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CHARGEPOINT, INC.

11
12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
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CHARGEPOINT, INC.,

Plaintiff,

vs.

ORGANIZATION FOR THE
ADVANCEMENT OF STRUCTURED
INFORMATION STANDARDS aka OASIS,
OPEN CHARGE ALLIANCE aka OCA, and
DOES 1-10,

Defendants.

) Case No.

)
) **CHARGEPOINT, INC.'S COMPLAINT**
) **FOR (1) VIOLATION OF SECTION 1 OF**
) **THE SHERMAN ACT; (2) VIOLATION OF**
) **THE CARTWRIGHT ACT; AND (3)**
) **UNFAIR COMPETITION (CAL BUS. &**
) **PROF. CODE § 17200)**

) Date:
) Time:
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2 **I. INTRODUCTION**

3 1. This case involves an agreement by ChargePoint's competitors, organized by and
4 under the auspices of OCA and OASIS, to misuse a critical industry standard, OCPP¹, for electric
5 vehicle charging stations and related infrastructure. These competitors and organizations know
6 that ChargePoint controls patents and technology that likely are essential to practicing the
7 proposed standard. So, with the knowing and active participation of OCA and OASIS, they have
8 banded together to present ChargePoint with an impossible choice: either license its standard-
9 essential IP on a royalty-free basis or be excluded from the standard-setting process.

10 2. In addition to the harm caused to ChargePoint, the boycott harms electric vehicle
11 charging station owners and operators, who will necessarily be purchasing unlicensed and
12 infringing products, as well as technologically inferior goods and services in the relevant market.
13 ChargePoint now sues under the Sherman Act, the Cartwright Act, and California's Unfair
14 Competition Law, seeking injunctive and other relief to redress this wrong.

15 **II. THE PARTIES**

16 3. ChargePoint, Inc. is a Delaware corporation with its principal place of business in
17 this District, at 254 East Hacienda Avenue, Campbell, CA 95008.

18 4. The Organization for the Advancement of Structured Information Standards
19 ("OASIS") is a non-profit consortium with a principal place of business at 35 Corporate Drive,
20 Suite 150, Burlington, MA 01803-423. OASIS is a nationwide organization with significant
21 constituencies in this jurisdiction.

22 5. The Open Charge Alliance ("OCA") is a global consortium of electric vehicle
23 infrastructure stakeholders with a principal place of business at Businesspark Arnhems Buiten,
24 Utrechtseweg 310, Office building B42, 6812 AR Arnhem, The Netherlands.

25 6. DOES 1-10 are individuals and companies, identities unknown, that materially

26
27 ¹ This originally stood for "Open Charge Point Protocol." But ChargePoint owns an incontestable
28 federal trademark registration for the mark CHARGEPOINT, and OASIS has agreed to cease and
desist all use of the CHARGEPOINT trademark in the United States, including in the name of the
proposed standard.

1 participated in the violations of law alleged herein. They are sued by fictitious names, and
2 ChargePoint will promptly seek leave to amend once their actual identities are ascertained.

3 **III. JURISDICTION AND VENUE**

4 7. ChargePoint's claims arise under the antitrust laws of the United States, including
5 Section 1 of the Sherman Act. This Court has jurisdiction under 28 U.S.C. §§ 1331 and 1367.
6 The Court also has diversity jurisdiction over this action under 28 U.S.C. § 1332.

7 8. This Court has personal jurisdiction over OASIS because OASIS regularly and
8 systematically operates in California. Upon information and belief, and as advertised on OASIS's
9 website, OASIS has staff located and operating in San Francisco, including its CEO and Executive
10 Director since 2008, Laurent Liscia. On information and belief, OASIS regularly attends
11 conferences in this State, during which it meets with members. These meetings and conferences
12 include the 2016 RSA Security Conference in San Francisco. OASIS also offers its members
13 discounts to industry conferences in this State, including the Storage Developer Conference 2016
14 in Santa Clara, California.

15 9. This Court has personal jurisdiction over defendant OCA because it conducts
16 business in this State relevant to the instant dispute. In particular, OCA has partnered with OASIS
17 on the OCPP Technical Committee, and hosted a joint OCA-OASIS meeting in this State on
18 October 19, 20, and 21, to collaborate on the OCPP standard. Arrangements for the conference
19 were being handled by Zeco Systems Pte. Ltd. dba Greenlots, a founder of OCA and current
20 Board Member of the OASIS OCPP Technical Committee. Greenlots is based in San Francisco,
21 CA.

