

**IN THE UNITED STATES DISTRICT COURT FOR THE  
MIDDLE DISTRICT OF PENNSYLVANIA  
(HARRISBURG DIVISION)**

FIRST UNITED BANK & TRUST  
19 South Second Street  
Oakland, MD 21550

Plaintiff,

v.

THE PNC FINANCIAL SERVICES  
GROUP, INC.  
One PNC Plaza  
249 Fifth Avenue  
Pittsburgh, PA 15222-2707

CASE NO.

and

EQUIPMENT FINANCE, LLC  
101 North Pointe Boulevard  
Lancaster, PA 17601

and

STERLING FINANCIAL CORPORATION  
101 North Pointe Boulevard  
Lancaster, PA 17601-4133

Defendants,

**COMPLAINT**

Plaintiff, First United Bank & Trust (hereinafter referred to as “First United”), by and through undersigned counsel, files this Complaint against Defendants, The PNC Financial Services Group, Inc. (hereinafter referred to as

“PNC”), Equipment Finance, LLC (hereinafter referred to as “EFI”), Sterling Financial Corporation (hereinafter referred to as “Sterling”), and in support of its cause of action, avers the following:

**STATEMENT OF THE CASE**

This is an action to recover damages for, *inter alia*, monies paid by Plaintiff First United to Defendants EFI / Sterling and PNC as a successor in interest for and arising out of Defendants’ fraudulent scheme and unfair and deceptive business practices in connection with the sale of equipment loans by EFI to Plaintiff.

**JURISDICTION AND VENUE**

1. Pursuant to 28 U.S.C. § 1332(a), this Court has jurisdiction over this matter as it involves a dispute between diverse Plaintiff and Defendants with an amount in controversy in excess of \$75,000.

2. Pursuant to 28 U.S.C. § 1391 and the Master Loan Assignment Agreement entered into by and between Plaintiff and EFI in connection with the sale of the subject equipment loans, wherein the parties consent and submit to the jurisdiction of any state or federal court located within the Commonwealth of Pennsylvania, this Court is a proper venue to litigate this matter.

**PARTIES**

3. Plaintiff First United is a Maryland Banking Corporation with principal offices located as set forth in the caption hereof. In the course of its business, First United purchased equipment loans from EFI and accepted assignment of those loans from EFI.

4. Defendant EFI is a Pennsylvania limited liability company with offices located at 101 North Pointe Boulevard, Lancaster, PA 17601. EFI is engaged in the business of providing financing for forestry and land-clearing for the softwood chip business. At all times relevant EFI was a wholly owned subsidiary of Defendant Sterling who upon information and belief acquired One Hundred percent (100%) of Defendant EFI on or about February 28, 2002. Upon information and belief as an affiliate and wholly owned subsidiary of Defendant Sterling, EFI merged into PNC on or about April 4, 2008.

5. Defendant Sterling is a Pennsylvania corporation with offices located at 101 North Pointe Boulevard, Lancaster, PA 17601-4132. Sterling was a publicly held company whose stock was listed on NASDAQ. At all times relevant Sterling was the ultimate parent of EFI. On or about April 4, 2008 Defendant Sterling merged into Defendant PNC.

6. Defendant PNC is a Pennsylvania corporation with offices located at One PNC Plaza, 249 Fifth Avenue, Pittsburgh, PA 15222-2707. PNC is

a successor in interest to Defendant EFI and its alter ego Sterling as they merged into PNC on or about April 4, 2008.

### **BACKGROUND**

7. According to the records of the Pennsylvania Department of State, EFI's principal offices were located at the same address as those of Sterling: 101 North Pointe Blvd., Lancaster, PA 17601. At all relevant times, EFI was part of Sterling's "Financial Services Group."

8. In early 2007, Sterling and EFI first contacted First United to offer to sell certain loans within EFI's equipment loan portfolio (the "Loan Portfolio"). Thereafter, representatives of First United met with representatives from EFI to discuss the specifics of such a possible sale of certain equipment loans within the Loan Portfolio with particular emphasis on loans made in the logging industry.

9. In connection with their scheme to induce First United to purchase equipment loans from EFI, EFI and Sterling held themselves out to First United as experts in the field of equipment loans in the logging industry, and on the logging industry itself. Further, EFI and Sterling represented the following to First United:

a. That the Loan Portfolio had extremely low delinquency rates at and after 60 days;

b. That the Loan Portfolio had no delinquencies at and after 90 days; and

c. That the Loan Portfolio experienced no losses.

