

IN THE COURT OF COMMON PLEAS FOR
JEFFERSON COUNTY, PENNSYLVANIA

Dudo v. Capital One, N.A., d/b/a Capital One Auto Finance
No. 296-2020-CD

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. 296-2020-CD (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 www.RepoClass.com, 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 888-655-1989 or 412-716-5800.

<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 June 29, 2020 , 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 June 29, 2020 , 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 June 29, 2020 , 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.

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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 888-655-1989 or 412-716-5800 with questions. You may also contact the Settlement Administrator below:

CAPITAL ONE REPO SETTLEMENT

BrownGreer, PLC
P.O. Box 25431
Richmond, Virginia 23260
PHONE: 888-660-1378
FAX: 804-655-6585
EMAIL: Questions@RepoClass.com

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 www.RepoClass.com 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.

Calculation

[(\$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 www.RepoClass.com.

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 www.RepoClass.com.

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 888-660-1378 or Class Counsel at 888-655-1989 or 412-716-5800 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 to the Settlement Administrator using any of the following methods:

MAIL: CAPITAL ONE REPO SETTLEMENT
BrownGreer, PLC
P.O. Box 25431
Richmond, Virginia 23260

FAX: 804-655-6585

E-MAIL: Questions@RepoClass.com

The exclusion request must be postmarked or sent with a transmittal date no later than **June 29, 2020**, forty-five (45) days after the date of this Notice. The phone number for the Settlement Administrator is 888-660-1378.

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. You can contact Class Counsel by phone at 888-655-1989 or 412-716-5800 or by e-mail at rshenkan@shenkanlaw.com. 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 13% of the value of the aggregate benefit of 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 to the Settlement Administrator using any of the following methods:

MAIL: CAPITAL ONE REPO SETTLEMENT
BrownGreer, PLC
P.O. Box 25431
Richmond, Virginia 23260

FAX: 804-655-6585

E-MAIL: Questions@RepoClass.com

The objection must be postmarked or sent with a transmittal date no later than **June 29, 2020**, 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 888-660-1378.

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 to the Settlement Administrator using any of the following methods:

MAIL: CAPITAL ONE REPO SETTLEMENT
BrownGreer, PLC
P.O. Box 25431
Richmond, Virginia 23260

FAX: 804-655-6585

E-MAIL: Questions@RepoClass.com

The objection must be postmarked or sent with a transmittal date no later than **June 29, 2020**, 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 888-660-1378.

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, where, and how will the Court decide whether to approve the Settlement?

The Court will hold a fairness hearing on **July 6, 2020 at 3:00 p.m.** in Courtroom A310, 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. Additionally, in light of the restrictions necessitated by the COVID-19 pandemic, the Court, in its discretion, may change the mode or manner of the hearing (e.g., holding the hearing via Internet videoconference or telephone conference). You may confirm this information by checking www.RepoClass.com or calling 888-660-1378. 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 www.RepoClass.com. 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 888-655-1989 or 412-716-5800 or rshenkan@shenkanlaw.com. You may also contact the Settlement Administrator with any questions at 888-660-1378. You should not call the Bank or the Court.