22 10. Venue is proper in this District under 28 U.S.C. § 1391(b)(3) because a substantial
23 portion of OASIS's and OCA's acts alleged herein occurred in this District and were directed
24 against a resident of this District, and because ChargePoint is based in this District and hence
25 suffered the complained-of harms in this District.

26 **IV. THE IMPORTANCE OF INDUSTRY STANDARDS**

27 11. Industry standards are voluntary technical and design rules agreed upon jointly by
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1 stakeholders within an industry (generally by way of a “standard-setting organization” or “SSO”)
2 to ensure interoperability of products and, hence, a consistent consumer experience. When
3 established fairly and transparently, industry standards can enhance competition and consumer
4 welfare.

5 12. Participating in SSOs provides competitive advantages: participants can implement
6 standards earlier, gain an insider’s understanding of the industry’s technical evolution, identify
7 promising directions for future research, and influence what technologies are adopted as industry
8 standards.

9 13. Almost all industry standards require SSO participants to agree to license any of
10 their standard-essential intellectual property (“IP”) on a reasonable and non-discriminatory
11 (“RAND”) basis. This ensures that IP innovators can realize the value of their innovation while
12 also guaranteeing that IP claims cannot be used to exclude competitors from practicing industry
13 standards.

14 14. RAND license obligations do not apply to *all* IP, but rather only to IP that is deemed
15 “essential” to practicing a particular industry standard.

16 15. The electric vehicle (“EV”) charging industry in the United States is growing
17 rapidly. In general, EV charging stations are networked. The owners and operators of EV
18 charging stations insist that their networked charging infrastructure interoperates on an “open”
19 standard. An interoperability standard is just one of a number of standards that have been or are
20 under development in the United States. On information and belief, all U.S. EV charging
21 standards developed to date have been developed on a RAND basis.

22 16. The EV charging industry, in the United States and internationally, has been
23 working toward an open EV charging network protocol. The leading candidate is OCPP, a
24 European charging station infrastructure standard promulgated by OCA.

25 17. As discussed in more detail below, OCA has recently moved the development of
26 OCPP to OASIS.

27 18. ChargePoint is America’s leading developer and provider of EV infrastructure
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1 solutions. It has invested tens of millions of dollars into its charging technologies, and as a
2 consequence holds fundamental IP covering critical aspects of the new charging paradigm.

3 19. ChargePoint has repeatedly sought to participate in the development of the OCPP
4 standard. But the standard-setting organizations (OCA and, now, OASIS) insist that ChargePoint
5 relinquish its IP rights without compensation as the price of membership. ChargePoint thus has
6 been unlawfully excluded from the development process and is prevented from obtaining the
7 benefits of participation.

8 20. ChargePoint now seeks an injunction to allow it to participate in the OCPP process
9 without being forced to relinquish its intellectual property rights.

10 **V. CHARGEPOINT'S IP AND THE RELEVANT MARKET**

11 21. ChargePoint was founded in 2007 and is the pioneer in the EV charging
12 infrastructure industry. It has invested millions of dollars in research, development, design,
13 manufacture, and sale of EV charging stations and related technology. As part of its R&D efforts,
14 ChargePoint has obtained dozens of patents and applications that relate to hardware, software,
15 management, networking of EV charging stations, and communications with EVs and EV drivers.

16 22. ChargePoint's technology and intellectual property make it a leader in the industry.
17 It has received numerous awards and recognitions including a 2016 Edison Award in the Electric
18 Energy & Propulsion Systems category. It has been a Global Cleantech winner six years in a row.
19 It has been recognized by the United Nations and the World Economic Forum. Time Magazine,
20 CNBC, and Businessweek have all recognized ChargePoint's contributions and potential.

21 23. ChargePoint's worldwide EV charging network includes tens of thousands of
22 stations that have been used more than 16 million times.

