

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

JOHN MEEHAN, <i>on behalf of himself and all</i>)	
<i>similarly situated individuals,</i>)	Civil Action No. 1:22-cv-1073
)	(MSN/JFA)
Plaintiff,)	
)	
v.)	
)	
CAPITAL ONE, N.A.,)	
)	
Defendant.)	

**PLAINTIFF’S MEMORANDUM IN SUPPORT OF
MOTION FOR ATTORNEYS’ FEES, COSTS, AND SERVICE AWARD**

Under Federal Rule of Civil Procedure 23(h) and this Court’s May 17, 2023 Preliminary Approval Order (ECF No. 27), this motion seeks a \$10,000.00 service award for the Plaintiff, and \$500,000.00 to Class Counsel for attorneys’ fees and costs. As detailed below, these amounts are fair and reasonable because of the substantial relief obtained for class members and to compensate Class Counsel for the risks taken and resources invested in this case.

INTRODUCTION

Over a year ago, Plaintiff filed this Class Action after Defendant Capital One, N.A. (“Capital One”) held him liable for several unauthorized debit card transactions that were performed by another without Plaintiff’s authorization. Plaintiff alleged that, as to him and the class, Capital One failed to investigate disputed transactions on a transaction-by-transaction basis and then failed to apprise him of its reasons for denying his disputes. Plaintiff alleged that Capital One violated the Electronic Fund Transfer Act (“EFTA”) by: (1) failing to investigate his disputes of unauthorized debit card use, in violation of 15 U.S.C. § 1693f(a); (2) holding him liable for transactions involving unauthorized debit card use, in violation of 15 U.S.C. § 1693g; and (3)

failing to provide him with sufficient notice explaining its reasons for denying his EFTA disputes, in violation of 15 U.S.C. § 1693f(d).

After months of extensive litigation, Plaintiff and Capital One reached a settlement that provides significant relief to the class members, including: (1) an automatic payment of \$500,000 to be shared on a *pro rata* basis by 3,425 class members; and (2) the implementation of a claims process that allows class members to recover actual damages on top of the automatic payment. As of October 30, 2023, class members had submitted 435 timely claims, of which 419 are valid.¹ This represents a total of 7,587 disputed transactions valued at \$609,434.38.² Thus, if approved as requested, the settlement will provide the following total consideration:

Description	Amount
Automatic Payment Shared Pro Rata Between Class Members	\$500,000
Claims Process Payments to Class Members with Timely Claims	\$609,434.38
Attorney's Fees and Costs ³	\$500,000
Estimated Costs of Class Notice and Administration	\$65,000
Service Award	\$10,000
TOTAL:	\$1,684,434.38

¹ There have also been 10 late filed claims that Class Counsel is working with Capital One to discuss an agreed approach to handle these. These late filed claims have a total of 93 disputed transactions representing a disputed amount of \$5,050.01.

² Capital One is still in the process of reviewing the claim forms to make sure the transactions were not authorized. This number may decrease if Capital One undertakes the process in the Settlement Agreement Section 4.3.1.2.3. to deny claims.

³ In a traditional common fund settlement, attorney's fees and costs, class notice and administration, and the service award would all be deducted from the common fund. Here, Plaintiff negotiated these amounts separately to maximize the class members' recovery. The Court should still count these amounts as consideration to the class members, as they are a benefit that the class is receiving as part of the settlement.

This is an excellent financial result for class members, who would only be able to recover \$500,000.00 in statutory damages under EFTA, as well as their actual damages (much of which will be paid to those who submitted claims). This significant consideration was achieved despite Capital One's potentially viable defenses to the litigation, which posed risk to litigating this case at class certification, summary judgment, or trial.

The substantial relief afforded by the settlement would not have been possible without: (i) Plaintiff's willingness to stand up for other consumers who were subject to Capital One's dispute resolution process; and (ii) Class Counsel's skill, creativity, hard work, and willingness to take on the long-term risks of litigating this case. As detailed below, the parties conducted significant work before agreeing to settle, including written discovery, document productions, depositions, and extensive meet and confers. As a result, the parties were fully informed when they engaged in settlement discussions. Given the complexities of the case, those settlement discussions lasted many months as the parties worked together to determine the potential class list. After this process, the parties attended an in-person mediation in Philadelphia, Pennsylvania before the Honorable Diane M. Welsh (Ret.).

The Court should approve the requested service award and fee because these will both be paid separately by Capital One, and the Class will not recover more if the requested service award and fee are not approved. Further, while significant, the requested service award and attorneys' fees are consistent—perhaps on the low end—of similar amounts approved in this Court or the Fourth Circuit. For example, in two consumer class actions, this Court has awarded \$20,000 service awards to class representatives who, like Plaintiff, remained engaged in a class-action case for several years, participated in discovery, and remained in regular communication with counsel. *Gibbs v. Stinson*, No. 3:18-cv-676, ECF No. 346 ¶ 20 (E.D. Va. Aug. 16, 2022); *Soutter v. Equifax*

Info. Servs., LLC, No. 3:10-cv-107, ECF No. 247 ¶ 11 (E.D. Va. Apr. 5, 2016). Likewise, the requested attorneys' fees are fair and reasonable under multiple standards. For starters, Class Counsel's fee request of \$500,000—when considered against the total \$1,684,434.38 settlement consideration, represents a 29.68 percent fee request. This percentage is at the low range of the 25-to-40-percent range that courts within the Fourth Circuit have held appropriate. It is also within the appropriate range found by the recent comprehensive study of attorneys' fees in class action cases.⁴ Beyond this, a lodestar cross-check further confirms that the requested fee—which results in 1.67 multiplier—is fair and reasonable. *See, e.g., Skochin v. Genworth Fin., Inc.*, No. 3:19-cv-49, 2020 WL 6708388 (E.D. Va. Nov. 13, 2020) (finding 9.05 multiplier not unreasonable in lodestar cross-check analysis).

Class Counsel took this case on a contingency basis, which put them at significant risk if the litigation failed. They should be compensated for accepting and overcoming this risk. Plaintiff also seeks a reasonable service award to compensate him for his commitment to this case and the significant work that he has completed, including his willingness to have class notices sent to thousands of consumers bearing his name. Plaintiff, therefore, requests that the Court grant his Motion and award \$500,000 in attorneys' fees and costs and a \$10,000 service award to Plaintiff. Capital One does not oppose this request.

BACKGROUND

This lawsuit was filed on September 21, 2022 and challenged Capital One's dispute resolution procedures under the EFTA. Plaintiff alleged that Capital One's conduct violated three cornerstone provisions of the EFTA: (i) 15 U.S.C. § 1693f(a) by failing to individually investigate

⁴ *See, e.g., 4 Newberg on Class Actions* § 14:6 (4th ed.) (“[E]mpirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in the class actions average around one-third of the recovery.”).

each disputed transaction; (ii) 15 U.S.C. § 1693g as to any transactions subject to the § 1693f(a) claim because those disputes were denied without considering authorization; and (iii) 15 U.S.C. § 1693f(d) by sending denial letters that did not comply with the EFTA's requirement that Capital One provide "an explanation of its findings."

This case was vigorously litigated. After Capital One answered, the parties exchanged discovery requests and scheduled a settlement conference before Magistrate Judge John Anderson. Capital One, however, later made its participation in that settlement conference contingent on Plaintiff agreeing to discuss settlement on an individual basis only, a stipulation to which Plaintiff's counsel did not agree. The parties then responded to the other's discovery and engaged in several meet and confers. During those meet and confers, the parties developed a detailed ESI protocol, which resulted in several more document productions. Plaintiff's counsel then deposed two Capital One fact witnesses: (1) the Capital One employee who decided Plaintiff's disputes; and (2) the Capital One employee who considered Plaintiff's rebuttal (*i.e.*, follow-up dispute). After those depositions, Plaintiff prepared an Amended Class Action Complaint. After Plaintiff sought leave from Capital One to file that amended pleading, the parties agreed to appear before the Honorable Diane M. Welsh (Ret.) for a settlement conference in Philadelphia, Pennsylvania, at which time the agreement to settle was reached after a full-day in-person session involving several attorneys from both parties and multiple representatives of Capital One.

This extensive work was necessary to obtain the meaningful relief provided to class members. And considering Capital One's strong belief in the merit of its defenses, this settlement outcome is a very good one. Overcoming Capital One's arguments would have taken many more months (and years on appeal), and would have incurred significant fees and costs. The settlement

is significant because it avoids the risk presented by those defenses, conserves the resources of all parties, and provides the class members with significant relief.

ARGUMENT

A. There have been no class member or governmental objections to date.

The class notice process is unfinished because objections can be submitted until November 15, 2023. Class notice, however, has been sent to the class members, and neither Class Counsel nor the Settlement Administrator have received any objections to the settlement or the proposed fees and service awards, which were listed in the class notice. And despite delivery of the required CAFA notice to all state attorneys general and the appropriate federal agencies, not one has reached out to Class Counsel to express concern.⁵ “Such a lack of opposition . . . strongly supports a finding of adequacy, for ‘[t]he attitude of the members of the Class, as expressed directly or by failure to object, after notice to the settlement is a proper consideration for the trial court.’” *In re MicroStrategy, Inc. Sec. Litig.*, 148 F. Supp. 2d 654, 668 (E.D. Va. 2021) (quoting *Flinn v. FMC Corp.*, 528 F.2d 1169, 1173 (4th Cir. 1975)). The lack of objection is particularly dispositive to the reasonableness of service awards and attorney’s fees. *Berry v. Schulman*, 807 F.3d 600, 618-619 (4th Cir. 2015) (affirming fee in part because of lack of objections).

B. Plaintiff’s service award is appropriate.

John Meehan requests—and Capital One does not oppose—an award of \$10,000 for his participation and service to the Class. Most importantly, this amount would be paid separately by Capital One and would not reduce Class Member recovery if approved. The Court should approve the requested award because Plaintiff took a very active role in the litigation and remained engaged throughout the lengthy litigation process. He was committed—at all points of the process—to

⁵ If an objection is made on or before the November 15, 2023 objection deadline, Class Counsel will file a separate response.

litigate this case as a class action and to obtain relief for the class members. (Declaration of Kristi C. Kelly (“Kelly Decl.”) ¶¶ 35-37, attached as **Exhibit 1**.) To that end, Plaintiff responded to lengthy written discovery, he regularly communicated with Class Counsel about the litigation, he made himself available during the mediation to answer questions from Class Counsel, and he thoroughly reviewed and approved the settlement.

