

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

SANDRA SEARLES, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

C.A. No. 2020-0136-KSJM

RICHARD M. DEMARTINI, CHRISTOPHER G.
MARSHALL, R. EUGENE TAYLOR,
CRESTVIEW PARTNERS, L.P., CRESTVIEW-
NAFH, LLC and CRESTVIEW ADVISORS,
L.L.C.

Defendants.

**NOTICE OF PENDENCY AND PROPOSED SETTLEMENT OF STOCKHOLDER CLASS ACTION,
SETTLEMENT HEARING, AND RIGHT TO APPEAR**

The Delaware Court of Chancery authorized this Notice. This is not a solicitation from a lawyer.

NOTICE OF PENDENCY OF CLASS ACTION: Please be advised that your rights will be affected by the above-captioned stockholder class action (the “Action”) pending in the Court of Chancery of the State of Delaware (the “Court”) if you held Capital Bank Financial Corporation (“Capital Bank” or the “Company”) common stock as of November 30, 2017, the date of the consummation of the merger of Capital Bank and First Horizon Bank (“First Horizon”).

NOTICE OF SETTLEMENT: Please also be advised that plaintiff Sandra Searles (“Plaintiff”), on behalf of herself and the Settlement Class (defined in paragraph 24 below) and defendants Richard M. DeMartini, Christopher G. Marshall, R. Eugene Taylor, Crestview Partners, L.P., Crestview-NAFH, LLC, and Crestview Advisors, L.L.C. (collectively, “Defendants”) have reached a proposed settlement of the Action for \$23,000,000 in cash (the “Settlement”).

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. This Notice explains how Class Members will be affected by the Settlement. The table on the following page provides a brief summary of the rights you have as a Class Member and the relevant deadlines, which are described in more detail later in this Notice.¹

¹ Any capitalized terms used in this Notice that are not otherwise defined herein shall have the meanings given to them in the Stipulation and Agreement of Settlement, Compromise, and Release dated August 26, 2021 (the “Stipulation of Settlement” or “Stipulation”), entered into by and among Plaintiff, on behalf of herself and the Settlement Class, and Defendants. Plaintiff and Defendants are collectively referred to as the “Parties.” A copy of the Stipulation is available at www.CapitalBankStockholderLitigation.com.

CLASS MEMBERS' LEGAL RIGHTS IN THE SETTLEMENT:

RECEIVE A PAYMENT FROM THE SETTLEMENT. CLASS MEMBERS <u>DO NOT</u> NEED TO SUBMIT A CLAIM FORM.	If you are a member of the Settlement Class (defined in paragraph 24 below), you may be eligible to receive a <i>pro rata</i> distribution from the Settlement proceeds. Eligible Class Members do not need to submit a claim form in order to receive a distribution from the Settlement, if approved by the Court. Your distribution from the Settlement will be paid to you directly. See paragraphs 29-36 below for further discussion.
OBJECT TO THE SETTLEMENT BY SUBMITTING A WRITTEN OBJECTION SO THAT IT IS RECEIVED NO LATER THAN NOVEMBER 2, 2021.	If you are a member of the Settlement Class and would like to object to the proposed Settlement, the proposed Plan of Allocation, or Plaintiff's Lead Counsel's request for an award of attorneys' fees and expenses, you may write to the Court and explain the reasons for your objection.
ATTEND A HEARING ON NOVEMBER 17, 2021 AT 1:30 P.M., AND FILE A NOTICE OF INTENTION TO APPEAR SO THAT IT IS RECEIVED NO LATER THAN NOVEMBER 2, 2021.	Filing a written objection and notice of intention to appear that is received by November 2, 2021, allows you to speak in Court, at the discretion of the Court, about your objection. In the Court's discretion, the November 17, 2021 hearing may be conducted by telephone or video conference (see paragraphs 40-41 below). If you submit a written objection, you may (but you do not have to) attend the hearing and, at the discretion of the Court, speak to the Court about your objection.

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WHAT IS THE PURPOSE OF THIS NOTICE?

1. The purpose of this Notice is to notify Class Members of the existence of the Action and the terms of the proposed Settlement of the Action. The Notice is also being sent to inform Class Members of a hearing that the Court has scheduled to consider the fairness, reasonableness, and adequacy of the Settlement, the proposed Plan of Allocation for the Settlement proceeds, and the application by Plaintiff's Lead Counsel for a Fee and Expense Award in connection with the Settlement (the "Settlement Hearing"). See paragraphs 40-41 below for details about the Settlement Hearing, including the location, date, and time of the hearing.

