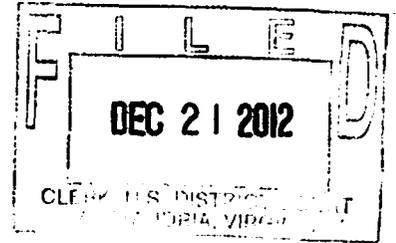


IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION



UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 CAPITAL ONE, N.A. and )  
 )  
 CAPITAL ONE BANK (USA), N.A., )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

CIVIL ACTION NO. 1:12-cv-828  
(JCC-IDD)

**AMENDED CONSENT ORDER**

**I. INTRODUCTION**

1. This Consent Order resolves the allegations contained in the United States' Complaint that Defendants Capital One, N.A. and Capital One Bank (USA), N.A. (collectively "Capital One" or "Defendants") violated the Servicemembers Civil Relief Act ("SCRA"), 50 U.S.C. app. §§ 501-597b, when, from at least July 15, 2006 to November 21, 2011, they: 1) wrongly denied certain written requests made by "SCRA-protected servicemembers"<sup>1</sup> to have the interest rate on their credit cards and motor vehicle finance loans lowered to six percent (6%) per annum; 2) provided insufficient benefits on certain accounts that were enrolled after written requests were received from SCRA-protected servicemembers; 3) foreclosed on certain mortgages of SCRA-protected servicemembers without court orders; 4) repossessed certain SCRA-protected servicemembers' motor vehicles without court

<sup>1</sup> For purposes of this Consent Order, "[t]he term "SCRA-protected servicemember" includes servicemembers as defined in 50 U.S.C. App. § 511(1) and (2).

orders; and 5) obtained default judgments on debts owed by SCRA-protected servicemembers on credit cards, mortgage foreclosures, and/or motor vehicle finance loans without filing accurate affidavits of military service.

2. Defendant Capital One, N.A. is a national bank with its main office located at 1680 Capital One Drive in McLean, Virginia, in the Eastern District of Virginia.
3. Defendant Capital One Bank (USA), N.A. is a national bank with its main office located at 1680 Capital One Drive in McLean, Virginia, in the Eastern District of Virginia.
4. On February 17, 2012, Capital One Financial Corporation acquired ING Direct USA, which included certain account assets covered by the SCRA, and on May 2, 2012, Capital One N.A. and Capital One Bank (USA), N.A. acquired certain account assets from HSBC Holdings covered by the SCRA. As used in this Consent Order, “Accounts” refers to Capital One credit cards, mortgages, home equity loans, motor vehicle finance loans, consumer loans and lines of credit accounts, and commercial lending accounts, including certain accounts acquired from Chevy Chase Bank, N.A., formerly known as Chevy Chase Bank, FSB; GreenPoint Mortgage Funding, Inc.; North Fork Bank; Hibernia National Bank; and Onyx Acceptance Corporation. “Accounts” excludes the recently-acquired HSBC accounts, which are referred to as “HSBC Accounts,” and the recently-acquired accounts included in the ING Direct USA acquisition, which are referred to as “ING Accounts.”
5. From at least July 15, 2006 to November 21, 2011, Defendants have been responsible for approving or denying requests for interest rate reductions made by

SCRA-protected servicemembers who had or have Capital One credit cards, motor vehicle financing loans, mortgages, home equity loans, consumer loans and lines of credit, and commercial lending accounts. Defendants also have been responsible for foreclosing on mortgages entered into by SCRA-protected servicemembers, repossessing motor vehicles from SCRA-protected servicemembers, and obtaining default judgments against SCRA-protected servicemembers without filing accurate affidavits of military service.

6. In its Complaint, the United States alleges that Defendants engaged in a pattern or practice of violating Section 527(a)(1) of the SCRA, 50 U.S.C. app. § 527(a)(1), by denying written requests made by SCRA-protected servicemembers to have the interest rates on Accounts lowered to six percent (6%) per annum when, among other reasons, the military orders provided to Defendants did not include a specific end date for the period of military service stated in the form of a day, month, and year. The Complaint also alleges that Defendants engaged in a pattern or practice of violating: Section 532(a)(1) of the SCRA, 50 U.S.C. app. § 532(a)(1), by repossessing the motor vehicles of SCRA-protected servicemembers without a court order; Section 533(c) of the SCRA, 50 U.S.C. app. § 533(c), by foreclosing on the properties of SCRA-protected servicemembers without a court order; and Section 521 of the SCRA, 50 U.S.C. app. § 521, by obtaining default judgments against SCRA-protected servicemembers without first having filed an accurate affidavit of military service.
7. This Consent Order covers all Accounts, HSBC Accounts, and ING Accounts.

8. Capital One has cooperated fully with the United States' investigation in this matter. Capital One began and completed extensive work with an independent consultant approved by the United States Department of Justice ("DOJ") to review its Accounts and identify the nature and scope of its SCRA problems. This independent consultant has shared those results with DOJ. Through its review, Capital One has identified victims of SCRA-related violations involving the Accounts since July 15, 2006, and has agreed to make those individuals whole and provide them with additional compensation, for a total of approximately \$7,000,000 in compensation to identified victims, and provide an additional \$5,000,000 per Paragraph 48 of this Consent Order. Additionally, Capital One agrees to pay additional amounts, to be determined pursuant to Paragraphs 54, 56, 58, 61, 62, and 63, should there be any SCRA-related violations involving the HSBC Accounts or ING Accounts. Capital One also has voluntarily adopted numerous SCRA Policies and Procedures that will include benefits above and beyond those required by the SCRA or by this Consent Order. Such benefits include extending a 4% interest rate to certain servicemembers and giving an additional one-year grace period before de-enrolling servicemembers from the reduced interest rate program.
9. The United States and Defendants agree that the Court has jurisdiction over the subject matter of this case pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1345, and 50 U.S.C. app. § 597(a).
10. The United States and Defendants agree that, to avoid costly and protracted litigation, the claims against Capital One should be resolved without further proceedings or an evidentiary hearing. Therefore, as indicated by the signatures

appearing below, the United States and Defendants agree to the entry of this Consent Order.

It is hereby ORDERED, ADJUDGED and DECREED:

## II. INJUNCTIVE RELIEF<sup>2</sup>

11. Defendants, their officers, employees, agents, representatives, assigns, successors-in-interest, and all persons and entities in active concert or participation with Defendants are hereby enjoined from charging interest<sup>3</sup> on Accounts in excess of six percent (6%) per annum during a period of military service on any obligations incurred prior to military service<sup>4</sup> for which a servicemember requests SCRA protection, as required by Section 527 of the SCRA, 50 U.S.C. app. § 527.<sup>5</sup> In the case of interest rates charged on mortgages and home equity loans, the prohibitions described in this Paragraph shall be extended for a period of one (1) year following the end of the period of military service.
12. Defendants, their officers, employees, agents, representatives, assigns, successors-in-interest, and all persons and entities in active concert or participation with Defendants are hereby enjoined from foreclosing on the mortgages of SCRA-protected servicemembers, provided the mortgages were originated before the

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<sup>2</sup> Nothing in this Consent Order shall preclude Defendants from offering greater protections to servicemembers than those afforded by the Consent Order or the SCRA.

<sup>3</sup> For purposes of this Consent Order, “[t]he term ‘interest’ includes service charges, renewal charges, fees, or any other charges (except bona fide insurance) with respect to an obligation or liability.” 50 U.S.C. app. § 527(d)(1).

<sup>4</sup> For purposes of this Consent Order, the term “military service” is defined by Section 511(2) of the SCRA, 50 U.S.C. app. § 511(2).

