UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

JACQUELINE L. DESMOND AND TARA D. LODGE, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, Plaintiffs, v. STERLING JEWELERS, INC.; AND COMENITY BANK, Defendants.	**COMPLAINT** **CLASS ACTION** **DEMAND FOR JURY TRIAL** Case No. May 7, 2019

<u>COMPLAINT</u>

Table of Contents

I. INTRODUCTION

1. While many consumers may not be familiar with the name of defendant Sterling Jewelers, Inc. (“Sterling”), they know the names of Sterling’s jewelry stores. Sterling owns and operates some of the best-known jewelry stores in the United States, including Kay Jewelers, Jared, and a variety of mall-based regional brands.

2. Defendant Comenity Bank (“Comenity”) is a major issuer of credit cards, focusing on co-branded retail store credit cards. In 2017, Comenity purchased the in-house credit card portfolio from Sterling. At the time, Sterling was under active investigation by the Consumer Finance Protection Bureau (“CFPB”) and the New York Attorney General’s Office for its practice of enrolling consumers in store credit cards without authorization. According to a complaint filed by those authorities, Sterling employees misrepresented to consumers that the employees needed personal information to update records, when in fact they were running credit reports and causing credit cards to be issued, all without the knowledge or consent of the consumers. In addition to opening store credit-card accounts without customer consent, Sterling enrolled customers in payment-protection insurance without their consent and misrepresented to consumers the financing terms associated with credit-card accounts.

3. In a narrative now familiar to those who have followed news reports about Wells Fargo, to increase the number of consumers carrying its credit cards, Sterling incentivized its managers and employees to submit credit applications for as many consumers as possible. For example, employees were required to complete one credit-card application per day in mall locations and one credit application every two days at standalone locations. In some instances, employees who failed to meet credit-application quotas received additional training, or they were fired.

4. Deceived consumers often first learned about these unauthorized cards, accounts, and insurance products when they received notification from a credit reporting agency that a new credit inquiry had been made. Other consumers had no idea that a credit application had been processed until they received a physical credit card in the mail. Sterling eventually settled the claims with the CFPB and the New York Attorney General's Office for $11 million in January 2019.

5. Sterling's deceptive credit-card practices also were discussed in a recent New York Times Magazine article about a different legal action against Sterling: a pay-and-promotions lawsuit alleging grievous sexual discrimination against female employees. The article explains:

> But Sterling wasn't just about jewelry. It was also about selling credit cards and payment-protection plans and extended warranties. Many of the women told me that stores had quotas for that, and sometimes, when things got desperate, saleswomen were sent to the food court to flirt with men and get them to come apply for a credit card. "If you could fog up a mirror," one woman told me the saying went, "you could get a credit line." Salespeople were sometimes instructed by managers to charge customers without their consent for payment-protection plans to meet their store quotas.[1]

6. After purchasing Sterling's credit card portfolio in 2017, Comenity took over the weighty responsibility of requesting consumer credit reports from credit bureaus and issuing credit cards in the names of consumers. These are significant steps that can affect consumers' credit scores and credit histories. If the credit applications are unauthorized, requesting credit reports and issuing credit cards can also cause consumers substantial injury. However, despite the active governmental investigation into Sterling's deceptive practices and a history of complaints regarding the same tactics, Comenity did not change how consumer credit

---

[1] Taffy Brodesser-Akner, *The Company That Sells Love to America Had a Dark Secret*, N. Y. Times Magazine (Apr. 23, 2019), https://www.nytimes.com/2019/04/23/magazine/kay-jewelry-sexual-harassment.html (last visited Apr. 29, 2019).

applications were obtained or even verify whether the credit applications were authorized by consumers.

7. As plaintiffs in this action experienced, the deceptive practices behind Sterling's high volume of credit card applications continued after Comenity acquired that part of Sterling's business. Sterling, through its sales staff and other employees, continued to deceive and defraud consumers, asking for personal information for what would seem to a consumer a legitimate business purpose, such as to update Sterling's system. In fact, Sterling completed applications for credit cards, other unauthorized accounts, and unauthorized insurance products without the knowledge or consent of consumers. Comenity knew or should have known that many credit applications from Sterling, including those submitted on behalf of plaintiffs and class members, were fraudulent. Comenity willfully and/or negligently ignored these practices and continued to process Sterling's credit applications, blindly requesting consumer credit reports on plaintiffs and the classes and issuing unwanted and unauthorized credit cards, other unauthorized accounts, and unauthorized insurance products in their names. Plaintiffs and class members were injured by these practices.

8. Comenity's and Sterling's misconduct is remarkably similar to Wells Fargo's deceptive practice of opening new, unauthorized accounts in the names of its customers in order to meet unrealistic goals. A consumer class represented by undersigned counsel recently settled with Wells Fargo for $142 million in recovery for the bank's shameless misconduct of opening accounts in consumers' names without their knowledge or consent.

9. Like the consumers harmed by Wells Fargo's scheme of opening unauthorized accounts, plaintiffs in this matter and the classes they seek to represent have suffered from Comenity's and Sterling's deception and deserve recovery.

