

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

JESSICA PARM, on behalf of herself and all others similarly situated,  Plaintiff,  v.  Bluestem Brands, Inc.,  Defendant.	Court File No.: _____  CLASS ACTION COMPLAINT AND JURY DEMAND  (Equitable Relief Sought)
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**NATURE OF THE ACTION**

1. Plaintiff Jessica Parm (“Plaintiff”) brings this class action complaint on behalf of herself and all other similarly situated, against Defendant Bluestem Brands, Inc. (“Defendant”) for its deceptive sales practices, through its online marketplace Fingerhut.com, including: the assessment of hidden finance charges disguised as massive price markups on exorbitantly priced electronics and household goods and the charging of usurious rates of interest.

2. Plaintiff seeks monetary damages, restitution, declaratory and injunctive relief from Defendant on behalf of herself and the classes, as defined below.

3. Defendant, via its website branded as Fingerhut.com (“Fingerhut”), targets low-income consumers for the sale of extremely high-cost electronics and household goods. Virtually all purchases on Fingerhut are made on credit arranged for by Defendant, and virtually all purchases are made by consumers that Defendant identifies

as having a) a low income of less than \$50,000; and b) a low FICO credit score of less than 670.

4. Items sold on Fingerhut to low-income consumers come with substantial markups. By way of example, an iPad Mini 3 currently sells on Fingerhut for \$539.99, whereas its retail price is \$399.00.<sup>1</sup> This massive sales price markup is actually a finance charge in disguise.

5. The massive price markups are actually hidden finance charges, and this fact is demonstrated by reference to another website operated by Defendant. Gettington.com (“Gettington”) is also owned and operated by Bluestem, and it sells identical consumer goods at much *lower* prices, largely to consumers with a) incomes ranging from \$55,000-\$100,000 and b) with FICO credit scores above 610.<sup>2</sup> These consumers typically pay in a single transaction, not financed by Defendant, either because they have the ability to make outright cash purchases, or because they have access to their own financing (through personal credit cards, for example).

6. Consumers who finance purchases on Fingerhut pay a higher cash price than consumers who make outright purchases on Gettington. As such, the higher sales prices on Fingerhut represent the cost of deferring payment, and are by definition finance charges.

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<sup>1</sup> Fingerhut.com, <http://www.fingerhut.com/product/TA652.uts> (last visited June 30, 2015); cf. Apple, <http://www.apple.com/ipad/compare/> (last visited June 30, 2015).

<sup>2</sup> Bluestem Brands, Inc., *Capmark Investor Presentation*, 9 (Nov. 11, 2014), <http://www.capmark.com/siteassets/investor-relations/Bluestem%20Investor%20Deck%20-%2011-11-14.pdf>.

7. Fingerhut uses the price markups as an artifice designed to deceive consumers and evade usury laws. Even worse, these hidden finance charges are so severe that they are violations of the usury laws of Georgia, Minnesota, and other jurisdictions.

8. Defendant's illegal representations and schemes have victimized Plaintiff and thousands of others. Unless enjoined, Defendant will continue to engage in these schemes and cause substantial injury to consumers.

### **PARTIES**

9. Plaintiff Jessica Parm is a citizen of Georgia. During the Class Period, Plaintiff obtained a WebBank/Fingerhut Advantage Credit Account through Defendant's website [www.Fingehut.com](http://www.Fingehut.com). Plaintiff made several purchases using her WebBank/Fingerhut Advantage Credit Account, including the purchase of a "Room with A View Pet House" for \$159.99 and "Advantek Pet Gazebo" for \$229.99 on June 4, 2014. At the time of purchase, Plaintiff was unaware, and Defendant did not disclose, that it sold the same products on Gettington for \$94.99 and \$178.99, respectively. Had Plaintiff known of the hidden finance charge included in the prices of these items, she would not have purchased the items on Fingerhut.

10. Defendant Bluestem Brands, Inc. is a Delaware corporation with its principal place of business at 6509 Flying Cloud Dr., Eden Prairie, MN 55344. Fingerhut and Gettington are both registered in the state of Minnesota as "Assumed Names" for Defendant Bluestem Brands, Inc.

### **JURISDICTION AND VENUE**

11. This Court has subject-matter jurisdiction pursuant to the Class Action

Fairness Act of 2005, 28 U.S.C. § 1332(d) in that: (1) this is a class action involving more than 100 class members; (2) the aggregate claims of the Class members exceed the sum or value of \$5,000,000.00, exclusive of interest and costs; and (3) Plaintiff is a citizen of the State of Georgia and Defendant is a citizen of the States of Delaware and Minnesota.

12. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(1), as Defendant resides in this District.

