IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
NORTHERN DIVISION

AMERICA'S COLLECTIBLES NETWORK, INC., d/b/a JEWELRY TELEVISION®,	)	
Plaintiff,	)	Civil Action No.: 3:09-CV-143 Jordan/Guyton
v.	)	Jury Trial Demanded
STERLING COMMERCE (AMERICA), INC.	)	
Defendant.	)	

SECOND AMENDED COMPLAINT

Plaintiff America's Collectibles Network, Inc. d/b/a Jewelry Television® ("JTV"), for its Second Amended Complaint against defendant Sterling Commerce (America), Inc. ("Sterling"), alleges, upon knowledge as to itself and otherwise upon information and belief, as follows:

Preliminary Statement

1. This action arises from the fraudulent and negligent conduct of Sterling, a software developer and implementer, in connection with Sterling's failed installation of its software to run JTV's business operations which has significantly damaged JTV.

2. JTV, a television and Internet seller of jewelry and gemstones, is dependent upon well-functioning computer and software technology to run its business. Sterling fraudulently induced JTV into licensing its purportedly advanced warehouse management, order management and purchase order system software, and contracting with Sterling to implement that software. Sterling did so based on its false representations of fact to JTV that: the components of its software programs were "highly integrated" -- that is, that as a collection of

computer programs they could work together to handle an application, either by passing data from one to another or as components of a single system; the software programs would "seamlessly integrate" with JTV's existing software; the software programs, with minor modifications, could run JTV's business; the systems could be implemented within seven months; Sterling had the experience and expertise required to successfully implement the software; Sterling had successfully implemented its software systems together at other major corporations; and the cost of implementation would not exceed approximately $2 million. At the time they were made, Sterling knew that all of these representations were false.

3. Sterling's software, without extensive modifications, is entirely inadequate to run JTV's business. Sterling's $2 million budget for the implementation of its software was exhausted before a third of the project was completed. As a result of the deficiencies in Sterling's software, JTV repeatedly has been forced to develop solutions to problems caused by the software and its failed implementation. JTV already has paid $5 million to Sterling for an unfinished, non-integrated and functionally deficient software system, and has incurred $5 million in additional costs trying to support and develop the failed software implementation project.

4. Today, JTV, after spending millions of dollars and investing years of its own time and resources, has only bits and pieces of the system it was fraudulently induced to license and implement. With the Sterling products JTV employees cannot efficiently manage inventory and they are forced to do more manual work to fulfill orders. JTV has had to add a level of complexity to its existing systems. The problems with the systems will likely take years and millions of more dollars to fix. Just to restore the functionality of JTV's system that was in

place before the failed implementation of bits and pieces of the Sterling software would require significant resources.

5. By this action, JTV seeks to recover the compensatory damages that Sterling has inflicted on JTV, as well as punitive and treble damages.

THE PARTIES

6. Plaintiff JTV is a Tennessee corporation, with its principal place of business in Knoxville, Tennessee. JTV has approximately 1,100 employees. JTV sells jewelry, watches, gemstones and other related products electronically through its webpage and its television network. JTV accepts orders through many different methods of payment, including, but not limited to, standard credit card transactions, the "Bill Me Later" program, "JTV Preferred Account" and PayPal. JTV stores its products in two warehouses in Knoxville (one of which is 105,000 square feet), which hold approximately $50 million of product. JTV requires software to, among other things, track orders, control inventory and ship products.

7. Defendant Sterling is an Ohio corporation, with its principal place of business in Dublin, Ohio. Sterling is a software company that purports to develop and implement commercial software. In 2005, Sterling acquired Yantra Corporation, a provider of order management and supply chain, or purchase order software solutions. Sterling has offices in 19 countries and employs approximately 2,700 employees.

JURISDICTION AND VENUE

8. This Court has jurisdiction pursuant to 28 U.S.C. § 1332, in that the controversy exceeds the sum or value of $75,000 exclusive of interest and costs, and is between citizens of different states.

9. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a)(2).

FACTS

A. JTV's Business And Its Software System.

10. JTV sells, via its television network and the Internet, jewelry, watches, gemstones and other related products. Items can be purchased on-line and via phone orders. JTV has, at any given time, tens of thousands of items for sale. Properly functioning software is critical to JTV's business. In order to meet customer demands, it is essential that JTV's software be capable of receiving, processing, and shipping an order efficiently and accurately. Because of the nature of JTV's business, it is also essential that its software has the capability of accepting purchases from many different sales channels, and its different software components must be integrated and compatible with each other in order to maximize efficiency.

11. Prior to its relationship with Sterling, JTV processed orders and tracked inventory using software systems that it had designed itself over the years (its "legacy" system). The legacy system was designed in the mid to late 1990s by JTV employees. The legacy system was originally designed to handle a business which was significantly smaller than it was in 2005 and is today. By 2005, JTV needed more efficient warehouses and a more robust software system to more efficiently handle its growing number of orders.

B. Sterling's Software And Implementation Services.

12. Sterling develops, licenses, and implements commercial software systems. Among its other products, Sterling licenses and implements a Networked Warehouse Management System ("WMS"), an Order Management System ("OMS"), and a Supply Collaboration or Purchase Order ("PO") system.

13. Sterling's WMS is advertised as software which can efficiently manage a company's warehouse operations. Based on its "service-oriented architecture," WMS is

advertised as a program which allegedly "easily integrates with a [company's] existing infrastructure and material handling equipment." The software (sometimes referred to as an "application"), is supposed to efficiently manage a company's inventory.

14. Sterling's OMS is advertised as software which can deliver "the Perfect Order." Processing an order, also known as fulfilling an order, involves what Sterling refers to as the "order life cycle," which involves, among other things, taking the order, keeping track of inventory, and getting the product to the customer. Allegedly based on its "intelligent sourcing engine" and other factors, OMS is advertised as a program that "can help [a company] grow revenue by . . . cost-effectively orchestrating global order and service fulfillment."

15. Sterling's PO is advertised as software that can "enable the aggregation, routing and tracking of planned orders in an extended enterprise environment with multiple divisions and complex supplier networks."

C. JTV's Decision To Achieve Greater Efficiencies Through A Software Conversion.

16. By December 2005 JTV determined that it needed to improve the efficiency and reliability of its legacy systems and prepare for future anticipated growth. JTV did not have the space to manually handle the orders. JTV was shipping approximately 18,000 to 20,000 packages a day and it needed a robust warehouse management system to handle the volume in an efficient and reliable manner.

17. In response to JTV's concerns about its legacy system, JTV determined that it required reliable, proven, efficient and highly integrated software systems; that is, software systems that could work well together and where each system knows what the other system is doing and each system can respond to the other's needs. JTV needed a modern inventory management system and a system that could efficiently process orders. JTV determined that

many of its needs would be met by licensing an "outbound" warehouse management system. An "outbound" warehouse management system processes the product and sends it "outbound" to the customer. At the same time, JTV determined that it would be best to retain its legacy system for order management and purchase order functions.

18. JTV concluded in December 2005 that the only new software it needed was a warehouse management system. It therefore decided to retain the majority of its legacy systems. JTV concluded, therefore, that it was imperative that any warehouse management system licensed must be capable of being integrated with JTV's legacy systems. JTV therefore made it clear to prospective software providers that any warehouse management system licensed must have the capability of being integrated with JTV's legacy systems.

19. In order to find a suitable software program, JTV spent a tremendous amount of time and money investigating different software vendors. It looked at, among others, High Jump and Softeon. JTV prepared a request for proposal which was sent to Sterling and other vendors and JTV analyzed the responses.

D. <u>The Request For Proposal.</u>

20. On or about January 23, 2006, JTV provided Sterling with a copy of its "Warehouse Management System (WMS) Request for Proposal" (the "RFP").

21. As the RFP stated, its "primary purpose . . . [was] to define the functional requirements of a comprehensive Warehouse Management System (WMS) developed and implemented for [JTV]." The RFP specified that: JTV required a "qualified computer software [company] for the development and implementation of the systems" defined in the RFP; the software company chosen would be responsible for furnishing a "complete and operational" system to support a new JTV Distribution Center located in Knoxville, TN; and a "major

consideration [was] to select and utilize a successfully implemented and proven system in a similar operating environment."

22. The RFP stated in clear and unambiguous terms that JTV required Sterling to provide: a "totally integrated and operational system"; "details for integrating the new WMS with the existing 'legacy' systems"; and "a system for [JTV] [to meet] all the requirements identified in [the] RFP and any subsequent requirements identified throughout the course of the project."

23. The RFP described in detail the project's "major objectives" and, in so doing, detailed the extent to which JTV required a warehouse management system that provided both "inbound" and "outbound" functionality. For example, JTV detailed in the RFP that the WMS system must be able, among other things, to "continuously communicate and exchange information with [the company's 'Warehouse Control System'] and Host System for the purpose of receiving and transmitting data concerning customer orders, stock receipts, customer shipments, and other data on the status of the Fulfillment Center operations."

24. JTV also made it clear that Sterling would be "required to furnish and install a complete and operational computer warehouse system in conjunction with the operation of the new National Fulfillment Center."

25. Because a WMS system was only one of several software systems JTV needed in order to efficiently and profitably run its business, JTV made clear in the RFP that Sterling must provide a WMS system that would "support requirements in conjunction with the proposed operational processes," and that any system chosen would have to be highly integrated with the other aspects of JTV's computer systems.

