

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

In Re: Fifth Third Early Access Cash) CASE NO. 1:12-cv-00851-MRB
Advance Litigation))
) DISTRICT JUDGE MICHAEL R. BARRETT
))
))
) **CONSOLIDATED CLASS ACTION**
) **AMENDED COMPLAINT**
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))
)

COMPLAINT

Plaintiffs Lyn Adanich, Donald Adanich, Janet Fyock, Brian Harrison, Diana Horn, William Klopfenstein, Lori Laskaris, Daniel Laskaris and Adam McKinney (collectively, “Plaintiffs”) allege the following based on personal knowledge as to allegations regarding Plaintiffs and on information and belief as to other allegations:

INTRODUCTION AND GENERAL ALLEGATIONS

1. This is an action for monetary damages, restitution, declaratory and injunctive relief against Defendant Fifth Third Bank (“Defendant” or “Fifth Third”), for misrepresenting the annual percentage interest rate (“APR”) associated with Early Access payday loans and for charging usurious interest rates in violation of federal law and state law on those loans.

2. Fifth Third is a state-chartered, federally insured bank with branches located throughout the United States, including Florida, Illinois, Indiana, Kentucky, Michigan, Ohio and Tennessee.

3. Payday loans—small loans due on the borrower’s next “payday”—have a long and sordid history. For centuries, unscrupulous lenders have been accused of taking advantage of working people desperate to make ends meet by offering such loans at usurious and unconscionable rates. Payday lenders have been perceived as operating on the shadowy fringe of the mainstream financial system.

4. Fifth Third is one of a tiny number of mainstream financial institutions to offer short-term, closed-ended payday loans to its checking account customers (“Early Access Loans”).

5. What distinguishes Fifth Third’s Early Access Loans from those made by storefront payday lenders is the direct and automatic access Fifth Third has to its customers’ checking accounts for repayment of Early Access Loans. Fifth Third deposits the Early Access Loan amount directly into the customer’s checking account and then repays itself the loan amount, plus interest, directly from the customer’s next incoming direct deposit in excess of \$100.

6. If direct deposits are not sufficient to repay the loan within thirty-five (35) days, Fifth Third repays itself anyway, even if it overdraws the customer’s account.

7. Fifth Third prominently represents an Annual Percentage Rate (“APR”) of 120% for every Early Access Loan in the Early Access Program’s Terms & Conditions (“Terms & Conditions”) and in customers’ checking account statements.

8. That 120% APR disclosure is false and misleading. In fact, Early Access Loans carry a 120% APR only when repaid in 30 days. However, Fifth Third repays itself for the vast majority of Early Access Loans well prior to 30 days—resulting in APRs exponentially higher than 120%.

9. Fifth Third knows the vast majority of Early Access Loans are repaid prior to 30 days and Fifth Third therefore knows the vast majority of Early Access Loans carry an APR far higher than 120%—including Early Access Loans with APRs of 500%, 1,000%, 1,800% or more. But the bank discloses none of this to its customers.

10. In short, Class members' Early Access Loans carried multiple APRs, yet Fifth Third disclosed only the lowest possible APR.

11. Fifth Third's deceptive APR disclosures prevent consumers from accurately comparing the relative cost of Early Access Loans with other forms of credit.

12. Moreover, the APR that Fifth Third charges on Early Access Loans is far in excess of the permissible interest rate allowed by federal and state law.

PARTIES

13. Plaintiffs Lyn Adanich and Donald Adanich are citizens of Ohio.

14. Plaintiff Janet Fyock is a citizen of Illinois.

15. Plaintiff Brian Harrison is a citizen of Tennessee.

16. Plaintiff Diana Horn is a citizen of Kentucky.

17. Plaintiff William Klopfenstein is a citizen of Michigan.

18. Plaintiffs Lori Laskaris and Daniel Laskaris are citizens of Florida.

19. Plaintiff Adam McKinney is a citizen of Indiana.

20. Defendant Fifth Third Bank is a state-chartered, federally insured bank, headquartered in Ohio, with branches located in Florida, Illinois, Indiana, Kentucky, Michigan, Missouri, North Carolina, Ohio, Pennsylvania, Tennessee and West Virginia.

JURISDICTION AND VENUE

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

22. The Court has subject matter jurisdiction over this matter under 28 U.S.C. 1332(d)(2) and (6), as amended by the Class Action Fairness Act of 2005, because this matter was brought as a class action, the aggregate claims of the putative Class members exceed \$5,000,000, exclusive of interest and costs, and at least one member of the putative Class is a citizen of a different state than Fifth Third.

23. The Court has subject matter jurisdiction over Plaintiffs' claims arising under 12 U.S.C. 1831(d), pursuant to 28 U.S.C. 1331.

24. The Court has supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. 1367, because Plaintiffs' state law claims arise out of the same transaction or occurrence as their claims under 12 U.S.C. 1831(d)—namely, Fifth Third's charging excessive interest in connection with its Early Access Program and misrepresenting the interest rates charged in connection with Early Access Loans.

25. Venue is proper in this Court pursuant to 28 U.S.C. 1391, because Fifth Third is subject to personal jurisdiction here and regularly conducts business in this District. Additionally, a substantial part of the events or omissions giving rise to the claims asserted occurred and continue to occur in this district.

FACTS

Common Factual Allegations as to the Proposed Class and Plaintiffs

Fifth Third's False Disclosures Regarding Early Access Loans APRs.

26. Fifth Third offers Early Access Loans to its customers residing in, *inter alia*, Ohio, Kentucky, Michigan, Illinois, Indiana, Tennessee, Missouri and Florida.

27. The Terms & Conditions governing Early Access Loans and in effect at all times material to this Complaint are attached as Exhibit A.

28. The Early Access Terms & Conditions are presented to its customers on a “take it or leave it” basis, and are drafted and imposed by Fifth Third, which was the party of vastly superior bargaining strength and they thus constitute agreements of adhesion.

29. In both the Early Access Terms & Conditions and on monthly bank statements provided to customers, Fifth Third states that the APR for Early Access Loans is, in all cases, 120%. The Early Access Terms & Conditions state plainly:

The transaction fee is \$1 for every \$10 borrowed. **This equates to an Annual Percentage Rate (APR) of 120%** (emphasis added).

30. The Early Access Terms & Conditions also state in bold print:

**INTEREST RATE AND FEES
Annual Percentage Rate (APR) for 120%**

31. The Early Access Terms & Conditions also state:

[The] transaction fee will be reflected as an Annual Percentage Rate (APR) in the Fifth Third Early Access section of your checking account statement. The APR is a measure of the cost of credit, expressed as a yearly rate.

32. As alleged herein, these contract Terms & Conditions are misleading and are violated by Third Fifth in most every case because the APR for Early Access Loans almost always exceeds 120%.

33. Fifth Third knew Early Access Loans were almost always repaid prior to 30 days. However, Fifth Third did not incorporate this reasonably available information into its customer disclosures. Rather, Fifth Third's disclosures are pervaded by knowingly false assumption that loans would be repaid only after 30 days.

34. The Terms & Conditions state that “[t]he Annual Percentage Rate is calculated by dividing the transaction fee by the Advance amount and multiplying the quotient by the number of statement cycles within a year. For example, \$100 Advance with a \$10 transaction fee = $\$10/\$100 = 0.1\% \times 12 \text{ cycles} = 120\% \text{ APR.}$ ”

35. However, the APR equation Fifth Third provided was arbitrary at best and intentionally deceptive at worst. That equation is a misleading tautology that cannot be used to calculate APRs on Early Access Loans repaid prior to 30 days from issuance.

36. Despite the contractual promise noted at paragraph 32, *supra*, to reflect the Early Access Loan transaction fee on borrowers' bank statements, Fifth Third falsely states on consumers' checking account statements that the APR for Early Access Loans is 120%—even after an Early Access Loan has been repaid and even after Fifth Third could easily calculate and provide the actual APR associated with an Early Access Loan. A copy of an account statement noting the 120% APR is attached as Exhibit B.

37. In small print, the account statements state that “The Annual Percentage Rate (APR) is calculated by dividing the total Early Access Advance Fees for the billing cycle by the total amount of advances during the billing cycle ($\$10/\$100 = 0.1$) and multiplying the quotient by the number of billing cycles in a year ($0.1 \times 12 \text{ monthly billing cycles}$) equals 120%.”

