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

TIMOTHY SOUTH and KARI-ANNE
SHORT, individually and on behalf of all
others similarly situated;

Plaintiff,

v.

ONPOINT COMMUNITY CREDIT UNION;

Defendant.

Case No. 21CV06289

**ORDER PRELIMINARILY APPROVING
CLASS SETTLEMENT AND NOTICE
PLAN**

Assigned to: Hon. Shelley Russell

WHEREAS, Plaintiffs Timothy South and Kari-Anne Short, individually and on behalf of a proposed Settlement Class, and Defendant OnPoint Community Credit Union (“OnPoint”), all acting by and through their respective counsel, have agreed, subject to Court approval, to settle this Action upon the terms and conditions stated in the Settlement Agreement:

NOW, THEREFORE, based upon the Settlement Agreement, upon all of the files, records, and proceedings herein, statements of counsel, and it appearing to the Court that a hearing should be held to determine whether the proposed Settlement described in the Settlement Agreement should be finally approved as fair, reasonable, and consistent with precedent concerning class settlements in Oregon.

IT IS HEREBY ORDERED THAT:

- 1. All capitalized terms herein shall have the same meanings as those in the Settlement Agreement.
- 2. The Court has jurisdiction over the subject matter of this action and personal

1 jurisdiction over the Parties, including the Named Plaintiffs and Potential Settlement Class
2 Members.

3 3. The Court preliminarily approves the Settlement, including the Notice to be sent to
4 the Potential Settlement Class Members, finding that the proposed Settlement is
5 sufficiently fair, reasonable, and consistent with precedent concerning class settlements in
6 Oregon to warrant providing Notice to the Settlement Class, but such finding is not to be
7 deemed as an admission of fault or liability by Defendant or a finding of the validity of any
8 claims asserted in the Action or of any wrongdoing or of any violation of law by Defendant.
9 Defendant shall maintain all rights to assert that but for settlement purposes, the Action
10 should not be certified as a class.

11 4. For purposes of determining whether the Court should finally approve the terms of
12 the proposed Settlement as fair, reasonable, and consistent with precedent concerning class
13 settlements in Oregon, the following classes are preliminarily certified for settlement
14 purposes only:

15 “OON Inquiry Fee Class”: those members of Defendant who were
16 charged OON Inquiry Fees between February 19, 2015 through
17 February 28, 2021.

18 “Retry NSF/Overdraft Fee Class”: those members of Defendant
19 who were charged Retry NSF/Overdraft Fees between February
20 19, 2015 through October 30, 2019.

21 (collectively, the “Settlement Class”).

22 Excluded from the Settlement Class are Defendant, its parents, subsidiaries, affiliates,
23 officers and directors, all Potential Settlement Class Members who make a timely election
24 to be excluded, and all judges assigned to this litigation and their immediate family
25 members.

26 5. The Court preliminarily finds that the terms of the Settlement are fair, adequate,
and consistent with precedent concerning class settlements in Oregon. In so finding, the

1 Court finds the Settlement presumptively fair because it was the product of arms'-length
2 bargaining with the benefit of discovery, and the amount of the Settlement is fair and
3 reasonable.

4 6. The Court finds that, for purposes of settlement: (a) the number of members of the
5 Settlement Class is so numerous that joinder is impracticable; (b) there are questions of
6 law and fact common to the members of the Settlement Class; (c) the claims of the Named
7 Plaintiffs are typical of the claims of the members of the Settlement Class; (d) the Named
8 Plaintiffs are adequate representatives for the Settlement Class, and have retained
9 experienced and adequate Class Counsel; (e) the Named Plaintiffs complied with the
10 prelitigation notice required by ORCP 32 H; (f) the questions of law and fact common to
11 the members of the Settlement Class predominate over any questions affecting any
12 individual members of the Settlement Class; and (g) a class action is superior to the other
13 available methods for the fair and efficient adjudication of this controversy.