26. JTV made clear in the RFP that one of the criteria it would use in evaluating Sterling was the company's "Implementation Methodology" and its "implementation approach," and that it was relying on Sterling's "experience and installations in similar environments." The RFP required Sterling to provide a detailed Pricing Worksheet for "Project Management and Implementation Costs." The RFP specifically asked Sterling to answer questions about "Implementation and Project Management" including, "Have you had an implementation fail?" And the RFP put Sterling on notice that JTV needed a "project manager and team members [who have] prior experience in a system implementation of similar design, size, interfacing, and complexity of operation." "Maintenance of a project timeline" was critical.

27. The RFP stated that the criteria to be used in evaluating Sterling as a licensor and implementer would be its "Supplier Strength and Capabilities -- Number and Type of Installations, Financial Stability . . . Software Support, Software Upgrades & Software Documentation."

28. JTV provided Sterling with a detailed profile of JTV and its existing legacy systems. Sterling thus knew exactly what JTV was looking for and the extent to which Sterling's software would have to be integrated with its other systems and with JTV's legacy systems.

29. JTV also stated in its RFP that Sterling's response to the RFP "will be the primary means for evaluating the proposed software." JTV therefore made it clear that it was relying on the truth and accuracy of Sterling's response to the RFP. Sterling, however, improperly took advantage of JTV's lack of expertise and knowledge in the licensing and implementation of Sterling's commercial computer software systems by, among other things, providing a misleading and fraudulent response to the RFP which, among other things, stated

that its WMS system could be highly integrated with any other Sterling software systems and with JTV's legacy systems.

E. Sterling's Response To The RFP: Its Written Misrepresentations.

30. On or about September 26, 2006, Sterling delivered to JTV its Response to the Request for Proposal Warehouse Management System - Project: KF-396" (the "Response").

31. In its Response, Sterling made written misrepresentations of material fact which Sterling knew were untrue at the time that they were made and which were made to induce JTV into licensing Sterling's software and retaining Sterling to implement that software. Those misrepresentations included, among others, that:

(a) Sterling has the "ability to combine highly skilled resources, products and services [which will] allow for a single source provider to meet the needs of [JTV]."

(b) Sterling's products and services will "lower [JTV's] costs … and drive revenue through faster fill rates."

(c) "Sterling's solutions can standardize inventory and warehousing systems onto a single platform that can enable a shared functionality and common operating procedures across inventory stocking locations for business functions such as receiving, physical inventory & cycle counting, inventory control, value added services, and shipping."

(d) JTV's "operational costs [will] go down," "inventory costs [will] go down" and "revenues [will] increase."

(e) Sterling's "technology foundation" will enable "each Sterling application to effectively manage both internal and external supply chain processes."

(f) Sterling's products and services will "maximize [JTV's] ROI [Return on Investment]," "minimize Business Transformation Costs," and "reduce System Support Costs."

(g) Sterling's software will "improve customer responsiveness, reduce inventory levels and minimize operational costs."

(h) Sterling's software has "easily configurable processes" in order to "handle different types of returns processes."

(i) Sterling's software and system integration services will "reduce inventory levels," "minimize returns," "increase customer loyalty" and "reduce shipment costs."

(j) Sterling's systems will:

(i) "integrate with the various systems currently in use [at JTV] today";

(ii) be "capable of forming the basis for future changes in business processes";

(iii) be supported by "continuous 24-hour, 7-day operations [with] appropriate fault tolerance features";

(iv) "consist of a commercially available off-the-shelf package, with as few modifications as possible"; and,

(v) "provide an extensive framework to address specific, competitive needs of [JTV]."

(k) Sterling has met the objectives referenced above in Paragraph 31(j) "with other leading retailers."

(l) Sterling will provide a "Solid Implementation Strategy to Meet [JTV's] Delivery Needs."

(m) "[JTV] can be *assured* that a partnership with [Sterling] will prove successful and profitable" (emphasis added).

(n) The total cost for the licensing and implementation of WMS, including "Inbound Management" and "Outbound Scheduling & Management," and other related products and services, will not exceed $1,281,000.00.

(o) The total amount of time needed for implementing WMS and its related products will be 6-7 months.

(p) "Sterling will provide the right team with the right skills at the right time to implement our proposed solution for [JTV] based on our understanding of [JTV's] timing for this initiative."

(q) "[Sterling] utilizes a Rapid Return [Implementation] Methodology that has been designed specifically for our customers to accelerate the time to value process."

(r) Sterling's implementation providers have the "proven experience delivering [its] solution to [its] customers."

(s) Sterling will provide "consistent project leadership, architecture expertise and business/systems analysis."

(t) Sterling's implementation team will be staffed by Blaine F. Trainor, Jay Black and Manish Kumbhare.

(u) Sterling can provide "Future Add-on Products" which will "eliminate barriers to multi-enterprise collaboration so [JTV] can optimize shared process for competitive advantage."

(v) Sterling's "Future Add-on Products" will provide "end-to-end visibility and control over the business processes [JTV] share[s] with outside partners."

(w) Sterling's "Future Add-on Products" include Supply Chain Applications which, in turn, include Order Management software and Sterling's Order Management software will:

(i) "enable [JTV] to exceed its corporate goals";

(ii) "seamlessly integrate with [JTV's] existing systems avoiding expensive 'rip and replace' strategies and speed time to value";

(iii) “drive profitable sales growth”;

(iv) “successfully manag[e] order fulfillment across the extended supply chain”;

(v) “provide[] the capability to manage orders from multiple channels”;

(vi) “coordinate fulfillment across multiple inventory locations, suppliers, partners and business units”;

(vii) “dramatically improve supply chain efficiency”;

(viii) “present a single face to customers”;

(ix) “adapt to ongoing business evolutions”;

(x) “make[] the increasingly complex fulfillment process transparent”;

(xi) “enable[] [JTV] to harness its full growth potential”;

(xii) “driv[e] down supply chain costs”;

(xiii) include “easily configurable process models”;

(xiv) “address[] the entire order process from order capture to settlement”;

(xv) make sure that “each order line [will] easily follow[] a unique process based upon any order-related attribute or business rule”;

(xvi) “automatically create[] and track[] any process that result from, or depend upon, the original customer order”;

(xvii) “dramatically reduce[] order fulfillment costs”;

(xviii) “significantly improve[] the quality of customer service”;

(xix) be capable of “order aggregation and global sourcing,” “rules-based order scheduling,” “execut[ing] beyond the four walls,” “flexibly control[ling] fulfillment activities” and providing “granular management of complex fulfillment”; and,

(xx) benefit JTV by “reduc[ing] operating costs,” “driv[ing] higher revenue,” “improv[ing] order fill rates,” “increas[ing] customer satisfaction” and providing “easily on-board new selling channels or acquisitions.”

(x) Sterling's "Future Add-on Products" include Supply Applications which, in turn, include Supply Collaboration (or purchase order) software and Sterling's Supply Collaboration software will:

(i) "effectively manage the extended purchase order lifecycle, including all interactions with external parties";

(ii) "provide[] both internal and external users with immediate access to purchase/planned order, allowing them to negotiate changes over the Internet; redirect orders and inventory; and resolve unexpected problems or delay";

(iii) "provide[] real-time visibility into all aspects of the inbound chain";

(iv) "improve[] communication with suppliers";

(v) "lower process costs";

(vi) provide "faster response rates on exceptions";

(vii) "increase[] performance of [JTV's] supply chain";

(viii) provide a "central [purchase order] repository," "collaborative execution," "supplier compliance," "flexible control of purchase order processes," "proactive exception management," and "analytics"; and,

(ix) benefit JTV by "increas[ing] revenue," "reduc[ing] costs," "reducing working capital" and "leverag[ing] fixed assets."

F. <u>Sterling's Response To The RFP: Its Oral Misrepresentations.</u>

32. Between January 23, 2006, the date of JTV's RFP, and December 22, 2006, the date JTV licensed Sterling's WMS software, Wayne Lambert and other JTV employees had numerous face-to-face individual and group meetings, email communications and telephone calls to discuss Sterling's WMS software and Sterling's implementation services. One meeting was at Sterling's office in Boston, Massachusetts. During these meetings, Sterling's

representatives repeated orally what Sterling had written in its Response; namely, that its WMS software was capable of being "seamlessly integrated" with JTV's legacy systems.

33. During these communications over this eleven month period, the JTV employees explained to Sterling that JTV's legacy software systems were "web-based"; that is, that JTV's software used "web applications" that were accessed via a web browser over a network. In response, Sterling repeatedly and falsely asserted that because Sterling also used a "web service approach," the WMS software was capable of being "seamlessly integrated" with JTV's legacy systems. Sterling also repeatedly and falsely asserted that its implementation specialists had the experience, skills, knowledge and willingness to "seamlessly integrate" the WMS software with JTV's legacy systems.

34. When Sterling made these oral misrepresentations of material facts, Sterling knew that they were untrue. Sterling made these oral misrepresentations of material facts to induce JTV into licensing Sterling's WMS software.

G. <u>The Sterling WMS License.</u>

35. In reliance upon, among others, the written and oral misrepresentation of material fact that Sterling's WMS software was capable of being seamlessly integrated with JTV's legacy systems, JTV licensed Sterling's WMS software pursuant to a December 22, 2006 Universal Software License Agreement (the "Universal License") and an attached "Schedule No. 1" license (the "Schedule No. 1 License"). JTV paid approximately $600,000 for this license, plus approximately $110,000 for maintenance. The discussions that led to the license contemplated that the actual implementation of the software would not start for several months. JTV, prior to signing the Universal License and the Schedule No. 1 License, made it clear that because JTV (at that point) only contemplated licensing WMS, it was imperative that the WMS

software be capable of being seamlessly integrated with JTV's legacy system. As stated above, Sterling orally and in its written Response misrepresented the material fact that the WMS software was capable of being seamlessly integrated with JTV's legacy system and these misrepresentations of material facts were made to induce JTV into signing the Universal License and the Schedule No. 1 License. In the Schedule No. 1 License, Sterling expressly warranted "for a period of sixteen (16) months from the effective date of the applicable [software], that the Software . . . will provide, in all material respects, the functionality set forth for the Software in the applicable user documentation."

