

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

IN RE: CAPITAL ONE 360 SAVINGS
ACCOUNT INTEREST RATE LITIGATION

Civil Action No. 1:24-md-03111-DJN-WBP

FILED UNDER SEAL

EIGHTH REPORT OF THE SPECIAL MASTER

The Special Master submits this report under authority of the order appointing the undersigned as special master (ECF No. 24), the November 6, 2025 order amending the scope of the Special Master’s duties to cover all responsibilities set forth therein (ECF No. 260), and the November 21, 2025 order directing the Special Master to file a report concerning (1) an assessment of the historical loss amounts resulting from the alleged misconduct by Defendants Capital One Financial Corp. and Capital One, N.A. (collectively, “Defendants” or “Capital One”), (2) what percentage of those loss amounts would stand addressed by the \$425 million settlement fund (the “Settlement Fund”), and (3) an estimate of the value provided to the Settlement Class¹ over two years by treating 360 Savings accountholders in the same manner as 360 Performance Savings accountholders. (ECF No. 278.) Accordingly, this report sets forth the Special Master’s findings on those three items.²

¹ All capitalized terms incorporate by reference the definitions in the new Settlement Agreement dated December 12, 2025, unless otherwise stated. (*See* ECF No. 284-1.)

² At the outset, the Special Master, who has more than thirty years of experience litigating and utilizing damages models like those provided by the parties in this suit, notes that this report is informed by his presence and active role in multiple days of mediation with the parties, where damages analyses were discussed at length (*see* ECF No. 284 ¶¶ 17–19), as well as his thorough review of the filings submitted in this case.

Based on a review of the parties' expert reports and the full record in this case, the Special Master concludes that Defendants have identified considerations that a reasonable jury could credit in assessing—and reducing—Plaintiffs' class-wide damages estimate of \$2.9 billion. A jury could, for example, reasonably conclude that certain assumptions underlying Plaintiffs' damages model warrant adjustment, including the exclusion of specific categories of Settlement Class Members and 360 Savings account balances. Taking these considerations into account, a reasonable damages estimate ranges from approximately \$742 million to \$1.098 billion. Based on this estimate, the \$425 million Settlement Fund represents between 38 and 57 percent of what Settlement Class Members could have obtained for their historical losses if Plaintiffs were successful through trial and appeal. For a consumer class action, this represents a robust recovery in light of the status of the case when the parties settled and the significant defenses of Capital One. The recovery for Settlement Class Members is even greater considering Capital One's prospective obligation to pay the interest rate for the 360 Performance Savings account to 360 Savings accountholders for at least two years. The Special Master estimates that the value of the prospective relief is between approximately \$722.6 million and \$877.5 million based on updated information from Capital One, reflecting a total payment to the Settlement Class in excess of \$1 billion. Using this number, the recovery of the class is equal to the Special Master's reasonable damages estimate and is a remarkable recovery for the Settlement Class.

I. Relevant Background

On July 1, 2024, Plaintiffs, who were 360 Savings accountholders with Capital One between September 2019 and July 2024, filed their consolidated amended complaint on behalf of themselves and a putative class of similarly situated accountholders, as well as various subclasses, against Capital One. (ECF No. 10.) Plaintiffs alleged that Capital One maintained and marketed a

“360 Savings” online savings account as a “high-interest” product from February 2013 until September 2019. (*Id.* ¶ 1.) Plaintiffs further alleged that in September 2019, Capital One surreptitiously, and without warning to existing customers, removed 360 Savings from its website and introduced a materially identical account called “360 Performance Savings” that carried a higher interest rate while still continuing to maintain legacy 360 Savings accounts at a lower rate for existing accountholders. (*Id.* ¶¶ 2–7.) Plaintiffs alleged that Capital One’s conduct was motivated by a “desire to cheat customers out of interest payments” and “caused its 360 Savings accountholders to lose millions of dollars of interest” (*Id.* ¶¶ 6, 10.) Based on Capital One’s alleged conduct, Plaintiffs asserted twenty-three claims, which included breach of contract and breach of the covenant of good faith and fair dealing, unjust enrichment, promissory estoppel, and violations of various state consumer protection and unfair trade practice statutes. (*Id.* ¶¶ 130–311.) Among other things, Plaintiffs sought damages, restitution, and/or disgorgement. (*Id.* ¶¶ 312–17.)

