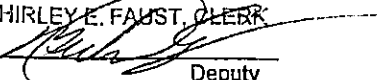


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\*\*\*\*\*  
MONTANA FOURTH JUDICIAL DISTRICT COURT,  
MISSOULA COUNTY  
\*\*\*\*\*

DANIEL P. KNUDSEN, ROSE E.  
AYERS, ERIC DENNISON, LANCE  
FRENCH, ERIK FARNHAM and KAILA  
JACOBSON as Class Representatives,

Plaintiffs,

v.

THE UNIVERSITY OF MONTANA, a  
unit of the Montana University system,  
Higher One Holdings, Inc. and  
Customers Bancorp,

Defendants.

Cause No. DV 16-977  
Department No. 2  
Hon. Shane A. Vannatta

**FIRST AMENDED CLASS ACTION  
COMPLAINT FOR DAMAGES,  
INJUNCTIVE AND EQUITABLE  
RELIEF AND JURY DEMAND**

Class Representatives state and allege in support of this class action complaint against Defendants as follows:

### **PARTIES, JURISDICTION AND VENUE**

1. Named Plaintiffs and Class Representatives bring this action on behalf of themselves and others similarly situated.

2. Plaintiffs are residents of Missoula County, Montana. At relevant times, Plaintiffs were students at Defendant University of Montana.

3. Defendant University of Montana (“Defendant” or “University” herein) is a unit of the Montana University System, and is located in Missoula County, Montana.

4. Defendant Higher One Holdings, Inc. (Higher One), which is not a bank, contracted with Defendant University of Montana to process loan refunds from 2010 – 2015 on behalf of the University of Montana.

5. Defendant Customers Bancorp acquired certain assets of Higher One, including the OneAccount disbursements business at issue and is the successor in interest to Higher One. Customers Bancorp is legally responsible for all of the acts of Higher One alleged herein.

6. This Court has subject matter jurisdiction pursuant to Mont. Code Ann. §§ 3-5-302, 27-8-201, 27-8-202 and 27-19-101.

7. Venue is proper in this district pursuant to Mont. Code Ann. § 25-2-126, including because this is where the claim arose, because Plaintiffs are residents of this county, and because Defendant University is located here.

### **ALLEGATIONS COMMON TO ALL COUNTS**

8. Upon information and belief, until 2010, Defendant University issued checks to students whose student loans exceeded the tuition due to the university.

9. Students could then use those “loan refunds” to purchase books, computers and other supplies needed for classes, or to pay for other expenses associated with attending university classes.

10. Upon information and belief, beginning in 2010 and continuing through 2015, Defendant University implemented new procedures for handling loan refunds.

11. Instead of the University processing the refunds and issuing checks to students, the University sought to avoid that expense by outsourcing the matter to Higher One Holdings Inc. (“Higher One”), a Delaware corporation, which in turn contracted with other entities such as The Bancorp Bank (“Bancorp”) and Wright Financial Services Corporation (“Wright Financial”), now known as WEX Bank.

12. Under the arrangement between the University of Montana and Higher One (and other entities like Bancorp and Wright Financial), an account was opened in every student's name, irrespective of whether the student was to receive any loan refund.

13. Although the students were not involved in the establishment of these accounts, their personal information, including information protected by Montana state statutes and Constitution, was used to open these accounts.

14. This information included at a minimum, but was not necessarily limited to, their full legal names, addresses, email addresses, student identification numbers, birthdates, genders, telephone numbers and at least the last four digits of their Social Security Numbers.

15. Each student was then sent a debit/credit card associated with the account, again irrespective of whether the student was to receive any loan refund.

16. The materials sent to the student used their school's logos, thus suggesting that the account was endorsed by their school.

17. These debit cards were mailed to students at their private addresses, although they had never provided that information to Higher

One or consented to having Defendant University transmit that information to Higher One.

18. If the student had a loan refund coming, it was deposited into the Higher One account opened in that student's name.

19. The funds could be accessed by activating the Higher One account or using the debit/credit card sent to that student.

20. In order to activate the account, the student had to contact Higher One and supply Higher One with additional personal information.