H. Sterling's Oral And Written Misrepresentations Of Material Facts From January To October 2007 Which Also Fraudulently Induced JTV Into (1) Licensing Sterling's Order Management and Supply Collaboration (Purchase Order) Software And (2) Retaining Sterling To Implement All Three Software Programs (Warehouse Management, Order Management and Purchase Order).

36. In January 2007, JTV Chief Information Officer Wayne Lambert and Gary Giannoni, JTV's Account Representative at Sterling, began discussions about adding Sterling's Order Management (OMS) and Supply Collaboration or purchase order (PO) Systems to the project. At this time, no decision had yet been made to retain Sterling to implement the WMS software.

37. From January to October 2007, JTV and Sterling held several meetings and had many telephone conferences to discuss Sterling's OMS and PO systems and the implementation of WMS, OMS and PO by Sterling.

38. Representing Sterling in the meetings and calls from January to October 2007 were Felton Lewis, Gary Giannoni, and Phil Tampanic. Representing JTV in these meetings and calls were Wayne Lambert, Chris Meystrik (VP of Software Engineering), Dave Boeschenstein (VP of Operations), Joe Fields (Chief Operating Officer), and Tim Matthews

(functioning at that time as the Chairman of JTV's Information Technology Steering Committee).

39. From January to October 2007, Sterling made oral and written misrepresentations of material fact which Sterling knew were untrue at the time that they were made and which were made with the intent to induce JTV into licensing Sterling's OMS and PO software and retaining Sterling to implement WMS, OMS and PO.

40. In order to induce JTV into licensing OMS and PO and retaining Sterling to implement WMS, OMS and PO, the Sterling employees made the following misrepresentations of material facts during their meetings and calls between January and October 2007. They falsely represented, among other things, that:

(a) WMS, PO and OMS are highly integrated.

(b) WMS, PO and OMS can seamlessly integrate with JTV's legacy system.

(c) WMS, PO, and OMS have been implemented together at other major companies.

(d) Implementing WMS, PO and OMS together will not be much more difficult than implementing just the WMS software and will only cost approximately $2 million.

(e) Implementing WMS, PO and OMS will be completed within a few months.

(f) WMS, PO and OMS, with modest modifications, will support JTV's business operations.

(g) Sterling will use its proprietary "Rapid Return Methodology" as its implementation methodology.

(h) Any modifications needed to seamlessly integrate WMS, PO and OMS with JTV's legacy systems will be modest.

(i) The implementation of WMS, PO and OMS will reduce carrying costs by implementing more efficient inventory management.

(j) The implementation of WMS, PO and OMS will improve cash flow.

(k) Sterling will assign to the project a "business specialist" and a "project specialist" who have successfully implemented WMS, PO and OMS previously.

(l) The Sterling products and services will result in enhanced operational capacities (order volumes and shipment cycle times).

(m) The Sterling products and services will result in increased inventory accuracy and tracking.

(n) The Sterling products and services will result in improved order accuracy and completeness.

(o) The Sterling products and services will result in a robust database schema to support enhanced business intelligence and reporting.

(p) Sterling will provide scalability to build a strong scalable state-of-the art IT infrastructure for new ventures, acquisitions, and product line expansion.

(q) There will be immediate, measurable, and sustainable cost reductions and productivity increases.

(r) There will be a reduction of labor needed for the fulfillment of orders based on improved flows and processes which will eliminate extra scans, handling, and walking.

(s) Sterling software will result in better scheduling, planning, and execution of order fulfillment.

(t) The benefits from Sterling's software's order fulfillment functionality will include expedited returns processing and "put-away," "an overall reduction in returns," and a "lower cost of order fulfillment."

(u) The benefits from Sterling's software's inbound functionality will be expedited receipts, improved visibility and accuracy of receipts, managed tracking of receipts, automatic routing and processing to accommodate a wide variety of downstream requirements, improved information capture and accuracy, support of purchase order discipline, and improved visibility via consolidators.

(v) Sterling's software and services will result in improved financial tracking of inventory and shrink reductions, reduction in short ships and resulting returns, improved replenishment of product, inventory audit staff reductions from improved cycle counting and accuracy improvements, and space and storage location utilization improvements.

41. During the negotiations for the licensing of OMS and PO, and the implementation of WMS, OMS and PO, JTV expressed its concerns that, given the magnitude of work that would have to be completed, there was no room for error and JTV would have to rely on Sterling's representations, experience and expertise for a successful implementation. JTV made it clear that the systems had to be ready for the 2008 holiday season, which meant that the systems had to "go live" by September 2008.

42. In Sterling's response to the RFP, during the meetings and negotiations, and at a "kick off" meeting in June 2007 by Subroto Majumdar, the first Project Manager from Sterling, Sterling emphasized its "Rapid Return Methodology" as its proprietary implementation methodology. In its response to the RFP, Sterling represented that its Rapid Return Methodology "has been designed specifically . . . to accelerate the time to value process" and

that "Sterling has proven experience delivering our solutions to our customers." At one point during the project, however, Guy Read (who was on his first Sterling project having recently left IBM), admitted to a JTV employee that he was not familiar with the "Rapid Return Methodology" and that Sterling was not and would not be using it on the JTV project.

43. Previously, in its response to the RFP, Sterling had also represented that any "Future Add-on Products" could "seamlessly integrate" with JTV's existing legacy system. Sterling employees repeated and emphasized the misrepresentation of material fact that its OMS and PO could "seamlessly integrate" with JTV's existing legacy systems during the calls, meetings and conferences with JTV employees from January to October 2007.

I. The Contracts, Agreements And Licenses JTV Was <u>Fraudulently Induced Into Signing Between April and October 2007.</u>

44. In reliance on the misrepresentations of material facts listed above, in or about April 2007 Wayne Lambert decided that JTV should license the OMS and PO software systems from Sterling and retain Sterling to implement all three software programs (WMS, OMS and PO). Mr. Lambert had received permission from the Technology Steering Committee (the "Committee") to license the WMS software in 2006, and he now requested permission to make the OMS and PO systems part of the project as well. While awaiting for approval from the Committee, and in reliance on the misrepresentations of material facts listed above, on or about April 19, 2007, Sterling and JTV entered into a Professional Services Agreement (the "PSA"). Under the terms of the PSA, Sterling was obligated to provide JTV with implementation services pursuant to a separately executed schedule (a "Schedule"), a Statement of Work (an "SOW"), or a Change Request form (a "CR").

45. On April 24, 2007, also in reliance on the misrepresentations of material facts listed above, Sterling and JTV then signed a "Pre-Project Planning Statement of Work,"

wherein Sterling agreed, in connection with the implementation of WMS, to create a "solution definition engagement," "develop a communication plan," and "define overall business objectives and measuring success." The estimated duration for this phase of the project was two weeks at a cost of approximately $40,000. In this Pre-Project Planning Statement of Work, Sterling falsely represented that it would successfully "plan[] for the solution definition engagement," "develop a communications plan," "develop a training plan," "develop a schedule for the solution definition phase," and "define overall business objectives and measuring success." Sterling also falsely represented that it would deliver a professional and effective "Communication Plan," a "Training Plan," a "Workshop Schedule," and a "Change control process." Sterling further falsely represented that it would complete these tasks in two weeks for $40,800.00.

46. On May 1, 2007, Gary Giannoni falsely represented to Wayne Lambert in writing that if JTV signed software addenda and statements of work for the OMS and PO systems immediately, there would be no adverse affect on the resources Sterling could devote to JTV's project which might otherwise be caused by Sterling's final contract negotiations "with a VERY LARGE retailer in Arkansas for a nice OMS deal."

47. On May 1, 2007, Sterling falsely represented in writing in a PowerPoint presentation delivered to Wayne Lambert that:

(i) JTV will achieve growth if it "adopted multi-enterprise collaboration platforms";

(ii) OMS "aligns closely with [a] technical architecture vision required to support the JTV growth plans and provides the business users with a flexible set of services that can be leveraged and easily altered to support changes to the business process";

(iii) OMS "will allow JTV an opportunity to leverage a 'package' and eliminate the time and cost of one year of development building similar capabilities";

(iv) Sterling's implementation methodology is "a comprehensive methodology that can be tailored or encompassed in a larger program"; and,

(v) Sterling would provide a "Rapid Deployment Team."

48. On May 3, 2007, at 3:00 p.m. in the Viper Room at JTV headquarters in Knoxville, Tennessee, there was a meeting to introduce the Sterling Implementation Team. Attending on behalf of Sterling were David Sanders (VP of Sales), John Miller (VP of Services), Dinesh Chaurasia (Delivery Manager), Subroto Majumdar (Project Manager), Felton Lewis (Managing Principal), Gary Giannoni, David Sanders and John Miller. Attending this meeting on behalf of JTV were Wayne Lambert, David Boeschenstein, Chris Meystrik and Tim Matthews. At this meeting, the representatives from Sterling falsely represented that the resources from Sterling for implementing OMS and PO would be experienced enough to seamlessly integrate all three systems (WMS, OMS and PO), and that Sterling could complete the project on time and without "scope creep."

