

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

CARL STITT, Individually and On Behalf of
All Others Similarly Situated,

Plaintiff,

v.

ON DECK CAPITAL, INC., NOAH
BRESLOW, HOWARD KATZENBERG,
JAMES ROBINSON III, DAVID
HARTWIG, SANDY MILLER, JANE J.
THOMPSON, RON VERNI, NEIL
WOLFSON, MORGAN STANLEY & CO.
LLC, BANK OF AMERICA MERRILL
LYNCH, J.P. MORGAN SECURITIES LLC,
DEUTSCHE BANK SECURITIES INC., and
JEFFERIES LLC,

Defendants.

) **Case No.**

) **CLASS ACTION**

) **COMPLAINT FOR VIOLATION OF
THE FEDERAL SECURITIES LAWS**

) **DEMAND FOR JURY TRIAL**

CLASS ACTION COMPLAINT

Plaintiff Carl Stitt (“Plaintiff”), individually and on behalf of all other persons similarly situated, by his undersigned attorneys, for his complaint against defendants, alleges the following based upon personal knowledge as to himself and his own acts, and information and belief as to all other matters, based upon, *inter alia*, the investigation conducted by and through his attorneys, which included, among other things, a review of the defendants’ public documents, conference calls and announcements made by defendants, United States Securities and Exchange Commission (“SEC”) filings, wire and press releases published by and regarding On Deck Capital, Inc., (“On Deck” or the “Company”), analysts’ reports and advisories about the Company, and information readily obtainable on the Internet. Plaintiff believes that substantial evidentiary support will exist

for the allegations set forth herein after a reasonable opportunity for discovery.

NATURE OF THE ACTION

1. This is a federal securities class action on behalf of a class consisting of all persons other than defendants who purchased or otherwise acquired On Deck securities pursuant and/or traceable to On Deck's false and misleading Registration Statement and Prospectus issued in connection with the Company's December 16, 2014 initial public offering ("IPO"), seeking to recover damages caused by defendants' violations of the federal securities laws and to pursue remedies under Sections 11 and 15 of the Securities act of 1933 ("1933 Act"), against the Company and certain of its top officials.

2. On Deck provides financing products to small businesses in the United States. It offers fixed term loans and revolving lines of credit. The Company processes and services its loans through its online platform. On Deck was incorporated in 2006 and is headquartered in New York, New York. Its shares trades on the NYSE under the ticker symbol "ONDK".

3. On December 15, 2014, On Deck filed its amended Registration Statement for the IPO, which became effective on December 17, 2014. Pursuant to the IPO, 11,500,000 shares of On Deck common stock were sold—including 1,500,000 shares purchased by the Underwriter Defendants (as defined infra at ¶ 30) pursuant to exercise of their over-allotment option—at the price to the public of \$20.00 per share. The gross proceeds of the IPO were \$230 million. On Deck's common stock began trading on the NYSE under the symbol "ONDK" on December 17, 2014.

4. Defendants made materially false and misleading statements regarding the Company's business, operational and compliance policies. Specifically, defendants made false and/or misleading statements and/or failed to disclose that: (1) the true rate of default for the

Company's loan portfolio was steadily increasing; (2) the true value of the Company's loan portfolio was in material decline; and (3) as a result of the foregoing, On Deck's public statements were materially false and misleading at all relevant times.

5. On February 11, 2015, less than two months after the IPO, *SeekingAlpha.com* published an article entitled "On-Deck Capital: Bad Loans, Bad Interest Rates, Bad Business Plan." The article described, in part, how the Company's Registration Statement significantly understated the default rate for the Company's loan portfolio.

6. On March 18, 2015, Compass Point Research & Trading, LLC ("Compass Point") published a research report (the "Compass Point Report") that detailed concerns with On Deck's business model, including inherent risks surrounding an untested credit model, growing competition, uncertainty with regard to interest rates, and anticipated regulatory threats, all of which create a risky environment for On Deck investors. On Deck's unsustainable business model, according to the Compass Point Report, could ultimately lead to slower growth and higher expenses. Accordingly, Compass Point assigned a "Sell" rating to On Deck stock.

7. On July 1, 2015, barely six months after the IPO, On Deck common stock dropped to a low of \$11.15 per share, a decline of over 40% from the IPO price and of over 60% from its almost \$29 per share high on December 18, 2014. The significant drop in share price came after news reports of rising default rates in On Deck's loan portfolios and declining value of its business model. The Company is now reportedly losing tens of millions of dollars through defaults on its loans, likely due to the company's reliance on stated income and data from third-party sources, which may contain inaccuracies.

