

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

TABLE OF CONTENTS

1. RECITALS1

2. DEFINITIONS.....5

3. CONDITIONAL NATURE OF THIS AGREEMENT13

4. CLASS CERTIFICATION FOR SETTLEMENT PURPOSES.....14

5. CLASS SETTLEMENT PROCEDURES15

6. SETTLEMENT ADMINISTRATION24

7. THE SETTLEMENT FUND25

8. ADDITIONAL CLASS RELIEF36

9. RELEASES.....39

10. DENIAL OF LIABILITY – NO ADMISSIONS.....40

11. TERMINATION OF AGREEMENT42

12. MISCELLANEOUS PROVISIONS.....43

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

Subject to approval by the Court and in exchange for the good and valuable consideration set forth herein, this Class Action Settlement Agreement and Release (this “**Agreement**”) is entered into by and between Plaintiffs, Michael Dudo, Danielle Dudo, Gwendolyn Terrell, Scott Clark, individually and as Administrator of the Estate of Lisa Clark, Robert Arquillo, James Dwyer, Anthony Wagner, and Constance Wagner (“**Plaintiffs**”), on their own behalf and on behalf of the Class Members, and Capital One, N.A., d/b/a Capital One Auto Finance (“**COAF**”), each a “**Party**” and, collectively, the “**Parties.**”¹

1. RECITALS

WHEREAS, Plaintiffs entered into retail installment sales contracts with automobile dealerships in connection with purchasing motor vehicles for personal, family, or household purposes that thereafter were assigned to COAF (“**Auto Loans**”);

WHEREAS, COAF repossessed Plaintiffs’ motor vehicles because Plaintiffs allegedly defaulted on their payment obligations under the Auto Loans;

WHEREAS, COAF mailed to each of Plaintiffs a notice of the repossession and COAF’s intention to dispose of the repossessed motor vehicles at private sales (each a “**Post-Repossession Notice**”);

WHEREAS, COAF caused Plaintiffs’ repossessed motor vehicles to be sold at auctions conducted by Automobile Dealer Exchange Services of America at an auction facility located in Mercer, Pennsylvania (“**ADESA Mercer**”);

¹ All capitalized terms herein shall have the meanings ascribed to them in § 2 hereof.

WHEREAS, on December 31, 2018, Plaintiffs Michael Dudo, Danielle Dudo, and Gwendolyn Terrell filed a Class Action Complaint (the “**Complaint**”) with the Court of Common Pleas for Jefferson County (the “**State Court**” or the “**Court**”), in an action captioned *Michael Dudo, et al. v. Capital One Auto Finance, a division of Capital One, N.A.*, No. 1236-2018 (the “**Action**”);

WHEREAS, on January 29, 2019, COAF removed the Action to the United States District Court for the Western District of Pennsylvania (the “**District Court**”), under the caption *Michael Dudo, et al. v. Capital One Auto Finance, a division of Capital One, N.A.*, No. 2:19-cv-00098-MRH (*see* ECF No. 1²);

WHEREAS, on February 28, 2019, Plaintiffs Michael Dudo, Danielle Dudo, and Gwendolyn Terrell filed a motion to remand the Action to the State Court (the “**Motion for Remand**”) (ECF Nos. 12 & 13), asserting, *inter alia*, that the claims set forth in the Complaint do not satisfy the injury-in-fact requirement for standing under Article III of the United States Constitution;

WHEREAS, COAF opposed the Motion for Remand (ECF Nos. 28 & 29);

WHEREAS, on July 11, 2019, Plaintiffs Michael Dudo, Danielle Dudo, and Gwendolyn Terrell filed a First Amended Class Action Complaint (the “**Amended Complaint**”), in which they added Scott Clark, individually and as Administrator of the Estate of Lisa Clark, Robert Arquillo, James Dwyer, Anthony Wagner, and Constance Wagner as named plaintiffs and withdrew certain claims previously asserted in the Complaint (ECF No. 47);

² All references to “**ECF No. ___**” refer to docket entries in case number 2:19-cv-00098-MRH in the District Court.

WHEREAS, Plaintiffs filed an amended motion to remand the Action to the State Court (the “**Amended Motion for Remand**”) (ECF Nos. 52 & 53) asserting that the claims set forth in the Amended Complaint do not satisfy the injury-in-fact requirement for standing under Article III of the United States Constitution;

WHEREAS, COAF opposed the Amended Motion for Remand (ECF Nos. 55 & 56);

WHEREAS, at the Parties’ request, the District Court stayed the Action to allow the Parties to engage in settlement discussions and mediation, as stipulated by the Parties (ECF Nos. 60, 61, and 62);

WHEREAS, on October 23, 2019, the Parties participated in a full-day mediation with the Honorable Annette M. Rizzo (Retired) of JAMS;

WHEREAS, Plaintiffs contend that the auction sales at ADESA Mercer through which Plaintiffs’ and the putative class members’ repossessed motor vehicles were sold (the “**ADESA Mercer Auction Sales**”) constitute “public dispositions” for the purposes of the Pennsylvania Uniform Commercial Code, 13 Pa. C.S. § 9601, *et seq.* (the “**UCC**”);

WHEREAS, Plaintiffs contend that COAF violated the UCC by sending Post-Repossession Notices to Plaintiffs and the putative class members that did not set forth the “time and place” of the alleged “public dispositions” of Plaintiffs’ and the putative class members’ motor vehicles, as required under 13 Pa. C.S. §§ 9613 and 9614;

WHEREAS, Plaintiffs, on their own behalf and on behalf of the putative class members, seek to recover statutory damages under 13 Pa. C.S. § 9625(c)(2) for COAF’s alleged violation of the UCC;

WHEREAS, Plaintiffs, on their own behalf and on behalf of the putative class members, dispute that the deficiency balances that COAF contends remain due and owing on Plaintiffs' and the putative class members' Auto Loans (the "**Disputed Deficiency Balances**");

WHEREAS, COAF denies that the ADESA Mercer Auction Sales constitute "public dispositions" for the purposes of the UCC;

WHEREAS, COAF contends that the Post-Repoession Notices COAF sent to Plaintiffs and the putative class members complied in all respects with the requirements of 13 Pa. C.S. §§ 9613 and 9614;

WHEREAS, COAF denies that it violated the UCC in any respect and denies that Plaintiffs or the putative class members are entitled to statutory damages under 13 Pa. C.S. § 9625(c)(2);

WHEREAS, COAF contends that it is entitled to pursue collection of the Disputed Deficiency Balances and retain any amounts paid by Plaintiffs or the putative class members toward the Disputed Deficiency Balances;

WHEREAS, Plaintiffs, through Class Counsel, have vigorously pursued their claims against COAF;

WHEREAS, COAF, through Defense Counsel, has vigorously defended against Plaintiffs' claims;

WHEREAS, the Parties have negotiated in good faith in an effort to settle Plaintiffs' claim, including through mediation; and

WHEREAS, the Parties desire to fully settle and resolve the Action and Plaintiffs' claims on a class basis in accordance with the Class defined herein and the terms hereof, without

admitting any liability, and thereby release all Claims arising out of or relating to Plaintiffs' and the Class Members' Auto Loans;

NOW, THEREFORE, in consideration of the respective covenants, undertakings, mutual promises, representations, and conditions contained herein, and intending to be legally bound hereby, the Parties agree as follows, subject to court approval:

2. DEFINITIONS

2.01. The definitions contained herein shall apply only to this Agreement and, as explicitly incorporated, to other documents necessary to effectuate the Settlement, and shall not apply to any other agreement, including without limitation any retail installment sales contract. Nor shall the definitions contained herein be used as evidence of the meaning of any term, except as set forth herein with respect to this Agreement and related settlement documents. Each defined term stated in a singular form shall include the plural form, and each defined term stated in a plural form shall include the singular form.

2.02. The "**Action**" means the putative class action captioned *Michael Dudo, et al. v. Capital One Auto Finance, a division of Capital One, N.A.*, No. 1236-2018, filed in the State Court, later removed to the District Court and docketed as case number 2:16-cv-06130-HB, and which, in accordance with § 5.01 hereof, shall be voluntarily dismissed without prejudice in the District Court and filed as a new action in the State Court.

2.03. "**ADESA Mercer**" means the motor vehicle auction facility in Mercer, Pennsylvania, operated by Automobile Dealer Exchange Services of America.

2.04. "**ADESA Mercer Auction Sales**" means the sales through which Plaintiffs' and the Class Members' repossessed motor vehicles were sold.

2.05. This "**Agreement**" means this Class Action Settlement Agreement and Release, as fully-executed by the Parties.

2.06. The “**Amended Complaint**” means the First Amended Class Action Complaint filed by Plaintiffs in the Action (ECF No. 47).

2.07. The “**Amended Motion for Remand**” means the Amended Motion for Remand filed by Plaintiffs in the Action (ECF Nos. 52 & 53).

2.08. “**Auto Loan**” means a retail installment sales contract for the purchase of a motor vehicle for personal, family, or household purposes, entered into by one or more individuals and an automobile dealership, secured by the motor vehicle, and assigned by the automobile dealership to COAF.

2.09. “**Auto Loan Account**” means a separate account, identified by a COAF account number, associated with an Auto Loan.

2.10. “**Borrower**” means an individual who entered into an Auto Loan, including a co-borrower or co-obligor.

2.11. “**Claims**” means any and all rights, remedies, actions, claims, counterclaims, cross-claims, demands, liabilities, obligations, promises, agreements, controversies, actions, causes of action, suits, verdicts, judgments, liens, damages, costs, losses, debts, charges, and expenses (including attorneys’ fees and disbursements of counsel and other professionals), of any and every nature whatsoever, whether currently known or unknown, suspected or unsuspected, foreseen or unforeseen, matured or un-matured, accrued or not accrued, whether in law or in equity, whether now recognized by law or whether later created or recognized by statute, regulation, judicial decision, or in any other manner, whether based upon contract, breach of contract, intentional acts, warranty or covenant, breach of warranty or covenant, tort, negligence, gross negligence, recklessness, joint and several liability, guarantee, contribution, reimbursement, subrogation, indemnity, defect, fault, strict liability, bad faith, misrepresentation,

common law fraud, quantum meruit, breach of fiduciary duty, violation of statute, administrative regulation, or common law, and any other legal, equitable, or other theory or right of action whatsoever.

2.12. The “**Class**” means all Borrowers: (i) who entered into an Auto Loan; (ii) whose motor vehicle was repossessed by COAF; (iii) whose mailing address or whose co-obligor’s mailing address at the time of the repossession of the vehicle, according to COAF’s business records, was in Pennsylvania; (iv) to whom COAF sent a Post-Repossession Notice advising that the repossessed vehicle would be sold at a “private sale”; (v) whose repossessed vehicle was offered for sale at ADESA Mercer during the Class Period; and (vi) who is not a member of Class 1 in the class action settlement in the Langer Action. According to COAF’s business records, the Class consists of 3,729 members, associated with 2,669 Auto Loan Accounts.

2.13. “**Class Counsel**” means Richard Shenkan and Shenkan Injury Lawyers, LLC, counsel of record for Plaintiffs in the Action.

2.14. “**Class Counsel Costs**” means the reasonable costs and expenses incurred by Class Counsel in connection with the investigation, prosecution, administration, and settlement of the Action, as approved by the Court, which shall be reimbursed to Class Counsel from the Settlement Fund.

2.15. “**Class Counsel Fees**” means the reasonable attorneys’ fees payable to Class Counsel, as approved by the Court, which shall be paid from the Settlement Fund.

2.16. “**Class Member**” means a member of the Class.

2.17. The “**Class Notice**” means the Notice to Class Members, described in § 5.05 hereof, as approved by the Court.

2.18. The “**Class Period**” means the time period between December 31, 2012 and March 26, 2018, inclusive.

2.19. The “**Class Releasees**” and the “**Class Releasors**” mean (i) Plaintiffs; (ii) the Class Members, excluding only those Class Members whose requests for exclusion are approved by the Court in the Final Approval Order; and (iii) as to each of the foregoing, his or her heirs, executors, administrators, trustees, personal representatives, beneficiaries, and assigns.

2.20. “**COAF**” means Capital One, N.A., d/b/a Capital One Auto Finance.

2.21. The “**COAF Releasees**” and the “**COAF Releasors**” mean (i) COAF; (ii) COAF’s respective past, present, and future, direct and indirect, parents, subsidiaries, partners, joint ventures, and affiliates; (iii) as to each of the foregoing, the past, present, and future officers, directors, employees, principals, representatives, agents, attorneys, shareholders, and insurers, each in their capacity as such; and (iv) the predecessors, successors, heirs, executors, administrators, trustees, personal representatives, beneficiaries, and assigns of any of the foregoing.

2.22. The “**Complaint**” means the Class Action Complaint filed by Plaintiffs Michael Dudo, Danielle Dudo, and Gwendolyn Terrell in the Action (ECF No. 1-4).

2.23. The “**Court**” and the “**State Court**” mean the Court of Common Pleas for Jefferson County, Pennsylvania.

2.24. The “**Credit Reporting Agencies**” means Experian, Equifax, and TransUnion.

2.25. The “**Cy Pres Recipients**” means one or more IRS 501(c)(3) non-profit organization(s) whose charitable or public service purposes are related to the objectives of the Action and/or the interests of the Class Members, to be agreed upon by Class Counsel and Defense Counsel and approved by the Court in the Final Approval Order to receive *cy pres*

payments of any residual amount in the Settlement Account after distribution of the Net Settlement Fund to the Class Members, as set forth in § 7.12 hereof. COAF has no objection to designating the following organizations as *cy pres* recipients: National Association of Consumer Advocates, National Consumer Law Center, and/or the University of Pittsburgh (for its Law School Taxpayer Clinic). Class Counsel and Defense Counsel shall reasonably cooperate to designate one or more of the foregoing organizations and/or additional appropriate organizations in connection with moving for the entry of the Final Approval Order.

2.26. “**Defense Counsel**” means Stradley Ronon Stevens & Young, LLP, counsel of record for COAF in the Action.

2.27. The “**Disputed Deficiency Balances**” means the deficiency balances that COAF contends remain due and owing on Plaintiffs’ and the Class Members’ Auto Loans. The Parties acknowledge and agree that the Disputed Deficiency Balances are disputed liabilities that are being compromised and extinguished by way of an accord and satisfaction through the Settlement. According to COAF’s business records, the total amount of the Disputed Deficiency Balances is approximately \$15.1 million.

2.28. The “**Distribution Date**” means the date upon which the Settlement Administrator shall begin to make distributions of the Net Settlement Fund and the Post-Stay Return Payments to the Class Members, not later than sixty (60) days after the Effective Date.

2.29. The “**District Court**” means the United States District Court for the Western District of Pennsylvania.

2.30. The “**Effective Date**” means the date upon which Final Approval occurs.

2.31. “**Final Approval**” means the entry of the Final Approval Order, the expiration of the applicable period for filing a notice of appeal from the Final Approval Order, and, if any

appeal is taken from the Final Approval Order, the final affirmance of the Final Approval Order without any right of further appeal.

2.32. The “**Final Approval Hearing**” means the hearing to be held by the Court to determine whether the Settlement shall receive final approval pursuant to Pa. R.C.P. No. 1714.

