BEFORE THE UNITED STATES JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE: CAPITAL ONE 360 SAVINGS ACCOUNT INTEREST RATE LITIGATION	))	MDL No. ____

CAPITAL ONE DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION FOR TRANSFER AND CONSOLIDATION UNDER 28 U.S.C. § 1407

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Defendants Capital One, N.A. ("CONA") and Capital One Financial Corporation ("COFC," and together with CONA, "Capital One") respectfully submit this memorandum in support of their motion under 28 U.S.C. § 1407, which seeks transfer and consolidation of six putative class actions that are based on the same set of alleged facts. In all six cases, plaintiffs allege that Capital One paid too little interest on and deceptively marketed its 360 Savings account. For the convenience of the parties and witnesses and to promote the just and efficient conduct of the litigation, these related actions should be consolidated and transferred to the Eastern District of Virginia, Alexandria Division, where Capital One is headquartered, where relevant documents and witnesses are located, and where the first-filed and most advanced case is pending.

INTRODUCTION

To date, six putative class actions, referred to as the "Related Actions," have been filed in five federal district courts challenging the interest rates paid by Capital One to holders of its 360 Savings Account, as well as Capital One's allegedly deceptive marketing of that account. There are twenty-two putative class representatives hailing from fourteen different states.

Plaintiffs either held or still hold a 360 Savings account. The governing Account Disclosures, agreed to by each Plaintiff and governed by Virginia law, provide that Capital One can adjust the interest rate on Plaintiffs' accounts "in its sole discretion." Nevertheless, Plaintiffs allege, purportedly on behalf of three overlapping nationwide classes and numerous overlapping state classes and subclasses, that Capital One breached the implied covenant of good faith and fair dealing. Specifically, according to Plaintiffs, Capital One should have exercised its right to set the interest rates on Plaintiffs' account by raising those rates as the federal funds rate began to increase in 2021. Plaintiffs also assert, in the alternative, substantially identical equitable theories such as unjust enrichment and promissory estoppel claims. They further assert consumer protection claims

that, while arising under various state statutes, are all premised on the same allegedly unfair or deceptive conduct. In short, each of the Related Actions seeks the same relief, from the same defendants, on behalf of the same consumers, to redress the same alleged harms.

In light of the number of substantially identical actions already filed, the number of different courts in which such actions are pending, the large number of alleged class members, and the likelihood that related putative class action and individual complaints will continue to be filed, consolidation and transfer is warranted. The Panel has consistently held that centralized litigation is proper for overlapping class actions premised on the same underlying facts. Capital One respectfully submits that the Panel should follow its well-reasoned precedent and establish an MDL proceeding for all cases involving allegations that the interest rate paid on Capital One's 360 Savings account, or its marketing of that account, was unlawful. Doing so would facilitate "the convenience of [the] parties and witnesses and … promote the just and efficient conduct of [the] actions" as a whole, as contemplated in 28 U.S.C. § 1407(a).

Not only is consolidation proper, the Eastern District of Virginia, Alexandria Division is the appropriate venue. Capital One is headquartered in McLean, Virginia, located in the Eastern District of Virginia, and that is where most of the relevant witnesses and documents relating to the claims against Capital One are located. The overwhelming majority of Capital One's leadership and associates with responsibilities potentially relevant to this matter are located in the Eastern District of Virginia. Moreover, *Savett v. Capital One, N.A.*, No. 1:23-cv-00890-RDA-WBP (E.D. Va.), which was filed on July 10, 2023, was the first-filed class action, and is the most procedurally advanced, with Capital One's motion to dismiss having been fully briefed since January 25, 2024. Additionally, the vast majority of named plaintiffs (eighteen out of twenty-two) have brought their claims in the Eastern District of Virginia. The Eastern District of Virginia is, moreover, renowned

for its ability to resolve complex litigation swiftly and efficiently, and it is well-suited for handling consolidated pretrial proceedings in the Related Actions. Finally, the courts within the Eastern District of Virginia—particularly its Alexandria Division—are conveniently located, providing ready access to multiple large airports and an array of hotels and other amenities.

Accordingly, Capital One moves for transfer and consolidation of all Related Actions in the Eastern District of Virginia, Alexandria Division.

FACTUAL BACKGROUND

Established in 1994, COFC is a diversified financial services holding company. CONA, a subsidiary of COFC, offers a broad spectrum of banking products and financial services to consumers, small businesses, and commercial clients. COFC and CONA have their corporate headquarters in McLean, Virginia, and of their approximately 44,000 U.S. employees, approximately 25,000 are in Virginia—more than in any other state. *See* Declaration of Maria Concepcion, attached as Exhibit A, ¶ 5. These 25,000 Capital One employees in Virginia are situated at Capital One's headquarters in and around McLean, Virginia, and at locations in the Richmond, Virginia area—all within the Eastern District. *Id*. As for potential witnesses with responsibilities possibly relevant to this matter, more than three quarters of the employees responsible for pricing and setting interest rates on Capital One deposit products are located in McLean, Virginia. *Id*. ¶ 6. Further, of the employees responsible for marketing Capital One deposit products, more are located in McLean, Virginia than in any other Capital One location. *Id*. ¶ 7.

Each Plaintiff held, or continues to hold, a particular deposit product formerly offered by CONA called the 360 Savings account. *E.g.*, 2d. Am. Compl. ¶¶ 7-9, *Savett*, No. 1:23-cv-00890

(E.D. Va. Oct. 19, 2023), ECF No. 19 ("*Savett* SAC").[1] These accounts are governed by the 360 Savings Account Disclosures, which provide that Capital One has the right to change "interest rates and annual percentage yields … at any time at [its] discretion." *Id.* ¶¶ 6, 34. Plaintiffs allege that their 360 Savings accounts were generally characterized by Capital One as paying a "high" interest rate or a "great rate" in certain promotional materials, at certain periods of time. *Id.* ¶¶ 33, 36.

In September 2019, Capital One began offering an additional online savings product, the 360 Performance Savings account. *Id.* ¶ 38. Plaintiffs allege that the interest rate on the Performance Savings account has increased along with the federal funds rate, while the interest rate on their 360 Savings Accounts did not. *Id.* ¶¶ 42-48. All of their claims challenge Capital One's alleged failure to increase the interest rate on the 360 Savings account, along with Capital One's alleged failure to inform them about the existence of the Performance Savings account and its higher rate. *E.g.*, *id.* ¶ 6.

