

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

Bureau of Consumer Financial
Protection and the People of the State of
New York, by Letitia James, Attorney
General for the State of New York,

Plaintiffs,
v.

Sterling Jewelers Inc.,

Defendant.

Case No.

COMPLAINT

The Bureau of Consumer Financial Protection (Bureau) and the People of the State of New York (State of New York), by its Attorney General (NYAG), bring this action against Sterling Jewelers Inc. (Sterling) and allege as follows:

INTRODUCTION

1. Sterling operates roughly 1,500 jewelry stores in malls and off-mall locations in all 50 states, including roughly 130 stores in New York State. Sterling does business as Kay Jewelers, Jared The Galleria of Jewelry, and a variety of regional brands, including JB Robinson Jewelers, Marks & Morgan Jewelers, Belden Jewelers, Goodman Jewelers, LeRoy's Jewelers, Osterman Jewelers, Rogers Jewelers, Shaw's Jewelers, and Weisfield Jewelers.

2. Sterling is a wholly owned subsidiary of Signet Jewelers Limited (Signet). Signet is the largest specialty-jewelry retailer in the United States, United Kingdom, and Canada. Sterling entities account for more than 60% of Signet's total annual sales of about \$6.4 billion.

3. Since 1990, and until at least October 2017, Sterling offered in-house credit financing directly to consumers to make purchases in its stores.

4. Consumers who visited Sterling's stores were typically encouraged by Sterling's salespeople to finance their purchases. Roughly 60% of Sterling's total sales are financed by consumers using Sterling's in-house credit. From 2014 through 2017, Sterling had over three million open credit accounts each year, and Sterling generated more than \$300 million in net revenue each year from such accounts.

5. Sterling's company culture, reflected in its training materials and sales-performance standards, pressures employees to enroll consumers in company credit cards and to sell its financing plans and payment-protection insurance.

6. The Bureau and the State of New York bring this action under §§ 1031, 1036(a)(1), 1054, and 1055 of the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. §§ 5531, 5536(a)(1), 5564, 5565, the Truth in Lending Act (TILA), 15 U.S.C. § 1601 *et seq.*, and its implementing regulation, Regulation Z, 12 C.F.R. part 1026, in connection with Sterling's credit-financing practices, including (1) submitting credit applications for consumers and causing credit cards to be issued without consumers' knowledge or consent; (2) misrepresenting credit-financing terms and conditions; and (3) enrolling consumers in payment-protection insurance without their knowledge or consent. The State of New York also brings this action under New York Executive Law (Exec. Law) § 63(12) and New York General Business Law (GBL) § 349.

JURISDICTION AND VENUE

7. This Court has subject-matter jurisdiction because this action is brought under “Federal consumer financial law,” 12 U.S.C. § 5565(a)(1), presents a federal question, 28 U.S.C. § 1331, and is brought by an agency of the United States, 28 U.S.C. § 1345. This Court has supplemental jurisdiction over the State of New York’s state-law claims because they are so related to the federal claims that they form part of the same case or controversy. 28 U.S.C. § 1337(a).

8. Venue is proper in this district because Sterling conducts business in this district. 12 U.S.C. § 5564(f).

PARTIES

9. The Bureau is an agency of the United States charged with regulating the offering and provision of consumer-financial products and services under “Federal consumer financial laws.” 12 U.S.C. § 5491(a). The Bureau has independent litigating authority to enforce “Federal consumer financial laws.” See 12 U.S.C. § 5564(a)–(b).

10. The State of New York, by its Attorney General, is authorized to take action to enjoin repeated and persistent fraudulent or illegal conduct under Exec. Law § 63(12) and deceptive business practices under GBL § 349. The NYAG is also authorized to initiate civil actions in federal district court to enforce provisions of the CFPA. See 12 U.S.C. § 5552(a)(1).

