attorneys' fees awarded to Class Counsel, reimbursement of Class Counsel's litigation expenses and costs, and any payment to Capital One for Settlement Administration Costs that exceed \$750,000 incurred as permitted under the Settlement.

Any Residual Funds that are not feasible and practical to distribute to individual Settlement Class Members will be provided to one or more charitable organization ("*cy pres*" recipients). The parties will recommend an organization with their Motion for Final Approval.

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

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

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

If you stay in the Settlement Class, all of the decisions by the Court will bind you, and you give Capital One a "release." A "release" means you cannot sue, continue to sue, or be part of any other lawsuit against Capital One about the legal issues in this case. Section XII of the [Settlement Agreement](#) contains the release and describes the precise legal claims that you give up if you remain in the Settlement. The Settlement Agreement is available at www.capitaloneoverdraftlitigation.com.

EXCLUDING YOURSELF FROM THE SETTLEMENT

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

10. How do I get out of the Settlement?

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

- Your name, address, and telephone number; and the last four digits of the account number of the Capital One Account
- A statement with a clear request that you want to "opt-out" or "be excluded" from the Settlement Class in *Tawanna Roberts v. Capital One, N.A.*, 16-cv-04841-LGS, or other words clearly indicating a desire to no longer participate in the Settlement; and

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- Your signature.

You must mail your exclusion request, postmarked no later than **September 23, 2020**, to:

Settlement Administrator
 Roberts v. Capital One, N.A. Overdraft Settlement Program
 P.O. Box 25571
 Richmond, VA 23260

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

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

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

No. You will not receive a payment or account credit if you exclude yourself from the Settlement.

THE LAWYERS REPRESENTING YOU

13. Do I have a lawyer in this case?

The Court has appointed the following lawyers, known as Class Counsel, to represent you and others:

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|---|---|
| Jeff Ostrow Jonathan M. Streisfeld Joshua Levine KOPELOWITZ OSTROW PA 1 West Las Olas Blvd., Ste. 500 Fort Lauderdale, FL 33301 | Hassan Zavareei TYCKO & ZAVAREEI LLP 1828 L Street NW, Ste. 1000 Washington, DC 20036 |
| Jeffrey Kaliel Sophia Gold KALIEL PLLC 1875 Connecticut Avenue NW, 10 th Floor Washington, DC 20009 | |

Class Counsel will represent you and others in the Settlement Class. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

14. How will the lawyers be paid?

Class Counsel intends to request up to 30% of the Settlement Fund for attorneys' fees, plus reimbursement of their litigation expenses and costs incurred in connection with prosecuting this case. The fees and expenses awarded by the Court will be paid out of the Settlement Fund. The Court will determine the amount of fees and expenses to award. Class Counsel will make their request for attorney's fees and expenses by September 8, 2020.

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Class Counsel will also request that a Service Award of up to \$15,000.00 for the Class Representative be paid from the Settlement Fund for her service to the entire Settlement Class. Any Service Award is subject to Court approval. The Class Representative will make her request for a Service Award by September 8, 2020.

OBJECTING TO THE SETTLEMENT

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

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

If you are a Settlement Class member and have not requested to be excluded from the Settlement Class, you can object to any part of the Settlement; the Settlement as a whole; Class Counsel's requests for fees, costs and expenses; and/or Class Counsel's request for a Service Award for the Plaintiff. To object, you must submit your objection by mail or private courier (*e.g.*, Federal Express) to the Clerk of the Court, Class Counsel, Capital One's counsel, and the Settlement Administrator. Your objection must include the following:

- The name of this case, which is *Tawanna Roberts v. Capital One, N.A.*, 1:16-cv-04841-LGS;
- Your full name, address and telephone number;
- All grounds for the objection, accompanied by any legal support for the objection known to you or your counsel;
- The identity of all counsel who represent you, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement or fee application;
- The number of times you have objected to a class action settlement within the five years preceding the date that you file the objection, the caption of each case in which you have made such objection, and a copy of any orders or opinions related to or ruling upon the prior objections that were issued by the trial and appellate courts in each listed case;
- Any and all agreements that relate to the objection or the process of objecting – whether written or verbal – between you or your counsel and any other person or entity;
- The identity of all counsel representing you who will appear at the hearing that the Court has scheduled to determine whether to grant Final Approval to the Settlement and Class Counsel's request for attorneys' fees and Service Award to Plaintiff (the "Final Approval Hearing");
- The number of times in which your counsel and/or counsel's law firm have objected to a class action settlement within the five years preceding the date that you file the objection, the caption of each case in which counsel or the firm has made such objection and a copy of any orders related to or ruling upon counsel's or the firm's prior objections that were issued by the trial and appellate courts in each listed case;
- A list of all persons who will be called to testify at the Final Approval Hearing in support of the objection;
- A statement confirming whether you intend to personally appear and/or testify at the Final Approval Hearing; and
- Your signature (an attorney's signature is not sufficient).

If submitted by mail, an objection shall be deemed to have been submitted when posted if received with a postmark date indicated on the envelope if mailed first-class postage prepaid. If submitted

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by private courier (e.g., Federal Express), an objection shall be deemed to have been submitted on the shipping date reflected on the shipping label. You must submit your objection to the following addresses no later than **September 23, 2020**:

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|---|---|--|--|
| Clerk of the Court U.S. District Court for the Southern District of New York 40 Foley Square Courtroom 1106 New York, NY 10007 | Settlement Administrator Roberts v. Capital One, N.A. Overdraft Settlement Program P.O. Box 25571 Richmond, VA 23260 | Jeff Ostrow Kopelowitz Ostrow Ferguson Weiselberg Gilbert 1 West Las Olas Blvd. Suite 500 Fort Lauderdale, FL 33301 | James McGuire Buckley LLP 555 California Street Suite 4925 San Francisco, CA 94104 |
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16. What's the difference between objecting and excluding?

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

THE COURT'S FINAL APPROVAL HEARING

The Court will hold the Final Approval Hearing to decide whether to approve the Settlement and the request for attorneys' fees, litigation expenses and costs, and a Service Award for Plaintiff. You may attend and you may ask to speak, but you don't have to do so. If you retain your own counsel, they may appear on your behalf.

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

The Court will hold a Final Approval Hearing at 10:50 am ET on October 29, 2020, at the United States District Court for the Southern District of New York, located at 40 Foley Square, Courtroom 1106, New York, NY 10007. The hearing may be moved to a different date or time without additional notice, so it is a good idea to check at www.CapitalOneOverdraftLitigation.com for updates. At this hearing, the Court will consider whether the Settlement is fair, reasonable and adequate. The Court will also consider any request by Class Counsel for attorneys' fees and expenses and for the Service Award for Plaintiff. If there are objections, the Court will consider them at this time. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take.

18. Do I have to come to the hearing?

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

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YOU ARE **NOT** REQUIRED TO ATTEND THIS HEARING TO BENEFIT FROM THE SETTLEMENT.

19. May I speak at the hearing?

If you do not exclude yourself from the Settlement Class, you may ask the Court for permission to speak at the Final Approval Hearing concerning any part of the proposed Settlement by asking to speak in your objection by following the instructions above in Section 15.

IF YOU DO NOTHING

20. What happens if I do nothing at all?

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

GETTING MORE INFORMATION

21. How do I get more information?

This Long Form Notice summarizes the proposed Settlement. More details can be found in the Settlement Agreement. You can obtain a copy of the Settlement Agreement at www.capitaloneoverdraftlitigation.com. You may also write with questions to the Settlement Administrator, Roberts v. Capital One, N.A. Overdraft Settlement Program, P.O. Box 25571, Richmond, VA 23260 or call the toll-free number, 1-888-312-0063. Do not contact Capital One or the Court for information.