On July 26, 2024, twenty-five days after Plaintiffs filed their consolidated amended complaint, Capital One filed a motion to dismiss the complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). (ECF No. 29.) Capital One argued, *inter alia*, that all of Plaintiffs’ claims were preempted by the National Bank Act, that Plaintiffs’ state statutory claims failed for a variety of independent threshold and merits reasons, and that Plaintiffs failed to state claims for unjust enrichment, promissory estoppel, and breach of the implied covenant of good faith and fair dealing. (ECF No. 30 at 19–21.) The Court agreed with Capital One that Plaintiffs failed to state claims for unjust enrichment and promissory estoppel, and also that Plaintiffs lacked standing to bring a claim under the Ohio Deceptive Trade Practices Act, dismissing those claims.³ (ECF No. 49 at 106.)

³ Capital One and Plaintiffs agreed that a claim brought under the Nebraska Uniform Deceptive Trade Practices Act should also be dismissed and the Court dismissed the claim without analysis. (ECF No. 49 at 8 n.2.)

However, the Court denied Capital One's motion with respect to all other claims, allowing Plaintiffs' case to proceed with the remaining nineteen claims. (*Id.*)

In March 2025, with the assistance of the Special Master and mediator Robert Meyer of JAMS, the parties began mediation with the goal of reaching a settlement.⁴ (*See* ECF No. 95 at 2.) That initial mediation session was unsuccessful, but after meeting again the next month with the Special Master and Mr. Meyer, Plaintiffs and Capital One tentatively agreed to settle the suit. Following two more mediations with the Special Master and Mr. Meyer, the parties entered into a settlement agreement (the "Previous Agreement"). (*See* ECF No. 163-1.) The terms of the Previous Agreement required Capital One to pay Settlement Class Members \$300 million from a cash fund, and \$125 million in increased interest payments to Members who continued to maintain 360 Savings accounts. (*Id.*) On June 6, 2025, Plaintiffs moved for preliminary approval of the parties' agreement. (ECF No. 161.)

On June 16, 2025, the Court preliminarily approved the Previous Agreement (ECF No. 174) and Plaintiffs then moved for final approval on September 11, 2025 (ECF No. 196). On November 6, 2025, following the filing of an *amicus* brief by eighteen state attorneys general in opposition to the settlement (ECF No. 210) and Member objections (*see, e.g.*, ECF No. 191), the Court denied final approval of the Previous Agreement under Federal Rule of Civil Procedure 23(e) and directed Plaintiffs and Capital One to "engage in further settlement negotiations to remedy the flaws in the proposed settlement." (ECF No. 259 at 6.) Among other things, the Court rejected the Previous Agreement because the proposal "potentially afford[ed] the class a recovery of less than 10% of damages, fail[ing] to provide meaningful relief to the three-quarters of the

⁴ Although the parties completed substantial discovery before the first mediation session, the present action was still in its early stages of litigation in March 2025, with class certification (ECF No. 102) and *Daubert* motions (*see, e.g.*, ECF No. 112), having been fully briefed but still pending, and summary judgement motions still to be filed. Nevertheless, trial was scheduled to begin on July 21, 2025 (*see* ECF No. 26).

class who remain[ed] in 360 Savings accounts.” (*Id.* at 2–3.) Pursuant to the Court’s direction, the parties engaged in renewed negotiations involving the Special Master (*see* ECF No. 274 at 1–2), and on December 23, 2025, Plaintiffs moved for preliminary approval of a new settlement agreed to by the parties. (ECF No. 282.)