Savett was filed on July 10, 2023. Compl., No. 1:23-cv-00890 (E.D. Va. July 10, 2023), ECF No. 1. After two amended pleadings, the case now involves three named plaintiffs who seek to represent a nationwide class and Pennsylvania, Massachusetts, and Illinois subclasses. *E.g.*, *Savett* SAC ¶ 68. Capital One's motion to dismiss has been fully briefed since January 25, 2024. Reply Mem. in Supp. of Defs.' Mot. to Dismiss, *Savett*, No. 1:23-cv-00890 (E.D. Va. Jan. 25, 2024), ECF No. 40.

[1] The facts in this paragraph and the next are drawn from Plaintiffs' Second Amended Complaint in *Savett*, which is illustrative of the allegations across the related complaints. As Capital One has not filed an answer, none of these allegations are admitted, and Capital One reserves all rights to dispute them.

Beginning in mid-February 2024, more cases began to be filed in federal courts across the country. To date, the following actions, in addition to *Savett*, are pending:

- *Sim v. Capital One Financial Corp.*, No. 2:24-cv-01222 (C.D. Cal. Feb. 14, 2024): This action involves one named plaintiff who seeks to represent a California class.
- *Pitts v. Capital One Financial Corp.*, No. 3:24-cv-00047 (S.D. Ohio Feb. 19, 2024): This action involves one named plaintiff who seeks to represent an Ohio class.
- *Port v. Capital One, N.A.*, No. 3:24-cv-01006 (D.N.J. Feb. 21, 2024): This action involves one named plaintiff who seeks to represent a nationwide class and a New Jersey class (that would appear to be a subclass).
- *Hopkins v. Capital One, N.A.*, No. 1:24-cv-00292 (E.D. Va. Feb. 26, 2024): This action involves fifteen named plaintiffs who seek to represent a nationwide class and Texas, California, Georgia, Maryland, North Carolina, Florida, Oregon, New York, New Jersey, and Virginia[2] subclasses.
- *Bellantoni v. Capital One Financial Corp.*, No. 1:24-cv-01558 (E.D.N.Y. Mar. 1, 2024): This action involves one named plaintiff who seeks to represent a New York class.

These recently filed cases are all in their infancy. Capital One's first deadline to respond to one of these later-filed complaints is on April 15, 2024 in the *Port* case, *see* Consent Order Extending Def.'s Time to Answer, Move, or Otherwise Respond to Pl.'s Compl. at 2, No. 3:24-cv-01006 (D.N.J. Mar. 7, 2024), ECF No. 6, with the other deadlines following shortly thereafter.

The claims asserted in all the Related Actions are virtually identical. They assert, on behalf of three virtually identical nationwide classes and various overlapping state-specific classes and subclasses, claims for: (i) breach of contract and the implied covenant and fair dealing; (ii) unjust enrichment; (iii) promissory estoppel; and (iv) violations of various state consumer-protection statutes. The claims in every action arise out of a materially identical factual predicate: That Capital

[2] While the Amended Complaint does not explicitly define a Virginia subclass, this may have been an oversight, as the Complaint later purports to assert a claim on behalf of a Virginia subclass. *See* Am. ¶¶ 109-115, No. 1:24-cv-00292 (E.D. Va. Mar. 15, 2024), ECF No. 4 ("*Hopkins* Am. Compl.").

One failed to raise interest rates on the 360 Savings accounts, as it did on the Performance Savings account, deceptively marketed the 360 Savings account, and failed to disclose the existence of the Performance Savings account to 360 Savings accountholders.

ARGUMENT

I. The Related Actions should be consolidated under 28 U.S.C. § 1407.

Under 28 U.S.C. § 1407(a), consolidation for pretrial proceedings is warranted where: (i) the cases involve one or more common questions of fact; and (ii) transfer will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the cases. *See In re Anthem, Inc., Customer Data Sec. Breach Litig.*, 109 F. Supp. 3d 1364, 1365 (J.P.M.L. 2015). These factors are satisfied here. Six putative class actions, brought by twenty-two named Plaintiffs from fourteen different states, have been filed relating to the *same* underlying course of conduct—Capital One's alleged failure to pay enough interest on Plaintiffs' 360 Savings accounts and its allegedly deceptive marketing of that product. And these cases all assert the same or substantially similar claims on behalf of overlapping putative nationwide classes and state classes and subclasses. Consolidating all the Related Actions in the Alexandria Division of the Eastern District of Virginia will maximize the efficiencies intended by Section 1407 and promote the convenience of the parties and witnesses and the just and efficient conduct of the litigation.

A. All of the Related Actions involve common questions of fact.

Related cases are appropriate for transfer and consolidation under Section 1407 where, as here, they "share factual issues arising from common allegations." *In re Lipitor (Atorvastatin Calcium) Mktg., Salespractices & Prods. Liab. Litig. (No. II)*, 997 F. Supp. 2d 1354, 1356-57 (J.P.M.L. 2014). Here, the factual allegations across the cases filed so far are not just common—they are virtually identical.

The complaints filed in the Related Actions plainly meet Section 1407's "common questions of fact" standard because they all arise out of the same principal allegations: (1) that Capital One failed to pay Plaintiffs sufficient interest on their 360 Savings accounts, and in turn committed a breach of contract and/or of the implied covenant of good faith and fair dealing; and (2) that Capital One engaged in fraudulent, misleading and/or deceptive marketing of the 360 Savings account product in violation of various state consumer protection statutes. *See, e.g., Savett* SAC ¶ 6 ("Capital One … fail[ed] to raise interest rates for its 360 Savings accountholders, to whom Capital One had promised a variable 'high interest' rate … [and] capped the interest rate for the 360 Savings Account and furtively created a new, similar sounding savings account product with a higher yield (i.e., 360 Performance Savings), without informing its current customers."); *Hopkins* Am. Compl. ¶ 10 (same); Class Action Compl. ¶ 3, *Sim*, No 2:24-cv-01222 (C.D. Cal. Feb. 14, 2024), ECF No. 1 ("Capital One abruptly and without notice stopped offering the 360 Savings account to new customers and, instead, began offering a new, virtually identical account with a highly similar name, the '360 Performance Savings' account, which it advertised as a 'high yield' online savings account and, from its launch to the present, offered a significantly higher interest rate than the 360 Savings account."); Class Action Compl. ¶ 3, *Pitts*, No. 3:24-cv-00047 (S.D. Ohio Feb. 19, 2024), ECF No. 1 (same); Class Action Compl. ¶ 3, *Bellantoni*, No. 1:24-cv-01558 (E.D.N.Y. Mar. 1, 2024), ECF No. 1 (same); Class Action Compl. ¶ 10, *Port*, No. 3:24-cv-01006 (D.N.J. Feb. 21, 2024), ECF No. 1 (alleging Capital One "relegate[d] all [360 Savings accounts] to a lower tier interest rate status while disguising this fact from account holders"). Capital One has attached a chart detailing the extensive overlap in factual allegations between the six complaints filed to date. *See* App. 1.

