

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

BRIAN HARRISON)	
on behalf of himself and a)	
Class of persons similarly situated,)	
)	
Plaintiff)	
)	COMPLAINT – CLASS ACTION
)	
v.)	CASE NO. _____
)	
FIFTH THIRD BANK)	JUDGE _____
)	
Defendant)	JURY DEMAND
)	

* * * * *

Plaintiff Brian Harrison (“Plaintiff” or “Plaintiff Harrison”), individually and on behalf of all other persons similarly situated, brings this Complaint against FIFTH THIRD BANK (“Defendant” or “Defendant Fifth Third Bank”) and, by and through counsel, alleges as follows:

I. INTRODUCTION

1. This is an action for damages and injunctive relief from Defendant Fifth Third Bank for charging usurious interest rates in violation of state and federal law through its Early Access Program and for violations of Tennessee’s Consumer Protection Act.
2. Defendant Fifth Third Bank (“Fifth Third” or “Defendant”) is a state-chartered, federally insured bank with branches located throughout Tennessee.
3. Fifth Third offers a program exclusively to its checking account customers known as the Fifth Third Early Access Program (“Early Access Program”).
4. The Early Access Program allows customers to open an account with a line of credit to obtain short-term advances based on a customer’s regular direct deposits. The Early Access

account is directly linked to the customer's checking account, and a customer can make as many online transfers as they would like so long as their advance does not exceed their credit limit less any unpaid balances and fees from prior advances.

5. Fifth Third claims it charges interest with an Annual Percentage Rate ("APR") of 120% for every advance.

6. In the Early Access Program's Terms & Conditions ("Terms & Conditions") and in customers' Early Access Account Statements, Fifth Third discloses the 120% APR. The 120% APR is calculated based on a customer repaying the entire balance of the advance plus the "fee" 30 days after taking the advance. The 120% APR disclosed by Fifth Third to its customers is false and misleading.

7. The true APR is almost always much higher than the 120% APR Fifth Third claims to charge customers for each advance. APR is a financial concept that describes the "time value of money." The interest charged for a loan translates into a much higher APR if the customer pays back the loan and interest in less than 30 days because Fifth Third calculates the APR based on 30 day repayment. In reality, customers usually pay back their advances immediately after receiving them. Fifth Third receives full payment for each advance plus its interest automatically when the customer's next direct deposit posts to their account. This usually occurs within a few days of the customer's Early Access advance. The quoted 120% APR is accurate only if the customer does not repay the loan and the interest until 30 days after taking the advance.

8. More often than not, a customer's next direct deposit occurs within days of the customer taking the advance, resulting in an interest rate well over the 120% APR disclosed by Fifth Third and well in excess of the permissible interest rate allowed by federal law.

9. At its roots, the Early Access Program is the same as pay-day loan programs usually

offered by store front cash advance businesses. These store-front operations earned a reputation for preying on the financially desperate by offering loans at interest rates that shock the conscience. Banks historically refrained from offering these types of loans due to laws preventing banks from charging usury interest rates for loans to customers.

10. For the most part, the Early Access Program mirrors pay-day loan programs with one important exception—Fifth Third has direct access to its customers’ checking accounts and the ability to pay itself back immediately with customers’ next direct deposit.

11. Fifth Third preys on its customers, who find themselves in desperate need of financial support to bridge a gap between bills due and the next paycheck. The unfortunate self-reinforcing spiral that necessarily follows, and on which Fifth Third’s profits necessarily depend, requires the customer to continually take out new advances to fund the customer’s payments for Fifth Third’s advances and usurious interest rates on past advances.

12. In its disclosures to customers, Fifth Third accurately states that the Early Access Program is an “expensive form of credit that should be used only in emergency situations.” However, Fifth Third intentionally misleads its customers as to just how expensive the Early Access Program is and fails to disclose that the interest rate Fifth Third may charge will be in excess of what federal law allows a state-chartered, federally insured bank to receive. In many instances, Fifth Third receives an APR well over 1000% to the detriment of its customers—a fact Fifth Third never discloses as a possibility to its customers.