The new settlement agreement (the “Agreement” or “Settlement Agreement”) has two key terms. First, under Sections 4.1 and 4.2 of the Agreement, Capital One will be obligated to “make a non-reversionary settlement payment of . . . [\$425 million]” to compensate Settlement Class Members and to cover attorneys’ fees and expenses approved by the Court, notice and administrative costs, and service awards approved by the Court. (ECF No. 284-1 at 17–18.) Second, under Section 6.1, upon the Court’s final approval of the Agreement, Capital One is obligated to “(i) maintain and service both 360 Savings accounts for at least two years and (ii) pay the same rate of interest on deposits in, and apply the same terms and conditions relating to fees and minimum balances to, 360 Savings accounts and 360 Performance Savings accounts.” (*Id.* at 21.) In other words, Capital One must “match interest rates for Settlement Class members who continue to hold 360 Savings Accounts to those rates paid to 360 Performance Savings accountholders.” (ECF No. 296 at 2.) The Settlement Agreement also, under Section 3.1, makes Capital One’s obligations contingent upon the New York Attorney General agreeing to dismiss with prejudice its related litigation against Capital One. (*Id.* at 15.) Further, Capital One’s obligations are also contingent upon each of the seventeen attorneys general *amici* (*see* ECF No. 210) affirming that they will not challenge the new settlement or bring any legal action against Capital One related to the subject matter of this suit (ECF No. 284-1 at 17).

The Court preliminarily approved the Settlement Agreement on January 12, 2026. (ECF No. 296.) All of the states which previously objected to the earlier settlement informed the Special

Master that they would not object to the new settlement and provided assurances regarding future litigation. (ECF No. 289.) During the preliminary approval hearing, the Court valued the settlement at approximately \$1 billion. *See* January 12, 2026 Preliminary Approval Hearing Tr. at 17:15–16, 21.

II. Assessment of Historical Loss Amounts Resulting from Capital One’s Alleged Misconduct

A. Plaintiffs’ Damages Estimate

On January 21, 2025, Plaintiffs’ expert David McKnight submitted an expert report estimating class-wide damages at approximately \$2.9 billion. Mr. McKnight’s estimate is comprised of two components, both of which assume that Settlement Class Members should have been paid the higher rates offered on 360 Performance Savings accounts upon the launch of the 360 Performance Savings product on September 18, 2019. The components are (1) the damages suffered by the 360 Savings accountholders resulting from the underpayment of interest, and (2) interest on the additional funds that would have been credited to the Settlement Class Members’ accounts, compounded monthly, at the 360 Performance Savings account rates. As to the first component, Mr. McKnight estimated a delta of approximately \$2.722 billion between the interest actually earned on the 360 Savings accounts and the interest that would have been earned at the higher rates on the 360 Performance Savings accounts from September 18, 2019 through November 30, 2024.⁵ As to the second component, Mr. McKnight estimated prejudgment interest in the amount of approximately \$178 million, calculated from September 18, 2019 through the date of Mr. McKnight’s expert report.

⁵ November 30, 2024 is the date through which Capital One provided information on the amount of interest paid to 360 Savings accountholders.

B. Capital One's Damages Estimate

On February 18, 2025, Defendants' expert Bruce Strombom submitted an expert report that included discounted damages estimates reflecting adjustments to Mr. McKnight's initial \$2.9 billion figure, which Dr. Strombom prepared by excluding certain categories of Settlement Class Members, excluding certain 360 Savings account balances held by Settlement Class Members, and using benchmarks other than the interest rate on the 360 Performance Savings accounts to calculate damages. Unlike Mr. McKnight's damages methodology, which calculated damages on a class-wide basis, Dr. Strombom's methodology emphasized the purported heterogeneity of the Settlement Class and, relatedly, the purported importance of individualized inquiries to determine whether Settlement Class Members were harmed and the degree of harm. Although Dr. Strombom's report calculated a range of damages estimates based upon the application of one or more sensitivities, the estimate relied upon by the parties in subsequent briefing is \$742 million.⁶ (*See, e.g.*, ECF No. 162 at 24 (“[B]ased on one such calculation in Capital One's damages expert's report that could have been presented to the jury, the Settlement here represents 57.2% of damages [*i.e.*, \$425 million divided by \$742 million.]”); ECF No. 197 at 20 (“As stated in Plaintiffs' preliminary approval brief, the Settlement here represents 14.8% of maximum expected damages (based on Plaintiffs' damages expert's reply report), or 57.2% of minimum expected damages (based on Capital One's expert's sensitivity analyses).”).