<sup>5</sup> Nothing in this Consent Order shall prohibit Defendants from seeking a court order pursuant to Section 527(c) of the SCRA, 50 U.S.C. app. § 527(c), should it wish to obtain relief from the requirements of Section 527 of the SCRA, 50 U.S.C. app. § 527.

period of the servicemembers' military service, during the servicemember's military service and nine (9) months thereafter, without a court order.

13. Defendants, their officers, employees, agents, representatives, assigns, successors-in-interest, and all persons and entities in active concert or participation with Defendants are hereby enjoined from repossessing recreational and non-recreational motor vehicles of SCRA-protected servicemembers without a court order, during the servicemember's military service, provided the servicemember paid a deposit or installment on the contract before entering military service.
14. Defendants, their officers, employees, agents, representatives, assigns, successors-in-interest, and all persons and entities in active concert or participation with Defendants are hereby enjoined from seeking default judgments against SCRA-protected servicemembers without first checking the Department of Defense Manpower Data Center ("DMDC") website to determine whether the individual on whose debt Defendants seek a default judgment is an SCRA-protected servicemember, and, for those who are, filing an accurate affidavit of military service and attaching to the affidavit the most recent military status report from the DMDC or a copy of the military orders.

### **III. COMPLIANCE WITH THE SCRA AND SCRA POLICIES AND PROCEDURES**

15. Within thirty (30) calendar days of the date of entry of the Consent Order dated and filed on July 27, 2012 (the "July 27, 2012 Consent Order") [Dkt. No. 2], Capital One shall develop SCRA Policies and Procedures for Interest Rates to ensure that it does not charge interest on Accounts, HSBC Accounts, or ING Accounts in excess of six percent (6%) per annum during a period of military service, where the

obligation was incurred before military service and for which a servicemember requests SCRA protection, as required by Section 527 of the SCRA, 50 U.S.C. app. § 527. For all mortgage loans and home equity loans, the protections of this Section shall be extended for a period of one (1) year after the conclusion of the term of military service. The Policies and Procedures shall contain the following provisions:

- a. Defendants shall accept servicemembers' written requests for reduced interest rates pursuant to the SCRA made via facsimile, United States Postal Service First Class Mail (postage pre-paid), or overnight mail. Within six (6) months after entry of the July 27, 2012 Consent Order, Defendants shall also accept servicemembers' requests for reduced interest rates pursuant to the SCRA via in person delivery at any Capital One full-service branch location or via an online intake form. If a servicemember fails to provide a copy of military orders establishing that he or she is eligible for the SCRA's interest rate cap, Defendants shall request additional information in accordance with Paragraph 15(c) below before making a final determination that the servicemember is not, in fact, eligible for the interest rate reduction. Defendants shall also designate customer service representatives who have been specifically trained on the protections of the SCRA and who are responsible for the intake and fulfillment of benefit requests across all Accounts, HSBC Accounts, and ING Accounts that the servicemember has with Defendants. Defendants shall also ensure that they have a designated telephone number at which

servicemembers may reach the designated Capital One SCRA customer service representatives who will address questions or concerns regarding requests for reduced interest rates pursuant to the SCRA.

- b. When Defendants receive a request from a servicemember for a reduced interest rate pursuant to the SCRA, within two (2) billing cycles, they shall review all Accounts, HSBC Accounts, and ING Accounts held by the requesting servicemember with Defendants, regardless of type of obligation, as well as the interest rate(s) charged on those accounts, and shall determine the servicemember's eligibility for the reduced interest rate on all such Accounts, HSBC Accounts, and ING Accounts. If the servicemember is determined to be eligible, the reduced interest rate will be applied retroactively to the first day of eligibility.
- c. In the event that a servicemember fails to provide a copy of military orders entitling him or her to the interest rate cap with his or her request for an interest rate reduction pursuant to the SCRA, Defendants shall check the DMDC website to confirm eligibility. Should Defendants continue to question an applicant's eligibility, Defendants shall request, in writing, a copy of such orders. Defendants shall seek only military orders identifying the beginning date of the applicable period of military service from the requesting servicemember. Defendants shall not require that any military order submitted have a specific end date for the period of military service.

- d. Within twenty-one (21) calendar days after determining that a servicemember is not eligible for an interest rate reduction pursuant to the SCRA, Defendants shall notify the servicemember in writing of the reason(s) for the denial. Defendants shall ensure that such servicemember is given an opportunity to provide additional documentation or information to establish eligibility for the reduced interest rate.
- e. Defendants shall be permitted to raise the interest rate on eligible servicemember's Accounts, HSBC Accounts, and ING Accounts to an amount higher than six percent (6%) per annum only after Defendants access the DMDC website, and the information on the DMDC website shows that the servicemember is not in military service.<sup>6</sup>

16. Within thirty (30) calendar days of the date of entry of the July 27, 2012 Consent Order, Capital One shall develop SCRA Policies and Procedures for Mortgage Foreclosures in compliance with Section 533 of the SCRA, 50 U.S.C. app. § 533 and Section 521 of the SCRA, 50 U.S.C. app. § 521. These policies and procedures must address:

- a. In addition to any other reviews Defendants may perform to assess eligibility under the SCRA, (i) before referring a loan for foreclosure, (ii) within seven (7) business days before a foreclosure sale, and (iii) the later of (A) promptly after a foreclosure sale or (B) within three (3) business

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<sup>6</sup> In the case where an SCRA-protected servicemember provides Defendants with valid military orders that include an end date of military service inconsistent with that appearing on the DMDC website, Defendants shall not raise the interest rate on the servicemember's account until the later end date has expired. In the case of mortgage and home equity loans, the period of benefits is extended by one (1) year pursuant to Section 527(a)(1)(A) of the SCRA, 50 U.S.C. app. § 527(a)(1)(A).

days before the regularly scheduled end of any redemption period, Defendants will determine whether the secured property is owned by a servicemember covered by the SCRA by (1) reviewing any orders they have received from borrowers and (2) searching the DMDC for evidence of SCRA eligibility by either (a) last name and social security number or (b) last name and date of birth.

- b. If Defendants pursue a foreclosure action in court and the borrower fails to answer the action, Defendants and/or their agent will file a military affidavit with the court as required by Section 521(b)(1)(A). Before seeking entry of default, Defendants and/or their agent will search the DMDC and review information in their possession or control for orders to determine if the borrower is SCRA-protected or was SCRA-protected at any time during the preceding nine (9) months. If Defendants and/or their agent learns that the borrower is SCRA-protected or was SCRA-protected at the time of default, Defendants and/or their agent will: 1) file an affidavit stating that “the defendant is in military service” or “was in military service at the time of default” before seeking default judgment; and 2) attach the most recent military status report from the DMDC or a copy of the military orders to the affidavit.
- c. If Defendants initiate and pursue a waiver under a written agreement, as provided in Section 517 of the SCRA, Defendants must initiate the waiver process with the servicemember at least thirty (30) days in advance of any anticipated foreclosure sale date by sending a notice and a copy of the

proposed waiver to the servicemember. To the extent Defendants exercise this right, Defendants shall use a notice in the form attached as Exhibit A-1 and a waiver compliant with the SCRA and approved by DOJ. With prior approval of counsel for the United States, this provision may be modified based on changes in servicing requirements from government-sponsored entities or the Department of Housing and Urban Development.