13. Fifth Third’s practice is the exact type of practice the United States Legislature sought to prevent by enacting the National Banking Act and its related statutes. A bank must adhere to the maximum interest rates allowed by law in the State where it chooses to do business. Fifth Third has chosen to open branches in Tennessee and willfully ignores Tennessee’s laws

regulating permissible interest rates for consumer credit like the Early Access Program.

II. PARTIES

14. Plaintiff Brian Harrison is a citizen of Tennessee, residing in the city of Bon Aqua, Tennessee. Plaintiff was a Fifth Third checking account customer for more than two years.

15. Defendant Fifth Third Bank is a state-chartered, federally insured bank, with branch locations in Tennessee. Defendant Fifth Third is incorporated under the laws of the State of Ohio, with its principal place of business in Cincinnati, Ohio. Defendant Fifth Third Bank is therefore a citizen of the State of Ohio.

III. JURISDICTION AND VENUE

16. Substantial acts giving rise to the causes of action asserted herein occurred in this State and within this venue.

17. Jurisdiction is proper in this Court because Plaintiff, and the proposed class members maintain Early Access accounts in Tennessee or opened their Early Access account in Tennessee.

18. Jurisdiction is proper in this Court pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2) (“CAFA”). Plaintiff is a citizen of Tennessee. Other class members are citizens of Tennessee or opened their Early Access accounts in Tennessee. Defendant is a citizen of the State Ohio. Minimal Diversity has therefore been met. The amount in controversy exceeds five million (\$5,000,000.00) exclusive of interest and costs.

19. Furthermore, this Court has subject matter jurisdiction over Plaintiffs’ claims arising under 12 U.S.C. § 1831d pursuant to 28 U.S.C. § 1331.

20. The Court has supplemental jurisdiction over Plaintiff’s and the Proposed Class’s state law claims pursuant to 28 U.S.C. § 1367 because Plaintiff’s and the Proposed Class’s state

law claims arise out of the same transaction or occurrence as their claims under 12 U.S.C. § 1831d—namely, Fifth Third charging excessive interest in connection with its Early Access program.

IV. FACTS

a. Common Factual Allegations as to the Proposed Class

21. Fifth Third offers the Early Access Program in Tennessee. Customers can open an Early Access account by either visiting a branch location in the participating states or opening an account through Fifth Third's internet banking.

22. A customer qualifies for an Early Access account if they: (1) have a Fifth Third checking account that has been open for at least 90 days; (2) are in good standing with the bank; and (3) have received at least one direct deposit of \$100 or more during at least two of the prior four months and one such direct deposit within the 35 days prior to opening the Early Access account.

23. Customers may take advances equal to half of their combined monthly direct deposits into their checking account. However, the maximum credit limit is \$750.00 if the customer's total monthly direct deposits do not exceed \$2,000, and \$1,000 if the customer's total monthly direct deposits do exceed \$2,000.

24. Once an account is open, customers can view all transfers, fees, and payments related to their Early Access account on-line. From there, customers are able to immediately transfer advances from their Early Access account directly into their checking account.

25. By opening an Early Access account, each customer agrees to Fifth Third's Terms & Conditions, which are available as of the day of this filing on Fifth Third's website. The Terms & Conditions explain the finance charges under the Early Access program as well as the repayment

procedures required by Fifth Third.

26. According to the Terms & Conditions, Fifth Third charges what it refers to as a 10% “transaction fee” for every dollar borrowed by a customer. The “fee” is in actuality an interest rate, which Fifth Third equates to an APR of 120% for every advance. The 120% APR is specifically identified in on-line customers’ account statements as a “Fifth Third Early Access Finance Charge” and is also disclosed in the Terms & Conditions.

27. On the date a customer takes an advance, Fifth Third enters the withdrawal along with the applicable finance charge on the Early Access account statement. On the date the customer receives his or her next direct deposit, Fifth Third withdraws the advance plus the entire finance charge regardless of the time that has passed since the customer took the advance. It is often the case that the customer’s next direct deposit occurs within a few days of the customer taking the advance, resulting in a finance charge with an APR well in excess of 120% and well in excess of what the customers agreed to pay, and Fifth Third agreed to charge, in exchange for the advance.