⁶ Dr. Strombom used benchmarks other than the interest rate on the 360 Performance Savings accounts to calculate damages, including the Federal Deposit Insurance Corporation (“FDIC”) national average rate, the savings interest rate of three competing financial institutions (Chase, Bank of America, and Wells Fargo), the average, median, and 75th percentile savings interest rates of 13 banks comparable to Capital One, and the average, median, and 75th percentile interest rates of all savings products captured by RateWatch data. The \$742 million damages estimate does not incorporate Dr. Strombom's analysis of damages using any benchmark other than the 360 Performance Savings rate, however, because the 360 Savings rate was higher than the alternative benchmark rates. Accordingly, each of the potential alternative benchmark rates analyzed by Dr. Strombom yielded much lower damages amounts.

C. The Special Master's Assessment

Having carefully reviewed the expert reports submitted by Mr. McKnight and Dr. Strombom, and based on the Special Master's ongoing involvement in and familiarity with the facts of this case, the Special Master is persuaded that a reasonable jury could reject the assumptions underlying Mr. McKnight's \$2.9 billion class-wide damages estimate—namely, that all Settlement Class Members, had they been properly informed that the 360 Savings account and the 360 Performance Savings account were different products, would have immediately transferred their entire 360 Savings account balances to a 360 Performance Savings account, and that Settlement Class Members who did not close their 360 Savings accounts remained unaware of the differences between the two products throughout the relevant period. If a jury were to reject either assumption, it would be reasonable to expect a corresponding and significant downward adjustment to Mr. McKnight's damages estimate. In making such adjustments, a jury could exclude certain categories of Settlement Class Members and associated 360 Savings account balances, as identified by Dr. Strombom and discussed below, including: (1) Settlement Class Members who opened Capital One's December 6, 2024 marketing email but took no further action or otherwise appeared inactive; (2) Settlement Class Members who logged into their accounts during at least 75 percent of the months in which they maintained a positive 360 Savings account balance; (3) Settlement Class Members who held total 360 Savings account balances of \$1,000 or less as of September 30, 2019; (4) 360 Savings account balances maintained after a Settlement Class Member opened a 360 Performance Savings account; and (5) 360 Savings account balances maintained after a Settlement Class Member viewed their account details or account statement pages one, two, or three times during the relevant period. Applying these exclusions yields an estimated damages range of approximately \$742 million to \$1.098 billion, which represents the

Special Master's reasonable assessment of damages in light of the record and the parties' expert submissions.

The Special Master has assumed that the 360 Performance Savings rate should be used as the benchmark interest rate. As the allegations were focused on a comparison of the two Capital One rates (*i.e.*, the 360 Savings and 360 Performance Savings rates), not alternative rates, the Special Master concludes that the 360 Performance Savings rate is the more appropriate benchmark. The alternative benchmarks analyzed by Dr. Strombom (*i.e.*, the FDIC national average interest rate, the savings interest rates of Chase, Bank of America, and Wells Fargo, the average, median, and 75th percentile savings interest rates of 13 banks comparable to Capital One, and the average, median, and 75th percentile interest rates of all savings products captured by RateWatch data) yielded much lower damages amounts and would be litigated by the parties but for the Settlement.

1. Categories of Settlement Class Members and 360 Savings Account Balances for Exclusion

In the opinion of the Special Master, there are several categories of Settlement Class Members and 360 Savings account balances that a jury could reasonably exclude in their damages. The key categories are detailed below.

First, a jury could reasonably exclude Settlement Class Members who opened Capital One's December 6, 2024 email, which advised them that they could earn more interest at Capital One and invited them to open a 360 Performance Savings account⁷ (*see* ECF No. 198-28), and did not take one of three following actions: (1) close their 360 Savings account by January 31, 2025;

⁷ Specifically, on December 6, 2024, Capital One sent an email to 360 Savings accountholders with the subject line "Earn more interest with Capital One" and a leading headline of "Earn a higher APY with a new account today." The email informed the 360 Savings accountholders of the then-current 360 Savings interest rate (0.5% APY on their 360 Savings accounts) and that 360 Performance Savings accounts were available with a rate of 3.80% APY. The email also encouraged 360 Savings accountholders to open a 360 Performance Savings account. (*See* ECF No. 198 ¶ 10.)