### **FACTUAL ALLEGATIONS**

#### **A. Defendant's Practices Target Consumers Requiring Financing**

13. Defendant offers goods for sale on two different websites it owns and operates; Fingerhut and Gettington.

14. According to Defendant's Fingerhut website,<sup>3</sup>

The Fingerhut business model is pretty cool. We are a retailer that offers payment options—and low monthly payments. We help people afford everything from national-brand furniture and bedding to washers to wedding rings to the latest electronics. In fact, 4 out of 5 people who apply are approved for a WebBank/Fingerhut Credit Account or Fingerhut FreshStart<sup>®</sup> Account.

It's a great feeling to be the company that can say YES, when many others have said no!

15. According to a 2014 investor presentation, Fingerhut and Gettington target low-to-middle income consumers: "These consumers typically have less access to credit,

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<sup>3</sup> Bluestem Brands, <http://www.bluestembrands.com/our-brands/fingerhut/> (last visited July 9, 2014).

and Defendant has the data-driven expertise to profitably and reasonably offer credit to this underserved segment of the population.”<sup>4</sup>

16. Defendant’s growth strategy is to “[l]everage differentiated business model[s] *to take advantage of consumers in need of credit.*”<sup>5</sup>

17. In furtherance of this strategy, Defendant’s websites target different demographics with different credit scores.<sup>6</sup> Fingerhut targets consumers with lower incomes and credit scores less than 670, while Gettington targets middle-income consumers with credit scores greater than 610.<sup>7</sup> Thus, Defendant uses Fingerhut to target consumers more likely to require financing.

18. That targeting is successful. The vast majority of Defendant’s customers that require financing make their purchases on Fingerhut (91.8%) rather than Gettington (7.8%).<sup>8</sup> On information and belief, virtually all purchases on Fingerhut are made using Defendant’s arranged financing.

19. Defendant has created the sister sites in order to propagate this financing dichotomy. The two sites are nearly identical in appearance. However, using sophisticated internet analytics and other tools, Defendant drives consumers it targets as having low-incomes and low credit scores to finance their purchases at a significant

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<sup>4</sup> Bluestem Brands, Inc., *Capmark Investor Presentation*, 7 (Nov. 11, 2014), <http://www.capmark.com/siteassets/investor-relations/Bluestem%20Investor%20Deck%20-%2011-11-14.pdf> (attached as Exhibit 1).

<sup>5</sup> *Id.* at 12 (emphasis added).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

premium on Fingerhut.com, whereas consumers with better financial profiles are driven toward the Gettington site, largely for unfinanced purchases.

20. The websites' respective price representations are markedly different. On Fingerhut, the prices are advertised based on the per month cost, thereby communicating to consumers that the product is being offered as a financed purchase. On the other hand, Gettington offers the identical product, using the identical product number, on a nearly identically formatted site, but for a flat, up-front price. This communicates to consumers that the product is offered for sale outright—and is another indication that the massive price differential for the same products represents a cost for deferring payment.

The image displays two side-by-side screenshots of e-commerce websites. The left screenshot is from Fingerhut.com, showing the Apple iPad mini 3 16GB Wi-Fi with Retina Display for \$539.99, with a financing option of \$46.99 per month. The right screenshot is from Gettington.com, showing the same Apple iPad mini 3 16GB Wi-Fi with Retina Display for a flat price of \$439.99. Both pages include product images, descriptions, and 'Add to Cart' or 'Add to Bag' buttons.

21. Additionally, on Fingerhut, at the point of purchase, consumers are defaulted into using Defendant's arranged financing to pay for the purchase:

The screenshot shows the Fingerhut checkout page at <https://www.fingerhut.com/checkout/single/checkout.cmd>. The page has a progress bar with three steps: 1. Shipping & Billing Info, 2. Payment Options (current step), and 3. Review & Place Order. The main heading is "Choose Payment Type". There are four payment options: "Apply For Credit" (highlighted), "Pay In Full", "Two Forms of Payment", and "Gift Card". Below these options, there is a section for applying for credit, stating: "If You Do Not Already Have a Fingerhut/WebBank Credit Account, You Can Apply Today!". It includes a link to "Apply before you checkout" and a button "Yes, I want Fingerhut credit". There is also a link "No, thank you. I would like to pay for my order now." and a link "Already have Fingerhut Credit? Find Your Account". On the right side, there is an "Order Summary" table showing: Product Total (\$499.99), Shipping (\$70.99), Tax (\$0.00), and Total (\$570.98). Below the order summary are fields for "Promo Code" and "Catalog Code", each with a "Type a Code" input and an "Enter" button. At the bottom, there is a "Continue to Review Order" button and a note: "You will have a chance to review your order before placing it."