8. As a result of Defendants' false and/or misleading statements, On Deck securities traded at inflated prices. However, after disclosure of Defendants' false and/or misleading

statements, On Deck's stock suffered a precipitous decline in the market value, thereby causing significant losses and damages to Plaintiff and other Class members.

JURISDICTION AND VENUE

9. The claims asserted herein arise under and pursuant to §§11(b) and 15 of the Securities Act, 15 U.S.C. §§77k and 77o.

10. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1337, and Section 22 of the Securities Act, 15 U.S.C. § 77v.

11. Venue is proper in this District pursuant to §22 of the Securities Act and 28 U.S.C. §1391(b), as defendant is headquartered in this District and a significant portion of the defendants' actions, and the subsequent damages, took place within this District. Following the IPO, On Deck securities trade on the NYSE.

12. In connection with the acts, conduct and other wrongs alleged in this Complaint, defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including but not limited to, the United States mail, interstate telephone communications and the facilities of the national securities exchange.

PARTIES

13. Plaintiff, as set forth in the attached Certification, acquired On Deck securities at artificially inflated prices and was damaged upon the revelation of the alleged corrective disclosures.

14. Defendant On Deck is a Delaware corporation with its principal executive offices located at 1400 Broadway New York, NY 10018. On Deck's common stock trades on the NYSE under the ticker symbol "ONDK."

15. Defendant Noah Breslow (“Breslow”) is, and was at all relevant times, the Company’s Chief Executive Officer (“CEO”) and a Director of the Company. Breslow signed and/or authorized the signing of the Company’s false and misleading Registration Statement filed with the SEC.

16. Defendant Howard Katzenberg (“Katzenberg”) is, and was at all relevant times, the Company’s Chief Financial Officer (“CFO”). Katzenberg signed and/or authorized the signing of the Company’s false and misleading Registration Statement filed with the SEC.

17. The defendants referenced above in ¶¶ 15 and 16 are sometimes referred to herein as the “Officer Defendants.”

18. Defendant James Robinson III (“Robinson”) is, and was at all relevant times, a Director of the Company. Robinson signed and/or authorized the signing of the Company’s false and misleading Registration Statement filed with the SEC.

19. Defendant David Hartwig (“Hartwig”) is, and was at all relevant times, a Director of the Company. Hartwig signed and/or authorized the signing of the Company’s false and misleading Registration Statement filed with the SEC.

20. Defendant Sandy Miller (“Miller”) is, and was at all relevant times, a Director of the Company. Miller signed and/or authorized the signing of the Company’s false and misleading Registration Statement filed with the SEC.

21. Defendant Jane J. Thompson (“Thompson”) is, and was at all relevant times, a Director of the Company. Thompson signed and/or authorized the signing of the Company’s false and misleading Registration Statement filed with the SEC.

22. Defendant Ron Verni (“Verni”) is, and was at all relevant times, a Director of the Company. Verni signed and/or authorized the signing of the Company’s false and misleading Registration Statement filed with the SEC.

23. Defendant Neil Wolfson (“Wolfson”) is, and was at all relevant times, a Director of the Company. Wolfson signed and/or authorized the signing of the Company’s false and misleading Registration Statement filed with the SEC.

24. The defendants named in ¶¶ 18 - 23 above are sometimes referred to herein as the “Director Defendants”.

25. Defendant Morgan Stanley & Co. LLC (“Morgan Stanley”) served as joint lead book-running manager and representative of the underwriters for the Company’s IPO, helping to draft and disseminate the offering documents.

26. Defendant Bank of America Merrill Lynch (“BOA”) served as joint lead book-running manager and representative of the underwriters for the Company’s IPO, helping to draft and disseminate the offering documents.

27. Defendant J.P. Morgan Securities LLC (“J.P. Morgan”) served as an underwriter and a book-running manager for the Company’s IPO, helping to draft and disseminate the offering documents.

28. Defendant Deutsche Bank Securities Inc. (“Deutsche Bank”) served as an underwriter and a book-running manager for the Company’s IPO, helping to draft and disseminate the offering documents.

29. Defendant Jefferies LLC (“Jefferies”) served as an underwriter and a book-running manager for the Company’s IPO, helping to draft and disseminate the offering documents.