Courts including this one, have approved similar, and even higher, service awards than the \$10,000 award sought here when the service award would reduce the Class Member recovery. For example, this Court has awarded \$20,000 service awards to class representatives who, like Plaintiff, remained engaged in a class-action case, participated in discovery, and remained in regular communication with counsel. *Gibbs v. Stinson*, No. 3:18-cv-676, ECF No. 346 ¶ 20 (E.D. Va. Aug. 16, 2022); *Soutter v. Equifax Info. Servs., LLC*, No. 3:10-cv-107, ECF No. 247 ¶ 11 (E.D. Va. Apr. 5, 2016).⁶ This Court routinely awards service awards in consumer class actions⁷ and should do so here, as it was amply earned.

⁶ See also *Loudermilk Servs., Inc. v. Marathon Petroleum Co. LLC*, 623 F. Supp. 2d 713, 727 (S.D. W. Va. 2009) (awarding each of the five class representatives a \$25,000 service award); *Temp. Servs., Inc. v. Am. Int’l Grp., Inc.*, No. 3:08-cv-271, 2012 WL 4061537, at *6 (D.S.C. Sept. 14, 2012) (approving \$20,000 service awards to each of the two class representatives); *In re Lorazepam & Clorazepate Antitrust Litig.*, 205 F.R.D. 369, 400 (D.D.C. 2002) (approving a service award of \$25,000 to each of the three class representatives in the case); *Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 299–300 (N.D. Cal. 1995) (awarding \$50,000 to the named plaintiff); *In re Dunn & Bradstreet Credit Serv. Customer Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio 1990) (awarding \$55,000 each to two named plaintiffs); *In re Janney Montgomery Scott LLC Fin. Consultant Litig.*, No. 06-3202, 2009 WL 2137224, at *12 (E.D. Pa. July 16, 2009) (approving a service award of \$20,000 to each of the three class representatives in the case); *Garett v. Morgan Stanley DW, Inc.*, Civ. A. No. 04–1858 (S.D. Cal. Sept. 12, 2006) (order granting final approval) (awarding named plaintiffs service awards of \$20,000 each).

⁷ See, e.g., *Hayes v. Delbert Servs. Corp.*, 3:14-cv-258 (JAG) (E.D. Va.); *Manuel v. Wells Fargo Nat’l Ass’n*, No. 3:14cv238(DJN), 2016 WL 1070819, at *6 (E.D. Va. Mar. 15, 2016); *Beverly v. Wal-Mart Stores, Inc.*, No. 3:07-cv-469; *Williams v. Lexis Nexis Risk Mgmt.*, No. 3:06cv241; *Cappetta v. GC Servs. LP*, No. 3:08-cv-288- (E.D. Va.); *Makson v. Portfolio Recovery Assoc., Inc.*, No. 3:07-cv-982-HEH (E.D. Va. Feb. 9, 2009); *Daily v. NCO*, No. 3:09-cv-31; *Conley v.*

B. The requested attorneys' fees and costs are appropriate and should be awarded.

Class Counsel seeks an award of \$500,000.00 for their attorneys' fees and costs. Although this case is not a traditional common fund recovery, Plaintiff's fee request is still reasonable under both a percentage-of-the-fund and a lodestar analysis. Additionally, the fee award was negotiated separately from the class settlement, and it does not detract from the individual benefits that the class members receive from the Settlement. Thus, the class will not recover more money if Class Counsel's request is denied or modified. In any event, because the total consideration is \$1,684,434.38, Class Counsel's request represents 29.68 percent of the settlement value, or less than one-third of the class's expected recovery.

i. The negotiated fee is appropriate and reasonable here.

Rule 23(h) gives the Court authority to "award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement" in class actions. Fed. R. Civ. P. 23(h). Here, Class Counsel agreed to a fee after the relief to the class was negotiated. (Kelly Decl. ¶ 27.) Thus, the ordinary scrutiny demanded by Rule 23 is less apposite here as the Court is not considering a fee that is to be taken from class members. Capital One agreed that \$500,000 was a fair fee and agreed to pay that amount. Any diminishment in the fee requested here will not benefit consumers and will simply remain with Capital One. As the Fourth Circuit explained in another consumer class action settlement:

Other features of this case further diminish any concern about the fee award and, accordingly, any need for heightened scrutiny by the district court. Because class

First Tenn., No. 1:10-cv-1247-TSE (E.D. Va.); *Lengrand v. Wellpoint*, No. 3:11-cv-333 (E.D. Va.); *Henderson v. Verifications, Inc.*, No. 3:11-cv-514 (E.D. Va.); *Pitt v. K-Mart Corp.*, No. 3:11-cv-697 (E.D. Va.); *James v. Experian Info. Sols.*, No. 3:12-cv-902 (E.D. Va.); *Manuel v. Wittstadt*, No. 3:12-cv-450 (E.D. Va.); *Shami v. Middle E. Broadcast Network*, No. 1:13-cv-467 (E.D. Va.); *Goodrow v. Freidman Freidman & MacFadyen*, No. 3:11-cv-20 (E.D. Va.); *Berry v. LexisNexis Risk & Info. Analytics Grp., Inc.*, No. 3:11-cv-274 (E.D. Va.); *Marcum v. Dolgencorp*, No. 3:12-cv-108 (E.D. Va.); *Kelly v. Nationstar*, No. 3:13-cv-311 (E.D. Va.); *Wyatt v. SunTrust Bank*, No. 3:13-cv-662 (E.D. Va.).

counsel's fee is to be paid entirely by Lexis, it does not reduce the (b)(2) Class's recovery. *Cf. Cook v. Niedert*, 142 F.3d 1004, 1011 (7th Cir. 1998) (when attorneys' fee reduces amount of common fund, court must carefully scrutinize fee application). Nor, of course, will it require the expenditure of taxpayer funds, which might warrant additional scrutiny. *Cf. Perdue v. Kenny A.*, 559 U.S. 542, 559 (2010) (limiting the use of multipliers in lodestar-based fee awards against the government under fee-shifting statutes). Finally, the parties did not even begin to negotiate class counsel's fee until after the substantive terms of the Agreement were finalized, making it far less likely that counsel could have traded off the interests of class members to advance their own ends.

Berry v. Schulman, 807 F.3d 600, 618 n.10 (4th Cir. 2015); *see also Henderson v. CoreLogic Nat'l Background Data, LLC*, No. 3:12-cv-97, 2018 WL 1558556, at *5 (E.D. Va. Mar. 22, 2018) (acknowledging that fee award being paid separately from Settlement Fund supported finding of reasonableness); *Witt v. CoreLogic Saferent, LLC*, No. 3:15-cv-386, 2018 WL 1560069, at *4 (E.D. Va. Mar. 22, 2018) (same).

Beyond this, even if the Court considered the requested fee on a percentage basis, it is still appropriate. When a case results in a common fund for the class, courts often award fees as a percentage of that common fund. The doctrine originates from the equitable principles of quantum meruit and unjust enrichment and aims to shift the expense of litigation from named plaintiffs, who obtained the fund's benefits, to the absent class members, who benefit from the fund but likely contributed little, or nothing, to the process. *Brundle ex rel. Constellis Emp. Stock Ownership Plan v. Wilmington Tr., N.A.*, 919 F.3d 763, 785 (4th Cir. 2019), as amended (Mar. 22, 2019). As the Fourth Circuit has explained, awarding fees as a percentage of the common fund "hold[s] the beneficiaries of a judgment or settlement responsible for compensating the counsel who obtained the judgment or settlement for them." *Id.* at 786.⁸

⁸ Circuit courts generally permit the percentage method. *See 5 Newberg on Class Actions* § 15:66 (5th ed. Dec. 2020 Update).

Here, as part of the total cash value of the settlement, Class Counsel’s fee request represents less than thirty percent of the relief secured for the class. The Fourth Circuit has not established a benchmark for fee awards in common-fund cases, but Class Counsel’s request falls near the bottom of the 25-to-40-percent range that courts within the Fourth Circuit have held appropriate.⁹ It is also within the appropriate range found by the recent comprehensive study of attorneys’ fees in class action cases. Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees in Class Action Settlements: An Empirical Study*, 1 J. Empirical Legal Studies 27, 31, 33 (2004) (noting “a remarkable uniformity in awards between roughly 30% to 33% of the settlement amount.”). This Court has approved several class action settlements with a one-third fee award. *Gibbs v. Stinson*, No. 3:18-cv-676, ECF No. 346 ¶ 19 (E.D. Va. Aug. 16, 2022); *Gibbs v. Plain Green, LLC*, No. 3:17-cv-495, ECF No. 141 ¶ 24 (E.D. Va. Dec. 13, 2019); *Gibbs v. TCV V, L.P.*, No. 3:19-cv-789, ECF No. 95 at 11–13 (E.D. Va. Mar. 29, 2021); *Gibbs v. Rees*, No. 3:20-cv-717, ECF No. 68 at 9–11 (E.D. Va. Mar. 26, 2021); *see also Exhibit 2*, Declaration of Dale W. Pittman.

In addition, Judge Payne awarded a 33-percent fee award in a consumer class action, holding: “A percentage award of 33% of a common fund is a bit on the high side for this circuit and in general, but it is certainly not outside of the realm of reasonable percentage awards, particularly given that the award will be inclusive of costs.”

⁹ Indeed, “empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in the class actions average around one-third of the recovery.” 4 Newberg *on Class Actions* § 14:6 (4th ed.); *see also In re Rite Aid Corp. Sec. Litig.*, 146 F. Supp. 2d 706, 735 (E.D. Pa. 2001) (review of 289 class action settlements shows “average attorney’s fees percentage [of] 31.31%” with a median value that “turns out to be one-third.”). In an analysis of such historic patterns, Silber and Goodrich explained that empirical evidence does not necessarily establish what a court should do in any given case, but it does provide guidance to the court in determining whether a fee is reasonable. Reagan W. Silber & Frank E. Goodrich, *Common Funds and Common Problems: Fee Objections and Class Counsel’s Response*, 17 Rev. Litig. 525, 545–46 (1998).