(2) self-initiate any transactions involving their 360 Savings account for the remainder of December 2024 and the entirety of January 2025; or (3) open a 360 Performance Savings account on or before January 31, 2025. Of the more than one million 360 Savings accountholders who received Capital One’s December 6, 2024 email, only 48 percent opened it; among those who opened the email, only 0.8 percent opened a 360 Performance Savings account between December 6, 2024 and January 31, 2025. (ECF No. 198 ¶ 10.) In other words, only a few thousand of the more than one million recipients elected to switch to the higher-yield 360 Performance Savings account, after being directly informed of its availability. While the parties dispute the effect of this email, a jury could view this limited response rate as evidence that additional disclosure by Capital One would not have caused most recipients of the December 6, 2024 email to switch accounts.⁸ The Special Master, Mr. Meyer, and the parties spent significant time at the mediation discussing the impact of this email as it is a key milestone in the case timeline.

A jury could also exclude Settlement Class Members who had not logged into their 360 Savings accounts since January 2019 or had not self-initiated any transactions involving those accounts since September 2019. Based on the minimal engagement by these accountholders, a jury could reasonably infer that additional disclosures by Capital One would not have prompted these accountholders to take affirmative steps to move funds to a different account. Excluding the above-

⁸ This conclusion is reinforced by the fact that, in the middle of the same December 6, 2024 to January 31, 2025 window, the Consumer Financial Protection Bureau (“CFPB”) publicly filed a lawsuit alleging that Capital One had “worked to keep 360 Savings accountholders in the dark” about the higher-interest product and had “avoided paying millions of 360 Savings accountholders more than \$2 billion in interest” they would have earned by switching. Compl. ¶¶ 4, 91, *Consumer Fin. Prot. Bureau v. Capital One Fin. Corp.*, No. 1:24-cv-00061 (E.D. Va. Jan. 14, 2025). The lawsuit generated immediate, national coverage, ensuring that the recipients of Capital One’s December 6, 2024 email likely received contemporaneous information about the products and interest rates at issue in both the CFPB case and the instant case. *See, e.g.*, Taylor Telford, *CFPB Accuses Capital One of ‘Cheating’ Customers on Interest Rates*, WASH. POST (Jan. 14, 2025), <https://www.washingtonpost.com/business/2025/01/14/cfpb-capital-one-savings-interest/>; *Capital One Allegedly Cheated Customers out of \$2 Billion in Interest, CFPB Claims*, CBS NEWS (Jan. 14, 2025), <https://www.cbsnews.com/news/capital-one-cfpb-lawsuit-savings-account-rates/>; Rachel Louise Ensign, *They Thought Their Money Was in High-Interest Accounts—They Got Paid Peanuts*, WALL ST. J. (Jan. 21, 2024), <https://www.wsj.com/finance/investing/capital-one-high-interest-savings-complaints-b9adc1e9?msockid=3cee99701bea61db08f48f1a1a3860cd>.

referenced categories of Settlement Class Members reduces Mr. McKnight's \$2.9 billion damages estimate by approximately \$264 million.

A jury could likewise exclude Settlement Class Members who regularly monitored their Capital One accounts, meaning those who logged into their accounts for 75 percent of the months in which they maintained a positive 360 Savings account balance. A jury could reasonably infer that such accountholders were aware of the interest rates applicable to their accounts and knowingly elected to retain funds in their 360 Savings accounts, undermining the premise that they were harmed by Capital One's alleged conduct. Excluding this category of Settlement Class Members reduces Mr. McKnight's \$2.9 billion damages estimate by approximately \$1.313 billion.

