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Attorneys for Defendant OnPoint Community Credit Union

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

CINDY ADKINS [sic], TIMOTHY SOUTH,  
and PAITON CAMPBELL, individually and on  
behalf of all other similarly situated,

Plaintiff,

v.

ONPOINT COMMUNITY CREDIT UNION,

Defendant.

Case No. 3:21-cv-00567

**NOTICE OF REMOVAL**

Defendant OnPoint Community Credit Union (“OnPoint”) removes this case, originally filed in the Circuit Court of the State of Oregon for the County of Multnomah, to the United States District Court for the District of Oregon at Portland. OnPoint removes this case under 28 U.S.C. §§ 1331, 1332, 1334, 1441, 1452, and 1446, on the grounds described below.<sup>1</sup>

<sup>1</sup> OnPoint expressly preserves all Rule 12(h) objections. *See* Wright & Arthur R. Miller, *Federal Practice & Procedure* § 1395 (3d ed. 2004) (“When a defendant removes an action from a state court in which he has been sued, he consents to nothing and ‘waives’ nothing; he is exercising a

## I. STATEMENT OF FACTS

1. On March 16, 2021, Plaintiffs Cindy Adkins [sic], Timothy South, and Paiton Campbell (“Plaintiffs”) served a Summons including a Complaint styled *Cindy Adkins, Timothy South, and Paiton Campbell, individually and on behalf of all other [sic] similarly situated v. OnPoint Community Credit Union* (the “State Court Action”). On approximately April 2, 2021, OnPoint received a copy of the First Amended Complaint (“FAC”), though the FAC has not been filed in the State Court Action. Copies of the Summons, Complaint, and FAC are attached hereto as **Exhibit 1**.

2. OnPoint is entitled to remove this action under 28 U.S.C. § 1441 because—despite Plaintiffs’ efforts to disguise the nature of their claims—the State Court Action is a civil action “arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331; *Bright v. Bechtel Petroleum, Inc.*, 780 F.2d 766, 769 (9th Cir. 1986) (“A plaintiff will not be allowed to conceal the true nature of a complaint through ‘artful pleading.’”).

3. OnPoint is also entitled to remove this action under diversity jurisdiction, 28 U.S.C. 1332(d)(2), because this case is brought as a putative class action involving more than 100 potential class members, at least one Plaintiff is diverse from OnPoint (*see* FAC ¶ 6), and the amount in controversy exceeds \$5 million.

4. OnPoint is also entitled to remove this action under 28 U.S.C. §§ 1334 and 1452, because the State Court Action is related to the bankruptcy case pending in the United States Bankruptcy Court for the District of Oregon, *In re Campbell*, Case No. 21-30543-pcm13 (the “Active Bankruptcy Case”). The State Court action is also related to the Bankruptcy estate and discharge of Plaintiff Atkins in the United States Bankruptcy Court for the District of Oregon, *In re Atkins*, 16-31931-tmb13 (Bankr. D. Or. June 12, 2020).

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privilege unconditionally conferred by statute, and, since the district court to which he must remove it is fixed by law, he has no choice, without which there can be no ‘waiver.’”).

## II. FEDERAL JURISDICTION EXISTS FOR SEVERAL REASONS

5. “To remove a case from a state court to a federal court, a defendant must file in the federal forum a notice of removal ‘containing a short and plain statement of the grounds for removal.’” *Dart Cherokee Basin Operating Co. v. Owen*, 135 S. Ct. 547, 552 (2014). “A statement ‘short and plain’ need not contain evidentiary submissions.” *Id.*

### A. The FAC Arises Under Federal Law

6. “An action may arise under a law of the United States if the plaintiff’s right to relief necessarily turns on the construction of federal law.” *Bright*, 780 F.2d at 769. The claims in Plaintiffs’ FAC all arise under federal law because they necessarily turn on the construction and application of 12 C.F.R. § 205, otherwise known as “Regulation E,” which implements provisions of the federal Electronic Funds Transfer Act, 15 U.S.C. § 1693 *et seq.*, and the Truth in Savings Act, 12 USC §§ 4301 *et seq.*, and its implementing regulations, which require financial institutions and ATM operators to make certain disclosures in connection with ATM withdrawals and electronic funds transfers (and fees associated with those actions).

7. Plaintiffs are or were members of defendant OnPoint, FAC ¶¶ 4-6, and allege contract and Unfair Trade Practices Act (“UTPA”), ORS 646.608, claims based on OnPoint’s alleged practice of charging NSF fees on purportedly unauthorized payment requests and balance-inquiry fees at out-of-network ATMs when combined with withdrawals and withdrawal fees. *See* FAC ¶¶ 11, 92.

8. As detailed in the State Court Action, the underpinnings of Plaintiffs’ claims necessarily raise federal questions. For example, Plaintiffs allege as a basis for their claims that they need not comply with federal Regulation E’s duty to contact OnPoint within 60 days to challenge unauthorized electronic transfers (or errors appearing on monthly statements), while simultaneously basing their claims on allegedly unauthorized transfer attempts, transfers, and fees identified on statements. *Compare* 15 U.S.C. § 1693(f)(1); 12 C.F.R. 205.11(a)(1)(ii) and

(iv), with FAC ¶¶ 60-62 (no duty to report “errors”), ¶¶ 17, 18, 26, 31, 48, 52, 56-57 (unauthorized electronic funds transfer requests and transfers processed by OnPoint).

9. Plaintiffs allege that their claims are based on the fact that “*federal law requires*” ATM operators to “inform users of the amount of the usage fees,” *id.* ¶ 70 (citing 15 U.S.C. § 1693b(d)(3)), and that OnPoint’s alleged “scheme to assess OON fees” is based on those federally required disclosures made to consumers at ATMs. *See* FAC ¶ 75. Plaintiffs allege that “as a result of” the “ATM screen[‘s]” failure to “disclose that a balance inquiry alone will incur a usage fee”—which is a disclosure controlled by “federal law”—that OnPoint is liable. *Id.* ¶¶ 75-76, 70. Plaintiffs likewise challenge OnPoint’s disclosures as to ATM fees, *id.* ¶ 77, which are mandated by the federal Truth in Savings Act. 12 C.F.R. 1030.4(b)(4).

10. Plaintiffs summarize their claims by alleging that “[a]gainst the backdrop of reasonable consumer expectations *and federal law [cited] above*,” OnPoint breaches its contracts with members. FAC ¶ 80 (emphasis added). Plaintiffs based their ATM-fee contract and UTPA claims on the “Electronic Funds Transfer” disclosures required under federal law (the Electronic Funds Transfer Act). *Id.* ¶ 84.