22. Fingerhut consumers are provided with two types of financing options:
- WebBank/Fingerhut Advantage Credit Account (“Revolving Credit Account”) which is a “revolving line of credit that lets [purchasers] make repeat purchases up to [an] assigned credit limit”<sup>9</sup>; and
  - WebBank/Fingerhut FreshStart® Credit Account (“Installment Loan”) which “is a one-time extension of credit that allows [the purchaser] to finance a single order from Fingerhut up to [their] approved loan amount.”<sup>10</sup>

23. Plaintiff and all members of the putative Classes were provided with Revolving Credit Accounts.

<sup>9</sup> Fingerhut, <http://www.fingerhut.com/custserv/custserv.jsp?pageName=CreditTC&print=print> (last visited July 14, 2015).

<sup>10</sup> *Id.*

24. The Revolving Credit Account features an Annual Percentage Rate (“APR”) of 24.90%.<sup>11</sup> It is set based on the Prime Rate plus 21.62%.<sup>12</sup>

25. As discussed *supra*, Defendant has differentiated its consumer market, pushing financed purchases to Fingerhut’s (low income, low FICO score consumers) and unfinanced purchases to Gettington’s (mid-income, higher FICO score consumers). But this financing differentiation also comes with a different pricing strategy in which Gettington purchasers are charged a “Slight Premium,” while Fingerhut purchasers are charged a “Moderate premium.”<sup>13</sup> In other words, prices on Fingerhut goods are marked up much more than prices on Gettington goods.

**B. Fingerhut’s Prices Are Massively Inflated, Representing Hidden Finance Charges in Violation of Lending Laws**

26. Defendant sells the same goods on both Fingerhut and Gettington, yet the pricing on the two sites differs radically. For example, in July, 2015, Fingerhut offered

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<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Bluestem Brands, Inc., *Capmark Investor Presentation*, 9 (Nov. 11, 2014), <http://www.capmark.com/siteassets/investor-relations/Bluestem%20Investor%20Deck%20-%2011-11-14.pdf>.



Apple iPad Mini 3 16GB for \$539.99.<sup>14</sup> At the same time, Gettington sold it for \$439.99,<sup>15</sup> while the retail price was \$399.00.<sup>16</sup>

27. The difference in sales price between products purchased 1) on finance on Fingerhut by a group of consumers with lower incomes and lower credit scores; and 2) those purchased unfinanced from Gettington by a group of consumers with higher incomes and better credits scores, represents a hidden finance charge.

28. Defendant does not disclose this finance charge to consumers prior to their financed purchases on Fingerhut.

29. Adding insult to injury, Defendant charges another round of extremely high interest charges through the credit it arranges via its partners. Because the sales price is already inclusive of the hidden finance charge, Fingerhut is actually charging interest on interest, without disclosing this fact to consumers.

30. Defendant charges an annual interest rate of approximately 24.90%.<sup>17</sup> This annual interest rate is driven even higher when the hidden finance charges are accounted for. These rates of interest are far in excess of the maximum 18% annual interest allowed under Minnesota usury laws or 16% allowed under Georgia usury laws.

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<sup>14</sup> Fingerhut, <http://www.fingerhut.com/product/TA652.uts> (last visited July 14, 2015).

<sup>15</sup> Gettington, <http://www.gettington.com/product/TA652.uts> (last visited July 14, 2015).

<sup>16</sup> Apple, <http://store.apple.com/us/buy-ipad/ipad-mini-3/16gb-silver-wifi> (last visited July 14, 2015).

<sup>17</sup> Fingerhut, <http://www.fingerhut.com/custserv/custserv.jsp?pageName=CreditTC&print=print> (last visited July 14, 2015).

31. In sum, nearly all of the goods sold on Fingerhut are available on Gettington for a significantly lower sales price. The markup on Fingerhut is actually a hidden finance charge. By not disclosing this finance charge, Defendant deceived consumers and violated the Truth in Lending Act (“TILA”). Additionally, when this hidden finance charge is accounted for, Fingerhut loans feature interest rates far in excess of the allowable rate under both Georgia and Minnesota law.

**C. Plaintiff’s Experience**

32. Beginning in on or about March of 2014, and continuing through March of 2015, Plaintiff maintained a Revolving Credit Account with Defendant.