II. JURISDICTION AND VENUE

10. The Court has subject-matter jurisdiction pursuant to 28 U.S.C. § 1331 because plaintiffs' claims arise under federal law, namely the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681, *et seq.*, and the Truth in Lending Act ("TILA"), 15 U.S.C. 1601, *et seq.* The Court also has jurisdiction pursuant to the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1332(d), which provides federal district courts with original jurisdiction over civil actions in which the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs, and is a class action in which any member of a class of plaintiffs is a citizen of a state different from any defendants. Finally, the Court has supplemental jurisdiction over plaintiffs' state law claims pursuant to 28 U.S.C. § 1367.

11. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) and (c) because defendants transact business in, are found in, and/or have agents in the District of Delaware. Venue is also proper because Comenity resides in this district.

III. PARTIES

12. Plaintiff Tara D. Lodge is and at all relevant times has been a resident of Ohio.

13. Plaintiff Jacqueline L. Desmond is and at all relevant times has been a resident of Ohio.

14. Defendant Comenity Bank ("Comenity") is a limited-purpose credit card bank incorporated in Delaware. It is a bank subsidiary of Alliance Data Systems Corporation.[2]

15. Comenity's assets at the beginning of 2019 were $14,254,311,000.[3] It has over 50 million cardholders.

---

[2] All. Data Sys. Corp., Annual Report (Form 10-K) at 9 (Feb. 26, 2019), https://www.sec.gov/Archives/edgar/data/1101215/000110121519000048/ads-20181231x10k.htm.

[3] *Financial Reports of Leading Banks,* iBanknet (Dec. 31, 2018), http://www.ibanknet.com/scripts/callreports/fiList.aspx?type=031.

16. Defendant Sterling Jewelers, Inc. ("Sterling") is headquartered in Akron, Ohio, and operates roughly 1,500 jewelry stores in all 50 states.

17. Sterling is the U.S. operating subsidiary of the world's largest jewelry retailer, Signet Jewelers Limited ("Signet"), incorporated in Bermuda.

18. Sterling stores operate nationally in malls and off-mall locations principally under the brand names Kay (Kay Jewelers and Kay Jewelers Outlet) and Jared (Jared The Galleria Of Jewelry and Jared Vault). The Sterling division also operates a variety of mall-based regional brands including JB Robinson Jewelers, Belden Jewelers, LeRoy's Jewelers, Rogers Jewelers, Shaw's Jewelers, Osterman Jewelers, Goodman Jewelers, Weisfield Jewelers, and Marks & Morgan Jewelers. Sterling acquired JamesAllen.com in 2017.[4]

19. Sterling generated 61.1% of Signet's $6.3 billion in sales in fiscal year ending February 3, 2018 ("FY 2018"). Sterling's FY 2018 gross advertising spending was $251.4 million. In FY 2018, the average number of fulltime Sterling employees was 13,901.[5]

IV. STATEMENT OF FACTS

A. Sterling Misled Consumers and Deceptively Signed Them Up for Unwanted Credit Cards.

20. Although a jewelry business by name, Sterling also earned significant revenue through in-house financing. From 2014 through 2017, approximately 60% of Sterling's sales were financed by consumers using Sterling's in-house credit, generating more than $300 million in net revenue for Sterling each year.[6]

---

[4] Unless otherwise noted, these brands are collectively referred to as "Sterling."

[5] Signet Jewelers Limited, Annual Report (Form 10-K) at 11 (Feb. 3, 2018), https://www.sec.gov/Archives/edgar/data/832988/000162828018003906/fy18q410k.htm.

[6] Complaint ¶ 4, *Bureau of Consumer Financial Protection and the People of the State of New York v. Sterling Jewelers, Inc.*, No. 1:19-cv-00448, (E.D.N.Y Jan. 16, 2019), ECF No. 1, https://files.consumerfinance.gov/f/documents/bcfp_sterling-jewelers_complaint.pdf.

21. Sterling made in-house customer financing central to its business model for good reason. As the Signet Annual 10-K Report for fiscal year ending January 30, 2016, explains:

> The lifetime value of a customer obtained through the in-house credit program is estimated to be 3.5 times that of a customer not obtained through the in-house credit program. For our in-house credit program, as of January 30, 2016 and January 31, 2015, 52.7% and 50.5%, respectively, of balances due were from customers who were acquired as users of our credit program more than 12 months prior to its most recent purchase.[7]

22. Sterling was able to stimulate its sales with easy credit, establishing higher risk tolerance levels and misleading sales practices. Sterling sales made using in-house customer financing increased annually from 2010 to 2017. In FY 2010, 53.9% of Sterling sales were made using customer financing, by FY 2014 this number had risen to 57.7%, and then jumped to 60.5% the very next year.[8] By FY 2017, the year Comenity began managing Sterling's credit portfolio, 62% of all Sterling sales were made using in-house customer financing.[9] These annual increases are not insignificant—a one percent increase in sales made using in-house customer financing results in a four percent increase in the company's pretax profits.[10]

23. Sterling knew its in-house credit program elicited higher profits; its only problem was that not enough people were signing up. The desire to increase sales through this lucrative scheme led Sterling to expand the number of store credit card holders through unfair, unlawful, and deceptive business practices.

---

[7] Signet Jewelers Limited, Annual Report (Form 10-K) at 18 (Jan. 30, 2016), https://www.sec.gov/Archives/edgar/data/832988/000162828016012998/fy16q410k.htm

[8] Signet Jewelers Limited, Annual Report (Form 10-K) at 71 (Jan. 30, 2011), https://www.sec.gov/Archives/edgar/data/832988/000119312511082150/d10k.htm; Signet Jewelers Limited, Annual Report (Form 10-K) at 65 (Jan. 31, 2015), https://www.sec.gov/Archives/edgar/data/832988/000162828015001969/a10k-1312015xq4.htm.