21. Students had to supply this additional personal information to Higher One and activate the account even if they simply wanted to transfer all the funds from the Higher One account into a different account of their own choice.

22. Students were warned that if they did not activate the Higher One accounts, they would not obtain timely access to their loan refunds.

23. The only way for students to quickly access their funds was to activate and use the Higher One account.

24. If there were means to circumvent contact with Higher One altogether, while still timely receiving access to their student loan funds, such means were not disclosed or not adequately disclosed to Plaintiffs.

25. Defendant and Higher One together designed or permitted the disbursement system to make it a more time-consuming and slower process if students wanted to bypass any contact with Higher One.

26. On information, Higher One (or a contracted entity, such as Bancorp or Wright Financial) charged fees for transferring the student loan funds to a bank account of the student's choosing.

27. Using the debit card to access the funds resulted in service fees being charged against the account and paid to Higher One.

28. Such fees were not adequately disclosed and not consented to by the students in advance of activating their Higher One accounts to access their student loan refunds.

29. Few Higher One ATMs were provided. As a result, students were charged excessive and unnecessary foreign ATM fees and the practice forced students to use the Higher One card as a debit card to make purchases and thereby incur fees.

30. Using the card to make debit card purchases resulted in fees being charged. Those fees could be avoided by completing the purchase as a credit card transaction. However Higher One marketing materials emphasized that the cards were debit cards, not credit cards, thus steering

students away from the fee-free means of using their card to make purchases.

31. Higher One (or entities contracted with Higher One, such as Bancorp and Wright Financial) further permitted the Higher One cards to be transmitted into credit access devices, by allowing overdrafts, for which overdraft fees were charged.

32. Higher One (or entities contracted with Higher One, such as Bancorp and Wright Financial) kept the accounts active even when they contained extremely small balances, and then charged account holders “inactivity fees.” These fees caused some accounts to go negative. If an account had a negative balance, including solely as a result of such “inactivity fee,” Higher One would charge an overdraft fee.

33. Students did not give informed, written consent to having their personal information provided to Higher One.

34. Defendant University was aware or should have been aware of its obligations to protect students’ personal information.

35. Defendant University was aware that some students objected to having their personal information transmitted to Higher One.

36. Defendant University was aware that some students objected to being forced to choose between activating Higher One debit/credit cards they never requested or being unable to timely access loan refunds.

37. Defendant University was aware that lawsuits had been filed against Higher One for participating in this scheme.

38. For example, in 2014, Higher One, along with the predecessor company of WEX Bank, settled with a class of plaintiffs alleging abuses similar to those alleged here. That class was comprised of students who opened accounts with Higher One between July 1, 2006 and August 2, 2012. As a result of the settlement, Higher One set aside a fund of \$15 million to compensate that class of students. It also made specific promises to change its tactics. However, Defendant instead continued to assess improper fees and engage in deceptive practices.

39. The full extent of Defendant Higher One's deceptive practices is still unknown. However, in March of 2020, Higher One disclosed fee information related to UM students. This information demonstrates that Higher One charged for fees in amounts undisclosed to the students or the University of Montana. Higher One continues to withhold information relevant to the amounts of fees charged to UM students.



40. Defendants' wrongful conduct alleged herein harmed Plaintiffs and members of the classes.

41. UM estimates that, from 2010 to 2015, Higher One sent its UM-branded debit card to approximately 38,629 to 39,279 UM students. Many of these students paid undisclosed and illegal fees to Higher One. The total fees paid by UM students to Higher One was \$1,079,916.27.

42. Higher One made significant money charging undisclosed and illegal service fees to students. The One Account fees charged ranged from \$.50 point-of-sale transaction fees to \$50 "lack of documentation fees." Higher One also charged students "inactivity fees" when the account sat dormant for an undisclosed period. This practice even drove some accounts below \$0, which then led to Higher One charging overdraft fees.

43. The banks with which Higher One contracted to hold the students' loan refunds did not charge fees, but rather retained the interest earned on the students' loan refunds as payment for their services.