In addition, a jury could exclude Settlement Class Members who maintained total 360 Savings account balances of \$1,000 or less as of September 30, 2019. Given the relatively small amount of additional interest those accountholders stood to gain, coupled with the switching costs associated with opening a new account and transferring funds between accounts, a jury could reasonably infer that such accountholders would not have opened a 360 Performance Savings account, even with additional disclosure by Capital One. Excluding this category of Settlement Class Members reduces Mr. McKnight's \$2.9 billion damages estimate by approximately \$179 million.

With respect to 360 Savings account balances, a jury could exclude balances maintained by Settlement Class Members who continued to maintain funds in their 360 Savings accounts after opening 360 Performance Savings accounts. Because these individuals had already opened 360 Performance Savings accounts, a jury could reasonably infer that they were aware of the availability of that product and made an informed decision to retain some portion of their funds in

their 360 Savings accounts. Excluding this category of 360 Savings account balances reduces Mr. McKnight’s \$2.9 billion damages estimate by approximately \$172 million.

A jury could also exclude 360 Savings account balances held by Settlement Class Members who viewed their “Account Details” page or account statements one or more times between September 18, 2019 and the date of Dr. Strombom’s report. A jury could reasonably infer that such accountholders were aware of the interest rates applicable to their 360 Savings accounts and thus made informed decisions regarding the retention of funds in those accounts. Excluding the account balances of accountholders after their first view of the account details page reduces Mr. McKnight’s \$2.9 billion damages estimate by approximately \$1.432 billion. Excluding account balances after accountholders’ second and third views of the account details page reduces Mr. McKnight’s estimate by approximately \$904 million and \$607 million, respectively.

Taken together, excluding these categories of Settlement Class Members and 360 Savings account balances reduces Plaintiffs’ \$2.9 billion damages estimate by between \$2.158 billion and \$1.802 billion, to between \$742 million and \$1.098 billion. The estimated reductions for each category are reflected in the chart below. There is some overlap between the categories (*e.g.*, Settlement Class Members who logged into their accounts during at least 75 percent of the months for which they had positive total 360 Savings account balances may have also reviewed their 360 Savings account details or account statement pages one, two, or three times during the relevant period), so adding the below reductions together results in a higher figure than the actual differential between the Special Master’s damages estimate of between \$742 million and \$1.098 billion and Plaintiffs’ estimate of \$2.9 billion.

Category	Reduction (\$)
Settlement Class Members Who (1) Opened the December 6, 2024 Email and Took No Action, and/or (2) Appear to Have Been Inactive	\$264 million

Category	Reduction (\$)
Settlement Class Members Who Logged Into Their Account During at Least 75% of Months for Which They Had a Positive Total 360 Savings Balance	\$1.313 billion
Settlement Class Members with \$1,000 or Less in Total 360 Savings Balance as of September 30, 2019	\$179 million
360 Savings Account Balances After Settlement Class Members Opened a 360 Performance Savings Account	\$172 million
360 Savings Account Balances After Settlement Class Members' First, Second, or Third View of Their Account Details or Account Statement Page	\$1.432 billion (first view); \$904 million (second view); or \$607 million (third view)

III. Assessment of Percentage of Historical Loss Amounts Addressed by the Settlement Fund

Based on the Special Master’s estimated damages range of approximately \$742 million to \$1.098 billion, the \$425 million Settlement Fund represents between 38 and 57 percent of what Settlement Class Members could have obtained for their historical losses if Plaintiffs were successful through trial and appeal. These risks include, as the Court previously noted, class certification and “ultimately proving [Plaintiffs’] claims under various provisions of state law by a preponderance of the evidence,” as well as “the existence of numerous disputed issues.” (*See* ECF No. 284-7 at 66 (transcript of November 6, 2025 final approval hearing); *see also* Transcript of January 12, 2026 Settlement Approval Hearing at 15:20–25 (“Plaintiffs also faced risks in continuing to litigate this case through trial. These risks include delayed certification, the potential of awarding summary judgment to Capital One, significant appellate risks given the number and diversity of the legal issues at play under different bodies of state law, and of course they could have failed at trial.”)). The Special Master addresses each of these risks in turn.