11. Sterling, an Ohio corporation, maintains its headquarters at 375 Ghent Road, Akron, Ohio 44333. Sterling operates jewelry stores and offers credit products to consumers in all 50 states, including in the State of New York. Sterling engages in

offering a “consumer financial product or service” under the CFPA. 12 U.S.C. § 5481(5)(A), (15)(A)(i). Sterling is therefore a “covered person” under the CFPA. 12 U.S.C. § 5481(6).

FACTS

12. Sterling offers consumers a credit card that provides a line of credit that can be used only at Sterling’s stores; it is not a general-purpose credit card.

13. Signing up consumers for Sterling credit cards built brand loyalty and caused consumers to be more likely to purchase goods at Sterling’s stores. According to one of its recent annual reports, “[t]he 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.”

14. In connection with offering its credit products, Sterling’s salespeople misrepresented financing terms or omitted information necessary for consumers to understand the credit offer.

15. Store employees failed to inform consumers that they were applying for credit and misstated the reasons for requesting consumers’ personal information.

16. In many instances, Sterling’s sales representatives offered to check for a consumer whether the consumer qualified for a line of credit. In fact, the sales representative actually submitted a credit application for the consumer.

17. In many instances, Sterling’s sales representatives told consumers when they applied for credit that there would be no “hard inquiry” or negative impact on

consumers' credit reports because Sterling offered "in-house" financing. In fact, for each application for credit from Sterling, Sterling made a credit-report inquiry.

18. In many instances, Sterling's sales representatives induced consumers to provide their personal information by purporting to sign up consumers for a store "rewards card," loyalty program, newsletter, or mailing list. In fact, the sales representatives used consumers' personal information to submit a credit application.

19. In other instances, Sterling's sales representatives informed consumers that they were collecting personal information for a "survey" or to place a custom order for the consumer when, in fact, the information was used to complete a credit application.

20. Many of Sterling's store managers and district managers encouraged deceptive tactics to induce consumers to apply for a credit card, and many turned a blind eye to such conduct.

21. For example, Sterling's store managers and district managers told sales representatives not to use the term "credit card" but instead to refer to the credit card as a store card or a "Kay card."

22. Sterling's training materials instructed employees to offer credit to every customer who visited a store, and they included tips that enabled salespeople to distract the consumer, such as "offer to clean your Guest's jewelry while you fill out the credit application," and "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."

23. Sterling's credit-card applications have been in both paper and electronic formats.

24. 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."

25. Because the credit application usually was completed not by the consumer, but by a salesperson on paper or on the employee-operated electronic tablet, many consumers never saw their credit-card application or any applicable terms and conditions.

26. In many instances, consumers were never given any written or oral credit disclosures or any indication they were applying for credit. Sometimes, consumers were given inaccurate oral disclosures about the terms of the credit.

27. Sterling's employees experienced pressure to obtain and submit completed credit-card applications.

28. Employees were rated, retained, and compensated based on their ability to meet certain performance standards, including for obtaining credit-card applications.

29. Sterling's companywide, formal performance standards required employees at stores located in shopping malls to complete "one credit card application a day." Employees at standalone stores were required to obtain one credit application every two days.

30. In some instances, employees who failed to meet the company's credit-application quota received counseling and additional training from store managers;

other employees were terminated for failing to meet credit-application performance standards.

31. Bonuses for certain Sterling's managers were determined, in part, based on the number of credit-card applications obtained by employees the managers supervised.

32. From 2013 through 2017, over one million Sterling credit-card accounts were opened based on applications completed and submitted in Sterling's stores and then never used by the consumers who had supposedly applied for them.

33. When consumers knew they were applying for credit, Sterling's employees sometimes misled consumers about the type of financing for which they were applying, as well as the applicable terms of the financing, such as the interest rate and monthly payment amount.

34. In such instances, consumers applied for credit from Sterling after employees presented them with certain terms—a low monthly payment or interest-free period—that were not honored. These consumers received credit cards and billing statements that did not match the representations made by the salespeople at the time consumers applied for credit.