44. Universities and third-party servicers, such as Higher One, are prohibited by law from charging fees to students to access their student loan refunds. As the Department of Education informed UM, "Per 34 CFR 664.164(c)(3)(iv), regardless of how students receive their title IV credit

balance funds, an institution, **and any third-party servicer**, is prohibited from charging a fee for delivering those title IV funds.”

45. Because its business model was illegal, Higher One was unsurprisingly sued for its conduct in various class actions and repeatedly penalized by the FDIC. For example, the FDIC stated in a 2012 Consent Order:

Higher One has engaged in unsafe or unsound banking practices and violations of law and regulation, including engaging in deceptive and unfair acts and practices in or affecting commerce, in violation of Section 5 of the Federal Trade Commission Act (“Section 5”), 15 U.S.C. § 45(a)(1), in connection with the Bank’s deposit account product that is offered in conjunction with Higher One (the “OneAccount”).

In 2015, in another Consent Order with Higher One, FDIC again found that, in violation of the previous Consent Order:

Higher One engaged in deceptive acts or practices in or affecting commerce, in violation of section 5 of the Federal Trade Commission Act (“Section 5”), 15 U.S.C. § 45(a)(1), arising from the marketing to and enrollment of consumers into the OneAccount product offered through the Bank.

46. Pursuant to Montana Rule of Civil Procedure Rule 23, the Montana Supreme Court certified the following classes:

Class 1: Past or present students of Defendant University who paid fees to Higher One Holdings, as a consequence of opening an account with Higher One to receive student loan refunds.

Class 2: Past or present students of Defendant University whose personal information was transmitted to Higher One Holdings.

47. On March 30, 2020, Higher One disclosed information related to fees charged to UM students, including the Plaintiffs and all class members. This documentation reveals, for the first time, that undisclosed fees were deducted from class members' accounts. The documentation reveals that various fees which cannot be reconciled with Higher One's fee schedule were charged without notice or explanation.

48. On behalf of themselves and other members of the classes, Plaintiffs seek damages, declaratory and injunctive relief, attorney fees, costs and expenses, and other appropriate relief.

## **CLAIMS FOR RELIEF**

### **COUNT ONE – BREACH OF FIDUCIARY DUTY**

#### **(Against All Defendants)**

49. Plaintiffs hereby incorporate every other allegation in this complaint as though fully set forth herein.

50. Defendants owed duties to Plaintiffs, including fiduciary duties of the highest standard of care and diligence in connection with its handling of student loan refund monies. According to 34 C.F.R. § 668.82:

a) A participating institution or a third-party servicer that contracts with that institution acts in the nature of a fiduciary in the administration of the Title IV, HEA programs...

b) In the capacity of a fiduciary –

1) A participating institution is subject to the highest standard of care and diligence in administering the programs and in accounting to the Secretary for the funds received under those programs; and

2) A third-party servicer is subject to the highest standard of care and diligence in administering any aspect of the programs on behalf of the institutions with which the servicer contracts and in accounting to the Secretary and those institutions for any funds administered by the servicer under those programs.

This fiduciary duty to students required Defendants to act in the best interests of students. According to the Department of Education:

Congress and the Department have established the expectation that schools act in the best interests of students when administering Title IV programs. The House Report for the Higher Education Opportunity Act of 2008 stated, “[t]he nation’s financial aid system exists for a single purpose: to serve students and their families.” Additionally, the Senate’s Committee on Health, Education, Labor, and Pensions stated in a 2007 report on proposed amendments to the HEA, that “[t]he committee believes strongly that lenders, guaranty agencies and institutions of higher education must act with honesty and integrity at all times to ensure that the financial aid programs under title IV serve the best interests of students.” Furthermore, one of FSA’s strategic goals is “. . . to ensure that all participants in the system of funding postsecondary education serve the interests of students.”

51. Defendants further owed fiduciary duties to protect and not unreasonably use the confidential student information to which they had access.

52. The conduct alleged herein constitutes a breach of fiduciary obligations to students.

53. Defendant University used or allowed Higher One to use student loan refunds and confidential student information to market non-competitive financial accounts to students for its own financial gain.