Galloway v. Williams, No. 3:19-cv-470, 2020 WL 7482191, at *11 (E.D. Va. Dec. 18, 2020) (citing *In re Celebrex (Celecoxib) Antitrust Litig.*, No. 2:14-cv-361, 2018 WL 2382091, at *5 (E.D. Va. Apr. 18, 2018)).

Moreover, in consumer class actions like this one, there is a great deal of work necessary post-approval. This case is no exception. After this filing, Class Counsel will have to oversee the claims process to ensure that timely claims are honored. Additionally, Class Counsel will have to file its Motion for Final Approval and attend the hearing. After Final Approval, Class Counsel will implement the settlement, continue to communicate with class members, and assist class members with any remaining issues they have obtaining settlement relief. As Judge Novak held in another class action case: “I am going to approve that. It represents 33 percent of the monetary value. The lodestar multiplier is 3.86, but believing that number is going to fall for the reasons you just said about the continuing work.” *Turner v. ZestFinance, Inc.*, No. 3:19-cv-293, ECF No. 116 at 16:1-5 (E.D. Va. Aug. 4, 2020).

In each case, the standards of Rule 23 demanded that Class Counsel represent the interest of the class with the same attention, zeal, and competence whether the class is in the millions or not. In this case, where Class Counsel bore the risk of the litigation and advanced significant funds to advance the litigation, the requested fee is reasonable.

ii. A cross-check against Class Counsel’s lodestar confirms the requested fee is reasonable.

A cross-check is not required to determine the fairness of a fee when the percentage method is used. At times, however, some courts have used a lodestar estimate as a cross-check in assessing Class Counsel’s fee request. *Manual for Complex Litigation (Fourth)* § 21.724. As this Court recently recognized, “where used as a mere cross-check, the hours documented by counsel need

not be exhaustively scrutinized by the district court.” *Galloway v. Williams*, No. 3:19-cv-470, 2020 WL 7482191, at *11 (E.D. Va. Dec. 18, 2020).

Here, the requested award includes both attorneys’ fees and costs. For fees, Class Counsel estimates that its lodestar is \$282,752.50. Ex. 1, Kelly Decl. ¶ 32. Class Counsel has also incurred \$15,891.43 in unreimbursed expenses. These costs include filing fees, process server fees, mailing charges, travel expenses, mediation fees, and copying fees. *Id.* As a result, the total estimated fees and costs Class Counsel has incurred to obtain this settlement is \$298,643.93. Of course, Class Counsel will continue to accrue even more time since Class Counsel is committed to complete all post-approval work, regardless of the actual time incurred. In Class Counsel’s experience, actual post-approval work can be significant.

The requested \$298,643.93 for fees and costs represents a 1.67 multiplier for Class Counsel. In light of the settlement’s benefits, this multiplier is reasonable. *Berry v. Schulman*, 807 F.3d 600, 617 n.9 (4th Cir. 2015) (noting that using the lodestar method, “the district court multiplies the number of hours worked by a reasonable hourly rate. And it can then “adjust the lodestar figure using a ‘multiplier’ derived from a number of factors, such as the benefit achieved for the class and the complexity of the case”) This multiplier is well-within the range approved in other settlements both in the Fourth Circuit and nationally.¹⁰ In fact, this Court

¹⁰ See, e.g., *Skochin v. Genworth Financial, Inc.*, No. 3:19-cv-49, 2020 WL 6708388 (E.D. Va. Nov. 13, 2020) (finding 9.05 multiplier not unreasonable in lodestar cross-check analysis); *Spartanburg Reg’l Health Services District, Inc. v. Hillenbrand Industries, Inc.*, No. 7:03-2141, 2006 WL 8446464 (D.S.C. Aug. 15, 2016) (approving fee award which resulted in multiplier above 6); see also *Lloyd v. Navy Federal Credit Union*, Case No. 3:17-cv-01280-BAS-RBB (S.D. Cal. 2019) (approving fee which resulted in multiplier of 10.96); *Stop & Shop Supermarket Co. v. SmithKline Beecham Corp.*, No. 03-cv-04578, 2005 WL 1213926 (E.D. Pa. May 19, 2005) (15.6 multiplier); *New Eng. Carpenters Health Benefits Fund v. First Databank*, No. 05-cv-11148, 2009 WL 2408560, at *2 (D. Mass. Aug. 3, 2009) (8.3 multiplier); *In re Doral Financial Corp. Securities Litigation*, No. 05-cv-04014-RO (S.D.N.Y. Jul. 17, 2007) (10.26 multiplier); *Beckman v. KeyBank*, N.A., 293 F.R.D. 467, 481 (S.D.N.Y. 2013) (“Courts regularly

recently approved a 4.33 multiplier in another consumer class-action case that was similarly complex and hard fought. *Hengle v. Asner*, No. 3:19-cv-250, ECF No. 230 (E.D. Va. Oct. 25, 2022); *see also Singleton v. Domino's Pizza, LLC*, 976 F. Supp. 2d 665, 689 (D. Md. 2013) (holding that courts in the Fourth Circuit have generally held that lodestar multipliers falling between 2 and 4.5 demonstrate a reasonable attorneys' fee); *In re Peanut Farmers Antitrust Litig.*, No. 2:19-cv-00463, 2021 WL 9494033, at *7 (E.D. Va. Aug. 10, 2021) (same and collecting cases to support); *Gibbs v. Stinson*, No. 3:18-cv-676, ECF No. 346 (E.D. Va. Aug. 16, 2022) (approving 1.86 multiplier); *Brown v. RP On-Site, LLC*, No. 1:20-cv-482, ECF No. 84 (approving 1.98 multiplier).

Particularly given the result achieved, the requested fee is reasonable and appropriate. The class notice also has been sent and there has so far been no objection to the proposed fee amounts or requested service awards.

CONCLUSION

The requested attorneys' fees and costs are reasonable and well within the range typically awarded by this Court in similar cases. The requested service award was also well-earned by Plaintiff. No class member has objected to the proposed fee amounts. For these reasons, Plaintiff asks that this Court grant his Motion for Attorneys' Fees, Expenses, and Class Representative Service Awards.

Respectfully submitted,
JOHN MEEHAN

By: /s/ Kristi C. Kelly
Kristi Cahoon Kelly, VSB #72791
Andrew J. Guzzo, VSB #82170
Casey S. Nash, VSB #84261

award lodestar multipliers of up to eight times the lodestar, and in some cases, even higher multipliers.”).

J. Patrick McNichol, VSB No. 92699

KELLY GUZZO PLC

3925 Chain Bridge Road, Suite 202

Fairfax, Virginia 22030

Telephone: (703) 424-7572

Facsimile: (703) 591-0167

Email: kkelly@kellyguzzo.com

Email: aguzzo@kellyguzzo.com

Email: casey@kellyguzzo.com

Email: pat@kellyguzzo.com

Class Counsel

Exhibit 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

JOHN MEEHAN, <i>on behalf of himself and all</i> <i>similarly situated individuals,</i>)	
)	
Plaintiff,)	
)	Civil Action No. 1:22-cv-1073
v.)	
)	
CAPITAL ONE, N.A.,)	
)	
Defendant.)	

DECLARATION OF KRISTI C. KELLY

I, Kristi C. Kelly declare:

1. My name is Kristi C. Kelly. I am over 21 years of age, of sound mind, capable of executing this declaration, and have personal knowledge of the facts stated herein, and they are all true and correct.

2. I am one of the attorneys working on behalf of the Plaintiff in the above-styled litigation, and I am a founder and a partner of Kelly Guzzo, PLC, a law firm located at 3925 Chain Bridge Road, Suite 202, Fairfax, Virginia 22030. Prior to January 15, 2014, I was an attorney and equity partner at Surovell Isaacs Petersen & Levy, PLC, a nineteen-attorney law firm with offices in Fairfax, Virginia. My primary office was 4010 University Drive, Suite 200, Fairfax, Virginia 22030. I also worked for Legal Services of Northern Virginia, focusing exclusively on housing and consumer law for approximately three years prior to Surovell Isaacs Petersen & Levy, PLC.

3. Since 2006, I have been and presently am a member in good standing of the Bar of the highest court of the Commonwealth of Virginia, where I regularly practice law. Since 2007, I have been and presently am a member in good standing of the Bar of the highest courts of the

District of Columbia and since 2014 of Maryland. I am also admitted in the United States District Courts for the District of Columbia and Maryland.

4. My law firm is committed to representing the most vulnerable—and often overlooked—consumers. We work with various legal aid organizations to help identify areas of need, where our firm can “step up” and meet those needs through class action litigation or pro bono work. Many of these cases include seeking remedies for credit reporting errors or lending abuses. Kelly Guzzo was the co-recipient of the 2019 Frankie Muse Freeman Organizational Pro Bono Award by the Virginia State Bar Association.

5. I have taught numerous Continuing Legal Education programs for other attorneys in the areas of consumer law, including mortgage servicing abuses, dormant second mortgages, landlord tenant defense, dealing with debt collectors, credit reporting, defenses to foreclosure, discovery in federal court, resolving cases, and internet lending. I have taught these courses for various legal aid organizations, state and local bar associations, the National Consumer Law Center, the Consumer Federation of America, the National Council of Higher Education, and the National Association of Consumer Advocates at its various conferences. I was also a panelist for the Consumer Financial Protection Bureau and Federal Trade Commission on the issue of credit reporting. I currently serve as an adjunct professor at George Mason University’s Antonin Scalia Law School, where I co-teach a course on federal consumer litigation.

6. My peers have recognized me as a Super Lawyer and Rising Star consistently for the past ten years. Additionally, I was selected to be a member of the Virginia Lawyers Weekly “Leader in the Law,” class of 2014, and Influential Women in the Law, class of 2020. I serve on the Board of Directors for the Legal Aid Justice Center and Virginia Poverty Law Center. I am a former State Chair for Virginia of the National Association of Consumer Advocates and am

currently a member of the Partners' Council for the National Consumer Law Center and Board of Directors of the National Association of Consumer Advocates.

7. I have also been appointed to the Merit Selection Panel for recommendation for the Magistrate Judge by the United States District Court Eastern District of Virginia, in both the Richmond and Alexandria Divisions.