49. On May 11, 2007, at 1:00 p.m., Gary Giannoni hosted a telephone conference call. On the call from Sterling, along with Giannonni, were Subroto Majumdar and Felton Lewis. On the call from JTV were David Boeschenstein, Wayne Lambert, and Chris Meystrik. During this call, Giannonni and Majumdar falsely represented that Sterling:

(i) has obtained a better understanding of JTV's business needs, challenges and process such that PO and OMS could be successfully implemented and seamlessly integrated with JTV's other software systems;

(ii) can achieve the results set forth in a "Business Case" PowerPoint presentation to be shown to the JTV Steering Committee whose permission was needed to license PO and OMS and retain Sterling to implement that software; and,

(iii) would see to it that the "Go Live" date was no later than March 2008.

50. After receiving authority from the Committee to include OMS and PO as part of the project, and in reliance on the misrepresentations of material facts listed above, on or about May 18, 2007, JTV and Sterling signed a Change Request (the "May 2007 CR"). Under the May 2007 CR, Sterling falsely represented that it would properly and effectively incorporate OMS and PO into the overall planning for JTV's software systems. The services that Sterling falsely represented it would provide pursuant to the May 2007 CR included, among others, professionally, efficiently and effectively initiating resource planning discussions, initiating technical discussions regarding interfaces, and conducting an integration assessment. Sterling falsely represented that, under this agreement, it would provide a useful and effective "Functional Fit Analysis" and a "Business Case Framework." The charge for pre-project planning under the May 2007 CR totaled approximately $115,000.

51. On or about June 1, 2007, in reliance upon Sterling's misrepresentations of material facts as set forth above and in particular its misrepresentations about its software's functionality and its ability to integrate with JTV's legacy system and support JTV's business, JTV and Sterling entered into a "Schedule No. 2" license (the "Schedule No. 2 License"). Pursuant to the Schedule No. 2 License, JTV licensed OMS and PO. The licensing fees were approximately $1.134 million and JTV was also charged approximately $200,000 for maintenance. In the Schedule No. 2 License, Sterling expressly warranted "for a period of sixteen (16) months from the effective date of the applicable [software], that the Software . . .

will provide, in all material respects, the functionality set forth for the Software in the applicable user documentation."

52. Later in June 2007, also in reliance upon the foregoing misrepresentations of material facts, Sterling convinced JTV to spend over $50,000 for educational and training services in connection with the implementation, and the parties entered into an "Education Services Letter of Agreement" which JTV signed on June 14, 2007 (Sterling signed the document on June 21, 2007). Under the Education Services Letter of Agreement, JTV paid for classes on how to use software that, in the end, Sterling was unable to implement.

53. Also in reliance upon the foregoing misrepresentations of material facts, on June 14, 2007, JTV signed Sterling's "JTV - SOL [Solution] Definition SOW [Statement of Work]" (signed by Sterling on June 21, 2007) (the "Solution Definition Statement of Work"). In the Solution Definition Statement of Work, Sterling falsely represented that it would:

(a) during a "Definition Phase," "create a high level design and define the scope of the Solution [i.e., clarifying the requirements and defining the conceptual solution design for the implementation of, among others, Sterling's Supply Collaboration (Purchase Order) (PO) and Distributed Order Management (OM)]";

(b) "configure[], buil[d], test[] and deploy[] [the Solution] during the . . . Implementation Phase";

(c) provide JTV with PO and OMS which will result in "increas[ed] sales, revenue and income," "reduc[e] time to market for new services," "enhanc[e] the customer experience," and "seamless[ly] integrate[] with other JTV Sub Systems";

(d) "work with the JTV project team in the clarification of the requirements and the definition of a conceptual solution design" for the implementation of PO and OMS;

(e) “confirm the project plan, scope, timetable, and change management process”; and,

(f) deliver a viable “Solution Definition Document” (an “SDD”) for WMS, OMS and PO that includes a “Functional Design” and an “Integration Design.”

54. Under the terms of the June 2007 Solution Definition Statement of Work, JTV employees were told that they “*must* attend [Sterling] product training” (emphasis added). The training was expensive, time consuming and useless because, among other reasons, Sterling never implemented PO and OMS. To add insult to injury, Sterling charged and JTV paid approximately $660,000 (including expenses) for the June 2007 Solution Definition Statement of Work.

55. In reliance upon the misrepresentations of material facts set forth above, the alleged expertise of Sterling, and the information developed by Sterling in the Solution Definition Statement of Work, on or about October 5, 2007, JTV and Sterling entered into an “Implementation Phase Statement of Work” (the “Implementation Phase Statement of Work”). In the Implementation Phase Statement of Work, Sterling falsely represented that it would: implement OMS, WMS and PO; create valid and effective designs and configurations; perform “string” tests; conduct systems performance and user acceptance tests; install the software; provide go-live support; and deliver a “Project Completion Sign-off.” Sterling falsely represented that the integration testing would be complete by June 15, 2008. The agreement stated that the service fees would not exceed approximately $2 million. The implementation of OMS, WMS and PO was called project “Phoenix.”

56. Throughout the process of licensing Sterling’s products and retaining Sterling’s services, JTV relied on Sterling’s expertise and experience in the functionality and

implementation of its software, as well as the representations and assurances Sterling made to JTV. In addition, JTV had paid Sterling hundreds of thousands of dollars to study JTV's business operations, clarify JTV's requirements, develop a conceptual solution design, and be in a position to knowledgably confirm in writing the representations that had earlier been made about Sterling's software as it relates to JTV's business operations. Therefore, upon JTV's request, and with Sterling's consent which was in no way coerced, the October 5, 2007 Implementation Phase SOW specifically included the following language in Section H ("Special Terms"):

> [JTV] has . . . relied upon the expertise of Sterling Commerce in its software, its experience in implementing similar solutions in other companies, and its ability to customize the Sterling Commerce software to meet the requirements as defined in the Solution Definition document.
>
> Accordingly, Sterling Commerce *assures* [JTV], and [JTV] is relying upon Sterling Commerce's *assurances*, that:
>
> (a) The estimated amount budgeted for the implementation of the Sterling Commerce Solutions for WMS, OMS and PO . . . and the Services to be provided by Sterling Commerce, will be sufficient to enable the Solutions to be fully designed, developed and implemented at [JTV].
>
> (b) . . . the Solution conforms to [JTV's] business practices.
>
> (c) . . . the Solutions are technically feasible within the framework of [JTV's] hardware and software systems . . . .
>
> (d) Assuming both parties' responsibilities are satisfied in a timely manner as specified in a mutually acceptable project plan, and also assuming that there are no changes in scope, all design, development and testing of the Solutions . . . will be completed and the Solutions will be ready to 'go live' by April 15, 2008 but, in any event, no later than June 15, 2008.

(emphasis added).

J. The Written Misrepresentations, Falsehoods And Misleading Assertions In Sterling's Solution Definition, Implementation And Related Documents.

1. The Communication Plan (May 1, 2007).

57. On May 1, 2007, Sterling provided JTV with its "Communication Plan: JTV System Transformation Project" (the "Communication Plan"). The Communication Plan was written by Sterling employee Subroto Majumdar. The Communication Plan was revised between May 1, 2007 and August 14, 2007.

58. Sterling falsely asserted in the Communication Plan that during project Phoenix it will:

(a) provide "effective and open communication";

(b) provide "full and clear communication";

(c) provide "reliable delivery of communication";

(d) provide "a structured communication plan";

(e) "establish and maintain the project credibility";

(f) "generate a common understanding of how the activities of [the] project will improve [JTV's] ability to achieve the goals"; and,

(g) deliver "long-term and broad-based support for developing and maintaining the partnership that are consistent, reliable and complete."

59. Sterling utterly failed to deliver what it promised it would deliver via its "Communication Plan." Throughout the project Sterling provided misleading, inaccurate and incomplete information. The objectives of the Communication Plan were never achieved -- the design documents were not reliable and they did not result in a "common understanding" of how the tasks in the project would be tackled. Sterling's "Communication Plan" resulted in frustration and delays which negatively impacted the project. At the time that Sterling made the

representations listed above in its Communication Plan, it knew that it could not provide the services offered because it had never before integrated OMS, PO and WMS together.

2. **<u>The Supply Chain Application Solution Definition (July 16, 2007).</u>**

60. On July 16, 2007, Sterling provided JTV with its "Supply Chain Application Solution Definition Document for JTV Order Management System (OMS)" (the "OMS Solution Definition"). The OMS Solution Definition was written by Sterling employees Darapan Seth, Sumit Singh and Subroto Majumbdar (with contributions by JTV employee Jason Hembree). The document was substandard and had to be revised several times between July 16, 2007 and September 26, 2007.

61. Sterling falsely asserted in the OMS Solution Definition that OMS and the implementation thereof "will be a critical and integral part of the new JTV Order Management and Customer Relationship Management Subsystem." Sterling's OMS was never implemented by Sterling at JTV and Sterling knew, or should have known, that it could not integrate OMS into JTV's existing systems with the resources and in the timeframe specified by Sterling.

62. Sterling falsely asserted in the OMS Solution Definition that OMS will be "configured, built, tested and deployed during the Implementation [P]hase." OMS was never implemented at JTV.

63. Sterling falsely represented in the OMS Solution Definition that OMS will "support[] JTV's business process and that few modifications to the software would be required." These statements were false at the time that they were made. OMS <u>never</u> supported JTV's business process and its "out of the box" functionality was woefully inadequate for JTV's needs.

