

# EXHIBIT 2

## PROPOSED CONSUMER SETTLEMENT BENEFITS PLAN

1. Capitalized Terms: Unless defined herein, the capitalized terms used in this Proposed Consumer Settlement Benefits Plan (“Benefits Plan”) are defined in the Settlement Agreement and Release.
2. Net Settlement Fund: The “Net Settlement Fund” is the Settlement Fund less (1) Notice Costs and Administrative Costs; (2) Attorneys’ Fees and Expenses awarded by the Court; (3) Service Awards awarded by the Court; and (4) costs associated with procurement of at least three years of Identity Defense Services and Restoration Services as provided in Exhibit 8. The Settlement Administrator shall use the Net Settlement Fund to pay valid claims for Out-of-Pocket Losses and Lost Time as set forth below. The Settlement Administrator, subject to such supervision and direction of the Court and Class Counsel as may be necessary or as circumstances may require, shall administer and oversee distribution of the Net Settlement Fund pursuant to the process set forth in this Benefits Plan.
3. Out-of-Pocket Losses: “Out-of-Pocket Losses” are verifiable unreimbursed costs or expenditures that a Settlement Class Member actually incurred and that the Settlement Class Member believes are fairly traceable to the Data Breach. Out-of-Pocket Losses may include, without limitation, the following:
  - a. unreimbursed costs, expenses, losses or charges incurred as a result of identity theft or identity fraud, falsified tax returns, or other alleged misuse of a Settlement Class Member’s personal information;
  - b. costs incurred on or after March 22, 2019, associated with placing or removing a credit freeze on a Settlement Class Member’s credit file with any credit reporting agency;
  - c. other miscellaneous expenses incurred on or after March 22, 2019, related to any Out-of-Pocket Loss such as notary, fax, postage, copying, mileage, and long-distance telephone charges;
  - d. costs of credit reports, credit monitoring, or other products related to detection or remediation of identity theft incurred on or after March 22, 2019, through the date of the Settlement Class Member’s claim submission.
4. Lost Time: “Lost Time” is time spent remedying fraud, identity theft, or other misuse of a Settlement Class Member’s personal information that the Settlement Class Member believes is fairly traceable to the Data Breach and time spent taking preventative measures to avoid such losses. Lost Time will be paid at the “Reimbursement Rate”, which shall be the greater of \$25 per hour, or, if the Settlement Class Member took time off work, at the Settlement Class Member’s documented hourly wage.

- a. Lost Time related to a qualifying claim for Out-of-Pocket Losses may be supported by a certification for up to 15 hours.
  - b. Lost Time not related to a qualifying claim for Out-of-Pocket Losses but incurred as a result of fraud, identity theft or other misuse, or incurred taking preventative measures to avoid fraud, identity theft or other misuse may be supported by a certification for up to 5 hours.
  - c. Lost Time claims may be made in 15-minute increments.
5. Claims Period: The “Claims Period” is the period starting from the date the Court enters the Preliminary Approval Order and ending 90 days after the Notice Date. Settlement Class Members must submit claims for Out-of-Pocket Losses and Lost Time during the Claims Period. Class members will be encouraged to claim Identity Defense Services during the Claims Period. After the Effective Date, Settlement Class Members may register for Identity Defense Services and request Restoration Services during the period such services are available to the Settlement Class, regardless of whether they made a claim for Identity Defense Services during the Claims Period.
6. Claims Cap: The Settlement Administrator will use the Net Settlement Fund to compensate those Settlement Class Members who submit valid claims for Out-of-Pocket Losses and Lost Time. Settlement Class Members will be subject to an aggregate claims cap of twenty-five thousand United States Dollars (\$25,000) paid directly from the Net Settlement Fund regardless of the number of claims submitted by the Settlement Class Member during the Claims Period.
7. Insufficient or Excess Funds:
  - a. To the extent valid claims exceed the Net Settlement Fund, payments for Out-of-Pocket Losses and Lost Time shall be reduced on a pro rata basis.
  - b. To the extent the Net Settlement Fund is not exhausted by the claims, any remaining funds in the Net Settlement Fund will first be used to purchase up to 2 years of additional Identity Defense Services and Restoration Services (and to pay any attendant expenses to provide notice of such extended period for Identity Defense Services and Restoration Services) and second will be used to increase payments to Settlement Class Members submitting valid claims on a pro-rated basis. No funds may revert to Capital One.
  - c. Any remaining funds resulting from the failure of Settlement Class Members to timely negotiate a settlement check or to timely provide required tax information such that a settlement check could issue, shall be distributed to Settlement Class Members, or as otherwise ordered by the Court. No funds may revert to Capital One.