54. This conduct caused damages to Plaintiffs, including incurring unreasonable and predatory account fees in connection with the non-competitive Higher One accounts. As stated by the Department of Education:

[G]overnment and consumer reports documented that the practices of account providers in the college banking market [such as Higher One] are troubling and not representative of the typical banking practices in the broader marketplace.

In light of the fiduciary role of institutions as stewards of the title IV, HEA programs, we believe that this institutional cost shifting is an impermissible development and that students should not be in the position to pay significant, unavoidable, and misleading costs as a prerequisite to obtaining their Federal student aid.

55. Plaintiffs are entitled to recover the fees paid to Higher One and to other compensation as a result of the breaches of fiduciary duties alleged herein.

## **COUNT TWO – NEGLIGENT ENTRUSTMENT**

### **(Against Defendant University of Montana)**

56. Plaintiffs hereby incorporate every other allegation in this complaint as though fully set forth herein.

57. The University negligently entrusted those loan refunds, confidential student information and a license to use its own logos to Higher One.

58. The University owned and/or was in control of student loan refund funds, confidential student information and its own logos and had a duty to protect these items from unreasonable, improper or harmful use by others.

59. The University knew or had reason to know that Higher One was likely to use the student loan funds, confidential student information and/or University logos in a manner involving unreasonable risk of harm to University students.

60. Nevertheless, the University unreasonably and in breach of its duties of care entrusted these materials to Higher One.

61. Higher One in fact did use its possession of the loan funds and confidential student information, as well as University logos, to engage in deceptive marketing of non-competitive accounts and to charge predatory, exorbitant and usurious fees.

62. In this manner, Higher One and the University profited at students' and taxpayers' expense, causing damage to Plaintiffs.

63. Plaintiffs are entitled to recover the fees paid to Higher One as a result of the University's negligent entrustment as well as to other compensation for the conduct alleged.

**COUNT THREE – MONT. CODE ANN. § 20-25-511**

**(Against Defendant University of Montana)**

64. Plaintiffs hereby incorporate every other allegation in this complaint as though fully set forth herein.

65. Defendant have violated Mont. Code Ann. § 20-25-511 by disclosing students' personal information, including residence and records, to Higher One.

66. Defendant's violations of this provision of Montana law have caused damages to Plaintiffs and others.

67. Plaintiffs and the members of the classes are entitled to damages and equitable relief as a result of such violations.

**COUNT FOUR – MONT. CODE ANN. § 20-25-512**

**(Against Defendant University of Montana)**

68. Plaintiffs hereby incorporate every other allegation in this complaint as though fully set forth herein.

69. Defendant has violated Mont. Code Ann. § 20-25-512 by requiring students to activate accounts with Higher One in order to make decisions about their access to student loan refunds.

70. Defendant's violations of this provision of Montana law have caused damages to Plaintiffs and others.

71. Plaintiffs and the members of the classes are entitled to damages and equitable relief as a result of such violations.

**COUNT FIVE – MONT. CODE ANN. § 20-25-515**

**(Against Defendant University of Montana)**

72. Plaintiffs hereby incorporate every other allegation in this complaint as though fully set forth herein.

73. Defendant has violated Mont. Code Ann. § 20-25-515 by transmitting student identification records or other records to Higher One.

74. Defendant's violations of this provision of Montana law have caused damages to Plaintiffs and others.



75. Plaintiffs and the members of the classes are entitled to damages and equitable relief as a result of such violations.

## **COUNT SIX – CONSTITUTIONAL RIGHT TO PRIVACY**

### **(Against All Defendants)**

76. Plaintiffs hereby incorporate every other allegation in this complaint as though fully set forth herein.

77. Under the Montana Constitution, Plaintiffs and the other class members enjoy the fundamental, inalienable and self-executing constitutional right to individual privacy.

78. Defendants' conduct as described herein constitutes material violations of the Constitutional privacy rights of Plaintiffs and other class members.