23 24. ChargePoint is an important competitor in the market for EV charging infrastructure.
24 The relevant antitrust market is the U.S. EV charging infrastructure market including charging
25 stations and related services and technology (the "Relevant Market").
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1 **VI. OCA DEVELOPS OCPP IN EUROPE AND DECIDES TO BRING IT TO THE**
2 **UNITED STATES ON AN IPR NONASSERTION BASIS**

3 25. In 2014, a group including European public utilities and ChargePoint competitors
4 formed OCA in the Netherlands, building on informal efforts underway since 2009. ChargePoint
5 competitor and co-founder Greenlots is on the five-member Board of OCA, which is responsible
6 for establishing or ending working groups and task groups and which “determines the main
7 strategy” of the organization.

8 26. OCA claims that it gives members influence on the “functionality and technical
9 deployment” of EV interfaces, the ability “to make sure the systems are interoperable,” and
10 “marketing value to your organization as membership proves that your organization believes in
11 open standardized protocols/interfaces, which you can use in your communication.” Participation,
12 says OCA, will make members “a front runner regarding knowledge and implementation of the
13 open interfaces.” In short, OCA admits that participating in the development of OCPP provides
14 important competitive advantages.

15 27. OCA’s founders and Board Members—including Greenlots—were and are aware of
16 ChargePoint’s U.S. IP portfolio.

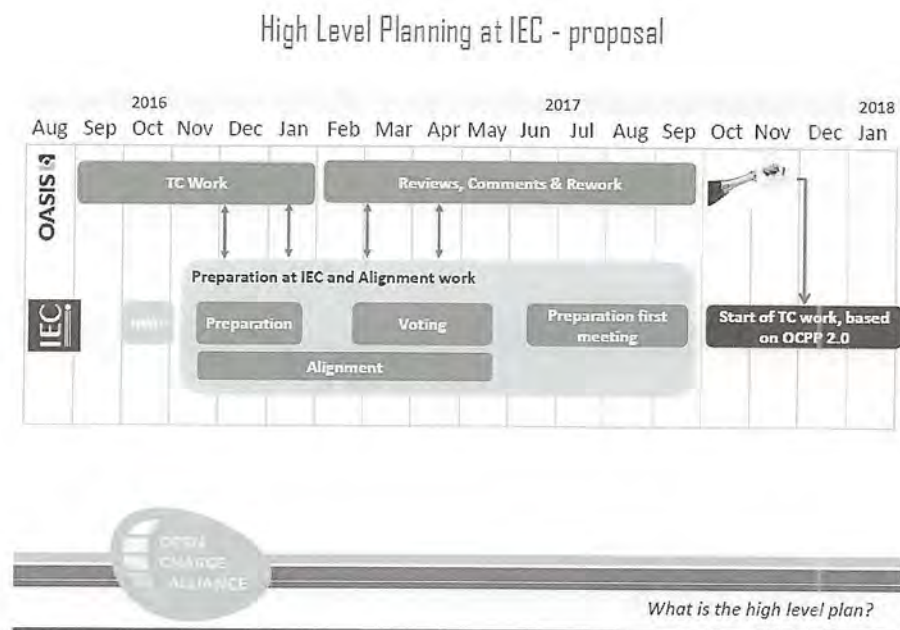
17 28. On information and belief, in 2015 OCA decided to move further development of
18 OCPP to a SSO in the United States. It considered IEC, NEMA, and IEEE, but ultimately
19 selected OASIS.

20 29. OASIS is a nonprofit consortium responsible for standards promulgated and adopted
21 primarily in the field of machine languages such as the eXtensible Markup Language (XML).
22 Unlike most SSOs, OASIS supports standards that confer royalty-free licenses to any applicable
23 patents. OCA admits that it sought a standards organization that would permit development of
24 “an IP and royalty free protocol.”

25 30. Prior to the actions giving rise to this complaint, OASIS had never been involved in
26 any standard-setting efforts relating to the EV industry. Rather, the International Electrotechnical
27 Commission (“IEC”) is the world’s leading organization for the preparation and publication of
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1 international standards for electrical, electronic, and related technologies, including EV
 2 technologies. But IEC's patent policy requires members to provide access to standard-essential
 3 patent rights on RAND licensing terms. IEC's policies thus contradict OCA's desire for an IP
 4 nonassertion rule—a rule that OCA's members wish to use in order to either exclude ChargePoint
 5 from the standard-setting process or obtain a royalty-free license to ChargePoint's IP.