38. This is even more deceptive than the comparable disclosure in the Terms & Conditions because at the time the account statement is issued, the vast majority of Early Access Loans have already been repaid in a time period less than a “billing cycle.”

39. Nowhere in the Terms & Conditions did Fifth Third disclose to its customers that the APR for Early Access Loans would be in excess of the represented 120% APR if the loan was repaid in less than 30 days.

40. Fifth Third had access to its customers’ direct deposit histories and was aware that an APR in excess of the represented 120% was exceedingly likely, or even certain, to be charged to the Early Access Loans received by many of its customers.

41. Fifth Third willfully and knowingly misled customers that Early Access Loans would carry an APR of 120%.

Early Access Loans Are a Form of Closed-Ended Credit.

42. Early Access Loans are a form of closed-ended credit.

43. Unlike open-ended credit lines (such as consumer credit card), each Early Access Loan is an independent obligation that requires new fees and an independent eligibility determination by Fifth Third.

44. Moreover, Early Access Loans feature no interest charges that are computed periodically on an outstanding unpaid balance. Rather, the interest charges are computed up-front, one time only. In short, Early Access Loans are wholly different from open-ended credit like credit cards, where interest is applied to unpaid balances after the debt is incurred.

45. Nor is an Early Access Loan a “line of credit,” as each loan requires a new eligibility determination by Fifth Third and new, up-front interest charges.

46. Indeed, eligibility for Early Access Loans can be revoked at any time by Fifth Third. Fifth Third specifies that it can reduce or eliminate access to Early Access Loans at any

time, for any reason. According to the Terms & Conditions, “[t]he Bank reserves the right, at any time...to modify your Credit Limit, including reducing the Credit Limit to \$0, based on your use of Fifth Third Early Access, your handling of the funds in your Associated Checking Account and other factors, at the Bank’s sole discretion.”

47. Fifth Third does not contemplate that consumers will repeatedly request Early Access Loans. Indeed, the Terms & Conditions state that Early Access Loans are to be used only for emergencies. In bold print, the Terms & Conditions state that “[w]e do not recommend continued use of the service.”

**Fifth Third Conditions the Extension of Early Access Credit on Borrowers’
Consent to Electronic Repayment.**

48. It is impossible for a consumer to receive an Early Access Loan without first agreeing to electronic repayment of that loan via direct debit from a consumer’s checking account.

49. According to the Terms & Conditions, “[a]ny Advance and related transaction fees will automatically be deducted by the Bank from your Associated Checking Account at the time of your next direct deposit of \$100 or more.”

50. In order to receive an Early Access Loan, customers agree to allow ongoing electronic transfer repayments according to the substantially regular schedule of the customer’s next direct deposit. These occur for the vast majority of Early Access Loan consumers like clockwork as wage direct deposits are posted.

51. For example, Plaintiffs had bimonthly direct deposits that were credited to their accounts at regular intervals. Those direct deposits were used by Fifth Third to repay Plaintiffs’ Early Access Loans.

52. While it is possible for borrowers to make manual payments after the loan is initiated, there is no possible way for a consumer to receive an Early Access Loan without first agreeing to electronic repayment.

Facts as to Plaintiffs Lyn Adanich and Donald Adanich

53. Plaintiffs Lyn and Donald Adanich (“the Adaniches”) hold a checking account with Fifth Third.

54. The Adaniches have always paid back the Early Access Loans in less than thirty (30) days, and sometimes within one week.

55. Since each and every one of the Adaniches’ Early Access Loans, including all interest and charges relating to same, were paid back in full to Fifth Third in less than (30) thirty days, the Adaniches were assessed APR interest charges well in excess of 120% on every Early Access Loan. As a result, the Adaniches were charged interest rates well in excess of the amount disclosed by Fifth Third.

56. Below are examples of specific instances where the Adaniches’ Early Access Loans featured an APR greater than 120%:

a. On April 25, 2012, the Adaniches borrowed an Early Access Loan in the amount of \$300. Six days later, on May 1, 2012, the Adaniches received a direct deposit and Fifth Third debited \$325.19¹ to repay that loan. This resulted in an APR of approximately 603% for the Early Access Loan. The monthly account statement issued by Fifth Third to the Adaniches states, incorrectly, that the APR for this transaction was 120%.

¹ The remaining \$4.81 was repaid from a direct deposit received May 10, 2012. The interest rate stated in this paragraph is calculated accordingly.

b. On May 18, 2012, the Adaniches borrowed an Early Access Loan in the amount of \$200. Four days later, on May 22, 2012, the Adaniches received a direct deposit and Fifth Third debited \$220 to repay that loan. This resulted in an APR of approximately 913% for the Early Access Loan. The monthly account statement issued by Fifth Third to the Adaniches, incorrectly, that the APR for this transaction was 120%.

Facts as to Plaintiff Janet Fyock

57. Plaintiff Janet Fyock holds a Fifth Third checking account.

58. Ms. Fyock has regularly received direct deposits bi-weekly since opening her Early Access account.

59. Ms. Fyock has taken out approximately twenty-three (23) Early Access Loans since opening her checking account.

60. Ms. Fyock has always paid back the Early Access Loans within thirty (30) days, and sometimes within one week. At no point since opening the account has thirty (30) days passed between an Early Access Loan and the next direct deposit.

61. Since each and every one of Ms. Fyock's Early Access Loans, including all interest and charges relating to same, were paid back in full to Fifth Third in less than thirty (30) days, Ms. Fyock was assessed APR interest charges well in excess of 120% on every Early Access Loan. As a result, Ms. Fyock was charged interest rates well in excess of the amount disclosed by Fifth Third.

62. Below are examples of specific instances where Fifth Third charged Ms. Fyock an APR greater than 120%:

a. On October 15, 2010, Ms. Fyock borrowed an Early Access Loan in the amount of \$550.00 from her Early Access account. Seven days later, on October 22, 2010, Ms. Fyock received a direct deposit and Fifth Third debited \$605.00 to repay this

Early Access Loan. This resulted in an APR of approximately 521% charged for this Early Access Loan. The monthly account statement issued by Fifth Third to Ms. Fyock states, incorrectly, that the APR for this transaction was 120%.

b. On February 2, 2011, Ms. Fyock borrowed an Early Access Loan in the amount of \$200.00 from her Early Access account. Fourteen days later, on February 16, 2011, Fyock received a direct deposit and Fifth Third debited \$220.00 to repay this Early Access Loan. This resulted in an APR of approximately 260% charged for this Early Access Loan. The monthly account statement issued by Fifth Third to Ms. Fyock states, incorrectly, that the APR for this transaction was 120%.

c. On October 17, 2011, Ms. Fyock borrowed an Early Access Loan in the amount of \$200.00 from her Early Access account. Nine days later, on October 26, 2011, Ms. Fyock received a direct deposit and Fifth Third debited \$220.00 to repay this Early Access Loan. This resulted in an APR of approximately 405% charged for this Early Access Loan. The monthly account statement issued by Fifth Third to Ms. Fyock states, incorrectly, that the APR for these transactions was 120%.

d. On December 7, 2011, Ms. Fyock borrowed an Early Access Loan in the amount of \$700.00 from her Early Access account. Fourteen days later, on December 21, 2011, Ms. Fyock received a direct deposit and Fifth Third debited \$770.00 to repay this Early Access Loan. This resulted in an APR of approximately 260% charged for this Early Access Loan. The monthly account statement issued by Fifth Third to Ms. Fyock states, incorrectly, that the APR for this transaction was 120%.

e. On August 23, 2012, Ms. Fyock borrowed an Early Access Loan in the amount of \$400.00 from her Early Access account. Six days later, on August 29, 2012,

Ms. Fyock received a direct deposit and Fifth Third debited \$440.00 to repay this Early Access Loan. This resulted in an APR of approximately 608% charged for this Early Access Loan. The monthly account statement issued by Fifth Third to Ms. Fyock states, incorrectly, that the APR for this transaction was 120%.

f. On December 10, 2012, Ms. Fyock borrowed an Early Access Loan in the amount of \$300.00 from her Early Access account. Nine days later, on December 19, 2012, Ms. Fyock received a direct deposit and Fifth Third debited \$330.00 to repay this Early Access Loan. This resulted in an APR of approximately 405% charged for this Early Access Loan. The monthly account statement issued by Fifth Third to Ms. Fyock states, incorrectly, that the APR for this transaction was 120%.

g. On January 3, 2013, Ms. Fyock borrowed an Early Access Loan in the amount of \$800.00 from her Early Access account. Thirteen days later, on January 16, 2013, Ms. Fyock received a direct deposit and Fifth Third debited \$880.00 to repay this Early Access Loan. This resulted in an APR of approximately 280% charged for this Early Access Loan. The monthly account statement issued by Fifth Third to Ms. Fyock states, incorrectly, that the APR for this transaction was 120%.

h. On March 13, 2013, Ms. Fyock borrowed an Early Access Loan in the amount of \$650.00 from her Early Access account. Fourteen days later, on March 27, 2013, Ms. Fyock received a direct deposit and Fifth Third debited \$715.00 to repay this Early Access Loan. This resulted in an APR of approximately 260% charged for this Early Access Loan. The monthly account statement issued by Fifth Third to Ms. Fyock states, incorrectly, that the APR for this transaction was 120%.