79. Defendants' violations of students' privacy rights have caused damages to Plaintiffs and others.

80. Plaintiffs and the members of the classes are entitled to damages and equitable relief as a result of such violations.

## **COUNT SEVEN – NEGLIGENCE PER SE**

### **(Against All Defendants)**

81. Plaintiffs hereby incorporates every other allegation in this complaint as though fully set forth herein.

82. Defendants violated Montana statutes enacted to protect student privacy as set forth in this Complaint, including Mont. Code Ann. §§ 25-5-511, 20-25-512 and 25-5-515.

83. Montana statutes enacted to protect student privacy were enacted to protect a specific class of persons, namely Montana university students.

84. Plaintiffs and the other class members are members of the class of persons intended to be protected by Montana statutes enacted to protect student privacy.

85. Plaintiffs' injuries, and the injuries to the class members, are of the kind that Montana statutes enacted to protect student privacy were enacted to prevent.

86. Montana statutes enacted to protect student privacy was intended to regulate members of the class of actors to which Defendant belongs.

87. As a direct and proximate result of Defendants' violation of Montana statutes enacted to protect student privacy, Plaintiffs and the class members all suffered injuries, entitling them to damages and other equitable relief.

## **COUNT EIGHT – RESCISSION AND RESTITUTION**

### **(Against All Defendants)**

88. Plaintiffs hereby incorporates every other allegation in this complaint as though fully set forth herein.

89. Consent to the terms of Higher One’s account agreements and fee schedule was not real or free and was given under mistake or fraud.

90. Defendants improperly induced Plaintiffs and class members to contract.

91. Plaintiffs seek, on behalf of themselves and all class members, rescission of their Higher One account agreements and restitution of all bank fees charged by Higher One (or contracted entities such as Bancorp or Wright Financial).

## **COUNT NINE – UNJUST ENRICHMENT**

### **(Against All Defendants)**

92. Plaintiffs hereby incorporate every other allegation in this complaint as though fully set forth herein.

93. For their own financial gain, Defendants participated in an arrangement that utilized student loan refunds, confidential student information and the appearance of University endorsement to guide

students into non-competitive financial accounts with significant, misleading and predatory fees.

94. Defendants have unjustly benefitted, at students' and taxpayers' expense, from outsourcing the processing of student loan refunds to a private for-profit banking corporation at the expense of student privacy and timely access to educational funds.

95. It would be unjust for Defendants to be permitted to retain such unjust benefits.

96. Defendants should not be allowed to unjustly retain the economic benefit derived from said improper conduct and should be ordered to disgorge such unjust enrichment.

### **COUNT TEN – BREACH OF CONTRACT**

#### **(Against Higher One and Customers Bancorp)**

97. Plaintiffs hereby incorporate every other allegation in this complaint as though fully set forth herein

98. Defendant Higher One entered into contracts with Plaintiffs and the class members.

99. Defendant Higher One likewise entered into contracts with Defendant University of Montana.

100. Defendant Higher One breached those contracts. Amongst other things, as revealed in the information disclosed by Higher One on March 30, 2020, Defendant Higher One charged for fees not disclosed to either UM students or the University of Montana. Further, as confirmed by the information disclosed by Higher One on March 30, 2020, Defendant Higher One breached its contractual obligation to comply with federal laws and regulations. In addition, Defendant Higher One breached its contractual agreement to acquire liability insurance naming the University of Montana as an Insured.

101. Plaintiffs and class members are parties to various contracts with Higher One. In addition, Plaintiffs and class members are intended third party beneficiaries of the contract entered into between Higher One and the University of Montana.

102. Plaintiffs satisfied all conditions precedent, or such conditions are excused or have been waived through Defendants' conduct.

103. Plaintiffs and class members have been harmed by Defendant's breach.

## **COUNT ELEVEN – DECLARATORY RELIEF**

### **(Against Higher One and Customers Bancorp)**

104. Plaintiffs hereby incorporate every other allegation in this complaint as though fully set forth herein.

105. Disputes currently exist amongst Plaintiffs and Defendants concerning the joint and several liability of Defendant Higher One and Defendant University and Higher One's obligation to maintain accurate records regarding funds withheld from student refunds as fees charged to UM students.

