

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
CLARKSBURG DIVISION**

PATRICIA EDGE, in her own right and
as representative of a class of persons
similarly situated

Plaintiff,

v.

Civil Action No. 1:21-cv-122 (Kleeh)

ELECTRONICALLY FILED 09/02/2021 U.S. DISTRICT COURT Northern District of WV

ROUNDPOINT MORTGAGE
SERVICING CORPORATION,

Defendant.

NOTICE OF REMOVAL

Defendant, RoundPoint Mortgage Servicing Corporation (“RoundPoint”), hereby removes the above-captioned action to the United States District Court for the Northern District of West Virginia, Clarksburg Division. Removal is based on 28 U.S.C. § 1332(a) (diversity jurisdiction) and is authorized by 28 U.S.C. §§ 1441 (authorization of removal) and 1446 (procedure for removal). As grounds for removal, RoundPoint states as follows:

I. SUMMARY OF ALLEGATIONS IN THE COMPLAINT

1. On or about July 22, 2021, Plaintiff, Patricia Edge (“Plaintiff”), filed a Complaint in the Circuit Court of Harrison County, West Virginia naming RoundPoint as the sole defendant (the “Complaint”). Plaintiff served RoundPoint with the Complaint on August 3, 2021, through the West Virginia Secretary of State. A true and correct copy of the state court Summons and Complaint served on RoundPoint is attached as **Exhibit A**.

2. In the Complaint, Plaintiff alleges that on “[i]n or around August 2014, Defendant was assigned the servicing rights to Plaintiff’s mortgage.” *See* Complaint (Ex. A.) at ¶ 4.

3. Plaintiff also claims that the “[a]s reflected by Plaintiff’s payment history documents, Roundpoint [sic] has assessed and collected, and/or threatened to assess and collect property inspection fees, late charges, ‘ORCC’ fees, and miscellaneous fees from Plaintiff” (the “Alleged Improper Fee Issue”). *See id.* at ¶ 5.

4. Although Plaintiff references “payment history documents,” she does not specify what documents are at issue, and she does not specify which fees she is alleging were improperly charged.

5. Upon information and belief, Plaintiff is referring to payment history documents that RoundPoint sent her on January 28, 2020 (the “RoundPoint Response”) in response to her letter dated November 4, 2019, wherein Plaintiff requested her complete loan servicing file, all monthly statements, and all correspondence sent to her while RoundPoint serviced the account.

6. Based upon a review of the payment history documents attached to the RoundPoint Response, there are forty-nine (49) “Fee Transactions and Amounts” referenced therein. As a result, it appears that Plaintiff is contesting these 49 fees based upon the allegations contained in the Complaint.

7. Plaintiff asserts that “Roundpoint’s [sic] threats to add, and assessment of, additional fees and costs are prohibited by West Virginia Law. West Virginia Code § 46A-2-127(g) prohibits ‘[a]ny representation that an existing obligation of the consumer may be increased by the addition of attorney’s fees, investigation fees, service fees or any other fees or charges when in fact such fees or charges may not legally be added to the existing obligation[.]’” *See Ex. A* at ¶ 7.

8. Plaintiff further alleges that “West Virginia Code § 46A-2-128(c) prohibits a debt collector from ‘collect[ing] or attempt[ing] to collect from the consumer all or any part of the debt collector’s fee or charge for services rendered.’” *See id.* at ¶ 8.

9. Plaintiff further alleges that “West Virginia Code § 46A-2-128(d) prohibits ‘[t]he collection of or the attempt to collect any interest or other charge, fee or expense incidental to the principal obligation unless such interest or incidental fee, charge or expense is expressly authorized by the agreement creating the obligation and by statute.’” *See id.* at ¶ 9.

10. Based upon the Alleged Improper Fee Issue, Plaintiff asserts class action claims on behalf of a putative class in Count I, Illegal Debt Collection – Illegal Threat to Add Fees pursuant to West Virginia Consumer Credit and Protection Act (“WVCCPA”), W. Va. Code §§ 46A-2-127(c), -127(g), -128(c), and -128(d); and § 46A-2-124(f). *See id.* at ¶¶ 34–36.

11. Based upon the Alleged Improper Fee Issue, Plaintiff also asserts class action claims on behalf of a putative class in Count II, Illegal Debt Collection – Assessment of Late Fees in Excess of \$30.00 in violation of W. Va. Code §§ 46A-3-112(1)(a). *See id.* at ¶¶ 37–38.

12. Based upon the Alleged Improper Fee Issue, Plaintiff also asserts class action claims on behalf of a putative class in Count III, Illegal Debt Collection – False Representation of Amount of Claim, in violation of W. Va. Code § 46A-2-127(d).

13. Plaintiff also alleges that “[i]n addition to assessing these illegal fees, according to its own call records, Roundpoint [sic] has called Plaintiff more than thirty times per week or engaged her in telephone conversations more than ten times per week, or at unusual times or at times known to be inconvenient, with intent to annoy, abuse, oppress or threaten her” (the “Individual Collection Calls Issue”). *See id.* at ¶ 11.

14. Although Plaintiff references RoundPoint's "own call records," she does not specify what call record documentation is at issue, nor does she specify which calls she claims were improperly made. Upon information and belief, Plaintiff is referring to the Customer Contact log which was provided in the RoundPoint Response. Based upon a review of the Customer Contact log attached to the RoundPoint Response, there are in excess of seventy-five (75) calls placed to Plaintiff which she appears to be contesting.