11. Each of Plaintiffs’ claims necessarily rely on the construction and application of the federal Electronic Funds Transfer Act (and Regulation E) and the federal Truth in Savings Act (and Regulation DD). Because Plaintiffs’ “right to relief necessarily turns on the construction of federal law.” *Bright*, 780 F.2d at 769, Plaintiffs’ claims arise under federal law.

**B. The Claims Are Related to Bankruptcy Proceedings.**

12. This Court has jurisdiction over “all civil proceedings arising under title 11, or arising in or related to cases under title 11.” 28 U.S.C. § 1334(b). An action is “related to” a bankruptcy proceeding if “the outcome of the proceeding could conceivably have an[ ] effect on the estate being administered in bankruptcy, alter the debtor’s rights, liabilities, options, or freedom of action (either positively or negatively) [or] ... in any way impact[ ] upon the handling and administration of the bankrupt estate.” *In re Fietz*, 852 F.2d 455, 457 (9th Cir. 1988).

13. The State Court Action involves claims brought by Plaintiff Campbell, who filed for bankruptcy in March 2021, and those claims thus belong to her bankruptcy estate and are therefore related to the Active Bankruptcy Case. Thus, this Court has jurisdiction over the State Court Action pursuant to 28 U.S.C. § 1334(b).

14. Likewise, the State Court Action involves claims brought by Plaintiff Atkins, which arose before her separate bankruptcy proceeding initiated in 2016, and which resulted in a discharge in June 2020. *In re Atkins*, 16-31931-tmb13 (Bankr. D. Or. June 12, 2020); *see also* FAC ¶¶ 46-48 (alleging improper fees assessed in January 2015). Any claims Ms. Atkins had before her discharge belonged to her bankruptcy estate and thus were related to her bankruptcy proceedings (subject to re-opening).

15. Under 28 U.S.C. § 1452(a), removal to the United States District Court for the District of Oregon is proper because § 1452(a) provides that a “party may remove any claim or cause of action in a civil action other than a proceeding before the United States Tax Court or a civil action by a governmental unit to enforce such governmental unit’s police or regulatory power, to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title.”

16. The State Court Action is not a core proceeding. 28 U.S.C. § 157(a)(2). OnPoint does not consent to entry of final orders and judgment by the Bankruptcy Court. Fed. R. Bankr. P. 9027(a)(1).

**C. This Court Has Diversity Jurisdiction Under 12 U.S.C. 1332(d).**

17. This Court also has jurisdiction under 12 U.S.C. 1332(d) because this case is brought as a putative class action with more than 100 potential members, at least one class member (Plaintiff Campbell) is diverse from Defendant OnPoint, *see* FAC ¶¶ 6-7, and the amount in controversy—without conceding the merits of the claims—exceeds \$5 million. As a result, this Court “has original jurisdiction.” 28 U.S.C. § 1332(d)(2). *See also Serrano v. 180 Connect, Inc.*, 478 F.3d 1018, 1023 (9th Cir. 2007).

### III. REMOVAL IS TIMELY

18. Defendant received copies of the Summons and Complaint on March 16, 2021. Removal is therefore timely. 28 U.S.C. § 1446(b)(1); *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 354-56 (1999) (“[I]f the summons and complaint are served together, the 30–day period for removal runs at once.”).

### IV. INTRADISTRICT ASSIGNMENT

19. OnPoint properly removes this action to the Portland Division of the District of Oregon. Under L.R. 3-2(a)(1), cases where the claims arose in Multnomah County are properly removed to Portland and plaintiffs allege Multnomah County is the appropriate venue. FAC ¶ 8. Defendant has therefore properly removed this case to the Portland Division. *See* L.R. 3-2(a)(1).

### V. DEFENDANT SATISFIED THE REMAINING PROCEDURAL REQUIREMENTS

20. The United States District Court for the District of Oregon is the federal judicial district embracing the superior courts of Multnomah County, where Plaintiffs filed the State Court Action. 28 U.S.C. § 117.

21. Copies of the Summons, Complaint, and FAC received by OnPoint are attached as Exhibit 1.

22. Promptly after filing this Notice of Removal, Defendant will give written notice to Plaintiffs’ counsel and will submit a copy of this Notice with the Clerk of the Multnomah County Circuit Court as required under 28 U.S.C. § 1446(d).

23. OnPoint therefore gives notice that the above-entitled action is removed to the United States District Court for the District of Oregon at Portland.

DATED this 15th day of April, 2021.

**DAVIS WRIGHT TREMAINE LLP**

By s/ Tim Cunningham

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Tim Cunningham, OSB #100906

timcunningham@dwt.com

Of Attorneys for Defendant

**IN THE CIRCUIT COURT OF THE STATE OF OREGON  
IN AND FOR THE COUNTY OF MULTNOMAH**

CINDY ADKINS, TIMOTHY SOUTH, and PAITON  
CAMPBELL, individually and on behalf of all other similarly  
situated,

Plaintiff,

vs.

ONPOINT COMMUNITY CREDIT UNION,

Defendant.

Case No. 21CV06289

SUMMONS

To: OnPoint Community Credit Union, Defendant  
c/o Rob Stuart, CEO/President  
2701 NW Vaughn St  
Portland OR 97210

You are hereby required to appear and defend the complaint filed against you in the above entitled action within thirty (30) days from the date of service of this summons upon you, and in case of your failure to do so, for want thereof, plaintiff(s) will apply to the court for the relief demanded in the complaint.

**NOTICE TO THE DEFENDANT: READ THESE PAPERS CAREFULLY!**

You must "appear" in this case or the other side will win automatically. To "appear" you must file with the court a legal paper called a "motion" or "answer." The "motion" or "answer" must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the plaintiff's attorney, or, if the plaintiff does not have an attorney, proof of service on the plaintiff.

If you have any questions, you should see an attorney immediately. If you need help in finding an attorney, you may call the Oregon State Bar's Lawyer Referral Service at (503) 684-3763 or toll-free in Oregon at (800) 452-7636

/s/ David F. Sugerman  
SIGNATURE OF ATTORNEY/AUTHOR FOR PLAINTIFF

David F. Sugerman 86298  
ATTORNEY'S NAME BAR NO.

707 SW Washington St, Suite 600  
ADDRESS

Portland OR 97205 503-228-6474  
CITY STATE ZIP PHONE

STATE OF OREGON, County of Multnomah) ss.

I, the undersigned attorney of record for the plaintiff, certify that the foregoing is an exact and complete copy of the original summons in the above-entitled action.

/s/ David F. Sugerman  
ATTORNEY OF RECORD FOR PLAINTIFF

TO THE OFFICER OR OTHER PERSON SERVING THIS SUMMONS: You are hereby directed to serve a true copy of this summons, together with a true copy of the complaint mentioned therein, upon the individual(s) or other legal entity(s) to whom or which this summons is directed, and to make your proof of service on the attached page or a separate similar document which you shall attach hereto.