17. Within thirty (30) calendar days of the date of entry of the July 27, 2012 Consent Order, Capital One shall develop SCRA Policies and Procedures for Motor Vehicle Repossessions in compliance with Section 532(a) of the SCRA, 50 U.S.C. app. § 532(a) and Section 521 of the SCRA, 50 U.S.C. app. § 521. These policies and procedures must address:
  - a. In addition to any other reviews Defendants may perform to assess eligibility under the SCRA, (i) before referring a recreational or non-recreational motor vehicle financing loan for repossession, (ii) within seven (7) business days before repossession, and (iii) promptly after notice of a repossession of a motor vehicle, Defendants will determine whether the secured property is owned by a servicemember covered by the SCRA by (1) reviewing any orders they have received from borrowers and (2) searching the DMDC for evidence of SCRA eligibility by either (a) last name and social security number or (b) last name and date of birth.
  - b. If Defendants pursue a repossession action in court and the borrower fails to answer the action, Defendants and/or their agent will file an affidavit of military service with the court as required by Section 521(b)(1)(A).

Before seeking entry of default, Defendants and/or their agent will search the DMDC and review information in their possession or control for orders to determine if the borrower is SCRA-protected. If Defendants and/or their agent learn that the borrower is SCRA-protected or was SCRA-protected at the time of default, Defendants and/or their agent will:

- 1) file an affidavit stating that “the defendant is in military service” or “was in military service at the time of default” before seeking default judgment; and 2) attach the most recent military status report from the DMDC or a copy of the military orders to the affidavit.

- c. If Defendants initiate and pursue a waiver under a written agreement as provided in Section 517 of the SCRA, Defendants must initiate the waiver process with the servicemember at least ten (10) days in advance of any anticipated repossession by sending a notice and a copy of the proposed waiver to the servicemember. To the extent Defendants exercise this right, Defendants shall utilize a notice in the form attached as Exhibit A-1 and a waiver in the form attached as Exhibit A-2.

18. Within thirty (30) calendar days of the date of entry of the July 27, 2012 Consent Order, Capital One shall develop SCRA Policies and Procedures for Default Judgments to ensure that they do not obtain default judgments on debts owed by SCRA-protected servicemembers for credit card loans, home equity loans, motor vehicle financing loans, consumer loans and lines of credit, and commercial lending accounts without first filing an accurate affidavit of military service, as required by

Section 521 of the SCRA, 50 U.S.C. App. § 521. These policies and procedures must address:

- a. In addition to any other reviews Defendants may perform, after a borrower fails to answer and prior to seeking entry of default, Defendants and/or their agent will search the DMDC and review information in their possession or control for orders to determine if the borrower is SCRA-protected.
  - b. If Defendants and/or their agent learn that the borrower is SCRA-protected or was SCRA-protected at the time of default, Defendants and/or their agent will: 1) file an affidavit stating that “the defendant is in military service” or “was in military service at the time of default” prior to seeking default judgment; and 2) attach the most recent military status report from the DMDC or a copy of the military orders to the affidavit.
  - c. If Defendants initiate and pursue a waiver under a written agreement, as provided in Section 517 of the SCRA, Defendants must initiate the waiver process with the servicemember at least thirty (30) days in advance of any anticipated default judgment by sending a notice and a copy of the proposed waiver to the servicemember. To the extent Defendants exercise this right, Defendants shall use a notice in the form attached as Exhibit A-1 and a waiver compliant with the SCRA and approved by DOJ.
19. No later than thirty (30) calendar days after the date of entry of the July 27, 2012 Consent Order, Defendants shall provide a copy of the proposed SCRA Policies and Procedures required under Paragraphs 15, 16, 17, and 18 to counsel for the United

States.<sup>7</sup> The United States shall respond to Defendants' proposed SCRA Policies and Procedures within forty-five (45) calendar days of their receipt. If the United States objects to any part of Defendants' proposed SCRA Policies and Procedures described in Paragraphs 15, 16, 17, and 18, the parties shall confer to resolve their differences. If the parties cannot resolve their differences after good faith efforts to do so, either party may bring the dispute to this Court for resolution. Defendants shall implement the SCRA Policies and Procedures within ten (10) calendar days of approval by the United States or the Court.

20. If at any time during the term of this Consent Order Defendants propose to materially change their SCRA Policies and Procedures described herein, they shall first provide a copy of the proposed changes to counsel for the United States. If the United States does not deliver written objections to Defendants within forty-five (45) calendar days of receiving the proposed changes, the changes may be implemented. If the United States makes any objections to the proposed changes within the forty-five (45)-day period, the specific changes to which the United States objects shall not be implemented until the objections are resolved.

#### **IV. TRAINING**

21. Defendants shall provide SCRA compliance training to any management officials or other employees who: (a) provide customer service to servicemembers in connection with the servicing of their Accounts, HSBC Accounts, or ING Accounts; (b) have significant involvement in servicing Accounts, HSBC Accounts

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<sup>7</sup> All materials required by this Consent Order to be sent to counsel for the United States shall be sent by commercial overnight delivery addressed as follows: Chief, Housing and Civil Enforcement Section, Civil Rights Division, U.S. Department of Justice, 1800 G Street, N.W., 7<sup>th</sup> Floor, Washington, DC 20006, Attn: DJ 216-79-12.

or ING Accounts, including setting the rates or fees; or (c) have significant involvement in foreclosure or repossession proceedings, (hereinafter together “covered Capital One employees”) within sixty (60) calendar days after Defendants’ new training program is approved by the United States or the Court pursuant to Paragraph 22, below. Training will be specific to the employee’s responsibilities associated with the obligation being serviced so the covered Capital One employees will receive training about specific SCRA provisions and applications pertinent to the employee’s position. Defendants shall provide to each covered Capital One employee: (a) training on the terms of Defendants’ SCRA Policies and Procedures specific to the employee’s responsibilities associated with that employee’s position; and (b) the contact information for the SCRA customer service representatives described above in Paragraph 15(a).

22. Within forty-five (45) calendar days of the United States’ approval of the SCRA Policies and Procedures pursuant to Paragraphs 15, 16, 17, and 18, Defendants shall provide to the United States the curriculum, instructions, and any written materials included in the training required by this Section. The United States shall have forty-five (45) calendar days from receipt of these documents to raise any objections to Defendants’ training materials, and, if it raises any, the parties shall confer to resolve their differences. In the event they are unable to do so, either party may bring the dispute to this Court for resolution.
23. The covered Capital One employees (described above in Paragraph 21) may undergo the training required by this Section via live training, computer-based training, web-based training, or via interactive digital media within sixty (60)

calendar days from the date the parties agree, or the Court decides, on the substance of the training materials (described above in Paragraph 22). If the training is conducted in any format other than live training, Defendants shall ensure that employees and agents have the opportunity to have their questions answered by a company contact that Defendants identify as having SCRA expertise within two (2) business days of the training. Any expenses associated with the training program required by this Section shall be borne by Defendants.

24. During the term of this Consent Order, Defendants shall provide annual SCRA training, as described in Paragraph 21, to covered Capital One employees with respect to their responsibilities and obligations under the SCRA, the SCRA Policies and Procedures, and the terms of this Consent Order. The training may be conducted by employees identified as Capital One training professionals with the supervision of counsel. Defendants shall certify in writing to counsel for the United States that the covered Capital One employees successfully completed this training.
25. Defendants shall secure a signed statement in the form attached as Exhibit B<sup>8</sup> from each covered Capital One employee at their SCRA compliance training acknowledging that he or she has received, read, and understands the Consent Order and the SCRA Policies and Procedures specific to the employee's responsibilities associated with the obligation being serviced, has had the opportunity to have his or her questions about these documents answered, and agrees to abide by them. Defendants shall also follow these training procedures for each of their employees who subsequently becomes a covered Capital One employee within thirty (30)

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<sup>8</sup> The electronic signature of a covered Capital One employee shall be deemed satisfactory for purposes of verifying completion of the training required under this Consent Order.

calendar days of his or her hiring, promotion or transfer. For the duration of this Consent Order, copies of those signed statements shall be provided to the United States upon request.