[9] Signet Jewelers Limited, Annual Report (Form 10-K) at 68 (Jan. 28, 2017), https://www.sec.gov/Archives/edgar/data/832988/000162828017002652/fy17q410k.htm.

[10] Gretchen Morgenson, *Signet Jewelers' Balance Sheet Gets Extra Sparkle*, New York Times (Mar. 3, 2017), https://www.nytimes.com/2017/03/03/business/how-signet-jewelers-puts-extra-sparkle-on-its-balance-sheet.html (last visited Mar. 7, 2019).

24. In 2016, the CFPB and the New York Attorney General's Office began investigating the unfair business practices related to Sterling's credit card accounts.[11] In January 2019, the CFPB and New York Attorney General's Office filed a complaint (the "CFPB Complaint") against Sterling based on its deceptive practices. According to the CFPB Complaint, more than one million Sterling credit-card accounts were opened between 2013 and 2017 that were never used for a single purchase.[12] The eight-count complaint includes causes of action against Sterling under the Consumer Financial Protection Act, the Truth in Lending Act, and state consumer protection laws.

25. The 2019 CFPB Complaint describes the tactics Sterling used to submit unauthorized credit applications on behalf of unwitting consumers. For example, Sterling employees would ask for a consumer's personal information, falsely stating the information was necessary for a "rewards card" loyalty program, mailing list, or newsletter, when Sterling in fact used the information to complete a credit application without the consumer's knowledge or consent. Sterling sales representatives also offered to check whether consumers qualified for a line of credit, when the representatives were actually submitting credit applications.

26. Sterling employees also often represented to consumers that their credit reports could not be negatively impacted, and that there would be no "hard inquiry," when they applied for credit. However, according to the CFPB Complaint, Sterling made a credit-report inquiry for each application for credit.

[11] *Signet Jewelers: Acceleration of Revenue Recognition Puts Pressure on Signet to Continue to Sell ESPs at Accelerated Pace; A Closer Look at Likelihood of Add-on Product Enforcement by CFPB*, The Capitol Forum (Jan. 7, 2016), https://thecapitolforum.com/wp-content/uploads/2013/12/Signet-2016.01.07.pdf.

[12] CFPB Complaint at ¶ 32, *supra* note 6.

27. According to the CFPB Complaint, Sterling employees also misrepresented financing terms when offering the company's credit products or left out information that was necessary for consumers to understand a credit offer.

28. The CFPB Complaint also states that Sterling's store managers and district managers encouraged employees to use deceptive tactics to induce consumers to apply for the store credit card. For example, rather than use the term "credit card," even though a hard credit inquiry was required in the application process, managers told sales representatives to refer to it as a store card or "Kay card."

29. The CFPB Complaint cites Sterling's training materials, which include instructions on how to distract consumers and more easily open a credit account on their behalf. The quoted portion of the training materials suggest "offer[ing] to clean your Guest's jewelry while you fill out the credit application" and point out that "completing the in-house credit account application for the Guest on the [in-store] tablet allows him/her to focus on his/her reason for visiting the Store, and not on completing paperwork."

30. While Sterling's credit applications can be filled out on paper or electronically, employees were instructed to always be the one to fill out credit applications. According to the CFPB Complaint, Sterling's training materials instruct employees to "[a]lways fill out the paper credit application or type the credit application into the Graphical POS for the Guest." In many instances, consumers were never given any indication that a Sterling employee was applying for credit on their behalf. These consumers never saw their credit card applications—instead, Sterling employees submitted credit card applications without consumers' knowledge or consent.

31. Sterling's deceptive practices were exacerbated by unrealistic quotas imposed on employees. Employees were required, for example, to complete one credit application per day in mall locations and one credit application every two days at standalone locations.

32. Employees were rewarded, rated, compensated, and reprimanded depending on whether they submitted enough credit card applications. Employees who did not meet the company's credit-application quota were required to participate in additional trainings. If quotas were not met, an employee faced termination.

33. This complaint is distinct from the CFPB Complaint and resulting settlement. It seeks to hold both Comenity and Sterling responsible for opening unauthorized credit accounts without consent. While the Stipulated Final Order and Judgment resulting from the government's lawsuit against Sterling requires the jewelry company to pay a $10 million civil penalty to the CFPB and a $1 million civil money penalty to the State of New York, the settlement does not include any compensation for consumers impacted by the company's actions. Plaintiffs in this action seek to recover restitution, compensation, statutory penalties, injunctive relief, and all other available remedies for consumers impacted by Comenity's and Sterling's misconduct.

34. The missing redress to consumers in the CFPB settlement was questioned by the U.S. House of Representatives Committee on Financial Services in a February 7, 2019 letter from Representatives Maxine Waters and Al Green to CFPB Director Kathy Kraninger. The letter states:

> The Consumer Financial Protection Bureau ("Consumer Bureau") has recently announced several settlements against entities for engaging in unlawful practices without requiring the payment of redress to consumers harmed by the illegal conduct. This stands in stark contrast to the Consumer Bureau's practice under the leadership of former Director Cordray. During Director Cordray's tenure, the Consumer Bureau recovered nearly $12 billion in relief for harmed consumers over its first six years. American consumers deserve a Consumer Bureau that will fight to recover their hard-earned money when they are cheated.