35. Sterling's employees offered, and were trained to promote, interest-free financing.

36. In many instances, consumers were offered interest-free financing in connection with a purchase, only to find out upon receiving a billing statement that they were enrolled in a regular, interest-bearing credit plan.

37. Sterling's stores generally offered 6-, 12-, and 18-month interest-free promotional financing to customers, provided the customers met a minimum purchase amount and made a 20% down payment at the time of purchase.

38. In many cases, Sterling's employees offered customers promotional financing but then determined that the customers could not make a down payment at the time of purchase and thus did not meet the eligibility requirements for interest-free financing. In these instances, Sterling's employees instead enrolled the consumers in a regular interest-bearing financing plan without disclosing this to the consumer. Consumers often did not learn of this until they noticed it on a billing statement weeks or months later.

39. In other cases, consumers were quoted a monthly payment amount based on interest-free financing and were later quoted a lower monthly payment without Sterling's employees explaining that the lower monthly payment was not available with interest-free financing and instead required extending the repayment period on a regular, interest-bearing plan. In these instances, Sterling's employees did not tell consumers that they were getting regular financing, rather than promotional financing, and they did not disclose the changed financing terms to consumers at the time of purchase or obtaining credit.

40. Until roughly June 2017, Sterling offered to its credit customers Payment Protection Plan (PPP) insurance through a third-party insurance provider. PPP insurance was offered at the point-of-sale in 33 states, including the State of New York.

Although a third party administered PPP, Sterling was responsible for the marketing and sale of PPP.

41. PPP generated significant revenues for Sterling. In fiscal year 2016, for example, PPP sales generated more than \$60 million in revenues.

42. PPP insurance was an optional credit-insurance program offered to Sterling credit customers to help them make their monthly payments in the event of death, disability, loss of property due to burglary or perils, or loss of work. The PPP terms varied depending on the customer's state of residence.

43. PPP insurance was directly tied to the consumer's credit card because its function was to make monthly credit-card payments if the consumer met certain criteria. PPP insurance was not offered to customers, and could not exist, independent of the credit card.

44. In states where PPP insurance was offered, Sterling's employees were required to enroll customers in it to meet company performance standards.

45. Sterling's employees enrolled some consumers in PPP insurance without their knowledge or consent. In many instances, consumers were asked to "sign here" or select "Yes" on an electronic "PIN-pad" in order to hold an item, process an order, or verify their information when, in fact, their signature was used to enroll them in PPP.

46. Customers enrolled in PPP insurance at the store by electronically consenting to coverage on the PIN-pad they used to complete their purchase transaction.

47. The cost of PPP insurance varied depending on the type of coverage and state in which it was offered, but it averaged around \$0.97 per \$100 purchase or balance amount. This amount was charged monthly to the consumer's credit-card billing statement. In New York State, the cost of PPP insurance was \$0.224 per \$100 of account balance per month.

48. In many instances, PPP insurance was added to consumers' accounts or purchases without their knowledge or consent.

49. Consumers did not realize that they were electing to purchase credit insurance on the PIN-pad, often noting that they assumed they were signing in connection with the purchase, special order, or, if they were aware of it, the credit application, which occurred at the same time and as part of the same transaction as PPP enrollment.

50. Consumers often only discovered that they were enrolled in, and were being charged for, PPP insurance after noticing it on their billing statements.

51. In some instances, Sterling's employees told consumers about the PPP insurance and asked them to sign up so that the employees could meet their quotas—while promising the consumers that the employees would cancel the insurance before the consumers were charged. But the PPP insurance was not canceled and consumers were charged for a product they did not want.

52. In other instances, Sterling's employees told consumers that they were signing up to receive an informational packet to gauge their interest in PPP insurance; in fact, and unbeknownst to them, consumers were purchasing the product.

CAUSES OF ACTION

Count I—Deception under the CFPA Regarding Credit-Card Applications, Asserted by the Bureau and the State of New York

53. The allegations in paragraphs 1-52 are incorporated by reference.

54. An act or practice is deceptive if there is a representation or omission of information that misleads or is likely to mislead a consumer; the consumer's interpretation of the act or practice is reasonable under the circumstances; and the misleading act or practice is material. 12 U.S.C. §§ 5531(a), 5536(a)(1)(B).