/s/ David F. Sugerman  
ATTORNEY FOR PLAINTIFF

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IN THE CIRCUIT COURT FOR THE STATE OF OREGON  
IN AND FOR THE COUNTY OF MULTNOMAH

CINDY ADKINS, TIMOTHY SOUTH, )  
and PAITON CAMPBELL, individually )  
and on behalf of all other similarly situated, )

Plaintiff,

v.

ONPOINT COMMUNITY )  
CREDIT UNION )

Defendant.

Case No.

CLASS ACTION COMPLAINT AND  
DEMAND FOR JURY TRIAL

BREACH OF CONTRACT; BREACH OF  
COVENANT OF GOOD FAITH AND  
FAIR DEALING; UNLAWFUL TRADE  
PRACTICES ACT (ORS 646.608)

CLAIMS NOT SUBJECT TO  
MANDATORY ARBITRATION

Filing fee \$884.00 pursuant to ORS  
21.160(1)(d)

1.

Plaintiffs, Cindy Adkins, Timothy South and Paiton Campbell, individually and on behalf of the classes of persons preliminarily defined below (the “Classes”), make the following allegations based upon information and belief, except as to allegations specifically pertaining to Plaintiff, which are based on personal knowledge.

**PRELIMINARY STATEMENT**

2.

Plaintiffs bring this action against Defendant OnPoint Community Credit Union (“OnPoint” or “Defendant”), arising from its routine practices of (1) assessing and collecting multiple \$30 fees



1 on the same item and (2) assessing two ATM Withdrawal/Inquiry Fees (“OON Fees”) per  
2 transaction. The practices at issue in this case breach consumers’ contracts and the covenant of  
3 good faith and fair dealing, and violate the Oregon Unlawful Trade Practices Act, ORS 646.605 *et*  
4 *seq.* (“UTPA”). Plaintiffs seek injunctive relief. As required by ORCP 32H, plaintiffs have  
5 provided notice and demand to OnPoint. Unless OnPoint fully complies with the provisions of  
6 ORCP 32I, Plaintiffs will amend to add claims for actual damages and statutory damages.  
7

8 **PARTIES**

9 3.

10 Plaintiff Atkins is a citizen and resident of Wilsonville, Oregon and has had a checking account  
11 with OnPoint at all times material hereto.

12 4.

13 Plaintiff South is a citizen and resident of Beaverton, Oregon and has had a checking account  
14 with OnPoint at all times material hereto.

15 5.

16 Plaintiff Campbell is a citizen and resident of Vancouver, Washington and has had a checking  
17 account with OnPoint at all times material hereto.

18 6.

19 OnPoint is the largest credit union in Oregon with its headquarters and principal place of  
20 business in Portland, Multnomah County, Oregon. OnPoint has \$4.4 billion in assets and provides  
21 banking services to 315,000 members throughout Oregon, including in this County. Among other  
22 things, OnPoint is engaged in the business of providing retail banking services to consumers,  
23 including Plaintiffs and members of the putative classes.  
24  
25  
26

**JURISDICTION AND VENUE**

7.

This Court has jurisdiction over this matter and venue is proper because OnPoint is headquartered in Multnomah County and conducts regular, sustained business in Multnomah County.

**BACKGROUND FACTS**

**OnPoint Improperly Charges Two Or More Fees on the Same Item**

**Overview of Claim**

8.

Plaintiffs have OnPoint checking accounts, which are governed by OnPoint’s standardized “Personal Fee Schedule,” attached hereto as Exhibit A (“Fee Schedule”) and the “Membership Account Agreement,” attached hereto as Exhibit B (“Account Agreement”) (collectively, “the Contract”).

9.

The Contract allows OnPoint to take certain steps when paying a check or an electronic item. Specifically, OnPoint may (a) pay the item and charge a *single* \$30 fee; or (b) reject the item and charge a *single* \$30 fee. Ex. A.

10.

In contrast to its account documents, however, OnPoint regularly assesses two or more fees on the *same* item.

11.

Plaintiffs do not dispute Defendant’s right to reject an item and charge a single fee, but OnPoint unlawfully maximizes its already profitable fees by unlawfully assessing *multiple* fees on

1 the same item.

2 12.

3 Unbeknownst to consumers, each time OnPoint reprocesses a check or an electronic  
4 payment item, ACH item for payment after it was initially rejected for insufficient funds, OnPoint  
5 chooses to treat it as a new and unique item that is subject to yet another fee. But the Contract  
6 doesn't allow OnPoint to do so.

7 13.

8  
9 The Contract indicates that only a *single* fee will be charged “per item,” however many  
10 times that item is reprocessed. Ex. B. An item, whether it be a check or an electronic payment  
11 item, reprocessed after an initial return for insufficient funds, especially through no action by the  
12 customer, cannot and does not fairly become a new, unique item for fee assessment purposes.

13 14.

14 This abusive practice is not universal in the financial services industry. Indeed, major banks  
15 like Chase—the largest consumer bank in the country—do not undertake the practice of charging  
16 more than one fee on the same item when it is reprocessed. Instead, Chase charges one fee even if  
17 an item is reprocessed for payment multiple times.

18 15.

19 The Contract never authorizes its practice of charging multiple fees on the same item. To  
20 the contrary, the Contract indicates it will only charge a single fee on the same item.

21  
22 **The Imposition of Multiple Fees on a Single Item Violates Defendant’s Express Promises  
23 and Representations**

24 16.

25 The Contract provides the general terms of Plaintiffs’ relationship with OnPoint, and  
26 therein OnPoint makes explicit promises and representations regarding how transactions will be

1 processed, as well as when fees may be assessed.

2 17.

3 OnPoint’s Fee Schedule promises that, at most, a single fee may be assessed on each item:

4 Returned Funds Fees

5 NSF Fee (items returned) \$30.00

6 Overdraft Fee (item paid) \$30.00

7 Fee Schedule, Ex. A at 2.

8 18.

9 The Contract thus promises that a “fee”—singular—will be assessed on the same item,  
10 when in fact OnPoint regularly charges two or more fees on the same item.

11 19.

12 OnPoint’s Account Agreement document reinforces the promise to only assess a single fee  
13 on a single item:

14 If we do not pay the overdraft, there is a **NSF/Returned Item fee per check or**  
15 **item.**

16 Ex. B at 16 - 17 (emphasis added).

17 20.

18 Taken together, the above promise can only mean that a single fee will be charged on the  
19 item.

20 21.

21 The same “item” on an account cannot conceivably become a new one each time it is  
22 rejected for payment then reprocessed, especially when—as here—Plaintiffs took no action to  
23 resubmit it.  
24  
25  
26

22.