First, Plaintiffs face a substantial risk at the class-certification stage due to Rule 23(b)(3) predominance issues. Where, as here, Plaintiffs seek to certify a class under Rule 23(b)(3), they

must show that “questions of law or fact common to class members predominate over any questions affecting only individual members.” Fed. R. Civ. P. 23(b)(3). Capital One vigorously opposed Plaintiffs’ class certification motion, arguing that individualized issues of reliance, causation, and damages would overwhelm any common questions. Indeed, some named Plaintiffs testified that they never saw Capital One’s allegedly misleading representations, or that they affirmatively chose not to move their funds from 360 Savings to 360 Performance Savings accounts even after learning of the higher interest rates. Such testimony potentially undermines a showing of class-wide reliance and casts doubt on whether Capital One’s alleged conduct caused uniform injury. If Capital One were to “defeat[] class certification, the value of th[e] case would . . . decrease[] to near zero.” (ECF No. 283 at 16 (quoting *Torres v. Bank of Am. (In re Checking Account Overdraft Litig.)*, 830 F. Supp. 2d 1330, 1347, 1347 (S.D. Fla. 2011)). At the same time, class certification also presents a litigation risk for Capital One: in 2025, courts granted class-certification motions in whole or in part in approximately 68 percent of cases, underscoring the non-trivial risk that the Court could certify the class notwithstanding Capital One’s opposition. *See* Duane Morris LLP, *Trend # 2 – Courts Certified Classes at High Rates Across Nearly All Substantive Areas of Class Action Litigation*, LEXOLOGY CLASS ACTION DEFENSE BLOG (Jan. 9, 2026), <https://www.lexology.com/library/detail.aspx?g=611492c8-493e-4f25-b0b9-9b8aa7fda0a2>.

At summary judgment, Plaintiffs face the risk of Capital One prevailing on a number of issues. These risks include certain exemptions under state consumer protection statutes applying to Capital One’s alleged conduct, and that the Court would not find that Plaintiffs reasonably relied on Capital One’s representations regarding 360 Savings account interest rates. (*See* ECF No. 49 at 101 (“As in the context of the Michigan [Consumer Protection Act], the Court determines that it

would be premature to rule here on the [Nebraska Consumer Protection Act] affirmative defense at this stage in the litigation.”); *see also id.* at 75 (noting that “justifiable reliance is typically a question of fact for the fact-finder to decide”) (internal citation omitted); *see also* ECF No. 198-1 at 16 (June 16, 2025 preliminary approval hearing transcript) (“I note that just because I denied largely the motion to dismiss, that doesn’t mean that I would have denied a summary judgment motion. Those are different standards. And there were significant hurdles here that Plaintiffs had to face in this case.”.) At trial, as is true in any case, Plaintiffs also face the risk of a jury finding in Capital One’s favor. And even if Plaintiffs obtained a favorable verdict, they would likely face appellate risk for any number of reasons, including those mentioned above.

With respect to damages, even if a jury were to return a verdict in Plaintiffs’ favor, it could substantially reduce any award by crediting the analysis of Capital One’s damages expert, Dr. Strombom. A jury could also reject Plaintiffs’ assertion that the appropriate benchmark for calculating damages is the interest rate paid on the 360 Performance Savings account, and instead select a lower benchmark. The alternative benchmarks analyzed by Dr. Strombom (*i.e.*, the FDIC national average rate, the savings interest rates of Chase, Bank of America, and Wells Fargo, the average, median, and 75th percentile savings interest rates of 13 banks comparable to Capital One, and the average, median, and 75th percentile interest rates of all savings products captured by RateWatch data) resulted in much lower damages amounts.