28. Nowhere in Fifth Third’s Early Access Terms & Conditions or other documents does it disclose that when a customer receives their next direct deposit in less than 30 days from the last cash advance the resulting APR will be greater than 120%. However, Fifth Third has access to their clients’ direct deposit history and is fully aware that the higher interest rate is likely for its customers.

29. Fifth Third willfully and knowingly misleads customers through Early Access documents and customers’ on-line Early Access account summaries into believing every advance taken will have an APR of 120%. In actuality, Fifth Third receives a much higher APR on the loans whenever a customer receives a direct deposit and Fifth Third repays its loan plus interest

less than 30 days after the date it makes the loan.

b. Facts as to Plaintiff Brian Harrison

30. In or around 2011, Plaintiff Harrison opened an Early Access Account with a Line of Credit of \$750. He closed this account in 2013.

31. In order to open the account, Plaintiff had to agree to the Terms and Conditions, which disclosed a finance charge equal to 120%.

32. Plaintiff has received direct deposits biweekly while his account was open.

33. Once the account was open, Plaintiff was able to access his account on-line and make transfers to her checking account.

34. Plaintiff used the account for cash advances on his direct deposits.

35. Plaintiff took out approximately ten (10) Early Access Cash Advance loans from Defendant Fifth Third Bank while his account was open.

36. Plaintiff has always paid back the Early Access loans within two weeks, and sometimes within days, because his paychecks were directly deposited into the account on a biweekly basis. At no point while his account was open did more than 14 days pass between an Early Access advance and the next direct deposit.

37. Since each and every one of Plaintiff's advances and finance charges were paid back in full to Fifth Third in less than 30 days, Plaintiff was assessed APR interest charges well in excess of 120% on every occasion that he took out an Early Access loan.

38. As Plaintiff is no longer a Fifth Third customer, he cannot access his account and cannot provide the specific dates on which Early Access Cash Advances were taken out and paid back. However, because each and every Early Access Cash Advance was paid back within 14 days, the actual APR far exceeded the 120% agreed to and advertised by Defendant Fifth Third

and ranged anywhere between 260.7% and 3,650%.

39. As a result of Fifth Third's practices, Plaintiff has been charged usurious interest rates and/or interest rates in excess of the agreed to amount for every advance he has taken since opening his Early Access account.

V. CLASS ALLEGATIONS

a. Class Definition

40. Plaintiff brings this action against Defendant pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of himself and all others similarly situated. Plaintiff seeks to certify a class defined as follows:

All customers in Tennessee who used the Early Access Program and repaid their loan within 30 days of taking an advance from an Early Access account.

41. Plaintiff reserves the right to modify or amend the definition of the proposed Class before the Court determines whether certification is appropriate.

42. Excluded from the Class are:

- a. Defendant and any entities in which Defendant has a controlling interest;
- b. Any entities in which Defendant's officers, directors, or employees are employed and any of the legal representatives, heirs, successors, or assigns of Defendant;
- c. The Judge to whom this case is assigned and any member of the Judge's immediate family and any other judicial officer assigned to this case;
- d. Persons or entities with claims for personal injury, wrongful death, and/or emotional distress;
- e. All persons or entities that properly execute and timely file a request for exclusion from the Class;
- f. Any attorneys representing the Plaintiffs or the Class; and
- g. All governmental entities.

43. Defendant subjected Plaintiff and the Proposed Class members to the same unfair,

unlawful, and deceptive practices and harmed them in the same manner. The conduct described above is the Defendant's standard and undisputed business practice.

b. Numerosity

44. The individual class members are so numerous that joinder of all members is impracticable. The Defendant has branches in Tennessee and it is believed thousands of customers have opened Early Access accounts. The individual class members are ascertainable as the names and addresses of all class members can be identified in the business records maintained by the Defendant. Plaintiff does not anticipate any difficulties in the management of the action as a class action.