2.33. The “**Final Approval Order**” means an Order finally approving the Settlement pursuant to Pa. R.C.P. No. 1714.

2.34. The “**Incentive Award**” means the sum, not to exceed \$15,000.00 each, to be awarded to each Plaintiff, as approved by the Court, as an award for the Plaintiff’s time and effort in bringing, prosecuting, and settling the Action on behalf of the Class Members, which shall be paid from the Settlement Fund.

2.35. “**IRS**” means the Internal Revenue Service.

2.36. The “**Langer Action**” means the class action captioned *Langer v. Capital One Auto Finance*, No. 2:16-cv-06130-HB (E.D. Pa.).

2.37. The “**Motion for Remand**” means the Motion for Remand filed by Plaintiffs Michael Dudo, Danielle Dudo, and Gwendolyn Terrell in the Action (ECF Nos. 12 & 13).

2.38. The “**Net Settlement Fund**” means the Settlement Fund less the Post-Stay Payment Total, Class Counsel Fees, Class Counsel Costs, Settlement Administration Costs, and the Incentive Awards.

2.39. The “**Pa. IOLTA Board**” means the Pennsylvania Interest on Lawyers Trust Account Board.

2.40. The “**Parties**” refers collectively to Plaintiffs and COAF, and “**Party**” refers individually to any of the Parties.

2.41. **“Plaintiffs”** means collectively Plaintiffs, Michael Dudo, Danielle Dudo, Gwendolyn Terrell, Scott Clark, individually and as Administrator of the Estate of Lisa Clark, Robert Arquillo, James Dwyer, Anthony Wagner, and Constance Wagner, individually and as representatives of the Class Members.

2.42. **“Post-Repossession Notice”** means a notice COAF sends to a Borrower notifying the Borrower, *inter alia*, of the repossession of the Borrower’s motor vehicle and COAF’s intention to dispose of the Borrower’s repossessed motor vehicle.

2.43. The **“Post-Stay Period”** means the period between March 26, 2018, the last day of the Class Period, and the Effective Date, inclusive.

2.44. **“Post-Stay Payment”** means any payment by a Class Member toward any portion of the Class Member’s Disputed Deficiency Balance tendered to Capital One or any of its collection agents at any time during the Post-Stay Period.

2.45. The **“Post-Stay Payment Total”** means the sum of all the Post-Stay Payments made by Class Members as of the Effective Date, excluding Post-Stay Payments made by any Class Members whose requests for exclusion are approved by the Court in the Final Approval Order.

2.46. **“Post-Stay Return Payment”** means the payment to be made by the Settlement Administrator, in accordance with § 7.09 hereof, to each eligible Class Member equal to the total amount of Post-Stay Payments made by the Class Member.

2.47. The **“Preliminary Approval Date”** means the date upon which the Court issues the Preliminary Approval Order.

2.48. The **“Preliminary Approval Order”** means an Order of the Court preliminarily approving the Settlement and conditionally certifying the Class, as described in § 5.02 hereof.

2.49. The “**Preliminary Settlement Administration Payment**” means an initial payment of \$50,000 to the Settlement Administrator for Settlement Administration Costs.

2.50. “**Proper Notification and Documentation**” means, with respect to a deceased Class Member and in the discretion of the Settlement Administrator and Class Counsel, a release and discharge, a death certificate and/or a copy of the official filings appointing an executor, administrator or other personal representative of the estate or fiduciary of an incompetent, and sufficient information as to the identity and address of the executor, administrator, personal representative or fiduciary to enable mailing of a check/wire instructions, or other similar documentation.

2.51. “**Qualified Settlement Fund**” has the meaning ascribed to it in Treasury Regulation § 1.468B-1, promulgated under Internal Revenue Code § 468B, as amended.

2.52. The “**Released Claims**” means the Claims released by the Class Releasers in § 9.01 hereof and the Claims released by the COAF Releasers in § 9.02 hereof.

2.53. The “**Settlement**” means the settlement between Plaintiffs and COAF as set forth in this Agreement.

2.54. The “**Settlement Account**” means collectively one or more Qualified Settlement Fund bank account(s) at a federally-insured financial institution where the Settlement Fund will be held on deposit pending distribution as set forth in § 7 hereof.

2.55. The “**Settlement Administrator**” means BrownGreer, PLC or another settlement administrator agreed to by the Parties and approved by the Court to administer the Settlement Fund.

2.56. The “**Settlement Administration Costs**” means the reasonable fees, costs, and expenses of the Settlement Administrator in connection with administering the Settlement in accordance with this Agreement.

2.57. The “**Settlement Amount**” means the sum of \$7,500,000.00.

2.58. The “**Settlement Fund**” means the aggregate of the Settlement Amount and the Post-Stay Payment Total held on deposit in the Settlement Account, together with any interest that accrues thereon.

2.59. “**Settlement Fund Purposes**” means (i) the payment to Class Counsel of Class Counsel Fees, as approved by the Court; (ii) the reimbursement to Class Counsel of Class Counsel Costs, as approved by the Court; (iii) the reimbursement to the Settlement Administrator of Settlement Administration Costs, as approved by the Court; (iv) the payment to Plaintiffs of the Incentive Awards, as approved by the Court; (v) the distribution to the Class Members of the Net Settlement Fund; (vi) the distribution of the Post-Stay Payment Total to the eligible Class Members; and (vii) the payment of any residual portions of the Settlement Fund to the Pa. IOLTA Board and the *Cy Pres* Recipients, as approved by the Court.

2.60. The “**UCC**” refers to Pennsylvania’s Uniform Commercial Code, 13 Pa. C.S. § 9601, *et seq.*

3. **CONDITIONAL NATURE OF THIS AGREEMENT**

3.01. This Agreement is made in compromise of disputed claims on a class-wide basis. This Agreement is intended by the Parties to fully, finally, and forever resolve, discharge and settle the Released Claims upon and subject to the terms and conditions set forth in this Agreement, without any admission of liability. The Parties hereby acknowledge and agree that the Settlement is subject to preliminary and final approval by the Court in accordance with the Pennsylvania Rules of Civil Procedure. Accordingly, the Parties enter into this Agreement on a

conditional basis that is subject to Final Approval and COAF's right to terminate the Agreement as set forth in § 11.01 hereof.

3.02. The Parties hereby acknowledge and agree that in the event that the Court does not enter the Preliminary Approval Order or the Final Approval Order, the Final Approval Order is vacated, in whole or in part, as the result of any appeal, preventing the Agreement from becoming final and effective, or this Agreement is terminated in accordance with § 11.01 hereof, then: (i) this Agreement will be deemed terminated, null and void *ab initio*, and of no force or effect whatsoever, except with regard to the provisions of §§ 3.02, 4.04, 7.03(c), 10.05, 10.06, 10.07, and 11.02; (ii) the Parties shall not reference or utilize this Agreement, any other documents prepared by the Parties to effectuate the Settlement, or any other evidence of this Agreement's terms or the Parties' settlement discussions to establish liability, damages, or class certification; and (iii) the Parties' settlement discussions shall remain subject to the protections of Fed. R. Evid. 408 and Pa.R.E. 408.

4. CLASS CERTIFICATION FOR SETTLEMENT PURPOSES

4.01. Solely for the purposes of this Agreement and the Settlement, the Parties agree that the Class shall be certified under Pa. R.C.P. No. 1710.

4.02. Solely for the purposes of this Agreement and the Settlement, the Parties agree that Plaintiffs are members of and shall be appointed as the class representatives for the Class.

4.03. Solely for the purposes of this Agreement and the Settlement, the Parties agree that Class Counsel shall be appointed as counsel for the Class.

4.04. In the event that the Court does not enter the Preliminary Approval Order or the Final Approval Order, the Final Approval Order is vacated, in whole or in part, as the result of any appeal, preventing the Agreement from becoming final and effective, or this Agreement is

terminated in accordance with § 11.01 hereof, then the provisions of this § 4 shall be void and of no force and effect.

5. CLASS SETTLEMENT PROCEDURES

5.01. Dismissal and Re-Filing of Action. In light of the Parties' dispute over the District Court's subject matter jurisdiction of the Action, as set forth in Plaintiffs' Motion for Remand and Amended Motion for Remand and COAF's oppositions thereto, without conceding their respective positions regarding the jurisdictional dispute, the Parties agree that:

(a) Within seven (7) days after the Parties' full execution of this Agreement, the Parties shall execute and Plaintiffs shall file with the District Court a stipulation of voluntary dismissal of the Action without prejudice pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii), in the form attached hereto as **Exhibit A**;

(b) Within fourteen (14) days after the Parties' full execution of this Agreement, Plaintiffs re-file the Action in the State Court by filing a Complaint in substantially the same form as the Amended Complaint;

(c) The Parties agree that any statute of limitation or repose applicable to Plaintiffs' claims in the Action shall be tolled between the filing of the stipulation of dismissal with the District Court as set forth in § 5.01(a) hereof and the filing of the Complaint in the State Court as set forth in § 5.01(b) hereof in order to preserve Plaintiffs' putative class claims in the Action for the entire Class Period.

5.02. Motion for Preliminary Approval. Within fourteen (14) days after the Parties' full execution of this Agreement, Plaintiffs, through Class Counsel, shall file a Motion for Preliminary Approval, together with a proposed Preliminary Approval Order in the form

attached hereto as **Exhibit B**. The proposed Preliminary Approval Order shall provide, among other things:

(a) That this Agreement and the Settlement set forth herein are deemed by the Court to be within the range of reasonableness such that preliminary approval of the Settlement is warranted and the Class Notice should be disseminated to the Class Members;

(b) That, solely for the purposes of this Agreement and the Settlement set forth herein, the requirements for conditional certification of the Class pursuant to Pa. R.C.P. No. 1710, as set forth in Pa. R.C.P. Nos. 1702, 1708, and 1709, have been satisfied;

(c) That, solely for the purposes of this Agreement and the Settlement set forth herein, the Class is conditionally certified;

(d) That, solely for the purposes of this Agreement and the Settlement set forth herein, Plaintiffs are preliminarily appointed as the class representatives for the Class;

(e) That, solely for the purposes of this Agreement and the Settlement set forth herein, Class Counsel is preliminarily appointed as counsel for the Class;

(f) That the Class Notice, in the form attached hereto as **Exhibit C**, meets all applicable legal requirements and is approved by the Court;

(g) That the mailing of the Class Notice to the Class Members in the manner set forth in the Preliminary Approval Order meets all applicable legal requirements and is approved by the Court;

(h) That the Settlement Administrator is appointed to administer the mailing of the Class Notice, is bound by the confidentiality provisions of the Preliminary Approval Order, and is subject to the jurisdiction of the Court for the purposes of the Action and the Settlement;

(i) Deadlines consistent with this Agreement and the Class Notice for (i) the mailing of the Class Notice to the Class Members, (ii) the filing of objections to the Settlement, and (iii) the filing of requests by Class Members for exclusion from the Class;

(j) That a written request for exclusion from the Class, as set forth in the Class Notice, must: (i) set forth the Class Member's full name, current address, telephone number and/or email address, if available, (ii) contain the signatures of any Class Member (or his or her guardian, administrator, or executor) obligated on the Class Member's Auto Loan, and (iii) state the intent of all signatory(ies) not to participate in the Settlement;

(k) That the Class Members who do not timely exclude themselves from the Class in accordance with the Class Notice shall be bound by the Final Approval Order;

(l) The date for the Final Approval Hearing and deadlines for the filing of motion papers in connection with seeking a Final Approval Order; and

(m) That at the Final Approval Hearing the Court will consider, *inter alia*: (i) whether the Settlement is fair and reasonable; (ii) whether the Class Counsel Fees are fair and reasonable; (iii) whether the Class Counsel Costs are fair and reasonable; (iv) whether the Settlement Administration Costs are fair and reasonable; (v) whether the Incentive Awards are fair and reasonable; and (vi) whether the Final Approval Order, dismissing the Action on the merits and with prejudice as to the Class Members who did not timely exclude themselves from the Class, should be entered.

5.03. COAF'S Non-Opposition to Motion for Preliminary Approval. Provided that Plaintiffs' Motion for Preliminary Approval and proposed Preliminary Approval Order comply with the terms of this Agreement, COAF shall timely file with the Court a response stating that COAF does not oppose the Motion for Preliminary Approval.

5.04. Identification of Class Members.

(a) Within thirty (30) days after the Court enters the Preliminary Approval Order, COAF shall provide to Class Counsel and the Settlement Administrator one or more Excel spreadsheet(s) containing the following information: (i) the name of each Class Member; (ii) the name of any co-obligor on each Class Member's Auto Loan; (iii) the last known mailing address for each Class Member; (iv) the last known telephone number(s) for each Class Member; (v) the last known email address for each Class Member; (vi) the Social Security Number for each Class Member; (vii) the Disputed Deficiency Balance for each Class Member (as of the Preliminary Approval Date); (viii) the total amount of Post-Stay Payments made by each Class Member (as of the Preliminary Approval Date); and (ix) whether the Class Member had filed for bankruptcy as of the Preliminary Approval Date (to the extent known), together with a Declaration under penalty of perjury as to the manner in which the information was collected and its accuracy. COAF agrees to make a reasonable and good faith effort to provide the foregoing information to Class Counsel and the Settlement Administrator. COAF may provide any of this information on a rolling basis and/or in parts, at its sole discretion, so long as all of the required information is sent to Class Counsel and the Settlement Administrator within this thirty (30) day period.

(b) COAF is providing the information set forth in this § 5.04, including the Class Members' Social Security Numbers, to Class Counsel and the Settlement Administrator for legitimate business purposes, namely to: (i) assist the Settlement Administrator in locating and/or verifying mailing addresses for the Class Members; and (ii) to assist Class Counsel in verifying that the Class Members receive the settlement consideration set forth in this Agreement.

(c) The Parties acknowledge and agree that the information provided by COAF in accordance with this § 5.04 is “Confidential Information” as defined in the Preliminary Approval Order and subject to the confidentiality provisions of the Preliminary Approval Order.

(d) COAF agrees to promptly respond to reasonable inquiries from the Settlement Administrator and Class Counsel regarding the Class Member information provided by COAF pursuant to this § 5.04.

(e) The Settlement Administrator shall review, verify, and, if applicable, update the Class Member mailing addresses in the spreadsheet(s) provided by COAF pursuant to this § 5.04 through the United States Postal Service National Change of Address database and through the Accurint and/or Westlaw database(s) or another equivalent database and provide updated spreadsheet(s) to Class Counsel and Defense Counsel prior to the sending of the Class Notice and as updated information is obtained.

5.05. The Class Notice. Subject to the Court’s approval, the Parties agree that notice of the Settlement shall be given to the Class Members through a class notice in the form attached as **Exhibit C.**

(a) Within the timeframe set forth in the Preliminary Approval Order, the Settlement Administrator shall mail the Class Notice, in the form approved by the Court, by First Class United States Mail to the Class Members at their last known mailing addresses as updated and verified in accordance with § 5.04(e) hereof.

(b) If a mailed Class Notice is returned with a forwarding address provided by the United States Postal Service or if Class Counsel or the Settlement Administrator becomes aware of another more suitable address, the Settlement Administrator will re-mail the Class Notice to such address or addresses.

(c) If a mailed Class Notice is returned without a forwarding address provided by the United States Postal Service or is otherwise designated by the United States Postal Service as bearing an invalid address, the Settlement Administrator will use the Accurint and/or Westlaw database or another equivalent database and use skip-tracing, as applicable and as approved by Class Counsel, to attempt to locate an updated address for the particular Class Member, and will re-mail the Class Notice to the Class Member at the most recent, updated address located if different from an address that was previously returned by the United States Postal Service. If the Settlement Administrator discovers an updated address after the Effective Date, the Settlement Administrator need not send a separate copy of the Class Notice; however, the Settlement Administrator shall send the Class Member his or her respective share of the Net Settlement Fund absent a directive to the contrary by Class Counsel or the Court.