2. The Court directed that this Notice be mailed to you because you may be a member of the Settlement Class. The Court has directed us to send you this Notice because, as a Class Member, you have a right to know about your options before the Court rules on the proposed Settlement. Additionally, you have the right to understand how the Action and the

proposed Settlement generally affects your legal rights. Please Note: the Court may approve the proposed Settlement with such modifications as the Parties may agree to, if appropriate, without further notice to the Settlement Class.

3. The issuance of this Notice is not an expression by the Court of any findings of fact or any opinion concerning the merits of any claim in the Action, and the Court has not yet decided whether to approve the Settlement. If the Court approves the Settlement, then payments to Eligible Class Members will be made after any appeals are resolved.

PLEASE NOTE: Receipt of this Notice does not mean that you are a Class Member or an Eligible Class Member or that you will be entitled to receive a payment from the Settlement.

WHAT IS THIS CASE ABOUT?

THE FOLLOWING RECITATION DOES NOT CONSTITUTE FINDINGS OF THE COURT. THE COURT HAS MADE NO FINDINGS WITH RESPECT TO THE FOLLOWING MATTERS AND THESE RECITATIONS SHOULD NOT BE UNDERSTOOD AS AN EXPRESSION OF ANY OPINION OF THE COURT AS TO THE MERITS OF ANY OF THE CLAIMS OR DEFENSES RAISED BY ANY OF THE PARTIES.

4. On May 3, 2017, Capital Bank, a Delaware corporation, entered into an Agreement and Plan of Merger (the “Merger Agreement”) with First Horizon, a Tennessee corporation.

5. Pursuant to the Merger Agreement, each share of Capital Bank common stock was converted into the right to receive either \$40.573 in cash or 2.1732 shares of First Horizon common stock (the “Merger Consideration”), subject to procedures applicable to oversubscription and undersubscription set forth in the Merger Agreement.

6. On July 31, 2017, Capital Bank and First Horizon filed the Definitive Proxy Statement.

7. On September 7, 2017, Capital Bank’s stockholders voted in favor of the Merger Agreement with the holders of nearly 82 percent of Capital Bank’s outstanding stock approving the Merger Agreement.

8. On November 30, 2017, pursuant to the Merger Agreement, Capital Bank merged with and into First Horizon (the “Merger”), with First Horizon surviving the Merger.

9. On March 28, 2018, two Capital Bank stockholders filed an appraisal action in the Court captioned *GKC Strategic Value Master Fund, LP v. Capital Bank Financial Corp.*, C.A. No. 2018-0226-KSJM (the “Appraisal Action”) for an appraisal of their stock in connection with the Merger. Plaintiff was not a party to the Appraisal Action.

10. On October 16, 2019, the Appraisal Action was settled and voluntarily dismissed with prejudice.

11. On November 4, 2019, Plaintiff filed a Notice of Challenge to Confidential Treatment in the Appraisal Action pursuant to Court of Chancery Rule 5.1(f). On November 18 and 19, 2019, Defendants unsealed the challenged documents.

12. On February 26, 2020, Plaintiff, on behalf of herself and the other members of the Settlement Class, filed a Verified Class Action Complaint (the “Complaint”) captioned *Searles v. DeMartini, et al.*, C.A. No. 2020-0136-KSJM (the “Action”) in the Court against Defendants. The Complaint asserted claims against Defendants for purported breaches of fiduciary duty and aiding and abetting such breaches of fiduciary duty arising from Defendants’ (i) decision to cause Capital Bank to enter into the Merger Agreement, (ii) recommendation that Capital Bank’s stockholders approve the Merger, and (iii) purported failure to disclose all material information in the Definitive Proxy Statement.

13. On March 24, 2020, Defendants moved to dismiss the Complaint. On May 8, 2020, Defendants filed opening briefs in support of their motions to dismiss the Complaint; on June 22, 2020, Plaintiff filed her omnibus answering brief in opposition to Defendants’ motions to dismiss; and on July 16, 2020, Defendants filed their reply briefs in further support of their motions to dismiss.

14. On September 24, 2020, the Court held oral argument on the motions to dismiss, and on January 20, 2021, the Court issued a telephonic bench ruling denying Defendants' motions to dismiss.

15. On February 19, 2021, Defendants each filed an Answer and Affirmative Defenses to Complaint.

16. On February 26, 2021, the Parties entered into a Stipulation and Order Governing the Production and Exchange of Confidential and Highly Confidential Information.

17. On March 10 and 11, 2021, Plaintiff served subpoenas on Barclays Capital Inc. and Morgan Stanley & Co. LLC.

18. Between March 2021 and April 2021, Defendants produced to Plaintiff all the discovery responses and documents that were exchanged in the Appraisal Action. In total, Plaintiff received more than 40,000 documents from Defendants totaling nearly 280,000 pages and more than 80,000 documents from third parties totaling more than 350,000 pages. Defendants and third parties also produced 15 deposition transcripts from the Appraisal Action and expert reports from the Appraisal Action. Throughout March and April 2021, Plaintiff's Lead Counsel reviewed the deposition transcripts from the Appraisal Action, the expert reports from the Appraisal Action, and tens of thousands of documents totaling hundreds of thousands of pages.