Further, the form 10K and Form 10Q filings prepared by the said Defendants affirmatively represented that the Loan Portfolio suffered no losses during the most recent years for which said filings were made.

10. In connection with their scheme to induce First United to purchase equipment loans from EFI, EFI and Sterling represented to First United that EFI's equipment loan business was very successful and it was a good business opportunity because of the creditworthiness of EFI's customers. EFI and Sterling also stated that: a) they stayed ahead on the depreciation curve of the equipment that allegedly served as security/collateral for EFI's short-term equipment loans; b) the loans were accordingly adequately secured; c) there was a low incidence of over 30-day late payments; d) they aggressively paid attention to collections; e) they aggressively protected the security/collateral; and f) they were accordingly low-risk investments. EFI and Sterling provided First United with claimed historical performance data on the Loan Portfolio to support their claims.

11. First United reasonably relied on EFI's and Sterling's expertise and their representations regarding the authenticity of the loans; the quality of the

collateral; EFI's experience in the equipment loan business; and the character and quality of the EFI equipment Loan Portfolio.

12. EFI and Sterling further represented to First United that the United States Office of the Comptroller of the Currency had undertaken two separate reviews of EFI's equipment Loan Portfolio and that the loans contained therein had passed those reviews. These and other representations by EFI and Sterling gave false assurances to First United about the quality of the Loan Portfolio, and further lulled and deceived First United about the true nature and quality of the equipment Loan Portfolio, the collateral, and the Fraudulent Scheme perpetrated by EFI and Sterling associated with them (hereinafter the "Fraudulent Scheme"). The Fraudulent Scheme included: subverting the putative internal controls of EFI; concealing credit delinquencies; falsely claiming no losses on the Loan Portfolio; falsifying financial contracts and related documents; and related actions and inactions in connection with EFI's equipment loan business, including, *inter alia*, those EFI equipment loans proposed to be sold to First United as well as many other loans in the Loan Portfolio. This Fraudulent Scheme and artifice to defraud was calculated, *inter alia*, to entice other financial institutions, including First United, to purchase equipment loans from EFI and/or Sterling.

13. Upon information and belief, at all times material to this Complaint, EFI was, and is, the alter ego and instrumentality of Sterling, because

among other reasons: Sterling acquired One Hundred Percent (100%) of EFI's shares of stock on February 28, 2002; there was a substantial intermingling of affairs between Sterling and EFI; and there was use by Sterling of EFI's business form to perpetrate a fraud.

14. Sterling had control over EFI management employees. Sterling's Senior Executive Vice President, J. Bradley Scovill, served as Group Executive of Sterling's Financial Group, which controlled EFI. Sterling employees were, at times, physically present at the same location as EFI and performed services for EFI. Sterling's senior management, including its CEO, Chief Banking Officer and Chief Revenue Officer, had access to EFI's business records via access to internal corporate documents, conversations and connections with EFI's corporate officers, and attendance at meetings. As a result, Sterling directly participated in the management of EFI.

15. During the period 2004-2006, EFI provided between 36% and 41% of Sterling's net operating income.

16. Upon information and belief, EFI was the agent of Sterling, and was acting as the agent of Sterling in all activities relating to the EFI equipment loan portfolios, including but not limited to all activities, representations, and omissions relating to the sale and loan servicing of EFI equipment loans to First United.

17. As a result of EFI's and Sterling's various intentional/negligent representations about the quality of EFI's loan portfolio, the quality, location, and value of the collateral, the quality and aggressiveness of EFI's loan service, EFI's equipment loan business or material omissions of fact regarding the same, First United was induced to enter into a business relationship with EFI concerning the purchase of EFI's equipment loans.

18. On or about March 14, 2007, First United entered into a Master Loan Assignment Agreement (the "Master Agreement") with EFI. The Master Agreement was signed by First United at its office in Maryland and, by its terms, did not take effect until First United signed it.

19. Under the Master Agreement, First United agreed to purchase equipment loans between EFI and its customers pursuant to the terms and conditions of the Master Agreement and related documents, including the underlying loan documents. For each loan purchased, EFI assigned to First United the underlying loan documents (e.g., Conditional Sales Contract; Security Agreement, Promissory Note and UCC-1 financing statement) through a signed "Loan Specification." The underlying loan documents were sent by EFI to First United in Maryland (hereinafter referred to as "Transactional Documents").