## **V. COMPENSATION FOR ACCOUNTS**

### **A. Violations of Sections 533 and 521 of the SCRA related to completed foreclosures on SCRA-protected servicemembers:**

26. Defendants have engaged the services of an independent consultant acceptable to DOJ that has begun to review completed foreclosures. To the extent they have not already done so, the independent consultant will review all foreclosures completed from July 15, 2006 to November 21, 2011, to evaluate whether the completed foreclosures were in compliance with Sections 533 and 521 of the SCRA. The independent consultant shall submit any results not previously provided to DOJ within thirty (30) calendar days of entry of the July 27, 2012 Consent Order and provide detailed information on the borrowers' periods of military service, dates of foreclosure, and Defendants' records (if applicable) for foreclosures determined to be related to any SCRA-protected servicemember from July 15, 2006 to November 21, 2011. Based on the information gathered by the independent consultant, information submitted by Defendants, and DOJ's independent investigation, DOJ shall evaluate the determinations made by the independent consultant. In the event Defendants disagree with DOJ's determination, Defendants shall be afforded thirty (30) calendar days to produce to DOJ evidence of compliance, which DOJ shall consider in good faith.

27. Using the methodologies developed by the independent consultant, Defendants will review all foreclosures completed from November 22, 2011 to the date of the July 27, 2012 Consent Order. Defendants shall submit all results for foreclosures determined to be related to any SCRA-protected servicemember during this time period within one hundred eighty (180) calendar days of entry of the July 27, 2012 Consent Order and provide the same detailed information as described in Paragraph 26. Based on the information gathered by Defendants and DOJ's independent investigation, DOJ shall evaluate the determinations made by Capital One. In the event Defendants disagree with DOJ's determination, Defendants shall be afforded thirty (30) calendar days to produce to DOJ evidence of compliance, which DOJ shall consider in good faith.
28. Where DOJ determines that a foreclosure was not in compliance with the SCRA, Defendants shall compensate the borrowers (i.e., any individual(s) who signed the note with respect to a foreclosed property) who execute the Declaration at Exhibit C-3 by providing:
- a. an amount of \$125,000.00 to the servicemember-borrower;
  - b. any lost equity in the foreclosed property, as calculated by subtracting any outstanding principal, interest, and other amounts owing by the borrowers (excluding any fees associated with foreclosure), plus any junior liens at the time of foreclosure and any disbursements made to the servicemember or a third party other than a junior lien holder from the proceeds of the foreclosure sale (exclusive of any fees associated with the foreclosure) from either:

- i. a contemporaneous appraisal reflecting the value of the home at the time of foreclosure;
- ii. a Broker Price Opinion (“BPO”) or other desktop determination of property valuation that results in property valuations reasonably consistent<sup>9</sup> with those contained in contemporaneous appraisals; or
- iii. a retroactive appraisal reflecting the value of the home at the time of foreclosure; and

c. interest accrued on this lost equity, calculated from the date of the foreclosure sale until the date payment is issued, at the rate set forth in 28 U.S.C. § 1961.<sup>10</sup>

29. While the amount described in subsection (a) of Paragraph 28 shall be paid entirely to the servicemember-borrower on the note securing the mortgage, the amounts described in subsections (b) and (c) of Paragraph 28 shall be distributed equally among all owners (including non-servicemember owners) on the deed. In cases where Defendants have already taken remedial actions with respect to a foreclosure which DOJ determines did not comply with Sections 533 or 521 of the SCRA, DOJ shall consider such remedial actions and adjust the compensation to be awarded to the servicemember-borrower or mortgagor.<sup>11</sup>

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<sup>9</sup> Before Defendants may rely on a BPO or desktop determination for purposes of this subsection, Defendants must first obtain DOJ approval that the methodology for the BPO or desktop determination results in property valuations reasonably consistent with a contemporaneous appraisal. DOJ shall not unreasonably withhold such approval.

<sup>10</sup> The independent consultant shall calculate the lost equity and interest described herein as part of its review.

<sup>11</sup> In determining the amount of compensation due to any servicemember or co-borrower pursuant to Paragraph 28, DOJ will credit any monetary compensation or other remediation efforts, including returning the home to the borrower, already provided to any servicemember or

30. After DOJ's determinations as provided in Paragraphs 26 and 27, Defendants must notify each identified servicemember or co-borrower (using best efforts to locate each person) by letter (using Exhibit C-1 or a modified version mutually agreeable to Defendants and DOJ) within forty-five (45) calendar days of DOJ's determination. Any letters returned with forwarding addresses must be promptly mailed to the forwarding address. Defendants shall issue and mail compensation checks no later than twenty-one (21) calendar days after receipt of the signed Declaration at Exhibit C-3 from the servicemember or co-borrower aggrieved person. Every six (6) months for a period of two (2) years following entry of the July 27, 2012 Consent Order, Defendants shall provide DOJ with an accounting of all declarations received, checks issued (including copies of issued checks), credit entries repaired (as provided in Paragraph 65), and notifications without responses or that were returned as undeliverable. Any uncashed checks will be reported by Capital One in accordance with state unclaimed property laws.

B. Violations of Section 532 and 521 of the SCRA relating to repossessions of motor vehicles:

31. Defendants have engaged the services of an independent consultant acceptable to DOJ that has begun to review completed motor vehicle repossessions. To the extent it has not already done so, the independent consultant will review all motor vehicle repossession actions completed from July 15, 2006 to November 21, 2011, to evaluate whether the repossessions were in compliance with Sections 532 and 521 of the SCRA. The independent consultant shall submit any results not previously provided to DOJ within ninety (90) calendar days of entry of the July 27,

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co-borrower for alleged compliance issues pursuant to Sections 533 or 521 of the SCRA and arising from the same mortgage.

2012 Consent Order and provide detailed information on the borrowers' periods of military service, dates of repossessions, and Defendants' records (if applicable) for all repossessions related to SCRA-protected servicemembers from July 15, 2006 to November 21, 2011. Based on the information gathered by the independent consultant, information submitted by Defendants, and DOJ's independent investigation, DOJ shall evaluate the determinations made by the independent consultant on all accounts. In the event Defendants disagree with DOJ's determination, Defendants shall be afforded thirty (30) calendar days to produce evidence of compliance to DOJ, which DOJ shall consider in good faith.

32. Using the methodologies developed by the independent consultant, Defendants will review all repossessions completed from November 22, 2011 to the date of the July 27, 2012 Consent Order. Defendants shall submit all results for repossessions determined to be related to any SCRA-protected servicemember during this time period within one hundred eighty (180) calendar days of entry of the July 27, 2012 Consent Order and provide the same detailed information as described in Paragraph 31. Based on the information gathered by Defendants and DOJ's independent investigation, DOJ shall evaluate the determinations made by Capital One. In the event Defendants disagree with DOJ's determination, Defendants shall be afforded thirty (30) calendar days to produce to DOJ evidence of compliance, which DOJ shall consider in good faith.
33. Where DOJ determines that a completed motor vehicle repossession was not in compliance with the SCRA, Defendants shall compensate the borrowers (i.e., any

individual(s) who signed the note with respect to a repossessed motor vehicle) who execute the Declaration at Exhibit C-4 by providing:

- a. an amount of \$10,000 to the servicemember-borrower;
- b. any lost equity in the repossessed motor vehicle, as calculated by:  
subtracting any outstanding principal, interest, and other amounts owing by the borrowers (excluding any fees associated with repossession), plus any liens at the time of repossession and any disbursements made to the servicemember or a third party other than a lien holder from the proceeds of the repossession sale (exclusive of any fees associated with the repossession) from the retail value of the motor vehicle at the time of repossession as identified in the National Automobile Dealers Association (“NADA”) Guide; and
- c. interest accrued on this lost equity, calculated from the date of the repossession sale until the date payment is issued, at the rate set forth in 28 U.S.C. § 1961.<sup>12</sup>