8. I have significant experience representing consumers in litigation under the Federal Consumer Credit Protection Act, 15 U.S.C. § 1601 *et seq.*, and in particular the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.*, the Equal Credit Opportunity Act, 15 U.S.C. § 1691 *et seq.*, the Real Estate Settlement Procedures Act, 12 U.S.C. § 2605 *et seq.*, and the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.*

9. My firm has litigated hundreds of consumer protection lawsuits in courts across the country. Several courts have recognized Kelly Guzzo's skill in the consumer protection arena. *See, e.g.,* Final Approval Hr'g Tr., *Campos-Carranza v. Credit Plus, Inc.*, No. 16-cv-120, at 5:3–7 (E.D. Va. Feb. 17, 2017) (“I think this is an extremely, as I say, extremely fair, reasonable, and adequate settlement. Again, the claims – and I think being generous on the time limit for the claims was also appropriate. So I have no difficulty in signing this order.”); *Ceccone v. Equifax Info. Servs. LLC*, No. 13-1314, 2016 WL 5107202, at *6 (D.D.C. Aug. 29, 2016) (“Given these qualifications, and in light of Class Counsel's conduct in court and throughout these proceeding, this Court concludes that Class Counsel is qualified to prosecute the interests of this class vigorously.”); *Dreher v. Experian Info. Sols., Inc.*, No. 11-00624, 2014 WL 2800766, at *2 (E.D. Va. June 19, 2014) (“Dreher's counsel is well- experienced in the arena of FCRA class action litigation.”); Fairness Hr'g Tr., *Burke v. Seterus, Inc.*, No. 16-cv-785, at 9:19–22 (E.D. Va. 2017) (“Experience of counsel on both sides in this case is extraordinary. Ms. Kelly and Ms. Nash and

their colleagues are here in this court all the time with these kinds of cases and do a good job on them.”).

10. In each of the class cases where I have represented plaintiffs in a consumer protection case, including cases such as the instant case, the Court found me to be adequate class counsel. *See Tsvetovat, v. Segan, Mason, & Mason, PC*, No. 1:12-cv-510 (E.D. Va.); *Conley v. First Tennessee Bank*, No. 1:10-cv-1247 (E.D. Va.); *Dreher v. Experian Info. Solutions, Inc.*, No. 3:11-cv-624 (E.D. Va.); *Shami v. Middle E. Broadcast Network*, No. 1:13-cv-467 (E.D. Va.); *Goodrow v. Friedman & MacFadyen*, No. 3:11-cv-20 (E.D. Va.); *Kelly v. Nationstar*, Case No. 3:13-cv-311 (E.D. Va.); *Thomas v. Wittstadt*, No. 3:12-cv-450 (E.D. Va.); *Fariasantos v. Rosenberg & Associates, LLC*, No. 3:13-cv-543 (E.D. Va.); *Morgan v. McCabe Weisberg & Conway, LLC*, No. 3:14-cv-695 (E.D. Va.); *Burke v. Shapiro, Brown & Alt, LLP*, No. 3:14-cv-838 (E.D. Va.); *Bartlow, et al., v Medical Facilities of Am., Inc.*, No. 3:16-cv-573 (E.D. Va.); *Blocker v. Marshalls of MA, Inc.*, No. 1:14-cv-1940 (D.D.C.); *Ceccone v. Equifax Info. Servs., LLC*, No. 1:13-cv-1314 (D.D.C.); *Jenkins v. Equifax Info. Servs., LLC*, No. 1:15-cv-443 (E.D. Va.); *Ridenour v. Multi-Color Corporation*, No. 2:15-cv-41 (E.D. Va.); *Hayes v. Delbert Services Corp.*, No. 3:14-cv-258 (E.D. Va.); *Campos-Carranza v. Credit Plus, Inc.*, No. 1:16-cv-120 (E.D. Va.); *Jenkins v. Realpage, Inc.*, No. 2:15-cv-1520 (E.D. Pa.); *Kelly v. First Advantage Background Services, Corp.*, No. 3:15-cv-5813 (D.N.J.); *Burke v. Seterus, Inc.*, No. 3:16-cv-785 (E.D. Va.); *Williams v. Corelogic Rental Prop. Solutions, LLC*, No. 8:16-cv-58 (D. Md.); *Clark v. Trans Union, LLC*, No. 3:15-cv-391 (E.D. Va.); *Clark v. Experian Info. Solutions, Inc.*, No. 3:16-cv-32 (E.D. Va.); *Thomas v. Equifax Info. Servs., LLC*, No. 3:18-cv-684 (E.D. Va.); *Heath v. Trans Union, LLC*, No. 3:18-cv-720 (E.D. Va.); *Turner, v. ZestFinance, Inc.*, No. 3:19-cv-293 (E.D. Va.); *Galloway v. Williams*, No. 3:19-cv-470, 2020 WL 7482191, at *4 (E.D. Va. Dec. 18, 2020); *Gibbs v. TCV V, LP*, No. 3:19-cv-789 (E.D. Va.); *Gibbs v. Rees*, No. 3:20-cv-717 (E.D. Va.); *Pang*

v. Credit Plus, Inc., No. 1:20-cv-122 (D. Md.); *Brown v. RP On-Site, LLC*, No. 1:20-cv-482 (E.D. Va.); *Brown v. Corelogic Rental Prop. Solutions, LLC*, No. 3:20-cv-363 (E.D. Va.); *Hengle v. Asner*, No. 3:19-cv-250 (E.D. Va.); *Gibbs v. Stinson*, No. 3:18-cv-676 (E.D. Va.); *Stewart v. Lexis Nexis Risk Data Retrieval Services, LLC*, No. 3:20-cv-903 (E.D. Va.); and *Hill-Green v. Experian Info. Solutions, Inc.*, No. 3:19-cv-708 (E.D. Va.).

11. Most of my law firm's work is contingent or brought under a fee-shifting statute so we will generally not charge my clients a fee. For the past couple years, I have been regularly approved in this Court at a rate of \$550.00 per hour. *Brown v. RP On-Site, LLC*, Case No. 1:20-cv-482 (E.D. Va.); *Gibbs v. Plain Green, LLC*, 3:17-cv-00495 (E.D. Va. Dec. 13, 2019); *Turner v. ZestFinance, Inc.*, 3:19-cv-293 (E.D. Va. June 30, 2020); *Galloway v. Williams*, No. 3:19-cv-470, 2020 WL 7482191, at *11-12 (E.D. Va. Dec. 18, 2020); *Gibbs v. TCV V, LP*, 3:19-cv-789 (E.D. Va.); *Gibbs v. Rees*, 3:20-cv-717 (E.D. Va.). These rates have even approved as reasonable in individual cases. *Garmer v. Easy Motors*, 1:20-cv-540 (E.D. Va. Nov. 23, 2020) (ECF 27 at 50); *Tsuchida v. Blackacre 1031 Exch. Services, LLC*, 2019-15803 (Fairfax County Circuit Court); *Rivera v. Blackacre 1031 Exch. Services, LLC*, 2019-15802 (Fairfax County Circuit Court); and most recently by Judge Brinkema in *Vela Diaz v. Equifax Info. Servs., LLC*, 1:23-cv-308 (E.D. Va. Aug. 29, 2023) (ECF 28 at 3) ("These hourly rates fall within the lower range of the Vienna Metro matrix and have been approved in numerous cases in this district.").

12. Other attorneys from my firm that have worked on this case include Andrew Guzzo, Casey Nash, and J. Patrick McNichol.

13. Andrew Guzzo was an associate at Surovell Isaacs Petersen & Levy, PLC and currently is a partner at Kelly Guzzo, PLC. He has been approved by this Court at a rate of \$550.00 per hour. He graduated from law school at Washington & Lee University in 2011. The entire time he has been practicing law, he has practiced exclusively in the field of consumer protection

litigation. He has litigated more than 400 hundred cases in federal court, including dozens of class actions. He is licensed to practice law in Virginia and Hawaii. He is the State Chair for Hawaii of the National Association of Consumer Advocates. He has also taught and trained lawyers, including class action and internet lending training sessions, as well as trainings for the annual Virginia Legal Aid Conference and the Consumer Federation of America. He has been named a Super Lawyer Rising Star for the past several years. He received the National Consumer Law Center's Rising Star Award in 2019.

14. Casey Nash was an associate at Consumer Litigation Associates, PC and is an associate at Kelly Guzzo, PLC. Her hourly rate is \$525.00. I supervise and work closely with Casey. She graduated from law school at the Catholic University of America in 2012. The entire time she has been practicing law, she has practiced exclusively in the field of consumer protection litigation. She has significant federal litigation experience, including litigation of over 350 federal cases and dozens of complex, class-action cases. She is licensed to practice law in Virginia and Washington, D.C. She has been named a Super Lawyers' Rising Star in Virginia and Washington, D.C. for the past several years. She has also taught and trained lawyers, including providing training about the FCRA and other consumer protection statutes to legal aid organizations. She has been approved as class counsel in several class action cases, including some of the cases listed above, as well as several others that she litigated during her time at Consumer Litigation Associates. *See, e.g., Soutter v. Equifax Info. Services, LLC*, No. 3:10-cv-107 (E.D. Va.); *James v. Experian Info. Solutions, Inc.*, No. 3:12-cv-908 (E.D. Va.); *Manuel v. Wells Fargo Nat'l Bank, N.A.*, No. 3:14-cv-00238 (E.D. Va.); *Milbourne v. JRK Residential Am., LLC*, No. 3:12-cv-00861 (E.D. Va.); *Thomas v. FTS USA, LLC*, No. 3:13-cv-825- REP (E.D. Va.).

15. J. Patrick McNichol is another lawyer at Kelly Guzzo, PLC. Before joining Kelly Guzzo, Mr. McNichol practiced law at McGuire Woods, where he handled hundreds of credit card,

banking, and auto finance matters for large financial institutions. Before that, Pat completed two federal clerkships: first, for the Honorable Joseph R. Goodwin of the United States District Court for the Southern District of West Virginia, where he worked on the largest MDL in federal court history; and then, for the Honorable M. Hannah Lauck of the United States District Court for the Eastern District of Virginia. Pat has been named one of *The Best Lawyers in America: Ones to Watch for Banking and Finance Law* four times (2021, 2022, 2023, and 2024). Pat co-authored the Virginia chapter in the American Bar Association's *The Law of Class Action: Fifty-State Survey* in 2020 and 2021 and he has contributed to the *Consumer Banking and Payments Law* treatise published by the National Consumer Law Center. He has also spoken on litigation strategies and topics of bank fraud at national conferences for the National Association of Consumer Advocates and the National Consumer Law Center.. His hourly rate is \$525.00.