1  
2 There is zero indication anywhere in the account documents that the same “item” is eligible  
3 to incur multiple fees.

23.

4  
5 Even if OnPoint reprocesses an instruction for payment, it is still the same “item.” Its  
6 reprocessing is simply another attempt to effectuate an account holder’s original order or  
7 instruction.  
8

24.

9  
10 The Contract never discusses a circumstance where OnPoint may assess multiple fees for  
11 a single check, electronic payment transaction, or ACH transaction that was returned for  
12 insufficient funds and later reprocessed one or more times and returned again.

25.

13  
14 In sum, OnPoint promises that one \$30 fee will be assessed per item, and this term must  
15 mean all iterations of the same instruction for payment. As such, OnPoint breached its contract  
16 when it charged more than one fee per item.  
17

26.

18  
19 Reasonable consumers understand any given authorization for payment to be one, singular  
20 “item,” as that term is used in the Contract.  
21

27.

22  
23 Taken together, the representations and omissions identified above convey to customers  
24 that all submissions for payment of the same item will be treated as the same “item,” which  
25 Defendant will either authorize (resulting in an overdraft item) or reject (resulting in a returned  
26 item) when it decides there are insufficient funds in the account. Nowhere does Defendant disclose

1 that it will treat each reprocessing of a check, electronic payment item, or ACH item as a separate  
2 item, subject to additional fees, nor do Defendant’s customers ever agree to such fee practices.

3 28.

4 Customers reasonably understand, based on the language of the account documents, that  
5 OnPoint’s reprocessing of checks, electronic payment transactions, and ACH transactions are  
6 simply additional attempts to complete the original order or instruction for payment, and as such,  
7 will not trigger fees. In other words, it is always the same item.  
8

9 29.

10 Banks and credit unions like OnPoint that employ this abusive practice require their  
11 accountholders to expressly authorize it—something OnPoint never did until February 1, 2021  
12 where it disclosed in its Fee Schedule, for the first time, that fees are charged “per presentment.”  
13

14 30.

15 For example, First Citizens Bank, a major institution in the Carolinas, engages in the same  
16 abusive practice as OnPoint, but at least expressly states:

17 Because we may charge a service fee for an NSF item each time it is presented, **we**  
18 **may charge you more than one service fee for any given item.** All fees are  
19 charged during evening posting. When we charge a fee for NSF items, the charge  
20 reduces the available balance in your account and may put your account into (or  
21 further into) overdraft.

22 *Deposit Account Agreement*, First Citizen’s Bank (Oct. 2020), <https://bit.ly/2GJjSqq> (emphasis  
23 added).

24 31.

25 First Hawaiian Bank engages in the same abusive practices as OnPoint, but at least  
26 currently discloses it in its online banking agreement, in all capital letters, as follows:

YOU AGREE THAT MULTIPLE ATTEMPTS MAY BE MADE TO SUBMIT A  
RETURNED ITEM FOR PAYMENT AND THAT **MULTIPLE FEES MAY BE  
CHARGED TO YOU AS A RESULT OF A RETURNED ITEM AND**

**RESUBMISSION.**

1 *Terms and Conditions of FHB Online Services*, First Hawaiian Bank 40, <https://bit.ly/30ObGMp>  
2 (last visited Jan. 26, 2021) (emphasis added).

3  
4 32.

5 Klein Bank similarly states in its online banking agreement:

6 [W]e will charge you an NSF/Overdraft Fee each time: (1) an item is submitted to  
7 us for payment from your Account when, at the time of posting, your Account is  
8 overdrawn or would be overdrawn if we paid the item (whether or not we in fact  
9 pay it); or (2) we return, reverse, or decline to pay an item for any other reason  
10 authorized by the Terms and Conditions of your account. For these purposes, an  
11 item includes a check, an ATM or debit card transaction, an ACH transaction, or  
12 other withdrawal, transfer or debit. Your account is overdrawn if your Available  
13 Balance is less than zero. **We will charge an NSF/Overdraft Fee as provided in  
14 this section regardless of the number of times an item is submitted or  
15 resubmitted to us for payment, and regardless of whether we pay the item or  
16 return, reverse, or decline to pay the item.**

17 *Online Access Agreement*, Klein Bank 17 (Jan. 2013), <https://bit.ly/2Fevj8W> (emphasis added).

18  
19 33.

20 Central Pacific Bank, a leading bank in Hawai'i, states in its Fee Schedule under the  
21 "Multiple NSF Fees" subsection:

22 Items and transactions (such as, for example, checks and electronic  
23 transactions/payments) returned unpaid due to insufficient/non-sufficient ("NSF")  
24 funds in your account, **may be resubmitted one or more times for payment, and  
25 a \$32 fee will be imposed on you each time an item and transaction resubmitted  
26 for payment is returned due to insufficient/nonsufficient funds.**

27 *Miscellaneous Fee Schedule*, Central Pacific Bank (Oct. 20, 2020), <https://bit.ly/3o2b9j1>  
(emphasis added).

28  
29 34.

30 BP Credit Union likewise states:

31 "We may charge a fee each time an item is submitted or resubmitted for payment;  
32 therefore, **you may be assessed more than one fee as a result of a returned item  
33 and resubmission(s) of the returned item.**"

1 *Membership and Account Agreement*, BP Federal Credit Union (Jul. 2019), <https://bit.ly/3o1AsBE>  
(emphasis added).

2 35.

3 Regions Bank states in their deposit agreement:

4  
5 If an item is presented for payment on your account at a time when there is an  
6 insufficient balance of available funds in your account to pay the item in full, you  
7 agree to pay us our charge for items drawn against insufficient or unavailable funds,  
8 whether or not we pay the item. **If any item is presented again after having  
previously been returned unpaid by us, you agree to pay this charge for each  
time the item is presented for payment and the balance of available funds in  
your account is insufficient to pay the item.**

9 *Deposit Agreement*, Regions Bank (Jun. 2018), <https://bit.ly/3qB9Qcd> (emphasis added).

10 36.

11 First Financial Bank states in their disclosures of charges document:

12 Merchants or payees may present an item multiple times for payment if the initial  
13 or subsequent presentation is rejected due to insufficient or other reason  
(representation). **Each presentment is considered an item and will be charged  
14 accordingly.**

15 *Special Handling/Electronic Banking Disclosures of Charges*, First Financial Bank (Aug. 2020),  
<https://bit.ly/3p2ULA1> (emphasis added).

16 37.