Facts as to Plaintiff Brian Harrison

63. Plaintiff Brian Harrison formerly held a Fifth Third checking account.

64. Mr. Harrison regularly received direct deposits biweekly while his Early Access account was open.

65. Mr. Harrison borrowed approximately ten (10) Early Access Loans from Fifth Third.

66. Mr. Harrison 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 thirty (30) days pass between receipt of an Early Access Loan and the next direct deposit.

67. Since each and every one of Mr. Harrison's Early Access Loans, including all interest charged relating to same, were paid back in full to Fifth Third in less than thirty (30) days, Mr. Harrison's Early Access Loans carried APRs well in excess of 120%. As a result, Mr. Harrison was charged interest rates well in excess of the amount disclosed by Fifth Third.

Facts as to Plaintiff Diana Horn

68. Plaintiff Diana Horn holds a Fifth Third checking account.

69. Ms. Horn has regularly received direct deposits since opening her Early Access account.

70. Ms. Horn has always paid back the Early Access Loans in less than thirty (30) days, and sometimes within one week. At no point since opening the account has thirty (30) days passed between an Early Access Loan and the next direct deposit.

71. Since each and every one of Ms. Horn's Early Access Loans, including all interest and charges relating to same, were paid back in full to Fifth Third in less than (30) thirty days, Ms. Horn was assessed APR interest charges well in excess of 120% on every Early Access Loan. As a result, Ms. Horn was charged interest rates well in excess of the amount disclosed by Fifth Third.

72. Below are instances where Ms. Horn's Early Access Loans that carried an APR greater than 120%:

a. On February 11, 2013, Ms. Horn borrowed an Early Access Loan in the amount of \$750. Eleven days later, on February 22, 2013, Ms. Horn received a direct deposit and Fifth Third debited \$825.00 to repay this Early Access Loan. This resulted in an APR of 331%. The monthly account statement issued by Fifth Third to Ms. Horn states, incorrectly, that the APR for this transaction was 120%.

b. On February 14, 2013, Ms. Horn borrowed an Early Access Loan in the amount of \$50. Seven days later, on February 22, 2013, Ms. Horn received a direct deposit and Fifth Third debited \$55.00 to repay this Early Access Loan. This resulted in an APR of 456%. The monthly account statement issued by Fifth Third to Ms. Horn states, incorrectly, that the APR for this transaction was 120%.

c. On February 15, 2013, Ms. Horn borrowed an Early Access Loan in the amount of \$45. Six days later, on February 22, 2013, Ms. Horn received a direct deposit and Fifth Third debited \$4.50 to repay this Early Access Loan. This resulted in an APR of 521%. The monthly account statement issued by Fifth Third to Ms. Horn states, incorrectly, that the APR for this transaction was 120%.

d. On February 19, 2013, Ms. Horn borrowed three Early Access Loans totaling \$150. Three days later, on February 22, 2013, Ms. Horn received a direct deposit and Fifth Third debited \$15.00 to repay this Early Access Loan. This resulted in an APR of 1,216%. The monthly account statement issued by Fifth Third to Ms. Horn states, incorrectly, that the APR for these transactions was 120%.

e. On March 18, 2013, Ms. Horn borrowed an Early Access Loan in the amount of \$8.00. Four days later, on March 22, 2013, Ms. Horn received a direct deposit and Fifth Third debited \$0.80 to repay this Early Access Loan. This resulted in an APR of 912%. The monthly account statement issued by Fifth Third to Ms. Horn states, incorrectly, that the APR for this transaction was 120%.

f. On April 4, 2013, Ms. Horn borrowed an Early Access Loan in the amount of \$15.00. One day later, on April 5, 2013, Ms. Horn received a direct deposit and Fifth Third debited \$1.50 to repay this Early Access Loan. This resulted in an APR of 3,650%. The monthly account statement issued by Fifth Third to Ms. Horn states, incorrectly, that the APR for this transaction was 120%.

Facts as to Plaintiff William Klopfenstein

73. Plaintiff William Klopfenstein formerly held a Fifth Third checking account.

74. Mr. Klopfenstein has regularly received direct deposits since opening his Early Access account.

75. Mr. Klopfenstein took approximately ten (10) Early Access Loans before closing his checking account in or around November of 2011.

76. Mr. Klopfenstein has always paid back the Early Access Loans in less than thirty (30) days. At no point since opening the account has thirty (30) days passed between an Early Access Loan and the next direct deposit.

77. Since each and every one of Mr. Klopfenstein's Early Access Loans, including all interest and charges relating to same, were paid back in full to Fifth Third in less than thirty (30) days, Mr. Klopfenstein was assessed APR interest charges well in excess of 120% on every Early Access Loan. As a result, Mr. Klopfenstein was charged interest rates well in excess of the amount disclosed by Fifth Third.

78. Below are examples of Mr. Klopfenstein's Early Access Loans that carried an APR greater than 120%:

a. On May 31, 2011, Mr. Klopfenstein borrowed an Early Access Loan in the amount of \$200. Three days later, on June 3, 2011, Mr. Klopfenstein received a direct deposit and Fifth Third debited \$220 to repay that loan. This resulted in an APR of approximately 1,217% charged for the Early Access Loan. The monthly account statement issued by Fifth Third to Mr. Klopfenstein states, incorrectly, that the APR for this transaction was 120%.

b. On July 19, 2011, Mr. Klopfenstein borrowed an Early Access Loan in the amount of \$400. Two days later, on July 21, 2011, Mr. Klopfenstein received a direct deposit and Fifth Third debited \$440 to repay that loan. This resulted in an APR of 1,825% charged for the Early Access Loan. The monthly account statement issued by Fifth Third to Mr. Klopfenstein states, incorrectly, that the APR for this transaction was 120%.

c. On July 26, 2011, Mr. Klopfenstein borrowed an Early Access Loan in the amount of \$100. Three days later, on July 29, 2011, Mr. Klopfenstein received a direct deposit and Fifth Third debited \$110 to repay that loan. This resulted in an APR of approximately 1,217% charged for the Early Access Loan. The monthly account statement issued by Fifth Third to Mr. Klopfenstein states, incorrectly, that the APR for this transaction was 120%.

d. On August 1, 2011, Mr. Klopfenstein borrowed an Early Access Loan in the amount of \$100. Three days later, on August 4, 2011, Mr. Klopfenstein received a direct deposit and Fifth Third debited \$110 to repay that loan. This resulted in an APR of

approximately 1,217% charged for the Early Access Loan. The monthly account statement issued by Fifth Third to Mr. Klopfenstein states, incorrectly, that the APR for this transaction was 120%.

e. On August 8, 2011, Mr. Klopfenstein borrowed an Early Access Loan in the amount of \$250. Four days later, on August 12, 2011, Mr. Klopfenstein received a direct deposit and Fifth Third debited \$275 to repay that loan. This resulted in an APR of approximately 913% charged for the Early Access Loan. The monthly account statement issued by Fifth Third to Mr. Klopfenstein states, incorrectly, that the APR for this transaction was 120%.

f. On August 16, 2011, Mr. Klopfenstein borrowed an Early Access Loan in the amount of \$150. Two days later, on August 18, 2011, Mr. Klopfenstein received a direct deposit and Fifth Third debited \$165 to repay that loan. This resulted in an APR of 1,825% charged for the Early Access Loan. The monthly account statement issued by Fifth Third to Mr. Klopfenstein states, incorrectly, that the APR for this transaction was 120%.