19. On April 29, 2021, the Parties entered into a Stipulation and [Proposed] Order Regarding Case Schedule that contemplated that trial in the Action would commence on May 16, 2022.

20. On April 30, 2021, both Plaintiff and Defendants submitted confidential mediation statements. Plaintiff and Defendants participated in a full day of mediation on May 14, 2021 in front of Phillips ADR Enterprises, P.C. mediator Greg Danilow in an attempt to resolve the Action. The Parties did not reach a resolution on May 14.

21. Settlement discussions continued over the next couple of weeks and, on June 4, 2021, Mr. Danilow made a mediator's proposal to resolve the matter. Thereafter, Plaintiff and Defendants continued to negotiate other aspects of a possible resolution, while separately considering the mediator's proposal.

22. On June 18, 2021, the parties agreed to a settlement in which Plaintiff agreed to fully and finally settle the claims asserted against Defendants in the Action in exchange for a cash payment of \$23,000,000 (the "Settlement Amount"). This settlement was reflected in a settlement term sheet executed by Plaintiff and Defendants on July 19, 2021 (the "Term Sheet").

23. On August 26, 2021, the Parties entered into the Stipulation of Settlement memorializing the final terms and conditions of the Settlement, and on September 13, 2021, the Court entered a Scheduling Order directing that notice of the Settlement be provided to potential Class Members, and scheduling the Settlement Hearing to, among other things, consider whether to grant final approval to the Settlement.

HOW DO I KNOW IF I AM AFFECTED BY THE SETTLEMENT?

24. If you are a member of the Settlement Class, you are subject to the Settlement. The Settlement Class consists of:

All holders of Capital Bank common stock as of November 30, 2017, the date of the Closing of the Merger.

Excluded from the Settlement Class are: (i) Defendants, Capital Bank, and First Horizon; (ii) members of the Immediate Family of the Individual Defendants; (iii) the parents, subsidiaries, and affiliates of Crestview Partners, L.P., Crestview-NAFH, LLC, Crestview Advisors, L.L.C., Capital Bank, and First Horizon; (iv) any person who is, or was at the time of the Closing, an officer, director, or partner of Crestview Partners, L.P., Crestview-NAFH, LLC, Crestview Advisors, L.L.C., Capital Bank, or First Horizon, or any of their respective parents, subsidiaries, or affiliates, and members of the Immediate

Family of such officers, directors, and partners; (v) Oak Hill Capital Partners III, L.P., Oak Hill Capital Management Partners III, L.P., or any of their respective parents, subsidiaries, or affiliates; (vi) GKC Strategic Value Master Fund, LP, GKC SV SMA I, LLC, Merlin Partners, LP, AAMAF LP, and Ancora Merlin, LP, or any of their respective parents, subsidiaries, or affiliates; (vii) any entity in which any Defendants or any other excluded person or entity has, or had at the time of the Closing, a controlling interest; and (viii) the legal representatives, agents, affiliates, heirs, successors, and assigns of any of the foregoing excluded persons or entities (the “Excluded Stockholders”).

PLEASE NOTE: The Settlement Class is a non-“opt-out” class pursuant to Delaware Court of Chancery Rules 23(a), 23(b)(1), and 23(b)(2). Accordingly, Class Members do not have the right to exclude themselves from the Settlement Class.

WHAT ARE THE TERMS OF THE SETTLEMENT?

25. In consideration of the settlement of the Released Plaintiff’s Claims (defined in paragraph 37 below) against Defendants and the other Defendants’ Releasees (defined in paragraph 37 below), Defendants will cause \$23,000,000 in cash (the “Settlement Amount”) to be deposited into an interest-bearing escrow account for the benefit of the Settlement Class. See paragraphs 29-36 below for details about the distribution of the Settlement proceeds to Eligible Class Members.

WHAT ARE THE PARTIES’ REASONS FOR THE SETTLEMENT?

26. Plaintiff and Plaintiff’s Lead Counsel thoroughly considered the facts and law underlying the claims asserted in the Action. Although Plaintiff and Plaintiff’s Lead Counsel believe that the claims asserted have merit, the Court could have adopted Defendants’ view of the applicable legal standards or of the underlying evidence, and could enter judgment for Defendants, either dismissing the Action prior to trial or after trial. Plaintiff and Plaintiff’s Lead Counsel also considered the expense and length of continued proceedings necessary to pursue Plaintiff’s claims against Defendants through trial, the uncertainty of appeals, and the collectability of any potential judgment.