15. Moreover, as pled, the Complaint can be interpreted to assert that since RoundPoint acquired the servicing rights for Plaintiff's mortgage loan in August 2014, RoundPoint has called Plaintiff over 30 times per week, and engaged her in telephone conversations more than ten times a week, with each call allegedly violating W. Va. Code § 46A-2-125. Exhibit A at ¶¶ 4, 11, and 44(b) and (c). Even when considering only the telephone calls that were allegedly made to Plaintiff within the four-year statute of limitations for such claims, Plaintiff is alleging some 6,240 individual statutory violations (30 calls per week x 52 weeks/year x 4 years).

16. The Complaint's Demand for Relief demands the following from RoundPoint for Plaintiff and the proposed class:

A. Actual and compensatory damages for annoyance, aggravation, distress, bother and anxiety, for the violations of the WVCCPA as authorized by W.Va. Code §46A-5-101(1) for all such violations that occurred up to the date and time of the filing of this complaint;

B. Statutory damages in the maximum amount authorized by W.Va. Code §46A-5-101(1) as adjusted for inflation pursuant to W.Va. Code §46A-5-106 for all such violations that occurred up to the date and time of the filing of this complaint;

C. Plaintiff's cost of litigation, including attorney fees, court costs and fees, pursuant to W.Va. Code §46A-5-104;

D. Such other relief as the Court shall deem meet and proper under the attendant circumstances.

II. THE STATUTORY REQUIREMENTS FOR REMOVAL UNDER DIVERSITY JURISDICTION ARE MET.

17. This Court has diversity jurisdiction under 28 U.S.C. § 1332(a) over this matter because the suit is between citizens of different states and the amount in controversy is more than \$75,000.

A. Complete Diversity of Citizenship

18. Plaintiff is a resident of West Virginia. *See* Complaint at ¶ 2.

19. RoundPoint Mortgage Servicing Corporation is a Delaware corporation and maintains its principal place of business in Fort Mill, South Carolina. *Id.* at ¶ 3. Therefore, for purposes of diversity jurisdiction, RoundPoint is a citizen of Delaware and South Carolina. *See* 28 U.S.C. § 1332(c).

20. RoundPoint is not a citizen or resident of West Virginia.

21. Consequently, there is complete diversity of citizenship between the parties.

B. Amount in Controversy

22. This case meets the jurisdictional requirement of more than \$75,000 in controversy because Plaintiff, seeks: (i) actual and compensatory damages for the violations of the WVCCPA as authorized by W. Va. Code § 46A-5-101(1); (ii) statutory damages in the maximum amount authorized by W. Va. Code § 46A-5-101 for all violations that occurred up to the date and time of the filing of the Complaint; and (iii) attorney fees, litigation expenses, and costs for the prosecution of this action (all of which are potentially recoverable under the WVCCPA). *See* Ex. A, Demand for Relief.

23. Here, Plaintiff artfully attempted to avoid explicitly pleading the specific amounts of non-monetary damages, monetary damages (i.e. actual/emotional/punitive damages, statutory damages), and/or statutorily recoverable attorney fees and costs. However, as discussed herein, a closer examination reveals that in aggregate, based on the facts pled in the Complaint, the amount in controversy based upon Plaintiff's alleged violations of the WVCCPA and her claimed statutory damages exceed the \$75,000 jurisdictional requirement. Therefore, subject matter jurisdiction exists in this Court.

1. Legal Standard for Determining Amount in Controversy

24. Courts within the Fourth Circuit apply the "either party" test for calculating whether the jurisdictional amount is met for purposes of diversity jurisdiction. *Dixon v. Edwards*, 290 F.3d 699, 710 (4th Cir. 2002) ("In this circuit, it is settled that the test for determining the amount in controversy in a diversity proceeding is 'the pecuniary result to either party which [a] judgment would produce.'") quoting *Gov't Employees Ins. Co. v. Lally*, 327 F.2d 568, 569 (4th Cir. 1964). To establish the amount in controversy in a notice of removal, "a defendant's notice of removal **need include only a plausible allegation** that the amount in

controversy exceeds the jurisdictional threshold.” *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 554 (2014) (emphasis added).

25. A “short and plain statement” of the alleged amount in controversy, such as those statements required of pleadings under Fed. R. Civ. P. 8(a), is sufficient. *Id.* at 553; *see also, Ellenburg v. Spartan Motors Chassis, Inc.*, 519 F.3d 192, 200 (4th Cir. 2008) (holding a defendant is not required “to meet a higher pleading standard than the one imposed on a plaintiff in drafting an initial complaint”).

26. In addition, attorney fees and costs may be included in an amount in controversy calculation where a state statute (such as the WVCCPA) mandates or allows payment of attorney fees. *See Maxwell v. Wells Fargo Bank, N.A.*, Civ. No. 2:09-0500, 2009 WL 3293871 at *4 (S.D. W. Va. October 9, 2009) citing *Mo. State Life Ins. Co. v. Jones*, 290 U.S. 199, 202 (1933); *see also Francis v. Allstate Ins. Co.*, 869 F. Supp. 2d 663 (D. Md. 2012) *aff’d*, 709 F.3d 362, 368 (4th Cir. 2013).

27. Moreover, no evidentiary submission is required to support a notice of removal. A defendant's amount in controversy allegation(s) “should be accepted” for purposes of conferring jurisdiction on the federal court unless it is “contested by the plaintiff or questioned by the court.” *Dart*, 135 S. Ct. at 553; *see also, id.* at 554 (“Defendants do not need to prove to a legal certainty that the amount in controversy requirement has been met. Rather, defendants may simply allege or assert that the jurisdictional threshold has been met.”).