5.06. Objections to the Settlement.

(a) The Class Notice, as approved by the Court, shall permit any Class Member to object to the Settlement, provided that the Class Member submits a written objection to the Settlement Administrator in the manner set forth in the Class Notice on or before the deadline for objections set forth in the Class Notice.

(b) Any Class Member can withdraw his or her objection to the Settlement, provided that the Class Member submits a written withdrawal of the objection to the Settlement Administrator at or before the Final Approval Hearing.

(c) Within five (5) days of receipt of any objection, the Settlement Administrator shall provide to Class Counsel and Defense Counsel: (i) the name, address, telephone number, and email address of the objecting Class Member; (ii) if applicable, the name,

address, telephone number, and email address of the objecting Class Member's counsel; and (iii) a copy of the objecting Class Member's written objection.

(d) Within five (5) days after the deadline for objections set forth in the Class Notice, the Settlement Administrator shall provide to Class Counsel and Defense Counsel a list of the Class Members (by name and Auto Loan Account number) who submitted objections and thereafter promptly update such list if any belated objections are received.

(e) At least twenty-one (21) days before the Final Approval Hearing or as otherwise directed by Class Counsel, the Settlement Administrator shall prepare a list of the Class Members (by last four digits of Auto Loan Account number and city only, for confidentiality purposes) who submitted objections to the Settlement, in a form suitable for submission to the Court with Plaintiffs' Motion for Final Approval.

5.07. Requests for Exclusion from the Class.

(a) The Class Notice, as approved by the Court, shall permit any Class Member to request exclusion from the Class, provided that the Class Member submits a written request for exclusion in the manner set forth in the Class Notice on or before the deadline for requests for exclusion set forth in the Class Notice.

(b) Any Class Member can withdraw his or her request for exclusion from the Class, provided that the Class Member submits a written withdrawal of the request for exclusion to the Settlement Administrator on or before the deadline for requests for exclusion set forth in the Class Notice.

(c) Within five (5) days of receipt of any request for exclusion, the Settlement Administrator shall provide to Class Counsel and Defense Counsel: (i) the name, address, telephone number, and email address of the Class Member requesting exclusion; (ii) if

applicable, the name, address, telephone number, and email address of counsel for the Class Member requesting exclusion; and (iii) a copy of the Class Member's written request for exclusion.

(d) Within five (5) days after the deadline for requests for exclusion set forth in the Class Notice, the Settlement Administrator shall provide to Class Counsel and Defense Counsel a list of the Class Members (by name and Auto Loan Account number) who submitted requests for exclusion from the Class, together with copies of the Class Members' written requests for exclusion and thereafter promptly update such list if any belated written requests for exclusion are received.

(e) At least twenty-one (21) days before the Final Approval Hearing or as otherwise directed by Class Counsel, the Settlement Administrator shall prepare a list of the Class Members (by last four digits of Auto Loan Account number and city only, for confidentiality purposes) who submitted requests for exclusion from the Class, in a form suitable for submission to the Court with Plaintiffs' Motion for Final Approval.

5.08. Motion for Final Approval. In accordance with the Preliminary Approval Order, after the Class Notice has been mailed to the Class Members and before the Final Approval Hearing, Plaintiffs shall file a Motion for Final Approval seeking a Final Approval Order in accordance with this Agreement, and including any modifications made by the Court, approving this Agreement as final, fair, reasonable, adequate, and binding on all Class Members who have not excluded themselves from the Class and ordering that the Settlement Fund be distributed in accordance with § 7 hereof and that the additional class relief be conferred to the eligible Class Members in accordance with § 8 hereof.

5.09. Class Counsel Fees and Class Counsel Costs.

(a) The Parties understand that in connection with seeking Final Approval, Class Counsel intends to apply for an award of Class Counsel Fees and an allowance for the reimbursement of Class Counsel Costs, both of which shall be paid from the Settlement Fund on a common fund basis without affecting COAF's payment obligations hereunder.

(b) COAF takes no position with respect to the Class Counsel Fees sought by Class Counsel and shall not object to Class Counsel's request for Class Counsel Fees, provided that the Class Counsel Fees sought by Class Counsel do not exceed \$3,000,000.00, taking into consideration the settlement benefits to the Class Members which, in addition to the \$7,500,000.00 Settlement Amount, include COAF's agreement to: (i) compromise and extinguish the Disputed Deficiency Balances by way of an accord and satisfaction; (ii) vacate or mark satisfied any unsatisfied deficiency judgments against the Class Members; (iii) request that the Credit Reporting Agencies delete the trade lines relating to the Class Members' subject Auto Loan Accounts; and (iv) return the Post-Stay Payments. COAF does not object to the payment of the Class Counsel Fees, in whole or in part, into an annuity or deferred compensation vehicle for the benefit of Class Counsel, subject to approval by the Court.

(c) COAF takes no position with respect to the Class Counsel Costs sought by Class Counsel and shall not object to Class Counsel's request for Class Counsel Costs provided that the Class Counsel Costs sought by Class Counsel do not exceed \$50,000.

(d) The Class Counsel Fees awarded by the Court shall include compensation to Class Counsel for addressing, *in futuro*, ongoing Class Member inquiries concerning the Settlement and the relief provided thereunder, including the compromise and extinguishment of the Disputed Deficiency Balances by way of an accord and satisfaction, requests for deletion of

trade lines relating to the Class Members' subject Auto Loan Accounts, and return of Post-Stay Payments. Class Counsel represents that it will also provide or otherwise make available to Class Members resources and tax-related information Class Members may use or find helpful relating to the Settlement.

6. SETTLEMENT ADMINISTRATION

6.01. The Settlement Administrator.

(a) The Parties agree that BrownGreer PLC of Richmond, Virginia shall be appointed by the Court to serve as the Settlement Administrator.

(b) If the Court does not appoint BrownGreer PLC as the Settlement Administrator or if BrownGreer PLC is unable or unwilling to serve as the Settlement Administrator, then the Parties agree to cooperate in good faith to select a mutually-agreeable firm to serve as the Settlement Administrator and to seek the Court's approval of the appointment of such firm as the Settlement Administrator.

(c) The Parties shall use their best efforts to require the Settlement Administrator to acknowledge and agree that the Settlement Administrator shall be subject to the jurisdiction of the Court for the purposes of the Action and the Settlement and shall be bound by the confidentiality provisions of the Preliminary Approval Order.

(d) The Parties shall use their best efforts to require the Settlement Administrator to acknowledge and agree that the Settlement Administrator shall promptly respond to inquiries from COAF, Defense Counsel, and/or Class Counsel regarding the administration of the Settlement Fund, the status of payments and distributions therefrom, communications with Class Members, and any other matter falling within the scope of the Settlement Administrator's services.

6.02. Settlement Administration Costs. The Settlement Administration Costs shall be paid from the Settlement Fund, provided that the Settlement Administration Costs do not exceed \$100,000. Class Counsel shall approve the payment of all compensation by the Settlement Administrator.

(a) Upon or after COAF's payment of the Settlement Amount to the Settlement Account, and with Class Counsel's approval, the Settlement Administrator may withdraw the Preliminary Settlement Administration Payment from the Settlement Account.

(b) Upon or after Final Approval, and with Class Counsel's approval, the Settlement Administrator may withdraw up to \$50,000 for the remainder of the Settlement Administration Costs.

(c) In the event that due to unforeseen circumstances, the Settlement Administration Costs reasonably necessary to administer the Settlement exceed \$100,000, Class Counsel shall seek authorization from the Court to pay such reasonable and necessary excess Settlement Administration Costs from the Settlement Account.

7. THE SETTLEMENT FUND

7.01. Qualified Settlement Fund. The Settlement Fund shall constitute a Qualified Settlement Fund, with the Settlement Administrator serving as the "Administrator" of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3).

(a) Upon or before the establishment of the Settlement Fund, the Settlement Administrator shall apply for an employer identification number for the Settlement Fund in accordance with Treasury Regulation §1.468B-2(k)(4).

(b) If requested by COAF, as transferor of the Settlement Fund, or by the Settlement Administrator, as Administrator of the Settlement Fund, COAF and the Settlement Administrator shall fully cooperate in jointly filing a relation-back election under Treasury

Regulation §1.468B-1(j)(2) to treat the Settlement Fund as coming into existence as a Qualified Settlement Fund as of the earliest possible date.

(c) The Settlement Administrator shall file or cause to be filed, on behalf of the Settlement Fund, all required federal, state, and local tax returns, information returns (including any IRS Form 1099-MISC returns), and tax withholdings statements, in accordance with the provisions of Treasury Regulation §1.468B-2(k)(1) and Treasury Regulation §1.468B-2(l)(2)(ii). Any contract, agreement or understanding entered into with the Settlement Administrator relating to the Settlement Fund must require the Settlement Administrator or its agent to file or cause to be filed, on behalf of the Settlement Fund, all such required returns and statements. Nothing in this § 7.01(c) is intended to, or shall be construed to, require the Settlement Administrator to file IRS Form 1099-C informational returns with respect to the compromise and extinguishment of the Class Members' Disputed Deficiency Balances by way of an accord and satisfaction through the Settlement.

7.02. Payment of the Settlement Amount by COAF. Within fourteen (14) days after the later of (i) the Court's issuance of the Preliminary Approval Order; (ii) COAF's receipt of a completed and signed IRS Form W-9 with the taxpayer identification number associated with the Settlement Account; and (iii) COAF's receipt of wire transfer instructions for payment to the Settlement Account, COAF shall cause the Settlement Amount to be paid by wire transfer of immediately available funds to the Settlement Account.

7.03. Management of the Settlement Fund.

- (a) The Settlement Fund shall be used solely for Settlement Fund Purposes.
- (b) The Settlement Fund shall not be commingled with any other funds and shall be held in cash, cash equivalents, certificates of deposit, money markets, or other

instruments insured by the United States Government (FDIC or SIPC), or corporate bonds that are rated at least “Investment Grade” by Standard and Poor’s or Moody’s Investors Service.

(c) The Settlement Fund may but need not bear interest, at the sole discretion of Class Counsel. In the event that the Court does not issue the Final Approval Order, the Final Approval Order is vacated, in whole or in part, as the result of any appeal, preventing the Agreement from becoming final and effective, or this Agreement is otherwise terminated in accordance with § 11.01 hereof, the Settlement Fund, including any accrued interest, shall be returned to COAF in accordance with § 11.02.

(d) The Settlement Administrator shall be authorized to immediately withdraw the Preliminary Settlement Administration Payment as set forth in § 6.02(a) hereof. Other than the Preliminary Settlement Administration Payment, no portion of the Settlement Fund shall be released from or paid out of the Settlement Account prior to the Effective Date.

(e) After the Effective Date, no portion of the Settlement Fund shall revert to or otherwise be returned to COAF.

7.04. Payments to Class Counsel. Subject to Final Approval, no later than fourteen (14) days after the Effective Date unless otherwise instructed by Class Counsel, the Settlement Administrator shall pay to Class Counsel and/or Class Counsel’s designee(s):

(a) Class Counsel Fees in the amount approved by the Court in the Final Approval Order; and,

(b) The amount approved by the Court in the Final Approval Order for reimbursement of Class Counsel Costs.

7.05. Payment of the Incentive Awards. Subject to Final Approval, no later than fourteen (14) days after the Effective Date unless otherwise directed by Class Counsel, the

Settlement Administrator shall issue and mail checks payable to each Plaintiff, at addresses to be provided by Class Counsel, in the amounts approved by the Court for the Incentive Awards or wire said funds if requested by Class Counsel. Plaintiffs and Class Counsel represent and warrant that Plaintiffs shall receive no benefit from the Settlement except: (i) the settlement consideration afforded to them under the Settlement as Class Members; and (ii) the Incentive Awards.

7.06. Payment of Settlement Administration Costs. Subject to Final Approval and Class Counsel's approval, on or after the Effective Date, the Settlement Administrator may withdraw up to \$50,000 (or more, if separately approved by Class Counsel and the Court in accordance with § 6.02(c)) from the Settlement Fund (in addition to the Preliminary Settlement Administration Payment) for Settlement Administration Costs.

7.07. Updating Class Member Data.

(a) Within fourteen (14) days after the Effective Date, COAF shall provide to Class Counsel and the Settlement Administrator one or more updated spreadsheet(s) in Excel format containing the following information: (i) the name of each Class Member, excluding any Class Members whose requests for exclusion are approved by the Court in the Final Approval Order; (ii) the name of any co-obligor on each Class Member's Auto Loan; (iii) the last known mailing address for each Class Member; (iv) the last known telephone number(s) for each Class Member; (v) the last known email address for each Class Member; (vi) the Social Security Number for each Class Member; (vii) the Disputed Deficiency Balance for each Class Member (as of the Effective Date); (viii) the total amount of Post-Stay Payments made by each Class Member (as of the Effective Date); and (ix) whether the Class Member had filed for bankruptcy as of the Effective Date (to the extent known). COAF agrees to make a reasonable and good

faith effort to provide the foregoing information to Class Counsel and the Settlement Administrator and confer with them to reasonably ensure that the information is updated.

(b) COAF is providing the information set forth in this § 7.07, including the Class Members' Social Security Numbers, to Class Counsel and the Settlement Administrator for legitimate business purposes, namely to: (i) assist the Settlement Administrator in locating and/or verifying mailing addresses for the Class Members; and (ii) to assist Class Counsel in verifying that the Class Members receive the settlement consideration set forth in this Agreement.

(c) The Parties acknowledge and agree that the information provided by COAF in accordance with this § 7.07 is "Confidential Information" as defined in the Preliminary Approval Order and subject to the confidentiality provisions of the Preliminary Approval Order.

(d) COAF agrees to promptly respond to reasonable inquiries from the Settlement Administrator and/or Class Counsel regarding the Class Member information provided by COAF pursuant to this § 7.07.

(e) The Settlement Administrator shall review, verify, and, if applicable, update the Class Member mailing addresses in the spreadsheet(s) provided by COAF pursuant to this § 7.07 through the United States Postal Service National Change of Address database and through the Accurint and/or Westlaw database or another equivalent database(s) and provide updated spreadsheet(s) to Class Counsel and Defense Counsel prior to commencing distributions of the Net Settlement Fund.

7.08. Distribution of the Net Settlement Fund.

(a) Subject to Final Approval, no later than sixty (60) days after the Effective Date unless otherwise directed by Class Counsel, the Settlement Administrator shall commence

distributions of the Net Settlement Fund to the Class Members, excluding only those Class Members whose requests for exclusion are approved by the Court in the Final Approval Order.

(b) The Net Settlement Fund shall be distributed in equal settlement payments for each Auto Loan Account associated with one or more Class Member(s), excluding any Class Members whose requests for exclusion are approved by the Court in the Final Approval Order. The settlement payment for an Auto Loan Account with more than one Borrower shall be split evenly among the Co-Borrowers for that Auto Loan Account, with separate checks made payable to each Co-Borrower. However, the Co-Borrowers on a given Auto Loan Account may request that their settlement payments be divided in some other fashion among the Co-Borrowers. In the event of a dispute between the Co-Borrowers regarding the allocation of their settlement payments, the Settlement Administrator shall hold the payments for both Co-Borrowers in escrow pending resolution of the dispute, and Class Counsel will use reasonable efforts to resolve the dispute. In the event that the dispute cannot be resolved, then Class Counsel shall petition the Court to adjudicate the dispute.