> On January 16, 2019, the Consumer Bureau announced it had reached a settlement with Sterling Jewelers Inc. ("Sterling") for numerous claims, including that the company engaged in unfair practices by enrolling consumers who had a Sterling credit card in payment protection insurance without their consent. Under the terms of the settlement, Sterling is required to pay a penalty to the Consumer Bureau of $10 million, but does not have to refund consumers any of the money paid for payment protection insurance. According to the Consumer Bureau's complaint against Sterling, payment protection insurance generated $60 million in revenue in 2016 alone. The Consumer Bureau has previously required payments to consumers in similar cases where it found that consumers were enrolled in payment protection products without their consent. The Committee is deeply troubled that the Consumer Bureau would allow a company to keep the profits they made from their illegal sales practices.[13]

35. As asserted by the Committee on Financial Services' letter, plaintiffs and class members have been subjected to Sterling's unfair business practices and must be made whole. This action seeks restitution, compensation, statutory penalties, injunctive relief, and all other available remedies for affected consumers who were deceived by Sterling's unfair business practices and negatively affected by Comenity's practice of processing of credit applications that it knew, or should have known, were fraudulent.

B. Comenity Blindly Processed Consumer Credit Applications from Sterling Despite Sterling's History of Deceptive Credit Practices.

36. Notwithstanding Sterling's unfair and fraudulent credit application practices, on May 25, 2017, Comenity entered into a sale and purchase agreement to acquire Sterling's credit portfolio. The agreement established the purchase by Comenity of a portion of Sterling's existing credit card portfolio and the assumption from Sterling of certain liabilities related to Sterling's credit card portfolio. The purchase price was approximately $1 billion.[14]

---

[13] *Letter from Representatives Maxine Waters and Al Green to CFPB Director Kathy Kraninger*, U.S. House of Representatives Committee on Financial Services (Feb. 7, 2019), https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=402128.

[14] Signet Jewelers Limited, Current Report (Form 8-K) (May 24, 2017), https://www.sec.gov/Archives/edgar/data/832988/000114036117022238/form8k.htm.

37. Comenity credit cards are co-branded with retail stores, travel services, gas stations, auto dealers, healthcare providers, and financial institutions. It offers more than 100 store-specific credit cards for retail financing, including with Sterling.

38. Comenity and its co-brands market a "credit card" to customers as another way to pay for purchases in stores and online. Unlike other credit cards, Comenity's co-branded cards can only be used at brand stores.

39. When an application for a store credit card is submitted by a store's employee on behalf of a consumer, Comenity requests credit reports from consumer reporting agencies, such as Transunion, Equifax, and Experian, and issues the card. Comenity also reports credit card account activity to consumer reporting agencies.

40. While Comenity's co-branded credit cards are tied to particular retailers, they are just like traditional credit cards in that hard credit inquiries are conducted before Comenity determines whether to issue the card. Hard inquiries have two effects: they allow lenders to view the applicant's credit report and they inform future potential lenders and credit card companies that the applicant had previously sought credit. Additionally, as with standard credit cards, card activity is reported to major credit bureaus and can affect a consumer's credit score and credit report.

41. Although Comenity acquired the right and responsibility from Sterling to process consumer credit applications and issue Sterling-branded credit cards, it appears Comenity took no action to determine whether Sterling had ended its deceptive practices. Instead, Comenity continued to rely on Sterling sales staff to procure credit applications, which Comenity then submitted to consumer credit bureaus before issuing credit cards in the names of consumers. On

information and belief, Comenity did not question whether such applications were valid and authorized by the consumer in whose name the account was opened.

42. In fact, as is evident from plaintiffs' experiences, Sterling's misleading and fraudulent tactics after Comenity purchased Sterling's credit card business remained shockingly similar to the conduct that led to the government investigation. Sterling employees deceived plaintiffs and the classes, filling out credit card applications without their consent or knowledge. As the bank that submitted credit inquiries to consumer credit bureaus and issued credit cards in the names of consumers, Comenity took on the great responsibility of ensuring the credit applications were authorized. Rather than reasonably investigate the legitimacy of the credit applications—particularly where they were supplied by a business that was under active investigation—Comenity negligently failed to look into the matter, or willfully ignored it. Comenity failed to live up to its duty, to the detriment of plaintiffs and the classes.

43. This is not the first time Comenity's unfair consumer practices related to its co-branded credit cards and credit card accounts have been scrutinized. In 2015, the Federal Deposit Insurance Corporation ("FDIC") entered into a settlement with Comenity regarding the bank's deceptive practices and material misrepresentations and omissions in relation to credit card add-on products.[15] Comenity paid a $2 million penalty and $53 million in restitution to harmed consumers as part of the settlement.

44. Unfortunately, the government actions were apparently insufficient to deter Comenity from continuing to wrong consumers. After its settlement with the FDIC, Comenity

---

[15] *FDIC Announces Settlement with Comenity Bank and Comenity Capital Bank for Deceptive Practices Related to Credit Card Add-On Products*, Federal Deposit Insurance Corporation (Sept. 8, 2015), https://www.fdic.gov/news/news/press/2015/pr15073.html.

continued to allow unjust business practices to prevail, exemplified by its approval of fraudulent credit account applications submitted by Sterling.