55. In many instances, Sterling's employees represented to consumers that they were completing a survey, enrolling in a rewards program, or checking to see how much they would qualify to spend in the store when, in fact, the consumers were completing credit-card applications or Sterling's employees were completing applications for consumers without their knowledge or consent.

56. These misrepresentations were likely to mislead consumers acting reasonably under the circumstances because consumers believed they were providing personal information for other purposes and consumers relied on store employees' representations that consumers were doing something other than applying for a credit card.

57. These misrepresentations were material because many consumers likely would not have provided their personal information and signature if they knew they were applying for credit, given that they may not have wanted an extension of credit or the potential negative impact it could have on their credit file or ability to obtain credit in the future.

58. Furthermore, a reasonable consumer would want to know that his personal information and signature would be used to apply for a credit-card account at Sterling's stores.

59. The fact that the credit-card application disclosed the actual nature of the transaction does not correct the misrepresentations made to consumers.

60. Sterling's statements or omissions to consumers regarding credit applications were false or misleading and constituted deceptive acts and practices, in violation of the CFPB. 12 U.S.C. §§ 5531(a), 5536(a)(1)(B).

Count II—Unauthorized Issuance of Credit Cards under TILA and Regulation Z, Asserted by the Bureau

61. The allegations in paragraphs 1-52 are incorporated by reference.

62. TILA provides that “[n]o credit card shall be issued except in response to a request or application therefor.” 15 U.S.C. § 1642.

63. 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).

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

65. Therefore, Sterling has violated TILA and Regulation Z. 15 U.S.C. § 1642; 12 C.F.R. § 1026.12(a)(1).

**Count III – Pursuant to New York Executive Law § 63(12),
Violation of TILA and Regulation Z, Asserted by the State of New York**

66. The allegations in paragraphs 1-52 are incorporated by reference.
67. N.Y. Exec. Law § 63(12) authorizes the NYAG to bring an action to enjoin repeated illegal acts or persistent illegality in the carrying on, conducting, or transaction of business.
68. TILA provides that “[n]o credit card shall be issued except in response to a request or application therefor.” 15 U.S.C. § 1642.
69. 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).
70. Sterling issued credit cards to consumers without their knowledge or consent and not in response to an oral or written request for the card.
71. Therefore, Sterling has violated TILA and Regulation Z. 15 U.S.C. § 1642; 12 C.F.R. § 1026.12(a)(1).
72. By its actions in violation of TILA and Regulation Z, Sterling has engaged in repeated and persistent illegal conduct in violation of N.Y. Exec. Law § 63(12).

**Count IV—Violation of the CFPA,
Asserted by the Bureau and the State of New York**

73. The allegations in paragraphs 1-52 are incorporated by reference.
74. Sterling’s violations of TILA and Regulation Z, described in Count II, constitute violations of § 1036 of the CFPA. 12 U.S.C. § 5536(a)(1)(A).

Count V—Deception under the CFPA Regarding Promotional Financing Terms, Asserted by the Bureau and the State of New York

75. The allegations in paragraphs 1-52 are incorporated by reference.
76. Sterling's employees misrepresented certain financing terms to consumers, including the applicable interest rate, monthly payment amount, and eligibility for promotional financing.
77. In these instances, consumers did not know the terms of the extension of credit they received until they noticed them on a billing statement.
78. Consumers reasonably relied on Sterling's employees' statements regarding the terms of the extension of credit they would receive, and consumers opened lines of credit and made purchase decisions on the understanding that they would receive the terms represented to them by Sterling's employees.
79. Sterling's statements or omissions to consumers regarding the terms of or consumers' eligibility for promotional financing plans were false or misleading and constituted deceptive acts and practices, in violation of the CFPA. 12 U.S.C. §§ 5531(a), 5536(a)(1)(B).