30. The defendants named in ¶¶ 25- 29 above are sometimes referred to herein as the “Underwriter Defendants”.

31. Defendant On Deck and the Officer and Director Defendants who signed and/or authorized the signing of the Registration Statement are strictly liable for the false and misleading statements incorporated into the Registration Statement. The Underwriter Defendants drafted and disseminated the offering documents and were paid substantial fees in connection therewith. The Underwriter Defendants’ failure to conduct an adequate due diligence investigation was a substantial factor leading to the harm complained of herein.

SUBSTANTIVE ALLEGATIONS

Background

32. On Deck provides financing products to small businesses in the United States. It offers fixed term loans and revolving line of credit. The company processes and services its loans through its online platform. On Deck was incorporated in 2006, is headquartered in New York, New York, and its shares trades on the NYSE under the ticker symbol “ONDK”.

Defendants’ Materially False and Misleading Statements Made In Connection with the IPO

33. On or about December 15, 2014, On Deck filed with the SEC its amended Registration Statement on Form S-1/A, which became effective on December 16, 2014, and would be utilized in the IPO. The Registration Statement was negligently prepared and, as a result, contained untrue statements of material facts or omitted to state other facts necessary to make the statements not misleading, and was not prepared in accordance with the rules and regulations governing its preparation.

34. On December 17, 2014, On Deck filed its Prospectus for the IPO. The Registration Statement and Prospectus (collectively, the “Offering Documents”) did not disclose any detailed

information with respect to default rates. Rather, the Offering Documents simply stated the following:

Worsening economic conditions may result in decreased demand for our loans, cause our customers' default rates to increase and harm our operating results.

Uncertainty and negative trends in general economic conditions in the United States and abroad, including significant tightening of credit markets, historically have created a difficult environment for companies in the lending industry. Many factors, including factors that are beyond our control, may have a detrimental impact on our operating performance. These factors include general economic conditions, unemployment levels, energy costs and interest rates, as well as events such as natural disasters, acts of war, terrorism and catastrophes.

Our customers are small businesses. Accordingly, our customers have historically been, and may in the future remain, more likely to be affected or more severely affected than large enterprises by adverse economic conditions. These conditions may result in a decline in the demand for our loans by potential customers or higher default rates by our existing customers. If a customer defaults on a loan payable to us, the loan enters a collections process where our systems and collections teams initiate contact with the customer for payments owed. If a loan is subsequently charged off, we generally sell the loan to a third-party collection agency and receive only a small fraction of the remaining amount payable to us in exchange for this sale.

There can be no assurance that economic conditions will remain favorable for our business or that demand for our loans or default rates by our customers will remain at current levels. Reduced demand for our loans would negatively impact our growth and revenue, while increased default rates by our customers may inhibit our access to capital, hinder the growth of our OnDeck Marketplace and negatively impact our profitability. Furthermore, we have received a large number of applications from potential customers who do not satisfy the requirements for an OnDeck loan. If an insufficient number of qualified small businesses apply for our loans, our growth and revenue could decline.

...

An increase in customer default rates may reduce our overall profitability and could also affect our ability to attract institutional funding. Further, historical default rates may not be indicative of future results.

Customer default rates may be significantly affected by economic downturns or general economic conditions beyond our control and beyond the control of individual customers. In particular, loss rates on customer loans may increase due to factors such as prevailing interest rates, the rate of unemployment, the level of

consumer and business confidence, commercial real estate values, the value of the U.S. dollar, energy prices, changes in consumer and business spending, the number of personal bankruptcies, disruptions in the credit markets and other factors. In addition, as of September 30, 2014, approximately 28.3% of our total loans outstanding related to customers with fewer than five years of operating history. While our OnDeck Score is designed to establish that, notwithstanding such limited operating and financial history, customers would be a reasonable credit risk, our loans may nevertheless be expected to have a higher default rate than loans made to customers with more established operating and financial histories. In addition, if default rates reach certain levels, the principal of our securitized notes may be required to be paid down, and we may no longer be able to borrow from our debt facilities to fund future loans. In addition, if customer default rates increase beyond forecast levels, returns for investors in our OnDeck Marketplace program will decline and demand by investors to participate in this program will decrease, each of which will harm our reputation, operating results and profitability.

35. The statements referenced above in ¶ 34 were materially false and/or misleading because they misrepresented and/or failed to disclose the following adverse facts pertaining to the Company's business, operational and financial results which were known to Defendants and/or recklessly disregarded by them. Specifically, Defendants made false and/or misleading statements and/or failed to disclose that: (1) the true rate of default for the Company's loan portfolio was steadily increasing; (2) the value of the Company's loan portfolio was materially in decline; and (3) a result of the foregoing, On Deck's public statements were materially false and misleading at all relevant times.