17 Andrews Federal Credit Union states in their Terms and Conditions:

18 You understand and agree that a merchant or other entity may make multiple  
19 attempts to resubmit a returned item for payment. **Consequently, because we may  
charge a service fee for an NSF item each time it is presented, we may charge  
20 you more than one service fee for any given item. Therefore, multiple fees may  
be charged to you as a result of a returned item and resubmission regardless  
21 of the number of times an item is submitted or resubmitted to use for payment,  
and regardless of whether we pay the item or return, reverse, or decline to pay  
22 the item.** When we charge a fee for NSF items, the charge reduces the available  
23 balance in your account and may put your account into (or further into) overdraft.

24 *Terms & Conditions*, Andrews Federal Credit Union (Aug. 2020), <https://bit.ly/2KwRFFj>  
(emphasis added).



38.

Parkside Credit Union states in its Membership and Account Agreement:

If the Credit Union returns the item, you will be assessed an NSF Fee. Note that the Credit Union has no control over how many times an intended payee may resubmit the same check or other item to us for payment. **In the event the same check or other item is presented for payment on more than one occasion, your account will be subject to an additional charge on each occasion that the item is presented for payment.** There is no limit to the total fees the Credit Union may charge you for overdrawing your account.

*Membership and Account Agreement*, Parkside Credit Union, <https://bit.ly/3qGTgHV> (emphasis added).

39.

Because OnPoint provided no such disclosures until February 1, 2021, its customers never agreed to OnPoint’s multiple fee practice prior to that date.

#### **Plaintiffs’ Experience**

40.

In support of Plaintiffs’ claims, Plaintiffs offer examples of fees that should not have been assessed against their checking accounts. As alleged below, OnPoint: (a) reprocessed a previously declined item; and (b) charged a fee upon reprocessing.

41.

On or around January 8, 2015, Plaintiff Atkins attempted a \$150 payment via check.

42.

OnPoint rejected payment of the item due to insufficient funds in Plaintiff Atkins’ account and charged a \$30 “NSF Fee (Item Returned)” for doing so. Plaintiff Atkins does not dispute this initial fee, as it is allowed by OnPoint’s account documents.

1 43.

2 Unbeknownst to Plaintiff Atkins and without Plaintiff's request to OnPoint to reprocess  
3 the item, on January 13, 2015, OnPoint processed the same item yet again, rejected the item again  
4 for insufficient funds, and charged Plaintiff Atkins another \$30 "NSF Fee (Item Returned)."

5 44.

6 *In sum, OnPoint charged Plaintiff Atkins \$60 in fees to attempt to process a single item.*

7 45.

8 Similarly, on or around November 30, 2020, Plaintiff South attempted a payment via ACH  
9 to a company called FUTU.  
10

11 46.

12 OnPoint rejected payment of the item due to insufficient funds in Plaintiff South's account  
13 and charged a \$30 "NSF Fee (Item Returned)" for doing so. Plaintiff South does not dispute this  
14 initial fee, as it is allowed by OnPoint's account documents.  
15

16 47.

17 Unbeknownst to Plaintiff South and without Plaintiff's request to OnPoint to reprocess  
18 the item, on December 2, 2020, OnPoint processed the same item yet again, and this time paid the  
19 item into overdraft, charging Plaintiff South another \$30 fee.  
20

21 48.

22 *In sum, OnPoint charged Plaintiff South \$60 in fees to attempt to process a single item.*

23 49.

24 On or around August 19, 2020 Plaintiff Campbell attempted a payment to PayPal.  
25  
26

50.

1  
2 OnPoint rejected payment of the item due to insufficient funds in Plaintiff Campbell's  
3 account and charged a \$30 "NSF Fee (Item Returned)" for doing so. Plaintiff Campbell does not  
4 dispute this initial fee, as it is allowed by OnPoint's account documents.

51.

6 Unbeknownst to Plaintiff Campbell and without Plaintiff Campbell's request to OnPoint  
7 to reprocess the item, on August 21, 2020, OnPoint processed the same item yet again, rejected  
8 the payment of the item, and assessed Plaintiff Campbell another \$30 Fee.

52.

10 Then, unbeknownst to Plaintiff Campbell and without Plaintiff's request to OnPoint to  
11 reprocess the item, on August 25, 2020, OnPoint processed the same item for a third time, rejected  
12 the payment of the item, and assessed Plaintiff Campbell *another* \$30 fee.

53.

14 *In sum, OnPoint charged Plaintiff Campbell \$90 in fees to attempt to process a single item.*

54.

15  
16  
17 Plaintiff Campbell was also assessed multiple fees on the same item on August 17, 2020  
18 and August 19, 2020.

55.

19  
20  
21 The improper fees charged by OnPoint were not "errors" such as a "statement" error" and  
22 were not caused by "circumstances beyond the Credit Union's control," but rather were intentional  
23 charges made by OnPoint as part of its standard processing of transactions. Ex. B at 16.  
24  
25  
26

56.

1  
2 Plaintiffs therefore had no duty to report the fees as “errors” because they were not “errors,”  
3 but were systematic and intentional assessment of fees according to OnPoint’s standard practices.

4 57.

5 Moreover, any such reporting would have been futile as OnPoint had made a decision to  
6 charge the fees in this specific manner to maximize profits at the expense of customers.

7  
8 **A. The Imposition of Multiple Fees on a Single Item Breaches Defendant’s Duty of  
9 Good Faith and Fair Dealing**

10 58.

11 Parties to a contract are required not only to adhere to the express conditions in the contract,  
12 but also to act in good faith when they are invested with a discretionary power over the other party.  
13 This creates an implied promise to act in accordance with the parties’ reasonable expectations and  
14 means that OnPoint is prohibited from exercising its discretion to enrich itself and gouge its  
15 customers. Indeed, OnPoint has a duty to honor transaction requests in a way that is fair to  
16 Plaintiffs and its other customers and is prohibited from exercising its discretion to pile on ever  
17 greater penalties on the depositor.

18 59.

19 Here—in the adhesion agreements OnPoint foisted on Plaintiffs and its other customers—  
20 OnPoint has provided itself numerous discretionary powers affecting customers’ accounts. But  
21 instead of exercising that discretion in good faith and consistent with consumers’ reasonable  
22 expectations, OnPoint abuses that discretion to take money out of consumers’ accounts without  
23 their permission and contrary to their reasonable expectations that they will not be charged  
24 multiple fees for the same item.  
25  
26

60.

1  
2 When OnPoint charges multiple fees on an item, it uses its discretion to define the meaning  
3 of “item” in a way that violates common sense and reasonable consumer expectations. OnPoint  
4 uses its contractual discretion to define that term to choose a meaning that directly causes more  
5 fees.

6  
7 61.