Facts as to Plaintiffs Lori Laskaris and Daniel Laskaris

79. Plaintiffs Lori and Daniel Laskaris (“the Laskarises”) hold a joint Fifth Third checking account.

80. The Laskarises have regularly received direct deposits since opening their account.

81. The Laskarises have taken numerous Early Access Loans since opening their Early Access account.

82. The Laskarises have always paid back the Early Access Loans in less than thirty (30) days, and sometimes within one week. At no point since opening the account has thirty (30) days passed between an Early Access Loan and the next direct deposit.

83. Since each and every one of the Laskarises' Early Access Loans, including all interest and charges relating to same, were paid back in full to Fifth Third in less than thirty (30) days, the Laskarises were assessed APR interest charges well in excess of 120% on every Early Access Loan. As a result, the Laskarises were charged interest rates well in excess of the amount disclosed by Fifth Third.

84. Below are examples of specific instances where the Laskarises' Early Access Loans carried an APR greater than 120%:

a. On April 11, 2011, the Laskarises borrowed an Early Access Loan in the amount of \$100.00. Four days later, the Laskarises received a direct deposit and Fifth Third debited \$110.00 from their checking account. This resulted in an APR of approximately 912% charged for their Early Access Loan. The monthly account statement issued by Fifth Third to the Laskarises states, incorrectly, that the APR for this transaction was 120%.

b. On May 2, 2011, the Laskarises borrowed an Early Access Loan in the amount of \$100.00. One day later, the Laskarises received a direct deposit and Fifth Third debited \$110.00 from their checking account. This resulted in an APR of approximately 3,650% charged for their Early Access Loan. The monthly account statement issued by Fifth Third to the Laskarises states, incorrectly, that the APR for this transaction was 120%.

c. On October 21, 2011, the Laskarises borrowed an Early Access Loan in the amount of \$100.00. Seven days later, the Laskarises received a direct deposit and Fifth Third debited \$110.00 from their checking account. This resulted in an APR of approximately 521% charged for their Early Access Loan. The monthly account statement issued by Fifth Third to the Laskarises states, incorrectly, that the APR for this transaction was 120%.

d. On January 30, 2012, the Laskarises borrowed an Early Access Loan in the amount of \$50.00. Two days later, the Laskarises received a direct deposit and Fifth Third debited \$55.00 from their checking account. This resulted in an APR of approximately 1,825% charged for their Early Access Loan. The monthly account statement issued by Fifth Third to the Laskarises states, incorrectly, that the APR for this transaction was 120%.

e. On October 22, 2012, the Laskarises borrowed an Early Access Loan in the amount of \$200.00. Four days later, the Laskarises received a direct deposit and Fifth Third debited \$220.00 from their checking account. This resulted in an APR of approximately 912% charged for their Early Access Loan. The monthly account statement issued by Fifth Third to the Laskarises states, incorrectly, that the APR for this transaction was 120%.

f. On January 4, 2013, the Laskarises borrowed an Early Access Loan in the amount of \$150.00. Fourteen days later, the Laskarises received a direct deposit and Fifth Third debited \$165.00 from their checking account. This resulted in an APR of approximately 260% charged for their Early Access Loan. The monthly account

statement issued by Fifth Third to the Laskarises states, incorrectly, that the APR for this transaction was 120%.

Facts as to Plaintiff Adam McKinney

85. Plaintiff Adam McKinney holds a Fifth Third checking account.

86. Mr. McKinney regularly received direct deposits into his checking account.

87. Mr. McKinney has taken approximately two dozen Early Access Loans.

88. Mr. McKinney has always paid back the Early Access Loans in less than thirty (30) days. At no point since opening the account has thirty (30) days passed between an Early Access Loan and the next direct deposit.

89. Since each and every one of Mr. McKinney's Early Access Loans, including all interest and charges relating to same, were paid back in full to Fifth Third in less than thirty (30) days, Mr. McKinney was assessed APR interest charges well in excess of 120% on every Early Access Loan. As a result, Mr. McKinney was charged interest rates well in excess of the amount disclosed by Fifth Third.

90. Below are examples of specific instances where Mr. McKinney's Early Access Loans carried an APR greater than 120%:

a. On August 3, 2009, Mr. McKinney borrowed an Early Access Loan in the amount of \$300. Four days later, on August 7, 2009, Mr. McKinney received a direct deposit and Fifth Third debited \$330 to repay that loan. This resulted in an APR of approximately 913% charged for this Early Access loan. The monthly account statement issued by Fifth Third to Mr. McKinney states, incorrectly, that the APR for this transaction was 120%.

b. On September 16, 2009, Mr. McKinney borrowed an Early Access Loan in the amount of \$400. Two days later, on September 18, 2009, Mr. McKinney received

a direct deposit and Fifth Third debited \$440 to repay that loan. This resulted in an APR of 1,825% charged for this Early Access loan. The monthly account statement issued by Fifth Third to Mr. McKinney states, incorrectly, that the APR for this transaction was 120%.

c. On November 13, 2010, Mr. McKinney borrowed an Early Access Loan in the amount of \$250. Two days later, on November 15, 2010, Mr. McKinney received a direct deposit and Fifth Third debited \$275 to repay that loan. This resulted in an APR of 1,825% charged for this Early Access loan. The monthly account statement issued by Fifth Third to Mr. McKinney states, incorrectly, that the APR for this transaction was 120%.

d. On January 18, 2011, Mr. McKinney borrowed an Early Access Loan in the amount of \$200. Three days later, on January 21, 2011, Mr. McKinney received a direct deposit and Fifth Third debited \$220 to repay that loan. This resulted in an APR of approximately 1,217% charged for this Early Access loan. The monthly account statement issued by Fifth Third to Mr. McKinney states, incorrectly, that the APR for this transaction was 120%.

e. On January 19, 2012, Mr. McKinney borrowed an Early Access Loan in the amount of \$70. One day later, on January 20, 2012, Mr. McKinney received a direct deposit and Fifth Third debited \$77 to repay that loan. This resulted in an APR of 3,650% charged for this Early Access loan. The monthly account statement issued by Fifth Third to Mr. McKinney states, incorrectly, that the APR for this transaction was 120%.

CLASS ALLEGATIONS

Class Definition

91. Pursuant to Federal Rule of Civil Procedure 23, Plaintiffs seek to certify a class of all Fifth Third customers who used the Early Access Program and repaid the loan within 30 days of receiving such loan.

92. The proposed Class is defined as:

All persons in the United States who, within the applicable statute of limitations preceding the filing of this action to the date of class certification, received an Early Access Loan that was repaid in less than 30 days (the “Class”).²

93. Excluded from the Class are Defendant, its affiliates, subsidiaries, agents, board members, directors, officers, employees and Plaintiffs’ counsel.

94. Plaintiffs reserve the right to modify or amend the definitions of the Class before the Court determines whether certification is appropriate.

95. Defendant subjected Plaintiffs and 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.

Numerosity

96. Members of the Class are so numerous that joinder of all members is impracticable. Defendant has numerous branches in various states and it is believed thousands of customers have received Early Access Loans that were paid back within 30 days. The individual Class members are ascertainable, as the names and addresses of all Class members can be identified in the business records maintained by Defendant.

² The state-wide classes referenced in Counts Six through Eighteen are the same as the Class, except that the state-wide classes do not include all persons in the United States, but only persons in the state referenced.

Commonality

97. There are numerous questions of law and fact that are common to Plaintiffs' and Class members' 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 whether Fifth Third:

- a. Charged excessive interest rates/finance charges to customers using the Early Access Program in violation of federal law and state law.
- b. Misrepresented that the APR for Early Access Loans was 120%.
- c. Fraudulently induced customers into receiving Early Access Loans based on misrepresentations as to the true APR charged for each loan.
- d. Breached the contract with its customers as to the APR that would be charged for each Early Access Loan.
- e. Concealed the true APR it charged on Early Access Loans, both in the Terms & Conditions and on monthly bank statements.
- f. Was unjustly enriched through its Early Access Program's policies and practices.