20. Pursuant to the Master Agreement, First United originally purchased ten (10) separate equipment loans from EFI (the "First United



Portfolio”) for \$1,544,712.40. Two of these loans have been resolved prior to the filing of this lawsuit. First United currently has eight (8) separate equipment loans remaining in the First United Portfolio which were purchased for the aggregate sum of \$1,238,111.10. The Master Agreement required EFI to administer the loans, to collect the proceeds of the loans, and to pay said proceeds promptly to First United.

21. Following the purchase of the First United Portfolio, First United immediately noted that the performance of the loans in the First United Portfolio was dramatically deficient by comparison to the historical experience claimed by EFI and Sterling as to the Loan Portfolio. Upon due and timely inquiry to EFI and Sterling, First United was advised that said poor performance was attributable to seasonal bad weather. Significantly, EFI and Sterling intentionally concealed that the true reason for such poor performance was attributable entirely to the Fraudulent Scheme.

22. On or about April 20, 2007, just 36 days after the closing on the purchase of the First United Portfolio, First United became aware for the first time from a telephone call and a follow-up e-mail from King T. Knox, President of Sterling Financial Corporation’s Correspondent Services Group, and a Sterling press release that Sterling was restating its financial statements for the years 2004, 2005 and 2006 because there were “irregularities’ related to equipment financing

contracts at EFI. Until receipt of said telephone call, e-mail and press release, neither EFI nor Sterling had advised First United of any problems with the Loan Portfolio or the First United Portfolio. Notwithstanding said admissions of irregularities, Mr. Knox continued thereafter affirmatively to represent to First United's executive personnel that no problems related to said irregularities affected any of the loans in the First United Portfolio.

23. On May 24, 2007, Sterling announced the existence of a fraudulent scheme in a press release and conference call to investors. As described on that date, Sterling acknowledged that as a result of a fraudulent scheme orchestrated by high ranking EFI officers and employees, Sterling would record an after-tax charge to its December 31, 2006 financial statements of approximately \$145-\$165 million (the "Fraudulent Scheme"). According to that press release, the material actions of the Fraudulent Scheme were widespread throughout EFI and as a result, five employees of EFI were terminated, including its Chief Operating Officer and Executive Vice President. As a result of the Fraudulent Scheme, the President and CEO of EFI also resigned. Sterling thereafter installed an acting Chief Operating Officer, appointed a special collections team to maximize recoveries from impaired contracts, and added two members to EFI's Board.

24. Upon information and belief, EFI and Sterling improperly made payments on behalf of, or otherwise "propped up" and concealed the existence of

payment problems with respect to, fraudulent or otherwise problematic loans in the First United Portfolio. This, in turn, had the effect of concealing the true – and substandard – performance of the First United Portfolio; and concealing the Fraudulent Scheme associated with the First United Portfolio.

25. Subsequent to the April 20, 2007 press release, First United became aware that EFI had breached numerous terms and conditions of the Master Agreement with respect to various equipment loan transactions in the First United Portfolio.

26. Under the Master Agreement and related documents, First United assumed no responsibility to collect or otherwise administer the equipment loans in the First United Portfolio. However, First United was entitled to receive, and EFI was required to provide, information about the administration of those equipment loans, including, among other things, the status of the collateral.

27. EFI failed to abide by the terms and conditions of the Master Agreement by withholding accurate information about the loans, some of which were fraudulent. Fraudulent loans included loans not having the collateral as advised by EFI or not being in the lien position as represented by EFI.

28. As part and parcel of the Fraudulent Scheme, EFI and Sterling hid and concealed fraudulent equipment loans in among the other loans in the Loan Portfolio, in an effort to conceal the nature and existence of said fraudulent loans.

Furthermore, EFI and Sterling concealed the true nature of the entire First United Portfolio and each loan therein.

29. Upon information and belief, contrary to representations made by EFI and Sterling to First United when First United initially purchased the First United Portfolio, those certain EFI equipment loans are under-collateralized or are otherwise not adequately supported by the specific collateral as initially represented to First United by EFI and Sterling.