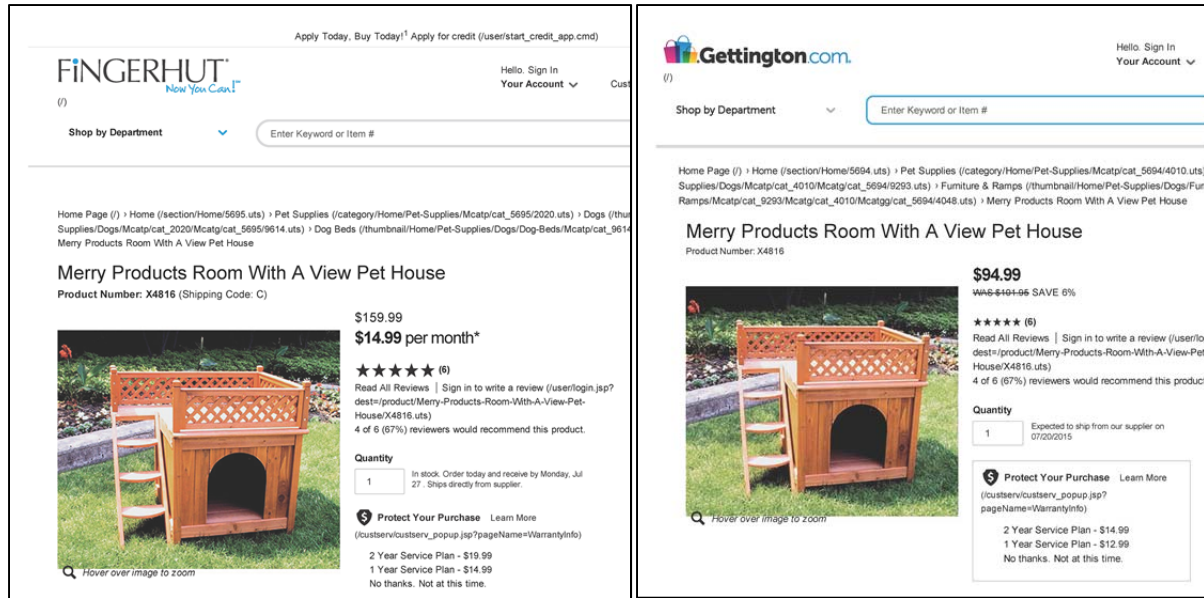
33. During that time period, Plaintiff made purchases on Fingerhut using her Revolving Credit Account.

34. By way of example, on June 4, 2014, Plaintiff purchased the Merry Products Room with a View Pet House from Fingerhut for \$159.99 using her Revolving Credit Account.<sup>18</sup> Unbeknownst to Plaintiff, the same Merry Products Room with a View Pet House was available for sale on Gettington for just \$94.99.<sup>19</sup> Defendant did not disclose this critical fact to Plaintiff or the Class.

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<sup>18</sup> Fingerhut, <http://www.fingerhut.com/product/X4816.uts> (last visited July 14, 2015).

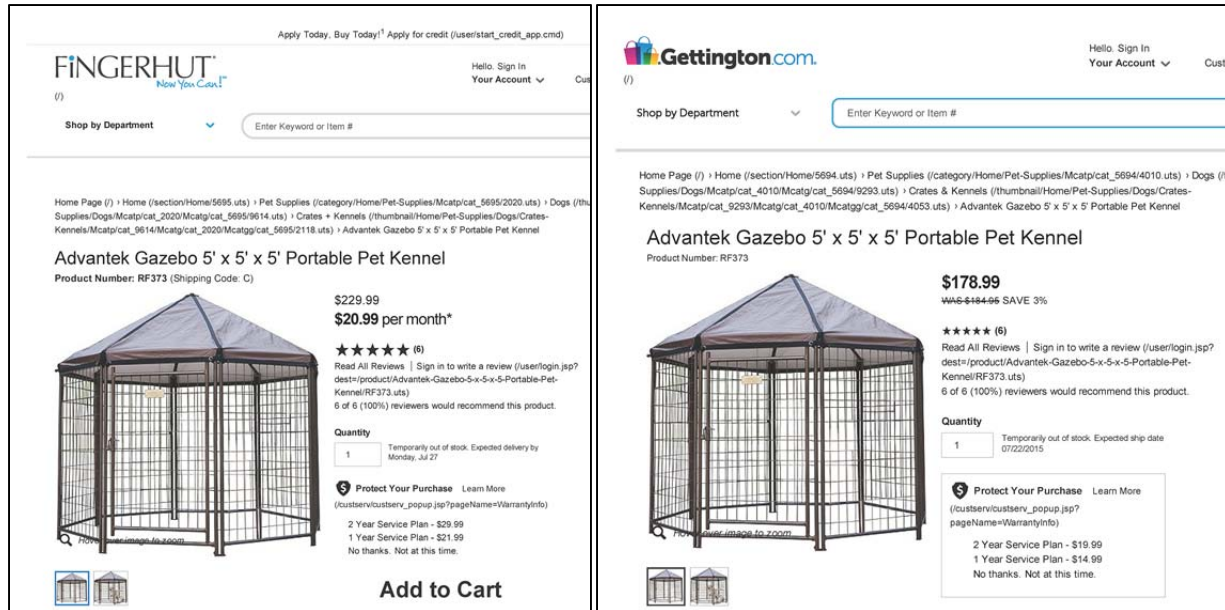
<sup>19</sup> Gettington, <http://www.gettington.com/product/X4816.uts> (last visited July 14, 2015).