45. These practices are similar to those of Wells Fargo, which created millions of likely unauthorized deposit or credit accounts on behalf of clients without their knowledge or consent. Initially, individual Wells Fargo branch workers and managers were blamed for the unethical and deceitful practices. As the investigation into unauthorized accounts evolved, it was found that the bank's fraudulent cross-selling culture was attributed to top executives, aggressive sales goals, and high-consequence incentives established by the company.[16] Wells Fargo's negligent actions and irresponsible business practices led to a $142 million class-action settlement that undersigned counsel secured for the impacted consumers.

C. Plaintiff Tara Lodge's Experience.

46. On or about January 18, 2019, Tara Lodge went to a Sterling Jewelers brand store, Kay Jewelers in Lorain, Ohio, to have jewelry inspected. Comenity owns and manages Kay's credit card portfolio and produces its promotional and application materials.

47. While Ms. Lodge's jewelry was being cleaned, the salesperson asked Ms. Lodge for her name, stating she was updating information.

48. A few days later, Ms. Lodge was alarmed and surprised to be alerted by her credit card company, and later through a consumer reporting agency, that an unauthorized Kay Jewelers and Comenity Bank co-branded credit card had been opened in her name. Ms. Lodge also learned that the credit inquiry from Comenity appeared on her credit report.

---

[16] *Independent Directors of the Board of Wells Fargo & Company Sales Practices Investigation Report*, The Financial Brand (Apr. 10, 2017), https://thefinancialbrand.com/wp-content/uploads/pdfs/Wells_Fargo_Board_Report.pdf.

49. After receiving these two notifications, as well as the credit card she never authorized, Ms. Lodge called customer service numbers on multiple occasions to close the unauthorized credit account and reverse its effects on her credit report.

50. Following her repeated attempts to reach someone at Kay Jewelers or Comenity who could help her, Ms. Lodge finally received a form letter from Comenity telling her that the credit account had been removed and the credit inquiry had been stricken from her credit bureau report.

comenity

Comenity Bank
PO Box 182025
Columbus, Ohio 43218-2025

February 11, 2019

Tara Lodge
[redacted]

Kay Jewelers LONG LIVE LOVE Credit Card Account Ending In 9685

We understand you did not intend to apply for a Kay Jewelers LONG LIVE LOVE Credit Card account.

Dear Tara,

We're Comenity Bank and we handle requests related to Kay Jewelers LONG LIVE LOVE credit card accounts.

The corporate office of Kay Jewelers indicated that you did not intend to apply for a Kay Jewelers LOVE LIVE LOVE credit card account, but an application was processed in your name while you were in the store. We apologize for any frustration or inconvenience this matter may have caused you.

I have removed the account and credit inquiry from your credit bureau report.

The application was processed in Kay Jewelers on January 18, 2019. Please note when an application is processed, the applicant is required to provide personal information such as date of birth, Social Security number, etc., to open an account.

Please be assured the account was closed permanently on January 23, 2019.

As a follow up to our phone conversation on February 8, 2019, notification was sent to the credit reporting agencies to delete the account and inquiry from your files. Please allow up to 45 days for the credit reporting agencies to update their records.

We hope this information is helpful. Should you have any other questions or concerns, regarding this letter, please feel free to contact me at **1-800-675-5685** ext. **7293162**, (TDD/TTY **1-800-695-1788**). I will be happy to assist you.

Sincerely,

Rebecca Underwood

Rebecca Underwood
Consumer Support Specialist

D. Plaintiff Jacqueline Desmond's Experience

51. On or about January 21, 2018, Jacqueline Desmond visited Osterman Jewelers in Sandusky, Ohio, to have a piece of jewelry cleaned. Osterman Jewelers is a regional Sterling

store. As explained above, Sterling's credit card portfolio along with its credit card promotional and application materials are managed by Comenity.

52. Although no employees discussed opening a Sterling and Comenity co-branded credit card with Ms. Desmond during the visit, she received a credit card with her name on it at her home address a few weeks after she visited the store. Ms. Desmond first learned that Comenity had opened the card in her name when she received the card in the mail.

53. Ms. Desmond never authorized Sterling to submit an application for a credit card, nor did she authorize Comenity to open a credit card in her name. She had no reasonable way of knowing that a credit card application was being submitted, reviewed, and approved on her behalf.

54. Sterling's acts of submitting unauthorized credit card applications and Comenity's acts of obtaining and using unauthorized credit reports and issuing unwanted credit cards have impactful and lasting consequences. Because Sterling submitted these applications and Comenity approved these applications for unauthorized credit accounts without consumers' consent, both entities violated their own responsibilities and injured plaintiffs and the classes.

E. Plaintiffs and Class Members Have Been Harmed by Sterling's and Comenity's Misconduct.

55. Plaintiffs and Class members never consented to a Sterling credit card application being filled out and submitted on their behalf or to Comenity requesting a credit inquiry and issuing them credit cards. Nor were they approached by Comenity to confirm their knowledge of and consent to a having credit account opened in their name. Sterling and Comenity left plaintiffs to face the substantial consequences of the unauthorized credit checks and unwanted credit card accounts.

56. Consumers have been wronged by Sterling and Comenity. The companies' misconduct of requesting unauthorized credit reports and opening unwanted credit accounts has and will continue to affect consumers' credit history.

V. CLASS ACTION ALLEGATIONS

57. Pursuant to Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure, plaintiffs bring this action on behalf of themselves and the Nationwide Class and Ohio State Class, defined as:

Nationwide Class:

> All persons in the United States (including its territories and the District of Columbia) who received a Sterling-brand store credit-card or payment-protection insurance without consent.