98. Other questions of law and fact common to the Class include:

- a. The proper method or methods by which to measure damages.
- b. The injunctive and declaratory relief to which Class members are entitled.

Typicality

99. Plaintiffs are members of the Class. Plaintiffs' claims are typical of the claims of the Class because of the similarity, uniformity and common purpose of the unlawful conduct of Fifth Third. Each Class member has sustained and will continue to sustain damages in the same manner as Plaintiffs as a result of Defendant's wrongful conduct.

Adequacy of Representation

100. Plaintiffs are adequate Representatives of the Class and will fairly and adequately protect the interests of the Class. Plaintiffs' claims stem from the same course of conduct as the other Class members and Plaintiffs possess no interests antagonistic to those of the other Class members. Additionally, Plaintiffs are committed to the vigorous prosecution of this action and have retained competent counsel experienced in litigation of this nature.

Requirements of Fed.R.Civ.P. 23(b)(3)

101. The questions of law or fact common to Plaintiffs' and the other Class Members' claims predominate over any question of law or fact affecting only individual members of the Class. All claims by Plaintiffs and the other Class members are based on Fifth Third misrepresenting the actual APR that Class members would be charged on their Early Access Loans and Fifth Third charging interest rates in violation of federal law and state law.

102. Common issues predominate when, as here, liability can be determined on a class-wide basis, even when there will be some individualized damages determinations.

Superiority

103. A class action is the superior mechanism to fairly and efficiently adjudicate this controversy because:

a. Joinder of all Class members would create extreme hardship and inconvenience for the affected customers residing in various states;

b. Individual claims by Class members are impractical, because the costs to pursue individual claims exceed the value of what any one Class member has at stake.

As a result, individual Class members have no interest in prosecuting and controlling separate actions, yet if the action is not prosecuted, Defendant will continue its wrongful actions;

c. There are no known individual Class members who are interested in individually controlling the prosecution of separate actions;

d. The interests of justice will be well served by resolving the common disputes of potential class members in one forum;

e. Individual suits would not be cost effective or economically maintainable as individual actions; and

f. The action is manageable as a class action.

Requirements of Fed.R.Civ.P. 23(b)(1) & (2)

104. Prosecuting separate actions by or against individual Class members would create a risk of inconsistent or varying adjudications with respect to individual Class members that would establish incompatible standards of conduct for the party opposing the Class.

105. Defendant has acted or failed to act in a manner generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

FIRST CLAIM FOR RELIEF

Violations of the Truth in Lending Act, 15 U.S.C. 1601 et seq. and Regulation Z, 12 C.F.R. 226 et seq.
(On Behalf of the Class)

106. Plaintiffs incorporate by reference the preceding paragraphs.

107. Fifth Third disclosed to Plaintiffs and all other members of the Class in the Terms & Conditions and on bank statements that Early Access Loans carried an APR of 120%.

108. The Truth in Lending Act requires lenders to provide accurate and meaningful disclosures to consumer borrowers, including accurate disclosure of an Annual Percentage Rate for each transaction or loan.

109. Fifth Third did not provide accurate and meaningful APR disclosures to Plaintiffs regarding Early Access Loans.

110. Fifth Third's APR disclosures were not based on the best information reasonably available to it.

111. Fifth Third failed to correct the grossly understated APRs on Plaintiffs' and the other Class members' monthly bank statements—even after Early Access Loans had been repaid and the true APR was easily calculable.

112. Moreover, because of Fifth Third's conduct, consumers were not able to appropriately compare the cost of Early Access Loans to other forms of credit.

113. Under 15 U.S.C. 1640, Plaintiffs and the other members of the Class are entitled to damages, including statutory damages.

114. Under 15 U.S.C. 1640, Plaintiffs and the other members of the Class are entitled to payment of attorneys' fees and costs.

SECOND CLAIM FOR RELIEF

Violations of the Electronic Funds Transfer Act, 15 U.S.C. 1693 et seq. **(On Behalf of the Class)**

115. Plaintiffs incorporate by reference the preceding paragraphs.

116. Section 913(1) of the Electronic Funds Transfer Act ("EFTA"), 15 U.S.C. 1693(1), provides that no person may condition the extension of credit to a consumer on such consumer's repayment by means of preauthorized electronic fund transfers.

117. Section 1005.10(e)(1) of Regulation E, 12 C.F.R. 1005.10(e)(1), provides that "[n]o financial institution or other person may condition an extension of credit to a consumer on the consumer's repayment by preauthorized electronic fund transfers, except for credit extended

under an overdraft credit plan or extended to maintain a specified minimum balance in the consumer's account.”

118. In connection with offering Early Access Loans to Plaintiffs and other members of the Class, all of whom are consumers, Fifth Third conditioned the extension of credit on recurring preauthorized electronic fund transfers, thereby violating Section 913(1) of EFTA, 15 U.S.C. 1693k(1), and Regulation E, 12 C.F.R. 1005.10(e)(1).

119. As a direct and proximate result of these violations, Plaintiffs and members of the Class were and continue to be damaged in an amount according to proof, including, without limitation, statutory damages and actual damages, such as payments of interest and other charges collected by Fifth Third.

120. Pursuant to 15 U.S.C. 1693 *et seq.*, Plaintiffs and members of the Class are entitled to recover actual damages sustained as a result of Fifth Third's violations of EFTA, in an amount to be determined at trial, statutory damages and attorneys' fees and costs in accordance with 15 U.S.C. 1693(m).

THIRD CLAIM FOR RELIEF

Violation of 12 U.S.C. 1831(d) **(On Behalf of the Class)**

121. Plaintiffs incorporate by reference the preceding paragraphs.

122. 12 U.S.C. 1831(d) 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.

123. Defendant is headquartered in Cincinnati, Ohio.

124. O.R.C. 1109.20(A) prohibits banks from receiving finance charges and interest in excess of an APR of 25%.

125. Both under the terms of the Early Access payday loan program and when acting in violation of that agreement, Fifth Third has routinely charged Plaintiffs and members of the Class interest and finance charges well in excess of an APR of 25%.

126. Fifth Third's Early Access "transaction fee" is interest for the purposes of 12 U.S.C. 1831(d).

127. Defendant received this usurious interest and/or finance charges in violation of 12 U.S.C. 1831(d).

128. Pursuant to 12 U.S.C. 1831(d), Plaintiffs and the other Class members are entitled an amount equal to twice the amount of interest paid for the two years preceding the filing of the first complaint in this action.

FOURTH CLAIM FOR RELIEF

Breach of Contract **(On Behalf of the Class)**

129. Plaintiffs incorporate by reference the preceding paragraphs.

130. Plaintiffs and Fifth Third have contracted for Early Access Loans, as embodied in Fifth Third's Early Access Terms & Conditions and related documentation.

131. Fifth Third has breached that contract by charging Plaintiffs and the other Class members APRs in excess of 120% on Early Access Loans.

132. Moreover, Fifth Third has breached the contract by failing to provide an accurate APR summary for Early Access Loans on monthly bank statements.

133. Plaintiffs and the other members of the Class have performed all, or substantially all, of the obligations imposed on them under the Terms and Conditions.

134. Plaintiffs and the other members of the Class have sustained damages as a result of Fifth Third Bank's breach in that they were assessed APRs on their Early Access Loans in excess of 120%.

FIFTH CLAIM FOR RELIEF

Conversion
(On Behalf of the Class)

135. Plaintiffs incorporate by reference the preceding paragraphs.

136. Fifth Third had and continues to have a duty to maintain and preserve its customers' checking accounts and to prevent their diminishment through its own wrongful acts.

137. Fifth Third has wrongfully collected Early Access interest charges from Plaintiffs and the members of the Class and has taken specific and readily identifiable funds from their accounts in payment of these fees in order to satisfy them.

138. Each of the accounts was maintained in Ohio and each unlawful taking thereby occurred in Ohio.

139. Fifth Third has, without proper authorization, assumed and exercised the right of ownership over these funds, in hostility to the rights of Plaintiffs and the members of the Class, without legal justification.