106. Higher One was acting as UM's agent for the purposes of providing student loan refunds to UM students. Pursuant to Montana law, the principle is responsible for the acts of its agent. However, in the contract between Higher One and the University, Higher One promised that its program complied with all applicable Government Rules and statutory and regulatory provisions. In addition, Higher One agreed that it would be "jointly and severally liable with [UM] for any violations by Higher One of any statutory or regulatory provisions."

107. The Higher One program did not comply with all applicable Government Rules and statutory and regulatory provisions For example, in December 2015, the Federal Deposit Insurance Corporation ("FDIC")

concluded Higher One violated various statutory and regulatory provisions and engaged in deceptive acts and practices. FDIC ordered restitution of fees collected from students of universities that partnered with Higher One. However, upon information and belief, UM students were not reimbursed all fees collected by Higher One pursuant to the FDIC Order.

108. In addition, Higher One agreed to acquire insurance naming the Defendant University as an Insured. After this case was filed, it was revealed that Higher One failed to acquire the requisite insurance. As such, Higher One is jointly liable to Plaintiffs and class members with UM for its failure to secure adequate indemnity protections for UM.

109. Higher One is also jointly liable with UM due to the concerted action rule. A “concerted action” is an “action that has been planned, arranged, adjusted, agreed on and settled between parties acting together pursuant to some design or scheme.” Black’s Law Dictionary 243 (Bryan A Garner ed., 8<sup>th</sup> ed., West 2004). Parties act in concert when they “act in accordance with an agreement to cooperate in a particular line of conduct or to accomplish a particular result.” *Restatement (Second) of Torts* § 876, pp. 316 (cmt a); see also *Sloan v. Fauque*, 239 Mont. 383, 784 P.2d 895 (1989); *Martin v. Dorn Equip. Co., Inc.*, 250 Mont. 422, 427, 821 P.2d 1025,

1028 (1991). In this case, UM and Higher One acted in concert. Therefore, pursuant to Montana law, Higher One is jointly liable for UM's conduct.

110. Plaintiffs and class members seek recovery from UM for unreimbursed fees under various legal theories as set forth above. An actual controversy exists regarding Higher One's joint liability to Plaintiffs and the class members.

111. Plaintiffs and class members also seek information regarding fees taken by Higher One. Higher One was obligated by its contracts to keep and retain information regarding disbursements and fees. Higher One provided certain information related to its fees on March 30, 2020. However, the information provided is unspecific and fails to comply with its contractual obligations. For example, numerous fees are simply designated under the category "Other Fees." Other entries showing fees charged to UM students are not evenly divisible in the amount of the disclosed fee. As such, it is clear that Higher One has failed to comply with its contractual obligation.

112. Plaintiffs request a declaratory ruling pursuant to Mont. Code Ann. § 27-8-101 et seq. that Defendant Higher One is jointly liable with UM for the damages sought by Plaintiffs and class members herein in addition to being directly liable to the Plaintiffs and class members.



113. Plaintiffs request a declaratory ruling pursuant to Mont. Code Ann. § 27-8-101 et seq. that Defendant Higher must provide more detailed information related to the fees charged to UM students than the information provided on March 30, 2020 or, in the event Higher One has no more detailed information, that Higher One is in breach of its obligation to keep a detailed accounting of fees.

### **COUNT TWELVE – FOR AN ACCOUNTING**

#### **(Against Higher One and Customers Bancorp)**

114. Plaintiffs hereby incorporate every other allegation in this complaint as though fully set forth herein.

115. An action for an accounting is appropriate to pursue disgorgement of unjust gains and/or discovery of information necessary to evaluate one's rights. See, e.g., Eichengrun, J., *Remedying the Remedy of Accounting*, 60 Ind. L.J. 463 (Summer 1985); *Parke v. First Reliance Standard Life Ins. Co.*, 368 F.3d 999, 1008-09 (8th Cir. 2004); *Wheeler v. Benson-Taylor Inc.*, 394 P.2d 523, 526-27 (Ok. 1964); *Winslow v. Winslow*, 38 N.W.2d 430, 431-32 (Wis. 1949), 431–32.