Plaintiffs in the Related Actions will no doubt seek to explore during pretrial discovery common factual issues related to both Capital One's policies and practices regarding the adjustment of interest rates on its 360 Savings account, *see In re Daily Fantasy Sports Mktg. & Sales Practices Litig.*, 158 F. Supp. 3d 1375, 1379 (J.P.M.L. 2016) ("the actions will involve common discovery regarding the nature of the DFS Defendants' online daily fantasy sports contests, their advertising and promotions, and their internal policies and practices"), and Capital One's allegedly deceptive marketing of the 360 Savings account, *see In re: Higher One OneAccount Mktg. & Sales Practices Litig.*, 908 F. Supp. 2d 1371, 1371 (J.P.M.L. 2012) ("The subject actions share numerous factual issues arising from allegations of unfair and deceptive conduct in the marketing and fee policies of the Higher One OneAccount bank account[.]"). These overarching questions of fact are at the core of all the complaints, warranting transfer and consolidation under Section 1407.

Whatever minor differences exist among the complaints filed to date, including that they assert consumer protection claims under different states' laws, do not weigh against consolidation. *See In re Marriott Int'l, Inc., Customer Sec. Breach Litig.,* 363 F. Supp. 3d 1372, 1374 (J.P.M.L. 2019) (explaining that "differing legal theories is not significant where … the actions still arise from a common factual core"); *see also In re Acetaminophen - ASD/ADHD Prods. Liab. Litig.*, 637 F. Supp. 3d 1372, 1375 (J.P.M.L. 2022) ("Section 1407 does not require a complete identity of common factual issues or parties as a prerequisite to transfer"). Indeed, the Panel "routinely ha[s] centralized actions asserting similar claims under different state statutes where they involve common questions of fact." *In re BPS Direct, LLC, & Cabela's, LLC, Wiretapping Litig.*, 2023 WL 3828643, at *2 (J.P.M.L. June 2, 2023); *see also In re M3Power Razor Sys. Mktg. & Sales Practices Litig.*, 398 F. Supp. 2d 1363, 1364 (J.P.M.L. 2005) (rejecting, in case involving

consumer fraud claims, argument that cases should not be consolidated because they were "dependent upon questions of different state laws"). Because the claims here rest on the same set of operative facts, Section 1407's "common questions" standard is easily satisfied.

B. Consolidated pretrial proceedings will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation.

This Panel routinely orders transfer and consolidation where overlapping putative class actions are filed in different jurisdictions. *See, e.g.*, *In re FTX Cryptocurrency Exch. Collapse Litig.*, 2023 WL 3829242, at *2 (J.P.M.L. June 5, 2023). The benefit of centralized pretrial proceedings in complex class-action litigation is so clear that the Panel has ordered consolidation where there are as few as *two* overlapping putative class actions. *See, e.g.*, *In re: Toys "R" Us-Delaware, Inc., Fair & Accurate Credit Transactions Act (FACTA) Litig*., 581 F. Supp. 2d 1377, 1377 (J.P.M.L. 2008) (plaintiffs' argument that "there are only two actions pending" is "not quite sufficient to persuade" because "they are brought on behalf of nearly identical putative nationwide classes, and there is a risk of inconsistent rulings on class certification"); *see also In re: Michaels Stores, Inc., Fair Credit Reporting Act (FCRA) Litig.*, 96 F. Supp. 3d 1380, 1380-81 (J.P.M.L. 2015) (ordering centralization of three putative nationwide class actions).

Similarly, the Panel frequently consolidates class actions alleging that financial institutions operating in multiple states or nationwide have engaged in unfair and deceptive conduct. *See In re HSBC Bank USA, N.A., Debit Card Overdraft Fee Litig.*, 949 F. Supp. 2d 1358, 1359 (J.P.M.L 2013) (centralizing three "overlapping putative nationwide classes" regarding overdraft fee policy); *Higher One*, 908 F. Supp. 2d at 1371–72 (centralizing three overlapping putative classes (with two potential tag-along actions) concerning bank's marketing and fee policies); *see also In re: TD Bank, N.A., Debit Card Overdraft Fee Litig*., 96 F. Supp. 3d 1378, 1378–79, 1378 n.1 (J.P.M.L. 2015) (centralizing eight overlapping putative class actions, with two potential tag-along

cases, regarding overdraft fee policy); *In re: Checking Account Overdraft Litig.*, 626 F. Supp. 2d 1333, 1335 & n.2 (J.P.M.L. 2009) (centralizing five overlapping putative class actions, with seven potential tag-along cases, regarding overdraft fee policy).

Here, a total of twenty-two Plaintiffs have brought six cases in five different jurisdictions asserting claims under the laws of fourteen states. Three cases assert claims on behalf of a duplicative nationwide class, and the rest assert claims on behalf of state-wide classes, several of which overlap.[3] Given the number of putative class actions pending in federal courts nationwide, all arising out of the same factual allegations and asserting claims under nearly identical legal theories, consolidation in a single court for pretrial proceedings is appropriate to ensure the just and efficient conduct of the litigation. *See In re Profemur Hip Implant Prods. Liab. Litig.*, 481 F. Supp. 3d 1350, 1352 (J.P.M.L. 2020) ("[T]he substantial similarity of the claims asserted by the various plaintiffs[] suggest … that centralization will result in significant efficiency and convenience benefits for the parties and the courts."). Absent consolidation, each of the cases filed to date would have to be litigated, simultaneously, in federal courts across the country before different judges. In contrast, consolidated pretrial proceedings "will eliminate duplicative discovery, prevent inconsistent pretrial rulings on class certification and other issues, and conserve the resources of the parties, their counsel, and the judiciary." *Marriott*, 363 F. Supp. 3d 1372 at 1374.