(c) To the extent that a Class Member is a Borrower with respect to more than one Auto Loan Account that would qualify the Borrower for inclusion in the Class, the Class Member shall be entitled to a separate settlement payment for each such Auto Loan Account.

(d) To the extent that the vehicle associated with a Class Member's Auto Loan Account was repossessed more than once or offered for sale at ADESA Mercer more than once, only one payment shall be made for such Auto Loan Account, regardless of the number of repossessions or the number of times the vehicle was offered for sale at ADESA Mercer.

(e) The settlement payments to Class Members are non-assignable and non-transferable except with approval of the Court or as set forth in §§ 7.10(b) and 7.10(c) hereof.

(f) The settlement payments to the Class Members in accordance with § 7.08(b) hereof shall be made by way of checks mailed to the Class Members at their last known mailing addresses as updated and verified in accordance with § 7.07(e) hereof, together with an explanatory letter in the form attached hereto as **Exhibit D**, unless Class Counsel directs otherwise.

7.09. Post-Stay Return Payments.

(a) As part of this Settlement, COAF covenants that it will not, on its own or through any collection agents, actively pursue collection of the Disputed Deficiency Balances during the remaining Post-Stay Period.

(b) Subject to Final Approval, within thirty (30) days after the Effective Date, COAF shall cause the Post-Stay Payment Total to be paid by wire transfer of immediately available funds to the Settlement Account.

(c) In the event that a Class Member makes a payment toward any portion of the Class Member's Disputed Deficiency Balance after the Effective Date, COAF shall return such payment directly to the Class Member within sixty (60) days of receipt of such payment.

(d) No later than thirty (30) days after the Post-Stay Payment Total is deposited into the Settlement Account, the Settlement Administrator shall make Post-Stay Return Payments to each Class Member who made Post-Stay Payments, excluding any Class Members whose requests for exclusion are approved by the Court in the Final Approval Order, in the amounts provided by COAF in accordance with § 7.07(a)(viii). The Post-Stay Return Payments shall be made by way checks mailed to the eligible Class Members at their last known mailing addresses as updated and verified in accordance with § 7.07(e) hereof, unless Class Counsel

directs otherwise. The Post-Stay Return Payments shall be mailed with an explanatory letter in the form attached hereto as **Exhibit E**, with a copy to Class Counsel and Defense Counsel.

(e) The Post-Stay Return Payment for an Auto Loan Account with more than one Borrower shall be split evenly among the Co-Borrowers for that Auto Loan Account, with separate checks made payable to each Co-Borrower. However, the Co-Borrowers on a given Auto Loan Account may request that their Post-Stay Return Payments be divided in some other fashion among the Co-Borrowers. In the event of a dispute between the Co-Borrowers regarding the allocation of their Post-Stay Return Payments, the Settlement Administrator shall hold the payments for both Co-Borrowers in escrow pending resolution of the dispute, and Class Counsel will use reasonable efforts to resolve the dispute. In the event that the dispute cannot be resolved, then Class Counsel will petition the Court to adjudicate the dispute.

(f) Post-Stay Return Payments to Class Members are non-assignable except with approval of the Court or in connection with a Class Member's death or incapacity, as set forth in § 7.10(b) hereof.

7.10. Treatment of Class Members Who Have Moved or Died.

(a) For each Class Member whose mailed check(s) (for settlement payments and/or Post-Stay Return Payments) is/are returned without a forwarding address provided by the United States Postal Service or is otherwise designated by the United States Postal Service as bearing an invalid address, the Settlement Administrator will use the Accurint and/or Westlaw databases or another equivalent database(s) and use skip-tracing, as applicable as directed by Class Counsel, to attempt to locate an updated address for the particular Class Member, and will re-mail the check(s) to the Class Member at the most recent, updated address located if different

from an address that was previously returned by the United States Postal Service unless otherwise instructed by Class Counsel or the Class Member.

(b) If the Settlement Administrator receives notice that a Class Member is deceased or incompetent, the Settlement Administrator will, upon receipt of Proper Notification and Documentation, make the Class Member's settlement payment and/or Post-Stay Return Payment to the Class Member's estate or next of kin if deceased, or trust or guardian if incompetent. Any payments to or on behalf of an estate, next of kin, or guardian of an incompetent must be made within one hundred fifty (150) days after the Distribution Date. For any Auto Loan Account with more than one Borrower, in the event that one of the Co-Borrowers is deceased or incompetent, if no Proper Notification and Documentation is provided to the Settlement Administrator within one hundred twenty (120) days after the Distribution Date, the Settlement Administrator shall make the deceased or incompetent Co-Borrower's settlement payment and/or Post-Stay Return Payment to the other Co-Borrower, unless Class Counsel directs otherwise.

(c) Treatment of Uncashed or Unclaimed Settlement Checks. Except as otherwise ordered by the Court or as directed by Class Counsel, those Class Members who are not located within one hundred fifty (150) days after the Distribution Date will be ineligible to share in the Settlement Fund but will otherwise receive the non-cash benefits of the Settlement, as applicable, except as permitted by Class Counsel or the Court. For those Class Members whose checks are not cashed or claimed within sixty (60) days after the Distribution Date or another date at Class Counsel's discretion, the Settlement Administrator will issue and mail replacement checks for the settlement payments to those Class Members, together with an explanatory letter in the form attached hereto as **Exhibit F**. The Settlement Administrator, in its

discretion or the discretion of Class Counsel, shall replace any lost or non-cashed check upon proper request from a Class Member within one hundred twenty (120) days of the Distribution Date or as otherwise directed by Class Counsel so long as the Settlement Fund has not been fully distributed. COAF does not object to further reasonable efforts by Class Counsel to ensure distribution to Class Members of settlement payments in accordance with this Agreement, including without limitation mailing one or more follow-up letter(s), which may include replacements check(s), to those Class Members who have been sent – but have not negotiated – their checks for distribution to remind the Class Member that a check was previously mailed, has not been negotiated, and will expire if not deposited or cashed in a timely manner. Except as otherwise ordered by the Court or as directed by Class Counsel, those Class Members whose checks are not cashed or claimed within one hundred fifty (150) days after the Distribution Date will be ineligible to share in the Settlement Fund but will otherwise receive the non-cash benefits of the Settlement, as applicable, except as directed by Class Counsel or the Court.

Notwithstanding the foregoing, for any Auto Loan Account with more than one Borrower, in the event that the settlement payment and/or Post-Stay Return Payment checks(s) for one of the Co-Borrowers is/are not cashed or claimed within one hundred twenty (120) days after the Distribution Date the Settlement Administrator, shall make the Co-Borrower's unclaimed settlement payment and/or Post-Stay Return Payment to the other Co-Borrower, unless Class Counsel directs otherwise.

7.11. Settlement Administrator's Notification to Class Counsel and Defense Counsel.

Within one hundred fifty (150) days after the Distribution Date, the Settlement Administrator must notify Class Counsel and Defense Counsel in writing of: (i) the number of Class Members to whom settlement checks were mailed; (ii) the number of Class Members who cashed their

settlement checks; (iii) the number of Class Members who did not cash their settlement checks; (iv) the number of Class Members to whom Post-Stay Return Payment checks were mailed; (v) the number of Class Members who cashed their Post-Stay Return Payment checks; (vi) the number of Class Members who did not cash their Post-Stay Return Payment checks; (vii) the total dollar amount of the Settlement Fund distributed; and (viii) and the remaining balance of the Settlement Fund, accounting for interest (if any), bank fees and similar direct expenses of the administration.

7.12. Cy Pres. The Settlement does not entail a reverter. Except as otherwise ordered by the Court, within one hundred eighty (180) days after the Distribution Date:

(a) Fifty percent (50%) of the remaining balance of the Settlement Fund, comprised of the principal of any uncashed or returned checks together with accrued interest, if any, shall be paid by the Settlement Administrator to the Pa. IOLTA Board, in accordance with Pa. R.C.P. No. 1716(b);

(b) Fifty percent (50%) of the remaining balance of the Settlement Fund shall be distributed by the Settlement Administrator to the *Cy Pres* Recipients approved by the Court in the Final Approval Order, made by way of checks mailed to the *Cy Pres* Recipients at addresses to be provided to the Settlement Administrator by Class Counsel; and

(c) Upon distribution of the balance of the Settlement Fund to the Pa. IOLTA Board and the *Cy Pres* Recipients, the Settlement Administrator shall close the Settlement Account.

7.13. Certification of Distribution. Within fourteen (14) days after the final distribution of all portions of the Settlement Fund, the Settlement Administrator will provide to Class

Counsel an affidavit attesting to the Court that the distributions provided for by this Agreement have all been timely made and will serve a copy thereof on Defense Counsel.

7.14. No Liability to COAF or Defense Counsel. The Parties acknowledge and agree that following COAF's payment of the Settlement Amount in accordance with § 7.02 hereof and COAF's payment of the Post-Stay Payment Total in accordance with § 7.09(b) hereof, COAF and Defense Counsel have no responsibility for, interest in, control over, or liability whatsoever with respect to: (i) the management, investment, allocation, or distribution of the Settlement Fund; (ii) the administration of the Settlement, the calculation or payment of Counsel Costs, Counsel Fees, Settlement Administration Costs, Incentive Awards, settlement payments to Class Members, or payments to the Pa. IOLTA Board or the *Cy Pres* Recipients; (iii) the calculation, withholding, or payment of any taxes, penalties, interest, charges, or fees related to the Settlement Fund; or (iv) any Claims by Plaintiffs, the Class Members, Class Counsel, the Settlement Administrator, or anyone else with respect to the foregoing.

8. ADDITIONAL CLASS RELIEF

8.01. Accord and Satisfaction of Disputed Deficiency Balances.

(a) Subject to and upon Final Approval, within thirty (30) days after the Effective Date, COAF shall permanently extinguish all of the Disputed Deficiency Balances of the Class Members, excluding those Class Members whose requests for exclusion are approved by the Court in the Final Approval Order, with such Disputed Deficiency Balances being compromised through an accord and satisfaction by virtue of the mutual consideration set forth herein. Nothing herein is intended to, or shall be construed to, prevent COAF from taking steps to effectuate the extinguishment of the Class Members' Disputed Deficiency Balances between the date of the Court's entry of the Final Approval Order and the Effective Date.

(b) COAF agrees to take reasonable steps to vacate or mark satisfied any unsatisfied deficiency judgments against any Class Members, excluding any Class Members whose requests for exclusion are approved by the Court in the Final Approval Order, within thirty (30) days after the Effective Date and to provide copies of any such Court filings to Class Counsel.

8.02. IRS Form 1099-C Reporting.

(a) The Parties acknowledge that COAF may have certain obligations under the Internal Revenue Code and related regulations to file IRS Form 1099-C informational returns with the IRS and to furnish copies of the IRS Forms 1099-C to the relevant Borrowers.

(b) The Parties acknowledge and agree that the Class Members' Disputed Deficiency Balances are disputed liabilities that are being compromised and extinguished by way of an accord and satisfaction through the Settlement.

(c) Plaintiffs take the position that under *Zarin v. Commissioner of Internal Revenue*, 916 F.2d 110 (3d Cir. 1990), the Parties' agreement to compromise and extinguish the Class Members' Disputed Deficiency Balances by way of an accord and satisfaction, as set forth in § 8.01(a) hereof, constitutes the resolution of contested liabilities, not the cancellation or discharge of indebtedness, and that the compromise and extinguishment of the Class Members' Disputed Deficiency Balances by way of an accord and satisfaction therefore do not result in taxable income to the Class Members.

(d) COAF takes no position as to whether the compromise and extinguishment of the Class Members' Disputed Deficiency Balances by way of an accord and satisfaction under § 8.01(a) hereof result in taxable income to the Class Members.

(e) COAF shall handle the IRS Form 1099-C reporting with respect to the Class Members' Disputed Deficiency Balances as it would in the ordinary course of business. Within thirty (30) days after filing the Forms 1099-C, COAF shall provide to Class Counsel a list of the Class Members with respect to whom COAF issued the Forms 1099-C and the respective amount of discharged debt reported for each such Class Member. In lieu of providing this list, COAF may furnish to Class Counsel copies of the Forms 1099-C.

(f) Nothing in this Agreement shall impair any Class Member's right to challenge the income tax treatment of the relief he or she receives under the Settlement.

(g) The Parties acknowledge and agree that neither COAF, Defense Counsel, nor Class Counsel has provided tax advice to Plaintiffs, the Class Members, or anyone else with respect to the Settlement.

8.03. Requests for Deletion of Trade Lines.

(a) Within thirty (30) days after the Settlement Administrator provides to COAF a the list of the Class Members who requested exclusion from the Class, in accordance with § 5.07(d) hereof, COAF shall make a written or electronic request to the Credit Reporting Agencies to delete entirely the trade line relating to each Class Member's Auto Loan Account from the Class Member's credit file, excluding any Class Members who submitted requests for exclusion from the Class.

(b) COAF agrees that after the Effective Date it shall not submit any new credit reports to the Credit Reporting Agencies regarding any Class Members' Auto Loan Accounts.

(c) The Parties acknowledge and agree that: (i) the Credit Reporting Agencies are independent entities that are not affiliated with COAF; (ii) COAF cannot and does

not control whether, when, or how the Credit Reporting Agencies will act upon the requests for deletion of the Class Members' trade lines; (iii) COAF is not responsible for ensuring or compelling the Credit Reporting Agencies' action in response to the requests for deletion of the Class Members' trade lines; and (iv) COAF shall not be liable to any Class Member for the failure of a Credit Reporting Agency to delete the Class Member's trade line.

(d) If after a reasonable period of time, one or more of the Credit Reporting Agencies fail(s) to delete the trade line relating to a Class Member's subject Auto Loan, as requested by COAF, Class Counsel may request that COAF resubmit the request to the Credit Reporting Agencies to delete the trade line, and COAF shall resubmit the request for deletion of the trade line within thirty (30) days of such request from Class Counsel. COAF shall not be required to make more than three (3) affirmative requests to the Credit Reporting Agencies to delete the trade line. If, after three (3) affirmative requests by COAF to the Credit Reporting Agencies to delete the trade line, the trade line is still not removed and the Class Member disputes the trade line with one or more of the Credit Reporting Agencies, then COAF agrees to respond to such dispute by requesting that the trade line be deleted.

(e) The Parties acknowledge and agree that COAF shall not be liable to any Class Member under the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.*, the Fair Credit Extension Uniformity Act, 73 Pa. C.S. § 2270.1 *et seq.*, or any similar law for complying with provisions of this § 8.03.

9. RELEASES

9.01. Release by Class Releasers.

(a) Subject to Final Approval, on the Effective Date, the Class Releasers, by operation of this Agreement, do and shall forever release, remise, waive, acquit, and discharge the COAF Releasees from, and covenant not to sue the COAF Releasees in connection with, any

and all Claims the Class Releasors ever had, now have, or in the future may have against the COAF Releasees arising out of or in any way relating to the Action, the Auto Loans and Auto Loan Accounts that are the subject of the Settlement, the Post-Repossession Notices issued by COAF, the ADSA Mercer Auction Sales, the Disputed Deficiency Balances, and COAF's policies, procedures, and practices on or related to the repossession of motor vehicles, the issuance of Post-Repossession Notices, the disposition of repossessed motor vehicles, or the Disputed Deficiency Balances, subject to the exceptions set forth in this § 9.01.