116. Defendants had a special relationship as to Plaintiffs and the Class Members, including a fiduciary relationship as described herein.

117. Defendants have engaged in lucrative business transactions while ignoring and contravening their contractual and fiduciary obligations to Plaintiffs and the Class Members.

118. Defendants exercise exclusive control over much of the information and documents necessary for Plaintiffs and Class Members to ascertain and exercise the full extent of their rights and claims against Defendants.

119. Plaintiffs and class members seek information regarding fees taken by Higher One. Higher One was obligated by its contracts to keep and retain information regarding disbursements and fees. Higher One provided certain information related to its fees on March 30, 2020. However, the information provided is unspecific and fails to comply with its contractual obligations. For example, numerous fees are simply designated under the category "Other Fees." Other entries showing fees charged to UM students are not evenly divisible in the amount of the disclosed fee.

120. An accounting will demonstrate the amounts of fees and the types of fees taken from UM students and which the Class Members are entitled to recoup.

**COUNT THIRTEEN - BREACH OF IMPLIED COVENANT  
OF GOOD FAITH AND FAIR DEALING**

**(Against Higher One and Customers Bancorp)**

121. Plaintiffs hereby incorporate every other allegation in this complaint as though fully set forth herein.

122. Plaintiffs and the Class Members entered into contractual agreements in connection with opening OneAccounts.

123. Defendants breached obligations owed to Plaintiffs and the Class Members under the agreements and has acted in bad faith and in contravention of the implied covenant of good faith and fair dealing. In particular, information provided by Customers Bancorp to Class Counsel on Mach 30, 2020 demonstrates that Higher One charged undisclosed fees and fees in amounts that cannot be reconciled with Higher One's fee schedules.

124. Higher One charged for fees that violated its obligations under the law, including the law of this state and various governmental rules and standards and prevented the Class Members from understanding fees charged.

125. As alleged above, Higher One induced Class Members to sign up for OneAccounts using improper means and thereafter failed to engage in good faith with the Class Members.

126. As a result of Higher One's breaches of the implied covenant, Plaintiffs and Class Members have suffered damages as alleged herein.

### **COUNT FOURTEEN - PUNITIVE DAMAGES**

#### **(Against Higher One and Customers Bancorp)**

127. Plaintiffs hereby incorporate every other allegation in this complaint as though fully set forth herein.

128. Defendants acted with knowledge of facts which created a high degree of risk or harm to the interests of the Plaintiffs and class members and deliberately proceeded to act in conscious disregard of or indifference to that risk.

129. Defendants' conduct was so malicious, oppressive, fraudulent, willful, and egregious as to justify an award of punitive or exemplary damages to punish Defendants and to serve as an example to other similarly situated Defendants that conduct of this kind is unacceptable and will not be tolerated.

130. Defendants should be required to pay punitive damages in an amount sufficient to deter such conduct by these Defendants and others similarly situated.

### **REQUESTS FOR RELIEF**

Accordingly, Plaintiffs prays for judgment, for themselves and for all those similarly situated, as follows:

1. Compensatory damages in an amount to be proven at trial, including but not limited to consequential damages.
2. Rescission of students' Higher One account agreements and restitution of fees charged.
3. That the Court render judgment that Defendants have been unjustly enriched by their wrongful conduct and must disgorge such unjust enrichment.
4. Declaratory relief as set forth above.
5. Prejudgment interest.
6. Attorney fees as permitted by law.
7. Costs and expenses, including pursuant to Mont. Code Ann. § 27-8-311 or other applicable provision of law.
8. Punitive damages.

9. Such other and further relief as permitted by law or deemed just and equitable by this Court.

**JURY DEMAND**

Plaintiffs hereby demand trial by jury on all counts so triable.

DATED this 5<sup>th</sup> day of August 2020.

SUBMITTED BY:

/s/ Justin P. Stalpes  
BECK, AMSDEN & STALPES, PLLC  
*Attorneys for Plaintiffs*