35. As a further example, on June 4, 2014, Plaintiff purchased the Advantek Pet Gazebo from Fingerhut for \$229.99 using her Revolving Credit Account.<sup>20</sup> The same Advantek Pet Gazebo was available for sale on Gettington for \$178.99.<sup>21</sup> Defendant did not disclose to Plaintiff that, had she not used the financing option, she could have purchased the Advantek Pet Gazebo offered for \$51.00 less on Gettington.

<sup>20</sup> Fingerhut, <http://www.fingerhut.com/product/RF373.uts> (last visited July 14, 2015).

<sup>21</sup> Gettington, <http://www.gettington.com/product/RF373.uts> (last visited July 14, 2015).



36. Plaintiff was deceived by Fingerhut's pricing scheme. Had Plaintiff known that the prices offered actually included finance charges, she would not have purchased the items, or would have not used her Revolving Credit Account to purchase the items on Fingerhut.

#### D. The Relevant Disclosures

37. Upon embarking on a first-time purchase on Fingerhut.com, consumers are directed to apply for credit through Fingerhut's partner WebBank.

38. During the credit application process, consumers are provided a checkbox with a statement, "Yes I accept these terms. I understand that I am providing authorization for WebBank to obtain information from my credit report in order to confirm my identity." Those terms and conditions (the "Credit Agreement") are available in a hyperlink, but are never affirmatively provided to consumers.

39. The Credit Agreement draws a distinction between the WebBank/Fingerhut Advantage Credit Account (the Revolving Credit Account) and the WebBank/Fingerhut FreshStart® Credit Account (the Installment Loan Account).

40. The Credit Agreement contains the following arbitration provision, which only applies to the WebBank/Fingerhut FreshStart® Credit Account:

**Arbitration:** Your WebBank/Fingerhut FreshStart® Credit Account Agreement will contain a binding arbitration provision. In the event of any dispute relating to your Agreement, the dispute will be resolved by binding arbitration pursuant to the rules of the American Arbitration Association. Both you and we agree to waive the right to go to court or to have the dispute heard by a jury. You and we will be wai[sic]ing any right to a jury trial and you will not have the right to participate as part of a class of claimants relating to any dispute with us. Other rights available to you in court may also be unavailable in arbitration. When you receive your WebBank/Fingerhut FreshStart® Credit Account Agreement, you should read the arbitration provision in the Agreement carefully.

41. The plain language of the arbitration provision only applies to the Installment Loan Accounts, which are not at issue in this litigation.

### **CLASS ACTION ALLEGATIONS**

42. Description of the Classes: Plaintiff brings this class action on behalf of herself and Classes defined as follows:

- i. All natural persons who made a purchase on Fingerhut.com on a WebBank/Fingerhut Advantage Credit Account during the Class Period (the “Hidden Finance Charge Class”);
- ii. For the purpose of asserting a claim under state usury laws, all natural persons residing in in the United States - at the time of a purchase on Fingerhut.com on WebBank/Fingerhut Advantage Credit Account at Fingerhut.com whose true loan interest rates, including

hidden finance charges, exceeded the maximum rate set by Minnesota state law (the “Nationwide Usury Class”); and

- iii. For the purpose of asserting a claim under Georgia state usury laws, all natural persons residing in Georgia - at the time of a purchase on Fingerhut.com on a WebBank/Fingerhut Advantage Credit Account at Fingerhut.com whose true loan interest rates, including hidden finance charges, exceeded the maximum rate set by Georgia state law (the “Georgia Usury Class”).

(collectively “Classes”)

43. Excluded from the Classes are Fingerhut’s officers, directors, affiliates, legal representatives, employees, successors, subsidiaries, and assigns. Also excluded from the Classes are any judges, justices or judicial officers presiding over this matter and the members of their immediate families and judicial staff.

44. Numerosity: The proposed Classes are each so numerous that individual joinder of all members is impracticable.

45. Common Questions of Law and Fact Predominate: There are many questions of law and fact common to Plaintiff and the class members, and those questions substantially predominate over any questions that may affect individual class members.

Common questions of fact and law include whether:

- a) Defendant provides a discount for unfinanced purchases;
- b) Defendant’s discounts for unfinanced purchases are in reality hidden finance charges;
- c) Defendant charges usurious interest rates;
- d) Defendant is unjustly enriched by the practices described herein; and

e) Defendant violates state usury laws.