27. In light of the monetary recovery achieved, and based upon their investigation and prosecution of the case, and the information available to them through discovery and the settlement negotiations conducted with Defendants, Plaintiff and Plaintiff’s Lead Counsel have concluded that the terms and conditions of the Stipulation are fair, reasonable, and adequate to Plaintiff and the Settlement Class, and in their best interests. The Settlement provides an immediate benefit in the form of a \$23 million cash payment without the risk that continued litigation could result in obtaining no recovery or a smaller recovery after continued extensive and expensive litigation, including trial and appeals.

28. Defendants deny all allegations of wrongdoing, fault, liability, or damage to Plaintiff as well as each and every other member of the Settlement Class, and further deny that Plaintiff has asserted a valid claim as to any of them. Defendants further deny that they engaged in any wrongdoing or committed, or aided or abetted, any violation of law or breach of duty and believe that they acted properly, in good faith, and in a manner consistent with their legal duties and have entered into the Settlement and the Stipulation solely to avoid the substantial burden, expense, inconvenience, and distraction of continued litigation and to resolve each of the Released Plaintiff’s Claims (defined in paragraph 37 below) against the Defendants’ Releasees (defined in paragraph 37 below). The Settlement and the Stipulation shall in no event be construed as, or deemed to be, evidence of or an admission or concession on the part of any of the Defendants with respect to any claim or factual allegation or of any fault or liability or wrongdoing or damage whatsoever or any infirmity in the defenses that any of the Defendants have or could have asserted.

HOW MUCH WILL MY PAYMENT FROM THE SETTLEMENT BE? HOW WILL I RECEIVE MY PAYMENT?

29. Please Note: If you are eligible to receive a payment from the Net Settlement Fund, you do not have to submit a claim form in order to receive your payment.

30. As stated above, the \$23,000,000 Settlement Amount will be deposited into an interest-bearing escrow account for the benefit of the Settlement Class. If the Settlement is approved by the Court and the Effective Date of the

Settlement occurs, the Net Settlement Fund (that is, the Settlement Amount plus any and all interest earned thereon (the “Settlement Fund”) less: (i) any Fee and Expense Award; (ii) all Notice and Administration Costs; (iii) any Taxes; and (iv) any other costs or fees approved by the Court) will be distributed in accordance with the proposed Plan of Allocation stated below or such other plan of allocation as the Court may approve.

31. The Net Settlement Fund will not be distributed unless and until the Court has approved the Settlement and a plan of allocation, and the time for any petition for rehearing, appeal, or review, whether by certiorari or otherwise, has expired. Approval of the Settlement is independent from approval of a plan of allocation. Any determination with respect to a plan of allocation will not affect the Settlement, if approved.

32. The Court may approve the Plan of Allocation as proposed or it may modify the Plan of Allocation without further notice to the Settlement Class. Any Orders regarding any modification of the Plan of Allocation will be posted on the Settlement website, www.CapitalBankStockholderLitigation.com.

PROPOSED PLAN OF ALLOCATION

33. The Net Settlement Fund will be distributed on a *pro rata* basis to “Eligible Class Members.” “Eligible Class Members” will consist of all Class Members who held shares of Capital Bank common stock at the Merger’s Closing and therefore received or were entitled to receive the Merger Consideration for their “Eligible Shares.” “Eligible Shares” will be the number of shares of Capital Bank common stock held by Eligible Class Members at the Closing and for which Eligible Class Members received or were entitled to receive the Merger Consideration.²

34. Each Eligible Class Member will be eligible to receive a *pro rata* payment from the Net Settlement Fund equal to the product of (i) the number of Eligible Shares held by the Eligible Class Member and (ii) the “Per-Share Recovery” for the Settlement, which will be determined by dividing the total amount of the Net Settlement Fund by the total number of Eligible Shares.

35. Payments from the Net Settlement Fund to Eligible Class Members will be made in the same manner in which Eligible Class Members received the Merger Consideration. Accordingly, if your shares of Capital Bank common stock were held in “street name” and the Merger Consideration was deposited into your brokerage account, your broker will be responsible for depositing your Settlement payment into that same brokerage account.

36. Subject to Court approval in the Class Distribution Order, Plaintiff’s Lead Counsel will direct the Settlement Administrator to conduct the distribution of the Net Settlement Fund to Eligible Class Members as follows:

(i) With respect to shares of Capital Bank common stock held of record at the Closing by the Depository Trust & Clearing Corporation, including its subsidiary the Depository Trust Company (collectively, “DTCC”), through its nominee Cede & Co., Inc. (“Cede”), the Settlement Administrator will cause that portion of the Net Settlement Fund to be allocated to Eligible Class Members who held their shares through DTCC Participants to be paid to DTCC. DTCC shall then distribute that portion of the Net Settlement Fund among the DTCC Participants by paying each the Per-Share Recovery times its respective Closing Security Position,³ using the same mechanism that DTCC used to distribute the Merger Consideration and subject to payment suppression instructions with respect to Excluded Shares and any other shares ineligible for recovery from the Settlement. The DTCC Participants and their respective customers, including any intermediaries, shall then ensure *pro rata* payment to each Eligible Class Member based on the number of Eligible Shares beneficially owned by such Eligible Class Members.