THE TRUTH BEGINS TO EMERGE

36. On February 11, 2015, less than two months after the IPO, *SeekingAlpha.com* published an article entitled "On-Deck Capital: Bad Loans, Bad Interest Rates, Bad Business Plan." The article stated, in part:

Bad Loans: "About" 6% Losses? How about 25%?

So how much money is the company losing through defaults of On Deck loans? According to a video interview of Mr. Breslow, tens of millions of dollars.

"What is the rate of default?" TheStreet's reporter Dan Freed asked Mr. Breslow.

"So our rates of default are also publicly available on our S-1. We expect to lose about 6 cents for every dollar that we lend," CEO Noah Breslow said in the video interview.

The company's S-1 says that expected rate is 7 cents for every dollar loaned. According to LendingMemo, this compares with rival Lending Club's actual default rate of about 5 percent.

But we want a clearer picture of the actual default rate for On Deck. So let's take the actual dollars lost or \$26.7 million lost in loans charged-off in the last nine months, and look at that as a percentage of the last nine months' gross revenue of \$107.6 million.

That works out to a whopping loan loss of 24.8 percent.

And filings suggest On Deck is getting ready for even higher losses from defaults.

Indeed, lending companies set aside money they expect to lose from bad loans. So On Deck's "provisions for expected losses" or the reserve through September 2014 rocketed to \$47 million. ***That's nearly triple the previous year's.***

(Emphases added.)

37. On this news, On Deck's share price dropped \$0.27, or 1.6%, to close at \$17.12 on February 11, 2015.

38. On March 18, 2015, Compass Point issued a report assigning a "Sell" rating to On Deck stock. The Compass Point report stated, in part, that "the current valuation [of On Deck] does not account for the inherent risks in the business surrounding an untested credit model, increasing competition, uncertainty in a rising interest rate environment, and an evolving regulatory landscape."

39. On this news, On Deck's share price dropped \$0.30, or 1.4%, to close at \$20.95 on March 18, 2015.

40. On May 13, 2015, On Deck filed a report on Form 10-Q with the SEC announcing its financial and operating results for the quarter ended March 31, 2015 (the “Q1 2015 10-K”). For the quarter, net loss was \$5.34 million, or \$0.8 per diluted share, on revenue of \$56.46 million.

41. On July 1, 2015, barely six months after the IPO, On Deck common stock dropped to a low of \$11.15 per share, a decline of over 40% from the IPO price and a more than 60% decline from its almost \$29 per share high on December 18, 2014.

42. As a result of Defendants’ false and/or misleading statements, On Deck securities traded at inflated prices. However, after disclosure of Defendants’ false and/or misleading statements, On Deck’s stock suffered a precipitous decline in value, thereby causing significant losses and damages to Plaintiff and other Class members.

PLAINTIFF’S CLASS ACTION ALLEGATIONS

43. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a class consisting of all persons other than defendants who acquired On Deck securities pursuant and/or traceable to the Company’s false and misleading Registration Statement for its IPO, and who were damaged thereby (the “Class”). Excluded from the Class are Defendants, the officers and directors of On Deck, members of the Defendants’ immediate families and their legal representatives, heirs, successors or assigns and any entity in which Officer or Director Defendants have or had a controlling interest.

44. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to plaintiff at this time and can only be ascertained through appropriate discovery, plaintiff believes that there are hundreds of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by On Deck or its transfer agent and may be notified of the pendency of

this action by mail, using the form of notice similar to that customarily used in securities class actions.

45. Plaintiff's claims are typical of the claims of the members of the Class, as all members of the Class are similarly affected by defendants' wrongful conduct in violation of federal law that is complained of herein.

46. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation.

47. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

- whether defendants violated the Securities Act;
- whether the Registration Statement was negligently prepared and contained inaccurate statements of material fact and omitted material information required to be stated therein; and
- to what extent the members of the Class have sustained damages and the proper measure of damages.

48. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

COUNT I

(Against All Defendants for Violation of the 1933 Act)

49. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

50. This Count is brought pursuant to Section 11 of the 1933 Act, 15 U.S.C. §§77k, on behalf of the Class, against all defendants.

51. The Registration Statement for the IPO was inaccurate and misleading, contained untrue statements of material facts, omitted to state other facts necessary in order to make the statements not misleading, and omitted to state material facts required to be stated therein.

52. On Deck is the registrant for the IPO. The other defendants named herein were responsible for the contents and dissemination of the Registration Statement.

53. As the issuer of the shares, On Deck is strictly liable to Plaintiff and the Class for any misstatements or omissions in the Registration Statement.