46. Typicality: Plaintiff's claims are typical of the claims of the members of the Classes. Plaintiff and all members of the Classes have been similarly affected by Fingerhut's actions.

47. Adequacy of Representation: Plaintiff will fairly and adequately represent and protect the interests of the Classes. Plaintiff has retained counsel with substantial experience in prosecuting complex class action litigations. Plaintiff and her counsel are committed to vigorously prosecuting this action on behalf of the Classes and have the financial resources to do so.

48. Superiority of Class Action: Plaintiff and the members of the Class suffered, and will continue to suffer, harm as a result of Fingerhut' unlawful and wrongful conduct. A class action is superior to other available methods for the fair and efficient adjudication of the present controversy. Individual joinder of all members of the Classes is impractical. Even if individual class members had the resources to pursue individual litigation, it would be unduly burdensome for the courts in which the individual litigation would proceed. Individual litigation magnifies the delay and expense to all parties in the court system of resolving the controversies caused by Defendant's common course of conduct. The class action device allows a single court to provide the benefits of unitary adjudication, judicial economy, and the fair and equitable handling of all class members' claims in a single forum. The conduct of this action as a class action conserves the resources of the parties and of the judicial system, and protects the rights of the class members.

**FIRST CLAIM FOR RELIEF**  
**Violations of Georgia Usury Law**  
**Ga. Code Ann. § 7-4-1 *et seq.***  
**(On behalf of the Georgia Usury Class)**

49. Plaintiff repeats each and every allegation contained in the paragraphs above and incorporates such allegations by reference herein.

50. Georgia's usury law states: "[w]here the principal amount involved is \$3,000.00 or less, such rate shall not exceed 16 percent per annum simple interest on any loan, advance, or forbearance to enforce the collection of any sum of money. . . ." Ga. Code Ann. § 7-4-2(a)(1)(C)(2).

51. "Interest" includes "a charge for the use of money computed over the term of the contract at the rate stated in the contract or precomputed at a stated rate on the scheduled principal balance or computed in any other way or any other form." Ga. Code Ann. § 7-4-2(a)(1)(C)(3).

52. As set forth more fully above, Defendant's prices are significantly marked up to mask the hidden interest charges. When those interest charges are considered, Defendant's loans carry an interest at a rate greater than 16% per annum in violation of Ga. Code Ann. § 7-4-2(a)(1)(C)(2).

53. Defendant intentionally failed to disclose the hidden interest charges, and thus intentionally charged Plaintiff and the Georgia Usury Class members interest rates in excess of 16% per annum.

54. Defendant must forfeit and refund to Plaintiff and the Georgia Usury Class members all of the interest it has collected in violation of § 7-4-2(a)(1)(C)(2). Ga. Code



Ann. § 7-4-10(a).

55. THEREFORE, Plaintiff prays for relief as set forth below.

**SECOND CLAIM FOR RELIEF**  
**Violations of Georgia Usury Law**  
**Ga. Code Ann. § 7-4-1 *et seq.***  
**(On behalf of the Hidden Finance Charge Class)**

56. Plaintiff repeats each and every allegation contained in the paragraphs above and incorporates such allegations by reference herein.

57. Pursuant to Ga. Code Ann. § 7-4-4, “[n]o person shall advertise in or through . . . any medium any rate of interest or finance charge pertaining to any consumer credit transaction other than a rate stated in simple interest terms or a rate stated in terms which would comply with the federal Truth in Lending Simplification and Reform Act.”

58. As discussed above, the difference in price between the regular price on Fingerhut and the discount price on Gettington was a finance charge. 15 U.S.C. 1666f(b). Defendant is liable for violating the TILA by failing to identify for Plaintiff and the Hidden Finance Charge Class members this finance charge imposed as part of the sale, in violation of 15 U.S.C. § 1637(a)(5).

59. Through its Fingerhut website, Defendant failed to advertise to Plaintiff and the Hidden Finance Charge Class members the discount applied to consumer credit transaction between Fingerhut and Gettington. In so doing, Defendant violated section 1637(a)(5) of the TILA, and thus violated Ga. Code Ann. § 7-4-4.

60. As a result of Defendant’s violation of Ga. Code Ann. § 7-4-4, Plaintiff and the Hidden Finance Charge Class members were injured in an amount to be determined at

trial.

61. THEREFORE, Plaintiff prays for relief as set forth below.

**THIRD CLAIM FOR RELIEF**  
**Violations of Minnesota Usury Law**  
**Minn. Stat. § 334.01 *et seq.***  
**(On behalf of the Nationwide Usury Class)**

62. Plaintiff repeats each and every allegation contained in the paragraphs above and incorporates such allegations by reference herein.