c. Commonality

45. There are questions of law and fact that are common to the Plaintiff's and Class Member's claims. These common questions predominate over any question that goes particularly to any individual member of the Class. Among such common questions of law and fact are the following:

1. Whether Fifth Third charged usurious interest rates to customers using the Early Access Program in violation of federal law.
2. Whether Fifth Third misrepresented that the APR for Early Access advances was 120%.
3. Whether Fifth Third breached its contract with Plaintiff and Class for charging an APR for Early Access advances in excess of 120%.
4. Whether Fifth Third violated Tenn. Code Ann. 47-14-101, *et seq.* relating to maximum interest rates, and Tenn. Code Ann. 45-2-1720, relating to false advertising
5. Whether Fifth Third knowingly charged an interest rate with an APR in excess of 120% for any loans repaid in less than 30 days;
6. Whether Fifth Third violated the Tennessee Consumer Protection Act, Tenn. Code Ann. 47-18-101, *et seq.*

7. Whether Defendant owed a duty to the class members under the applicable statutes and law;
8. Whether and to what extent Defendant's acts or practices, as complained of herein, violation Tennessee's Declaratory Judgment statute Tenn. Code Ann. 29-14-101, *et seq.*
9. Whether and to what extent Defendant has been unjustly enriched as a result of Fifth Third's unfair methods of competition complained of herein;
10. Whether and to what extent Defendant has been unjustly enriched as a result of Fifth Third's unfair or deceptive acts and practices;

d. Typicality

46. Plaintiff is a member of the Class. Plaintiff's claims are typical of the claims of the Class because of the similarity, uniformity, and common purpose of the unlawful conduct of Defendant. Each class member has sustained and will continue to sustain damages in the same manner as Plaintiff as a result of Defendant's wrongful conduct.

e. Adequacy of Representation

47. Plaintiff is an adequate representative of the Class and will fairly and adequately protect the interests of the Class. Plaintiff is committed to vigorous prosecution of this action and has retained competent counsel, experienced in litigation of this nature, to represent him. There is no hostility between Plaintiff and unnamed class members. Plaintiff anticipates no difficulty in the management of this litigation as a class action. This lawsuit may be maintained as a class action because the questions of law or fact common to Plaintiff's and each Class Member's claims predominate over any questions of law or fact affecting only individual members of the class. All claims by Plaintiff and the unnamed Class Members are based on the Early Access Program initiated by Defendant charging usurious interest rates to its customers in violation of federal law. Common issues predominate when, as here, liability can be determined on a class-wide basis, even

when there will be some individualized damages and determinations. As a result, when determining whether common questions predominate, courts focus on the liability issue, and, if the liability issue is common to the class as is the case at bar, common questions will be held to predominate over individual questions. The class mechanism is an appropriate method for fair and efficient adjudication of the claims involved. Class action treatment is superior to all other available methods for the fair and efficient adjudication of the controversy alleged herein; it will permit a large number of similarly-situated persons and entities to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of evidence, effort, and expense that numerous individual actions would require. Class action treatment will also permit the adjudication of relatively small claims by certain class members, who could not individually afford to litigate a complex claim against a large corporate defendant. Further, even for those class members who could afford to litigate such a claim, it would still be economically impractical, as the cost of litigation is almost certain to exceed any recovery they would obtain.

48. This lawsuit may be maintained as a class action pursuant to Rule 23(b) of the Federal Rules of Civil Procedure because Plaintiff and the Putative Class seek declaratory and injunctive relief, and all of the above factors of numerosity, common questions of fact and law, typicality, and adequacy are present. Moreover, Defendant has acted on grounds generally applicable to Plaintiff and the Putative Class as a whole, thereby making declaratory and/or injunctive relief proper and suitable remedies.

COUNT I USURY

49. Plaintiff, individually and on behalf of all others similarly situated, repeats, realleges, and incorporates by reference each of the foregoing and subsequent allegations of this Complaint as if fully set forth herein.

50. 12 U.S.C. § 1831d prohibits state-chartered federally insured banks, such as Fifth Third, from charging an interest rate greater than the rate allowed by the laws of the State where the bank is located.