In sum, any of the above-described risks could result in no recovery or a substantially reduced or delayed recovery for the Settlement Class. *See, e.g., In re Checking Acct. Overdraft Litig.*, 830 F. Supp. 2d 1330, 1347 (S.D. Fla. 2011) (“Had [Defendants] defeated class certification, the value of this case would have decreased to near zero.”); *Lenahan v. Sears, Roebuck and Co.*, No. 02-0045, 2006 WL 2085282, at *12 (D.N.J. July 24, 2006) (explaining that, absent a

settlement, “[Defendant] would likely appeal any result reached on liability or damages further prolonging litigation and increasing Plaintiffs’ risk of receiving no recovery.”). Because of these risks, it would be improper and unwise to assume that the Plaintiffs could have fully recovered their damages estimate and therefore it is unfair to compare the value of the settlement to the \$2.9 billion in damages sought by Plaintiffs. Plaintiffs faced many significant hurdles when the case settled, and any evaluation of their model and their likelihood of recovery must take into account these risks. In light of these risks, the \$425 million settlement fund, which accounts for between 38 and 57 percent of the Special Master’s estimate of loss, is a robust recovery for the Settlement Class in light of the litigation risks. *See In re MicroStrategy, Inc. Sec. Litig.*, 148 F. Supp. 2d 654, 665–66 (E.D. Va. 2001) (finding the settlement, which was comprised of a recovery of between approximately \$100 million and \$137.5 million out of an estimated maximum recovery of \$711 million (or between approximately 14% and 19.3% of the maximum recovery), was adequate under *Jiffy Lube*); *In re Genworth Fin. Sec. Litig.*, 210 F. Supp. 3d 837, 842 n.3 (E.D. Va. 2016) (approving settlement where the settlement amount represented “approximately 15% of the damages the plaintiffs could win if they prevailed on each and every issue”); *see also Torres v. Bank of Am. (In re Checking Account Overdraft Litig.)*, 830 F. Supp. 2d 1330, 1347, 1350 (S.D. Fla. 2011) (granting final approval to a class action settlement of \$410 million, amounting to only 9% of maximum recoverable damages). The Special Master further notes that he has negotiated numerous consumer MDL class action settlements, and that this is a very strong recovery for the Settlement Class.

IV. Assessment of the Value Provided to the Settlement Class Over Two Years

The recovery for Settlement Class Members is further increased by Capital One’s prospective obligation to apply the 360 Performance Savings interest rate to 360 Savings account balances for a period of at least two years. (*See* ECF No. 284-1 at 21.) To evaluate the value

provided by this prospective relief over a period of two years, the Special Master began with the 360 Savings total account balance as of January 13, 2026. Using that balance, the Special Master estimated the total interest that would accrue over a two-year period at the current 360 Performance Savings rate, which is 3.30 percent. Applying the 3.30 percent rate, the estimated interest earned over two years on 360 Savings accounts is \$1,031,688,320.

The Special Master then compared this earned interest estimate to what 360 Savings members are estimated to receive if the 360 Savings interest rate remains at two other interest rates for a two-year period: 0.50 percent (the interest rate prior to the parties' settlement discussions) and 1 percent (the interest rate following the execution of the first settlement agreement). At the 0.50 percent rate, 360 Savings accountholders would earn \$154,173,631 over a two-year period (*i.e.*, \$877,514,689 less than at the 3.30 percent 360 Performance Savings rate). At the 1 percent rate, 360 Savings accountholders would earn \$309,076,921 (*i.e.*, \$722,611,399 less than at the 3.30 percent Performance Savings rate). Accordingly, the Special Master estimates that the value of the prospective relief falls between approximately \$722.6 million and \$877.5 million. The Special Master notes that the figures in this report are significantly higher than the number discussed by the Court at the preliminary approval hearing and reflect additional input and data from Capital One. Based on the new information, the total benefit to the class is in excess of \$1 billion.

* * *

For the foregoing reasons, the Special Master concludes that the historical losses resulting from the alleged misconduct fall within a range of approximately \$742 million to \$1.098 billion. Measured against this range, the \$425 million Settlement Fund addresses a substantial portion of the Special Master's estimated damages—between approximately 38 and 57 percent—that could have been recovered by the Settlement Class in the event of success through trial and appeal. In

addition, the Settlement provides prospective value to the Settlement Class through Capital One's obligation to treat 360 Savings accountholders in the same manner as 360 Performance Savings accountholders for at least two years, which the Special Master estimates will confer an additional \$722.6 million to \$877.5 million in value. Taken together, these components reflect substantial and meaningful relief to the Settlement Class.

Washington, DC
Date: January 23, 2026



Craig P. Seebald