² “Eligible Class Members” do not include any of the “Excluded Stockholders” (as defined in the Stipulation) and “Eligible Shares” do not include any of the “Excluded Shares” (as defined in the Stipulation).

³ For each DTCC Participant, the “Closing Security Position” is the number of shares of Capital Bank common stock reflected on the DTCC allocation report used by DTCC to distribute the Merger Consideration.

(ii) With respect to shares of Capital Bank common stock held of record at the Closing other than by Cede, as nominee for DTCC (a “Closing Non-Cede Record Position”), the payment with respect to each such Closing Non-Cede Record Position shall be made by the Settlement Administrator from the Net Settlement Fund directly to the record owner of each Closing Non-Cede Record Position in an amount equal to the Per-Share Recovery times the number of Eligible Shares comprising such Closing Non-Cede Record Position.

(iii) A person who purchased shares of Capital Bank common stock on or before November 30, 2017 but had not settled those shares at the Merger’s Closing (“Non-Settled Shares”) shall be treated as an Eligible Class Member (and their shares treated as Eligible Shares) with respect to those Non-Settled Shares, and a person who sold those Non-Settled Shares on or before November 30, 2017 shall not be treated as an Eligible Class Member with respect to those Non-Settled Shares.

(iv) In the event that any payment from the Net Settlement Fund is undeliverable or in the event a check is not cashed by the stale date (*i.e.*, more than six months from the check’s issue date), the DTCC Participants or the holder of a Closing Non-Cede Record Position shall follow their respective policies with respect to further attempted distribution or escheatment.

WHAT WILL HAPPEN IF THE SETTLEMENT IS APPROVED?
WHAT CLAIMS WILL THE SETTLEMENT RELEASE?

37. If the Settlement is approved, the Court will enter a judgment (the “Judgment”). Pursuant to the Judgment, the Action will be dismissed with prejudice and the following releases will occur:

(i) **Release of Claims by Plaintiff and the Settlement Class:** Upon the Effective Date of the Settlement, Plaintiff and each of the other Class Members, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such, will have fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Plaintiff’s Claim (defined below) against Defendants and the other Defendants’ Releasees (defined below), and will forever be enjoined from prosecuting any or all of the Released Plaintiff’s Claims against the Defendants’ Releasees.

“Released Plaintiff’s Claims” means any and all claims and causes of action of every nature and description, whether known claims or Unknown Claims (defined below), contingent or absolute, liquidated or not liquidated, accrued or unaccrued, suspected or unsuspected, disclosed or undisclosed, apparent or not apparent, foreseen or unforeseen, matured or not matured, which now exist, heretofore or previously existed, or may hereafter exist including, but not limited to, any claims arising under federal, state, common, or foreign law, that Plaintiff or any other member of the Settlement Class (i) asserted in the Complaint or (ii) could have asserted or could in the future assert in any forum that concern, arise out of, refer to, are based upon, or are related to the allegations, transactions, facts, matters, occurrences, representations, statements, or omissions alleged, involved, set forth, or referred to in the Action and relate in any way to the purchase, sale, ownership, and/or holding of Capital Bank securities. Released Plaintiff’s Claims do not include any claims relating to the enforcement of the Settlement.

“Defendants’ Releasees” means, whether or not each or all of the following persons or entities were named, served with process, or appeared in the Action, (i) Defendants, (ii) Capital Bank and First Horizon, and (iii) all current and former officers, directors, employees, agents, fiduciaries, partnerships, general or limited partners or partnerships, joint ventures, controlling persons, parents, subsidiaries, divisions, direct or indirect affiliates, associated entities, stockholders, principals, officers, managers, directors, managing directors, members, managing members, managing agents, predecessors, predecessors-in-interest, successors, successors-in-interest, assigns, advisors, financial or investment advisors, personal or legal representatives, heirs, estates, administrators, insurers, and attorneys (including Defendants’ Counsel) of Defendants, Capital Bank, or First Horizon, any members of any Defendant’s Immediate Family, or any trust of which any Defendant is the settlor or which is for the benefit of any Defendant and/or member(s) of any Defendant’s Immediate Family.

(ii) **Release of Claims by Defendants:** Upon the Effective Date of the Settlement, Defendants, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as

such, will have fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Defendants' Claim (defined below) against Plaintiff and the other Plaintiff's Releasees (defined below), and will forever be enjoined from prosecuting any or all of the Released Defendants' Claims against the Plaintiff's Releasees.