6 31. But because an IEC standard is the “gold standard” in the electromechanical arts,
 7 OCA developed a workaround. As its own “high level plan” confirms, OCA has determined to
 8 transfer the European OCPP standard to OASIS (which receives substantial new membership fees
 9 in return) in order to get U.S. buy-in under an IP non-assertion regime, align the OCPP standard
 10 with IEC requirements, finalize the standard, and *then* transfer it to IEC to promote international
 11 adoption *without having to comply with IEC's RAND patent policy*:



25 32. To that end, in 2016 OCA formed an OASIS Technical Committee consisting of
 26 OCA and its core members. To join the OASIS OCPP Technical Committee, a corporation must
 27 pay money, join OASIS, agree to OASIS's membership requirements, and accede to the Charter,
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1 obligations, and requirements of the particular Technical Committee. OASIS stands to benefit
2 through new annual membership fees ranging from \$3,600 to \$50,000 per member, depending on
3 the size of the corporation and level of membership.

4 33. The price of admission, however, is more than just the membership fees: the OASIS
5 Technical Committee also has insisted on IPR nonassertion as the added price of participating in
6 the OCPP standard-setting process. That added price has no impact on any of the participants,
7 none of whom, on information and belief, have any standard-essential IP to assert. That added
8 price affects only one party, ChargePoint, which owns IP that is likely standard-essential. OCA
9 and OASIS were each aware of this fact when they set up the OASIS Technical Committee.

10 34. "IPR nonassertion" is an unusual approach to developing industry standards because
11 it requires technological innovators to license their intellectual property to technological followers
12 at no cost. It is far more common for standard-setting organizations to promulgate standards on a
13 RAND basis. A RAND standard allows anyone in the industry to practice a particular standard
14 and assures all market participants that any standard-essential IP will be licensed on reasonable
15 and non-discriminatory terms.

16 35. Other standard-setting bodies engaged in EV-related activities, including IEC,
17 NEMA, SAE, and IEEE, use a RAND standard. All three were considered by OCA as the home
18 of the OCPP standard, but were rejected in favor of OASIS.

19 36. The OASIS Technical Committee seeks to set EV standards applicable throughout
20 the United States and are intended to affect the entire Relevant Market. OASIS acknowledges that
21 its standard-setting process is intended to affect all stakeholders in the EV charging eco-system—
22 including ChargePoint.

23 37. Membership in the OASIS OCPP Technical Committee thus is vital to competing in
24 the EV industry. The Technical Committee (and any Working Groups that are created during the
25 standard-setting process) will have access to information about where the industry is headed, what
26 standards will be, how they will be changed, and what the requirements are—long before non-
27 members. In addition to the ability to mold and influence the standards, participants will receive a
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1 head-start advantage in complying with and implementing the standards, and thus in competing in
2 the Relevant Market.

3 **VII. THE AGREEMENT TO EXCLUDE CHARGEPOINT AS LEVERAGE TO FORCE**
4 **CHARGEPOINT TO COMMIT TO AN IP NON-ASSERTION AGREEMENT**

5 38. On information and belief, ChargePoint is the only entity that owns likely standard-
6 essential IP relating to OCPP. OCA's and OASIS's IPR nonassertion rules thus amount to an
7 anticompetitive group boycott of ChargePoint.

8 39. When ChargePoint learned that OCA would be moving the development of OCPP to
9 OASIS, it sought to participate in the process. Given the critical importance of the standard to the
10 EV charging industry, ChargePoint believed it was vital to participate in that standard's further
11 development. Starting in 2015 it wrote letters to both OCA and OASIS, informing them of its
12 desire to participate but also confirming that ChargePoint owns fundamental and likely standard-
13 essential IP. ChargePoint urged the adoption of the same RAND standard employed by all prior
14 U.S. EV SSOs (and which all previous SSO participants had considered acceptable). ChargePoint
15 informed OASIS and OCA of its belief that the intent to form the OCPP Technical Committee
16 under an IPR nonassertion basis was being undertaken by its competitors, including those on
17 OCA's Board of Directors, in order to disadvantage (solely) ChargePoint.

18 40. Despite enabling its members to impose an "IPR nonassertion" policy, OASIS
19 responded that it has no institutional role in the adoption of a policy, but rather is merely acting on
20 behalf of its members. OASIS refused to allow ChargePoint to participate in the standard-setting
21 process on a RAND basis, instead reiterating the "IPR nonassertion" rule OCA previously put in
22 place.