51. Defendant is located in Tennessee with numerous branches throughout the State.

52. Fifth Third offers its Early Access Program at an interest rate of 120%, which Plaintiff and the Class agreed to pay.

53. Pursuant to Tenn. Code Ann. 47-14-101, *et seq.*, the legal rate of interest is ten percent (10%) per annum.

54. Since the inception of the Early Access Program, Fifth Third has knowingly charged an APR on advances taken by customers from their Early Access account well in excess of a per annum rate of (10%) in violation of 12 U.S.C. § 1831d.

55. Fifth Third not only charged more than what was agreed to, but also charged more than what is allowed under Tenn. Code Ann. 47-14-101, *et seq.* At most, Fifth Third could only charge interest in the amount of (10%).

56. Here, Defendant disclosed an APR of 120% and charged a much higher APR because each and every loan was paid off well before the 30-day basis for 120% APR calculated by Fifth Third.

57. In fact, Defendant has knowingly charged finance charges with APRs well in excess of the 120% it discloses to the proposed class members.

58. Specifically, Defendant knew that all Fifth Third customers who used the Early Access Program and repaid their loan in less than 30 days of taking an advance from their Early Access account would be charged an APR greater than 120%.

59. Pursuant to 12 U.S.C. § 1831d, Plaintiffs and all other similarly situated individuals

are entitled an amount equal to twice the amount of interest paid for the two years preceding the filing of this Complaint.

**COUNT II
BREACH OF CONTRACT**

60. Plaintiff, individually and on behalf of all others similarly situated, repeats, realleges, and incorporates by reference each of the foregoing and subsequent allegations of this Complaint as if fully set forth herein, excepting paragraphs which challenge the existence of a valid contract.

61. Fifth Third's Terms and Conditions for the Early Access Program detail the customer's agreement and contract for taking advances from their Early Access account. Each customer, including Plaintiff and all others similarly situated, must agree to the Terms & Conditions in order to open an Early Access account.

62. Fifth Third agreed in its Terms and Conditions that customers of the Early Access Program would not be charged an APR greater than 120% for each advance. Fifth Third also represented a maximum APR of 120% in its Frequently Asked Questions and other documents, including on-line account summaries for its customers.

63. Fifth Third breached the Early Access Program contract by charging customers who used the Early Access Program and repaid their loan in less than 30 days of taking an advance from their Early Access account a finance charge with an APR greater than 120%.

64. As a result of Fifth Third's breach of contract, Plaintiff, and all others similarly situated, are entitled to compensatory damages in an amount to be determined after a trial by jury.

**COUNT III
TENN. CODE ANN. 47-14-101 *et seq.***

65. Plaintiff, individually and on behalf of all others similarly situated, repeats,

realleges, and incorporates by reference each of the foregoing and subsequent allegations of this Complaint as if fully set forth herein.

66. Pursuant to Tenn. Code Ann. 47-14-101, *et seq.*, the legal rate of interest is ten (10%) per annum.

67. Here, Fifth Third, a branch of an out-of-state bank, agreed with Plaintiff and the Proposed Class to charge an Annual Percentage Rate in the amount of 120% and instead received and collected interest and charges in excess of 120%.

68. Since the inception of the Early Access Program, Fifth Third has knowingly charged an APR on advances taken by customers from their Early Access account well in excess of a per annum rate of ten percent (10%) in violation of Tenn. Code Ann. 47-14-101, *et seq.*

69. Specifically, Defendant knew that all Fifth Third customers who used the Early Access Program and repaid their loan in less than 30 days of taking an advance from their Early Access account would be charged an APR greater than 120%, which is in excess of the 10% allowed under Tenn. Code Ann. 47-14-101, *et seq.*

70. Defendant was calculated in its violation of statutory limitations on interest with full awareness of those limitations.

71. Pursuant to Tenn. Code Ann. 47-14-117(c)(1), Plaintiff and the Proposed Class are entitled to damages in an amount paid twice the total of all charges determined by the loan contract(s) or paid by the Plaintiff and the Proposed Class, whichever is greater plus such reasonable attorney's fees and court costs as may be assessed by the Court.