"Released Defendants' Claims" means any and all claims and causes of action of every nature and description, whether known claims or Unknown Claims, contingent or absolute, liquidated or not liquidated, accrued or unaccrued, suspected or unsuspected, disclosed or undisclosed, apparent or not apparent, foreseen or unforeseen, matured or not matured, which now exist, heretofore or previously existed, or may hereafter exist including, but not limited to, any claims arising under federal, state, common, or foreign law, that arise out of or relate to the institution, prosecution, or settlement of the claims asserted in the Action against the Defendants. Released Defendants' Claims do not include any claims relating to the enforcement of the Settlement.

"Plaintiff's Releasees" means (i) Plaintiff and all other Class Members, and (ii) all current and former officers, directors, employees, agents, fiduciaries, partnerships, general or limited partners or partnerships, joint ventures, controlling persons, parents, subsidiaries, divisions, direct or indirect affiliates, associated entities, stockholders, principals, officers, managers, directors, managing directors, members, managing members, managing agents, predecessors, predecessors-in-interest, successors, successors-in-interest, assigns, advisors, financial or investment advisors, personal or legal representatives, heirs, estates, administrators, insurers, and attorneys (including Plaintiff's Counsel) of Plaintiff or any other Class Member, any members of Plaintiff or any other Class Member's Immediate Family, or any trust of which Plaintiff or any other Class Member is the settlor or which is for the benefit of any Plaintiff or any other Class Member and/or member(s) of Plaintiff or any other Class Member's Immediate Family.

"Unknown Claims" means any Released Plaintiff's Claims which Plaintiff or any other Class Member does not know or suspect to exist in his, her, or its favor at the time of the release of such claims, and any Released Defendants' Claims which any Defendant does not know or suspect to exist in his, her, or its favor at the time of the release of such claims, which, if known by him, her, or it, might have affected his, her, or its decision(s) with respect to this Settlement. With respect to any and all Released Claims, the Parties stipulate and agree that, upon the Effective Date of the Settlement, Plaintiff and Defendants shall expressly waive, and each of the other Class Members shall be deemed to have waived, and by operation of the Judgment shall have expressly waived, any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law or foreign law, which is similar, comparable, or equivalent to California Civil Code §1542, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Plaintiff and Defendants acknowledge, and each of the other Class Members shall be deemed by operation of law to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement.

By Order of the Court, until entry of the Judgment, all proceedings in the Action other than proceedings necessary to carry out or enforce the terms and conditions of the Stipulation have been stayed and Plaintiff, and all other Class Members, are barred and enjoined from commencing, prosecuting, instigating, or in any way participating in the commencement or prosecution of any Released Plaintiff's Claim, either directly, representatively, derivatively, or in any other capacity, against any Defendants' Releasees.

HOW WILL PLAINTIFF'S COUNSEL BE PAID?

38. Plaintiff's Counsel have not received any payment for their services in pursuing claims against Defendants on behalf of the Settlement Class, nor have Plaintiff's Counsel been paid for their litigation expenses incurred in connection with the Action. Before final approval of the Settlement, Plaintiff's Lead Counsel will apply to the Court for an award of attorneys' fees and litigation expenses to Plaintiff's Counsel in connection with achieving the creation of the Settlement Fund ("Fee and Expense Award") in an amount not to exceed \$4,600,000. The Court will determine the amount of the Fee

and Expense Award. The Fee and Expense Award will be paid solely from (and out of) the Settlement Fund in accordance with the terms of the Stipulation. Class Members are not personally liable for any such fees or expenses.

WHEN AND WHERE WILL THE SETTLEMENT HEARING BE HELD?
DO I HAVE TO COME TO THE HEARING? MAY I SPEAK AT THE HEARING
IF I DON'T LIKE THE SETTLEMENT?

39. **Class Members do not need to attend the Settlement Hearing. The Court will consider any submission made in accordance with the provisions below even if a Class Member does not attend the Settlement Hearing. Class Members can recover from the Settlement without attending the Settlement Hearing.**

40. **Please Note:** The date and time of the Settlement Hearing may change without further written notice to Class Members. In addition, the ongoing COVID-19 health emergency is a fluid situation that creates the possibility that the Court may decide to conduct the Settlement Hearing by video or telephonic conference, or otherwise allow Class Members to appear at the hearing by phone or video, without further written notice to Class Members. **In order to determine whether the date and time of the Settlement Hearing have changed, or whether Class Members must or may participate by phone or video, it is important that you monitor the Court's docket and the Settlement website, www.CapitalBankStockholderLitigation.com, before making any plans to attend the Settlement Hearing. Any updates regarding the Settlement Hearing, including any changes to the date or time of the hearing or updates regarding in-person or telephonic appearances at the hearing, will be posted to the Settlement website, www.CapitalBankStockholderLitigation.com. Also, if the Court requires or allows Class Members to participate in the Settlement Hearing by telephone or video conference, the information needed to access the conference will be posted to the Settlement website, www.CapitalBankStockholderLitigation.com.**