14 7. For purposes of settlement only, the Court finds and determines that Plaintiffs will
15 fairly and adequately represent the interests of the Class in enforcing their rights in the
16 action, and preliminarily appoints Plaintiffs Short and South as class representatives. The
17 Court preliminarily appoints the following attorneys as Class Counsel for the Settlement
18 Class:

19 KanielGold PLLC

20 Sugerman Dahab

21 Cohen & Malad

22 8. The Parties have selected Epiq Systems to serve as the Settlement Administrator.
23 The Court hereby approves of and appoints Epiq Systems as the Settlement Administrator
24 and directs it to commence sending Notice to the Potential Settlement Class Members and
25 to otherwise comply with all obligations of the Settlement Administrator as outlined in the
26 Agreement.

1 9. The Parties have prepared the Email notice, Postcard Notice, and Long Form
2 Notice, which are attached to the Settlement Agreement as Exhibits 1-3. The Court
3 preliminarily finds that the notice provided to Potential Settlement Class Members (i) is
4 the best practicable notice; (ii) is reasonably calculated, under the circumstances, to apprise
5 Potential Settlement Class Members of the pendency of the Action and of their right to
6 object or to exclude themselves from the Settlement; and (iii) is reasonable and constitutes
7 due, adequate, and sufficient notice to all Potential Settlement Class Members entitled to
8 receive notice.

9 10. The Court has carefully reviewed and hereby approves the Notice as to form and
10 content and directs that it be sent to Potential Settlement Class Members without material
11 alteration unless otherwise modified by agreement of the Parties and approved by the
12 Court. The Court directs that Notice be sent to the Settlement Class in the manner outlined
13 in the Settlement Agreement.

14 11. Potential Settlement Class Members who wish to opt out of the Settlement and
15 exclude themselves from participation may do so by submitting timely and valid requests
16 at any time before the Bar Date to Opt-Out. The process to opt out is set forth in the
17 Agreement and in the Notice. Potential Settlement Class Members who opt out shall have
18 no rights under the Settlement, shall not share in any of the benefits of the Settlement, and
19 shall not be bound by the Settlement or by any Final Approval Order and judgment
20 approving the Settlement.

21 12. All Settlement Class Members who do not submit a timely, written request for
22 exclusion in the manner set forth in the Notice and Agreement shall be bound by any Final
23 Approval Order and judgment entered, even if such Settlement Class Members never
24 received actual notice of this Action or the Settlement. If Final Approval of the Settlement
25 is granted, they shall be barred, now and in the future, from asserting any of the Released
26 Claims, as defined in the Settlement Agreement, against any Released Parties as defined in

1 the Settlement Agreement.

2 13. Settlement Class Members who wish to object to the Settlement and/or to Class
3 Counsel's application for attorneys' fees and costs and/or a Service Award to the Named
4 Plaintiffs shall file any objections pursuant to the requirements of this paragraph. To be
5 valid and considered by the Court, the objection must be in writing and sent by first class
6 mail, postage prepaid, to the Court, Settlement Administrator, Class Counsel, and
7 Defendant's Counsel. The objection must be postmarked on or before the Bar Date to
8 Object, and must include the following information: (a) a heading referring to the *South v.*
9 *OnPoint* Action; (b) the objector's name, address, telephone number, the last four digits of
10 either his or her account number (current or former) or Social Security Number, and the
11 contact information for any attorney retained by the objector in connection with the
12 objection or otherwise in connection with this case; (c) a statement of the factual and legal
13 basis for each objection and any exhibits the objector wishes the Court to consider in
14 connection with the objection; and (d) a statement as to whether the objector intends to
15 appear at the Final Approval Hearing, either in person or through counsel, and, if through
16 counsel, identifying the counsel by name, address, and telephone number. Class Counsel
17 and/or Defendant's Counsel shall file any responses to objections at least seven (7) days
18 before the Final Approval Hearing Date. Any objector who retains counsel shall be solely
19 responsible for paying his or his own attorneys' fees and costs. Any objector who fails to
20 comply with the provisions herein shall waive and forfeit any and all rights to appear and/or
21 object separately and shall be bound by the terms of this Agreement and the orders and
22 judgments of the Court.