64. Sterling falsely represented in its OMS Solution Definition that OMS would be implemented during JTV's 2008 fiscal year and that it would deliver the following functionality, among others:

(a) provide pertinent information and visibility to the call center so that JTV can "overcome [its] major business challenges";

(b) "support multi-line orders out-of-the box and no additional customization is required";

(c) provide "multiple payment methods on one Sales Order";

(d) allow modifications to Sale Orders;

(e) "provide better visibility and order detail information on demand";

(f) "industry-leading order fulfillment capabilities";

(g) "support substantial sales growth in the future";

(h) deliver "differentiated cross-channel experience";

(i) support "the principles of a service-oriented architecture (SOA) design consistent with JTV's technology strategies";

(j) provide "real time inventory inquiry, reservations and updates for complex Sellable Offer Designs . . . allow the use of multiple payment options . . . determine[] the most appropriate location to fulfill an order and its . . . out-of-the-workflows . . . proactively detect problems and make fulfillment adjustments";

(k) provide "Enhanced Operational Capabilities," "Scalable & Flexible IT Infrastructure," "Enhance[d] Multi-Channel Operational Efficiencies," and "Immediate, measurable, and sustainable cost reductions and productivity increases"; and,

(l) “reduce order fulfillment costs,” “improve supply chain efficiencies,” and “improve responsiveness to customer and market changes.”

65. Sterling’s OMS Solution Definition falsely represented that OMS would be seamlessly integrated with JTV’s other systems including Jupiter, Product Taxonomy, Customer Taxonomy, ESB, JTV.com, Auctions, Payment Processing, Oracle Financials and Reporting Solution. Because Sterling failed to implement OMS at JTV, OMS was never seamlessly integrated with any of these systems.

3. **The WMS Solution Definition (July 24, 2007).**

66. On July 24, 2007, Sterling provided JTV with its WMS Solution Definition (the “WMS Solution Definition”). The WMS Solution Definition was written by Sterling employees Satish Subbiah and Kerstin Smith. The WMS Solution Definition was revised between July 24, 2007 and September 6, 2008.

67. Sterling falsely asserted in the WMS Solution Definition that Sterling’s WMS software and the implementation thereof would provide Sterling with both a WMS Inbound Process and WMS Outbound Processes. This assertion was false at the time it was made and was designed to induce JTV to continue paying for maintenance of Sterling’s products and retain its implementation services. The WMS Solution Definition falsely represented that Sterling would provide “the design, configuration, and deployment of the Sterling WMS application for Jewelry Television.”

68. Sterling falsely asserted in the WMS Solution Definition that WMS would deliver the following functionality, among others:

(a) “manage *all* warehouse process” (emphasis added);

(b) "define the type of task, schedule tasks, [and] assign people to complete those tasks";

(c) "pick, putaway, move, pack, count [and] replenish[]" inventory;

(d) "provide[] a real time inventory view in *both* WMS *and* OMS" (emphasis added);

(e) "manage and control[] the outgoing materials from the time the orders are captured until [they are] shipped out";

(f) "group[] shipments into a wave, assign[] lanes, determin[e] pick strategy and pick locations, picking, sorting, packing, outbound VAS and shipping"; and,

(g) send orders to the "Sterling Commerce Order Management System (OMS)".

69. Sterling failed to implement any WMS Outbound Processes at JTV.

K. The Delays, Deficiencies And Issues With The Solution Definition Phase <u>And The Flaws In Sterling's Software And The Implementation Of Its Software.</u>

70. By September 2007, JTV had been working with Sterling for over one year. The Response to the RFP had been submitted in September 2006; the WMS license was signed in December 2006; the OMS and PO licenses were signed in June 2007; and Sterling had been paid to do pre-program planning, a functional fit analysis, a business case framework, and create solution definition documents. By this time Sterling was entrenched in JTV's technology, and JTV remained hopeful that early warning signs of Sterling issues were either false or could be overcome.

71. For example, in a September 11, 2007 presentation to the Steering Committee, JTV informed the Committee that many of the planned milestones for the project had to be re-scheduled. The original planned end of the "Definition Phase" had been August

30th; the new planned completion date was September 21st. The planned start of the "Solution Construction Phase" would not be September 3rd; it now had to be moved to September 24th. The planned end of the "Solution Construction Phase" had to be moved from January 11, 2008 to January 31, 2008. The planned start of the "Solution Validation Phase" was moved from January 28, 2008 to February 4, 2008, and the new date for the Go Live and Operations Start was "TBD."

72. On September 14, 2007, Wayne Lambert wrote to Wendy Coleman (JTV Project Administrator) that, "The SOW appears to be nearly $500,000 more than we projected originally but it also looks like it contains hours for the validation and implementation phase. The project manager hours also look a lot higher than was originally projected." On September 20, 2007, in its weekly "OMS and WMS Implementation" project summary status report, Sterling itself reported that the "Project Risks" included "Sterling Communications on Phase Deliverables Structure / scope / audience / approval [is] not effective" and that the "Solution Definition Phase was staffed at a 100% burn rate of Budget against planned Phase Exit Date [and] [n]o risk contingency [is] accommodated."

73. On September 20, 2007, Sterling informed JTV that it needed more time and more money "to complete the services specified in [the June 14, 2007 Solution Definition Statement of Work]." Sterling was prepared to bill JTV approximately $200,000 for this privilege.

74. On October 1, 2007, Rich Jackson (Sterling Project Manager) authored his "Implementation Phase Integrated Project Plan." In this plan, Mr. Jackson falsely asserted that work on PO and OMS would start on October 15, 2007 and October 23, 2007, respectively. He falsely asserted that work on WMS Outbound would begin on January 18, 2008, and that the go-

live would be June 13, 2008. A few days later, on or about October 5, 2007, JTV and Sterling entered into the Implementation Phase SOW.

75. JTV soon discovered that Sterling had not completed the solution definition phase documents at the time the Implementation Phase was supposed to start, and that the SDDs themselves were woefully inadequate. It became clear in or around October 2007 that Sterling, notwithstanding its representations to the contrary, either did not understand JTV's business or was ignoring essential elements of JTV's business, and had materially misrepresented the amount of work necessary to implement WMS, OMS and PO.

76. On October 23, 2007, in the Spinel Room at JTV, Rich Jackson (Sterling Project Manager), falsely represented to JTV employees that WMS (all inbound and outbound functionality with some exceptions), OMS (including sales order and fulfillment) and PO (all functionality except for alerts and emails), would be released via Sterling's Release Plan, by June 15, 2008. That never happened. On October 25, 2007, Sterling again misled JTV by asserting in its weekly WMS and OMS project summary status report that OMS would "go live" and "operations start" would be on June 15, 2008. The OMS system, however, did not "go live" on June 15, 2008. It never went live at all.

77. By November 1, 2007, JTV was forced to report to its Steering Committee that, although Sterling had announced at the June 28, 2007 Kick-Off that the Go Live date for WMS, PO and OMS would be April 1, 2008, the new planned Go Live date was now June 15, 2008. The extent to which Sterling had misrepresented its commitment to keeping experienced Sterling employees on the team was also apparent by this time. JTV was forced to inform its Steering Committee, regarding "Sterling Project Leadership," that, "The Sterling team has gone through multiple changes at the project leadership level. Individuals on the Sterling team that we

expected to be here have left the team." It was also forced to report, regarding "Sterling Resources," that, "Sterling's resource changes have introduced risk to the project. The risk so far has been minimal. Further changes could cause substantial problems going forward." This was not news to Sterling. As early as July 26, 2007, Guy Read and Subroto Majumdar, in their OMS and WMS Implementation project summary status report, identified the following as a "Project Risk": "Resource churn - Sterling to address with Resource Action Plan." Sterling never properly mitigated this risk.

78. On or about December 21, 2007, JTV employee Mary Regan (Project Manager) had a meeting with Rich Jackson (Sterling Project Manager). Ms. Regan was sent to Mr. Jackson because it was clear that the implementation was not going well. Mr. Jackson told Ms. Regan that, notwithstanding Sterling's prior representations, Sterling had never before implemented WMS, OMS and PO at once.

79. By the end of 2007 there were so many Sterling employees coming on and off the project that it was difficult to communicate all the changes on a timely basis to the JTV employees. In a January 4, 2008 email, Louis Burgin (a systems architect from Sterling's Professional Services group), was forced to admit to Jason Hembree and others that Sterling "dropped a ball on communicating an update" regarding "redeployment" of Sterling personnel. Jason Hembree had to report to members of his team on the same day about "Sterling's inability to clearly explain how the [Sterling] product works as well as elicit the necessary information from JTV all in one meeting session for even a small topic." A few days later, Guy Read conceded that there were problems and that the "project plan drives everything [and] Rich [Jackson] has a lot of work to do to get it into shape."

80. By January 2008 the Sterling employees' lack of technical expertise was painfully clear. On January 23, 2008, for example, Mary Regan was forced to report to her colleagues that, "I don't think that those who put the plan together have a good enough understanding of interfaces" and Sterling could not "explain any of the interface lists and how they fit with the plan . . . Even Louis [Burgin] agreed that there was confusion."

81. JTV also discovered during this time that many of the Sterling employees assigned to the project were inexperienced and incompetent. Sterling experienced significant turnover making project continuity and performance extremely difficult, if not impossible. Sterling did not assign enough resources to the project and Sterling billed JTV for hours "worked" by Sterling employees who were idle (in at least two cases, surfing the Internet and working on a project for a different customer). Transition and knowledge transfer from key Sterling employees to their replacements was not adequate. For example, one key employee took a three-week vacation during the project and the transitions to and from his temporary replacement caused delays and extra work because the two employees were doing things in different ways.