28. When a complaint seeks a non-specific amount of damages, the Court applies a preponderance of the evidence standard in determining whether the amount in controversy requirement has been met. *See Maxwell* 2009 WL 3293871 at *2 (citing *Sayre v. Potts*, 32 F. Supp. 2d 281, 885 (S.D. W. Va. 1999)).

29. Importantly, in *Maxwell*—a similar case with non-specific allegations of consumer law violations and damages for emotional distress where the “total amount sought by a plaintiff [was] . . . not specified in the complaint”—Judge Copenhaver held as follows:

[T]he jurisdictional minimum is satisfied in as much as a jury could, if plaintiff fully prevails, properly award (1) \$52,800 in WVCCPA civil penalties; (2) \$9,000 in actual damages . . . ; (3) \$8,000 in compensatory damages for emotional distress, annoyance, and humiliation; and (4) [a conservative amount of at least] \$10,000¹ in attorneys’ fees, aggregating \$79,800.

See Maxwell, 2009 WL 3293871 at *1 & *5 (denying motion to remand).

30. In addition, where “emotional damages” are recoverable under state law, those the damages may be included for purposes of determining the amount in controversy necessary for diversity jurisdiction. *See, e.g., Bragg v. Harco Distributions, Inc.*, Civ. No. WDQ-13-1950, 2014 WL 509524 at *3 (D. Md. Feb. 6, 2014) (citing *Exxon Mobil Corp. v. Albright*, 433 Md. 303, 350 (2013)).

31. Under West Virginia law, emotional damages are recoverable for tortious conduct. *See, e.g., Marlin v. Bill Rich Const., Inc.*, 482 S.E.2d 620, 637 (W. Va. 1996) (holding that an individual may recover emotional damages stemming from negligent conduct); *Simms v. U.S.*, Civ. No. 3:11-0932, 2014 WL 7212608 at *3 (S.D. W. Va. Dec. 17, 2014).

32. Thus, emotional damages—such as those included in Plaintiff’s Complaint—can be included in the amount in controversy calculation for purposes of diversity jurisdiction.

2. The Amount in Controversy is Satisfied Here.

33. In this case, Plaintiff seeks statutory damages, attorney’s fees and costs, actual damages, and damages for emotional distress. *See Ex. A generally.*

34. Although RoundPoint contends that Plaintiff’s claims are meritless, if Plaintiff were to prevail in her claims, her monetary damages would clearly exceed \$75,000.

¹ Specifically, the Court characterized this fee estimate as a “distinctively conservative estimate . . .” *Id.* at *4.

35. Based on the allegations raised in Plaintiff's Complaint, Plaintiff's attorney's fees and costs (as recoverable under the WVCCPA) could reach tens of thousands of dollars through trial, or at the very least summary judgment in this putative class action.

36. Plaintiff's Complaint demands the maximum allowable statutory damages of \$1,000 for each such alleged violation pursuant to W. Va. Code § 46A-5-101(1), with said statutory damages adjusted for inflation pursuant to W. Va. Code § 46A-5-106. *See* Complaint at Demand for Relief at A. According to the U.S. Bureau of Labor Statistics' inflation calculator (https://www.bls.gov/data/inflation_calculator.htm), \$1,000 in 2015 (when the operative statute was last amended to provide for a maximum statutory damages award of \$1,000) is equivalent to \$1,168.14 in July 2021.

37. Pursuant to the face of the allegations contained in Paragraph 11 of the Complaint, it appears that Plaintiff is alleging some 6,240 individual statutory violations (30 calls per week x 52 weeks/year x 4 years).²

38. Further, the Customer Contact log that appears to be serving as the basis for Plaintiff's claims indicates that Plaintiff is contesting more than seventy-five (75) calls that were placed to her.

39. Moreover, as discussed above, the payment history documents attached to the RoundPoint Response demonstrate that Plaintiff appears to be contesting forty-nine (49) "Fee Transactions and Amounts."

40. Assuming *arguendo* for purposes of this Notice of Removal only, that Plaintiff's contentions in the Complaint are accurate, each individual improper fee charge and phone call is subject to up to a maximum of \$1,168.14 in civil penalties per violation, in addition to any actual

² Once again, RoundPoint is not conceding that these violations exist and is only providing calculations based upon the face of the Plaintiff's Complaint as pled.

damages sustained by Plaintiff. *See Vanderbilt Mortg. & Fin., Inc. v. Cole*, 230 W. Va. 505, 510–14 (2013). Thus, the cumulative statutory penalties and damages asserted by Plaintiff clearly exceed the \$75,000 amount in controversy requirement.

41. In addition to the statutory penalties, Plaintiff alleges unspecified amounts of actual damages and damages for emotional distress.

42. Further, it is very likely that the instant putative class action litigation would require extensive motion practice (including dispositive motions and class certification motions, and responses thereto) and discovery, which could result in significant costs and time expended by Plaintiff and her attorneys. Indeed, based upon the allegations in the Complaint, “experience and common sense” dictate that counsel will likely incur significant attorney’s fees and costs. *See, e.g., Francis*, 869 F. Supp. 2d at 670.³

43. Therefore, in light of the pleading requirements for removal under controlling law, RoundPoint respectfully submits that it has set forth sufficient information and facts to support a finding that the allegations of Plaintiff’s Complaint exceed the \$75,000 threshold requirement for diversity jurisdiction.

44. Accordingly, Plaintiff’s Complaint may be removed to this Court.

C. Other Factors Supporting Removal

31. Removal to Proper Court. This Court is part of the “district and division” embracing the place where the Complaint was filed—Harrison County, West Virginia—and so this Court is the proper venue for removal. 28 U.S.C. § 1446(a).