30. First United has made demand upon PNC as a successor in interest to EFI and Sterling that they repurchase all of the remaining eight (8) outstanding EFI equipment loans in the First United Portfolio which originally were purchased by First United for the sum of \$1,238,111.10. First United demanded the original purchase price less principal payments received, if any, plus accrued interest, late charges, attorneys' fees and costs. However, PNC has failed and otherwise refused to repurchase all of the outstanding loans as demanded.

**COUNT I**  
**BREACH OF CONTRACT**  
**(EFI/PNC)**

31. The above and all other paragraphs are hereby incorporated by reference as if fully set forth herein.

32. Pursuant to the Master Agreement, EFI: made representations, warranties and covenants to First United; agreed to indemnify and save First

United harmless (Paragraph 6); agreed to act as “Fiscal Agent” on behalf of First United as an independent contractor to administer the loans in the First United Portfolio; agreed to collect the amounts due under those loans; and agreed to remit those amounts to First United.

33. Among the ways that EFI breached the terms and conditions of the Master Agreement are the following:

a. In breach of Paragraph 7 of the Master Agreement, EFI has failed to act properly as First United’s “Fiscal Agent” in the administration of the First United Portfolio. For example, EFI has not followed the terms of the Master Agreements prescribing the proper method of administration of the loans by failing to tell First United: that some of the EFI borrowers whose loans First United had purchased had gone out of business; that there had been repossessions of some of the equipment which served as collateral for the loans sold to First United; that some EFI borrowers sold the collateral which served as security for First United’s loans; that some of the equipment collateral had suffered a casualty loss; that some EFI borrowers had otherwise breached the conditions of the equipment loans, or had failed to make payments; *etc.* EFI was obligated to advise First United of the aforesaid events when they occurred, but EFI failed to do so; and

b. Upon information and belief, in breach of the Master Agreement, rather than advising First United of the events adversely affecting the

collateral for the equipment loans or of the borrowers' failure, to pay, as it was required to do under the Master Agreement, EFI continue to pay First United for a time to cover up the borrowers' defaults, even though EFI had not received payment from its borrowers.

34. The actions and inactions of EFI with respect to the loans and their administration constitute breaches of its representations, warranties and covenants identified in Paragraph 2 of the Master Agreement.

35. EFI had "actual knowledge" of facts impairing First United's rights created by the "Transaction Documents" with respect to loans covered by the Master Agreement, but EFI failed to notify First United of those facts.

36. Upon information and belief, EFI falsely maintains that the unpaid balances of the eight (8) remaining loans amount to less than the balances that First United's records show.

37. EFI's breaches of the Master Agreement have affected adversely the ability of First United to collect payment in full of those loans in the First United Portfolio. Said breaches affect the validity of the Master Agreement and entitle First United to demand repurchase of all of the outstanding loans by EFI as permitted by the Master Agreement.

38. The amount paid by First United for each of the remaining eight (8) loans is as follows:

<b>BORROWER</b>	<b>AMOUNT PAID</b>
Darrell Padget	\$44,976.76
William Earl Taylor	\$98,314.85
Charlie McCants, Jr.	\$205,517.19
Gordon Lee Basden, Jr.	\$260,109.84
Shaw Logging	\$45,578.18
Shaw Logging	\$197,332.24
John Lee Kearney	\$194,805.07
Wilton Ray Beasley	\$191,476.61
<b>TOTAL AMOUNT PAID</b>	<b>\$1,238,111.10</b>

39. First United has demanded that PNC as successor in interest to EFI and Sterling repurchase all of the remaining loans in the First United Portfolio, but PNC has failed and refused to do.

40. Under Paragraph 6 of the Maser Agreement, First United is entitled to indemnification of losses, including attorneys' fees, reasonably incurred as a result of EFI's breaches of representations, warranties, and covenants in the Master Agreement and any Loan Specification.

41. Under Paragraph 8 of the Master Agreement, First United is entitled to recover its costs and counsel fees in this action from EFI if First United prevails.

42. As a corporate successor, PNC acquires the liabilities and debts of its predecessors including EFI and its alter ego Sterling.

WHEREFORE, First United demands judgment in its favor and against EFI and PNC in the amount of the purchase price of \$1,238,111.10 less

principal payments received, if any, plus accrued and accruing interest, late charges, attorneys' fees and costs.

**COUNT II**  
**NEGLIGENT MISREPRESENTATION/NON-DISCLOSURE**  
**(EFI, STERLING, & PNC)**

43. The above and all other paragraphs are hereby incorporated by reference as if fully set forth herein.

44. As First United's Fiscal Agent, EFI owed to First United the duties of a fiduciary, including, but not limited to, the duty of loyalty.