58. In addition to the Nationwide Class, and pursuant to Federal Rules of Civil Procedure 23(c)(5), plaintiffs seek to represent the following class as well as any subclasses or issue classes as plaintiffs may propose and/or the Court may designate at the time of class certification:

Ohio State Class:

> All persons in the State of Ohio who received a Sterling-brand store credit-card or payment-protection insurance without consent.

59. Excluded from the classes are Sterling and its subsidiaries, affiliates, and officers; Comenity and its subsidiaries, affiliates, and officers; all persons who timely elect to exclude themselves from the classes; and the judge to whom this case is assigned and his or her immediate family. Plaintiffs reserve the right to revise the class definitions based on information learned through discovery.

60. Certification of plaintiffs' claims for classwide treatment is appropriate because plaintiffs can prove the elements of their claims regarding liability and entitlement to damages on

a classwide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claim. This action has been brought and may properly be maintained on behalf of the Nationwide Class and/or the Ohio State Class proposed herein under Federal Rule of Civil Procedure 23.

61. Membership in these classes may be determined by objective criteria in material obtained through discovery, including indicators of unauthorized accounts, such as account inactivity. Plaintiffs reserve the right to modify the definitions of the classes and define additional classes prior to class certification.

A. Class Certification Requirements

62. **Numerosity – Rule 23(a)(1):** The members of each of the classes are so numerous and geographically dispersed that individual joinder of all class members is impracticable. Based on available reports regarding the prevalence of Sterling's and Comenity's misconduct, plaintiffs are informed and believe there are thousands of class members. The precise numbers of class members can be ascertained through discovery, which will include Sterling's and Comenity's records.

63. **Commonality and predominance – Rules 23(a)(2) and 23(b)(3):** This action involves significant common questions of law and fact, which predominate over any questions affecting individual class members, including, but not limited to:

A. Whether Sterling and/or Comenity engaged in the conduct alleged in this complaint;

B. Whether Sterling violated the Ohio Consumer Sales Practices Act;

C. Whether Comenity violated the Fair Credit Reporting Act;

D. Whether Sterling and/or Comenity violated the Truth in Lending Act;

E. Whether Comenity violated the Delaware Consumer Fraud Act;

F. Whether and how Sterling and its employees engaged in unlawful practices in order to cause credit cards to be issued in consumers' names without their authorization;

G. Whether Sterling knew or should have known of its employees' unlawful, unfair, and deceptive practices in submitting credit applications in the names of consumers without authorization and causing credit cards to be issued in their names;

H. Whether Comenity is liable to class members for damages caused by obtaining and using consumer reports without the consumer's authorization;

I. Whether Comenity is liable to class members for damages caused by issuing Sterling credit cards without the consumer's authorization; and

J. Whether as a result of Sterling's and/or Comenity's misconduct, plaintiffs and the classes are entitled to equitable and declaratory relief and, if so, the nature of such relief.

64. **Typicality – Rule 23(a)(3):** The representative plaintiffs' claims are typical of the claims of the members of the classes. Plaintiffs and all class members have been injured by defendants' same wrongful practices. Plaintiffs' claims arise from the same practices and course of conduct that give rise to the claims of the class members and are based on the same legal theories.

65. **Adequacy – Rule 23(a)(4):** Plaintiffs are representatives who will fully and adequately assert and protect the interests of the classes and have retained class counsel who are experienced and qualified in prosecuting class actions. Neither plaintiffs nor their attorneys have any interests contrary to or in conflict with the classes.

66. **Declaratory and injunctive relief – Rule 23(b)(2):** Sterling and Comenity have acted or refused to act on grounds generally applicable to plaintiffs and the other class members,

making final injunctive and declaratory relief, as described below, appropriate with respect to the classes as a whole.

67. **Superiority – Rule 23(b)(3):** A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The damages or other financial detriment suffered by plaintiffs and other class members are relatively small compared to the burden and expense that would be required to individually litigate their claims against defendants, so it would be practicable for class members to individually seek redress for defendants' misconduct. Even if class members could afford individual litigation, the court system could not. Individualized litigation creates a potential for inconsistent or contradictory judgments and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

VI. TOLLING OF ANY APPLICABLE STATUTES OF LIMITATIONS

A. Discovery Rule

68. The discovery rule delays the date on which a statute of limitations starts to run. Despite their diligence, plaintiffs and class members did not discover and could not have discovered the facts that form the basis for their causes of action on the day the conduct occurred. In particular, plaintiffs and class members had no ability to know that Sterling was surreptitiously submitting credit card applications on their behalf or that Comenity was requesting consumer credit reports and issuing credit cards based on unauthorized credit applications.

69. Plaintiffs had the reasonable expectation that Sterling would not signed them up for credit cards without permission and that Comenity would not process fraudulent credit card applications.

70. Neither defendant has contacted plaintiffs to inform them that Sterling submitted unauthorized credit applications on their behalf or that Comenity requested unauthorized consumer credit reports and issued unauthorized credit cards. Nor, on information and belief, has either defendant informed class members of this misconduct.

71. Any statutes of limitation otherwise applicable to any claim asserted have been tolled under the discovery rule by the inability of plaintiffs and the class members to have a reasonable opportunity to discover, in real time, the unlawful injury giving rise to this complaint.