8. Claims Process: The “Claim Form” shall be the form approved by the Court and used by Settlement Class Members to submit claims for benefits under the Settlement. Settlement Class Members may submit Claim Forms to the Settlement Administrator electronically during the Claims Period, or download a form for mailing from the settlement website. The Settlement Administrator shall verify that each person who submits a Claim Form is a Settlement Class Member and shall be responsible for evaluating claims and deciding whether claimed Out-of-Pocket Losses and Lost Time are valid and fairly traceable to the Data Breach.

a. Claims for Out-of-Pocket Losses:

- i. Settlement Class Members with Out-of-Pocket Losses must submit Reasonable Documentation supporting their claims. As used herein, “Reasonable Documentation” means documentation supporting a claim, including but not limited to: credit card statements, bank statements, invoices, telephone records, and receipts. Except as expressly provided herein, personal certifications, declarations, or affidavits from the claimant do not constitute Reasonable Documentation but may be included to provide clarification, context or support for other submitted Reasonable Documentation.
- ii. In assessing what qualifies as “fairly traceable,” the Settlement Administrator must consider (1) the timing of the loss, including whether the loss occurred on or after March 22, 2019, through the date of the Settlement Class Member’s claim submission; (2) whether the loss involved the possible misuse of the type of personal information accessed in the Data Breach; (3) whether the personal information accessed in the Data Breach that is related to the Settlement Class Member is of the type that was possibly misused; (4) the Class Member’s explanation as to how the loss is fairly traceable to the Data Breach; (5) the nature of the loss, including whether the loss was reasonably incurred as a result of the Data Breach; and (6) any other factor that the Settlement Administrator considers to be relevant. The Settlement Administrator shall have the sole discretion and authority to determine whether claimed Out-of-Pocket Losses are valid and fairly traceable to the Data Breach.

b. Claims for Lost Time:

- i. Lost Time related to Out-of-Pocket Losses. Settlement Class Members with (1) qualifying Out-of-Pocket Losses and (2) time spent remedying these issues may submit a claim for up to 15 hours of such time to be compensated at the Reimbursement Rate. In the event the Settlement Administrator does not approve a claim for Out-of-Pocket Losses, related claims for Lost Time shall be treated as a claim for Self-Certified Time.

- ii. Self-Certified Time. Settlement Class Members who attest (i) to fraud, identity theft, or other alleged misuse of the Settlement Class Member's personal information the Settlement Class Member believes is fairly traceable to the Data Breach, or taking preventive measures to avoid such fraud, identity theft, or other misuse and (ii) that they spent time remedying such misuse or taking such preventative measures, may self-certify the amount of time they spent remedying the foregoing by providing a certified explanation of the misuse or preventative measures taken and how the time claimed was spent remedying the misuse or taking preventative measures. Settlement Class Members may file a claim for Self-Certified Time for up to 5 hours at the Reimbursement Rate.

9. Disputes and Appeals:

- a. To the extent the Settlement Administrator determines a claim is deficient in whole or part, within 21 days after the Settlement Administrator processes all claims, the Settlement Administrator shall notify the Settlement Class Member in writing (including by e-mail where the Settlement Class Member selects e-mail as his or her preferred method of communication) of the deficiencies and provide the Settlement Class Member 30 days to cure the deficiencies. The notice shall inform the Settlement Class Member that he or she can either attempt to cure the deficiencies outlined in the notice, or dispute the determination in writing and request an appeal. If the Settlement Class Member attempts to cure the deficiencies but, in the sole discretion and authority of the Settlement Administrator fails to do so, the Settlement Administrator shall notify the Settlement Class Member of that determination within 14 days of the determination. The notice shall inform the Settlement Class Member of his or her right to dispute the determination in writing and request an appeal within 30 days. The Settlement Administrator shall have the sole discretion and authority to determine whether a claim is deficient in whole or part but may consult with the Parties in making individual determinations.
- b. If a Settlement Class Member disputes a determination in writing (including by e-mail where the Settlement Class Member selects e-mail as his or her preferred method of communication) and requests an appeal, Class Counsel shall propose that the Court appoint a claims referee to be paid from the Net Settlement Fund. The Settlement Administrator shall provide the claims referee a copy of the Settlement Class Member's dispute and Claim Form along with all documentation or other information submitted by the Settlement Class Member. The claims referee's approval or denial of the Settlement Class Member's claim, in whole or part, will be final.