45. EFI and Sterling misrepresented the credit quality of their borrowers and EFI's actual delinquency rates and Loan Portfolio losses prior to the date of execution of the Master Agreement and the sale of the First United Portfolio to First United. EFI and Sterling also failed to disclose their actions and inactions relating to other equipment loans in the Loan Portfolio and the Fraudulent Scheme which was in effect. Said misrepresentations were of material facts.

46. EFI and Sterling knew or should have known that the credit quality of their borrowers, the nature and quality of the equipment collateral, and the historical delinquency rates and Loan Portfolio losses that they communicated to First United were incorrect; that the Fraudulent Scheme was in effect; and that



EFI's and Sterling's failure to disclose this and other certain information to First United would cause First United to purchase the First United Portfolio.

47. Furthermore, EFI and Sterling intended to induce First United to act on the misrepresentations and failures to disclose material information.

48. But for these misrepresentations and failures to disclose material information, First United would not have purchased any of the equipment loans in the First United Portfolio.

49. After entering into the Master Agreement and purchasing the First United Portfolio, First United discovered that the delinquency rates and loan losses were actually higher than that which EFI had represented.

50. After entering into the Master Agreement, First United discovered that the collateral for the loans in the First United Portfolio was misrepresented and overstated.

51. After entering into the Master Agreement, First United discovered that the quality of the loans in the First United Portfolio was much lower than what EFI had advised.

52. After entering into the Master Agreement, First United discovered that EFI and Sterling's promise of quality loan servicing of the First United Portfolio went unperformed or was abjectly ignored.

53. After First United purchased the First United Portfolio, EFI and Sterling failed to disclose information about EFI's substandard administration of the purchased loans to First United, including the ongoing existence of the Fraudulent Scheme.

54. As a corporate successor, PNC acquires the liabilities and debts of its predecessors, EFI and its alter ego Sterling.

55. As a result of these misrepresentations and non-disclosures, First United is entitled to rescind the sale and assignment of the First United Portfolio and receive from PNC, EFI and Sterling the purchase price paid therefor less principal payments received plus interest, attorney's fees and costs. Alternatively, First United is entitled to damages for the misrepresentations and non-disclosures in the amount of the purchase value of the eight (8) outstanding equipment loans as set forth above plus interest, attorney's fees and costs, from EFI and Sterling, and PNC as successor in interest.

WHEREFORE, First United demands judgment in its favor and against EFI and PNC in the amount of the purchase price of \$1,238,111.10 less principal payments received, if any, plus accrued and accruing interest, late charges, attorneys' fees and costs.

**COUNT III**  
**INTENTIONAL MISREPRESENTATION/NON-DISCLOSURE**  
**(EFI, STERLING & PNC)**

56. The above and all other paragraphs are hereby incorporated by reference as if fully set forth herein.

57. EFI and Sterling intentionally misrepresented: the credit quality of their borrowers; the nature and quality of the collateral for the loans in the First United Portfolio; their loan servicing capabilities; and the historical loan delinquency rates and loan losses on the Loan Portfolio.

58. EFI and Sterling knew that their representations regarding the credit quality of their borrowers, the nature and quality of the collateral for the loans in the First United Portfolio, their loan servicing capabilities, and their historical delinquency rates and loan losses as communicated to First United were incorrect when made.

59. After entering into the Master Agreement and purchasing the First United Portfolio, First United discovered that: the credit quality of the borrowers was lower than represented; the collateral for the loans was misrepresented and overstated; the loan servicing capabilities were far more limited than represented; and the historical delinquency rates and loan losses were higher than represented.

60. Both before and after First United purchased the First United Portfolio, EFI and Sterling failed to disclose material information about the administration of the loans to First United, including the existence of the Fraudulent Scheme.

61. In all respects and at all times material hereto, when EFI and Sterling made the aforementioned misrepresentations and fraudulent omissions of fact, EFI and Sterling knew or believed that those representations and omissions were false.

62. In making the aforementioned misrepresentations and fraudulent omissions of fact, EFI and Sterling intended to induce First United to buy and/or retain the First United Portfolio and were material to said transaction.