In particular, because the six Related Actions share common questions of fact and assert the same or similar claims, the actions will involve substantially the same discovery and inquiry into the same relevant subject matter. *See In re MLR, LLC, Patent Litig.*, 269 F. Supp. 2d 1380,

[3] For example, both *Port* and *Hopkins* involve a putative New Jersey class; both *Bellantoni* and *Hopkins* involve a putative New York class; and both *Sim* and *Hopkins* involve a putative California class.

1381 (J.P.M.L. 2003) (finding that consolidation "has the benefit of placing all actions . . . before a single transferee judge who can structure pretrial proceedings to consider all parties' legitimate discovery needs"). Consolidated pretrial proceedings will allow discovery to be conducted efficiently under the oversight of a single court, rather than having duplicative discovery occur on a piecemeal basis in different courts around the country. *See In re Commodity Exchange, Inc., Gold Futures and Options Trading Litig.*, 38 F. Supp. 3d 1394, 1395 (J.P.M.L. 2014) (centralization is appropriate where it "will eliminate duplicative discovery" and "conserve the resources of the parties, their counsel, and the judiciary"); *see also Manual for Complex Litigation*, Fourth § 20.131 (2004) ("The objective of transfer [through the MDL process] is to eliminate duplication in discovery, avoid conflicting rulings and schedules, reduce litigation cost, and save the time and effort of the parties, the attorneys, the witnesses, and the courts.").

Likewise, enabling a single transferee judge to resolve all pretrial issues, including Rule 12 motions to dismiss, discovery disputes, class certification motions, and motions for summary judgment, will avoid the risk that the different courts will issue inconsistent pretrial rulings. *See In re Generic Digoxin & Doxycycline Antitrust Litig.*, 222 F. Supp. 3d 1341, 1343 (J.P.M.L. 2017) (consolidating where "there [wa]s a significant risk of inconsistent rulings" if the actions proceeded individually). Because this concern is particularly acute in the context of multidistrict putative class actions, the Panel has "consistently held that transfer of actions under Section 1407 is appropriate, if not necessary, where the possibility of inconsistent class determinations exists." *In re Sugar Indus. Antitrust Litig*., 395 F. Supp. 1271, 1273 (J.P.M.L. 1975); *see also In re Allergan BIOCELL Textured Breast Implant Products Liab. Litig*., 412 F. Supp. 3d 1361, 1363 (J.P.M.L. 2019) ("Centralization will … prevent inconsistent pretrial rulings, *especially* with respect to class certification." (emphasis added)). And the concern is amplified here, where Capital One will argue,

and has argued in *Savett*, that Plaintiffs' claims are preempted by the National Bank Act. Mem. of Law in Supp. of Defs.' Mot. to Dismiss at 9-15, *Savett*, No. 1:23-cv-00890 (E.D. Va. Nov. 9, 2023), ECF No. 33. If that issue were not decided uniformly, it would only add to the chaos of multi-state regulation that the National Bank Act is designed to avoid. *See, e.g.*, *Watters v. Wachovia Bank, N.A.*, 550 U.S. 1, 11 (2007) ("[F]ederal control shields national banking from unduly burdensome and duplicative state regulation.").

That Capital One has filed a motion to dismiss in *Savett* is not an impediment to consolidation, as the Panel has routinely recognized. *See, e.g., In re Allura Fiber Cement Siding Products Liab. Litig.*, 366 F. Supp. 3d 1365, 1366 (J.P.M.L. 2019) ("[W]here the litigation involves common factual questions, centralization may be appropriate even though defendants predict that they will prevail on dispositive motions prior to commencement of discovery."); *In re: Anheuser-Busch Beer Labeling Mktg. and Sales Practices Litig.*, 949 F. Supp. 2d 1371, 1371 n.2 (J.P.M.L. 2013) (centralizing actions over defendant's objection that "little or no discovery will be required in light of the defenses raised in its pending motions to dismiss").

Finally, it is possible that this litigation will continue to expand. Capital One has been notified that additional plaintiffs may file new putative class actions. In *Savett*, for example, the Plaintiffs allege, "At all relevant times, there were thousands of 360 Savings accountholders." *Savett* SAC ¶ 69. And in *Hopkins*, the Plaintiffs allege that in the past few months alone, "over a hundred 360 Savings accountholders from across the country have reached out to Plaintiffs' counsel." *Hopkins* Am. Compl. ¶ 1. The likelihood that this litigation will continue to expand further weighs in favor of centralization. *See In re Schnuck Markets, Inc., Customer Data Sec. Breach Litig.*, 978 F. Supp. 2d 1379, 1381 (J.P.M.L. 2013) (granting § 1407 motion where the

estimated number of affected customers across five states indicated that additional tag-along actions could be filed).

II. The Alexandria Division of the Eastern District of Virginia is the superior transferee forum.

The Alexandria Division of the Eastern District of Virginia is the most logical choice for a transferee forum. The majority of Capital One's relevant witnesses and documents are located in that Division, making it the most convenient forum for the parties and witnesses. The Eastern District of Virginia also has the most pending actions relating to the 360 Savings account, as well as the most advanced action (*Savett*). Moreover, the Eastern District of Virginia is well-equipped to efficiently handle this litigation.