(b) Notwithstanding the foregoing, the release set forth in this § 9.01 does not and shall not be deemed to release, remise, waive, acquit, affect, or discharge any Claims or defenses of the Class Releasors arising from or relating to the enforcement of this Agreement.

9.02. Release by COAF Releasors.

(a) Subject to Final Approval, on the Effective Date, the COAF Releasors, by operation of this Agreement, do and shall forever release, remise, waive, acquit, and discharge the Class Releasees from, and covenant not to sue the Class Releasees in connection with, any and all Claims the COAF Releasors ever had, now have, or in the future may have against the COAF Releasees arising out of or in any way relating to the Action, the Auto Loans and Auto Loan Accounts that are the subject of the Settlement, or the Disputed Deficiency Balances, subject to the exceptions set forth in this § 9.02.

(b) Notwithstanding the foregoing, the release set forth in this § 9.02 does not and shall not be deemed to release, remise, waive, acquit, affect, or discharge any Claims or defenses of the COAF Releasors arising from or relating to the enforcement of this Agreement.

10. DENIAL OF LIABILITY – NO ADMISSIONS

10.01. Plaintiffs, on their own behalf and on behalf of the Class Members, dispute the commercial reasonableness of COAF's practices regarding the issuance of Post-Repossession

Notices to the Class Members and dispute the existence, amount, and validity of any Disputed Deficiency Balances.

10.02. COAF, on the other hand, denies that its practices regarding the issuance of Post-Repossession Notices to the Class Members violated the UCC, denies any liability to Plaintiffs or the Class Members, and asserts that it is entitled to pursue collection of the Disputed Deficiency Balances.

10.03. Neither the Settlement, nor this Agreement, nor any of the Parties' settlement discussions, shall be construed as an admission or concession: (i) by COAF as to any liability to Plaintiffs or the Class Members; or (ii) by Plaintiffs or any Class Member as to the existence, amount, or validity of any Disputed Deficiency Balance or as to any liability to COAF.

10.04. Except as necessary in a proceeding to enforce the terms of this Agreement, this Agreement and any evidence of the Settlement or the Parties' settlement discussions, shall not be offered or received as evidence in any action, proceeding, or suit to establish any liability or admission by any Party.

10.05. The Parties expressly agree and represent that, in the event that the Court does not enter the Preliminary Approval Order or the Final Approval Order, the Final Approval Order is vacated, in whole or in part, as the result of any appeal, preventing the Agreement from becoming final and effective, or this Agreement is terminated in accordance with § 11.01 hereof, no Party will use or attempt to use any conduct or statement of any other Party in connection with this Agreement or any effort to seek approval of the Agreement to affect or prejudice any other Party's rights in any ensuing suit.

10.06. COAF has agreed to resolve the Action through this Agreement, but in the event that the Court does not enter the Preliminary Approval Order or the Final Approval Order, the

Final Approval Order is vacated, in whole or in part, as the result of any appeal, preventing the Agreement from becoming final and effective, or this Agreement is terminated in accordance with § 11.01 hereof, COAF does not waive, but rather expressly reserves, all rights, claims, and defenses, including the Released Claims. To the extent this Agreement is deemed void or Final Approval does not occur, COAF reserves the right to defend against Plaintiffs' claims in the Action on any available legal, factual, or procedural grounds, including without limitation on the grounds that Plaintiffs do not satisfy the requirements for class certification.

10.07. Plaintiffs have agreed to resolve the Action on their own behalf and on behalf of the Class Members through this Agreement, but in the event that the Court does not enter the Preliminary Approval Order or the Final Approval Order, the Final Approval Order is vacated, in whole or in part, as the result of any appeal, preventing the Agreement from becoming final and effective, or this Agreement is terminated in accordance with § 11.01 hereof, the Plaintiffs, on their own behalf and on behalf of the putative class members, do not waive, but rather expressly reserve, all rights, claims, and defenses including the Released Claims. To the extent this Agreement is deemed void or Final Approval does not occur, Plaintiffs reserve the right to pursue their claims in the Action on any available legal, factual, or procedural grounds.

11. TERMINATION OF AGREEMENT

11.01. Excessive Requests for Exclusion.

(a) In the event that 5% or more of the Class Members to whom Class Notice is mailed request exclusion from the Class in accordance with the Class Notice, COAF, in its sole discretion, may elect to terminate this Agreement by providing written notice to Class Counsel within fourteen (14) days after the Settlement Administrator provides to Defense Counsel lists of the Class Members who requested exclusion from the Class as set forth in § 5.07(d).

(b) Neither COAF, Defense Counsel, Plaintiffs, nor Class Counsel shall directly or indirectly solicit or encourage any Class Member to request exclusion from the Class.

11.02. Effect of Termination. In the event that this Agreement terminates without Final Approval, the Action will revert to its status as it existed immediately prior to the execution of this Agreement:

(a) The Settlement Fund, including any interest which has accrued thereon, will be returned to COAF within fourteen (14) days, except for any monies paid or due to the Settlement Administrator for actual costs incurred for Settlement Administration Costs, not to exceed \$100,000;

(b) The Parties shall coordinate to promptly cause the Action to be removed by consent to the District Court or voluntarily dismissed and re-filed in the District Court; and

(c) To the extent that, pursuant to this § 11.02, the Parties must dismiss the Action in the State Court and re-file the Action in the District Court, any statute of limitation or repose applicable to Plaintiffs' and the putative class members' claims in the Action shall be tolled between the dismissal of the Action in the State Court and the re-filing of the Action in the District Court in order to preserve Plaintiffs' and all putative class claims in the Action for the entire Class Period.

12. MISCELLANEOUS PROVISIONS

12.01. Dismissal of Action. Subject to Final Approval, within fourteen (14) days after the Effective Date, Plaintiffs shall file with the Court a stipulation dismissing COAF from the Action with prejudice, leaving the Action open solely for the orderly administration of the Settlement.

12.02. Confidentiality and Non-Disparagement.

(a) The Parties agree that their settlement discussions and the documents exchanged between the Parties in connection with such discussions shall remain strictly confidential and shall not be disclosed to anyone other than the Parties, Class Counsel, and Defense Counsel.

(b) The Parties agree that the Class Members' personally-identifiable information and personal financial information, including the details relating to their Auto Loan Accounts, shall remain confidential and shall not be disclosed to anyone other than the Parties, Class Counsel, Defense Counsel, and the Settlement Administrator, as necessary to administer the Settlement, or for Class Counsel to render legal advice to Class Members.

(c) Plaintiffs and Class Counsel shall not publicly disparage or encourage any Class Member to publicly disparage: (i) COAF; (ii) any of COAF's representatives; (iii) COAF's conduct relating to this Agreement, the Settlement, the Action, the Auto Loans and Auto Loan Accounts that are the subject of the Settlement, the Post-Repossession Notices issued by COAF, the ADESA Mercer Auction Sales, or the Class Members' Deficiency Balances; or (iv) COAF's policies, procedures, and practices related to the repossession of motor vehicles, the issuance of Post-Repossession Notices, the disposition of repossessed motor vehicles or deficiency balances.

12.03. No Restraint on Legal Advice. Nothing in this Agreement is intended to, or shall be construed to, prevent or inhibit Class Counsel from providing legal advice to Class Counsel's clients including Plaintiffs and, after the Preliminary Approval Date, any other Class Members.

12.04. Right to Cure. The Parties, Class Counsel, and Defense Counsel agree to reasonably cooperate to comply with the terms of this Agreement. If any Party fails to comply

with a term or condition of this Agreement, the Party shall have the right to cure such non-compliance within fourteen (14) days after receiving written notice by the other Party. No Party shall commence legal action or seek intervention by the Court with respect to another Party's failure to comply with the terms or conditions of this Agreement without first providing written notice and an opportunity for the other Party to cure the non-compliance(s).

12.05. Notices. Any notices or requests required to be sent under this Agreement shall be sent via hand delivery, overnight delivery (by Federal Express of United Parcel Service), email (with a "read" receipt), or facsimile as follows:

(a) If to Plaintiffs or Class Counsel:

Richard E. Shenkan, Esquire
Shenkan Injury Lawyers, LLC
6550 Lakeshore Street
West Bloomfield, MI 48323
rshenkan@shenkanlaw.com
Fax: (888) 769-1774

(b) If to COAF or Defense Counsel:

Joseph T. Kelleher, Esquire
Stradley Ronon Stevens & Young, LLP
2005 Market Street, Suite 2600
Philadelphia, PA 19103
jkelleher@stradley.com
Fax: (215) 564-8120

12.06. Governing Law and Enforcement. This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania without regard to conflict of laws rules. This Agreement shall be enforced in the State Court or the District Court, and the Parties waive any objection to the venue of any lawsuit, action, or proceeding to enforce this Agreement in the State Court or the District Court.

12.07. Entire Agreement. The terms and conditions set forth in this Agreement constitute the complete and exclusive statement of the agreement between the Parties relating to the subject matter of this Agreement, superseding all previous negotiations and understandings, and may not be contradicted by evidence of any prior or contemporaneous agreement. The Parties further intend that this Agreement, including the exhibits attached hereto, constitutes the complete and exclusive statement of these terms as between them.

12.08. Cooperation. The Parties, Class Counsel, and Defense Counsel shall cooperate with each other and the Settlement Administrator as reasonably necessary to effectuate the Settlement.

12.09. Headings. The headings and sub-headings in this Agreement are for the purpose of convenience only and are not to have legal effect.

12.10. Modification in Writing Only. This Agreement may be altered, amended, modified or waived, in whole or in part, only in a writing signed by the Parties or counsel for the Parties. This Agreement may not be orally amended, altered, modified or waived, in whole or in part.

12.11. No Contra Proferentem. The determination of the terms of, and the drafting of, this Agreement have been by mutual agreement after negotiation, with consideration by and participation of all Parties hereto. Accordingly, this Agreement will be considered neutral and no ambiguity will be construed in favor or against any of the Parties.

12.12. Successors. This Agreement shall be binding upon, and inure to the benefit of, the respective heirs, successors and assigns of the Parties hereto.

12.13. Execution. The Parties may execute this Agreement in counterparts, and execution of counterparts shall have the same force and effect as if all Parties had signed the

same instrument. This Agreement may be executed by facsimile signature, and a facsimile signature will have the same legal effect as an original signature

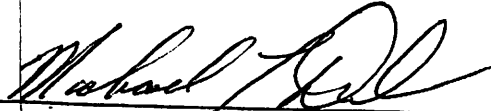
12.14. Waiver. The waiver by one Party of any provision or breach of this Agreement shall not be deemed a waiver of any other provision or breach of this Agreement.

12.15. Retention of Jurisdiction. The Court shall retain jurisdiction over the interpretation, effectuation, and implementation of this Agreement and the approval and enforcement of the Settlement. The Parties and the Settlement Administrator submit to the jurisdiction of the Court in connection with this Agreement and the Settlement.

IN WITNESS WHEREOF, the Parties and their Counsel, being duly authorized, have caused this Agreement to be executed on the dates shown below.

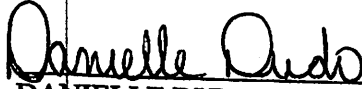
[SIGNATURES ON FOLLOWING PAGE]

EXECUTION COPY



MICHAEL DUDO

Date: 5 Mar 2020



DANIELLE DUDO

Date: 3/5/2020

GWENDOLYN TERRELL

Date: _____

SCOTT CLARK, individually and as Administrator
for the ESTATE OF LISA CLARK

Date: _____

ROBERT ARQUILLO

Date: _____

JAMES DWYER

Date: _____

ANTHONY WAGNER

Date: _____

EXECUTION COPY

MICHAEL DUDO

Date: _____

DANIELLE DUDO

Date: _____

Gwendolyn Terrell

GWENDOLYN TERRELL

Date: 3/6/20

SCOTT CLARK, individually and as Administrator
for the ESTATE OF LISA CLARK

Date: _____

ROBERT ARQUILLO

Date: _____

JAMES DWYER

Date: _____

ANTHONY WAGNER

Date: _____

EXECUTION COPY

MICHAEL DUDO

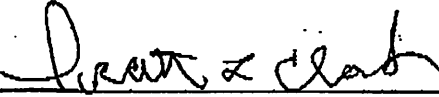
Date: _____

DANIELLE DUDO

Date: _____

GWENDOLYN TERRELL

Date: _____



SCOTT CLARK, individually and as Administrator
for the ESTATE OF LISA CLARK

Date: 3-5-2000

ROBERT ARQUILLO

Date: _____

JAMES DWYER

Date: _____

ANTHONY WAGNER

Date: _____

EXECUTION COPY

MICHAEL DUDO

Date: _____

DANIELLE DUDO


Date: _____

GWENDOLYN TERRELL

Date: _____

**SCOTT CLARK, individually and as Administrator
for the ESTATE OF LISA CLARK**

Date: _____



ROBERT ARQUILLO

Date: 3-5-20

JAMES DWYER

Date: _____

ANTHONY WAGNER

Date: _____

EXECUTION COPY

MICHAEL DUDO

Date: _____

DANIELLE DUDO

Date: _____

GWENDOLYN TERRELL

Date: _____

SCOTT CLARK, individually and as Administrator
for the ESTATE OF LISA CLARK

Date: _____

ROBERT ARQUILLO

Date: _____



JAMES DWYER

Date: MARCH, 06, 2020

ANTHONY WAGNER

Date: _____

EXECUTION COPY

MICHAEL DUDO

Date: _____

DANIELLE DUDO

Date: _____

GWENDOLYN TERRELL

Date: _____

SCOTT CLARK, individually and as Administrator
for the ESTATE OF LISA CLARK


Date: _____

ROBERT ARQUILLO

Date: _____

JAMES DWYER

Date: _____



ANTHONY WAGNER

Date: 3/5/2020

EXECUTION COPY

Constance Wagner
CONSTANCE WAGNER

Date: 3/5/2020

CAPITAL ONE, N.A., d/b/a CAPITAL ONE
AUTO FINANCE

By: _____

Its: _____

Date: _____

SHENKAN INJURY LAWYERS, LLC
(Class Counsel)

By: Richard E. Shenkan, Esquire

Date: _____

STRADLEY RONON STEVENS & YOUNG, LLP
(Defense Counsel)

By: Joseph T. Kelleher, Esquire

Date: _____

EXECUTION COPY

CONSTANCE WAGNER

Date: _____

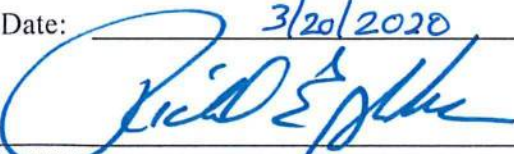


CAPITAL ONE, N.A., d/b/a CAPITAL ONE
AUTO FINANCE

By: Steven W. Braskamp

Its: SUP, FS Servicing

Date: 3/20/2020



SHENKAN INJURY LAWYERS, LLC
(Class Counsel)

By: Richard E. Shenkan, Esquire

Date: 3/6/20



STRADLEY RONON STEVENS & YOUNG, LLP
(Defense Counsel)

By: Joseph T. Kelleher, Esquire

Date: 3/23/2020

EXHIBIT A

[Stipulation of Dismissal of Action in the District Court]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MICHAEL DUDO, et al.	:	Civil Action No. 2:19-cv-00098
	:	
Plaintiffs,	:	Chief Judge Mark R. Hornak
v.	:	
	:	
CAPITAL ONE AUTO FINANCE, a division	:	
of CAPITAL ONE, N.A.,	:	
	:	
Defendant.	:	

STIPULATION OF DISMISSAL

Plaintiffs, Michael Dudo, Danielle Dudo, Gwendolyn Terrell, Scott Clark, individually and as Administrator of the Estate of Lisa Clark, Robert Arquillo, James Dwyer, Anthony Wagner, and Constance Wagner, and Defendant, Capital One Auto Finance, a division of Capital One, N.A., by and through their undersigned counsel, hereby stipulate to dismiss this action without prejudice pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii), with each party to bear its own costs.