82. As the project continued, it became clear to JTV that there was no reasonable basis for Sterling's schedule for implementation. As work continued and Sterling increased the estimated amount of work required to complete the project, Sterling neither changed the end date of its project plan nor added resources to the project, with the result that the Sterling employees would had to have worked unreasonable hours to meet deadlines – from 60 to as much as 200 hours per week per employee.

83. It also became clear that the project plan prepared by Rich Jackson was woefully inadequate. It failed to include a list of deliverables and it did not show when Sterling

would be delivering design documents to JTV for review, or when Sterling needed information from JTV. JTV asked for this information many times but never received a complete list, which impaired JTV's ability to plan its part of the work. Rich Jackson kept significant information on separate spreadsheets instead of incorporating them into the project plan, creating issues with version control and diverting attention from the lacking project plan. At one point, Mr. Jackson told JTV that he didn't want to list all of the deliverables because it would add almost 1,000 additional lines to the plan.

84. From December 2007 to March 2008, whenever JTV expressed concerns that the project was going to be significantly late and over budget, Guy Read assured Mary Regan, Wayne Lambert, and Chris Meystrik that Sterling would complete all of the work by June 15, 2008 and absorb any cost overruns at its own expense. Mr. Read stated that "you have my personal promise."

85. JTV questioned Sterling employees on many occasions as to how they could come up with their metrics and how they could make statements regarding cost and scheduling when they did not have a complete or accurate project plan. In response, Sterling produced a litany of excuses but never adequately addressed the issue. On several occasions, Chris Meystrik asked Guy Read, and others, if JTV could contact customers who had successfully implemented WMS, OMS and PO together. Mr. Meystrik never got a satisfactory answer.

86. Throughout the project JTV employees observed that Sterling kept sending new Sterling "experts" (consultants, engineers, architects, and solution designers), to try and implement WMS, OMS and PO, and that there was no continuity in leadership. It was a "revolving door" of Sterling employees. Sterling itself acknowledged during the project that

turn-over of Sterling employees was hurting the project and needed to be addressed. It was, however, never adequately addressed.

87. The Sterling project managers never submitted a single project plan that discussed, in one document, how WMS, OMS and PO would be implemented together.

88. JTV could not find a single Sterling employee who was able to discuss how WMS, OMS and PO would be implemented together. Sterling employees could only answer questions about how each system could be implemented on its own.

89. Sterling never produced a single SDD for the implementation of WMS, OMS and PO together as Sterling had represented it would. Rather, Sterling was only able to produce separate SDDs for each program. Moreover, the SDD for OMS was inadequate and had to be augmented by Jason Hembree of JTV.

90. Sterling never sent, as promised, a business specialist to the project.

91. Sterling's constant delays and inability to manage the project consistently forced JTV employees to miss their deadlines which negatively impacted the project.

92. The computer codes designed by Sterling were ineffective and substandard. JTV employees were often called upon to re-write Sterling's inferior code. Sterling's substandard configuration management led to frequent system crashes.

93. Sterling never produced any useful project plans, timetables or change management documents. Valid and useful design documents were never delivered. Sterling also provided inadequate SDDs. These documents did not contain adequate detail or provide the information necessary for a successful implementation. For example, on July 8, 2008, Mary Regan had to complain to Guy Read of Sterling that the "System Administration Guide" Sterling had been contracted to supply still wasn't complete. The woefully inadequate nature of the

SDDs demonstrates that Sterling never had the experience or expertise to properly implement WMS, OMS and PO together.

L. JTV Is Forced To Salvage What It Can By Launching "Phoenix Rising" But The Delays, Deficiencies, Issues And Flaws Continue.

94. On Friday, February 1, 2008, the Steering Committee met to discuss the status of the Sterling project. The news was not good. It was reported that Sterling was experiencing staff turnover and was not bringing the correct consultants into JTV to guide it through the implementation. It was also reported that Sterling had significantly underestimated the scope of the effort required, and the committee was reminded that JTV was necessarily relying on Sterling's expertise in scoping the project.

95. By February 2008 it was clear to JTV that the work could not be completed by the end of September 2008, which was the latest date for completion without interfering with JTV's holiday ordering season. Based on the many missed deadlines, the substandard documentation and the constant churn of Sterling personnel, JTV had no confidence that Sterling could deliver what it had promised. JTV was forced to conclude that it simply could not count on Sterling to handle the complexity involved in deploying WMS, OMS and PO by the holiday season: too much had to be done and, based on Sterling's work to date, JTV could not rely on Sterling to do it. That work included, among other things, testing WMS Outbound and OMS, and implementing quality assurance procedures.

96. JTV was also forced to acknowledge that Sterling's technical incompetence made it impossible for JTV to rely on Sterling to implement WMS-Outbound and OMS. As JTV employees told Sterling and each other many times during this period, it was clear to JTV that Sterling had woefully underestimated and understated the complexity of the project. Initially there was no systems architect on the project from Sterling. JTV had to get

but not during the pre-K sales cycle.

answers to questions from someone on the phone rather than someone on the project. JTV had already had to fix or ameliorate the many bugs in the systems on which Sterling had already worked. Moreover, JTV, on its own, had to build, manage and deploy the *Sterling* interface systems needed for the project. At one point, Sterling employees marveled at JTV's workproduct and said that they would like to use it on other projects.

97. Based on these realizations, and in an effort to salvage some useful benefit from the project, JTV told Sterling in early 2008 that it had to concentrate on completing the implementation of PO and WMS-Inbound, leaving OMS and WMS-Outbound for later deployment. This project was called "Phoenix Rising." Not even a dramatic reduction in the scope of the project, however, resulted in efficient, professional and effective work by Sterling.

98. Even before the February 1, 2008 Steering Committee meeting, Sterling had acknowledged that the project was off schedule and in trouble. In its January 4, 2008 "OMS/WMS/PO Project Recovery Plan," it agreed that it had to "implement a recovery plan to meet the original agreed milestone dates (per the [Statement of Work])." Sterling falsely asserted (again) that the go-live date for all three, fully integrated systems would be June 15, 2008. That never happened. Sterling acknowledged that it had to execute its plan "with committed scope," "supplement resources/skills as required," "take corrective action," "report accurate, timely, measurable status," "*no excuses, no distractions, no noise*" and "*no surprises*" (emphasis added). Unfortunately, there were many more excuses, distractions and surprises in store for JTV.

99. On or about February 7, 2008, Wayne Lambert called Guy Read of Sterling and told him that, due to the uncertainty of the project plan, JTV had to make contingency plans as to what could be delivered in 2008. He also told him that JTV did not

expect any letdown in effort from Sterling to get the systems in on time, within budget, and with the necessary functionality.

100. As the situation continued to deteriorate, in February 2008, members of the JTV technology team (David Boeschenstein, Wayne Lambert, Chris Meystrik, James Thome, Lisa Cornelius and Tim Matthews) agreed among themselves that they could not let up the pressure on Sterling or give it any "outs" from the commitments it had made to JTV. These efforts were unsuccessful: Sterling failed to integrate WMS, OMS and PO and seamlessly integrate them with JTV's systems.

101. The pressures of the failing project began to impact Sterling employees. For example, on March 14, 2008, Louis Burgin wrote to Mary Regan that he would only attend a meeting she requested "under [certain] conditions." This prompted Wayne Lambert to comment to Mr. Burgin, "I am not sure that I understand [your] email. We all want to get work done but the last time I checked we are the client." And on March 19, 2008, Chris Meystrik concluded in a report to his colleagues at JTV that, "clearly part of the issue here is the Sterling team trying to make up time at the expense of quality for failures early on in the project, but we cannot let quality suffer in any way." On March 20, 2008, Sterling was still promising JTV a fully and seamlessly integrated OMS, WMS and PO system with a revised go-live date of July 7, 2008. That too never happened.

102. By March 2008 Sterling's project management had proved itself to be hopelessly insufficient. Sterling assigned three different project managers during the project and JTV had to completely take over project management in April 2008 after asking for the removal of the third project manager, Rich Jackson. Rich Jackson was completely inept at project management. For example, Mr. Jackson was incapable of establishing realistic schedules for the

resources allocated to the project. He did not provide any useful milestones or deliverables. He was totally incapable of understanding what issues were important until it was too late – he constantly missed warning signs or downplayed them. He did not provide useful and effective status reports. He was late with his status reports. On March 2, 2008, Mary Regan had to tell him that:

> Rich
>
> If you guys are going to be late with something, we would appreciate advance warning. Both you and Guy told us on Thursday that we would see the [project] plan on Friday. JTV plans activities around Sterling commitments, and therefore, when a commitment is missed -- it hinders our ability to accomplish work. *There has been a history of an inability to meet commitment dates when it comes to the project plan.*

(emphasis added).

103. Rich Jackson also produced fraudulent and misleading status reports. Even though Mr. Jackson's superior Guy Read was informed of Mr. Jackson's inadequate performance, Sterling never took him off the project. It was when JTV could no longer stand his ineptitude that Wayne Lambert insisted in April 2008 that he be taken off the project.

104. On April 23, 2008, even though it was clear that Sterling could not deliver WMS (inbound and outbound), PO and OMS on time, on budget and seamlessly integrated with JTV's other systems, Guy Read continued to pitch business to JTV, by proposing, in a bullet point presentation, that JTV re-retain Sterling to assist in this downsized project, and one bullet point read, "Current [Sterling] resource plan is targeted toward a go-live of June 30th 2008." Upon his review of the proposal, however, Chris Meystrik commented that Sterling did not have a plan to meet that goal and "there was never a solid plan in place. This seems like an intentional

bullet." On April 24, 2008, Guy Read continued to pitch business to JTV, suggesting a "Proposed Resource Plan to Support Phoenix Rising."