63. The false statements and fraudulent omissions made by EFI and Sterling were substantial factors that caused First United to be ignorant of EFI's Fraudulent Scheme and thus impaired the collection from the borrowers of the sums due under the equipment loans in the First United Portfolio.

64. First United justifiably relied on Sterling's and EFI's misrepresentations and fraudulent omissions of fact, and was injured by the same.

65. As a result of EFI's and Sterling's misrepresentations and fraudulent omissions of fact, First United is entitled to damages for the aforesaid misrepresentations and non-disclosures in the amount of the purchase value of the

eight (8) outstanding equipment loans in the amount of \$1,238,111.10 less principal payments received plus interest, attorneys' fees and costs.

66. EFI's and Sterling's actions and the manner in which they committed the above-described fraud against First United are so shocking, outrageous and in bad faith that punitive damages are warranted.

67. As a corporate successor, PNC acquires the liabilities and debts of its predecessor Sterling and its alter ego EFI.

WHEREFORE, First United demands judgment in its favor and against EFI and PNC in the amount of the purchase price of \$1,238,111.10 less principal payments received, if any, plus accrued and accruing interest, late charges, attorneys' fees and costs, and punitive damages in the amount of \$10,000,000.00, and such other relief as this Court deems necessary or appropriate.

**COUNT IV**  
**BREACH OF FIDUCIARY DUTY**  
**(EFI/PNC)**

68. The above and all other paragraphs are hereby incorporated by reference as if fully set forth herein.

69. The Master Agreement created an agency relationship between First United and EFI, whereby EFI agreed to serve as First United's "Fiscal Agent".

70. An agent is a fiduciary with respect to matters within the scope of his agency and is required to act solely for the benefit of his principal in all matters concerned with the agency.

71. As First United's Fiscal Agent, EFI owed to First United the duties of a fiduciary, including, but not limited to, the duty of loyalty.

72. EFI misrepresented the credit quality of its borrowers and EFI's historical delinquency rates and loan losses prior to the Master Agreement and the sale of the First United Portfolio to First United.

73. EFI knew that the credit quality of its customers and the historical delinquency rates and loan losses that it communicated to First United were incorrect.

74. Both before and after First United purchased the First United Portfolio, EFI intentionally misrepresented facts and information about the manner in which EFI administered loans and intended to administer the First United Portfolio.

75. EFI intentionally breached its fiduciary duty of loyalty to First United by misrepresenting the credit quality of its borrowers and EFI's delinquency rates and loan losses and by failing to disclose information about the administration of the loans in the First United Portfolio to First United.

76. EFI's breach of its fiduciary duties has caused First United to sustain damages in the amount of \$1,238,111.10 less principal payments received plus interest, attorneys' fees and costs.

77. EFI's actions and the manner in which it breached its fiduciary duties owed to First United are so shocking, outrageous and in bad faith that punitive damages are warranted.

78. As a corporate successor, PNC acquires the liabilities and debts of their predecessor including Sterling and its alter ego EFI.

WHEREFORE, First United demands judgment in its favor and against EFI and PNC in the amount of the purchase price of \$1,238,111.10 less principal payments received, if any, plus accrued and accruing interest, late charges, attorneys' fees and costs, and punitive damages in the amount of \$10,000,000.00, and such other relief as this Court deems necessary or appropriate.

**COUNT V**  
**CONVERSION**  
**(EFI/PNC)**

79. The above and all other paragraphs are hereby incorporated by reference as if fully set forth herein.

80. On or about May 13, 2008, First United demanded that PNC as successor in interest to EFI and Sterling repurchase the First United Portfolio.

81. PNC refused First United's demand.

82. PNC's refusal to repurchase the First United Portfolio and its continued retention of the purchase money paid by First United for the First United Portfolio is without First United's consent and lawful justification.

83. First United has a right to immediate possession of the purchase money paid for the eight (8) remaining outstanding loans in the First United Portfolio less principal payments received plus interest, attorneys' fees and costs.

84. First United has suffered damage as a result of EFI's conversion of these funds.

WHEREFORE, First United demands judgment in its favor and against EFI and PNC in the amount of the purchase price of \$1,238,111.10 less principal payments received, if any, plus accrued and accruing interest, late charges, attorneys' fees and costs, and punitive damages in the amount of \$10,000,000.00, and such other relief as this Court deems necessary or appropriate.