23 41. OASIS has continued to contact various ChargePoint executives, asking them to
24 become involved in the OCPP standard-setting process. In response, ChargePoint's executives
25 have reiterated the company's eagerness to participate in the process on RAND (but not "IPR
26 nonassertion") terms.

27 42. Despite repeated efforts to join the OASIS OCPP Technical Committee and
28 participate in an industry effort that vitally affects its interests (and the interests of the U.S. EV

1 industry more generally), despite OCA's and OASIS's actual knowledge of ChargePoint's
2 fundamental and likely standard-essential IP, despite OCA's and OASIS's knowledge of the
3 involvement of ChargePoint's competitors in the process, and despite multiple offers to license its
4 IP on RAND terms, ChargePoint has been excluded from the OCPP standard-setting process.

5 43. The membership requirements implemented by OCA and OASIS have no
6 procompetitive basis, and serve only to force ChargePoint into an untenable position: ChargePoint
7 must either give up its intellectual property rights without compensation or be shut out of the
8 OCPP standard-setting process. This harms ChargePoint and also harms consumers, who will be
9 faced with the necessity of using either infringing technology or inferior technology, and also will
10 be faced with competing and incompatible "standards" (one from OCPP, the other from
11 ChargePoint) that do not achieve the uniformity and compatibility that industry standards are
12 intended to create.

13 44. OASIS's and OCA's joint decision to enforce a group boycott of ChargePoint is
14 contrary to law and should be enjoined by this Court.

15 **COUNT I**

16 **VIOLATION OF § 1 OF THE SHERMAN ACT**

17 45. ChargePoint incorporates paragraphs 1-44 by reference.

18 46. The OASIS OCPP Technical Committee includes ChargePoint competitors in the
19 Relevant Market, including Greenlots and Schneider Electric. It was formed as a result of an
20 agreement between OASIS, OCA, and DOES 1-10 to transfer work done by OCA to OASIS,
21 which would enable the development of "an IP and royalty free protocol" in exchange for
22 membership fees to OASIS.

23 47. Upon information and belief, the OASIS OCPP Technical Committee is designed to
24 promote industry leadership and influence in developing and implementing technical standards for
25 EV charging stations. Membership in the group comes with substantial benefits including
26 learning of industry changes and standards, working with other members, and influencing industry
27 direction. OCA and OASIS have jointly developed and promoted the OCPP Technical
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1 Committee, and have jointly planned the progression of the standard to be developed.

2 48. OASIS requires that all participants in the Technical Committee preemptively
3 forego any standard-essential IP assertion rights relating to standards adopted by the group. This
4 membership requirement, however, only affects ChargePoint—and OCA and OASIS know it.
5 This membership requirement has no relationship to the goal of developing and implementing a
6 technological standard beneficial to the industry, and indeed is contrary to common practice in
7 other U.S. EV SSOs, which instead favor RAND licensing obligations.

8 49. ChargePoint offered to license its standard-essential IP on RAND terms in exchange
9 for participation in the OASIS OCPP Technical Committee, but has been excluded. OCA and
10 OASIS have cooperated with ChargePoint's direct competitors in an effort to force ChargePoint to
11 grant free access to its IP or else to exclude ChargePoint from the OCPP SSO. This conduct—in
12 effect a group boycott of ChargePoint—is *per se* unlawful under 15 U.S.C. § 1.

13 50. Excluding ChargePoint from the standard-setting process on unlawful terms has
14 harmed ChargePoint, as it cannot participate in the process and reap the benefits of that
15 participation; is injurious to competition, because it will result in a standard-setting process that
16 intentionally excludes key stakeholders who can provide input and innovation beneficial to
17 consumers; and is an attempt to reduce the competitiveness of non-members (such as
18 ChargePoint) in the Relevant Market to the benefit of the members (like Greenlots) who agreed to
19 the boycott of non-member IP.

20 51. This conduct is an unreasonable restraint on trade and cannot survive even “quick
21 look” rule of reason scrutiny. There is no good reason to exclude the industry leader from the
22 industry's standard-setting body unless that industry leader agrees to grant royalty-free IP licenses
23 to all of its competitors. Though standard-setting in general may have pro-competitive effects, the
24 IP boycott here has no pro-competitive justification.

25 52. The acts complained of are ongoing and this Complaint is filed within the time set
26 forth in 15 U.S.C. § 15 (b).