41. The Settlement Hearing will be held on **November 17, 2021 at 1:30 p.m.**, before The Honorable Kathaleen St. J. McCormick, Chancellor, either in person at the Court of Chancery of the State of Delaware, New Castle County, Leonard L. Williams Justice Center, 500 North King Street, Wilmington, Delaware 19801, or by telephone or videoconference (in the discretion of the Court), to determine, among other things: (i) whether the Action may be permanently maintained as a non-opt-out class action and whether the Settlement Class should be certified permanently, for purposes of the Settlement, pursuant to Court of Chancery Rules 23(a), 23(b)(1), and 23(b)(2); (ii) whether Plaintiff may be permanently designated as representative for the Settlement Class and Plaintiff's Lead Counsel, Bernstein Litowitz Berger & Grossmann LLP, as counsel for the Settlement Class, and whether Plaintiff and Plaintiff's Lead Counsel have adequately represented the interests of the Settlement Class in the Action; (iii) whether the proposed Settlement on the terms and conditions provided for in the Stipulation is fair, reasonable, and adequate to the Settlement Class, and should be approved by the Court; (iv) whether a Judgment, substantially in the form attached as Exhibit D to the Stipulation, should be entered dismissing the Action with prejudice against Defendants; (v) whether the proposed Plan of Allocation of the Net Settlement Fund is fair and reasonable, and should therefore be approved; (vi) whether the application by Plaintiff's Lead Counsel for an award of attorneys' fees and litigation expenses should be approved; and (vii) any other matters that may properly be brought before the Court in connection with the Settlement.

42. Any Class Member may object to the Settlement, the proposed Plan of Allocation, or Plaintiff's Lead Counsel's application for an award of attorneys' fees and litigation expenses ("Objector"). Objections must be in writing. To object, you must **(1)** file any written objection, together with copies of all other papers and briefs supporting the objection, with the Register in Chancery at the address set forth below **on or before November 2, 2021**; **(2)** serve the papers (electronically by File & ServeXpress, by hand, by First-Class U.S. Mail, or by express service) on Plaintiff's Lead Counsel and Defendants' Counsel at the addresses set forth below so that the papers are **received on or before November 2, 2021**; and **(3)** email a copy of your objection to markl@blbglaw.com, hardimanj@sullcrom.com, dicamillo@rlf.com, barlow@abramsbayliss.com, and lawrence.portnoy@davispolk.com by **November 2, 2021**.

REGISTER IN CHANCERY	PLAINTIFF'S LEAD COUNSEL
<p style="text-align: center;">Register in Chancery Court of Chancery of the State of Delaware New Castle County Leonard L. Williams Justice Center 500 North King Street Wilmington, Delaware 19801</p>	<p style="text-align: center;">Mark Lebovitch Bernstein Litowitz Berger & Grossmann LLP 1251 Avenue of the Americas New York, New York 10020</p>
DEFENDANTS' COUNSEL	
<p style="text-align: center;">John L. Hardiman Sullivan & Cromwell LLP 125 Broad Street New York, New York 10004-2498</p>	<p style="text-align: center;">Lawrence Portnoy Davis Polk & Wardwell LLP 450 Lexington Avenue New York, New York 10017</p>
<p style="text-align: center;">Raymond J. DiCamillo Richards, Layton & Finger, P.A. 920 North King Street Wilmington, Delaware 19801</p>	<p style="text-align: center;">Michael A. Barlow Abrams & Bayliss LLP 20 Montchanin Road, Suite 200 Wilmington, Delaware 19807</p>

43. Any objections must identify the case name and civil action number, “*Searles v. DeMartini, et al.*, C.A. No. 2020-0136-KSJM,” and they must: (i) state the name, address, and telephone number of the Objector and, if represented by counsel, the name, address, and telephone number of his, her, or its counsel; (ii) be signed by the Objector; (iii) contain a specific, written statement of the objection(s) and the specific reason(s) for the objection(s), including any legal and evidentiary support the Objector wishes to bring to the Court’s attention, and if the Objector has indicated that he, she, or it intends to appear at the Settlement Hearing, the identity of any witnesses the Objector may call to testify and any exhibits the Objector intends to introduce into evidence at the hearing; and (iv) include documentation sufficient to prove that the Objector is a member of the Settlement Class (*i.e.*, held shares of Capital Bank common stock as of November 30, 2017). Documentation establishing that an Objector is a member of the Settlement Class must consist of copies of monthly brokerage account statements or an authorized statement from the Objector’s broker containing the transactional and holding information found in an account statement.