63. For purposes of its usury laws, on open-ended credit accounts, Minnesota has adopted the definitions used in the TILA. Minn. Stat. § 334.16 subd. 2.

64. Minnesota's usury law states, "[t]he imposition, charge or collection of a finance charge upon an account balance by a seller of goods, services or both shall be unlawful, provided that: . . . (b) The terms of the plan, agreement or arrangement provide for a periodic rate of finance charge which does not exceed 1-1/2 percent per month computed on an amount no greater than the average daily balance of the account during each monthly billing cycle . . . ." Minn. Stat. § 334.16 subd. 1. Pursuant to this section, a company in Minnesota may not charge greater than 18% annual interest on an open-ended credit account.

65. As set forth more fully above, Defendant charged 24.90% interest on the Revolving Credit Accounts. Additionally, Defendant's prices are marked up significantly to mask the hidden interest charges. When those interest charges are considered, loans arranged on Fingerhut charge interest at a rate greater than 18% per annum in violation of Minn. Stat. § 334.16 subd. 1.

66. Defendant intentionally charged Plaintiff and the Nationwide Usury Class members interest rates in excess of 18% per annum.

67. Defendant must forfeit and refund to Plaintiff and the Nationwide Usury Class members three times the interest it has collected. Minn. Stat. § 334.18.

68. THEREFORE, Plaintiff prays for relief as set forth below.

**FOURTH CLAIM FOR RELIEF**  
**Violations of Minnesota Deceptive Trade Practices Law**  
**Minn. Stat. § 325D.44 *et seq.***  
**(On behalf of the Hidden Finance Charge Class)**

69. Plaintiff repeats each and every allegation contained in the paragraphs above and incorporates such allegations by reference herein.

70. Minnesota Statutes § 325D.44, subd. 1, provides in part:

A person engages in deceptive trade practices when, in the course of business, vocation, or occupation, the person . . .

(13) Engages in any other conduct which similarly creates a likelihood of confusion or of misunderstanding.

71. By engaging in the conduct described herein, Defendant violated and continues to violate Minn. Stat. § 325D.44.

72. Where, as here, Plaintiff's claims inure to the public benefit as Defendant has failed to disclose all of the finance charges to the public at large, Minnesota's private-attorney general statute, Minn. Stat. §8.31, subd. 3a, allows individuals who have been injured through a violation of these consumer-protection statutes to bring a civil action and recover damages, together with costs and disbursements, including reasonable attorneys' fees.

73. Defendant's wrongful conduct is likely to create confusion or misunderstanding including, by way of example and not by limitation: Defendant's failure to disclose the hidden finance charge.

74. As a result of the Defendant's conduct, Plaintiff and the Hidden Finance Charge Class members have suffered actual damages in that they paid a higher price to finance their purchases than was disclosed to them at the formation of the contract.

75. In order to prevent future injury to Plaintiff and the Hidden Finance Charge Class, Plaintiff and the Hidden Finance Charge Class seek injunctive relief in the form of a disclosure of the hidden finance charge.

76. As a direct, proximate and foreseeable result of Defendant's violation of the statute, Plaintiff and the Hidden Finance Charge Class members were injured and suffered damages, and are entitled to recover their actual damages, costs and disbursements, including costs of investigation and reasonable attorneys' fees, as well as injunctive relief and other equitable relief, including restitution, as determined by the Court, pursuant to Minnesota law, including Minn. Stat. §8.31, subd. 1 and 3a and 325D.45.

77. THEREFORE, Plaintiff prays for relief as set forth below.

**FIFTH CLAIM FOR RELIEF**  
**Unjust Enrichment**  
**(On behalf of the Classes)**  
**(In the Alternative)**

78. Plaintiff repeats each and every allegation contained in the paragraphs above and incorporates such allegations by reference herein, and, to the extent necessary, this cause of action is pled in the alternative.

79. Plaintiff, on behalf of herself and the Classes, asserts a common law claim for unjust enrichment.

80. By means of Defendant's wrongful conduct alleged herein, it knowingly sold products at massively marked-up prices that disguised finance charges, and excessive interest.

81. Defendant knowingly received and retained wrongful benefits and funds from Plaintiff and members of the Classes. In so doing, Defendant acted with conscious disregard for the rights of Plaintiff and members of the Classes.

82. As a result of Defendant's wrongful conduct as alleged herein, it has been unjustly enriched at the expense of, and to the detriment of, Plaintiff and members of the Classes.

83. Defendant's unjust enrichment is traceable to, and resulted directly and proximately from, the conduct alleged herein.