16. Natalie Cahoon is a paralegal at Kelly Guzzo, PLC, with over six years of experience in the legal field. She graduated from the University of Maine. Her hourly rate is \$225.00.

17. My law firm takes on significant risks in contingent fee cases: the risk of time spent researching and evaluating claims; the risk of not prevailing on a case; and time lost for unsuccessful cases. Class actions are even more risky because they require more front-end work and the risk of nonpayment remains. However, my law firm is committed to identifying problems in the marketplace and seeking redress for a class of consumers (where appropriate). We do this because it is important to prevent future misconduct, seek relief for those harmed by the conduct who are usually unaware of their rights or unable to afford counsel, and deter other actors from the same behavior.

18. In this case, Plaintiff asserted three theories of EFTA liability against Capital One. The first theory alleged that Capital One held Plaintiff and the class liable for unauthorized

transactions in violation of § 1693g. The second alleged that Capital One failed to investigate *each* disputed unauthorized transaction in violation of § 1693f(a).. The third theory alleged that when it denied a consumer dispute, Capital One failed to “deliver or mail to the consumer an explanation of its findings within 3 business days after the conclusion of its investigation.” 15 U.S.C. § 1693f(d).

19. Capital One’s alleged violations as to Plaintiff’s “failure-to-investigate” classes had the potential to recover \$2,888,752.46 in out-of-pocket losses, which is the aggregate total of disputed charges at issue for the Settlement Class Members. As to the “notice” class, Plaintiff was confident that Capital One violated § 1693f(d) as to every customer who had an EFTA dispute denied by Capital One. Members of the notice class can also obtain their actual damages, but—in any event—are subject to a statutory damages cap of \$500,000 for the class..

20. This Settlement recovers all available out-of-pocket losses for the Settlement Class Members, plus the maximum statutory damages available of \$500,000, making this Settlement a great outcome for Settlement Class Members.

21. No case is without risk. Here, the EFTA is not a heavily litigated statute. The theories advanced by Plaintiff have support in the plain text of the statute and in some case law but not on a scale that would have eased Plaintiff’s concerns in hotly contested litigation. For all intents and purposes, Plaintiff’s theories would have been matter of first impression in the class action context for this Court, as Plaintiff’s counsel is unaware of any other class action EFTA settlements involving the claims asserted by Plaintiff.

22. Plaintiff also acknowledges that his claims could face scrutiny at the class certification stage. These claims involve an inquiry into whether the disputed transactions were, in fact, authorized. Capital One has remained steadfast in its belief that it would prevail on this issue

at class certification, and this belief is why there is a claim process in place to alleviate concerns that fraudsters do not benefit from submitting false claims.

23. Despite multiple settlement conversations, Capital One continued to believe that Plaintiff would be unable to identify and ascertain class members, which would leave him unable to obtain class certification. In addition, Capital One believed that it had strong merits defenses, given the lack of case law interpreting the EFTA.

24. Plaintiff therefore focused on discovery efforts, including several meet and confer efforts and depositions, which resulted in a new theory of liability that Plaintiff believed would satisfy the elements necessary to certify a class and bring relief to the consumers he believed were impacted by Capital One's practices. Plaintiff provided an Amended Complaint to Capital One with this new theory, and Capital One produced the data regarding class membership issues. Ultimately, through this hard fought, collaborative, and—at times, adversarial—discovery process, the parties narrowed the issues and put themselves in a position to have serious conversations regarding a possible resolution.

25. The parties ultimately engaged retired Magistrate Judge Welsh to preside over in an all-day mediation, which was substantive, collaborative, and engaging. Ultimately, with the assistance of Judge Welsh, each side made substantial concessions, despite each side's strong belief in the strengths of their positions.

26. There was significant work left to do in this case, including a contested class certification motion, expert witness practice, dispositive motions, and trial preparation. The Settlement avoids the time and expense of that work. Given the significant consideration that the Settlement provides, especially considering Capital One's strong belief in its defenses, the outcome is outstanding. It allows the consumers impacted by the practice we have identified to recover all their losses from the unauthorized charges, along with a pro rata portion of statutory

damages. In Mr. Meehan's case, as a Settlement Class Member, he will be able to recover \$2,443.51 in unauthorized charges plus approximately \$150.00 for his portion of the statutory damages provided for by the Settlement. As a result, I endorse the Settlement as fair and adequate.

27. Attorneys' fees in most class settlements are calculated as a percentage of the settlement fund unless a fee amount is separately negotiated at the settlement, usually with help from a mediator or Magistrate Judge. Here, there is not a traditional common fund because there are multiple components to the settlement discussed above. The fee was negotiated only after we had agreed to the other terms of the settlement with help from a private mediator, retired Magistrate Judge Welsh.

28. A cross-check of our lodestar supports the negotiated fee.

29. Generally, if a task does not take more than .1 (or six minutes), attorneys and paralegals at Kelly Guzzo, PLC will not bill for that task. This includes reviewing routine court filings, fielding brief telephone calls, responding to quick emails, etc.

30. My office staff took the amount of time expended by each individual in this case and categorized it in a chart as best as practicable by the categories listed in what is attached as Exhibit A.

31. As discussed above, we completed significant work in this case, including: 1) spending significant time and resources investigating the claims, reviewing Plaintiff's documents, and preparing the complaint; 2) conducting discovery, including written discovery, third-party discovery, multiple depositions, and motions practice; and 3) significant formal and informal settlement discussions.

32. The total amount of our attorney's fees is \$282,752.50 which includes no estimated time for the work that we will complete between now and the final approval hearing, or after final approval if the settlement is approved. This includes all fees that my law firm has incurred

prosecuting this case. My law firm has also advanced \$15,891.43 in costs. These costs include filing fees, process server fees, deposition charges, federal express charges, research, mediation expenses, and copying charges.

33. I am familiar with the fees charged by other attorneys and approved by this Court for class action litigation. I believe the rates of my law firm are consistent, if not low, compared with the prevailing market rates in Virginia and for national class action work.

34. I have no doubt that Class Counsel will spend a significant amount of additional time between now and the Final Approval Hearing and even after final approval to help administer the settlement.

35. Lastly, but most importantly, Plaintiff was committed to litigating this case as a class action and securing meaningful relief for all consumers who have been impacted by the conduct alleged in this case.

36. Throughout this litigation, Plaintiff regularly communicated with counsel to stay updated on the case's status, reviewed the copies of pleadings that we sent to him, completed written discovery sent to him, and stayed informed of settlement negotiations. He was also available for consultation during the mediation sessions and reviewed and approved the settlement agreement.

37. Plaintiff also put his reputation and privacy on the line by agreeing to participate. He spent significant time and effort to help Class Counsel prosecute the claims on behalf of the class.

I declare under penalty of perjury of the laws of the United States that the foregoing is correct.

Signed this 30th day of October 2023.

/s/ Kristi C. Kelly
Kristi C. Kelly

Exhibit A

TIME REPORT

CLASS COUNSEL:

Kelly Guzzo, PLC

Timekeeper Description: (A) Attorney
(P) Paralegal

	Kristi Kelly (A)	Andrew Guzzo (A)	Casey Nash (A)	J. Patrick McNichol (A)	Natalie Cahoon (P)	TOTAL
Task						
Case Assessment, Presuit Work, Drafting Complaint	3.50	0.00	1.00	17.50	0.00	
Correspondences and Administrative Work	0.00	0.00	0.00	0.00	38.00	
Motions Practice (Motion for Leave to File Amended Complaint and Amended Complaint)	11.00	1.00	1.00	28.00	0.00	
Discovery (includes drafting requests and reviewing Defendants' responses including documents, deposition, meet and confers)	83.80	27.50	17.50	158.00	0.00	
Mediation (includes preparation of submission to mediator) and Settlement Negotiations	17.00	1.50	15.50	23.00	0.00	
Preparation of Settlement Documents, including Motion for Preliminary Approval	17.50	6.50	15.00	52.00	7.00	
Class Member Contact and Settlement Administration	6.00	0.00	0.00	5.00	5.00	
Total Hours	138.80	36.50	50.00	283.50	50.00	558.80
Hourly Rate	550.00	550.00	525.00	525.00	225.00	
Individual Total Lodestar	\$76,340.00	\$20,075.00	\$26,250.00	\$148,837.50	\$11,250.00	\$282,752.50
Class Counsel Total Lodestar	\$282,752.50					

Exhibit 2

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

JOHN MEEHAN,
*on behalf of himself and all
similarly situated individuals,*

Plaintiffs,

v.

Case No. 1:22-cv-1073

CAPITAL ONE, N.A.,

Defendant.

DECLARATION OF DALE W. PITTMAN

Dale W. Pittman declares under penalty of perjury that the following statements are true:

1. My name is Dale W. Pittman. I am over the age of 18 and have personal knowledge of the facts set forth herein. I submit this declaration in support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement.

2. I am a member in good standing of the bars of the following courts:

Supreme Court of the United States
Washington, DC
February, 1997

Supreme Court of Virginia
Richmond, Virginia
June 8, 1976

U. S. Court of Appeals for the Fourth Circuit
Richmond, Virginia
September 2, 1980

U. S. District Court for the Western District of Virginia
Roanoke, Virginia

U. S. District Court for the Eastern District of Virginia
Richmond, Virginia

December 30, 1976

U. S. Bankruptcy Court for the Eastern District of Virginia
Richmond, Virginia
November, 1997.

3. I am a 1971 graduate of Hampden-Sydney College and a 1976 graduate of the T. C. Williams School of Law of the University of Richmond, Virginia. I am a member of the Virginia State Bar, the Virginia Trial Lawyers Association, the Virginia Bar Association, the National Association of Consumer Advocates, the Federal Bar Association, and the Petersburg Bar Association, of which I am a past President. I am a member of the Council of the Virginia State Bar, the State Bar's governing body, now serving in my sixth term on Bar Council, having served prior five terms over the course of the past twenty-five years, as the elected representative of the Eleventh Judicial Circuit. My sixth term on Bar Council began on July 1, 2023. I am a member of the Board of Governors of the Virginia Trial Lawyers Association, and I chair the VTLA's Consumer Law Section. I serve on the Board of Directors of the Legal Services Corporation of Virginia (LSCV), which provides funding for programs offering civil legal assistance to low-income Virginians. I served as President of the LSCV Board for five years.