105. By May 2008 even Sterling had to admit that it could not deliver a seamlessly integrated WMS (inbound and outbound), OMS and PO systems on time, on budget, and with all of the functionality that JTV had told Sterling it required. On May 8, 2008, Louis Burgin had to agree with JTV that additional customization and/or configuration would be needed to allow users to enter orders in a manner required by JTV's business, but he wrote that "it is still unclear as to how this will be accomplished." On May 19, 2008, Sterling conceded that JTV had to implement an "OMS Lite" and that JTV would have to "opportunistically add OMS functionality" later.

106. On June 5, 2008, the problems, inadequacies and lack of professionalism on the part of Sterling employees required Mary Regan to complain to Louis Burgin that: the templates for users kept changing; there were increased configuration estimates; and, most importantly, the Sterling employee sent to assist JTV, Suresh Pillai, was not capable of being "the guy" on site who could effectively and efficiently take the implementation through to the go live phase. Guy Read was so out of touch with the problems on the project that, on June 9, 2008, he requested a meeting with Mary Regan so that *she* could help *him* "understand the OMS plan."

107. By July 2008 the inadequacy of the resources provided to JTV was clear. Every time an issue arose, as Mary Regan complained to Guy Read on July 24, 2008, JTV was "at a total stand still until something is fixed." JTV had no stable platform for testing, and files had not been "checked in," thus "breaking the system." Meeting the deadline for testing was impossible and, as Ms. Regan explained, "if we can't get to testing soon, all dates this year are off." In response, Sterling sent a technical "Senior Consultant" Vadiraja Ramamurthy who had

no experience in integrating all three systems licensed by JTV (WMS (inbound and outbound), OMS and PO).

108. In order to protect Sterling and re-write history, on August 6, 2008, Guy Read emailed Wayne Lambert and wrote that he "would also like to document in the CR that the scope of the deliverables is now limited to the Phoenix Rising Project," in an attempt to release Sterling from its obligations to deliver WMS outbound and OMS. JTV refused to sign the proposed new Change Request form.

109. On September 24, 2008, Phoenix Rising (a WMS Inbound and PO system only) was launched in time for the holiday season. Sterling then left the site before the system went live, even though the Implementation Phase SOW required Sterling to provide 10 business days of post go-live support. On the same day, JTV discussed retaining a new third-party integration vendor to help it complete the integration project which Sterling could not. On December 10, 2008, JTV finalized a profile of JTV's software and implementation needs to send to three new vendors.

110. By December 29, 2008, the problems, malfunctions and inadequacies of the Sterling software and Sterling's implementation services for just WMS Inbound and PO were dramatically apparent. In an internal summary to the JTV technology team, it had to be reported that:

(i) "we still struggle with the visibility of the Sterling inventory and product movement from a reporting perspective."

(ii) "Lots of support still needed from the IT department."

(iii) "Inventory accuracy seems to be a big concern with Sterling even though it was supposed to provide increased accuracy."

(iv) "We are not able to facilitate the movement of priority product as quickly with the Sterling application."

(v) "The ineffectiveness of Sterling is apparent through the heavy reliance we still have on legacy applications."

(vi) "Perceived gained efficiencies with the implementation of Sterling have not come to fruition leading to a perception within the area that we have actually taken a step back."

111. By February 2008, JTV was paying for maintenance and the continued implementation of WMS, OMS and PO even though there was still no viable project plan. By May 2009, JTV had a crippled, incomplete and malfunctioning system with OMS and WMS-Outbound -- over 65% of the project -- never implemented. And here is what JTV paid for such products and services: $1,740,000 for software licensing, $630,000 for software maintenance, $115,000 for pre-project planning services, $10,000 for pre-project planning expenses, $50,000 for education services, $580,000 for solution definition phase services, $80,000 for solution definition phase expenses, $2,020,000 for implementation phase services, $240,000 for implementation phase expenses, and $180,000 in sales taxes -- that is, over $5 million under the various licensing and implementation agreements JTV was fraudulently induced into signing.

112. In addition, JTV expended over $5 million internally in its effort to support and develop the failed software implementation program.

CLAIMS

113. As a result of Sterling's fraud, breach of contractual and other common law duties, negligence and/or gross negligence, unfair and deceptive trade practices, and other misconduct, JTV suffered substantial monetary losses and damage to its business in an amount to be determined by the trier of fact.

114. All conditions precedent to JTV's entitlement to recover on its claims herein have been performed, have occurred, or have been waived.

Count One -- Fraud In The Inducement

115. JTV repeats, realleges and incorporates the allegations contained in paragraphs 1 through 114 as if fully set forth herein.

116. Sterling made numerous misrepresentations of material facts, and failed to disclose material facts to JTV regarding, among other things, the qualities and functionality of its software, and its abilities, resources, qualifications, credentials and intention to perform and provide services and products in connection with the implementation of its software systems.

117. Such representations were false, and Sterling knew, or was reckless in failing to know, that such statements were false at the time they were made.

118. Such misrepresentations by Sterling were made in order to induce JTV to enter into the Universal License, the Schedule No. 1 License, the PSA, the Pre-Project Planning Statement of Work, the May 2007 CR, the Schedule No. 2 License, the Solution Definition Phase Statement of Work, the Education Services Letter of Agreement, and the Implementation Phase Statement of Work (the "Agreements"), and JTV reasonably relied upon such misrepresentations made by Sterling in entering into the Agreements.

119. During the course of its work at JTV, Sterling made numerous misrepresentations of material facts, and failed to disclose material facts, regarding the allegedly highly integrated nature of WMS, OMS, and PO**,** whether those systems could seamlessly integrate with JTV's legacy system, the progress of its work on the project, including the cost of the project, its services, its ability and intention to correct problems with the project, and its ability and intention to fulfill its obligations as the implementer and integrator of its own software.

120. Such representations made by Sterling during the course of its work on the project were false, and Sterling knew, or was reckless in failing to know, that such statements were false at the time they were made.

Tie to Par. 77?

121. Such misrepresentations were made by Sterling in order to induce JTV into permitting Sterling to continue to purport to work and be paid on the project, and JTV reasonably relied upon Sterling's material misrepresentations in permitting Sterling to do so.

122. Sterling made intentional misrepresentations of material facts with the knowledge of the falsity of those representations. Sterling knew that an injury to JTV would be caused by JTV's reasonable reliance on those representations, and that those representations involved promises of future actions with no present intent to perform.

123. As a direct result of Sterling's fraud and deceit, JTV sustained damages in an amount to be determined by the trier of fact.

124. In addition, because Sterling's actions were committed knowingly, willfully and in conscious disregard of the rights of JTV, JTV is entitled to recover punitive damages in an amount to be determined by the trier of fact.

Count Two -- Promissory Fraud

125. JTV repeats, realleges and incorporates the allegations contained in paragraphs 1 through 124 as if fully set forth herein.

126. Sterling made promises during the discussions and negotiations leading up to the Universal License, the Schedule No. 1 License, the PSA, the Pre-Project Planning Statement of Work, the May 2007 CR, the Schedule No. 2 License, the Solution Definition Phase Statement of Work, the Education Services Letter of Agreement, and the Implementation

Phase Statement of Work (the "Agreements"), with no intention of acting or delivering upon those promises.

127. Sterling made intentional misrepresentations of material facts with the knowledge of the falsity of those representations. Sterling knew that an injury to JTV would be caused by JTV's reasonable reliance on those representations, and that those representations involved promises of future actions with no present intent to perform.

128. Sterling made promises during the course of its work on the JTV project with no intention of acting or delivering upon those promises.

129. The promises and representation made by Sterling to JTV were made with the intent not to perform them.

130. As a direct result of Sterling's fraud and deceit, JTV sustained damages in an amount to be determined by the trier of fact.

131. In addition, because Sterling's actions were committed knowingly, willfully and in conscious disregard of the rights of JTV, JTV is entitled to recover punitive damages in an amount to be determined by the trier of fact.

Count Three -- Negligent Misrepresentation

132. JTV repeats, realleges and incorporates the allegations contained in paragraphs 1 through 131 as if fully set forth herein.

133. By virtue of its representation that the Sterling software systems were highly integrated and would be seamlessly integrated with JTV's legacy system, Sterling owed JTV a duty of care to provide JTV with accurate, truthful and complete information regarding both the services and products to be provided by Sterling and Sterling's qualifications and abilities to provide such services.

134. Sterling breached this duty by making representations to JTV that were materially false, incomplete or misleading at the time they were made, by failing to exercise reasonable care and competence in obtaining and communicating information to JTV, and by failing to ensure that the information it provided to JTV was complete and accurate.

135. JTV reasonably relied upon Sterling's misrepresentations in entering into the Universal License, the Schedule No. 1 License, the PSA, the Pre-Project Planning SOW, the May 2007 CR, the Schedule No. 2 License, the Solution Definition Phase SOW, the Education Services Letter of Agreement, and the Implementation Phase SOW (the "Agreements").

136. Furthermore, following the Agreements between the parties, Sterling made various material misrepresentations regarding the progress of its work on the project, including, but not limited to, the cost of the project, its services, its ability and intention to correct problems with the project, its ability and intention to fulfill its obligations as the implementer and integrator of its own software and the ability of the systems to perform as required.