27 53. Unless the IP non-assertion membership requirements implemented by OASIS for
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1 OCA are restrained by this Court, ChargePoint will continue to suffer harm from the unlawful
2 agreements described herein. The damages ChargePoint will suffer are difficult to ascertain but
3 are highly significant and continuing. ChargePoint has no adequate remedy at law and thus seeks
4 equitable relief from this Court.

5 **COUNT II**

6 **VIOLATION OF THE CARTWRIGHT ACT**

7 54. ChargePoint incorporates Paragraphs 1-44 and 46-53 by reference.

8 55. The IP boycott engineered by OCA, OASIS, and DOES 1-10 is an unreasonable
9 restraint of trade under Cal. Bus. & Prof. Code § 16720 *et seq.*

10 56. OCA's and OASIS's misconduct described herein was substantially carried out and
11 effectuated within the State of California.

12 57. OCA's and OASIS's conduct within California injured ChargePoint, a corporation
13 resident in the State of California, by unreasonably excluding it from the benefits of participation
14 in the EV industry standard-setting process except at the price of surrendering its IP rights.

15 58. OCA's and OASIS's conduct within California also injured consumers in the State
16 of California by depriving them of the benefits of free and open competition.

17 59. Unless the complained-of conduct is enjoined, ChargePoint will suffer damages and
18 other irreparable harm. ChargePoint has no adequate remedy at law.

19 **COUNT III**

20 **UNFAIR COMPETITION (CAL. BUS. & PROF. CODE § 17200)**

21 60. ChargePoint incorporates Paragraphs 1-44, 46-53, and 55-59 by reference.

22 61. OCA, OASIS, and DOES 1-10 have engaged in unlawful and unfair business
23 practices in this State by agreeing to and creating membership requirements to the OASIS OCPP
24 Technical Committee that invidiously affect solely ChargePoint without any corresponding pro-
25 competitive justification.

26 62. ChargePoint offered to license its standard-essential IP on RAND terms in exchange
27 for participation in the OCPP standard-setting process but was repeatedly refused. By excluding
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1 ChargePoint from the SSO, OCA and OASIS are exerting undue influence to force ChargePoint to
2 grant free access to its IP, for the benefit of ChargePoint's competitors (including Board Members
3 Greenlots and Schneider Electric).

4 63. OCA's and OASIS's agreement and decision to exclude ChargePoint from the
5 standard-setting process on unreasonable terms has harmed ChargePoint and injures competition.
6 It will result in a standard-setting process that [a] intentionally excludes key stakeholders who can
7 provide input and innovation that is beneficial to consumers, and [b] attempts to reduce the
8 competitiveness of those excluded parties to the benefit of the OCA and OASIS members
9 (Greenlots, Schneider Electric, and others) who agreed to the group boycott.

10 64. The acts and practices alleged herein constitute unfair competition by means of
11 unfair and unlawful business practices within the meaning of Cal. Bus. & Prof. Code § 17200 *et*
12 *seq.*, in that they violate both the Sherman and Cartwright Acts, as set forth herein.

13 PRAYER FOR RELIEF

14 WHEREFORE, ChargePoint prays for relief from this Court as follows:

- 15 A. Judgment that OCA and OASIS have violated 15 U.S.C. § 1;
- 16 B. Judgment that OCA and OASIS have violated California Bus. & Prof. Code §
17 16720;
- 18 C. Judgment that OCA and OASIS have violated California Bus. & Prof. Code §
19 17200;
- 20 D. An order preliminarily enjoining OCA and OASIS from operating the OASIS OCPP
21 Technical Committee or other Standard Development Committee for Electric
22 Vehicle infrastructure on an IP non-assertion or other anticompetitive basis;
- 23 E. An order permanently enjoining OCA and OASIS from operating the OASIS OCPP
24 Technical Committee or other Standard Development Committee for Electric
25 Vehicle infrastructure on an IP non-assertion or other anticompetitive basis;
- 26 F. Damages according to proof; and
- 27 G. Any other relief this court deems just.
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1
2 Dated: October 27, 2016

WINSTON & STRAWN LLP

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4 By: _____

5 Robert B. Pringle
6 David S. Bloch
7 Alexandra McTague
8 Attorneys for Plaintiff
9 CHARGEPOINT, INC.
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