32. Removal is Timely. RoundPoint was served with the Complaint via the West Virginia Secretary of State on August 3, 2021, and this Notice of Removal has been filed within 30 days of service. *See Ex. A.*

³ Notably, there are no allegations in the Complaint that Plaintiff’s damages are \$75,000 or less.

33. Pleadings and Process. A copy of the Complaint as served, with the summons, is attached as Exhibit A.

34. Docket Sheet: As required by L.R. Civ. P 3.4(b), a copy of the state court's "docket sheet" is attached as **Exhibit B**.

35. Notice of Filing of Notice of Removal. A copy of the Notice of Filing of Notice of Removal, which was timely filed with the clerk of the state court in which the action is pending (and has been served on Plaintiff's counsel pursuant to 28 U.S.C. § 1446(d)), is attached hereto as **Exhibit C**.

36. Signature. This Notice of Removal is signed pursuant to Fed. R. Civ. P. 11. *See* 28 U.S.C. § 1446(a).

37. Based on the foregoing, this Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a), and the claims are properly removed to this Court under 28 U.S.C. §§ 1332, 1441 and 1446.

38. In the event that Plaintiff seeks to remand this case, or that this Court considers remand *sua sponte*, RoundPoint respectfully requests the opportunity to submit such additional argument or evidence in support of removal as may be necessary.

WHEREFORE, this action should proceed in the United States District Court for the Northern District of West Virginia, Clarksburg Division.

DATED: September 2, 2021

Respectfully submitted,

/s/ Carrie Goodwin Fenwick

Carrie Goodwin Fenwick (W. Va. Bar No. 7164)

Lucas R. White (W. Va. Bar No. 12501)

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Counsel for Defendant

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
CLARKSBURG DIVISION**

PATRICIA EDGE, in her own right and
as representative of a class of persons
similarly situated

Plaintiff,

v.

Civil Action No. _____

ROUNDPOINT MORTGAGE
SERVICING CORPORATION,

Defendant.

CERTIFICATE OF SERVICE

I, Carrie Goodwin Fenwick, certify that on this 2d day of September 2021, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system to all subscribed users and by U.S. Mail to the following:

Jason E. Causey
BORDAS & BORDAS, PLLC
1358 National Road
Wheeling, WV 26003
304-242-8410
Counsel for Plaintiff

/s/ Carrie Goodwin Fenwick
Carrie Goodwin Fenwick (W. Va. Bar No. 7164)

Office of the Secretary of State
Building 1 Suite 157-K
1900 Kanawha Blvd E.
Charleston, WV 25305



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Mac Warner
Secretary of State
State of West Virginia
Phone: 304-558-6000
886-767-8683
Visit us online:
www.wvsos.com

ROUNDPOINT MORTGAGE SERVICING CORPORATION
Corporation Service Company
209 West Washington Street
Charleston, WV 25302

Control Number: 277808

Defendant: ROUNDPOINT MORTGAGE
SERVICING CORPORATION
209 West Washington Street
Charleston, WV 25302 US

Agent: Corporation Service Company

County: Harrison

Civil Action: 21-C-139

Certified Number: 92148901125134100003151719

Service Date: 8/3/2021

I am enclosing:

1 summons and complaint

which was served on the Secretary at the State Capitol as your statutory attorney-in-fact. According to law, I have accepted service of process in the name and on behalf of your corporation.

*Please note that this office has no connection whatsoever with the enclosed documents other than to accept service of process in the name and on behalf of your corporation as your attorney-in-fact. Please address any questions about this document directly to the court or the plaintiff's attorney, shown in the enclosed paper, **not to the Secretary of State's office.***

Sincerely,

A handwritten signature in cursive script that reads "Mac Warner".

Mac Warner
Secretary of State

PATRICIA EDGE

Plaintiff

v.

21-C-139

CHRISTOPHER JOHN MCCARTHY

ROUNDPOINT MORTGAGE SERVICING CORPORATION

Defendant

To the Above-Named Defendant(s):
IN THE NAME OF THE STATE OF WEST VIRGINIA,

you are hereby summoned and required to serve upon
JASON E. CAUSEY
Plaintiff's attorney whose address is
1358 NATIONAL ROAD
WHEELING, WV 26003

ACCEPTED FOR
SERVICE OF PROCESS
2021 AUG -3 P 4: 07
SECRETARY OF STATE
STATE OF WEST VIRGINIA

an answer, including any related counter-claim you may have, to the
complaint filed against you in the above-styled civil action, a true
copy of which is herewith delivered to you. You are required to serve
your answer within 30 days after service of this summons upon you,
exclusive of the day of service.

If you fail to do so, judgement by default will be taken
against you for the relief demanded in the complaint and you will be
thereafter barred from asserting in another action any claim you may
have which must be asserted by counter claim in the above-styled
civil action.

DATED: 07/29/21

ALBERT F. MARANO, CLERK
Harrison County Circuit Court

By: K. Coe, Deputy

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

AMENDED CIVIL CASE INFORMATION STATEMENT
(Civil Cases Other than Domestic Relations)

I. CASE STYLE:

Case No. 21-C-139-1

Plaintiff(s)

Judge: _____

PATRICIA EDGE, in her own right and
as representative of a class of persons
similarly situated

Plaintiff's Phone: _____

vs.

Days to Answer

Type of Service

Defendant(s)

30

WV Secretary of State.

ROUNDPOINT MORTGAGE SERVICING CORP.