137. Sterling was acting in the course of its business as a software developer, licensor and implementer when it made its misrepresentations to JTV; Sterling supplied false information to JTV, and at the time that information was being provided to JTV Sterling intended that the information would guide JTV in the transactions of licensing Sterling's software and contracting with Sterling to implement its software; Sterling failed to exercise reasonable care in obtaining and communicating the information; and JTV justifiably relied upon that information.

138. As a direct result of Sterling's negligent misrepresentations, JTV sustained damages in an amount to be determined by the trier of fact.

139. In addition, because Sterling's acts of negligent misrepresentation constitute gross negligence, JTV is entitled to recover punitive damages in an amount to be determined by the trier of fact.

Count Four -- Violations Of The Tennessee Consumer Protection Act

140. JTV repeats, realleges and incorporates the allegations contained in paragraphs 1 through 139 as if fully set forth herein.

141. Sterling, an Ohio-based licensor of software and a provider of computer consulting services, markets, sells and distributes its goods and services in Tennessee, and the software and implementation and other services which are the subject matter of this litigation were sold and distributed by Sterling to JTV in Tennessee. JTV licensed the software and contracted for the computer consulting, installation and implementation services from Sterling following Sterling's concerted efforts to secure such contracts. JTV, therefore, stands in the position of a consumer in this transaction under the Tennessee Consumer Protection Act (the "Act"), 47 Tenn. Code Ann. §§ 47-18-101 et seq., and such Act applies to this transaction.

142. In the course of its business as a provider of software, computer consulting and implementation services, and, specifically, with respect to its inducement of JTV to enter into the Universal License, the Schedule No. 1 License, the PSA, the Pre-Project Planning Statement of Work, the May 2007 CR, the Schedule No. 2 License, the Solution Definition Phase Statement of Work, the Education Services Letter of Agreement, and the Implementation Phase Statement of Work (the "Agreements"), and its purported attempt to perform under those Agreements, Sterling engaged in unfair and deceptive trade practices and violated the Act by, among other things: (a) representing that its goods and services had, or would have, characteristics, uses, benefits and qualities that they did not have, (b) representing that its goods

and services were, or would be, of a particular standard, quality or grade, when they were not, and (c) making the other misrepresentations as alleged above, all in violation of Tenn. Code Ann. § 47-18-104(a)(7) and (27).

143. Sterling intended that JTV rely on these false representations so that JTV would enter into the Agreements with Sterling and then continue to pay Sterling for its work on the project.

144. Sterling advertised its software products and its implementation services with an intent not to sell them or deliver them as advertised, in violation of Tenn.Code Ann. § 47-18-104(b)(9).

145. Sterling represented that its implementation services were of a particular standard and that the quality of its software was also a particular standard, but both the software and the implementation services were of another in violation of Tenn.Code Ann. § 47-18-104(b)(7).

146. Sterling used statements and illustrations in its advertisements which created a false impression of the quality of the software and the implementation services offered and misrepresented the software and the implementation services in such a manner that later, on disclosure of the true facts, it is likely that JTV was switched from the advertised software and implementation services to different software and implementation services in violation of Tenn.Code Ann. § 47-18-104(b)(21).

147. Sterling engaged in acts and practices which were deceptive to JTV in violation of Tenn.Code Ann. § 47-18-104(b)(27).

148. As a result of Sterling's violations of the Act, JTV sustained actual damages in an amount to be determined by the trier of fact.

149. In addition, pursuant to Tenn. Code Ann. § 47-19-109, because Sterling's use or employment of the unfair or deceptive acts and practices was a willful and knowing violation of the Act, JTV is entitled to recover three (3) times JTV's actual damages and such other relief as the Court considers necessary and proper.

150. JTV is also entitled to recover its reasonable and necessary attorney's fees and costs in prosecuting this claim under the Act.

Count Five -- Negligence And Gross Negligence

151. JTV repeats, realleges and incorporates the allegations contained in paragraphs 1 through 150 as if fully set forth herein.

152. By undertaking to provide JTV with software, consulting, and implementation services with respect to its products and services, Sterling assumed a duty of care to JTV required by its profession and in accordance with applicable professional standards. In the alternative, Sterling assumed a duty of ordinary care toward JTV with respect to its software and the implementation of its software.

153. Sterling failed to fulfill its duty of special and/or ordinary care toward JTV by, among other things: (a) mismanaging the Sterling implementation project, (b) causing schedule delays and cost overruns, (c) failing to staff the project with persons having sufficient experience and expertise to perform the professional services required, (d) failing to implement its software systems properly and adequately, and (e) failing to deliver accurate information to JTV regarding deficiencies in the system, the testing of the system and the curing of defects in the system.

154. There was a duty of care owed by Sterling to JTV; Sterling's conduct fell below the applicable standard of care amounting to a breach of that duty; JTV suffered an injury

and loss caused by Sterling's breach of that duty; and Sterling's breach of that duty of care was the proximate and legal cause of JTV's injury and loss.

155. In addition, because Sterling's negligent acts were committed knowingly, willfully and with a conscious disregard of the rights of JTV, JTV is entitled to recover punitive damages in an amount to be determined by the trier of fact.

Count Six -- Breach Of Contract (The Agreements)

156. JTV repeats, realleges and incorporates the allegations contained in paragraphs 1 through 155 as if fully set forth herein.

157. JTV and Sterling entered into the Universal License, the Schedule No. 1 License, the PSA, the Solution Definition Phase Statement of Work, the May 2007 CR, the Education Services Letter of Agreement, the Pre-Project Planning Statement of Work, the Implementation Phase Statement of Work and the Schedule No. 2 License (the "Agreements").

158. JTV fulfilled its responsibilities under the terms of the Agreements.

159. Sterling unilaterally and materially breached the Agreements.

160. As a direct result of Sterling's material breaches of the Agreements, JTV sustained damages in an amount to be determined by the trier of fact.

Count Seven -- Breach Of Express And Implied Warranties (The Implementation Statement of Work)

161. JTV repeats, realleges and incorporates the allegations contained in paragraphs 1 through 160 as if fully set forth herein.

162. In its Implementation Phase Statement of Work, Sterling provided an express warranty that "the estimated amount budgeted for the implementation of the Sterling Commerce Solutions for WMS, OMS and PO . . . and the Services to be provided by Sterling Commerce, will be sufficient to enable the Solutions to be fully designed, developed and

implemented," and that the implementation will be completed and systems will be ready to go live no later than by June 15, 2008, and at a cost not to exceed approximately $2 million. Sterling also agreed that the software it will implement "conforms to [JTV's] business practices and processes" and "[is] technically feasible."

163. Sterling also made various implied warranties in the Implementation Phase Statement of Work as to the quality, performance, cost, timing, usefulness and value of the software and implementation services it had contracted to provide Sterling.

164. Sterling materially breached its express and implied warranties to JTV.

165. As a direct consequence of Sterling's breach of its express and implied warranties, JTV sustained damages in an amount to be determined by the trier of fact.

Count Eight -- Breach Of Express
And Implied Warranties (The Schedule No. 1 and Schedule No. 2 Licenses)

166. JTV repeats, realleges and incorporates the allegations contained in paragraphs 1 through 165 as if fully set forth herein.

167. Sterling agreed, pursuant to an express warranty in the Schedule No. 1 and Schedule No. 2 Licenses, that '"for a period of sixteen (16) months from the effective date of the applicable [software], that the Software . . . will provide, in all material respects, the functionality set forth for the Software in the applicable user documentation."

168. Sterling materially breached its express warranties by providing JTV with defective software which was not highly integrated and which could not be seamlessly integrated with JTV's legacy system and was, therefore, unable to, among other things, efficiently process transactions.

169. As a direct consequence of Sterling's breach of express warranties, JTV sustained damages in an amount to be determined by the trier of fact.

170. Sterling also made various other express and implied warranties as to the quality, performance, usefulness and value of the software provided by Sterling, including warranties regarding the highly integrated nature of the software and the ability of that software to seamlessly integrate with JTV's legacy system.

171. Sterling also impliedly warranted that its software provided to JTV was merchantable.

172. Sterling both expressly and impliedly warranted that the software system provided to JTV was fit for a particular purpose, namely, to perform essential functions in connection with its warehouse management, purchase operations and operations management which could only be achieved if the constituent parts of the software systems were highly integrated and were seamlessly integrated with JTV's legacy system.

173. Sterling knew or should have known JTV's particular purpose in contracting for its software, and knew or should have known that JTV was reasonably relying on Sterling's purported skill and judgment to furnish appropriate goods to meet JTV's purpose.

174. Sterling materially breached its warranties, including its express warranties and its implied warranties of merchantability and fitness for a particular purpose to JTV, by providing JTV with software systems that were not fit for the ordinary or particular purposes for which they were to be used, in that, among other things, they could not provide the functionality that can only be achieved if the constituent parts of the software systems are highly integrated and are seamlessly integrated with JTV's legacy system.

175. As a direct consequence of the breach of express and implied warranties by Sterling, JTV sustained damages in an amount to be determined by the trier of fact.

PRAYER

WHEREFORE, JTV respectfully requests that this Court enter judgment in favor of JTV and against Sterling and provide the following relief:

(a) Awarding JTV compensatory damages in an amount to be determined by the trier of fact;

(b) Awarding JTV three (3) times its actual damages;

(c) Awarding JTV punitive damages in an amount to be determined by the trier of fact;

(d) Awarding JTV its court costs, expenses and reasonable attorney’s fees;

(e) Awarding JTV prejudgment and postjudgment interest at the highest rate(s) provided by law; and,

(f) Granting JTV such other and further relief, at law and in equity, as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial in this action for all the claims so triable.

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