84. Under the common law doctrine of unjust enrichment, it is inequitable for Defendant to be permitted to retain the benefits it received, and is still receiving, from the imposition of hidden finance charges and excessive interest on Plaintiff and members of the Classes. Defendant's retention of such funds under circumstances making it inequitable to do so constitutes unjust enrichment.

85. The financial benefits derived by Defendant rightfully belong to Plaintiff and members of the Classes. Defendant should be compelled to disgorge in a common fund for the benefit of Plaintiff and members of the Classes all wrongful or inequitable proceeds received by them. A constructive trust should be imposed upon all wrongful or

inequitable sums received by Defendant traceable to Plaintiff and the members of the Classes.

86. Plaintiff and members of the Classes have no adequate remedy at law.

87. THEREFORE, Plaintiff prays for relief as set forth below.

**SIXTH CLAIM FOR RELIEF**  
**Violations of the Truth in Lending Act**  
**15 U.S.C. § 1601 *et seq.***  
**(On Behalf of the Hidden Finance Charge Class)**

88. Plaintiff repeats each and every allegation contained in the paragraphs above and incorporates such allegations by reference herein.

89. Defendant is a “creditor” as defined by 15 U.S.C. § 1602(g).

90. Plaintiff and the Hidden Finance Charge Class members are “consumer[s]” as defined by 15 U.S.C. § 1602(i).

91. The Revolving Credit Accounts are “open end credit plans” as defined by 15 U.S.C. § 1602(j).

92. “Finance charges” are “the sum of all charges, payable directly or indirectly by the person to whom the credit is extended and imposed directly or indirectly by the creditor as an incident to the extension of credit.” 15 U.S.C. § 1605(a).

93. Pursuant to 15 U.S.C. § 1640, Defendant is liable for violating the TILA by failing to disclose to Plaintiff and the Hidden Finance Charge Class members all finance charges, in violation of 15 U.S.C. § 1631.

94. As a result of Defendant's violation of 15 U.S.C. § 1631, Plaintiff and the Hidden Finance Charge Class members were injured in an amount to be determined at trial.

95. THEREFORE, Plaintiff prays for relief as set forth below.

**SEVENTH CLAIM FOR RELIEF**  
**Violations of the Truth in Lending Act**  
**15 U.S.C. § 1601 *et seq.***  
**(On Behalf of the Hidden Finance Charge Class)**

96. Plaintiff repeats each and every allegation contained in the paragraphs above and incorporates such allegations by reference herein.

97. Defendant is a "creditor" as defined by 15 U.S.C. § 1602(g).

98. Plaintiff and the Hidden Finance Charge Class members are "consumer[s]" as defined by 15 U.S.C. § 1602(i).

99. The Revolving Credit Accounts are "open end consumer credit plans" as defined by 15 U.S.C. § 1602(j).

100. "Finance charges" are "the sum of all charges, payable directly or indirectly by the person to whom the credit is extended and imposed directly or indirectly by the creditor as an incident to the extension of credit." 15 U.S.C. § 1605(a).

101. Pursuant to 15 U.S.C. § 1637(a), "[b]efore opening any account under an open end consumer credit plan, the creditor shall disclose to the person to whom credit is to be extended each of the following items, to the extent applicable:

Identification of other charges which may be imposed as part of the plan, and their method of computation, in accordance with regulations of the Bureau.

102. Pursuant to 15 U.S.C. § 1640, Defendant is liable for violating the TILA by failing to identify to Plaintiff and the Hidden Finance Charge Class members the finance charges imposed as part of the sale, in violation of 15 U.S.C. § 1637(a)(5). The difference in price between the regular price on Fingerhut and the discount price on Gettington was a finance charge. 15 U.S.C. § 1666f(b). Defendant did not identify this finance charge for Plaintiff and the Hidden Finance Charge Class members before they opened the Revolving Credit Account.

103. As a result of Defendant's violation of 15 U.S.C. § 1631, Plaintiff and the Hidden Finance Charge Class members were injured in an amount to be determined at trial.

104. THEREFORE, Plaintiff prays for relief as set forth below.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff on behalf of herself and the Classes seeks judgment in an amount to be determined at trial, as follows:

- (a) For an order enjoining Defendant from continuing the unlawful practices set forth above;
- (b) For declaratory and injunctive relief as set forth above;
- (c) For an order requiring Defendant to disgorge and make restitution of all monies it acquired by means of the unlawful practices set forth above;
- (d) For compensatory damages according to proof;
- (e) For punitive damages according to proof;



- (f) For reasonable attorneys' fees and costs of suit;
- (g) For pre-judgment interest; and
- (h) Awarding such other and further relief as this Court deems just, proper and equitable.

**JURY DEMAND**

Plaintiff hereby demands a jury trial on all claims so triable.

Dated: August 27, 2015

Respectfully submitted,

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