4. From February 1, 1977, until September 13, 1996, I was employed by Southside Virginia Legal Services, in Petersburg, Virginia, the local Legal Aid Society, as its General Counsel (Chief Executive Officer). My caseload at Southside Virginia Legal Services evolved over the years into a primarily consumer law practice.

5. From September 16, 1996, until the present I have maintained a private law practice with an office located in Petersburg. My work in private practice is limited almost exclusively to the representation of consumers, with particular emphasis on representing consumer debtors under

the Fair Debt Collections Practices Act. I have a statewide consumer law practice and have represented consumers from all regions of the Commonwealth and elsewhere.

6. I was a contributing editor to the consumer law sections of *Virginia Practice Manual*, a practice manual for Legal Aid lawyers and for private lawyers handling cases under the auspices of *pro bono* initiatives in Virginia.

7. Pleadings and discovery from many of my consumer law cases appear in the National Consumer Law Center's *Consumer Law Pleadings*, nationally distributed form books of consumer law pleadings, beginning in 1994. Pleadings and discovery from my cases appear in Books 1, 2, 5, 6, 7, 10, and 11.

8. I have given over eighty lectures to lawyers that qualified for continuing legal education credit.

9. I have made two presentations on consumer protection law and litigation to Virginia's General District Court judges at the Judicial Conference of Virginia for General District Court judges, one in 1987 on consumer protection laws generally, and one in 2008 on arbitration in consumer financial services cases.

10. My consumer protection law continuing legal education lectures include the following:

Proving Attorney Fees: The Effective and Ethical Method	Virginia Trial Lawyers Association Zoom CLE	October 6, 2022
Ethical Issues in FDCPA Practice	2022 Fair Debt Collection Conference, Orlando	April 25, 2022
Rental Repairs: Making the Right Choice for Your Client	Virginia Poverty Law Center Annual Statewide Training Conference	October 14, 2021

Spotting Violations of the FDCPA Regulations: Communications	National Consumer Law Center Fair Debt Collections Conference	March 4, 2021
Phone Cases	2018 Fair Debt Collections Conference, Chicago	March 19, 2018
Consumer Protection Litigation and Bankruptcy: Intersections and Collisions, Fair Debt Collections Practices Act	Richmond Bar Association, Richmond	October 24, 2017
Class Actions and Multiple Claims: End Games Planning (co-presenter with Judge John A. Gibney, Jr., Orran L. Brown, Sr, W. James Young, and M. Peebles Harrison)	Hampden-Sydney Bar Association CLE Event Hampden-Sydney	October 20, 2017
Serious Illness, the Law, and Pro Bono Services, Part 3: Relief from Creditors	Legal Information Network Cancer, in conjunction with Virginia State Bar Access to Legal Services Committee	November 17, 2016
Representing the Pro Bono Client: Consumer Law Basics 2016	Practicing Law Institute, San Francisco	July 22, 2016
Fair Debt Collections Practices Act	Old Dominion Bar Association Winter Meeting, Williamsburg	January, 30, 2016
Fair Debt Collections Practices Act Overview	Virginia State Bar Young Lawyers Section Professional Development Conference	September 24, 2015
Consumer Law (FDCPA)	A Law Day Celebration Ft. Lee, Virginia	May 1, 2015

FDCPA: Ask the Experts	National Association of Consumer Advocates Fair Debt Collection Training Conference, Washington, DC	March 11, 2015
“It May Not Be a Payday Loan....”	Virginia Poverty Law Center 2014 Annual Statewide Legal Aid Conference, Portsmouth	October 23, 2014
Meeting the Legal Needs of Individuals Facing Serious Illness Through Pro Bono – Relief From Creditors	Virginia State Bar and the Legal Information Network for Cancer Webinar	April 23, 2014
Ethical Responsibilities of Class Counsel to Class Representatives, the Class and Objectors	Fair Debt Collection Practices Act Training Conference, San Antonio, Texas	March 8, 2014
Fair Debt Collections Practices Act	Working With Military Clients, Military Law Section of the Virginia State Bar, Williamsburg, Virginia	October 18, 2013
How the Consumer Bar Views FDCPA Compliance by Collection Attorneys	National Association of Retail Collection Attorneys Fall Collection Conference, Washington, DC	October 17, 2013
Making the Bad Guys Pay	Virginia Poverty Law Center, Richmond	May 9, 2013
FDCPA: Ask the Experts	National Association of Consumer Advocates Fair Debt Collection	March 8, 2013

	Training Conference, Baltimore	
FDCPA Update	JAG School, Charlottesville, VA	December 11, 2012
Fair Debt Collections Practices Act	VA CLE, Charlottesville, VA	September, 2012
FDCPA	ABA Standing Committee on Legal Assistance to Military Personnel, George Mason University Law School	March 15, 2012
Fair Debt Collections Practices Act	Ft. Lee Legal Assistance Division JAG Office CLE	May 5, 2011
Handling Fair Debt Collections Practices Act Cases	65 th Legal Assistance Course, The Judge Advocate General's Legal Center and School, Charlottesville	November 16, 2009
Handling Fair Debt Collections Practices Act Cases	VPLC Statewide Legal Aid Conference, Williamsburg	November 5, 2009
Challenging Predatory Small Loans	National Consumer Law Center Consumer Rights Litigation Conference, Philadelphia	October 23, 2009
The Fair Debt Collections Practices Act: Update 2009	VA CLE Webinar	September, 2009
Handling Fair Debt Collections Practices Act Cases	2009 Mid-Atlantic Joint Services Consumer Law Symposium, Naval Legal Service Office Mid-	June 12, 2009

Atlantic Legal Assistance
Department, Norfolk

Handling Fair Debt Collections Practices Act Cases	64 th Legal Assistance Course, The Judge Advocate General's Legal Center and School, Charlottesville	April 2, 2009
Defending Consumers in Medical Debt Collection Cases	National Consumer Law Center's Consumer Rights Litigation Conference in Portland, Oregon	October, 2008
Combating Consumer Issues Facing the Military, FDCPA Cases	Consumer Law Intensive for Military Personnel Advocates, National Consumer Law Center's Consumer Rights Litigation Conference in Portland, Oregon	October, 2008
Issues in Arbitration Cases	Judicial Conference of Virginia for District Court Judges, Virginia Beach	August 13, 2008
A Perfect Storm – The Intersection of the FDCPA and the FCRA in Debt Collection Harassment Cases	Virginia CLE Solo and Small Firm Institute, Williamsburg	May 13, 2008
Defending Debt Collection Suits	National Consumer Rights Litigation Conference, Washington, D.C.	November 11, 2007
Emerging Issues in Debt Collection Abuse & False Credit Reporting	Virginia Trial Lawyers Association Solo & Small Firm Conference, Richmond	October 19, 2007

The Fair Debt Collections Practices Act (Including 2006 Amendments)	Virginia CLE	September 24, 2007
Fair Debt Collections Practices Act	Naval Legal Service Office Mid-Atlantic Joint Services Consumer Law Symposium, Norfolk	May 11, 2007
How to Win (or Not Lose) an Arbitration	National Consumer Rights Litigation Conference Miami, Florida	November 11, 2006
Consumer Debt Collection	59 th Legal Assistance Course The Judge Advocate's School Charlottesville	November 2, 2006
Consumer Credit: Remedies You Should be Aware Of	Virginia Trial Lawyers Association Solo & Small Firm Conference, Williamsburg	October 20, 2006
Collection Law From Start to Finish (Presentation on the FDCPA)	National Business Institute Richmond	October 10, 2006
Overview of the Fair Debt Collections Practices Act	Framme Law Firm, Richmond	June 23, 2006
Fair Debt Collection Practices Act	Naval Justice School Newport, Rhode Island	May 22 , 2006
Fair Debt Collection Practices Act – Essential Tips for Both Debtors and Creditors	Virginia CLE - 4 th Annual Advanced Consumer Bankruptcy, Richmond	April 28, 2006

Fair Debt Collection Practices Act	3 rd Annual Naval Legal Service Office, Mid-Atlantic, Auto Fraud Symposium, Norfolk	April 12, 2006
What the Virginia Lawyer Must Know About Consumer Protection	Solo and Small Firm Conference – Virginia Trial Lawyers Association, Charlottesville	September 30, 2005
Points to Consider if You are Going to Arbitration	National Consumer Law Center’s 13 th Annual Consumer Rights Litigation Conference	November 7, 2004
Protecting Your Client’s Consumer Rights – Fair Debt Collections Practices Act	Virginia CLE - Richmond and Tysons Corner	April 21 and 22, 2004
Fair Debt Collections Practices Act Training Conference – Practice Issues	National Consumer Law Center and National Association of Consumer Advocates, Kansas City	February 22, 2004
Fair Debt Collections Practices Act	Henrico County Bar Association and Virginia Creditor’s Bar Association, Richmond	February 19, 2004
Using Experts in Automobile Sale Wreck Damage Cases	IVAN Diminished Value Conference, Chesapeake	January 31, 2004
Consumer Law: Everything You Need to Know to be an Expert in Handling the Latest in Consumer Cases	First Annual Solo and Small Firm Conference – Virginia Trial Lawyers Association, Charlottesville	October 10, 2003

Points To Consider If You Are Going To Arbitration	Virginia Women Attorney's Association, Southside Chapter, Petersburg	July 31, 2003
Fair Debt Collection Practices Act	Virginia CLE, First Advanced Consumer Bankruptcy Conference	May 2, 2003
Fair Debt Collection Practices Act Fair Credit Reporting Act	Naval Justice School Newport, Rhode Island	April 3, 2003
Overview of the Fair Debt Collections Practices Act	Framme Law Firm, Richmond	December 17 & 18, 2002
Arbitrating: Who's Afraid of the Big Bad Wolf?	National Consumer Law Center Consumer Rights Litigation Conference, Atlanta	October 26, 2002
Mobile Home Litigation Issues	National Consumer Law Center Consumer Rights Litigation Conference, Atlanta	October 25, 2002
Settlement Agreements and Confidentiality Issues: Recent Cases in the News and the Problems News Attention Can Create	Virginia Trial Lawyers Association Fall Fiesta, Richmond	September 28, 2002
Practice Pointers Roundtable	Virginia Trial Lawyers Association Fall Fiesta, Richmond	September 27, 2002
Arbitration and Beyond: What to Do If You Are Forced Into Arbitration and What Happens After the Arbitral Award	Virginia Trial Lawyers Association Fall Fiesta, Richmond	September 27, 2002
Fair Debt Collection	ABA Standing Committee on Legal Assistance for Military	August 15, 2002