Name

c/o Corporation Service Company

Defendant's Phone: _____

209 West Washington Street

Street Address

Charleston, WV 25302

City, State, Zip Code

FILED IN 15TH CIRCUIT COURT
2021 JUL 22 A 9:28

II. TYPE OF CASE:

- General Civil
- Mass Litigation [As defined in T.C.R. 26.04(a)]
 - Asbestos
 - FELA Asbestos
 - Other: _____
- Habeas Corpus/Other Extraordinary Writ
- Other: _____
- Adoption
- Administrative Agency Appeal
- Civil Appeal from Magistrate Court
- Miscellaneous Civil Petition
- Mental Hygiene
- Guardianship
- Medical Malpractice

III. JURY DEMAND: Yes No CASE WILL BE READY FOR TRIAL BY (Month/Year): 8 / 2022

IV. DO YOU OR ANY OF YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMMODATIONS?

Yes No

IF YES, PLEASE SPECIFY:

- Wheelchair accessible hearing room and other facilities
- Reader or other auxiliary aid for the visually impaired
- Interpreter or other auxiliary aid for the deaf and hard of hearing
- Spokesperson or other auxiliary aid for the speech impaired
- Foreign language interpreter-specify language: _____
- Other: _____

Attorney Name: Jason E. Causey

Representing:

Firm: Bordas & Bordas, PLLc

Plaintiff Defendant

Address: 1358 National Road, Wheeling, WV 26003

Cross-Defendant Cross-Complainant

Telephone: (304) 242-8410

3rd-Party Plaintiff 3rd-Party Defendant

Proceeding Without an Attorney

Original and 3 copies of complaint enclosed/attached.

Dated: 7/16/2021

Signature: 

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

PATRICIA EDGE, in her own right and
as representative of a class of persons
similarly situated,

Plaintiff,

v.

CIVIL ACTION NO. 21-C-139-1

ROUNDPOINT MORTGAGE SERVICING
CORPORATION,

Defendant.

CLASS COMPLAINT

Preliminary Statement

1. Defendant Roundpoint Mortgage Servicing Corporation ("Roundpoint") is a mortgage loan servicer that unfairly, unreasonably, and unlawfully services loans of West Virginia consumers by assessing numerous fees not permitted by West Virginia law, including property inspection fees, late charges, "ORCC" fees, and miscellaneous fees. The collection of or the threat to collect such fees are prohibited by West Virginia law. To enforce West Virginia law and stop these abusive business practices, Plaintiff brings this action on her own behalf and on behalf of a class of West Virginia borrowers with loans serviced by Roundpoint.

Parties

2. The Plaintiff, Patricia Edge, is a resident of West Virginia.
3. The Defendant, Roundpoint is a Delaware corporation that does business in West Virginia, and is the loan servicer responsible for collecting Plaintiff's payments and the charges assessed against her account.



1358 National Road
Wheeling, WV 26003
t 304-242-8410
f 304-242-3936

106 East Main Street
St. Clairsville, OH 43950
t 740-695-8141
f 740-695-6999

526 7th Street
Moundsville, WV 26041
t 304-845-5600
f 304-845-5604

One Gateway Center
420 Ft. Duquesne Blvd.
Suite 1800
Pittsburgh, PA 15222
t 412-502-5000
f 412-709-6343

Facts

4. In or about August 2014, Defendant was assigned the servicing rights to Plaintiff's mortgage.

5. As reflected by Plaintiff's payment history documents, Roundpoint has assessed and collected, and/or threatened to assess and collect, property inspection fees, late charges, "ORCC" fees, and miscellaneous fees from Plaintiff.

6. Upon information and belief, Roundpoint threatens to charge and charges the same illegal fees to persons with West Virginia addresses.

7. Roundpoint's threats to add, and assessment of, additional fees and costs are prohibited by West Virginia law. West Virginia Code § 46A-2-127(g) prohibits "[a]ny representation that an existing obligation of the consumer may be increased by the addition of attorney's fees, investigation fees, service fees or any other fees or charges when in fact such fees or charges may not legally be added to the existing obligation[.]"

8. West Virginia Code § 46A-2-128(c) prohibits a debt collector from "collect[ing] or attempt[ing] to collect from the consumer all or any part of the debt collector's fee or charge for services rendered."

9. West Virginia Code § 46A-2-128(d) prohibits "[t]he collection of or the attempt to collect any interest or other charge, fee or expense incidental to the principal obligation unless such interest or incidental fee, charge or expense is expressly authorized by the agreement creating the obligation and by statute."

10. The property inspection fees, late charges, "ORCC" fees, and miscellaneous fees are not permitted by either Plaintiff's mortgage agreement or by statute.



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f 412-709-6343

bordaslaw.com

11. In addition to assessing these illegal fees, according to its own call records, Roundpoint has called Plaintiff more than thirty times per week or engaged her in telephone conversations more than ten times per week, or at unusual times or at times known to be inconvenient, with intent to annoy, abuse, oppress or threaten her.

12. Defendant's conduct is of a kind which has the natural consequence of causing harassment, oppression, abuse, aggravation, annoyance, and inconvenience of which the Defendant knew or reasonably should have known would be the natural consequences of said conduct. Accordingly, where intent or willfulness is required to hold Defendant liable for its conduct, intent or willfulness may be implied by the nature of said conduct.