Richard Shenkan (PA 79800)
SHENKAN INJURY LAWYERS, LLC
6550 Lakeshore Street
West Bloomfield, MI 48323

Counsel for Plaintiffs

Joseph T. Kelleher (PA 202786)
STRADLEY RONON STEVENS & YOUNG, LLP
2005 Market Street, Suite 2600
Philadelphia, PA 19103

Counsel for Defendant

EXHIBIT B

[Preliminary Approval Order]

IN THE COURT OF COMMON PLEAS FOR
JEFFERSON COUNTY, PENNSYLVANIA

MICHAEL DUDO, et al.,)	CIVIL ACTION
)	
Plaintiffs,)	No. _____
)	
v.)	
)	
CAPITAL ONE, N.A., d/b/a CAPITAL ONE)	
AUTO FINANCE,)	
)	
Defendant)	

ORDER

AND NOW, this ____ day of _____, 2019, upon consideration of Plaintiffs’ Uncontested Motion for Preliminary Settlement Approval, Conditional Certification of Settlement Class, and Approval of Class Settlement Notice (the “**Motion**”), it is hereby **ORDERED** that the Motion is **GRANTED**. It is further **ORDERED** as follows:

1. Summary of Claims. Plaintiffs, Michael Dudo, Danielle Dudo, Gwendolyn Terrell, Scott Clark, individually and as Administrator of the Estate of Lisa Clark, Robert Arquillo, James Dwyer, Anthony Wagner, and Constance Wagner, bring this action against Defendant, Capital One, N.A., d/b/a Capital One Auto Finance (“**COAF**”), asserting claims on their own behalf and on behalf of similarly-situated Pennsylvania consumer auto loan borrowers, arising from COAF’s practices with respect to sending post-repossession notices informing Pennsylvania consumer borrowers of the repossession of their motor vehicles and COAF’s intention to dispose of the repossessed motor vehicles (“**Post-Repossession Notices**”) and disposing of repossessed motor vehicles through sales at an auction facility in Mercer,

Pennsylvania operated by Automobile Dealer Exchange Services of America (“**ADESA Mercer**”). Plaintiffs allege that COAF’s practices with respect to sending Post-Repossession Notices violated the Pennsylvania Uniform Commercial Code, 13 Pa. C.S. § 9601, *et seq.* (the “**UCC**”) and seek statutory damages under 13 Pa. C.S. § 9625(c)(2), on their own behalf and on behalf of the putative class members. Plaintiffs, on their own behalf and on behalf of the putative class members, also dispute the deficiency balances that COAF claims remain due and owing following the sales of Plaintiffs’ and the putative class members’ repossessed motor vehicles (the “**Disputed Deficiency Balances**”). COAF, on the other hand, denies that it violated the UCC, denies any liability to Plaintiffs or any putative class members, and asserts that it is entitled to pursue collection of the Disputed Deficiency Balances.

2. Proposed Settlement. Plaintiffs and COAF (the “**Parties**”) have agreed, subject to approval by the Court, to resolve this action on a class-wide basis in accordance with the terms of an executed Class Action Settlement Agreement and Release (the “**Settlement Agreement**”), a copy of which was attached as **Exhibit 1** to the Motion.³ Pursuant to the Settlement Agreement, in exchange for a release of the claims of Plaintiffs and the Class Members, as set forth in the Settlement Agreement, COAF, without admitting any liability, agrees to: (i) make a gross settlement payment to the Class in the aggregate sum of \$7,500,000.00; (ii) compromise and extinguish the Disputed Deficiency Balances on Plaintiffs’ and the Class Members’ Auto Loans by way of an accord and satisfaction; (iii) vacate or mark satisfied any unsatisfied deficiency judgments against the Class Members; (iv) request that the Credit Reporting Agencies delete the trade lines associated with Plaintiffs’ and the Class Members’ Auto Loans; and (v)

³ Unless defined herein, all capitalized terms in this Order shall have the meanings ascribed to them in the Settlement Agreement. The Settlement Agreement, including its exhibits, is incorporated by reference in this Order.

return to the Class Members the Post-Stay Payments they made toward their Disputed Deficiency Balances on or after March 26, 2018, the last day of the agreed Class Period.

3. **Preliminary Settlement Approval.** The Court preliminarily finds that the Settlement between the Parties, as memorialized in the Settlement Agreement, is fair, adequate, in the best interests of the Class Members, and within the range of reasonableness for preliminary settlement approval. The Court finds that: (a) the Settlement resulted from arm's length negotiations; and (b) the Settlement is sufficiently reasonable to warrant notice of the Settlement to the Class Members and a full hearing on the approval of the Settlement.

4. **Conditional Class Certification.** Pursuant to Pa. R.C.P. No. 1710, the Court conditionally certifies, for settlement purposes only, the following class (the "Class"):

All Borrowers (i) who entered into an Auto Loan; (ii) whose motor vehicle was repossessed by COAF; (iii) whose mailing address or whose co-obligor's mailing address at the time of the repossession of the vehicle, according to COAF's business records, was in Pennsylvania; (iv) to whom COAF sent a Post-Repossession Notice advising that the repossessed vehicle would be sold at a "private sale"; (v) whose repossessed vehicle was offered for sale at ADESA Mercer during the time period between December 31, 2012 and March 26, 2018, inclusive; and (vi) who is not a member of Class 1 in the class action settlement in *Langer v. Capital One Auto Finance*, No. 2:16-cv-06130-HB (E.D. Pa.).

5. **Findings as to the Class.** The Court preliminarily finds, for settlement purposes only, that:

- (a) The Class appears to be so numerous that joinder of all members is impracticable, as required by Pa. R.C.P. No. 1702(1);
- (b) There appear to be questions of law or fact common to the Class for the purposes of determining whether the Settlement should be approved, as required by Pa. R.C.P. No. 1702(2);
- (c) Plaintiffs' claims appear to be typical of the Class claims being resolved through the Settlement, as required by Pa. R.C.P. No. 1702(3);
- (d) Plaintiffs appear to be capable of fairly and adequately protecting the

interests of the Class in connection with the proposed Settlement, as required by Pa. R.C.P. No. 1702(4) and taking into consideration all of the factors set forth in Pa. R.C.P. No. 1709;

- (e) Certifying the Class for settlement purposes provides a fair and efficient method for resolving the parties' controversy in this action, as required by Pa. R.C.P. No. 1702(5);
- (f) Common questions of law and fact appear to predominate over questions affecting only individual Class members, as required by Pa. R.C.P. No. 1708(a)(1);
- (g) Certification of the Class appears to be superior to other available methods for the fair and efficient resolution of the Class claims, taking into consideration all of the factors set forth in Pa. R.C.P. No. 1708(a); and,
- (h) Class Counsel Richard Shenkan is an experienced class action litigator who has competently handled similar class claims in an effective manner thereby satisfying the competency criterium of Pa. R.C.P. No. 1709.

6. Findings as to the Compromise and Extinguishment of the Disputed

Deficiency Balances in an Accord and Satisfaction. Pursuant to the Settlement, COAF shall permanently extinguish the Disputed Deficiency Balances of the Class Members (excluding those Class Members whose requests for exclusion are approved by the Court). The Parties acknowledge and agree, and the Court finds, that the Disputed Deficiency Balances are disputed liabilities, with the Parties having a good faith dispute concerning COAF's right to pursue collection of the Disputed Deficiency Balances. Plaintiffs contend, and the Court finds, that the Parties' agreement to compromise and extinguish the Disputed Deficiency Balances constitutes a bona fide accord and satisfaction under Pennsylvania law, *see King v. Boettcher*, 616 A.2d 57, 62 (Pa. Commw. Ct. 1992) (setting forth elements of an accord and satisfaction), not the cancellation or discharge of indebtedness, and that, under *Zarin v. Commissioner of Internal Revenue*, 916 F.2d 110 (3d Cir. 1990), the compromise and extinguishment of the Disputed Deficiency Balances by way of an accord and satisfaction do not result in taxable income to the Class Members.

7. **Preliminary Appointment of Class Representatives and Class Counsel.** For settlement purposes only, the Court preliminarily appoints Plaintiffs as the class representatives for the Class and preliminarily appoints Richard Shenkan and Shenkan Injury Lawyers, LLC, as class counsel for the Class. The Court preliminarily finds that Plaintiffs and Class Counsel have and will fairly and adequately represent the interests of the Class Members with respect to the Settlement. Plaintiffs and Class Counsel, on behalf of the Class, are authorized to take all appropriate actions required and permitted to be taken by the Settlement Agreement to effectuate its terms.

8. **Appointment of Settlement Administrator.** BrownGreer PLC is appointed as the third-party administrator (the “**Settlement Administrator**”) to assist in the administration of the Settlement and the notification to the Class Members, as set forth in the Settlement Agreement. The Settlement Administrator shall be bound by the terms of this Order, including the confidentiality provisions set forth herein, and subject to the jurisdiction of the Court for the purposes of this action and the Settlement.

9. **Protection of Confidential Information.** The Court finds that it is necessary for COAF to disclose to Class Counsel and the Settlement Administrator confidential class data, including the names, addresses, telephone numbers, email addresses, and Social Security Numbers of the Class Members, as well as information regarding the Class Members’ Auto Loan Accounts (“**Confidential Information**”). Class Counsel and the Settlement Administrator shall: (i) maintain the confidentiality of any Confidential Information disclosed by COAF in connection with the administration of the Settlement; (ii) use any Confidential Information disclosed by COAF in connection with the administration of the Settlement solely for the purposes of administering the Settlement, representing the Class Members in connection with the

Settlement, and not for any other purpose; (iii) refrain from disclosing any Confidential Information disclosed by COAF in connection with the administration of the Settlement to anyone other than Class Counsel, Defense Counsel, the Settlement Administrator, or their respective employees assisting in the administration of the Settlement; and (iv) take reasonable steps to secure and protect from unauthorized disclosure any Confidential Information disclosed by COAF in connection with the administration of the Settlement. Nothing in this Order is intended to, or shall be construed to, prevent or inhibit Class Counsel from providing legal advice to Plaintiffs or the Class Members.

10. Approval of Manner and Form of Proposed Class Notice. The Court approves the proposed Class Notice attached as Exhibit C to the Settlement Agreement and the proposed manner of mailing the Class Notice, as set forth in the Settlement Agreement, finding that the Class Notice fully satisfies the requirements of Due Process, the applicable requirements of the Pennsylvania Rules of Civil Procedure, and Class Counsel’s obligations to Class Members, and constitutes reasonable and sufficient notice to all Class Members, as practicable under the circumstances. The Class Notice shall be sent by the Settlement Administrator to the Class Members by first-class U.S. mail, postage prepaid, not later than forty-five (45) days following the entry of this Order.

11. Qualified Settlement Fund. Class Counsel and/or the Settlement Administrator is/are authorized to establish the Settlement Account, at a federally-insured financial institution to be selected by Class Counsel, which satisfies the requirements to be a “Qualified Settlement Fund” within the meaning of Treasury Regulation Section 1.468B-1, promulgated under Section 468B of the Internal Revenue Code of 1986, as amended. As set forth in the Settlement Agreement, the Settlement Administrator will administer the Settlement Fund and will be the

“Administrator” of this Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3). Class Counsel and/or the Settlement Administrator shall establish the Qualified Settlement Fund in accordance with the terms of the Settlement Agreement.

12. Class Members’ Right to Object to the Settlement. As set forth in the Settlement Agreement and the proposed Class Notice, all Class Members have the right to object to the Settlement, by sending a written objection to the Settlement Administrator in accordance with the Class Notice. As set forth in the Class Notice, written objections to the Settlement must be post-marked no later than forty-five (45) days after the date of the Class Notice. Class Counsel shall file copies of all written objections to the Settlement with Plaintiffs’ motion for final approval of the Settlement in advance of the final approval hearing, redacting the name, address, or other personally identifiable information of the objector.

13. Class Members’ Right to Request Exclusion from the Class. As set forth in the Settlement Agreement and the proposed Class Notice, all Class Members have the right to request exclusion from the Class by sending a written request for exclusion to the Settlement Administrator in accordance with the Class Notice. Any written request for exclusion must: (i) set forth the Class Member’s full name, current address, telephone number and email address, if available, (ii) contain the signatures of any Class Member (or his or her guardian, administrator, or executor) obligated on the Class Member’s Auto Loan, and (iii) state the intent of all signatory(ies) not to participate in the Settlement. As set forth in the Class Notice, written requests for exclusion from the Class must be post-marked no later than forty-five (45) days after the date of the Class Notice. In accordance with Pa. R.C.P. No. 1711(a), Class Members who do not timely exclude themselves from the Class in accordance with the Class Notice shall be bound by the Court’s Order finally approving the Settlement, if final approval is granted. Class

Counsel shall file copies of all written requests for exclusion from the Class with Plaintiffs' motion for final approval of the Settlement in advance of the final approval hearing.

14. Final Approval Hearing. A final approval hearing with respect to the Settlement (the "Final Approval Hearing") shall take place before the Court in Courtroom ____, Jefferson County Courthouse, 200 Main Street, Brookville, PA 15825, on _____, 2020, at _____. At the Final Approval Hearing the Court will consider, *inter alia*: (i) whether the Settlement is fair and reasonable; (ii) whether the Class Counsel Fees are fair and reasonable; (iii) whether the Class Counsel Costs are fair and reasonable; (iv) whether the Settlement Administration Costs are fair and reasonable; (v) whether the Incentive Awards are fair and reasonable; and (vi) whether the Final Approval Order, dismissing the Action on the merits and with prejudice as to the Class Members who did not timely excluded themselves from the Class, should be entered. The Court will also hear and consider any properly lodged objections to the Settlement by any Class Member. Any Class Member may appear and be heard at the Final Approval Hearing, either in person or through counsel retained at the Class Member's expense. The Final Approval Hearing may be postponed, adjourned, or rescheduled by Order of the Court without further notice to the Class Members.

15. Motion for Final Approval. Before the Final Approval Hearing, Plaintiffs shall file a Motion for Final Approval seeking a Final Approval Order in accordance with the Settlement Agreement, approving the Agreement as final, fair, reasonable, adequate, and binding on all Class Members who have not excluded themselves from the Class and ordering that the Settlement Fund be distributed in accordance with the Settlement Agreement and that the additional class relief be conferred to the eligible Class Members in accordance with the Settlement Agreement. The Motion for Final Approval shall include Class Counsel's application

for a common fund award of Class Counsel Fees, Class Counsel Costs, Settlement Administration Costs, and Plaintiffs' Incentive Awards.