B. Equitable Tolling

72. Equitable tolling pauses of the statute of limitations after it has begun. Plaintiffs knew they did not sign up for the Sterling credit cards they received in the mail. However, neither defendant has contacted plaintiffs to inform them that Sterling submitted unauthorized credit applications on their behalf or that Comenity requested unauthorized consumer credit reports and issued unauthorized credit cards. Nor, on information and belief, have defendants contacted any class members to inform them of this misconduct.

73. Because there was excusable delay by plaintiffs and the class members for bringing claims, any statutes of limitation have been tolled by the doctrine of equitable tolling until the discovery of the conduct giving rise to this complaint.

C. Estoppel

74. Sterling was under a continuous duty to inform plaintiffs and the classes that it had submitted credit card applications without their knowledge or consent. Comenity was also under a continuous duty to inform plaintiffs and the classes that it processed unauthorized credit

card applications, improperly requested consumer reports, and issued unauthorized credit cards. Yet, defendants have never informed plaintiffs (nor, on information and belief, class members) of this misconduct. This delay increased the harm to plaintiffs and the classes. Because of defendants' concealment of their misconduct, plaintiffs and class members did not and could not know of the existence of their claims when they arose.

75. Based on the foregoing, defendants are estopped from relying on statutes of limitation in defense of this action.

VII. CAUSES OF ACTION

Count I – Violations of the Ohio Consumer Sales Practices Act Ohio Rev. Code § 1345.01, *et seq.*

(Asserted Against Sterling)

76. Plaintiffs incorporate by reference the allegations contained in the preceding and subsequent paragraphs of the complaint as if fully restated here.

77. Plaintiffs bring this count on behalf of themselves and the Nationwide Class or, in the alternative, plaintiffs bring this claim on behalf of the Ohio State Class.

78. The Ohio Consumer Sales Practices Act (the "CSPA") broadly prohibits unfair or deceptive acts or practices in connection with a consumer transaction. Ohio Rev. Code § 1345.02.

79. The CSPA defines a "consumer transaction" as "a sale, lease, assignment, award by chance, or other transfer of an item of goods, a service, a franchise, or an intangible, to an individual for purposes that are primarily personal, family, or household, or solicitation to supply any of these things." Ohio Rev. Code § 1345.01(A).

80. Sterling is a "supplier" within the meaning of the CSPA. *See* Ohio Rev. Code § 1345.01(C).

81. Plaintiffs and class members are "consumers" as defined in the CSPA. *See* Ohio Rev. Code § 1345.01(D).

82. Sterling's unfair and deceptive acts and practices, as described in this complaint, include, but are not limited to, (1) submitting credit applications in the names of plaintiffs and class members without authorization and causing credit cards to be issued in their names without their consent; (2) deceiving consumers by stating that personal information was needed to update records or for other benign purposes, when Sterling employees actually used the information to submit unauthorized credit applications; (3) enrolling customers in payment-protection insurance without their consent; and (4) misrepresenting to consumers the financing terms associated with the credit-card accounts.

83. Sterling's conduct, as alleged in this complaint, violates the CSPA.

84. As a result of Sterling's misconduct, plaintiffs and the classes have been damaged in an amount to be proven at trial. They seek all proper remedies, including, but not limited to, actual and statutory damages, an injunction prohibiting Sterling's deceptive and unfair conduct, treble damages, costs, and reasonable attorney fees pursuant to Ohio Rev. Code § 1345.09, *et seq.*

Count II – Violations of the Fair Credit Reporting Act, 15 U.S.C. § 1681, *et seq.*

(Asserted Against Comenity)

85. Plaintiffs incorporate by reference the allegations contained in the preceding and subsequent paragraphs of the complaint as if fully restated here.

86. Plaintiffs bring this count on behalf of themselves and the Nationwide Class or, in the alternative, plaintiffs bring this claim on behalf of the Ohio State Class.

87. Each time Comenity starts a new credit card, it obtains a "consumer report," as that term is defined in the Fair Credit Reporting Act (the "FCRA") about the consumer for whom the credit card is started. 15 U.S.C. § 1681a(d).

88. Comenity is required by 15 U.S.C. § 1681b, 1681n, and 1681o to refrain from obtaining or using consumer reports from consumer reporting agencies under false pretenses and without proper authorization from the consumer who is the subject of the report.

89. Obtaining and using consumer reports in the process of starting unauthorized credit cards is not allowed pursuant to the FCRA, and thus is a violation of federal law.

90. Comenity has a mandatory duty to use or obtain consumer reports only for permissible purposes. 16 U.S.C. § 1681b(f).

91. Despite these clear and unambiguous requirements of the FCRA, Comenity regularly obtains consumer reports regarding consumers without their knowledge or consent in order to cause new unauthorized credit cards to be issued, in violation of the FCRA.

92. Pursuant to 15 U.S.C. §§ 1681n and 1681o, Comenity is liable for negligently and willfully violating the FCRA by obtaining consumer reports without a permissible purpose or authorization under the FCRA.

Count III – Violations of the Delaware Consumer Fraud Act

(Asserted Against Comenity)

93. Plaintiffs incorporate by reference the allegations contained in the preceding and subsequent paragraphs of the complaint as if fully restated here.

94. Plaintiffs bring this count on behalf of themselves and the Nationwide Class or, in the alternative, plaintiffs bring this claim on behalf of the Ohio State Class.