A. The Alexandria Division of the Eastern District of Virginia is the most convenient forum.

The Panel routinely establishes MDL proceedings in the district and division where the defendant is headquartered. *See, e.g., In re Lumber Liquidators Chinese-Manufactured Flooring Prod. Mktg., Sales Practices & Prod. Liab. Litig.*, 109 F. Supp. 3d 1382, 1383 (J.P.M.L. 2015) (consolidating cases in Alexandria Division of the Eastern District of Virginia in part because "Lumber Liquidators is based in th[e D]istrict . . . and relevant documents and witnesses will likely be found there"); *In re Xyberbaut Corp. Sec. Litig.*, 403 F. Supp. 2d 1354, 1355 (J.P.M.L. 2005) (same); *see also, e.g.*, *In re Johnson & Johnson Talcum Powder Products Mktg., Sales Practices & Products Liab. Litig*., 220 F. Supp. 3d 1356, 1359 (J.P.M.L. 2016) ("As Johnson & Johnson is headquartered in New Jersey, relevant evidence and witnesses likely are located in the District of New Jersey."). Because Capital One's headquarters are in McLean, Virginia, this Panel's precedent supports transfer to the Alexandria Division of the Eastern District of Virginia. In fact, the Panel has previously consolidated a group of class actions against Capital One (and other defendants) in that District and Division. *See, e.g.*, *In re Capital One Customer Data Sec. Breach*

Litig., 396 F. Supp. 3d 1364, 1365 (J.P.M.L. 2019) ("Capital One is headquartered within this district in McLean, Virginia, and represents that relevant documents and witnesses will be found there.").

The Panel should do the same here. Capital One is based in and strongly tied to the Eastern District of Virginia, particularly the Alexandria Division. It has approximately 25,000 employees in Virginia—more than in any other state—split between Capital One's headquarters in McLean and locations in the Richmond area. Ex. A ¶ 5. More than three quarters of the employees responsible for pricing and setting interest rates on Capital One deposit products are located in McLean. *Id.* ¶ 6. Further, of the employees responsible for marketing Capital One deposit products, more are in McLean than in any other Capital One location. *Id.* ¶ 7.

Simply put, the Alexandria Division of the Eastern District of Virginia is the nerve center of Capital One's operations, with the most significant concentration of relevant personnel located there. The individuals located at Capital One's headquarters in McLean represent at least a plurality, if not a majority, of the witnesses likely to have knowledge relevant to Plaintiffs' 360 Savings accounts, and the majority of relevant information will be located in McLean as well. The Alexandria Division also represents a convenient forum for the potential witnesses who sit in Richmond—also in the Eastern District of Virginia. That makes the Alexandria Division of the Eastern District of Virginia the most appropriate transferee forum. *See In re Xyberbaut Corp. Sec. Litig.*, 403 F. Supp. 2d at 1355 (consolidating actions in the Eastern District of Virginia because it was a "likely source of relevant documents and witnesses inasmuch as [the defendant's] headquarters are located there.").

Transfer to the Eastern District of Virginia's Alexandria Division would also be convenient for the parties. "[A] litigation of this scope will benefit from centralization in a major metropolitan

center that is well served by major airlines, provides ample hotel and office accommodations, and offers a well-developed support system for legal services." *In re Enron Corp. Sec., Derivative & "ERISA" Litig.*, 196 F. Supp. 2d 1375, 1376-77 (J.P.M.L. 2002); *see also In re Jamster Mktg. Litig.*, 427 F. Supp. 2d 1366, 1368 (J.P.M.L. 2006) (choosing a transferee forum in an "accessible metropolitan location"). Alexandria is conveniently located with access to three large airports: Ronald Reagan Washington National Airport, Washington Dulles International Airport, and Baltimore/Washington International Thurgood Marshall Airport, with direct flights to all major U.S. cities. The Alexandria area also has an abundance of hotels and other amenities. Thus, the Alexandria Division of the Eastern District of Virginia would be a convenient location for the consolidated litigation. *See, e.g., In re TLI Commc'ns LLC Patent Litig.*, 26 F. Supp. 3d 1396, 1397 (J.P.M.L. 2014) (recognizing the district's convenient location and accessibility, even for international witnesses and parties).

B. The first-filed and most procedurally advanced case is in the Alexandria Division of the Eastern District of Virginia.

Savett, the first-filed and most-advanced of the Related Actions, was filed in the Alexandria Division of the Eastern District of Virginia in July of 2023. The other five pending actions were filed in February or March of 2024. In *Savett*, a fully briefed motion to dismiss is pending, while Capital One's deadlines to respond to the complaints in the other cases have not yet arrived. The Panel frequently orders litigation to be consolidated in the district with the first-filed and most-advanced case. *See, e.g.*, *In re Broiler Chicken Grower Antitrust Litig.*, 509 F. Supp. 3d 1359, 1362 (J.P.M.L. 2020) (ordering consolidation in Eastern District of Oklahoma because "[t]he Oklahoma action is the first-filed action and the most procedurally advanced"); *In re: Monitronics Intern., Inc., Tel. Consumer Prot. Act Litig.*, 988 F. Supp. 2d 1364, 1367 (J.P.M.L. 2013) (ordering consolidation in the Northern District of West Virginia because "[t]he first-filed action, which also

is the most advanced, is pending in this district."); *In re: U.S. Foodservice, Inc., Pricing Litig.*, 528 F. Supp. 2d 1370, 1371 (J.P.M.L. 2007) (ordering consolidation in District of Connecticut because "[t]he action pending there is the earliest filed and most advanced").

Moreover, the Panel has often found the district where the highest number of related actions were filed to be the appropriate transferee court for consolidation. *See, e.g., In re Packaged Ice Antitrust Litig.*, 560 F. Supp. 2d 1359, 1361 (J.P.M.L. 2008) (selecting district where largest number of cases had been filed); *In re Marine Hose Antitrust Litig. (No. II),* 531 F. Supp. 2d 1381, 1382 (J.P.M.L 2008) (same); *Enron*, 196 F. Supp. 2d at 1376 (same). Here, two actions—*Savett* and *Hopkins*—are pending in the Eastern District of Virginia. No other District has more than one. And the Virginia actions collectively bring claims on behalf of eighteen plaintiffs. Those plaintiffs assert claims under the laws of fourteen states and seek to represent two nationwide classes and thirteen subclasses. *See In re Profiler Products Liab. Litig.*, 429 F. Supp. 2d 1381, 1382 (J.P.M.L. 2006) (centralizing litigation at "the location where a sizeable number of plaintiffs have chosen to file their claims"). The other four actions were brought by single plaintiffs from separate states. That the vast majority of Plaintiffs have elected to bring their claims in the Eastern District of Virginia confirms it is the most convenient forum here. *See In re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, 228 F. Supp. 2d 1379, 1381 (J.P.M.L. 2002) ("the Northern District of California is an appropriate forum … [because] the district is the forum choice of the majority of both plaintiffs and defendants").