44. You may file a written objection without having to appear at the Settlement Hearing. You may not, however, appear at the Settlement Hearing to present your objection unless you first file and serve a written objection in accordance with the procedures described above, unless the Court orders otherwise.

45. If you wish to be heard orally at the hearing in opposition to the approval of the Settlement, the Plan of Allocation, or Plaintiff’s Lead Counsel’s application for an award of attorneys’ fees and litigation expenses, assuming you timely file and serve a written objection as described above, you must also file a notice of appearance with the Register in Chancery and serve it on Plaintiff’s Lead Counsel and on Defendants’ Counsel at the mailing and email addresses set forth in paragraph 42 above so that the notice is **received on or before November 2, 2021**. Persons who intend to object and desire to present evidence at the Settlement Hearing must include in their written objection or notice of appearance the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the hearing. Such persons may be heard orally at the discretion of the Court.

46. You are not required to hire an attorney to represent you in making written objections or in appearing at the Settlement Hearing. However, if you decide to hire an attorney, it will be at your own expense, and that attorney must file a notice of appearance with the Court and serve it on Plaintiff’s Lead Counsel and Defendants’ Counsel at the mailing and email addresses set forth in paragraph 42 above so that the notice is **received on or before November 2, 2021**.

47. The Settlement Hearing may be adjourned by the Court without further written notice to Class Members. If you intend to attend the Settlement Hearing, you should confirm the date and time with Plaintiff’s Lead Counsel.

48. Unless the Court orders otherwise, any Class Member who does not object in the manner described above will be deemed to have waived any objection and shall be forever foreclosed from making any objection to the proposed Settlement, the proposed Plan of Allocation, or Plaintiff's Lead Counsel's application for an award of attorneys' fees and litigation expenses. Class Members do not need to appear at the Settlement Hearing or take any other action to indicate their approval.

CAN I SEE THE COURT FILE? WHOM SHOULD I CONTACT IF I HAVE QUESTIONS?

49. This Notice contains only a summary of the terms of the proposed Settlement. For more detailed information about the matters involved in the Action, you are referred to the papers on file in the Action, including the Stipulation, which may be inspected during regular office hours at the Office of the Register in Chancery in the Court of Chancery of the State of Delaware, New Castle County, Leonard L. Williams Justice Center, 500 North King Street, Wilmington, Delaware 19801. Additionally, copies of the Stipulation, the Complaint, and any related orders entered by the Court will be posted on the Settlement website, www.CapitalBankStockholderLitigation.com. If you have questions regarding the Settlement, you may contact the Settlement Administrator: Capital Bank Stockholder Litigation, c/o A.B. Data, Ltd., P.O. Box 173067, Milwaukee, Wisconsin 53217, 1-877-888-8410, info@CapitalBankStockholderLitigation.com, or Plaintiff's Lead Counsel: Mark Lebovitch, Bernstein Litowitz Berger & Grossmann LLP, 1251 Avenue of the Americas, 44th Floor, New York, New York 10020, 1-800-380-8496, settlements@blbglaw.com.

WHAT IF I HELD SHARES ON SOMEONE ELSE'S BEHALF?

50. If you are a broker or other nominee that held shares of Capital Bank common stock on November 30, 2017 for the beneficial interest of persons or entities other than yourself, you are requested to either: (i) within seven (7) calendar days of receipt of this Notice, request from the Settlement Administrator sufficient copies of this Notice to forward to all such beneficial owners and within seven (7) calendar days of receipt of those Notices forward them to all such beneficial owners; or (ii) within seven (7) calendar days of receipt of this Notice, provide a list of the names, addresses, and, if available, email addresses of all such beneficial owners to Capital Bank Stockholder Litigation, c/o A.B. Data, Ltd., P.O. Box 173067, Milwaukee, Wisconsin 53217. If you choose the second option, the Settlement Administrator will send a copy of the Notice to the beneficial owners.

51. Upon full compliance with these directions, such nominees may seek reimbursement of their reasonable expenses actually incurred by providing the Settlement Administrator with proper documentation supporting the expenses for which reimbursement is sought. A copy of this Notice may also be obtained from the Settlement website, www.CapitalBankStockholderLitigation.com, by calling the Settlement Administrator toll-free at 1-877-888-8410, or by emailing the Settlement Administrator at info@CapitalBankStockholderLitigation.com.

**DO NOT CALL OR WRITE THE COURT OR THE OFFICE OF
THE REGISTER IN CHANCERY REGARDING THIS NOTICE.**

Dated: September 29, 2021

BY ORDER OF THE COURT OF CHANCERY
OF THE STATE OF DELAWARE