34. While the amount described in subsection (a) shall be paid entirely to the servicemember-borrower on the note securing the motor vehicle, the amounts described in subsections (b) and (c) shall be distributed equally among all owners (including non-servicemember owners) on the title to the motor vehicle. In cases where Defendants have already taken remedial actions with respect to a repossession, which DOJ determines did not comply with Sections 532 or 521 of

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<sup>12</sup> The independent consultant shall calculate the lost equity and interest described herein as part of its review.

the SCRA, DOJ shall consider such remedial actions and adjust the compensation to be awarded to the servicemember-borrower.<sup>13</sup>

35. After DOJ's determination, as provided in Paragraphs 31 and 32, Defendants must notify each identified servicemember or co-borrower (using best efforts to locate each person) by letter (using Exhibit C-1 or a modified version mutually agreeable to Defendants and DOJ) within forty-five (45) calendar days of DOJ's determination. Any letters returned with forwarding addresses must be promptly mailed to the forwarding address. Defendants shall issue and mail compensation checks no later than twenty-one (21) calendar days after receipt of a signed Declaration at Exhibit C-4 from the servicemember or co-borrower aggrieved person. Every six (6) months for a period of two (2) years following entry of the July 27, 2012 Consent Order, Defendants shall provide DOJ with an accounting of all declarations received, checks issued (including copies of issued checks), credit entries repaired (as provided in Paragraph 65), and notifications without responses or that were returned as undeliverable. Any uncashed checks will be reported by Capital One in accordance with state unclaimed property laws.

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<sup>13</sup> In determining the amount of compensation due to any servicemember or co-borrower pursuant to Paragraph 33, DOJ will credit any monetary compensation or other remediation efforts, including returning the motor vehicle to the borrower, already provided to any servicemember or co-borrower for alleged compliance issues pursuant to Sections 532 or 521 of the SCRA and arising from the same motor vehicle loan.

C. Violations of Section 521 of the SCRA relating to default judgments for debts owed on credit cards, motor vehicle financing loans, home equity loans, consumer loans and lines of credit, and/or commercial lending accounts:

36. Defendants have engaged the services of an independent consultant acceptable to DOJ that has begun to review their default judgment proceedings related to their Accounts. To the extent they have not already done so, the independent consultant will review all default judgment proceedings (other than credit card default judgment proceedings) either completed from July 15, 2006 to November 21, 2011, to evaluate whether the judgments were obtained against SCRA-protected servicemembers during periods of military duty and, if so, whether those judgments were in compliance with Section 521 of the SCRA. The independent consultant shall submit any results not previously provided to DOJ within thirty (30) calendar days of entry of the July 27, 2012 Consent Order and provide detailed information on the borrowers' periods of military service, dates of judgments, and Defendants' records (if applicable) for all default judgments (other than credit card default judgments) determined to involve SCRA-protected servicemembers from July 15, 2006 to November 21, 2011. Based on the information gathered by the independent consultant, information submitted by Defendants, and DOJ's independent investigation, DOJ shall evaluate the determinations made by the independent consultant whether or not a completed default judgment was obtained against an SCRA-protected servicemember during a period of military service and, if so, whether it was in compliance with the SCRA. In the event Defendants disagree

with DOJ's determination, Defendants shall be afforded thirty (30) calendar days to produce evidence of compliance to DOJ, which DOJ shall consider in good faith.

37. Using the methodologies developed by the independent consultant, Defendants will review all default judgment proceedings (including credit card default judgment proceedings) obtained from November 22, 2011 to the date of the July 27, 2012 Consent Order to evaluate whether the judgments were obtained against SCRA-protected servicemembers during periods of military duty and, if so, whether those judgments were in compliance with Section 521 of the SCRA. Defendants shall submit all results within ninety (90) calendar days of entry of the July 27, 2012 Consent Order and provide the same detailed information as described in Paragraph 36 for default judgment proceedings determined to be related to any SCRA-protected servicemember from November 22, 2011 to the date of the July 27, 2012 Consent Order. Based on the information gathered by Defendants and DOJ's independent investigation, DOJ shall evaluate the determinations made by Capital One. In the event Defendants disagree with DOJ's determination, Defendants shall be afforded thirty (30) calendar days to produce to DOJ evidence of compliance, which DOJ shall consider in good faith.

38. Defendants have acknowledged that their procedures for credit card default judgments may not have been in compliance with Section 521 of the SCRA. Defendants and DOJ have determined that it is impractical to identify all credit card default judgments from July 15, 2006 to November 21, 2011, that were not in compliance with Section 521. Accordingly, DOJ has agreed to permit the independent consultant to identify all credit card default judgments obtained from

July 15, 2006 to November 21, 2011, within one hundred twenty (120) calendar days of entry of the July 27, 2012 Consent Order, and Defendants will compensate all servicemembers upon whom a credit card default judgment was taken during a period of military service who execute the Declaration at Exhibit C-5 by forgiving the total amount of the judgment, including all post-judgment interest, and, providing the borrower an additional payment of \$750.

39. Where DOJ determines that a default judgment (other than a credit card default judgment) taken from July 15, 2006, to the date of the July 27, 2012 Consent Order or a default judgment (including any credit card default judgment) taken from November 22, 2011, to the date of the July 27, 2012 Consent Order was obtained against an SCRA-protected servicemember during a period of military service, Defendants shall compensate the borrowers (i.e., any individual(s) who took out the loan or in whose name the Account was held) who execute the Declaration at Exhibit C-5 by forgiving the total amount of the judgment, including all post-judgment interest, by and providing the borrower an additional payment of \$750.
40. After DOJ's determination, as provided in Paragraphs 36, 37, 38, and 39, Defendants must notify each identified servicemember (using best efforts to locate each person) by letter (using Exhibit C-1 or a modified version mutually agreeable to Defendants and DOJ) within forty-five (45) calendar days of DOJ's evaluation. Any letters returned with forwarding addresses must be mailed promptly to the forwarding address. Defendants shall issue and mail compensation checks no later than twenty-one (21) calendar days after receipt of a signed Declaration at Exhibit C-5 from the servicemember or co-borrower aggrieved person. Every six (6)

months for a period of two (2) years following entry of the July 27, 2012 Consent Order, Defendants shall provide DOJ with an accounting of all declarations received, checks issued (including copies of issued checks), credit entries repaired (as provided in Paragraph 65), and notifications without responses or that were returned as undeliverable. Any uncashed checks will be reported by Capital One in accordance with state unclaimed property laws.

D. Violations of Section 527 of the SCRA related to failing to limit interest rates to 6% on SCRA-covered debt:

Identification

41. Defendants have engaged the services of an independent consultant acceptable to DOJ that has begun to review their servicing of their Accounts. The independent consultant's duties shall continue to include a review of:
  - a. All mortgage loans,<sup>14</sup> home equity loans, and commercial lending accounts where a borrower submitted a request in writing for protection under Section 527 of the SCRA and Defendants enrolled the account in SCRA benefits from July 15, 2006 to November 21, 2011, to evaluate whether Defendants complied with Section 527 of the SCRA;
  - b. A representative sample of credit card accounts, motor vehicle finance loans, and consumer loans and lines of credit where a borrower submitted a request in writing for protection under Section 527 of the SCRA and Defendants enrolled the account in SCRA benefits from July 15, 2006 to

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<sup>14</sup> For Paragraphs 41(a), 41(c), 44, 59, 61, and 63, to the extent records are available, the independent consultant will also review a sample of mortgage loan account notes, including call notes, for borrowers' statements relating to the SCRA and provide its results to DOJ. DOJ shall then review those results and may decide to require a broader review of such accounts.