For these reasons, the Eastern District of Virginia is decidedly the focal point of this litigation. This fact weighs strongly in favor of selecting it as the appropriate MDL forum.

C. The Alexandria Division of the Eastern District of Virginia is well-suited to handle the litigation.

The Alexandria Division of the Eastern District of Virginia is uniquely suited to handle the consolidated pretrial proceedings in a timely and efficient manner. When determining the appropriate court for consolidation, this Panel takes into consideration both the docket conditions and the expertise of the proposed forums. *See, e.g., In re Xyberbaut Corp. Sec. Litig.*, 403 F. Supp. 2d at 1355 (transferring related actions to the Eastern District of Virginia and citing its "relatively favorable caseload statistics"); *In re TLI Commc'ns LLC Patent Litig.*, 26 F. Supp. 3d at 1397 (ordering consolidation in Alexandria Division of the Eastern District of Virginia and noting the Court's experience); *see also Manual Complex Litigation* § 20.131 (4th ed.) (explaining that the Panel considers "the experience, skill, and caseloads of available judges").

This Panel has often ordered consolidation in transferee courts that are capable of expeditiously resolving complex litigation. *See, e.g., In re Fenofibrate Patent Litig.*, 787 F. Supp. 2d 1352, 1354 (J.P.M.L. 2011) (finding that Section 1407 consolidation is intended to allow for pretrial proceedings to be "conducted in a streamlined manner leading to the just and expeditious resolution of all actions to the overall benefit of all parties and the courts"); *In re Morgan Stanley & Co., Inc., Overtime Pay Litig. (No. II)*, 471 F. Supp. 2d 1353, 1354 (J.P.M.L. 2006) (selecting transferee forum based on its ability to "further enhance the prospects for a just and speedy resolution of all [related] actions"). Often referred to as the "Rocket Docket," the Eastern District of Virginia is well-known for its ability to resolve complex litigation expeditiously.

For several decades, the Eastern District of Virginia has been faster on average than any other federal district court in the country. For example, during the 12-month period ending September 30, 2023, the median time from the filing to the disposition of civil cases resolved during or after pretrial proceedings was just 9.9 months in the Eastern District of Virginia (the

quickest of any district), compared to a national average of 16.3 months.[4] The Eastern District of Virginia's ability to resolve cases quickly is also reflected in other caseload statistics: Despite a nearly average number of newly filed civil cases during the 12-month period ending September 30, 2023 (3,233 filings compared to a national average of approximately 3,614 across all 94 districts), the Eastern District of Virginia has only 2,544 pending civil cases, compared to a national average over twice as high (approximately 6,830 across all 94 districts).[5] This Panel has previously selected the Eastern District of Virginia as an MDL forum in light of its "relatively favorable caseload statistics." *See In re Xyberbaut Corp. Sec. Litig.*, 403 F. Supp. 2d at 1355.

Finally, the Alexandria Division of the Eastern District of Virginia has been efficiently handling complex MDL proceedings to completion throughout the past decade, evidencing the court's ability to take on the Related Actions at issue here. *See In re Capital One Customer Data Sec. Breach Litig*., No. 1:19-md-2915 (E.D. Va); *In re Lumber Liquidators Chinese-Manufactured Flooring Durability Marketing and Sales Practices Litigation*, No. 1:16-md-2743 (E.D. Va.); *In re Lumber Liquidators Chinese-Manufactured Flooring Prods. Marketing, Sales Practices & Prods. Liability Litig.,* No. 1:15-md-2627 (E.D. Va); *In re TLI Communications LLC Patent Litigation*, No. 14-md-2534 (E.D. Va.). And because the *Lumber Liquidators* MDL has been narrowed down to only one active case, and just one other MDL is pending in the Eastern District

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[4] *See* Admin. Office of the U.S. Cts., Federal Judicial Caseload Statistics: Median Time From Filing to Disposition of Civil Cases, by Action Taken, Table C-5 (Sept. 30, 2023), https://www.uscourts.gov/statistics/table/c-5/judicial-business/2023/09/30.

[5] *See* Admin. Office of the U.S. Cts., Federal Judicial Caseload Statistics: Civil Cases Filed, Terminated, and Pending, by Jurisdiction, Table C-1 (Sept. 30, 2023), https://www.uscourts.gov/statistics/table/c-1/judicial-business/2023/09/30.

of Virginia (*In re Air Crash Into the Java Sea on January 9, 2021*, 1:23-md-3072),[6] that District is well-suited to oversee consolidated pretrial proceedings in this litigation.[7]

For these reasons, the Eastern District of Virginia's Alexandria Division is the objectively superior forum for consolidation.

CONCLUSION

For these reasons, all the Related Actions should be consolidated for pretrial proceedings in the Eastern District of Virginia, Alexandria Division.

Respectfully submitted this 20th day of March, 2024.

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[6] *See* J.P.M.L., MDL Statistics Report - Distribution of Pending MDL Dockets by District (Feb. 1, 2024), https://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_District-February-1-2024.pdf.

[7] The Related Actions pending in the Eastern District of Virginia, Alexandria Division (*Savett* and *Hopkins*) are assigned to Judge Rossie D. Alston, Jr. While Judge Alston has not yet presided over an MDL, Capital One is confident he could ably handle the consolidated proceedings in this litigation. *See In re BPS Direct, LLC, & Cabela's, LLC, Wiretapping Litig.*, 2023 WL 3828643, at *2 (J.P.M.L. June 2, 2023) (transferring consolidated cases to "an able jurist who has not yet had the opportunity to preside over an MDL"). Capital One views the other judges in the Eastern District of Virginia, Alexandra Division, as equally capable, including Judge Claude M. Hilton, who is currently overseeing *In re Air Crash Into Java Sea on January 9, 2021*, and Judge Anthony J. Trenga, who recently has handled multiple MDLs (*In re Capital One Customer Data Security Breach Litigation* and both *Lumber Liquidators* cases).