13. Roundpoint is liable for the acts of its employees, agents, representatives, co-conspirators and related entities under the theories of *respondeat superior*, agency, conspiracy, joint venture, joint enterprise, as parents-subidiaries or under corporate veil-piercing, including, but not limited to, alter ego, instrumentality, identity, unity of interest, disregarding the corporate fiction and other such corporate veil-piercing theories. Accordingly, Roundpoint is equally, co-extensively, and jointly and severally liable for each and every act of its employees, agents, representatives, co-conspirators and related entities, including each and every act of every third-party that Roundpoint hired or retained.

14. Roundpoint's conduct as set forth herein have caused the Plaintiff undue and unreasonable harassment, oppression, abuse, aggravation, annoyance, and inconvenience by having to bring suit due to the illegal conduct of the Defendant.

15. As a result of Defendant's conduct, Plaintiff was forced to retain counsel thereby incurring attorney fees and costs.



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16. Plaintiff has suffered as a result of the stress caused by the harassment, oppression abuse, aggravation, annoyance, and inconvenience caused by the Defendant.

Class Allegations

17. Plaintiff brings this action individually and on behalf of all others similarly situated.

18. The class of consumers represented by Plaintiff in this action is defined as:

All consumers with West Virginia addresses who, within the applicable statute of limitations preceding the filing of this action through the date of class certification, had or have loans serviced by Defendant and were assessed property inspection fees, late charges, "ORCC" fees, or miscellaneous fees

19. Defendant Roundpoint has corporate policies and procedures regarding the collection of debts allegedly owed by West Virginia consumers such as Plaintiff. Defendant carries out its policies and procedures through the use of standardized collection activities.

20. The class can be readily identified by collection activity logs, claim records and computer storage devices or databases, maintained by Defendant and/or its employees, representatives or agents.

21. The class is so numerous that joinder of all class members is impracticable. The precise number of class members and their addresses are unknown to Plaintiff; however, they are readily available from Defendant's records. Class members may be notified of the pendency of this action by mail, supplemented (if deemed necessary or appropriate by the Court) by published notice.

22. This action involves questions of law and fact common to the class which predominate over questions affecting individual class members.



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23. Plaintiff's claims are typical of the claims of the class because, among other things, Plaintiff, like the other members of the class, was subjected to threats to collect fees, costs, or collection measures.

24. Plaintiff has displayed an interest in vindicating the rights of the class members, will fairly and adequately protect and represent the interest of the class, and is represented by skillful and knowledgeable counsel. Plaintiff's interests do not conflict with those of the class and the relief sought by Plaintiff will inure to the benefit of the class generally.

25. The questions of law and fact that are common to the class members predominate over questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy between the class members and Defendant.

26. The actions of Defendant are generally applicable to the class as a whole and to Plaintiff. For example, the class members can prove the elements of their claims against Defendant for violations of the WVCCPA on a class-wide basis using the same evidence that Plaintiff and individual class members would use to prove those claims in individual civil actions.

27. Additionally, the damages or other financial detriment suffered by individual class members is relatively small compared to the burden and expense that would be required to individually litigate each of the class member's claims against Defendant and it would be impracticable for the class members to individually seek redress for the Defendant's wrongful conduct.

28. Even if the members of the class could afford individual litigation, given the expected size of the class, separate litigation of each class member's claims against Defendant would create the potential for inconsistent and/or contradictory judgments, and cause delay and



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increase the expenses for the parties and the court in adjudicating the claims against Defendant. Conversely, a class action will prevent far fewer management difficulties, provide the benefits of a single adjudication, conserve time, effort and expense, employ comprehensive and cohesive supervision by a single court, and provide a forum for small claimants.

29. The prosecution of separate actions by the individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual class members which would establish incompatible standards of conduct for Defendant. Moreover, the likelihood that individual members of the class will prosecute separate actions is remote due to the time and expense necessary to conduct such litigation.

30. Defendant has acted on grounds generally applicable to the class, thereby making appropriate final injunctive relief with respect to the members of the class as a whole.

31. Any difficulties in management of this case as a class action are outweighed by the benefits that a class action has to offer with respect to disposing of common issues of law and fact on issues affecting a large number of litigants.

32. The damages in this case are set by statute and generally preclude the necessity of a case-by-case assessment of damages by the court. To the extent case-by-case assessment is necessary, Defendant maintains computerized individual account information, and that information can easily be reviewed and assessed electronically. Plaintiff is unaware of any litigation concerning this controversy already commenced by others who meet the criteria for class membership as described above.

33. Plaintiff's claims are typical of those of the class as a whole, and Plaintiff is capable of and willing to represent the other members of the class.



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Claims

**Count I – Illegal Debt Collection — Illegal Threat to Add Fees
(Class Claim)**

34. Plaintiff incorporates the preceding paragraphs by reference.

35. By threatening to collect additional fees and costs not permitted by law or contract, Roundpoint violated the West Virginia Consumer Credit and Protection Act, W.Va. Code §§ 46A-2-127(c), - 127(g), -128(c), and -128(d).

36. By threatening to take any action prohibited by Chapter 46 or other law regulating the debt collector's conduct, Roundpoint violated the West Virginia Consumer Credit and Protection Act, W.Va. Code § 46A-2-124(f).

**Count II – Illegal Debt Collection – Assessment of Late Fees in Excess of \$30.00
(Class Claim)**

37. Plaintiff incorporates the preceding paragraphs by reference.

38. By collecting late fees from the Plaintiff and putative class members in excess of \$30.00, Defendant violated W.Va. Code § 46A-3-112(1)(a), which provides that late fees shall not exceed \$30.00.

**Count III - Illegal Debt Collection — False Representation of Amount of Claim
(Class Claim)**

39. Plaintiff incorporates the preceding paragraphs by reference.

40. By making false representations regarding additional fees and costs, Roundpoint misrepresented the amount of a claim in violation of W.Va. Code § 46A-2-127(d).