140. Fifth Third continues to retain these funds unlawfully without the consent of Plaintiffs or members of the Class.

141. Fifth Third intends to permanently deprive Plaintiffs and members of the Class of these funds.

142. These funds are properly owned by Plaintiffs and members of the Class, not Fifth Third, which now claims that it is entitled to their ownership, contrary to the rights of Plaintiffs and members of the Class.

143. Plaintiffs and members of the Class are entitled to the immediate possession of these funds.

144. Fifth Third has wrongfully converted these specific and readily identifiable funds.

145. Fifth Third's wrongful conduct is continuing.

146. As a direct and proximate result of this wrongful conversion, Plaintiffs and the members of the Class have suffered and continue to suffer damages.

147. By reason of the foregoing, Plaintiffs and members of the Class are entitled to recover from Fifth Third all damages and costs permitted by law, including all amounts that Fifth Third has wrongfully converted.

SIXTH CLAIM FOR RELIEF

Unjust Enrichment **(On Behalf of an Ohio Class)**

148. Ohio Plaintiffs Lyn and Donald Adanich ("Ohio Plaintiffs") incorporate by reference the preceding paragraphs, excepting paragraphs which allege the existence of a valid contract.

149. Ohio Plaintiffs assert, on behalf of themselves and all similarly situated Ohio residents subject to the banking practices and loan policies described herein (the "Ohio Class"), a common law claim for unjust enrichment.

150. By means of Fifth Third's wrongful conduct alleged herein, Fifth Third knowingly provides banking services to Ohio Plaintiffs and members of the Ohio Class that are unfair, unconscionable and oppressive.

151. Fifth Third knowingly received and retained wrongful benefits and funds from Ohio Plaintiffs and members of the Ohio Class. In so doing, Fifth Third acted with conscious disregard for the rights of Ohio Plaintiffs and members of the Ohio Class.

152. As a result of Fifth Third's wrongful conduct as alleged herein, Fifth Third Bank has been unjustly enriched at the expense of, and to the detriment of, Ohio Plaintiffs and members of the Ohio Class.

153. Fifth Third's unjust enrichment is traceable to, and resulted directly and proximately from, the conduct alleged herein.

154. Under the Ohio common law doctrine of unjust enrichment, it is inequitable for Fifth Third to be permitted to retain the benefits it received, and is still receiving, without justification, from the imposition of Early Access fees on Ohio Plaintiffs and members of the Ohio Class in an unfair, unconscionable and oppressive manner.

155. Fifth Third Bank's retention of such funds under circumstances making it inequitable to do so constitutes unjust enrichment.

156. The financial benefits derived by Fifth Third Bank rightfully belong to Ohio Plaintiffs and members of the Ohio Class. Fifth Third Bank should be compelled to disgorge in a common fund for the benefit of Ohio Plaintiffs and members of the Ohio Class all wrongful or inequitable proceeds received by them. A constructive trust should be imposed upon all wrongful or inequitable sums received by Fifth Third Bank traceable to Ohio Plaintiffs and the members of the Ohio Class.

157. Ohio Plaintiffs and members of the Ohio Class have no adequate remedy at law.

SEVENTH CLAIM FOR RELIEF

Unjust Enrichment
(On Behalf of an Illinois Class)

158. Illinois Plaintiff Janet Fyock incorporates by reference the preceding paragraphs, excepting paragraphs which allege the existence of a valid contract.

159. Ms. Fyock asserts, on behalf of herself and all similarly situated Illinois residents subject to the banking practices and loan policies described herein (the “Illinois Class”), a common law claim for unjust enrichment.

160. Defendant was unjustly enriched by charging and collecting from Ms. Fyock and the Illinois Class interest in an amount that was never authorized.

161. Defendant was unjustly enriched by charging and collecting from Ms. Fyock and the Illinois Class a usurious and/or excessive interest rate.

162. By unknowingly paying excessive interest and/or APR in an amount that exceeded the amount allowable by law to Defendant, Ms. Fyock and the Illinois Class conferred a benefit on Defendant, which Defendant knowingly accepted despite the fact that they were not entitled to such benefit.

163. Such acts were, and are, unconscionable.

164. As a direct and proximate result of Defendant’s actions, which constitute unjust enrichment, Ms. Fyock and the Illinois Class members suffered actual damages for which Defendant is liable.

165. It would be unjust for Defendant to retain the benefits it received from Ms. Fyock and the Illinois Class.

166. To date, Defendant has retained said benefits.

167. Ms. Fyock and the Illinois Class have no adequate remedy at law.

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

EIGHTH CLAIM FOR RELIEF

Unjust Enrichment
(On Behalf of a Tennessee Class)

169. Tennessee Plaintiff Brian Harrison incorporates by reference the preceding paragraphs, excepting paragraphs which allege the existence of a valid contract.

170. Harrison asserts, on behalf of himself and all similarly situated Tennessee residents subject to the banking practices and loan policies described herein (the “Tennessee Class”), a common law claim for unjust enrichment.

171. Defendant was unjustly enriched by charging and collecting from Mr. Harrison and the Tennessee Class interest in an amount that was never authorized.

172. By unknowingly paying excessive interest and/or APR in an amount that exceeded the amount allowable by law, Mr. Harrison and the Tennessee 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.

173. As a direct and proximate result of Defendant’s actions, which constitute unjust enrichment, Mr. Harrison and the Tennessee Class suffered actual damages for which Defendant is liable.

174. It would be unjust for Defendant to retain the benefits it received from Mr. Harrison and the Tennessee Class.

175. To date, Defendant has retained said benefits.

176. Mr. Harrison and the Tennessee Class have no adequate remedy at law.

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

NINTH CLAIM FOR RELIEF

Unjust Enrichment
(On Behalf of a Kentucky Class)

178. Kentucky Plaintiff Diana Horn incorporates by reference the preceding paragraphs, excepting paragraphs which allege the existence of a valid contract.

179. Ms. Horn asserts, on behalf of herself and all similarly situated Kentucky residents subject to the banking practices and loan policies described herein (the “Kentucky Class”), a common law claim for unjust enrichment.

180. Defendant was unjustly enriched by charging and collecting from Ms. Horn and the Kentucky Class interest in an amount that was never authorized.

181. Defendant was unjustly enriched by charging and collecting from Ms. Horn and the Kentucky Class a usurious and/or excessive interest rate.

182. By unknowingly paying excessive interest and/or APR in an amount that exceeded the rate allowable by law, Ms. Horn and the Kentucky 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.

183. As a direct and proximate result of Defendant’s actions, which constitute unjust enrichment, Ms. Horn and the Kentucky Class suffered actual damages for which Defendant is liable.

184. It would be unjust for Defendant to retain the benefits it received from Ms. Horn and the Kentucky Class.

185. To date, Defendant has retained said benefits.

186. Ms. Horn and the Kentucky Class have no adequate remedy at law.

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

TENTH CLAIM FOR RELIEF

Unjust Enrichment
(On Behalf of a Florida Class)

188. Florida Plaintiffs Lori and Daniel Laskaris incorporate by reference the preceding paragraphs, excepting paragraphs which allege the existence of a valid contract.

189. The Laskarises assert, on behalf of themselves and all similarly situated Florida residents subject to the banking practices and loan policies described herein (the "Florida Class"), a common law claim for unjust enrichment.

190. Defendant was unjustly enriched by charging and collecting from the Laskarises and the Florida Class a usurious and/or excessive interest rate.

191. By unknowingly paying excessive interest and/or APR in an amount that exceeded the amount allowable by law the Laskarises and the Florida 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.

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

193. It would be unjust for Defendant to retain the benefits it received from the Laskarises and the Florida Class.

194. To date, Defendant has retained said benefits.

195. The Laskarises and the Florida Class have no adequate remedy at law.

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

ELEVENTH CLAIM FOR RELIEF

Unjust Enrichment
(On Behalf of a Michigan Class)

197. Michigan Plaintiff William Klopfenstein incorporates by reference the preceding paragraphs, excepting paragraphs which allege the existence of a valid contract.

198. Mr. Klopfenstein asserts, on behalf of himself and all similarly situated Michigan residents subject to the banking practices and loan policies described herein (the "Michigan Class"), a common law claim for unjust enrichment.