November 21, 2011, to evaluate whether Defendants complied with Section 527 of the SCRA;

- c. All Accounts where a borrower submitted a request in writing for protection under Section 527 of the SCRA from July 15, 2006 to November 21, 2011, but benefits under Section 527 were not provided, to evaluate whether Defendants complied with Section 527 of the SCRA; and
- d. All Accounts previously identified and remediated by Capital One in September/October 2010 and November 2011.

42. DOJ has approved the independent consultant's methodology. Any changes to that methodology must be submitted to DOJ for approval within sixty (60) calendar days after entry of the July 27, 2012 Consent Order. DOJ's approval of any changes to the methodology will be based on, among other things, DOJ's evaluation of Defendants' SCRA policies in and around the time period in question, Defendants' search capabilities for determining which individuals requested, in writing, interest rate protections based on their military status, the servicing platform, and the number of individuals who requested such protection.

43. For any accounts identified in:

- a. Paragraphs 41(a) and (b), the independent consultant shall submit any results not previously provided to DOJ within sixty (60) calendar days from the date of entry of the July 27, 2012 Consent Order and provide a representative sample of accounts identified as involving SCRA-protected servicemembers;

- b. Paragraph 41(c), the independent consultant shall submit any results not previously provided to DOJ within one hundred twenty (120) calendar days from the date of entry of the July 27, 2012 Consent Order and provide all accounts identified as involving SCRA-protected servicemembers; and
- c. Paragraph 41(d), the independent consultant shall submit any results not previously provided to DOJ within sixty (60) calendar days from the date of entry of the July 27, 2012 Consent Order and provide all accounts identified as involving SCRA-protected servicemembers.

Based on the information gathered by the independent consultant, information submitted by Defendants, and DOJ's independent investigation, DOJ shall evaluate the determinations made by the independent consultant on the above-described accounts reasonably based on the information it has received and its investigative conclusions. In the event Defendants disagree with DOJ's determination, Defendants shall be afforded thirty (30) calendar days to produce evidence of compliance to DOJ, which DOJ shall consider in good faith.

- 44. Using the methodologies developed by the independent consultant, Defendants will review all Accounts from November 22, 2011, to the date of entry of the July 27, 2012 Consent Order, where a borrower submitted a request in writing for protections under section 527 of the SCRA, to evaluate whether the Defendants complied with Section 527 of the SCRA. Defendants shall submit all results within ninety (90) calendar days of entry of the July 27, 2012 Consent Order and provide the same detailed information as described in Paragraphs 41 and 43. Based on the

information gathered by Defendants and DOJ's independent investigation, DOJ shall evaluate the determinations made by Capital One. In the event Defendants disagree with DOJ's determination, Defendants shall be afforded thirty (30) calendar days to produce to DOJ evidence of compliance, which DOJ shall consider in good faith.

### Remediation

45. Where DOJ determines that any mortgage loan, home equity loan, and/or commercial lending Account was provided benefits but the benefits were not calculated in compliance with Section 527 of the SCRA, as identified in Paragraph 41(a) and/or Paragraph 44, Defendants shall refund with interest (as calculated pursuant to 28 U.S.C. § 1961), all interest and fees charged above 6%,<sup>15</sup> and provide to the borrower an additional payment of \$500 or triple the amount of the refund owed, whichever amount is larger.<sup>16</sup>
46. Where DOJ determines that a borrower submitted a request in writing for protection under Section 527 for an Account, but protection under Section 527 was wrongfully denied, as identified in Paragraph 41(c) and/or Paragraph 44, Defendants shall refund, with interest (as calculated pursuant to 28 U.S.C. § 1961), all interest and

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<sup>15</sup> This compensation shall be distributed equally among all co-borrowers (including non-servicemember borrowers).

<sup>16</sup> The independent consultant shall calculate the amounts described in this Consent Order as part of its review.

fees charged above 6%,<sup>17</sup> and provide to the borrower an additional payment of \$500 or triple the amount of the refund owed, whichever amount is larger.<sup>18</sup>

47. For any of the Accounts previously identified and remediated by Capital One in September/October 2010 and November 2011, as identified in Paragraph 41(d) and/or Paragraph 44, Defendants shall provide an additional payment of \$500 to the borrower for each of these accounts.
48. Excluding those Accounts specifically identified in Paragraphs 45, 46, and 47 Defendants have acknowledged that upon enrollment, their practices did not cause the appropriate amount of benefits to be awarded to certain SCRA-protected servicemembers. Defendants and DOJ have determined that it is impractical to identify all impacted servicemembers and to calculate all associated benefit shortfalls for such servicemembers. Accordingly, Defendants have agreed to set aside \$5,000,000 for servicemembers who may not have received the appropriate amount of benefits, provided that any amounts not paid to individual servicemembers will be distributed by Defendants to one or more charitable organizations that assist servicemembers. Within thirty (30) calendar days of the date of entry of the July 27, 2012 Consent Order, Defendants shall submit to the United States a proposal that provides for distribution of this additional \$5,000,000. Within thirty (30) days after approval by the United States, the parties shall submit a proposal for the distribution of these funds to the Court and obtain the Court's approval prior to distribution of these funds. Defendants shall require each

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<sup>17</sup> This compensation shall be distributed equally among all co-borrowers (including non-servicemember borrowers).

<sup>18</sup> The independent consultant shall calculate the amounts described in this Consent Order as part of its review.

charitable organization to submit to Defendants and the United States a detailed report on how funds are used within one year after the funds are distributed.

49. Servicemembers shall receive separate compensation for each qualifying Account held with Defendants.
50. In cases where Defendants have already taken remedial actions with respect to an Account that DOJ determines did not comply with Section 527 of the SCRA, DOJ shall consider such remedial actions and adjust the compensation to be awarded to the subject servicemember, borrower, or mortgagor.<sup>19</sup>
51. Upon DOJ's determination of the servicemembers or co-borrowers to be compensated as identified according to Paragraphs 45, 46, and 47, Defendants must notify each identified servicemember or co-borrower (using best efforts to locate each person) by letter (using Exhibit C-2a or a modified version of Exhibit C-2a mutually agreeable to Defendants and DOJ<sup>20</sup>) within sixty (60) calendar days of DOJ's confirmation. Defendants shall issue and mail compensation checks with the notification at Exhibit C-2a<sup>21</sup>. Any letters returned with forwarding addresses must be promptly mailed to the forwarding address. Every six (6) months for a period of two (2) years following entry of the July 27, 2012 Consent Order, Defendants shall provide DOJ with an accounting of all checks issued (including copies of issued checks), credit entries repaid (as provided in Paragraph 65), and notifications that

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<sup>19</sup> In determining whether any compensation is due to any servicemember or co-borrower pursuant to Paragraph 47, and, if so, the amount, DOJ will consider the timing of any remedial actions and will credit any monetary compensation already provided to any servicemember or co-borrower for alleged compliance issues pursuant to Section 527 of the SCRA and arising from the same Account.

<sup>20</sup> Defendants will notify each servicemember or co-borrower identified under Paragraph 47 using Exhibit C-2b.

<sup>21</sup> Defendants will notify each servicemember or co-borrower identified under Paragraph 47 using Exhibit C-2b.

were returned as undeliverable. Any uncashed checks will be reported by Capital One in accordance with state unclaimed property laws.

E. Judicial review of DOJ determinations:

52. Defendants shall have thirty (30) calendar days after DOJ's final determination that a foreclosure, motor vehicle repossession, or default judgment was not in compliance with the SCRA or a mortgage, motor vehicle financing loan, credit card account, home equity loan, consumer loan, line of credit loan, or commercial lending account was not serviced in compliance with Section 527, to seek judicial review on the ground that DOJ made a clearly erroneous factual determination.