23 14. The Court will hold a Final Approval Hearing to consider the fairness,
24 reasonableness, and adequacy of the Settlement on May 12, 2023 at 9:00
25 AM/PM. The Court will advise the Parties in advance of the Final Approval Hearing
26 whether the hearing will be held in person at the Multnomah County Circuit Court or by

1 video conference. The date and time of the Final Approval Hearing will be set forth in the
 2 Notice and published on the Settlement Website. During the Final Approval Hearing, the
 3 Court will consider whether the Settlement should be approved as fair, reasonable, and
 4 consistent with precedent concerning class settlements in Oregon, and whether the Court
 5 should grant Final Approval of the Settlement and dismiss this Action on the merits, with
 6 prejudice. The Court will also consider the amount of any attorneys' fees and costs to be
 7 awarded to Class Counsel, whether to approve the amount of any Service Award to the
 8 Named Plaintiff. The Final Approval Hearing may be postponed, adjourned, or rescheduled
 9 by order of the Court without further notice to Potential Settlement Class Members other
 10 than on the Settlement Website and the Court's docket.

11 15. The Court confirms the following schedule (which the court, upon showing of good
 12 cause by the Parties, may extend any of the deadlines):

13 Deadline to Complete Notice	30 days after Preliminary Approval
14	
15 Deadline for Motion for attorneys' fees, costs, and for a Service Award	45 days after Preliminary Approval
16	
17 Bar Date to Opt-Out	90 days after Preliminary Approval
18	
19 Bar Date to Object	90 days after Preliminary Approval
20	
21 Deadline for Motion for Final Approval of the Settlement	120 days after Preliminary Approval
22 Final Approval Hearing	May 12th at 9 AM/PM [at 23 least 150 days after preliminary approval]
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1 **UTCRC 5.100 CERTIFICATE OF READINESS**

2 In accordance with UTCRC 5.100(1) & (2), I hereby certify that the foregoing proposed
3 order is ready for judicial signature because:

- 4 Each party affected by this order or judgment has stipulated to the order or judgment, as
5 shown by each party’s signature on the document being submitted.
- 6 Each party affected by this order or judgment has approved the order or judgment, as
7 shown by each party’s signature on the document being submitted or by written
8 confirmation of approval sent to me.
- 9 I have served a copy of this order or judgment on each party entitled to service and:
10 No objection has been served on me.
11 I received objections that I could not resolve with a party despite reasonable
12 efforts to do so. I have filed a copy of the objections I received and indicated
13 which objections remain unresolved.
14 After conferring about objections, the parties agreed to independently file any
15 remaining objection.
- 16 Service is not required pursuant to subsection (3) of this rule, or by statute, rule, or
17 otherwise.
- 18 This is a proposed judgment that includes an award of punitive damages and notice has
19 been served on the Director of the Crime Victims’ Assistance Section as required by
20 subsection (5) of this rule.
- 21 Other: _____

22 DATED this 6th day of October, 2022.

23 By: /s/ Nadia H. Dahab
24 **David F. Sugerman**, OSB No. 862984
25 **Nadia H. Dahab**, OSB No. 125630
26 SUGERMAN DAHAB
707 SW Washington Street, Suite 600
Portland, Oregon 97205
Telephone: (503) 228-6474
david@sugermandahab.com
nadia@sugermandahab.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that I caused to be served the foregoing **ORDER PRELIMINARILY APPROVING CLASS SETTLEMENT AND NOTICE PLAN** on the following named person(s) on the date indicated below:

Tim Cunningham, OSB No. 100906
DAVIS WRIGHT TREMAINE LLP
1300 SW Fifth Ave. Ste. 2400
Portland, OR 97201-5610
Tel: (503) 241-2300

by Overnight Delivery
 by Facsimile
 by U.S. Mail with postage prepaid
 By OJD File & Serve
 by Email
timcunningham@dwt.com

Frederick B. Burnside, OSB No. 096617
DAVIS WRIGHT TREMAINE LLP
920 Fifth Ave. Ste. 3300
Seattle, WA 98104
Tel: (206) 622-3150

by Overnight Delivery
 by Facsimile
 by U.S. Mail with postage prepaid
 By OJD File & Serve
 by Email
fredburnside@dwt.com

Attorneys for Defendant OnPoint Community Credit Union

DATED this 6th day of October, 2022.

By: /s/ Nadia H. Dahab
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