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APPENDIX 1: SIMILAR ALLEGATIONS IN THE RELATED ACTIONS

	Savett, 2d Am. Compl., Dkt. 19, No. 1:23-cv-00890 (E.D. Va.)	***Hopkins***, Am. Compl., Dkt. 4, No. 1:24-cv-00292 (E.D. Va.)	***Sim***, Compl., Dkt. 1, No. 2:24-cv-01222 (C.D. Cal.)	***Pitts***, Compl., Dkt. 1, No. 3:24-cv-00047 (S.D. Ohio)	***Bellantoni***, Compl., Dkt. 1, No. 1:24-cv-01558 (E.D.N.Y.)	***Port***, Compl., Dkt. 1, No. 3:24-cv-01006 (D.N.J.)
Plaintiffs' Counsel	Wolf Popper LLP The Kaplan Law Firm	Wolf Popper LLP The Kaplan Law Firm	Edelsberg Law, P.A. Kaliel Gold PLLC	Edelsberg Law, P.A. Kaliel Gold PLLC Shamis and Gentile, P.A.	Edelsberg Law, P.A. Kaliel Gold PLLC Shamis and Gentile, P.A.	Ahdoot & Wolfson, PC
"Interest" Allegations	Paragraph 5: "The rate on 360 Performance Savings is currently 4.30%, while the rate on 360 Savings has remained at 0.30%." Paragraph 6: "Capital One . . . fail[ed] to raise interest rates for its 360 Savings accountholders[.]" Paragraph 42: "Instead, from October 2019 through December 2020, Capital One dropped the rate paid on 360 Savings from 1.00% APY to 0.30% APY and then froze that rate at 0.30% from December 2020 to the present, notwithstanding material increases in the federal funds rate and the rate paid on the 360 Performance Savings account."	Paragraph 9: "The rate on 360 Performance Savings is currently 4.35%, while the rate on 360 Savings has remained at 0.30%." Paragraph 10: "[Capital One] … fail[ed] to raise interest rates for its 360 Savings accountholders[.]" Paragraph 57: "Instead, from October 2019 through December 2020, Capital One dropped the rate paid on 360 Savings from 1.00% APY to 0.30% APY and then froze that rate at 0.30% from December 2020 to the present, notwithstanding material increases in the federal funds rate and the rate paid on the 360 Performance Savings account."	Paragraph 24: "Capital One never again raised the interest rate on 360 Savings accounts—not even when the Federal Reserve started increasing interest rates in 2022-2023." Paragraph 28: "From October 2019 through December 2020, Capital One reduced the interest rate paid on the 360 Savings account from 1.00% APY to 0.30% APY. Then from December 2020 to the present, Capital One simply froze what was promised to be a 'variable' interest rate on the 360 Savings account at 0.30%—despite material increases in the federal funds rate and the interest rate increases on the 360	Paragraph 23: "Capital One never again raised the interest rate on 360 Savings accounts—not even when the Federal Reserve started increasing interest rates in 2022-2023." Paragraph 28: "From October 2019 through December 2020, Capital One reduced the interest rate paid on the 360 Savings account from 1.00% APY to 0.30% APY. Then from December 2020 to the present, Capital One simply froze what was promised to be a 'variable' interest rate on the 360 Savings account at 0.30%—despite material increases in the federal funds rate and the interest rate increases on the 360	Paragraph 23: "Capital One never again raised the interest rate on 360 Savings accounts—not even when the Federal Reserve started increasing interest rates in 2022-2023." Paragraph 28: "From October 2019 through December 2020, Capital One reduced the interest rate paid on the 360 Savings account from 1.00% APY to 0.30% APY. Then from December 2020 to the present, Capital One simply froze what was promised to be a 'variable' interest rate on the 360 Savings account at 0.30%—despite material increases in the federal funds rate and the interest rate increases on the 360	Paragraph 3: "After September 2019, the difference in interest rates Capital One paid to 360 Savings account holders continued to expand with, for instance, the July 2023 interest for the 360 Performance Savings account at 4.15% annual percentage yield ('APY') as compared to 0.30% APY for the 360 Savings account." Paragraph 30: "Since December 2020, the rate on the now-phased out 360 Savings account appears to be locked to a below-market rate of 0.3%."

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	Paragraph 82: "Capital One's conduct is dishonest and unfair . . . because Capital One failed to pay the same interest rate on the 360 Savings account that it paid on the 360 Performance Savings Account."	Paragraph 111: "Capital One's conduct is dishonest and unfair . . . because Capital One failed to pay the same interest rate on the 360 Savings account that it paid on the 360 Performance Savings Account."	Performance Savings account." Paragraph 29: "As of May 2023, the federal funds rate was 5.06%, the rate paid on 360 Savings account[s] was 0.30%, and the rate paid on 360 Performance Savings account[s] was 3.75%. Since then, Capital One has further increased the rate paid on 360 Performance Savings to 4.30%."	Performance Savings account." Paragraph 29: "As of May 2023, the federal funds rate was 5.06%, the rate paid on 360 Savings account[s] was 0.30%, and the rate paid on 360 Performance Savings account[s] was 3.75%. Since then, Capital One has further increased the rate paid on 360 Performance Savings to 4.30%."	Performance Savings account." Paragraph 29: "As of May 2023, the federal funds rate was 5.06%, the rate paid on 360 Savings account[s] was 0.30%, and the rate paid on 360 Performance Savings account[s] was 3.75%. Since then, Capital One has further increased the rate paid on 360 Performance Savings to 4.30%."	
"Advertising" Allegations	Paragraph 2: "From February 1, 2013[,] until on or about September 16, 2019, Capital One offered the 360 Savings account to members of the general public, and advertised the 360 Savings account as a 'high-interest' and 'great rate' savings account[.]" Paragraph 22: "[Capital One's] website summarizes the answer to the question, 'What is a high-yield savings account?' with the answer, 'It's all about the	Paragraph 6: "From February 1, 2013[,] until on or about September 16, 2019, Capital One offered the 360 Savings account to members of the general public, and advertised the 360 Savings account as a 'high-interest' and 'great rate' savings account[.]" Paragraph 37: "[Capital One's] website summarizes the answer to the question, 'What is a high-yield savings account?' with the answer, 'It's all about the	Paragraph 2: "Since its introduction in 2013, Capital One has advertised the 360 Savings account to California consumers as a 'high interest' account with 'great rate' savings." Paragraph 25: "[I]n September 2019, Capital One simply disregarded and abandoned its longtime 360 Savings accountholders and its promise of 'high-interest[.]'"	Paragraph 2: "Since its introduction in 2013, Capital One has advertised the 360 Savings account to Ohio consumers as a 'high interest' account with 'great rate' savings." Paragraph 24: "[I]n September 2019, Capital One simply disregarded and abandoned its longtime 360 Savings accountholders and its promise of 'high-interest[.]'"	Paragraph 2: "Since its introduction in 2013, Capital One has advertised the 360 Savings account to New York consumers as a 'high interest' account with 'great rate' savings." Paragraph 24: "[I]n September 2019, Capital One simply disregarded and abandoned its longtime 360 Savings accountholders and its promise of 'high-interest[.]'"	Paragraph 1: "In 2012, Capital One began offering customers a high-yield savings account it marketed as its '360 Savings' account. Capital One promised an interest rate for the 360 Savings account many times the rate offered by conventional savings accounts."