199. By means of Fifth Third Bank's wrongful conduct alleged herein, Fifth Third Bank knowingly provides banking services to Mr. Klopfenstein and members of the Michigan Class that are unfair, unconscionable and oppressive.

200. Fifth Third Bank knowingly received and retained wrongful benefits and funds from Mr. Klopfenstein and members of the Michigan Class. In so doing, Fifth Third Bank acted with conscious disregard for the rights of Mr. Klopfenstein and members of the Michigan Class.

201. As a result of Fifth Third Bank's wrongful conduct as alleged herein, Fifth Third Bank has been unjustly enriched at the expense of, and to the detriment of, Mr. Klopfenstein and members of the Michigan Class.

202. Fifth Third Bank's unjust enrichment is traceable to, and resulted directly and proximately from, the conduct alleged herein.

203. Under the Michigan common law doctrine of unjust enrichment, it is inequitable for Fifth Third Bank to be permitted to retain the benefits it received, and is still receiving,

without justification, from the imposition of Early Access fees on Mr. Klopfenstein and members of the Michigan Class in an unfair, unconscionable and oppressive manner.

204. Fifth Third Bank's retention of such funds under circumstances making it inequitable to do so constitutes unjust enrichment.

205. The financial benefits derived by Fifth Third Bank rightfully belong to Mr. Klopfenstein and members of the Michigan Class. Fifth Third Bank should be compelled to disgorge in a common fund for the benefit of Mr. Klopfenstein and members of the Michigan Class all wrongful or inequitable proceeds received by them. A constructive trust should be imposed upon all wrongful or inequitable sums received by Fifth Third Bank traceable to Mr. Klopfenstein and members of the Michigan Class.

206. Mr. Klopfenstein and members of the Michigan Class have no adequate remedy at law.

TWELFTH CLAIM FOR RELIEF

Unjust Enrichment
(On Behalf of an Indiana Class)

207. Indiana Plaintiff Adam McKinney incorporates by reference the preceding paragraphs, excepting paragraphs which allege the existence of a valid contract.

208. Mr. McKinney asserts, on behalf of himself and all similarly situated Indiana residents subject to the banking practices and loan policies described herein (the "Indiana Class"), a common law claim for unjust enrichment.

209. By means of Fifth Third Bank's wrongful conduct alleged herein, Fifth Third Bank knowingly provides banking services to Mr. McKinney and members of the Indiana Class that are unfair, unconscionable and oppressive.

210. Fifth Third Bank knowingly received and retained wrongful benefits and funds from Mr. McKinney and members of the Indiana Class. In so doing, Fifth Third Bank acted with conscious disregard for the rights of Plaintiffs and members of the Indiana Class.

211. As a result of Fifth Third Bank's wrongful conduct as alleged herein, Fifth Third Bank has been unjustly enriched at the expense of, and to the detriment of, Mr. McKinney and members of the Indiana Class.

212. Fifth Third Bank's unjust enrichment is traceable to, and resulted directly and proximately from, the conduct alleged herein.

213. Under the Indiana common law doctrine of unjust enrichment, it is inequitable for Fifth Third Bank to be permitted to retain the benefits it received, and is still receiving, without justification, from the imposition of Early Access fees on Mr. McKinney and members of the Indiana Class in an unfair, unconscionable and oppressive manner.

214. Fifth Third Bank's retention of such funds under circumstances making it inequitable to do so constitutes unjust enrichment.

215. The financial benefits derived by Fifth Third Bank rightfully belong to Mr. McKinney and members of the Indiana Class. Fifth Third Bank should be compelled to disgorge in a common fund for the benefit of Mr. McKinney and members of the Indiana Class all wrongful or inequitable proceeds received by them. A constructive trust should be imposed upon all wrongful or inequitable sums received by Fifth Third Bank traceable to Mr. McKinney and members of the Indiana Class.

216. Mr. McKinney and members of the Indiana Class have no adequate remedy at law.

THIRTEENTH CLAIM FOR RELIEF

Fraud
(On Behalf of an Ohio Class)

217. Ohio Plaintiffs Lyn and Donald Adanich incorporate by reference the preceding paragraphs.

218. Ohio Plaintiffs, on behalf of themselves and the Ohio Class, assert a common law claim for fraud.

219. Defendant represented to each member of the Ohio Class through the Early Access Terms & Conditions and on customers' bank statements that Early Access Loans carry an APR of 120%.

220. These representations were false. In fact, Fifth Third Early Access Loans regularly carry APRs of 1,000% or more and, in the case of each and every member of the Ohio Class, carried an APR of in excess of 120%.

221. Defendant knew that these APR representations were false.

222. Based upon these representations made by Defendant falsely and with intent to deceive, and in reasonable reliance on them, Ohio Plaintiffs and members of the Ohio Class were charged APRs in excess of that which was represented in Fifth Third's disclosures.

223. Defendant intended that Ohio Plaintiffs and members of the Ohio Class would rely on its representations and enter into these loan agreements.

224. Ohio Plaintiffs and members of the Ohio Class reasonably relied on the representation that Early Access Loans would carry a 120% APR.

225. Defendant's representations were material to inducing the Ohio Plaintiffs and members of the Ohio Class to take the loans and causing Ohio Plaintiffs and members of the

Ohio Class to believe that the Defendant would collect only the APR on each loan that they were actually owed.

226. As a direct and proximate result of Defendant's fraud, Ohio Plaintiffs and members of the Ohio Class have suffered damages by paying more than they owed.

227. Defendants engaged in this conduct in the same way to all members of the Ohio Class who reasonably relied thereon in similar fashion.

FOURTEENTH CLAIM FOR RELIEF

Fraud **(On Behalf of a Tennessee Class)**

228. Tennessee Plaintiff Brian Harrison incorporates by reference the preceding paragraphs.

229. Mr. Harrison, on behalf of himself and the Tennessee Class, asserts a common law claim for fraud.

230. Defendant represented to each member of the Tennessee Class through the Early Access Terms & Conditions and on the customers' bank statements that Early Access Loans carry an APR of 120%.

231. These representations were false. In fact, Fifth Third Early Access Loans regularly carry APRs of 1,000% or more and, in the case of each and every member of the Tennessee Class, carried an APR in excess of 120%

232. Defendant knew that these representations were false.

233. Based upon these representations made by Defendant falsely and with intent to deceive, and in reasonable reliance on them, Mr. Harrison and the Tennessee Class were charged APRs in excess of that which was represented in Fifth Third's disclosures.

234. Defendant intended that Mr. Harrison and the Tennessee Class would rely on its representations and enter into these loan agreements.

235. Mr. Harrison and the Tennessee Class reasonably relied on the representation that Early Access Loans would carry a 120% APR.

236. Defendant's representations were material to inducing Mr. Harrison and the Tennessee Class to take the loans and causing Mr. Harrison and the Tennessee Class to believe that the Defendant would collect only the APR on each loan that they were actually owed.

237. As a direct and proximate result of Defendant's fraud, Mr. Harrison and the Tennessee Class have suffered damages by paying more than they owed.

238. Defendants engaged in this conduct in the same way to all members of the Tennessee Class who reasonably relied thereon in similar fashion.

FIFTEENTH CLAIM FOR RELIEF

Fraud **(On Behalf of a Florida Class)**

239. Florida Plaintiffs Lori and Daniel Laskaris incorporate by reference the preceding paragraphs.

240. The Laskarises, on behalf of themselves and the Florida Class, assert a common law claim for fraud.

241. Defendant represented to each member of the Florida Class through the Early Access Terms & Conditions and on the customers' bank statements that Early Access Loans carry an APR of 120%.

242. These representations were false. In fact, Fifth Third Early Access Loans regularly carry APRs of 1,000% or more and, in the case of each and every member of the Florida Class, carried an APR in excess of 120%

243. Defendant knew that these representations were false.

244. Based upon these representations made by Defendant falsely and with intent to deceive, and in reasonable reliance on them, the Laskarises and the Florida Class were charged APRs in excess of that which was represented in Fifth Third's disclosures.

245. Defendant intended that the Laskarises and the Florida Class would rely on its representations and enter into these loan agreements.

246. The Laskarises and the Florida Class reasonably relied on the representation that Early Access Loans would carry a 120% APR.