**VI. COMPENSATION FOR HSBC ACCOUNTS AND ING ACCOUNTS**

A. Violations of Sections 533 and 521 of the SCRA related to completed foreclosures on SCRA-protected servicemembers:

53. Defendants will engage an independent consultant acceptable to DOJ whose duties shall include a review of all completed foreclosures on ING Accounts from July 15, 2006, to the date of the July 27, 2012 Consent Order, to evaluate whether the completed foreclosures were in compliance with Sections 533 and 521 of the SCRA. The independent consultant shall submit the results of its review within one hundred eighty (180) calendar days of entry of the July 27, 2012 Consent Order and provide detailed information on the borrowers' periods of military service, dates of foreclosure, and Defendants' records (if applicable) for foreclosures determined to be related to any SCRA-protected servicemember from July 15, 2006, to the date of the July 27, 2012 Consent Order. Based on the information gathered by the

independent consultant, information submitted by Defendants, and DOJ's independent investigation, DOJ shall evaluate the determinations made by the independent consultant. In the event Defendants disagree with DOJ's determination, Defendants shall be afforded thirty (30) calendar days to produce to DOJ evidence of compliance, which DOJ shall consider in good faith.

54. If violations of Sections 533 or 521 of the SCRA are found with respect to ING Accounts, Capital One shall remediate the violations related to foreclosures in the manner described in Paragraphs 28, 29, and 30, above.

B. Violations of Section 532 of the SCRA relating to repossessions of non-recreational and recreational motor vehicles:

55. Defendants will engage an independent consultant acceptable to DOJ whose duties shall include a review of all repossessions on certain HSBC Accounts either completed or in progress from July 15, 2006, to the date of the July 27, 2012 Consent Order, to evaluate whether the repossessions were in compliance with Section 532 of the SCRA. The independent consultant shall submit the results of its review within one hundred eighty (180) calendar days of entry of the July 27, 2012 Consent Order and provide detailed information on the borrowers' periods of military service, dates of repossessions, and Defendants' records (if applicable) for all repossessions related to SCRA-protected servicemembers from July 15, 2006, to the date of the July 27, 2012 Consent Order. Based on the information gathered by the independent consultant, information submitted by Defendants, and DOJ's independent investigation, DOJ shall evaluate the determinations made by the independent consultant. In the event Defendants disagree with DOJ's

determination, Defendants shall be afforded thirty (30) calendar days to produce evidence of compliance to DOJ, which DOJ shall consider in good faith.

56. If violations of Section 532 of the SCRA are found with respect to HSBC Accounts, Capital One shall remediate the violations:

a. related to recreational motor vehicles (including but not limited to all-terrain vehicles, boats, golf carts, jet skis, off-road motorcycles, snowmobiles, or utility vehicles) as follows:

(1) an amount of \$3,500 to the servicemember-borrower;

(2) any lost equity in the repossessed recreational motor vehicle, as calculated by: subtracting any outstanding principal, interest, and other amounts owing by the borrowers (excluding any fees associated with repossession), plus any liens at the time of repossession and any disbursements made to the servicemember or a third party other than a lien holder from the proceeds of the repossession sale (exclusive of any fees associated with the repossession) from the market value of the recreational vehicle at the time of repossession; and

(3) interest accrued on this lost equity, calculated from the date of the repossession sale until the date payment is issued, at the rate set forth in 28 U.S.C. § 1961; and

(4) in accordance with the provisions in Paragraphs 34 and 35, above.

- b. related to automobiles and motorcycles not used solely for recreation in the manner described in Paragraphs 33, 34, and 35, above.

C. Violations of Section 521 of the SCRA relating to default judgments for debts owed on credit cards, motor vehicle financing loans, home equity loans, consumer loans and lines of credit, and/or commercial lending accounts:

- 57. Defendants will engage an independent consultant acceptable to DOJ whose duties shall include a review of either all or a representative sample of default judgments obtained on HSBC Accounts and ING Accounts from July 15, 2006, to the date of the July 27, 2012 Consent Order, to evaluate whether the judgments were and/or are in compliance with Section 521 of the SCRA. The independent consultant shall submit the results of its review within one hundred eighty (180) calendar days of entry of the July 27, 2012 Consent Order and provide detailed information on the borrowers' periods of military service, dates of judgments, and Defendants' records (if applicable) for a representative sample of judgments related to SCRA-protected servicemembers during the respective time periods. Based on the information gathered by the independent consultant, information submitted by Defendants, and DOJ's independent investigation, DOJ shall evaluate the determinations made by the independent consultant on either the representative sample or all accounts. In the event Defendants disagree with DOJ's determination, Defendants shall be afforded thirty (30) calendar days to produce evidence of compliance to DOJ, which DOJ shall consider in good faith.

58. If violations of Section 521 of the SCRA are found with respect to HSBC Accounts or ING Accounts, Capital One shall remediate the violations in the manner described in Paragraphs 39 and 40, above.

D. Violations of Section 527 of the SCRA related to failing to limit interest rates to 6% on SCRA-covered debt:

59. Defendants will engage an independent consultant acceptable to DOJ whose duties shall include a review of either all or a representative sample of HSBC Accounts and ING Accounts where a borrower submitted a request in writing for protection under Section 527 of the SCRA from July 15, 2006, to the date of the July 27, 2012 Consent Order, to evaluate whether the benefits provided complied with Section 527 of the SCRA. The independent consultant shall submit the results of its review within one hundred eighty (180) calendar days after the entry of the July 27, 2012 Consent Order.
60. DOJ has approved the independent consultant's methodology. Any changes to that methodology must be submitted to DOJ for approval within sixty (60) calendar days after entry of the July 27, 2012 Consent Order. DOJ's approval of any changes to the methodology will be based on, among other things, DOJ's evaluation of Defendants' SCRA policies in and around the time period in question; Defendants' search capabilities for determining which individuals requested, in writing, interest rate protections based on their military status; the servicing platform; and the number of individuals who requested such protection.
61. If violations of Section 527 of the SCRA are found with respect to HSBC Accounts or ING Accounts where a borrower submitted a request in writing for protection

under Section 527 of the SCRA from July 15, 2006, to the date of the July 27, 2012 Consent Order, but benefits were not provided, Capital One shall remediate the violations in the manner described in Paragraphs 46, 49, 50, and 51, above.

62. If violations of Section 527 of the SCRA are found with respect to HSBC Accounts where borrowers submitted a request in writing for protection under Section 527 of the SCRA, the accounts were enrolled from July 15, 2006, to the date of entry of the July 27, 2012 Consent Order, the accounts may not have been awarded the appropriate amount of benefits, and it is impractical to identify all impacted servicemembers, Capital One shall remediate the violations in a manner similar to that described in Paragraph 48, 50, and 51, above, with additional contribution(s) proportionate to the amount provided for in Paragraph 48 and with the same selection and approval procedures provided for in Paragraph 48.
63. If violations of Section 527 of the SCRA are found with respect to ING Accounts where borrowers submitted a request in writing for protection under Section 527 of the SCRA, the account was enrolled from July 15, 2006, to the date of entry of the July 27, 2012 Consent Order, and the account may not have been awarded the appropriate amount of benefits, Capital One will remediate the violations in the manner described in Paragraphs 45, 49, 50, and 51.

E. Judicial review of DOJ determinations:

64. With respect to the HSBC Accounts and ING Accounts, Defendants shall have thirty (30) calendar days after DOJ's final determination that a foreclosure, motor vehicle repossession, or default judgment was not in compliance with the SCRA or a mortgage, motor vehicle financing loan, credit card account, home equity loan,

consumer loan, line of credit loan, or commercial lending account was not serviced in compliance with Section 527, to seek judicial review on the ground that DOJ made a clearly erroneous factual determination.