COUNT IV
VIOLATION OF THE TENNESSEE CONSUMER PROTECTION ACT
TENN. CODE ANN. 47-18-101, *et seq.*

72. Plaintiff, individually and on behalf of all others similarly situated, repeats,

realleges, and incorporates by reference each of the foregoing and subsequent allegations of this Complaint as if fully set forth herein.

73. This Count is a class action claim brought pursuant to Tennessee Code Annotated 47-18-104, *et seq.*, known as the Tennessee Consumer Protection Act (hereinafter, “the Act”).

74. Defendant’s actions constitute unlawful, unfair, deceptive, and/or fraudulent business acts and practices in violation of Tenn. Code Ann. § 47-18-101, *et seq.*

75. The conduct of Defendant constitutes and was intended to constitute unlawful, unfair, deceptive, and fraudulent business acts and practices within the meaning of Tenn. Code Ann. § 47-18-101, *et seq.*

76. The acts and business practices, as alleged herein, constituted and constitute a common, continuous, and continuing course of conduct of unfair, unlawful, deceptive, and/or fraudulent business acts or practices within the meaning of Tenn. Code Ann. § 47-18-101, *et seq.*

77. Defendant’s acts and business practices as described above are otherwise unfair, unconscionable, unlawful, deceptive and fraudulent.

78. Accordingly, Plaintiff, on behalf of himself and all other similarly situated Class members, requests Classwide relief and damages as allowed by law.

79. At all times relevant, Defendant engaged in the aforementioned acts or practices which are unfair, unlawful, deceptive, and/or fraudulent to the consumer or to any other person.

80. Defendant’s business practices were unscrupulous, unethical, and substantially injurious to consumers.

81. There is no legitimate business reason for Defendant’s business practices such that the utility of their business practices outweigh the harm to consumers. Furthermore, Defendant’s business practices undermine this state's and the applicable state’s fundamental policy against

unfair and/or deceptive business practices that are likely to deceive or mislead consumers and that undercut trust and fair competition in the consumer marketplace.

82. The product provided by Defendant was provided to Plaintiff and the proposed Class primarily for personal, family or household purposes.

83. Defendant, through its branches, employees, agents, and representatives, has engaged in otherwise unfair, unconscionable, unlawful, deceptive and/or fraudulent acts by charging an interest rate higher than that allowed by law and higher than that which was provided for in their own contract and written representations.

84. As a direct and proximate result of Defendant's unfair, unconscionable, unlawful, deceptive and/or fraudulent acts, Plaintiff and the Class Members were damaged.

85. Defendant at all times acted intentionally, maliciously, wilfully, outrageously, and knowingly by charging an interest rate higher than that allowed by law and higher than that which was provided for in their own contract and written representations.

86. The conduct reflects a deliberate indifference to Plaintiff and the proposed Class Members' rights, entitling Plaintiff and the proposed Class to an award of punitive damages.

87. Pursuant to the Act, this Court may award attorneys' fees to Plaintiff and the proposed Class Members.

88. Plaintiff and the proposed Class Members have sustained an ascertainable loss and were damaged by the unlawful acts, methods and/or practices of Defendant plus interest thereon.

89. Plaintiff, individually and as a member of the Class, has no adequate remedy at law for the future unlawful acts, methods, or practices as set forth above.

90. Plaintiff and the proposed Class are entitled to equitable relief, including restitutionary disgorgement of all profits accruing to Defendant during their unfair business

practices and an injunction prohibiting Defendant from engaging in the same or similar unfair business practices in the future. The entry of injunctive relief is of particular importance and is necessary to secure a fair consumer marketplace.

91. In bringing this action, Plaintiff has engaged the services of attorneys and has incurred reasonable legal expenses in an amount to be proved at trial.

**COUNTY V
DECLARATORY JUDGMENT
TENN. CODE ANN. 29-14-101**

92. Plaintiff, individually and on behalf of all others similarly situated, repeats, realleges, and incorporates by reference each of the foregoing and subsequent allegations of this Complaint as if fully set forth herein.