**COUNT VI**  
**AIDING AND ABETTING BREACH OF FIDUCIARY DUTY**  
**(STERLING/PNC)**

85. The above and all other paragraphs are hereby incorporated by reference as if fully set forth herein.

86. As averred above in this Complaint, EFI breached its fiduciary duties owed to First United.



87. Upon information and belief, due to their close relationship with EFI, Sterling and its agents had knowledge of EFI's: breach of duty; fraudulent statements and omissions of fact; negligent misstatements and omissions of fact; and failure to disclose important information about the administration of the loans in the First United Portfolio to First United.

88. Upon information and belief, Sterling and its agents, through their control over EFI management employees, substantially assisted, aided, abetted and encouraged EFI to breach its fiduciary duties to First United by allowing EFI: to make fraudulent statements and omissions of fact; to make negligent misstatements and omissions of fact; and to fail to disclose important information about the administration of the loans in the First United Portfolio to First United.

89. Upon information and belief, Sterling and its agents substantially assisted, aided, abetted, and encouraged EFI in EFI's breach of its fiduciary duties to First United by, *inter alia*, representing to First United that EFI's equipment loan business was very successful and that it was a good business opportunity because of: the creditworthiness of EFI's borrowers; the quality of the collateral for the loans in the First United Portfolio; the quality of EFI's loan servicing; and other statements which Sterling and its agents should have known were false.

90. Sterling's aiding and abetting of EFI's breach of fiduciary duties has caused First United to sustain damages.

91. Sterling's actions and the manner in which it aided and abetted EFI's breach of fiduciary duties are so shocking, outrageous and in bad faith that punitive damages are warranted.

92. As a corporate successor, PNC acquires the liabilities and debts of its predecessor Sterling and its alter ego EFI.

WHEREFORE, First United demands judgment in its favor and against EFI and PNC in the amount of the purchase price of \$1,238,111.10 less principal payments received, if any, plus accrued and accruing interest, late charges, attorneys' fees and costs, and punitive damages in the amount of \$10,000,000.00, and such other relief as this Court deems necessary or appropriate.

**COUNT VII**  
**CONCERTED TORTIOUS CONDUCT**  
**(STERLING/EFI/PNC)**

93. The above and all other paragraphs are hereby incorporated by reference as if fully set forth herein.

94. Without consent or approval of First United, EFI and Sterling collusively performed a tortious act in concert with each other and agreed to commit the intentional torts of Fraudulent Misrepresentation and Conversion as averred in Counts III and V respectively.

95. Both before and after First United purchased the First United Portfolio, EFI and Sterling, failed to disclose material information about the administration of the loans to First United, including their conspiracy to engage in the Fraudulent Scheme.

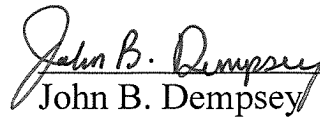
96. As a direct and proximate result of EFI's and Sterling's conspiracy to engage in the Fraudulent Scheme and commit the intentional torts of Fraudulent Misrepresentation and Conversion, First United has sustained damages in the amount of the purchase price of the eight (8) outstanding loans in the amount of \$1,238,111.10 less principal payments received, plus interest, attorneys' fees and costs plus punitive damages in the amount of \$10,0000.00, and such other relief as this Court deems necessary or appropriate.

97. As a corporate successor, PNC acquires the liabilities and debts of its predecessor Sterling and its alter ego EFI.

WHEREFORE, First United demands judgment in its favor and against EFI and PNC in the amount of the purchase price of \$1,238,111.10 less principal payments received, if any, plus accrued and accruing interest, late

charges, attorneys' fees and costs, and punitive damages in the amount of \$10,000,000.00, and such other relief as this Court deems necessary or appropriate.

Respectfully submitted,



John B. Dempsey

ID # 88017

Myers, Brier & Kelly, LLP  
425 Spruce Street, Suite 200  
Scranton, Pennsylvania 18503  
(570) 342-6100  
[jdempsey@mbklaw.com](mailto:jdempsey@mbklaw.com)

OF COUNSEL:

Alfred L. Scanlan  
Nathaniel K. Risch  
Eccleston and Wolf, P.C.  
7240 Parkway Drive, 4<sup>th</sup> Floor  
Hanover, MD 21076  
(410) 752-7474

Roger Schlossberg  
Schlossberg & Associates  
134 West Washington Street  
Hagerstown, MD 21740  
(301) 739-8610

Dated: March 6, 2009