8 In addition, OnPoint exercises its discretion in its own favor and to the prejudice of  
9 Plaintiffs and its other customers when it reprocesses a transaction when it knows a customer’s  
10 account lacks funds and then charges additional fees on a single item. Further, OnPoint abuses the  
11 power it has over customers and their bank accounts and acts contrary to their reasonable  
12 expectations under the account documents. This is a breach of OnPoint’s duty to engage in fair  
13 dealing and to act in good faith.

14  
15 62.

16 It was bad faith and totally outside of Plaintiffs’ reasonable expectations for OnPoint to use  
17 its discretion to assess two or more fees for a single attempted payment.

18  
19 63.

20 OnPoint abuses its discretion and acts in bad faith by defining contract terms in an  
21 unreasonable way that violates common sense and by charging multiple fees on the same item.

22  
23 64.

24 Moreover, OnPoint provides itself discretion to refuse to reprocess transactions that are  
25 initially rejected. It abuses that discretion when it repeatedly reprocesses transactions when it  
26 knows that the customer has insufficient funds in their account to pay the transaction and charges  
additional fees each time.

**OnPoint Improperly Charges Two OON Fees Per Transaction**

**Mechanics of Domestic Out of Network ATM Withdrawals**

65.

When consumers use ATMs not owned by their own bank, federal law requires the owners of those out-of-network ATMs to inform users of the amount of the usage fees charged by the ATM owner. *See* 15 U.S.C. § 1693b(d)(3).

66.

Thus, it is standard at ATMs in the United States that when a consumer uses an ATM not owned by his home bank, a message is displayed on the screen stating that usage of the ATM will cost a specified amount to proceed with a withdrawal of funds, and that such a fee is in addition to a fee that may be assessed by a consumer’s financial institution for use of the ATM.

67.

That message appears only after a user has decided to perform a cash withdrawal and entered the amount of cash he or she would like to withdraw.

68.

Through repeated exposure to such fee warning messages, consumers are accustomed to being warned of fee assessments at out-of-network ATMs - and to being provided with the opportunity to decide whether the fees charged are reasonable - before proceeding with their cash withdrawal.

69.

OnPoint knows this—that consumers expect a fair fee disclosure at the ATM— and has designed a scheme to assess OON Fees on balance inquiries and exploit consumers’ reasonable expectation that they will be provided an opportunity to cancel actions before being assessed a fee.

1 That scheme involves assessing fees for the mere act of checking a balance before proceeding with  
2 a cash withdrawal.

3 70.

4 The ATM screen does not disclose that a balance inquiry alone will incur a usage fee, and  
5 indeed ATM owners in the United States in general do not charge usage fees for balance inquiries.  
6 Thus, there is simply no warning at the ATM that a balance inquiry alone could incur a fee.

7 71.

8 As a result, reasonable consumers have zero expectation that their home bank will charge  
9 a separate fee for a balance inquiry, especially one that precedes a cash withdrawal at the same  
10 ATM.  
11

12 72.

13 If a bank is going to charge such a surprising fee, it must fully and fairly disclose such a  
14 fee in its account documentation. OnPoint did the opposite—providing express and implied  
15 indications in its contract that balance inquires would not incur OON Fees.  
16

17 **Defendant's Account Contract**

18 73.

19 Plaintiffs Campbell and South have OnPoint Bank checking accounts, which are governed  
20 by the Contract.

21 74.

22 OnPoint issues debit cards to its checking account customers, including Plaintiffs Campbell  
23 and South, which allows its customers to have electronic access to their checking accounts for  
24 purchases, payments, and ATM withdrawals at both Defendant and non-Defendant ATMs.  
25  
26

75.

Against the backdrop of the reasonable consumer expectations and federal law above, Defendant’s contractual disclosures deceive consumers and reinforce the reasonable understanding that no fee will be assessed for a balance inquiry—especially since ATM users are not warned beforehand.

76.

Defendant’s disclosures also reinforce the reasonable understanding that there can be no balance inquiry fee when such an inquiry is in conjunction with a cash withdrawal at the same ATM.

77.

At the time of the relevant transactions, OnPoint’s Fee Schedule stated:

ATM Withdrawal/Inquiry .....\$2.00  
(No charge for OnPoint, MoneyPass or CO-OP ATMs, Free with Interest Checking)

Ex. A at 2.

78.

In short, Defendant states that it may impose a *single* \$2.00 OON Fee on an ATM use.

79.

The Electronic Funds Transfer Disclosure states:

ATMs. If you use an ATM operated by any other institution or network, you may be charge a fee by that entity and the Credit Union.

Ex. B at 28 (emphasis added).

80.

When a cash withdrawal is made at the same time as a balance inquiry at an out of network ATM, Defendant’s account documents indicate to reasonable consumers that those functions count



1 as a single transaction triggering a single OON Fee assessment of \$2.

2 81.

3 Defendant and its customers, including Plaintiffs Campbell and South, contractually agree  
4 that should the customer make a balance inquiry and a cash withdrawal, the customer will pay a  
5 fee of no more than \$2.

6 82.

7  
8 Moreover, accountholders using a non-OnPoint ATM are never warned that they will  
9 receive two separate fees from OnPoint—plus another one from the ATM owner—when they  
10 check their balance before proceeding with a cash withdrawal at the same ATM. Yet that is exactly  
11 what happens.

12 83.

13 As discussed *supra*, ATMs do not warn that such a balance inquiry will be the basis for a  
14 fee, either from the ATM owner or from the consumer’s own bank. Defendant’s disclosures do  
15 nothing to disabuse consumers of the reasonable expectation that a balance inquiry will not incur  
16 a separate fee when it precedes a cash withdrawal at the same ATM, and never state outright that  
17 such a fee will be assessed even when conducted absent a subsequent cash withdrawal. Again, the  
18 Fee Schedule says nothing more than \$2 per “withdrawal/inquiry.”

19 84.

20  
21 Moreover, reasonable consumers like Plaintiffs Campbell and South do not understand—  
22 and are never warned—that a mere balance inquiry (in which no funds are transferred in any way)  
23 counts on its own as a separate “withdrawal/inquiry” that could be the basis for an independent  
24 OON Fee by OnPoint.  
25  
26

**Plaintiff Campbell’s and Plaintiff South’s Domestic Out of Network ATM Withdrawals**

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85.

As an example, on December 1, 2017, Plaintiff Campbell withdrew cash from an out of network ATM. Prior to withdrawing the cash, Plaintiff Campbell was prompted to check her balance, and she did so. The ATM owner charged Plaintiff Campbell a usage fee for the cash withdrawal but did not charge a fee for the balance inquiry. OnPoint, however, charged Plaintiff Campbell *two* OON Fees of \$2 each—one for the withdrawal and one for the “balance inquiry.”

86.

These improper fees were also charged to Plaintiff Campbell on February 29, 2020, June 28, 2020, and July 7, 2020.