93. Defendant has advertised the Interest Rate associated with the Early Access Program fees as being 120% APR and in fact charged a higher amount.

94. Additionally, Defendant agreed to only charge interest associated with the Early Access Program in the amount of 120%.

Additionally, Defendant is only allowed under Tenn. Code Ann. 47-14-101, *et seq.* and 12 U.S.C. § 1831d to charge a per annum of ten percent (10%).

95. An actual and justiciable controversy exists between Defendant and Plaintiff concerning the parties' respective rights and obligations as it relates to the Early Access Program and also the Early Access Program's "Terms and Conditions."

96. Plaintiff and the proposed Class have tangible legal interests in the instant controversy, including but not limited to:

- a. Their interest in obtaining injunctive relief so that Defendant does not in the future employ unfair and/or deceptive practices in its business dealings with consumers;

- b. Their interest in a declaration from this Court that Defendant is charging an interest rate higher than what was advertised, thereby violating Tennessee public policy and, therefore, rendering any payment above and beyond the advertised price as unconscionable; and/or
- c. Their interest in a declaration from this Court that Defendant is charging an interest rate higher than what is permitted under Tennessee law and the laws of the United states; thereby violating Tennessee public policy and, therefore, rendering any payment above and beyond the advertised price as unconscionable.

97. Plaintiff is therefore entitled to a declaration of rights from this Court that the Early Access Program “Terms and Conditions” are void and unenforceable with respect to Plaintiff and the proposed Class. Alternatively, Plaintiff asks this Court to strike those provisions that are unenforceable.

COUNT VI UNCONSCIONABILITY

98. Plaintiff, individually and on behalf of all others similarly situated, repeats, realleges, and incorporates by reference each of the foregoing and subsequent allegations of this Complaint as if fully set forth herein.

99. Defendant’s policies and practices for the Early Access Program are substantively and procedurally unconscionable in the following material respects, among others:

- a. Defendant is charging an interest rate higher than what was advertised, thereby violating Tennessee public policy and, therefore, rendering any payment above and beyond the advertised price as unconscionable;
- b. Defendant is charging an interest rate higher than what is permitted under Tennessee law and the laws of the United States, rendering any payment above and beyond the legal interest rate as unconscionable; and/or
- c. Defendant is engaging in a calculated violation of statutory limitations on interest with full awareness of those limitations.

100. Considering the great business acumen and experience of Defendant in relation to

Plaintiff and the proposed Class, the great disparity in the parties' relative bargaining power, the oppressiveness of the terms, the unreasonableness of the contract terms, the purpose and effect of the terms, the allocation of the risks between the parties, and similar public policy concerns, these provisions are unconscionable and, therefore, unenforceable as a matter of law.

101. Plaintiff and members of the proposed Class have sustained damages as a result of Defendant's unconscionable policies and practices as alleged herein.

COUNT VII UNJUST ENRICHMENT

102. Plaintiff, individually and on behalf of all others similarly situated, repeats, realleges, and incorporates by reference each of the foregoing and subsequent allegations of this Complaint as if fully set forth herein, except for those paragraphs alleging the existence of a valid contract.

103. Defendant was unjustly enriched by charging and collecting from Plaintiff and the Class interest in an amount that was never authorized.

104. Defendant was unjustly enriched by charging and collecting from Plaintiff and the Class a usurious and/or excessive interest rate.

105. By unknowingly paying excessive interest and/or APR in an amount that exceeded ten percent (10%), Plaintiff and the Class conferred a benefit on Defendant, which Defendant knowingly accepted despite the fact that they were not entitled to such benefit. Such acts were, and are, unconscionable.

106. As a direct and proximate result of Defendant's actions, which constitute unjust enrichment, Plaintiff and the Class members suffered actual damages for which Defendant is liable.

107. It would be unjust for Defendant to retain the benefits it received from Plaintiff and

the Class. To date, Defendant has retained said benefits.