54. None of the defendants named herein made a reasonable investigation or possessed reasonable grounds for the belief that the statements contained in the Registration Statement were true, and/or without omissions of any material facts, were not misleading.

55. By reason of the conduct alleged herein, each defendant violated, and/or controlled a person who violated, §11 of the 1933 Act.

56. Plaintiff acquired On Deck shares pursuant and/or traceable to the Registration Statement for the IPO.

57. Plaintiff and the Class have sustained damages. The value of On Deck stock has declined substantially subsequent to and due to defendants' violations.

58. At the time of their purchases of On Deck shares, Plaintiff and the other members of the Class were without knowledge of the facts concerning the wrongful conduct alleged herein and could not have reasonably discovered those facts prior to August 4, 2014. Less than one year has elapsed from the time that plaintiff discovered or reasonably could have discovered the facts upon which this complaint is based, to the time that Plaintiff filed this complaint. Less than three

years elapsed between the time that the securities upon which this Count is brought were offered to the public, and the time Plaintiff filed this complaint.

COUNT II

**(Against On Deck, the Officer Defendants and the Director Defendants
for Violation of §15 of the 1933 Act)**

59. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

60. This Count is brought pursuant to §15 of the 1933 Act against On Deck, the Officer Defendants and the Director Defendants.

61. The Officer Defendants and the Director Defendants each were control persons of On Deck by virtue of their positions as directors and/or senior officers of On Deck. The Officer Defendants and the Director Defendants each had a series of direct and/or indirect business and/or personal relationships with other directors and/or officers and/or major shareholders of On Deck. On Deck controlled the Officer Defendants and the Director Defendants.

62. Defendants each were culpable participants in the violations of the §11 of the 1933 Act alleged in the prior Count above, based on their having signed or authorized the signing of the Registration Statement and having otherwise participated in the process which allowed the IPO to be successfully completed.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against defendants as follows:

A. Determining that the instant action may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, and certifying Plaintiff as the Class representative;

- B. Requiring defendants to pay damages sustained by Plaintiff and the Class by reason of the acts and transactions alleged herein;
- C. Awarding Plaintiff and the other members of the Class prejudgment and post-judgment interest, as well as their reasonable attorneys' fees, expert fees and other costs; and
- D. Awarding such other and further relief as this Court may deem just and proper.

DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands a trial by jury.

Dated: August 4, 2015

Respectfully submitted,

POMERANTZ, LLP

/s/Jeremy A. Lieberman

Jeremy A. Lieberman

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Attorneys for Plaintiff

**CERTIFICATION PURSUANT
TO FEDERAL SECURITIES LAWS**

1. I, Carl A. Stitt, make this declaration pursuant to Section 27(a)(2) of the Securities Act of 1933 ("Securities Act") and/or Section 21D(a)(2) of the Securities Exchange Act of 1934 ("Exchange Act") as amended by the Private Securities Litigation Reform Act of 1995.

2. I have reviewed a Complaint against On Deck Capital Inc. ("On Deck" or the "Company") and, authorize the filing of a comparable complaint on my behalf.

3. I did not purchase or acquire On Deck securities at the direction of plaintiffs' counsel or in order to participate in any private action arising under the Securities Act or Exchange Act.

4. I am willing to serve as a representative party on behalf of a Class of investors who purchased or acquired On Deck securities during the class period, including providing testimony at deposition and trial, if necessary. I understand that the Court has the authority to select the most adequate lead plaintiff in this action.


5. To the best of my current knowledge, the attached sheet lists all of my transactions in On Deck securities during the Class Period as specified in the Complaint.

6. During the three-year period preceding the date on which this Certification is signed, I have not sought to serve as a representative party on behalf of a class under the federal securities laws.

7. I agree not to accept any payment for serving as a representative party on behalf of the class as set forth in the Complaint, beyond my pro rata share of any recovery, except such reasonable costs and expenses directly relating to the representation of the class as ordered or approved by the Court.

8. I declare under penalty of perjury that the foregoing is true and correct.

Executed: 28 July, 2015
(Date)



(Signature)

CARL A. STITT
(Type or Print Name)

ON DECK CAPITAL, INC. (ONDK)

Stitt, Carl

LIST OF PURCHASES AND SALES

| DATE | PURCHASE OR SALE | NUMBER OF SHS/UTS | PRICE PER SH/UT |
|------------|---------------------|----------------------|--------------------|
| 12/17/2014 | PUR | 11,130 | \$26.5100 |