**Count IV - Violations of the West Virginia Consumer Credit and Protection Act
(Individual Claim)**

41. Plaintiff incorporates the previous paragraphs as if fully set forth herein.



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42. Plaintiff is a person who falls under the protection of Article 2 of the *West Virginia Consumer Credit and Protection Act* (herein "WVCCPA") and is entitled to the remedies set forth in Article 5 of the WVCCPA.

43. The Defendant, Roundpoint, is a debt collector as defined by W.Va. Code §46A-2-122(d) engaging directly or indirectly in debt collection as defined by W.Va. Code §46A-2-122(c) within the State of West Virginia, including Harrison County, West Virginia.

44. The Defendant has engaged in repeated violations of Article 2 of the *West Virginia Consumer Credit and Protection Act*, including but not limited to:

- a. attempting to collect a debt by coercion in violation of W.Va. Code §46A-2-124;
- b. engaging in unreasonable or oppressive or abusive conduct towards the Plaintiff in connection with the attempt to collect a debt by placing telephone calls to the Plaintiff in violation of W.Va. Code §46A-2-125;
- c. causing Plaintiff's phone to ring or engaging persons, including the Plaintiff, in telephone conversations repeatedly or continuously or at unusual times or at times known to be inconvenient, with the intent to annoy, abuse or oppress the Plaintiff in violation of W.Va. Code §46A-2-125(d);
- d. utilizing fraudulent, deceptive or misleading representations or means in an attempt to collect a debt in violation of W.Va. Code §46A-2-127; and
- e. using unfair or unconscionable means to collect a debt from Plaintiff in violation of W.Va. Code §46A-2-128.

45. As a result of the Defendant's actions, Plaintiff has been annoyed, inconvenienced, harassed, bothered, upset, angered, harangued and otherwise was caused indignation and distress.

DEMAND FOR RELIEF

Plaintiff demands for herself and the proposed class from the Defendant:



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A. Actual and compensatory damages for annoyance, aggravation, distress, bother and anxiety, for the violations of the WVCCPA as authorized by W.Va. Code §46A-5-101(1) for all such violations that occurred up to the date and time of the filing of this complaint;

B. Statutory damages in the maximum amount authorized by W.Va. Code §46A-5-101(1) as adjusted for inflation pursuant to W.Va. Code §46A-5-106 for all such violations that occurred up to the date and time of the filing of this complaint;

C. Plaintiff's cost of litigation, including attorney fees, court costs and fees, pursuant to W.Va. Code §46A-5-104;

D. Such other relief as the Court shall deem meet and proper under the attendant circumstances.

PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

PATRICIA EDGE, Plaintiff

By:


Jason E. Causey #9482
Bordas & Bordas, PLLC
1358 National Road
Wheeling, WV 26003
(304) 242-8410
jcausey@bordaslaw.com
Counsel for Plaintiff



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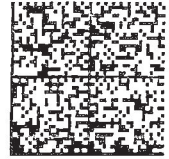
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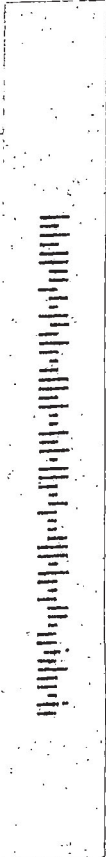
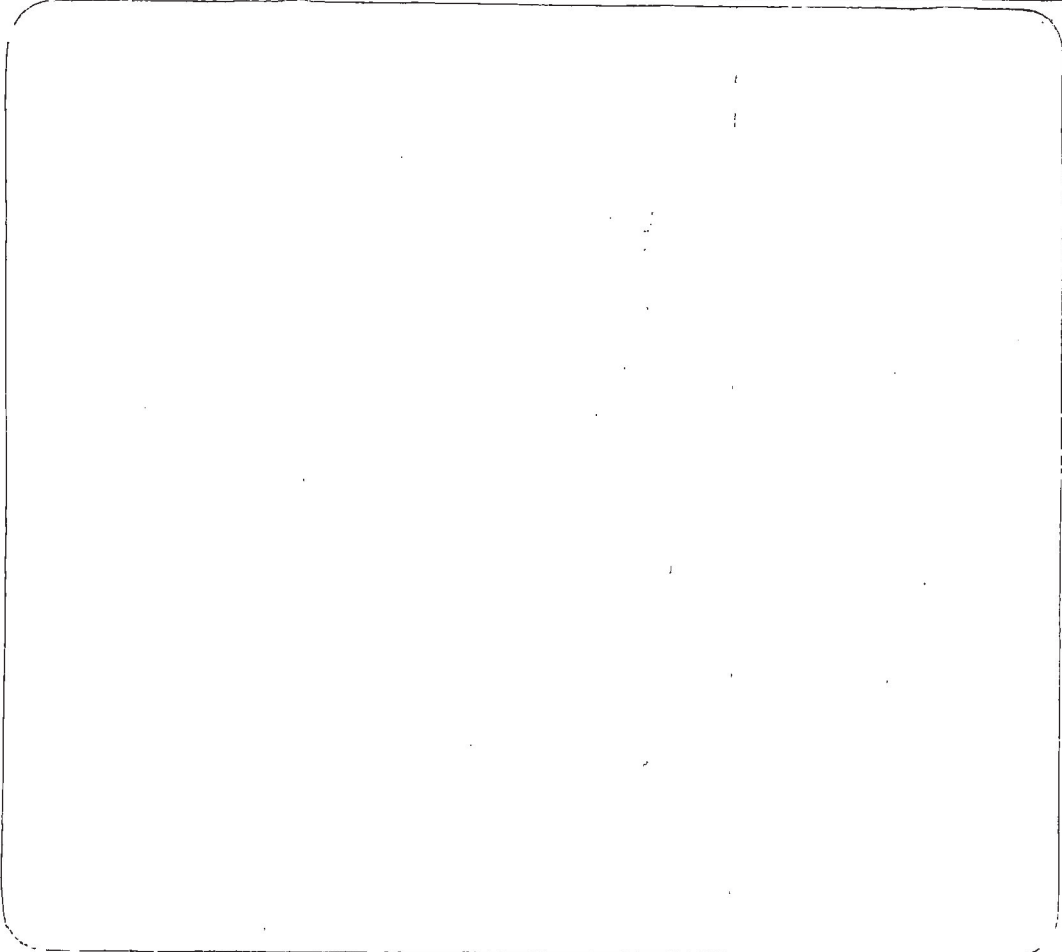
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CASE NO. 21-C-139