108. Plaintiff has no adequate remedy at law.

109. Defendant's liability for those damages should be measured by the extent of its unjust enrichment.

COUNT VIII
FALSE ADVERTISING TENN. CODE ANN. 45-2-1720

110. Plaintiff, individually and on behalf of all others similarly situated, repeats, realleges, and incorporates by reference each of the foregoing and subsequent allegations of this Complaint as if fully set forth herein.

111. Tenn. Code Ann. 45-2-1720 makes it unlawful for Defendant to make, publish, disseminate, circulate, or place before the public an advertisement, announcement or statement containing any assertion, representation, or statement with respect to the sale, distribution, offering for sale or advertising of any loan, refinance, insurance or any other product or service that is untrue, deceptive, or misleading.

112. Defendant has violated this statute by make, publish, disseminate, circulate, or place before the public an advertisement, announcement or statement containing an assertion, representation, or statement that the APR for the Early Access cash advance loan product is 120% when, in fact, the APR is much higher.

113. In fact, the APR for the Early Access cash advance loan product is more than 120% and, therefore, Fifth Third Bank made, published, disseminated, circulated, and/or placed before the public an advertisement, announcement or statement containing an assertion, representation, or statement that was untrue, deceptive, or misleading.

114. As a result of these violations, Plaintiff and the proposed Class have sustained damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays:

A. That the Court determine that this action may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, that the Plaintiff is a proper class representative, and his counsel is adequate class counsel;

B. That the Court certify the class identified above;

C. That judgment be entered against Defendant and in favor of Plaintiff and the Class on the Causes of Action in this Complaint, for injunctive and equitable relief as requested above, and for actual, compensatory, punitive, and treble damages in an amount to be determined at trial;

D. That Declaratory Judgment be entered against Defendant finding that Defendant's conduct is in violation of Tennessee law, and enjoining Defendant from continuing in such conduct.

E. That Defendant is enjoined from charging interest rates for Early Access advances in excess of rates allowed by federal law.

F. That judgment be entered imposing interest on damages, litigation costs, and attorneys' fees against Defendant;

G. For all other and further relief as this Court may deem necessary and appropriate.

DEMAND FOR JURY TRIAL

Plaintiff, individually and on behalf of all others similarly situated, demands a trial by jury on all issues so triable.

Dated: May 10, 2013

Respectfully submitted,

JONES WARD PLC

/s/ Randy Ratliff

Randy Ratliff (BPR 020941)

Jasper D. Ward (to be admitted *pro hac*)

Alex C. Davis (to be admitted *pro hac*)

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*Attorneys for Plaintiff and the
Proposed Class*

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
 Brian Harrison Individually and On Behalf of All Others Similarly Situated

(b) County of Residence of First Listed Plaintiff Hickman County
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
 Randy Ratliff, Jones Ward PLC, 312 S. Fourth St., 6th Floor
 Louisville, KY 40202. Phone: 502 882- 6000

DEFENDANTS
 Fifth Third Bank

County of Residence of First Listed Defendant Hamilton (OH)
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

2 U.S. Government Defendant

3 Federal Question (U.S. Government Not a Party)

4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	SOCIAL SECURITY	
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	
			IMMIGRATION	FEDERAL TAX SUITS	
			<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Class Action Fairness Act, 28 U.S.C. § 1332(d)(2)

Brief description of cause:
Class Action involving unfair and deceptive practices related to Fifth Third's Early Access Program

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 5,000,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE: 05/10/2013 SIGNATURE OF ATTORNEY OF RECORD: /s/ Randy Ratliff, BPR 020941

UNITED STATES DISTRICT COURT

for the

Middle District of Tennessee

Brian Harrison, et al.

Plaintiff(s)

v.

Fifth Third Bank

Defendant(s)

Civil Action No. 1:13cv0046

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Fifth Third Bank
c/o James R. Hubbard
38 Fountain Square Plaza, MD #10AT76
Cincinnati, OH 45263

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Randy Ratliff, Jasper Ward and Alex Davis
Jones Ward PLC
312 S. Fourth St., 6th Floor
Marion E. Taylor Building
Louisville KY 40202

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT KEITH THROCKMORTON

Date: 5-10-13

[Signature]
Signature of Clerk or Deputy Clerk