Count VI—Unfairness under the CFPA Regarding PPP Enrollment, Asserted by the Bureau and the State of New York

80. The allegations in paragraphs 1-52 are incorporated by reference.
81. Under the CFPA, an act or practice is “unfair” where the Bureau has “a reasonable basis” to conclude that “the act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers,” and that “such substantial injury is not outweighed by countervailing benefits to consumers or to competition.” 12 U.S.C. § 5531(c)(1).

82. Sterling's employees enrolled consumers in PPP insurance without their knowledge or consent.

83. This practice typically occurred when employees enrolled consumers in PPP insurance without informing them that they were being enrolled or misled consumers about what they were signing up for.

84. This conduct was likely to cause substantial injury because consumers were charged a monthly fee for the coverage in an amount proportional to their purchase or balance amount, which consumers could not reasonably avoid because they were not aware that they had the option to accept or decline coverage.

85. The harm to consumers from being enrolled in and charged for PPP insurance without their knowledge was not outweighed by countervailing benefits to consumers or competition; Sterling's practice of enrolling consumers in its optional PPP insurance without their knowledge or consent did not provide any benefits that would encourage legal business practices or competition.

86. Therefore, Sterling committed unfair acts or practices, in violation of §§ 1036(a)(1)(B) and 1031(c)(1) of the CFPA. 12 U.S.C. §§ 5536(a)(1)(B), 5531(c)(l).

**Count VII—Fraudulent Practices under
Executive Law § 63(12), Asserted by the State of New York**

87. The allegations in paragraphs 1-52 are incorporated by reference.

88. Exec. Law § 63(12) authorizes the NYAG to seek injunctive relief and other equitable relief and damages when a person or entity engages in repeated or persistent fraudulent conduct in the operation of a business.

89. Exec. Law § 63(12) broadly defines fraud to include “any device, scheme or artifice to defraud and any deception, misrepresentation, concealment, suppression, false pretense, false promise or unconscionable contractual provisions.”

90. Sterling has engaged in repeated fraudulent acts and practices in the operation of a business by conduct, including but not limited to: i) deceiving consumers about credit-card applications and enrollment; ii) misrepresenting to consumers the terms and conditions of Sterling’s promotional financing; and iii) failing to disclose that consumers are enrolling in payment-protection insurance.

91. Sterling has therefore engaged in repeated and persistent fraud in violation of Exec. Law § 63(12).

**Count VIII—Deceptive Practices under New York
General Business Law § 349, Asserted by the State of New York**

92. The allegations in paragraphs 1-52 are incorporated by reference.

93. GBL § 349 provides that “[d]eceptive acts or practices in the conduct of any business . . . in this state are hereby declared unlawful.”

94. GBL § 349 authorizes the NYAG to bring an action for an injunction, restitution, and civil penalties when any individual has engaged or is about to engage in deceptive practices in the State of New York.

95. Sterling’s employees have engaged in deceptive acts and practices by, including but not limited to: i) deceiving consumers about credit-card applications and enrollment; ii) misrepresenting to consumers the terms and conditions of Sterling’s promotional financing; and iii) failing to disclose that consumers are enrolling in payment-protection insurance.

96. Sterling has therefore engaged in deceptive acts or practices in violation of GBL § 349.

DEMAND FOR RELIEF

The Bureau and the State of New York request that the Court:

- a. enjoin Sterling from committing future violations of the CFPA, Truth in Lending Act, Regulation Z, Exec. Law § 63(12), and GBL § 349;
- b. order Sterling to pay damages, restitution, or other monetary relief to consumers;
- c. order Sterling to pay disgorgement or compensation for unjust enrichment;
- d. impose a civil money penalty under the CFPA;
- e. impose a civil money penalty for each violation of GBL § 349 pursuant to GBL § 350-d;
- f. order Sterling to pay the costs incurred in connection with prosecuting this action; and
- g. award additional relief as the Court may determine to be just and proper.

Respectfully submitted,

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