OPENED 6/15/2021

JUDGE... CHRISTOPHER JOHN MCCARTHY

PLAINTIFF. PATRICIA EDGE
VS DEFENDANT. ROUNDPOINT MORTGAGE SERVICING CORPORATION

PRO ATTY.. JASON E. CAUSEY
DEF ATTY..

PAGE#	DATE	MEMORANDUM.....	
00001	6/15/21	Receipt, Letter, CCIS, Class Complaint, No service at this	
00002	6/15/21	time per letter from attorney.	dm
00003	7/22/21	Receipt, letter, Amended CCIS, service on Roundpoint thru	
00004	7/22/21	SOS with 30 day return.	dm
00005	7/29/21	Summons issued for service thru WVSOS w/30 day return.	kmc
00006	8/06/21	Serv. Ret. 1 Summons & Complaint to SOS for Roundpoint	
00007	8/06/21	Mortgage on 8-3-21	jsd

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

PATRICIA EDGE, in her own right and
as representative of a class of persons
similarly situated

Plaintiff,

v.

Civil Action No. 21-C-139-1

ROUNDPOINT MORTGAGE
SERVICING CORPORATION

Defendant.


NOTICE OF FILING OF NOTICE OF REMOVAL

PLEASE NOTE that pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, on the 2d day of September, 2021, Defendant, RoundPoint Mortgage Servicing Corporation (“RoundPoint”) filed a Notice of Removal in the United States District Court for the Northern District of West Virginia. A copy of the Notice of Removal (without its exhibits) is attached as **Exhibit 1** to this Notice of Filing of Notice of Removal.

Pursuant to 28 U.S.C. § 1446(d), this Notice is provided to the Circuit Court for Harrison County, West Virginia, to effect removal, and the Court shall proceed no further with this matter unless and until the case is remanded.

DATED: September 2, 2021

Respectfully submitted,



Carrie Goodwin Fenwick (W. Va. Bar No. 7164)

Lucas R. White (W. Va. Bar No. 12501)

GOODWIN & GOODWIN, LLP

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Counsel for Defendant

IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA

PATRICIA EDGE, in her own right and
as representative of a class of persons
similarly situated

Plaintiff,

v.

Civil Action No. 21-C-139-1

ROUNDPOINT MORTGAGE
SERVICING CORPORATION

Defendant.

CERTIFICATE OF SERVICE

I, Carrie Goodwin Fenwick, certify that on the 2nd day of September, 2021, service of the forgoing “**Notice of Filing of Notice of Removal**” was made upon the following counsel and/or unrepresented parties of record by depositing a true and correct copy of this document in the U.S. Mail, postage prepaid to the following:

Jason E. Causey
BORDAS & BORDAS, PLLC
1358 National Road
Wheeling, WV 26003
(304) 242-8410
Counsel for Plaintiff



Carrie Goodwin Fenwick (W. Va. Bar No. 7164)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
Patricia Edge
(b) County of Residence of First Listed Plaintiff Harrison
(c) Attorneys (Firm Name, Address, and Telephone Number)
Jason Causey, 1358 National Road, Wheeling, WV 26003
(304) 242-8410

DEFENDANTS
RoundPoint Mortgage Servicing Corporation
County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)
Carrie Goodwin Fenwick, Lucas R. White, 300 Summers Street, Suite 1500, Charleston, WV 25301 (304) 346-7000

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State [X] 1 [] 1
Citizen of Another State [] 2 [X] 2
Citizen or Subject of a Foreign Country [] 3 [] 3
Incorporated or Principal Place of Business In This State [] 4 [] 4
Incorporated and Principal Place of Business In Another State [] 5 [X] 5
Foreign Nation [] 6 [] 6

IV. NATURE OF SUIT (Place an "X" in One Box Only) Click here for: Nature of Suit Code Descriptions.

Table with 5 columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes codes like 110 Insurance, 210 Land Condemnation, 310 Airplane, etc.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding [X] 2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. §§ 1332, 1441, & 1446
Brief description of cause:
Consumer credit claims

VII. REQUESTED IN COMPLAINT:
[X] CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint:
JURY DEMAND: [X] Yes [] No

VIII. RELATED CASE(S) IF ANY (See instructions):
JUDGE DOCKET NUMBER

DATE 09/02/2021 SIGNATURE OF ATTORNEY OF RECORD /s/ Carrie Goodwin Fenwick

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Claims Roundpoint Charged West Virginia Mortgage Borrowers Unlawful Fees](#)