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	interest.' Capital One's website further states: 'Simply put, a high-yield savings account—sometimes called a high-interest savings account—is a bank account that often has a higher interest rate or annual percentage yield (APY) than a traditional savings account.' Capital One's website also states: 'Online high-yield savings accounts earn higher than average interest on the balance amount.'"	interest.' Capital One's website further states: 'Simply put, a high-yield savings account—sometimes called a high-interest savings account—is a bank account that often has a higher interest rate or annual percentage yield (APY) than a traditional savings account.' Capital One's website also states: 'Online high-yield savings accounts earn higher than average interest on the balance amount.'"	Paragraph 21: "As Capital One[] explains on its website, a 'high-yield savings account' is 'all about the interest.' Capital One further states that 'a high-yield savings account—sometimes called a high-interest savings account—is a bank account that often has a higher interest rate or annual percentage yield (APY) than a traditional savings account.' Capital One promises that '[o]nline high-yield savings accounts earn higher than average interest on the balance amount.'"	Paragraph 25: "As Capital One[] explains on its website, a 'high-yield savings account' is 'all about the interest.' Capital One further states that 'a high-yield savings account—sometimes called a high-interest savings account—is a bank account that often has a higher interest rate or annual percentage yield (APY) than a traditional savings account.' Capital One promises that '[o]nline high-yield savings accounts earn higher than average interest on the balance amount.'"	Paragraph 25: "As Capital One[] explains on its website, a 'high-yield savings account' is 'all about the interest.' Capital One further states that 'a high-yield savings account—sometimes called a high-interest savings account—is a bank account that often has a higher interest rate or annual percentage yield (APY) than a traditional savings account.' Capital One promises that '[o]nline high-yield savings accounts earn higher than average interest on the balance amount.'"	
"Omission" Allegations	Paragraph 6: "Capital One capped the interest rate for the 360 Savings account . . . without informing its current customers." Paragraph 40: "Capital One did not notify any 360 Savings accountholders about the creation or existence of the 360	Paragraph 10: "Capital One capped the interest rate for the 360 Savings account . . . without informing its current customers." Paragraph 54: "Capital One did not notify any 360 Savings accountholders about the creation or existence of the 360	Paragraph 5: " Capital One never told Plaintiff or any other 360 Savings accountholder that (1) it had created a superior savings account with an almost-identical name, (2) it was ending new access to the 360 Savings account, (3) it was providing a superior product with a higher	Paragraph 5: " Capital One never told Plaintiff or any other 360 Savings accountholder that (1) it had created a superior savings account with an almost-identical name, (2) it was ending new access to the 360 Savings account, (3) it was providing a superior product with a higher	Paragraph 5: " Capital One never told Plaintiff or any other 360 Savings accountholder that (1) it had created a superior savings account with an almost-identical name, (2) it was ending new access to the 360 Savings account, (3) it was providing a superior product with a higher	Paragraph 4: "Capital One denied 360 Savings account holders any notice that they had to transfer funds into a 360 Performance Savings account in order to continue benefitting from market-competitive high-yield savings account rates."

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	Performance Savings account, or that the 360 Performance Savings account offered a higher APY than the 360 Savings account. Plaintiffs' monthly statements did not state that Capital One had introduced the 360 Performance savings product with a better APY."	Performance Savings account, or that the 360 Performance Savings account offered a higher APY than the 360 Savings account. Plaintiffs' monthly statements did not state that Capital One had introduced the 360 Performance savings product with a better APY."	interest rate to new accountholders, or (4) that they could easily take advantage of the near-identical 360 Performance Savings account by transferring their deposits and immediately receive significantly higher interest."	interest rate to new accountholders, or (4) that they could easily take advantage of the near-identical 360 Performance Savings account by transferring their deposits and immediately receive significantly higher interest."	interest rate to new accountholders, or (4) that they could easily take advantage of the near-identical 360 Performance Savings account by transferring their deposits and immediately receive significantly higher interest."	
"Deception" Allegations	Paragraph 6: "Capital One . . . furtively created a new, similar sounding savings account product with a higher yield (i.e., 360 Performance Savings)[.]" Paragraph 40: "Capital One did nothing to inform its customers that 360 Performance Savings was in fact a different product, and not just a new name for the existing 360 Savings product."	Paragraph 10: "[Capital One] . . . furtively created a new, similar sounding savings account product with a higher yield (i.e., 360 Performance Savings)[.]" Paragraph 54: "Capital One did nothing to inform its customers that 360 Performance Savings was in fact a different product, and not just a new name for the existing 360 Savings product."	Paragraph 25: "Capital One . . . began offering a new, virtually identical 'high-yield' savings account with a highly similar name—the 360 Performance Savings account—and a significantly higher interest rate than the 360 Savings account."	Paragraph 24: "Capital One . . . began offering a new, virtually identical 'high-yield' savings account with a highly similar name—the 360 Performance Savings account—and a significantly higher interest rate than the 360 Savings account."	Paragraph 24: "Capital One . . . began offering a new, virtually identical 'high-yield' savings account with a highly similar name—the 360 Performance Savings account—and a significantly higher interest rate than the 360 Savings account."	Paragraph 2: "[I]f a Capital One customer looked on Capital One's website for its published savings account interest rate, they would see only the 360 Performance Savings account. If account holders did not notice the addition of the word 'Performance' in the name or did not realize that it was a whole new type of account, they would never know that that their savings accounts had been relegated to a lower interest rate tier." Paragraph 32: "A casual viewer of the Capital One marketing campaign for the

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						'new' 360 Performance Savings account would observe Capital One made little effort to distinguish between its old and new accounts."