	Personnel Legal Assistance Symposium, Quantico	
Practical Applications of Consumer Protection Laws for the General Practitioner – Part II	Virginia Women Attorneys Association, Southside Chapter, Petersburg	June 27, 2002
Practical Applications of Consumer Protection Laws for the General Practitioner – Part I	Virginia Women Attorneys Association, Southside Chapter, Petersburg	April 25, 2002
Federal Court-Fun & Easy	Annual Statewide Legal Aid Conference, Virginia Beach	November 1, 2001
FDCPA Compliance for the Virginia Practitioner	National Business Institute CLE for Virginia Lawyers, Richmond	October 11, 2001
Use of Magnuson-Moss Warranty Act in the Recovery of Attorney’s Fees	Virginia Trial Lawyers Association Fiesta 3, Richmond	September 28, 2001
Credit Reporting Abuse	Petersburg Kiwanis Breakfast Club, Petersburg	September 18, 2001
A Consumer Lawyer’s Perspective on Mobile Home Transactions	Virginia Manufactured Housing Association, Virginia Beach	August 8, 2001
Debt Collection Harassment, Credit Reporting Abuse, Home Solicitation Sales, Fraud.	Elder Law Day	May 11, 2001
Truth in Lending Act and Title Issues in Car Sales	VA Independent Automobile Dealers Association, District 1	April 11, 2001

	Dinner Meeting, Virginia Beach, Virginia	
What Do These Attorneys Know About The Used Car Business That You Don't?	VA Independent Automobile Dealers Association, District 2 Dinner Meeting, Richmond, Virginia	January 30, 2001
Mobile Home Litigation Issues	National Consumer Law Center Consumer Rights Conference	October 28, 2000
Update on the Fair Debt Collection Practices Act	Virginia CLE®	July 12 and 19, 2000
Consumer Privacy in the Electronic Age	The Bar Association of the City of Richmond	May 31, 2000
Consumer Law Update for Virginia Practitioners, Fair Debt Collection Practices Act.	Virginia CLE®	December 7 and 8, 1999
Recent Developments in Fair Debt Collection, With an Emphasis on the Fourth Circuit	Annual Statewide Legal Aid Conference	November 3, 1999
Recent Developments in Fair Debt Collection	The Bankruptcy Section of the Bar Association of the City of Richmond	October 26, 1999
Consumer Law Seminar	Office of the Staff Judge Advocate, Ft. Eustis, Virginia	August 27, 1999
Automobile Fraud and Financing Issues	Annual Statewide Legal Aid Conference	November 11, 1998
Consumer Law for Support Staff	Annual Statewide Legal Aid Conference	November 11, 1998

First Day in Practice (Topic: Consumer Law Practice)	Virginia State Bar	November 3, 1998
Complying with the Fair Debt Collection Practices Act in Virginia	National Business Institute CLE for Virginia Lawyers	September 9, 1998
Basic Overview of Several Consumer Protection Laws Available to Assist Victims of Consumer Fraud and Abuse	Charlottesville-Albemarle Bar Association Bankruptcy/Creditors' Rights Committee	February 10, 1998
Overview of Consumer Law for Support Staff	Annual Statewide Legal Aid Conference	November 6, 1997
The Fair Debt Collection Practices Act	Annual Statewide Legal Aid Conference	November 6, 1997
Recent Developments under the Fair Debt Collection Practices Act	Virginia Creditor's Bar Association	September 25, 1997
Fair Debt Collection Practices Act	10 th Circuit Bar Association, Keysville, VA	April 23, 1997
Complying With the Fair Debt Collection Practices Act in Virginia	National Business Institute CLE for Virginia Lawyers	February 11, 1997
Handling Repossession Cases (gave segment on odometer law)	Virginia Legal Services Consumer Law Task Force	
State and Federal Consumer Protection Statutes Frequently Applicable to General District Court Cases	Judicial Conference of Virginia General District Court Judges	April 29, 1989

Everything Under the Sun You Ever
Wanted to Know About Handling Home
Improvement Cases

Elderly Law Task Force
of Virginia Legal
Services Programs

Consumer Law for Non-Consumer
Lawyers

Virginia Legal Services
Attorneys

Handling Home Improvement Cases

Consumer Law Training
for Virginia Legal
Services Attorneys

11. The Summer 2006 edition of *The Journal of the Virginia Trial Lawyers Association* included “Disputing Home Loan Servicing Abuse Through RESPA,” an article that I prepared for that publication.

12. For nearly a decade, I prepared annual reports on Virginia law for the American Bar Association’s *Survey of State Class Action Law*.

13. I was Section Chairman and Program Moderator for a Virginia Trial Lawyers Association Consumer Law Seminar entitled “Keeping the Big Boys Honest,” that took place on April 25, 1997, and covered the Fair Debt Collections Practices Act, the Fair Credit Reporting Act, Consumer Class Actions, Motor Vehicle Litigation, and Recovering Attorney’s Fees in Consumer Litigation. I was Program Chair for the Consumer Law portion of the VTLA’s February Fiesta CLE that took place in Williamsburg in February, 2000. I was a presenter on Mobile Home Sales, and in a Consumer Law Practice Roundtable. I was Program Chair for the Consumer Law portion of the VTLA’s Fall Fiesta that took place in Williamsburg on October 14 and 15, 2000, and was a presenter on Emerging Issues in Mobile Home Sales Fraud. I was Program Chair for the Consumer Law portion of the VTLA’s Fiesta 3 that took place in Richmond on September 28 and 29, 2001, and was a presenter on “Use of the Magnuson-Moss Warranty Act to Recover Attorney’s Fees.” I was Program Chair for the Consumer Law portion of the VTLA’s Fiesta 2002 that took place in

Richmond on September 27 and 28, 2002, and was a presenter on “Settlement Agreements and Confidentiality Issues: Recent Cases in the News and the Problems News Attention Can Create,” “Arbitration and Beyond: What to Do If You Are Forced Into Arbitration and What Happens After the Arbitral Award,” and a roundtable participant in a “Practice Pointers Roundtable.”

14. I was the 1996 recipient of the Virginia State Bar Legal Aid Award, given annually by the Virginia State Bar to recognize a Legal Aid attorney in Virginia who demonstrates innovation and creativity in advocacy and excellence in service to low-income clients. On November 9, 2007, I received the 2007 Consumer Attorney of the Year Award from the National Association of Consumer Advocates at its Annual Meeting in Washington, D.C. On October 21, 2010, I received the *Virginia Lawyers Weekly* “Leader in the Law 2010” award. On November 4, 2010, I received the Virginia Poverty Law Center’s John Kent Shumate, Jr. Advocate of the Year Award, in recognition of my having made a significant impact in advocating for low-income Virginia residents. The Virginia Trial Lawyers Association recognized me as only the fifth recipient of its Oliver White Hill Courageous Advocate Award at the VTLA's 2014 annual convention, an award periodically presented to an advocate who has demonstrated courage and commitment to the ideals of justice in representing an individual or cause at considerable personal risk. I received the Dr. David E. Marion Award for Legal Excellence, presented by the Hampden-Sydney College Bar Association, on October 20, 2017. I was named to the Virginia Lawyers Hall of Fame for 2019 by Virginia Lawyers Media, being honored for my career accomplishments, contributions to the development of the law in Virginia, contributions to the Bar and to the Commonwealth at Large and efforts to improve the quality of justice in Virginia. I have been selected to Virginia Super Lawyers every year since 2011. I am a fellow of the Virginia Law Foundation, whose mission is to promote, through philanthropy, the rule of law, access to justice,

and law-related education. I am a member of the Virginia Poverty Law Center Advisory Council, a group of key community leaders advising the Center and serving as its ambassador by championing its mission of breaking down systemic barriers that keep low-income consumers in the cycle of poverty.

15. I have been involved in many consumer cases involving a range of consumer protection laws, with an emphasis on the Fair Debt Collection Practices Act. Fair Debt Collection Practices Act, Fair Credit Reporting Act and Equal Credit Opportunity Act cases that I have handled alone or co-counseled with others include *Withers v. Eveland*, 988 F. Supp. 942 (E.D. Va. 1997); *Creighton v. Emporia Credit Service, Inc.*, 981 F. Supp. 411 (E.D. Va. 1997); *Morgan v. Credit Adjustment Board*, 999 F. Supp. 803 (E.D. Va. 1998); *Talbott v. GC Services Limited Partnership*, 53 F. Supp. 2d 846 (W.D. Va. 1999); *Talbott v. GC Services Limited Partnership*, 191 F.R.D. 99 (W.D. Va. 2000); *Woodard v. Online Information Servs.*, 191 F.R.D. 502 (E.D.N.C., Jan. 19, 2000); *Pitchford v. Oakwood Mobile Homes*, 124 F. Supp.2d 958, 961 (W.D. Va. 2000); *Sydnor v. Conseco Financial Services Corp.*, 252 F.3d 302, 305 (4th Circ. 2001); *Jones v. Robert Vest*, 2000 U.S. Dist. LEXIS 18413 (E.D. Va. 2000); *Kelly v. Jormandy*, 2005 U.S. Dist. Lexis 29901 (W.D. Va. 2005); *Lynch v. McGeorge Camping Center*, 2005 U.S. Dist. LEXIS 10201, *12 (E.D. Va. 2005); *Thornton v. Capps Mgmt. V, Inc.*, 2005 U.S. Dist. LEXIS 10202, *6 (E.D. Va. 2005); *Gansauer v. Transworld Systems, Inc.*, Civil Action No. 7:00cv00931 (W.D. Va. 2007); *Croy v. E. Hall & Associates, P.L.L.C.*, 2007 U.S. Dist. LEXIS 14830 (W.D. Va. 2007); *Turner v. Shenandoah Legal Group, P.C.*, 2006 U.S. Dist. LEXIS 39341 (E.D. Va., June 12, 2006); *Karnette v. Wolpoff & Abramson L.L.C.*, 444 F. Supp. 2d 640 (E.D. Va. 2006); *Karnette v. Wolpoff & Abramson, L.L.P.*, 2007 U.S. Dist. LEXIS 20794 (E.D. Va. March 23, 2007); *Bicking v. Law Offices of Rubenstein and Cogan*, 783 F. Supp. 2d at 841v (E.D. Va. 2011); *James v. Encore*