16. Stay of Proceedings. All proceedings in this action are stayed pending final approval of the Settlement, except as may be necessary to implement the Settlement or to comply with the terms of the Settlement Agreement.

17. Effect of Termination. If the Settlement Agreement is terminated or is not consummated for any reason, or if Final Approval is not obtained, this Order, including the preliminary approval of the Settlement, the conditional certification of the Class, the preliminary appointment of Plaintiffs as class representatives, and the preliminary appointment of Class Counsel, shall be deemed void and of no effect, except as to the confidentiality provisions set forth in ¶ 9 hereof, and this action shall proceed as though such approval, certification, and appointments never occurred, with the Parties reserving all rights, including with respect to class certification. Further, in such event, neither the Settlement Agreement, the Motion, this Order, nor any documents related thereto shall be referred to or used by any Party to establish liability, damages, or class certification or for any other purpose.

18. Retention of Jurisdiction. The Court retains jurisdiction to consider all further applications arising out of or related to the Settlement Agreement. The Court may approve or modify the Settlement without further notice to the Class Members.

BY THE COURT:

John H. Foradora, J.

EXHIBIT C

[Class Notice]

IN THE COURT OF COMMON PLEAS FOR
JEFFERSON COUNTY, PENNSYLVANIA

Dudo v. Capital One, N.A., d/b/a Capital One Auto Finance
No. [Docket No.]

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

You may be entitled to receive a settlement payment and other valuable benefits in connection with a class action against Capital One, N.A.

***A Court has authorized this Notice.
This is not a solicitation from a lawyer.***

This proposed settlement (the “**Settlement**”), if approved by the Court, will resolve a class action lawsuit against Capital One, N.A., d/b/a Capital One Auto Finance (the “**Bank**”), over whether the Bank sent proper notices to borrowers of their rights after the Bank repossessed their motor vehicles (“**Post-Repossession Notices**”).

The class action lawsuit, *Dudo v. Capital One, N.A., d/b/a Capital One Auto Finance*, No. [Docket No.] (the “**Lawsuit**”), is pending before the Court of Common Pleas for Jefferson County. The Bank denies and disputes the claims asserted in the Lawsuit. The Settlement avoids the costs and risks to the parties associated with proceeding with the Lawsuit.

Under the Settlement the Bank will: (a) provide a gross settlement payment of **\$7,500,000** to be distributed to class members after the payment of administrative costs, class counsel’s legal fees and costs, and incentive payments to the representative plaintiffs; (b) permanently extinguish by way of an accord and satisfaction the disputed deficiency balances that the Bank claims are owed on the class members’ auto loans with the Bank; (c) refund payments that the class members made toward the claimed deficiency balances on or after March 26, 2018; (d) request that the credit reporting agencies delete the credit reporting trade lines associated with the class members’ auto loans with the Bank; and (e) vacate of any deficiency judgments. In exchange, the Bank will be released from liability, as set forth in the Settlement Agreement. The Settlement Agreement can be reviewed at [website address], by reviewing the pleadings at the Jefferson County Prothonotary’s Office, or by requesting a copy from the Settlement Administrator or Class Counsel.

You are receiving this Notice because you may be a class member for purposes of the Settlement.

Your rights may be affected whether or not you act in response to this Notice. Please read this Notice carefully.

Why you have been sent this Notice

According to the Bank’s records, you are a member of the Class.

The relevant time period for the Settlement (the “**Class Period**”) is from December 31, 2012 through March 26, 2018, inclusive.

The **Class** is defined as all Borrowers: (i) who entered into an Auto Loan; (ii) whose motor vehicle was repossessed by the Bank; (iii) whose mailing address or whose co-obligor’s mailing address at the time of the repossession of the vehicle, according to the Bank’s business records, was in Pennsylvania; (iv) to whom the Bank sent a Post-Repossession Notice advising that the repossessed vehicle would be sold at a “private sale”; (v) whose repossessed vehicle was offered for sale at an auction facility in Mercer, Pennsylvania operated by Automobile Dealer Exchange Services of America (“**ADESA Mercer**”) during

the Class Period; and (vi) who is not a member of Class 1 in the class action settlement in *Langer v. Capital One Auto Finance*, No. 2:16-cv-06130-HB (E.D. Pa.) (the “**Langer Action**”).

Brief Summary of Settlement Benefits

The Settlement will provide several benefits to the class members.

Settlement Payments

Class members will receive an estimated net settlement payment of approximately \$1,580 for auto loans with only one borrower, or \$790 per co-borrower for auto loans with two co-borrowers. These amounts are estimates, and the actual cash payments could be smaller or larger than the estimates.

Refund of Certain Deficiency Balance Payments

The Bank has agreed to refund to the class members any payments the class members made toward their deficiency balances after March 26, 2018.

Compromised and Extinguished Deficiency Balances

The balance remaining on an auto loan after the financed vehicle is repossessed and sold by a bank or financing company is called a “deficiency balance.” In connection with the Settlement Agreement, the Bank has agreed to compromise and permanently extinguish the disputed deficiency balances the Bank claims are remaining on the auto loans of the class members by way of an accord and satisfaction.

Request to Delete Credit Reporting

The Bank has agreed to submit requests to the three major credit reporting agencies – Experian, Equifax, and TransUnion – to delete the credit reporting related to the class members’ auto loans.

Your Options

At this time, you are assumed to be a class member who is participating in the Settlement. Therefore, your rights will be affected even if you do nothing. Please read this Notice carefully.

The following is a general summary of the actions you can take and the results of those actions. If you want to have a detailed discussion regarding your specific situation or have other questions or concerns, you may contact Class Counsel at [toll-free number].

<u>YOUR ACTION</u>	<u>RESULT OF THAT ACTION</u>
DO NOTHING	You remain in the Settlement. If the Settlement is approved, you will receive a settlement payment and the other benefits summarized above, and, in exchange, you give up the right to sue the Bank for matters concerning your auto loan and the repossession and sale of your vehicle as set forth in the Settlement Agreement.
ASK TO BE EXCLUDED	You are removed from the Settlement. You will not receive a settlement payment or the other benefits summarized above. However, this is the only option that allows you to pursue your own lawsuit or to participate in any other lawsuit against the Bank concerning your auto loan or the repossession and sale of your vehicle. The deadline for you to submit your request to be excluded is [DATE] , forty-five (45) days after the date of this Notice, so you must act promptly.

<u>YOUR ACTION</u>	<u>RESULT OF THAT ACTION</u>
OBJECT TO SETTLEMENT	If you object to the Settlement, you are still in the Settlement, but you have notified the Court in writing that you don't like the Settlement and why. The deadline for you to submit an objection is [DATE] , forty-five (45) days after the date of this Notice, so you must act promptly.
OBJECT TO ALLOCATION OF SETTLEMENT AND REFUND PAYMENTS (CO-BORROWERS ONLY)	If you are a co-borrower, you may also object to the equal allocation between co-borrowers of the settlement payments and/or the refund of deficiency payments. This is not the same as objecting to the Settlement. The deadline for you to submit an objection to the payment allocation is [DATE] , forty-five (45) days after the date of this Notice, so you must act promptly.
GO TO THE HEARING WHERE THE COURT CONSIDERS WHETHER TO APPROVE THE SETTLEMENT	You are still in the Settlement and get the benefits of the Settlement, if approved by the Court. You do not need to attend the hearing to get the benefits of the Settlement, but you are invited to attend and will be afforded an opportunity to speak in Court about the fairness of the Settlement (should you choose to do so) or, if applicable, why any belatedly submitted objection or request for exclusion should be considered.

WHAT THIS NOTICE CONTAINS

BASIC INFORMATION1

1. Why is there a Notice?.....1

2. What is this Lawsuit About?.....1

3. Why is this a Class Action?1

4. Why is there a Settlement?.....1

WHO IS IN THE SETTLEMENT?1

5. How do I know if I am part of the Settlement?1

6. What if I am not sure whether I am included in the Settlement?2

THE SETTLEMENT BENEFITS2

7. What does the Settlement provide?.....2

8. How much will I receive?2

9. What is the payment refund benefit?3

10. What is the deficiency balance elimination benefit?3

11. What is the credit reporting benefit?3

12. When will I receive my benefits?3

13. What am I giving up and what claims might I still have to pursue if I remain in the Settlement?3

14. Will this affect my taxes?3

15. What happens if this notice is addressed to a class member that has passed away?4

16. What happens if this debt was discharged in or is presently included in a bankruptcy?4

17. What happens if I voluntarily surrendered my vehicle, redeemed my vehicle, or reinstated my account?4

HOW TO GET BENEFITS4

18. Do I need to do anything to get a cash payment, to get the credit reporting benefit, or to have my alleged but disputed deficiency balance eliminated?.....4

EXCLUDING YOURSELF FROM THE SETTLEMENT4

19. How do I exclude myself from the Settlement?.....4

20. If I do not exclude myself, can I sue the Bank for the same thing later?4

21. If I exclude myself, can I still benefit from this Settlement?5

THE LAWYERS REPRESENTING YOU5

22. Do I have a lawyer in the case?.....5

23. How will the lawyers be paid?.....5

OBJECTING TO THE SETTLEMENT OR OBJECTING TO THE DISTRIBUTION/REFUND5

24. How do I tell the Court if I do not like the Settlement?5

25. If I am a co-borrower, can I object to the equal division of the cash payments and/or deficiency payment refunds as between both co-borrowers?6

26. What is the difference between objecting and asking to be excluded?6

THE COURT'S FAIRNESS HEARING6

27. When and where will the Court decide whether to approve the Settlement?6

28. Do I have to attend the fairness hearing?.....6

29. May I speak at the hearing?7

GETTING MORE INFORMATION7

30. How do I get more information?.....7

BASIC INFORMATION

1. Why is there a Notice?

A Court has authorized this Notice because you have a right to know about the proposed Settlement of the 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 proposed Settlement, and your legal rights. If the Court approves the Settlement, and after any appeals are resolved, the Settlement Administrator will make the payments that the Settlement allows.

2. What is this Lawsuit About?

The people who sued the Bank (the “**Plaintiffs**”) have claimed that the Bank violated Pennsylvania law by failing to send its borrowers proper Post-Repossession Notices describing their rights after it repossessed their financed vehicles. The Bank denies that it did anything wrong and has asserted a variety of defenses. The Bank further asserts that it has the right to pursue the collection of the outstanding balances of the borrowers’ loans following the sales of the repossessed vehicles, which are referred to as “deficiency balances.” Plaintiffs dispute that the Bank can pursue collection of the borrowers’ deficiency balances. These issues have not yet been decided by the Court, and, if this Settlement is approved, these issues will not be resolved on the merits.

3. Why is this a Class Action?

In a class action, one or more people called “representative plaintiffs” sue on behalf of themselves and other people with similar claims. All of these people together are the “class” or “class members.” In this Lawsuit, the Plaintiffs, Michael Dudo, Danielle Dudo, Gwendolyn Terrell, Scott Clark, individually and as Administrator of the Estate of Lisa Clark, Robert Arquillo, James Dwyer, Anthony Wagner, and Constance Wagner are the representative plaintiffs. If this Settlement is approved, the Settlement will resolve the claims of all of the class members except for those individuals who exclude themselves from the class. For purposes of this Settlement, you are a class member.

4. Why is there a Settlement?

The Court has not decided in favor of the Plaintiffs or the Bank. Instead, both sides have agreed to a Settlement. By agreeing to this Settlement, both sides avoid the cost and risk of a trial, and the individuals affected may decide whether to participate in the Settlement. Class Counsel recommends the Settlement. Without a settlement, there would continue to be a dispute concerning class certification and disputes concerning liability and damages that would need to be determined at trial. A trial could result in a greater payment to class members, a smaller payment to class members, or no payment to class members, and potentially could result in class members being held liable for the deficiency balances which, though disputed, the Bank claims are owed. This Settlement provides very substantial benefits, including cash settlement payments, the compromise and extinguishment of disputed deficiency balances, the refund of payments made toward the deficiency balances on or after March 26, 2018, and requests to the credit reporting agencies to delete the class members’ trade lines related to their auto loans with the Bank. The Settlement does not mean that the Bank did anything wrong.

WHO IS IN THE SETTLEMENT?

If you received this Notice in the mail, the Bank’s records indicate you are a class member and are included in this Settlement. But even if you did not receive a mailed notice, you may still be a class member and included in this Settlement, as described below.

5. How do I know if I am part of the Settlement?

You are included in the Class if:

- You financed a motor vehicle primarily for personal, family, or household use, pledging the vehicle as collateral;
- Your auto loan was assigned to the Bank;
- Your vehicle that was pledged as collateral was repossessed by or at the direction of the Bank;
- Either you or the co-borrower on your loan had a Pennsylvania mailing address, according to the Bank's records, as of the date of the repossession;
- The Bank sent you a Post-Repossession Notice stating that your repossessed vehicle would be sold at a "private sale";
- Sometime between December 31, 2012 and March 26, 2018, inclusive, your vehicle was offered for sale at ADESA Mercer; and,
- You are not a member of Class 1 in the class action settlement in the Langer Action, a different class action settlement with Capital One which is also being handled by Attorney Richard Shenkan and Shenkan Injury Lawyers, LLC ("**Class Counsel**").

6. What if I am not sure whether I am included in the Settlement?

If you are not sure whether you are included in the Settlement, you may call Class Counsel at [toll free number] with questions. You may also contact the Settlement Administrator below:

CAPITAL ONE CLASS SETTLEMENT
[Settlement Administrator's name]
[mailing address]
[email]
[toll free number]

THE SETTLEMENT BENEFITS

7. What does the Settlement provide?

If the Settlement is approved and becomes final, it will provide, among other things, the following benefits:

- A total cash settlement payment of \$7.5 million (see Question 8), to be paid to the class members after the deduction of Class Counsel's attorneys' fees and costs, incentive awards to the Plaintiffs, and settlement administration costs (see Question 23);
- Refunds of the payments class members made toward their deficiency balances on or after March 26, 2018 (see Question 9);
- The compromise and extinguishment of the class members' disputed deficiency balances; (see Question 10); and
- Requests to the credit reporting agencies to delete the credit trade lines associated with the class members' auto loans with the Bank (see Question 11).

More details are in the Settlement Agreement, which is available to be reviewed at [website address] or by accessing the record for this lawsuit at the Jefferson County Prothonotary's Office, located at the Jefferson County Courthouse, 200 Main Street, 2nd Floor, Brookville, PA 15825.

8. How much will I receive?

The Bank has agreed to pay a settlement amount of \$7,500,000. After deducting Class Counsel's attorneys' fees and costs, the settlement administration costs, and incentive awards to the Plaintiffs, the

net settlement amount will be paid to the class members in equal payments for each auto loan at issue, with estimated net settlement payments of approximately \$1,580 each for auto loans with only one borrower, and estimated net settlement payments of \$790 per co-borrower for auto loans with two co-borrowers. These amounts are estimates, and the actual cash payments could be smaller or larger than these estimates. If you had more than one vehicle repossessed by the Bank, you may be entitled to such a payment for each repossessed vehicle. If the same vehicle was repossessed more than once, you will receive one payment.

9. What is the payment refund benefit?

If the Bank received any payments made on or after March 26, 2018 to a deficiency balance on your auto loan, the Bank has agreed to refund you 100% of such payments.

10. What is the deficiency balance elimination benefit?

If the Bank sold your repossessed vehicle and the amount of the sale did not cover the amount that you purportedly owed on the loan, then you may owe the Bank a deficiency balance.