95. The Delaware Consumer Fraud Act ("CFA") prohibits a variety of deceptive and fraudulent practices in connection with the sale or advertisement of merchandise or products. The CFA provides:

> The act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, or the concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale, lease or advertisement of any merchandise, whether or not any person has in fact been misled, deceived or damaged thereby, is an unlawful practice.

Del. Code Ann. tit. 6, § 2513.

96. As alleged throughout this complaint, Comenity engaged in deceptive acts or practices by opening accounts and financial products in the names of customers without their knowledge or consent.

97. As a result of Comenity's misconduct, plaintiffs and the classes have been damaged in an amount to be proven at trial.

Count IV – Unauthorized Issuance of Credit Cards under the Truth in Lending Act and Regulation Z

(Asserted Against Sterling and Comenity)

98. Plaintiffs incorporate by reference the allegations contained in the preceding and subsequent paragraphs of the complaint as if fully restated here.

99. The Truth in Lending Act ("TILA") provides that "[n]o credit card shall be issued except in response to a request or application therefor." 15 U.S.C. § 1642.

100. Regulation Z states that no credit card may be issued to any person except in response to an oral or written request or application for the card. 12 C.F.R. § 1026.12(a)(1).

101. Defendants issued credit cards to consumers without their knowledge or consent and not in response to an oral or written request for the card.

102. Defendants' violations were not unintentional, nor did defendants maintain procedures reasonably adapted to avoid the violations.

103. Therefore, defendants have violated TILA and Regulation Z. 15 U.S.C. § 1642; 12 C.F.R. § 1026.12(a)(1).

Count V – Declaratory Relief

(Asserted Against Sterling and Comenity)

104. Plaintiffs incorporate by reference the allegations contained in the preceding and subsequent paragraphs of the complaint as if fully restated here.

105. Plaintiffs bring this count on behalf of themselves and the Nationwide Class or, in the alternative, plaintiffs bring this claim on behalf of the Ohio State Class.

106. The Declaratory Judgment Act, 28 U.S.C. § 2201(a), provides that in "a case of actual controversy within its jurisdiction . . . any court of the United States . . . may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought." 28 U.S.C. § 2201(a).

107. As described above, this Court has jurisdiction over this matter, and therefore may declare the rights of plaintiffs and class members.

108. Plaintiffs and the classes seek an order declaring that Sterling's practices of (1) completing credit applications and submitting them without authorization from the consumer, (2) enrolling customers in payment-protection insurance without their consent, and (3) misrepresenting to consumers the financing terms associated with the credit-card accounts are unlawful, and that Sterling is liable to plaintiffs and the classes for damages caused by those practices.

109. Plaintiffs and the classes also seek an order declaring that Comenity's practice of obtaining unauthorized consumer reports and causing unauthorized credit cards to be issued is

unlawful and that Comenity is liable to plaintiffs and the classes for damages caused by that practice.

VIII. REQUEST FOR RELIEF

Plaintiffs, individually and on behalf of all others similarly situated, request judgments against Sterling and Comenity as follows:

A. For an order certifying the classes and, under Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3), and appointing plaintiffs as representatives of the classes and appointing the lawyers and law firm representing plaintiffs as counsel for the classes;

B. Declaring Sterling's and Comenity's actions to be unlawful;

C. Permanently enjoining Sterling and Comenity from performing further unfair and unlawful acts as alleged in this complaint;

D. For all recoverable compensatory, statutory, and other damages sustained by plaintiffs and the classes, including disgorgement and all other relief allowed under applicable law;

E. For costs;

F. For both pre-judgment and post-judgment interest on any amounts awarded;

G. For appropriate injunctive relief, including public injunctive relief, *i.e.*, an order compelling Sterling and Comenity to correct their nationwide policies that promote and condone the opening of unauthorized accounts;

H. For treble damages insofar as they are allowed by applicable laws;

I. For appropriate individual relief as requested above;

J. For payment of attorneys' fees and expert fees as may be allowable under applicable law; and

K. For such other and further relief, including declaratory relief, as the Court may deem proper.

IX. DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial on all issues so triable.

Dated this 8th day of May, 2019

WHITEFORD TAYLOR & PRESTON LLC

By /s/ Chad J. Toms
Chad J. Toms, Esq. (ID #4155)
The Renaissance Centre
405 N. King Street, Suite 500
Wilmington, DE 19801
Telephone: (302) 357-3253
Facsimile: (302) 357-3273
ctoms@wtplaw.com

KELLER ROHRBACK L.L.P.

By /s/ Derek W. Loeser
Derek W. Loeser, *Pro Hac Vice Forthcoming*
dloeser@kellerrohrback.com
Gretchen Freeman Cappio, *Pro Hac Vice Forthcoming*
gcappio@kellerrohrback.com
Gabriel E. Verdugo, *Pro Hac Vice Forthcoming*
gverdugo@kellerrohrback.com
1201 Third Avenue, Suite 3200
Seattle, WA 98101
Telephone: (206) 623-1900
Facsimile: (206) 623-3384

Alison E. Chase, *Pro Hac Vice Forthcoming*
achase@kellerrohrback.com
Matthew J. Preusch, *Pro Hac Vice Forthcoming*
mpreusch@kellerrohrback.com
801 Garden Street, Suite 801
Santa Barbara, CA 93101
Telephone: (805) 456-1496
Facsimile: (805) 456-1497
Attorneys for Plaintiffs