87.

OnPoint’s contract does not disclose that a \$2 balance inquiry fee will be charged by anyone, much less by OnPoint itself, when a balance inquiry precedes a cash withdrawal at the same out of network ATM.

88.

OnPoint’s contract does not disclose that Defendant imposes a fee on balance inquiries at all.

89.

On January 19, 2020, Plaintiff South withdrew cash from an out of network ATM. Prior to withdrawing the cash, Plaintiff South was prompted to check his balance, and he did so. The ATM owner charged Plaintiff South a usage fee for the cash withdrawal but did not charge a fee for the balance inquiry. OnPoint, however, charged Plaintiff South *two* OON Fees of \$2 each—one for the withdrawal and one for the “balance inquiry.”

90.

OnPoint’s contract does not disclose that a \$2 balance inquiry fee will be charged by anyone, much less by OnPoint itself, when a balance inquiry precedes a cash withdrawal at the same out of network ATM.

91.

OnPoint’s contract does not disclose that Defendant imposes a fee on balance inquiries at all.

**CLASS ACTION ALLEGATIONS**

92.

*Description of the Classes:* Plaintiffs bring this action individually and as a class action on behalf of the following proposed classes of persons:

The Multiple Fee Class: All citizens of Oregon who, during the applicable statute of limitations, were OnPoint checking accountholders and were charged multiple fees on the same item.

The OON Fee Class: All citizens of Oregon who, during the applicable statute of limitations, were OnPoint checking accountholders and were charged improper out-of-network ATM fees.

93.

Plaintiffs reserve the right to modify or amend the definition of the Classes as this litigation proceeds.

94.

Excluded from the Classes are OnPoint’s officers, directors, affiliates, legal representatives, employees, successors, subsidiaries, and assigns. Also excluded from the Classes are any judge, justice, or judicial officer presiding over this matter and the members of their immediate families and judicial staff.

95.

1  
2 The time period for the Classes is the number of years immediately preceding the date on  
3 which this Complaint was filed as allowed by the applicable statute of limitations, going forward  
4 into the future until such time as OnPoint remedies the conduct complained of herein.

5  
6 96.

7 *Numerosity:* The members of the proposed Classes are so numerous that individual joinder  
8 of all members is impracticable. ORCP 32A(1). The exact number and identities of the members  
9 of the proposed Classes are unknown at this time and can be ascertained only through appropriate  
10 discovery. Plaintiffs estimate the number of members in each Class to be in the thousands.

11 97.

12 *Commonality:* There are one or more questions of law or fact common to Plaintiffs and  
13 the Classes. ORCP 32A(2). Common questions of law and fact include whether OnPoint:

- 14 a. Imposed more than one fee on the same item;  
15 b. Improperly imposed OON Fees;  
16 c. Breached its contract with Plaintiffs and members of the Classes;  
17 d. Breached the covenant of good faith and fair dealing imposed on it; and  
18 e. Violated the UTPA.

19 98.

20 *Typicality:* Plaintiff's claims are typical of the claims of the members of the Classes. ORCP  
21 32A(3). Plaintiffs and all members of the Classes have been similarly affected by OnPoint's  
22 actions.  
23

24 99.

25 *Adequacy of Representation:* Plaintiffs will fairly and adequately represent and protect the  
26 interests of the Classes. ORCP 32A(4). Plaintiffs have retained counsel with substantial experience

1 in prosecuting complex and consumer class action litigation. Plaintiffs and Plaintiffs' counsel are  
2 committed to vigorously prosecuting this action on behalf of the Classes and have the financial  
3 resources to do so.

4 100.

5 *Prelitigation Notice.* Plaintiffs complied with the prelitigation notice provision of ORCP  
6 32H and 32A(5).

7 101.

8 A class is action is superior to other available methods for the fair and efficient adjudication  
9 of the controversy, ORCP 32B, in that:  
10

- 11 a) Prosecution of separate actions by individual members of the classes creates risks  
12 of inconsistent or varying adjudications with respect to members of the class which  
13 would establish incompatible standards of conduct (ORCP 32B(1)(a));  
14  
15 b) Prosecution of separate actions by individual members of the classes creates risks  
16 of adjudications with respect to members of the class which would as a practical  
17 matter be dispositive of the interest of the other members not parties to the  
18 adjudications or substantially impair or impede their ability to protect their rights  
19 (ORCP 32B(1)(b));  
20  
21 c) The relief sought includes injunctive relief or corresponding declaratory relief with  
22 respect to the class as a whole (ORCP 32B(2));  
23  
24 d) Common questions of law or fact predominate over any questions affecting only  
25 individual members (ORCP 32B(3));  
26  
e) Individual members of the class have little interest in controlling the prosecution of  
the separate actions (ORCP 32B(4));

- f) Plaintiff is aware of no other litigation already commenced by members of the class against this defendant (ORCP 32B(5));
- g) It is desirable to concentrate the litigation of these claims in one forum, and this court is well suited to handle the complexities of a case of this kind (ORCP 32B(6));
- h) There are few or no difficulties likely to be encountered in the management of this class action and to the extent such difficulties exist, they will not be eliminated or significantly reduced if the controversy is adjudicated by other available means (ORCP 32B(7)); and
- i) When compared to the complexities and costs of this litigation, the claims of the individual class members are sufficient in amount or interests to afford significant relief to the class (ORCP 32B(8)).

**FIRST CLAIM FOR RELIEF  
 (Breach of Contract and Breach of the Covenant of Good Faith and Fair Dealing)  
 (On Behalf of Plaintiffs and the Multiple Fee Class)**

102.

Plaintiffs incorporate the preceding allegations by reference as if fully set forth herein.

103.

Plaintiffs and OnPoint have contracted for bank account deposit, checking, ATM, and debit card services. *See* Exs. A and B.

104.

OnPoint mischaracterized in the account documents its true fee practices and breached the express terms of the account documents.

105.

No contract provision authorizes OnPoint to charge more than one fee on the same item.

106.

1  
2 Under Oregon law, good faith is an element of every contract pertaining to the assessment  
3 of overdraft fees. Good faith is also mandated by the Uniform Commercial Code (“UCC”), which  
4 covers banking transactions. Whether by common law or statute, all contracts impose upon each  
5 party a duty of good faith and fair dealing. Good faith and fair dealing, in connection with  
6 executing contracts and discharging performance and other duties according to their terms, means  
7 preserving the spirit—not merely the letter—of the bargain. Put differently, the parties to a contract  
8 are mutually obligated to comply with the substance of their contract in addition to its form.  
9 Evading the spirit of the bargain and abusing the power to specify terms constitute examples of  
10 bad faith in the performance of contracts.  
11

12 107.