Capital Corp., No. 3:11cv226 (E.D. Va.), *Goodrow v. Friedman & MacFadyen, P.A.*, 788 F. Supp. 2d 464 (E.D. Va. 2011); *Goodrow v. Friedman & MacFadyen, P.A.*, 2013 U.S. Dist. LEXIS 105395 (E.D. Va. July 26, 2013); *Kelly v. Nationstar*, 2013 U.S. Dist. Lexis 156515 (E.D. VA 2013); *Cross v. Prospect Mortgage, LLC*, 986 F. Supp. 2d 688 (E.D. Va. 2013); *Fariasantos v. Rosenberg & Associates, LLC*, 2014 WL 928206, 2014 U.S. Dist. Lexis 30898, (E.D. Va. 2014); *DeCapri v. Law Offices of Shapiro Brown & Alt, LLP*, 2014 U.S. Dist. Lexis 131979, 2014 WL 4699591 (E.D. Va. 2014); *Lengrand v. WellPoint*, No. 3:11-CV-333 (E.D. Va.); *Henderson v. Verifications, Incorporated*, Civil Action No. 3:11cv514 (ED Va.); and *Thomas v. Wittstadt Title & Escrow Company, LLC*, No. 3:12cv450 (E.D. Va.); *Soutter v. Equifax Information Services, LLC*, 307 F.R.D. 183 (E.D. Va. 2015); *Henderson v. Corelogic, Inc., et al.*, Civil Action No. 3:12cv97 (E.D. Va.); *Berry, et al. v. Schulman*, 807 F.3d 600 (4th Cir. 2015); *Henderson v. First Advantage Background Services Corp.*, Civil Action No. 3:14cv221 (E.D. Va.); *Hayes v. Delbert Services Corp., et al*, Civil Action No. 3:14cv258 (E.D. Va.); *Cornell v. Brock & Scott, PLLC*, Civil Action No. 3:14cv841 (E.D. Va.); *Reese v. Stern & Eisenberg Mid Atlantic, PC*, Civil Action No. 3:16cv496 (E.D. Va.); *Bralley v. Carey*, 2011 U.S. Dist. LEXIS 107015 (E.D. Va. 2011); *Bralley v. Carey*, 2011 U.S. Dist. LEXIS 142896 (E.D. Va. 2011); *Bralley v. Carey*, 2012 U.S. Dist LEXIS 15191 (E.D. Va. 2012); *Biber v. Pioneer Credit Recovery, Inc.*, 2018 U.S. Dist. LEXIS 62325 (E.D. Va. 2018); *Baker v. NRA*, Civil Action No. 3:19cv48 (W.D. Va.); *Curtis v. Propel Property Tax Funding*, 915 F.3d 234 (2019); *Turner v. Faber & Brand, LLC*, Civil Action No. 3:21cv30 (E.D. Va.); and *Henderson v. Source for Public Data, L.P.*, 540 Supp. 3d 539 (E.D. Va. 2021); 53 F.4th 110 (4th Cir. 2022). I was one of several lawyers representing plaintiff classes in a Multidistrict FDCPA class action, styled *In Re Dun & Bradstreet, Inc. Debt Collection Practices Litigation*, MDL #1198. The cases, originally transferred by the Judicial Panel on Multidistrict

Litigation to the Western District of Virginia, Danville Division, for consolidated pretrial proceedings, were centralized before the Northern District of Illinois for purposes of finalizing settlement. Classes were certified in *Talbott, Woodard, Gansauer, Karnette, Bicking, Goodrow, Kelly, Fariasantos, DeCapri, Lengrand, Henderson v. Verifications, Incorporated, Thomas, Soutter, Henderson v. Corelogic, Inc., Berry, Henderson v. First Advantage Background Services Corp., Hayes, Cornell, Reese, and Turner.*

16. I served as Special Master in a case styled *Silva v. Haynes Furniture Company, Inc.*, Civil Action No. 4:04cv082, (E.D. Va.), an ECOA/FCRA class action, having been appointed by Judge Kelley on January 27, 2006.

17. I have been quoted with respect to consumer protection law issues in the Wall Street Journal, the New York Times, and Consumer Reports.

18. Very few Virginia attorneys are willing to accept consumer cases because of the special expertise required and the risk of nonpayment. This case is not only a consumer case requiring such special expertise at the risk of nonpayment, but it is brought under a consumer statute that is not frequently litigated, making risk of nonpayment even more likely.

19. I have extensive experience in consumer cases brought this Court, and in the Eastern District of Virginia. I routinely represent plaintiffs in cases brought in the Eastern District of Virginia under the FDCPA and FCRA. I have been involved in many cases involving requests for attorneys' fees under different consumer protection claims and statute and am familiar with the rates charged by both plaintiffs' and defense attorneys in this region. My knowledge of the attorneys fee recoveries, factors and rates in this District and this region comes from a variety of sources, including my own personal experience requesting, or opposing requests for, attorneys' fees, research and discussions with other attorneys, advertised rates, case decisions and other

publications. I have had an opportunity to survey and I keep track of the attorneys fees recovered in complex and consumer finance class action cases in this District and Division, as well as in the consumer protection field.

20. Given the specific knowledge I have as to attorneys fees awarded and charged in this field and this market, I am able to testify as to the reasonable and expected ranges of fees in class action settlements and the reasonableness of the hourly rates charged by attorneys that practice in this district and division.

21. I am familiar with the law firm of Kelly Guzzo, PLC. I know from personal observation that each such lawyer participating from Kelly Guzzo, PLC is a top-notch attorney. I also know from personal observation that they are among the very best attorneys who constitute Virginia's consumer-side consumer protection bar, and is among the best in their field nationwide.

22. In my opinion, Kelly Guzzo, PLC is one of America's best consumer-side consumer protection litigation law firms. Kelly Guzzo, PLC does an excellent job of representing consumers in federal court in consumer protection litigation, and always brings cutting edge cases that deal with unmet needs of consumers, in a way that is both creative and effective.

23. I have known Kristi C. Kelly for roughly fifteen years. I have followed her career by attending consumer protection lectures that she has given, by consulting regularly with her on matters of consumer protection law, and by working together with her in cases that we have co-counseled. I know her to be an extremely skilled, thorough, and thoughtful litigator, who enjoys the well-deserved reputation of being perhaps the top mortgage lending and mortgage foreclosure abuse lawyer in the country, not just Virginia. She is also nationally recognized for her work on predatory lending cases and mortgage cases with a credit-reporting component.

24. I have known Andrew J. Guzzo for roughly ten years. Throughout the time that I have known Mr. Guzzo, he has worked in affiliation with Ms. Kelly.

25. Mr. Guzzo and I have collaborated on motions briefing, discovery issues, and other aspects of a number of consumer protection matters, primarily in cases arising under the Fair Debt Collection Practices Act. As an example, we worked closely together on a Motion to Dismiss briefing in *Kelly v. Nationstar Mortgage*, Civil Action No. 3:13-cv-311(JAG), a Richmond Division FDCPA case. His work there, as in all the other work that I have seen him do, was excellent, and contributed significantly in my opinion to the favorable ruling that we received from Judge Gibney in that case. *Kelly v. Nationstar Mortgage, LLC*, 3013 U.S. Dist. Lexis 156515 (E.D. Va. 2013). I have received briefing from him in various cases I have litigated and know Andrew to be an exceptional writer.

26. I have known Casey Nash for roughly eleven years, having met her through her work at CLA. I know Ms. Nash to be a conscientious, extremely bright, and hard-working lawyer who has assisted in developing and litigating several ground-breaking consumer-protection litigation theories in cases in which I have worked as co-counsel, including for example her enormous contributions to the Complaint preparation and briefing in *Goodrow v. Friedman & MacFadyen*, Civil Action No. 3:11-cv-20(MHL), a mortgage foreclosure case in the Richmond Division that asserted a number of cutting edge consumer protection theories.

27. I have also known Pat McNichol for several years. Although he is newer to Kelly Guzzo, he has extensive experience in the consumer protection field. I know him to be an extremely bright attorney and effective litigator. He has developed an area of expertise in unlawful transactions, including in claims brought under the EFTA or TILA. He has spoken at conferences

nationally and in Virginia on these same topics. I have also co-counseled at least one case with Mr. McNichol, using these same theories and found his advocacy to be effective and thorough.

28. I have reviewed Mrs. Kelly's fee declaration. Based on my experience, each attorney's hourly rate seems reasonable, if not on the low end of other class-action attorneys in this District and Division. I also believe that the time spent on this case is reasonable based on a review of the docket sheet and the relevant pleadings in the case.

29. It is also my understanding that, this is the first class action certified—either contested or by consent—under to the EFTA, which is remarkable. It is also my understanding that Capital One is entirely responsible for any fee award granted by the Court and it does not reduce any of the settlement benefits to class members. If the Court approves a lesser fee amount, Capital One would retain that money, and it would not increase the benefits that class members receive under the settlement.

30. I believe that the fee sought by Kelly Guzzo, PLC in this matter is not only fair and reasonable, given the qualifications of Kelly Guzzo, PLC, but it is well deserved, as those consumers who submit valid claims will receive all of their money back and the full amount of their pro rata statutory damages, which will more than make consumers whole for the conduct alleged in the Complaint. I believe awarding a lesser fee than requested would underestimate the value of Kelly Guzzo, PLC's work and effort expended on this litigation given its great result. As such, this case demanded specialized skill and experience. It is clear to me that Kelly Guzzo, PLC in this case both possessed and implemented the necessary specialized skill and experience. In addition, they faced a formidable defense firm and were able to negotiate a first of its kind settlement under the EFTA.

I declare under penalty of perjury of the laws of the United States that the foregoing is

correct.

Signed this 31st day of October, 2023.

/s/ Dale W. Pittman
Dale W. Pittman