Example: At the time the Bank sold Amanda’s repossessed vehicle, she owed \$10,000 on her loan. The Bank incurred \$250 to repossess her vehicle and \$250 to sell the vehicle. Amanda’s vehicle sold for \$6,000 at auction. Amanda’s deficiency balance would be \$4,500.

<i>Calculation</i>			
[(\$10,000 + \$250 + \$250)	-	(\$6,000)]	= \$4,500
Total amount owed by Amanda		Amount from vehicle sale	Deficiency Balance

Plaintiffs dispute that any deficiency balances are owed by any class members. As part of the Settlement, the Bank agrees to compromise and extinguish all of the class members’ disputed deficiency balances by way of an accord and satisfaction. It is critical for you to understand that if you exclude yourself from the Settlement, you may owe this disputed deficiency balance.

11. What is the credit reporting benefit?

As part of the Settlement, the Bank will ask Experian, Equifax, and TransUnion to delete the credit trade line associated with your auto loan with the Bank. It is likely that your credit score will increase as a result of this benefit unless you filed for bankruptcy; however, there is no guarantee as to this positive effect.

12. When will I receive my benefits?

Class members will receive their payments and other benefits after the Court grants final approval of the Settlement (see Question 27) and after any appeals are resolved. If there are appeals, resolving them can take time. Please be patient.

13. What am I giving up and what claims might I still have to pursue if I remain in the Settlement?

Unless you exclude yourself from the Settlement, you will remain in the Settlement and you will give up your right to sue (or continue a lawsuit against) the Bank for the same type of claims as are being resolved by this Settlement. The claims which are released are set forth in the Settlement Agreement. Please pay particular attention to Section 9. The full Settlement Agreement is available at [website address].

14. Will this affect my taxes?

We cannot give you a definitive answer in this Notice. You should consult a tax professional to provide you with this answer because all situations are unique. Because there is a cash benefit, you may need to pay taxes on this part of the settlement. The Bank will send IRS Forms 1099-C as a result of the

compromise and extinguishment of the class members' disputed deficiency balances. You should ask your tax professional about this aspect of the settlement as well.

You are urged to contact a tax professional regarding the benefits of this Settlement for your particular circumstances and provide to your tax professional a copy of the Settlement Agreement and the Court's Preliminary Approval Order which describe the benefits of the Settlement in detail. Copies of these documents are available at [website address].

15. What happens if this notice is addressed to a class member that has passed away?

If proper documentation of the death of the class member is promptly sent to the Settlement Administrator, a check will be issued (or re-issued) to the class member's estate or next of kin, as may be applicable. If the class member is deceased, please send a copy of the death certificate to the Settlement Administrator at the address listed in Question 6 and contact the Settlement Administrator at [toll-free number] or Class Counsel at [toll-free number] for more information.

16. What happens if this debt was discharged in or is presently included in a bankruptcy?

If the loan obligation was discharged in bankruptcy (yours and/or your co-borrower's bankruptcy) or is presently part of a bankruptcy proceeding, then you should consult a bankruptcy attorney regarding this matter. You may have an obligation to notify the bankruptcy trustee regarding the cash you are expected to receive.

17. What happens if I voluntarily surrendered my vehicle?

Because the lawsuit challenges the content of the Post-Repossession Notices and is not based on actual harm you may have suffered, you will still have the right to share in all of the monetary and equitable relief, including the request for deletion of your credit trade line.

HOW TO GET BENEFITS

18. Do I need to do anything to get a cash payment, to get the credit reporting benefit, or to have my alleged but disputed deficiency balance eliminated?

No. Assuming that the Court approves the Settlement, you do not need to do anything further in order to remain a part of the Settlement and to receive a settlement payment, the credit reporting benefit, and the extinguishment of your compromised deficiency balance.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want a settlement payment or the other significant benefits from this Settlement, and you instead want to keep the right to sue or continue to sue the Bank on your own about the issues in this case, then you must take steps to exclude yourself from (or "opt out" of) the Settlement.

19. How do I exclude myself from the Settlement?

In order to exclude yourself, send a letter that clearly states that you want to be excluded from the Settlement. Be sure to include your name, address, email (if available), telephone number, and signature. You must send a written exclusion request by e-mail to [email address] or by mail to [mailing address]. The exclusion request must be postmarked or sent with a transmittal date no later than **[DATE]**, forty-five (45) days after the date of this Notice. The phone number for the Settlement Administrator is [toll-free number].

20. If I do not exclude myself, can I sue the Bank for the same thing later?

No. Unless you exclude yourself, you give up any right to sue the Bank for the claims that this Settlement resolves on your behalf. If you have a pending lawsuit, speak to your lawyer in that case immediately because your legal rights may be adversely affected by this Settlement. You must exclude yourself from

this Settlement in order to start or to continue your own lawsuit for the same or similar claims. Your rights may be affected by this Settlement.

21. If I exclude myself, can I still benefit from this Settlement?

No. If you exclude yourself, you will not receive any money from this lawsuit or Settlement, the compromise and extinguishment of your deficiency balance, or any other benefit in connection with the Settlement.

THE LAWYERS REPRESENTING YOU

22. Do I have a lawyer in the case?

Yes. The Court has approved Richard Shenkan and the law firm of Shenkan Injury Lawyers, LLC. to represent you and other class members. This lawyer and law firm are called "Class Counsel." You will not be charged individually for this legal service; rather, Class Counsel's fees will be paid from the Settlement Fund with the approval of the Court. If you want to be represented by your own lawyer, you may hire one at your own expense. Class Counsel's phone number is [toll-free number]. You can speak with Class Counsel at no charge about this case.

23. How will the lawyers be paid?

Class Counsel will ask the Court for attorneys' fees of up to \$3,000,000 and expenses of up to \$150,000, including settlement administration costs. An attorneys' fee in this amount represents approximately [percentage]% of the value of the aggregate benefit including the cash payment and the compromise and extinguishment of the disputed deficiency balances. The value of the requests for credit tradeline removal will vary based upon each class member; however, these are significant additional benefits. The fees and expenses awarded by the Court will be paid out of the \$7.5 million settlement fund. Class Counsel will also request special service payments of no more than \$15,000 each for the Representative Plaintiffs for their services as class representatives for the Class. These service payments also will be paid from the settlement fund. The Court could decide to award less than the amounts requested for fees, costs, and service payments.

OBJECTING TO THE SETTLEMENT OR OBJECTING TO THE DISTRIBUTION/REFUND

24. How do I tell the Court if I do not like the Settlement?

If you are a class member, you can object to the Settlement if you do not like any part of it. You should state why you object and why you think the Court should not approve the Settlement. The Court will consider your views. To do so, you must timely send a written communication by e-mail to [email address] or by mail to [mailing address]. The objection must be postmarked or sent with a transmittal date no later than **[DATE]**, forty-five (45) days after the date of this Notice. The letter must include the following:

- A statement that you object to the Settlement;
- Your full name, address, email address (if available), and telephone number;
- The specific reasons why you object to the Settlement; and,
- Your signature.

The phone number for the Settlement Administrator is [toll-free number].

25. If I am a co-borrower, can I object to the equal division of the cash payments and/or deficiency payment refunds as between both co-borrowers?

Yes. To do so, you must timely send a written communication by e-mail to [email address] or by mail to [mailing address]. The objection must be postmarked or sent with a transmittal date no later than [DATE], forty-five (45) days after the date of this Notice. The letter must include the following:

- A statement that you are a co-borrower and object to an even split of the cash payment and/or deficiency payment refund;
- Your full name, address, email address (if available), and telephone number;
- The specific reasons why you object to an even split of the refund monies (e.g., “I paid all of the loan payments myself.”); and,
- Your signature and the signature of your co-borrower.

The phone number for the Settlement Administrator is [toll-free number].

26. What is the difference between objecting and asking to be excluded?

Objecting to the Settlement is informing the Court that you do not like something about the Settlement, and that you, for a clearly stated reason, do not want the Settlement to be approved or that you object to a particular part of the Settlement. You can object only if you do not exclude yourself from the Settlement. Excluding yourself is informing the Court that you do not want to be part of the Settlement. If you exclude yourself, you have no basis to object, because the Settlement no longer affects you.

THE COURT’S FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the Settlement. You may attend and you may ask to speak, but you do not have to do so.

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

The Court will hold a fairness hearing on [DATE] at [TIME] in Courtroom [Number], Jefferson County Courthouse, 200 Main Street, Brookville, PA 15825. The hearing may be moved to a different date or time without additional notice (including a sooner date), so if you intend to attend the hearing, it is a good idea to confirm in advance that the date and time of the hearing has not changed. You may confirm this information by checking [website address] or calling [toll-free number]. At this fairness hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them and will listen to class members who ask to speak at the hearing. Similarly, if you are a co-borrower and object to the even split of the cash payment and/or the deficiency payment refund as between both co-borrowers, the Court will decide these matters as well at the hearing, absent extenuating circumstances, unless you are able to resolve your differences amongst you and your co-borrower with the assistance of Class Counsel. The Court may also decide several other aspects of the Settlement including how much to pay the Representative Plaintiffs for their service awards and Class Counsel for his services and expenses. Following the hearing, the Court will decide whether to approve the Settlement. We do not know how long the Court’s decision will take. Please be patient.

28. Do I have to attend the fairness hearing?

No. Class Counsel will answer questions the Court may have, but you are welcome to come at your expense. If you file an objection, you do not have to come to Court to talk about it, but you may. As long as you timely filed your written objection the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

29. May I speak at the hearing?

Yes, any class member that has not excluded himself/herself from the Settlement may speak at the fairness hearing.

GETTING MORE INFORMATION

30. How do I get more information?

This notice briefly summarizes the key aspects of the proposed Settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement and other important case documents at [website address]. You may also examine these documents in person during regular office hours at the Jefferson County Prothonotary's Office, located at the Jefferson County Courthouse, 200 Main Street, 2nd Floor, Brookville, PA 15825. You may contact Class Counsel with questions at [toll-free number] or rshenkan@shenkanlaw.com. You may also contact the Settlement Administrator with any questions at [toll-free number]. You should not call the Bank or the Court.

EXHIBIT D

[Form Explanatory Letter for Settlement Payments]

[PRINTED ON CLASS COUNSEL'S LETTERHEAD]

[Date]

RE: Your Class Action Settlement
***Dudo v. Capital One, N.A., d/b/a Capital One Auto Finance*, No. [Docket No.]**
Court of Common Pleas for Jefferson County, Pennsylvania

Dear Class Member:

The Court has appointed my law firm to represent you, as a class member, with respect to the class action settlement with Capital One, N.A., d/b/a Capital One Auto Finance (the “**Bank**”) in the above-referenced consumer class action.

Settlement Payment: Please be advised that as part of this settlement, you are entitled to receive a cash payment. Accordingly, enclosed with this letter is a settlement check payable to you. Please promptly cash or deposit the check **right away**.

If you do not cash the check, the Court has ordered that all unpaid monies be paid to a non-profit organization, so take immediate steps to cash it.

Credit Reporting Benefit: As part of the settlement, the Bank also has agreed to submit requests to the major credit reporting agencies, Experian, Equifax, and TransUnion, to delete the trade line associated with your auto loan with the Bank. The removal will likely take approximately sixty (60) days. If you need assistance accessing your credit report, you can contact me at [toll-free number].

Other Important Information: To learn more about the benefits of this settlement that may apply to you, please visit [website address], which contains important information regarding this matter.

If you have any questions or concerns of any kind regarding this class action settlement, please feel free to contact me at [toll-free number] or the Settlement Administrator at [toll-free number]. Thank you very much for your attention to this matter.

Sincerely,
SHENKAN INJURY LAWYERS, LLC.

Richard Shenkan

Enclosure

EXHIBIT E

[Form Explanatory Letter for Post-Stay Return Payments]

[PRINTED ON CLASS COUNSEL'S LETTERHEAD]

[Date]

RE: Your Class Action Settlement
***Dudo v. Capital One, N.A., d/b/a Capital One Auto Finance*, No. [Docket No.]**
Court of Common Pleas for Jefferson County, Pennsylvania

Dear Class Member:

The Court has appointed my law firm to represent you, as a class member, with respect to the class action settlement with Capital One, N.A., d/b/a Capital One Auto Finance (the “**Bank**”) in the above-referenced consumer class action.

Your Refund: The Bank has agreed to refund to the class members any payments they made toward the deficiency balances for their auto loan accounts with the Bank on or after March 26, 2018, the end of the Class Period in the above-referenced consumer class action. The Bank’s records reflect that you made payments toward the deficiency balance for your auto loan account with the Bank on or after March 26, 2018. Accordingly, enclosed with this letter is a refund check for the total amount of such payments. If you had a co-borrower on the account, then the total amount of the refund is evenly split between each co-borrower. Please promptly cash or deposit the check.

If you do not cash the check, the Court has ordered that all unpaid monies be paid to a non-profit organization, so take immediate steps to cash it.

Credit Reporting Benefit: As part of the settlement, the Bank also has agreed to submit requests to the major credit reporting agencies, Experian, Equifax, and TransUnion, to delete the trade line associated with your auto loan with the Bank. The removal will likely take approximately sixty (60) days. If you need assistance accessing your credit report, you can contact me at [toll-free number].

Other Important Information: To learn more about the benefits of this settlement that may apply to you, please visit [website address], which contains important information regarding this matter.

If you have any questions or concerns of any kind regarding this class action settlement, please feel free to contact me at [toll-free number] or the Settlement Administrator at [toll-free number]. Thank you very much for your attention to this matter.

Sincerely,
SHENKAN INJURY LAWYERS, LLC.

Richard Shenkan

Enclosure

EXHIBIT F

[Form Explanatory Letter for Re-Issued Settlement Payments]

[PRINTED ON CLASS COUNSEL'S LETTERHEAD]

[Date]

RE: Your Class Action Settlement
***Dudo v. Capital One, N.A., d/b/a Capital One Auto Finance*, No. [Docket No.]**
Court of Common Pleas for Jefferson County, Pennsylvania

Dear Class Member:

The Court has appointed my law firm to represent you, as a class member, with respect to the class action settlement with Capital One, N.A., d/b/a Capital One Auto Finance (the “**Bank**”) in the above-referenced consumer class action.

Settlement Payment: Please be advised that as part of this settlement, you are entitled to receive a cash payment. A settlement check was previously mailed to you, but you did not cash or deposit the settlement check. Accordingly, enclosed with this letter is a re-issued settlement check payable to you. Please promptly cash or deposit the check.

If you do not cash the check, the Court has ordered that all unpaid monies be paid to a non-profit organization, so take immediate steps to cash it.

Credit Reporting Benefit: As part of the settlement, the Bank also has agreed to submit requests to the major credit reporting agencies, Experian, Equifax, and TransUnion, to delete the trade line associated with your auto loan with the Bank. The removal will likely take approximately sixty (60) days. If you need assistance accessing your credit report, you can contact me at [toll-free number].

Other Important Information: To learn more about the benefits of this settlement that may apply to you, please visit [website address], which contains important information regarding this matter.

If you have any questions or concerns of any kind regarding this class action settlement, please feel free to contact me at [toll-free number] or the Settlement Administrator at [toll-free number]. Thank you very much for your attention to this matter.

Sincerely,
SHENKAN INJURY LAWYERS, LLC.

Richard Shenkan

Enclosure