13 Subterfuge and evasion violate the obligation of good faith in performance even when an  
14 actor believes their conduct to be justified. A lack of good faith may be overt or may consist of  
15 inaction, and fair dealing may require more than honesty. Examples of violations of good faith and  
16 fair dealing are willful rendering of imperfect performance, abuse of a power to specify terms, and  
17 interference with or failure to cooperate in the other party’s performance.  
18

19 108.

20 OnPoint has breached the covenant of good faith and fair dealing through its overdraft  
21 policies and practices as alleged herein.  
22

23 109.

24 OnPoint harms consumers by abusing its contractual discretion in a number of ways that  
25 no reasonable customer would anticipate.  
26

110.

1  
2 Plaintiffs and members of the Multiple Fee Class have performed all, or substantially all,  
3 of the obligations imposed on them by the account documents.

4 111.

5 Plaintiffs and members of the Multiple Fee Class have sustained damages as a result of  
6 OnPoint's breach of the contract and breach of the covenant of good faith and fair dealing.  
7

8  
9 **SECOND CLAIM FOR RELIEF**  
10 **Breach of Contract, Including Breach of the Covenant of Good Faith and Fair Dealing**  
11 **(On Behalf of Plaintiff Campbell, Plaintiff South, and the OON Fee Class)**

12 112.

13 Plaintiff Campbell and Plaintiff South incorporate by reference the preceding paragraphs.

14 113.

15 Plaintiffs Campbell and South and OnPoint have contracted for banking services, as  
16 embodied in OnPoint's account documents. *See* Exs. A and B.

17 114.

18 All contracts entered between Plaintiffs Campbell and South and the OON Fee Class and  
19 OnPoint are identical or substantively identical because ONPOINT's form contracts were used  
20 uniformly.

21 115.

22 OnPoint has breached the express terms of its own agreements as described herein.  
23

24 116.

25 Under Oregon law, good faith is an element of every contract between banks and their  
26 customers because banks are inherently in a superior position to their checking account holders



1 and, from this superior vantage point, they offer customers contracts of adhesion, often with terms  
2 not readily discernible to a layperson.

3 117.

4 Good faith and fair dealing, in connection with executing contracts and discharging  
5 performance and other duties according to their terms, means preserving the spirit—not merely  
6 the letter—of the bargain. Put differently, the parties to a contract are mutually obligated to comply  
7 with the substance of their contract in addition to its form. Evading the spirit of the bargain and  
8 abusing the power to specify terms constitute examples of bad faith in the performance of  
9 contracts.  
10

11 118.

12 Subterfuge and evasion violate the obligation of good faith in performance even when an  
13 actor believes their conduct to be justified. Bad faith may be overt or may consist of inaction, and  
14 fair dealing may require more than honesty. Examples of bad faith are evasion of the spirit of the  
15 bargain and abuse of a power to specify terms.  
16

17 119.

18 OnPoint abused the discretion it granted to itself when it charged OON Fees that are not  
19 authorized by the Contract.

20 120.

21 In these and other ways, OnPoint violated its duty of good faith and fair dealing.  
22

23 121.

24 OnPoint willfully engaged in the foregoing conduct for the purpose of (1) gaining  
25 unwarranted contractual and legal advantages; and (2) unfairly and unconscionably maximizing  
26 fee revenue from Plaintiffs Campbell and South and other members of the Class.

122.

1  
2 Plaintiffs Campbell and South and members of the OON Fee Class have performed all, or  
3 substantially all, of the obligations imposed on them under the Contract.

4 123.

5 Plaintiffs Campbell and South and members of the OON Fee Class have sustained damages  
6 as a result of OnPoint’s breaches of the parties’ contracts and breaches of contract through  
7 violations of the covenant of good faith and fair dealing.  
8

9 **THIRD CLAIM FOR RELIEF**  
10 **Oregon Unlawful Trade Practices Act**  
**(On Behalf of Plaintiffs and the Classes)**

11 124.

12 Plaintiffs incorporate by reference the preceding paragraphs.

13 125.

14 OnPoint violated the Oregon Unlawful Trade Practices Act, ORS § 646.608 in one or more  
15 of the following ways:  
16

- 17 a. In failing to disclose that OnPoint would assess multiple fees on the same item and
- 18 improper OON Fees, in violation of ORS § 646.608(1)(e) and (1)(k);
- 19 b. In failing to disclose material known defects or known material nonconformity
- 20 upon tender or delivery, in violation of ORS § 646.608(1)(t);
- 21 c. In making false or misleading affirmative representations concerning the nature of
- 22 the transaction or obligation incurred, in violation of ORS § 646.608(1)(k); and
- 23 d. In affirmatively representing that its services have characteristics, benefits, and
- 24 qualities that they do not have, in violation of ORS § 646.608(1)(e).
- 25
- 26

126.

As a result of these violations, Plaintiffs and the Classes suffered ascertainable losses.

**First Count-Reckless or Knowing Violation**

127.

OnPoint acted recklessly or knowingly used or employed an unlawful method, act, or practice in violation of ORS § 646.608.

128.

Plaintiffs and members of the Classes are entitled to an injunction and equitable relief requiring repayment of monies overcharged. Plaintiffs will amend to allege a claim to recover statutory damages of \$200 per consumer, as well as attorneys' fees. ORS 646.638(1) and (8).

**Second Count-Willful Violation**

129.

OnPoint willfully used or employed an unlawful method, act, or practices in violation of ORS 646.608. Plaintiffs and members of the class are entitled to an injunction and equitable relief requiring repayment of monies overcharged. Plaintiffs will amend to allege a claim for actual damages. Plaintiffs are entitled to attorney fees. ORS 646.638(1).

130.

Plaintiffs and members of the Classes are entitled to recover actual damages in amounts to be proved at trial, as well as attorneys' fees. ORS § 646.638. Plaintiffs are entitled to an injunction to stop future violations and disgorgement of profits.

**REQUEST FOR RELIEF**

1  
2 WHEREFORE, Plaintiffs and the Class demand a jury trial on all claims so triable and  
3 judgment including the following:

- 4 a. Certify this case as a class action, designating Plaintiffs as the Class  
5 Representatives and designating the undersigned as Class Counsel;  
6  
7 b. Enjoin OnPoint from engaging in the practices outlined herein;  
8  
9 c. Require OnPoint to restore to Plaintiffs and the class monies illegally charged;  
10 and  
11  
12 d. Grant such other relief as the Court deems just and proper.

13 Dated February 19, 2021.

14 DAVID F. SUGERMAN ATTORNEY, PC

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PLAINTIFFS' DEMAND A JURY TRIAL as to each issue on which they are entitled.

DATED this 19<sup>th</sup> day of February, 2021.

SUGERMAN LAW OFFICE

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