#### **VII. OTHER RELIEF**

65. Concurrent with providing financial compensation to the servicemember-borrower, Defendants must request that all three (3) major credit bureaus delete trade lines for wrongful judicial foreclosures and default judgments, and delete negative credit entries for wrongful repossessions and interest overcharges that are specifically attributable to the wrongful repossession or interest overcharge, to correct the credit histories of accounts belonging to servicemember(s) and any co-borrower(s). Further, Defendants shall not pursue, and must indemnify the servicemember and his or her co-borrower(s) against any third-party pursuing, any deficiency that was remaining on either the servicemember's SCRA-protected mortgage or junior lien after a foreclosure or auto loan after a repossession, where the foreclosure or repossession was completed in violation of the SCRA.

#### **VIII. CIVIL PENALTY**

66. Within thirty (30) calendar days of the date of entry of the July 27, 2012 Consent Order, Defendants shall pay a total of Fifty-Five Thousand Dollars (\$55,000) to the United States Treasury as a civil penalty pursuant to 50 U.S.C. App. § 597(b)(3) to vindicate the public interest. The payment shall be in the form of an electronic funds transfer pursuant to written instructions to be provided by the United States.

**IX. REPORTING AND RECORD-KEEPING REQUIREMENTS**

67. For the duration of this Consent Order, Defendants shall: 1) retain all records relating to their obligations hereunder, including their records with respect to any Accounts for which a servicemember sought or seeks a reduced interest rate pursuant to the SCRA, whether or not that request is granted by Capital One; and 2) all records involving home foreclosure, motor vehicle repossession actions, and other court actions involving default judgments that involve servicemembers, as well as their records relating to compliance activities as set forth herein. The United States shall have the right to review and copy any such records, including electronic data, upon reasonable request, during the period of this Consent Order.
68. During the term of this Consent Order, Defendants shall notify counsel for the United States in writing every six (6) months, beginning six (6) months after the date of the July 27, 2012 Consent Order, of receipt of any SCRA or military-related complaint captured through the Capital One's official complaint process, which includes written and oral complaints. Defendants shall provide a copy of any written complaints with the notifications. Defendants will incorporate into their SCRA Policies and Procedures a requirement that all customer service personnel, upon receiving any oral SCRA complaint involving Capital One relating to the interest rate imposed on a credit card account, mortgage, motor vehicle financing loan, home equity loan, consumer loan and/or line of credit, or commercial lending account, shall notify individuals designated and trained to receive SCRA complaints. For both written and verbal SCRA complaints, each notification to the United States shall include the full details of the complaint, including the

complainant's name, address, and telephone number. Defendants shall also promptly provide the United States all non-privileged information it may request concerning any such complaint and shall inform the United States in writing within thirty (30) calendar days of the terms of any resolution of such complaint. If the United States raises any objections to Defendants' actions, the parties shall meet and confer to consider appropriate steps to address the concerns raised by the United States' review. If the parties are unable to come to an agreement regarding such objections or concerns, either party may bring the dispute to this Court for resolution.

#### **X. SCOPE OF CONSENT ORDER**

69. The provisions of this Consent Order shall apply to Defendants, their officers, employees, agents, representatives, assigns, successors-in-interest, and all persons and entities in active concert or participation with Defendants, including with respect to any accounts or loans Defendants acquired from July 15, 2006 to the date of entry of the July 27, 2012 Consent Order.
70. This Consent Order shall also be binding on affiliated successor entities and independent third party entities to the extent described in this Paragraph for the term of this Consent Order. In the event that Defendants seek to transfer or assign all or part of their operations<sup>22</sup> following entry of the July 27, 2012 Consent Order to an affiliated successor entity, and the affiliated successor entity intends to carry on the same or similar business, Defendants shall, as a condition of the transfer or assignment, obtain the written agreement of the affiliated successor entity to be

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<sup>22</sup> For purposes of this Paragraph, the requirements relating to the transfer or assignment of "operations" does not include the transfer or assignment of servicing rights to an independent third party.

bound by any obligations remaining under this Consent Order for the remaining term of this Order. In the event that the Defendants seek to transfer or assign all or part of their operations following the entry of the July 27, 2012 Consent Order to an affiliated successor entity or independent third party entity who does not intend to carry on the same or similar business, Defendants shall, as a condition of transfer or assignment, either: (i) require the affiliated successor or independent third party entity to be bound by the obligations remaining under this Consent Order with respect to all SCRA eligible servicemembers, or (ii) retain all obligations to comply with this Consent Order with respect to all SCRA-eligible servicemembers. In the event that the Defendants seek to transfer or assign all or part of their operations following entry of the July 27, 2012 Consent Order to an independent third party who intends to carry on the same or similar business, Defendants shall, as a condition of the transfer or assignment, either: (i) require the independent third party to be bound by any obligations remaining under this Consent Order for the remaining term of this Consent Order, or (ii) retain all obligations to comply with this Consent Order with respect to all SCRA-eligible servicemembers, for the remaining term of the Consent Order.

71. This Consent Order does not release claims for practices not addressed in the Complaint's allegations, including claims that may be held or are currently under investigation by any federal agency, or any claims that may be pursued for actions that may be taken by any executive agency established by 12 U.S.C. § 5491 or the appropriate Federal Banking Agency (FBA), as defined in 12 U.S.C. § 1813(q), against Capital One, any of their affiliated entities, and/or any institution-affiliated

party of Capital One, as defined by 12 U.S.C. § 1818 or any other statute or regulation. This Consent Order does not resolve and release claims other than claims for violation of the SCRA.

**XI. MODIFICATIONS, ATTORNEY'S FEES AND COSTS, AND REMEDIES FOR NON-COMPLIANCE**

72. Any time limits for performance imposed by this Consent Order may be extended by the mutual written agreement of the parties.
73. The parties to this Consent Order shall be responsible for their own attorney's fees and court costs, except as provided for in Paragraph 74, below.
74. The parties to this Consent Order shall endeavor in good faith to resolve informally any differences regarding the interpretation of and compliance with this Consent Order prior to bringing such matters to the Court for resolution. However, in the event the United States contends that there has been a failure by Defendants, whether willful or otherwise, to perform in a timely manner any act required by this Consent Order or otherwise comply with any provision thereof, the United States may move the Court to impose any remedy authorized by law or equity, including, but not limited to, an order requiring the performance of such act or deeming such act to have been performed, and an award of any damages, costs, and attorney's fees which may have been occasioned by Defendants' violation or failure to perform.

**XII. RETENTION OF JURISDICTION**

75. This Consent Order shall terminate three (3) months after the submission of the Defendants' seventh semi-annual report due under Paragraph 68 to the United States, except that if all the actions required by Paragraphs 15 through 65 have not

been completed, Paragraphs 15 through 65 and this Consent Order will continue in effect for an additional six months. Notwithstanding the above, The Court shall retain jurisdiction for the duration of this Consent Order to enforce its terms, after which time this case shall be dismissed with prejudice. The United States may move the Court to extend the duration of the Consent Order in the interests of justice.

**IT IS SO ORDERED.**

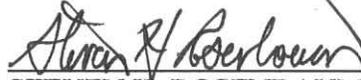
This 21 day of December, 2012 /s/  
  
James C. Cacheris  
United States District Judge  
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UNITED STATES DISTRICT JUDGE

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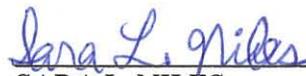
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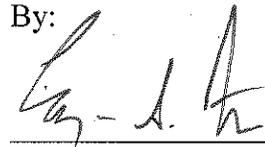
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