247. Defendant's representations were material to inducing the Laskarises and the Florida Class to take the loans and causing the Laskarises and the Florida Class to believe that the Defendant would collect only the APR on each loan that they were actually owed.

248. As a direct and proximate result of Defendant's fraud, the Laskarises and the Florida Class have suffered damages by paying more than they owed.

249. Defendant engaged in this conduct in the same way to all members of the Florida Class who reasonably relied thereon in similar fashion.

SIXTEENTH CLAIM FOR RELIEF

Fraud **(On Behalf of an Indiana Class)**

250. Indiana Plaintiff Adam McKinney incorporates by reference the preceding paragraphs.

251. Mr. McKinney, on behalf of himself and the Indiana Class, asserts a common law claim for fraud.

252. Defendant represented to each member of the Indiana Class through the Early Access Terms & Conditions and on the customers' bank statements that Early Access Loans carry an APR of 120%.

253. These representations were false. In fact, Fifth Third Early Access Loans regularly carry APRs of 1,000% or more and, in the case of each and every member of the Indiana Class, carried an APR in excess of 120%

254. Defendant knew that these representations were false.

255. Based upon these representations made by Defendant falsely and with intent to deceive, and in reasonable reliance on them, Mr. McKinney and the Indiana Class were charged APRs in excess of that which was represented in Fifth Third's disclosures.

256. Defendant intended that Mr. McKinney and the Indiana Class would rely on its representations and enter into these loan agreements.

257. Mr. McKinney and the Indiana Class reasonably relied on the representation that Early Access Loans would carry a 120% APR.

258. Defendant's representations were material to inducing Mr. McKinney and the Indiana Class to take the loans and causing Mr. McKinney and the Indiana Class to believe that the Defendant would collect only the APR on each loan that they were actually owed.

259. As a direct and proximate result of Defendant's fraud, Mr. McKinney and the Indiana Class have suffered damages by paying more than they owed.

260. Defendant engaged in this conduct in the same way to all members of the Indiana Class who reasonably relied thereon in similar fashion.

SEVENTEENTH CLAIM FOR RELIEF

Violation of 815 ILCS 505/1 *et seq.* – The Illinois Consumer Fraud and Deceptive Business Practice Act (On Behalf of an Illinois Class)

261. Illinois Plaintiff Janet Fyock incorporates by reference the preceding paragraphs, excepting paragraphs which allege the existence of a valid contract.

262. Ms. Fyock, on behalf of herself and the Illinois Class, asserts a claim pursuant to the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1 *et seq.* (“ICFA”).

263. Pursuant to ICFA, unfair methods of competition and unfair or deceptive acts or practices, including, but not limited to, the use or employment of any deception fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the “Uniform Deceptive Trade Practices Act” in the conduct of any trade or commerce is declared unlawful, whether any person has in fact been misled, deceived or damaged thereby. In construing this section consideration shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to Section 5 (a) of the Federal Trade Commission Act.

264. In connection with the sales, marketing and administration of Fifth Third’s Early Access Program to Ms. Fyock and the Illinois Class, Defendant, through its employees, agents and representatives, have violated ICFA by engaging in the following unfair or deceptive acts or practices:

- a. Willfully charging an APR that exceeds the rate permitted by agreement of the parties.

b. Willfully charging an APR that exceeds the rate permitted by Illinois statute.

265. As a direct and proximate result of Defendant's unfair or deceptive acts or practices, Ms. Fyock and the Illinois Class were damaged.

266. Ms. Fyock used Defendant's Early Access Loans primarily for personal, family or household purposes.

267. Ms. Fyock and the Illinois Class are consumers within the meaning of ICFA 815 ILCS 505/1(e).

268. Defendant at all times acted intentionally, maliciously, willfully, outrageously and knowingly in charging Ms. Fyock and the Illinois Class an APR in excess of 120% on Early Access Loans. This conduct reflects a deliberate indifference to Ms. Fyock and the Illinois Class members' rights, entitling Ms. Fyock and the Illinois Class to an award of punitive damages.

269. In the event Ms. Fyock is the prevailing party, Ms. Fyock also seeks reasonable attorneys' fees and costs as provided under the ICFA.

270. Ms. Fyock and the Illinois Class are entitled to equitable relief, including disgorgement of monies unlawfully collected by Defendant and an injunction prohibiting Defendant from engaging in the same or similar practices described herein in the future.

EIGHTEENTH CLAIM FOR RELIEF

Violation of KRS 367.110 et seq. – The Kentucky Consumer Protection Act (On Behalf of a Kentucky Class)

271. Kentucky Plaintiff Diana Horn incorporates by reference the preceding paragraphs, excepting paragraphs which allege the existence of a valid contract.

272. Ms. Horn, on behalf of herself and the Kentucky Class, asserts for violation of the Kentucky Consumer Protection Act, KRS 367.110, et seq. ("KCPA").

273. Under the KCPA Defendant's banking practices, including the marketing of Early Access Loans and the willful charging of interest rates in violation of the law and/or its own consumer contract constitute "trade or commerce" within the meaning of KRS 367.170.

274. KCPA prohibits unfair, false, misleading, unconscionable or deceptive acts.

275. Under KCPA, Defendant had a statutory duty to refrain from engaging in deceptive trade practices in connection with advertising for the Early Access Program.

276. Under KCPA, Defendant breached its duty to refrain from engaging in deceptive trade practices in connection with advertising for the Early Access Program by advertising the APR associated with the Early Access Program as being 120%, when in fact the APR charged exceeded 120%.

277. Additionally, under KCPA, Defendant breached its duty to refrain from engaging in unfair and/or deceptive trade practices in connection with advertising for the Early Access Program by charging more than allowed under Kentucky law and the law of the United States.

278. Under KCPA, Defendant had a statutory duty to refrain from engaging in deceptive trade practices in connection with charging interest for the Early Access Program.

279. Under KCPA, Defendant breached its statutory duty to refrain from engaging in deceptive trade practices in connection with charging interest for the Early Access Program by charging interest that was higher than the rate advertised and/or agreed to.

280. Each of the aforementioned actions and failures to act of Defendant constitute unfair or unconscionable acts or practices in the conduct of trade or commerce, in violation of the KCPA.

281. As a result of said deceptive trade practices, Defendant has directly, foreseeably and proximately caused damages to Ms. Horn and the Kentucky Class. Defendant's policies and

practices as alleged herein constitute unfair trade practices under KCPA, as they offend the public policy of the state of Kentucky and the United States, are unethical, oppressive and unscrupulous, and cause substantial injury to Kentucky consumers, including the Ms. Horn and Kentucky Class.

282. Defendant's practices as alleged are immoral, unethical, oppressive or unscrupulous and cause substantial injury to consumers.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, demand a jury trial on all claims so triable and judgment as follows:

1. Declaring Fifth Third Bank's Early Access Loan policies, practices and disclosures to be wrongful, unfair and unconscionable and providing appropriate injunctive relief;
2. Restitution of all Early Access fees paid to Fifth Third Bank by Plaintiffs and the Class, as a result of the wrongs alleged herein in an amount to be determined at trial;
3. Disgorgement of the ill-gotten gains derived by Fifth Third Bank from its misconduct;
4. Actual damages in an amount according to proof;
5. Punitive and exemplary damages;
6. Statutory and actual damages sustained as a result of violating TILA, in an amount to be determined at trial, including statutory damages of at least twice the finance charge assessed on Plaintiff and each member of the Classes, and attorney's fees and costs in accordance with 15 U.S.C. 1640;

7. Statutory and actual damages sustained as a result of violating the EFTA, in an amount to be determined at trial, including all statutory damages authorized under EFTA statutory damages, and attorneys' fees and costs in accordance with 15 U.S.C. 1693;
8. Damages and penalties for violations of the state consumer protection acts identified herein.
9. Pre-judgment interest at the maximum rate permitted by applicable law;
10. Costs and disbursements assessed by Plaintiffs in connection with this action, including reasonable attorneys' fees pursuant to applicable law; and
11. Such other relief as this Court deems just and proper.

TRIAL BY JURY IS HEREBY DEMANDED.

Respectfully submitted,

s/ Stuart E. Scott

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Other Plaintiffs' Counsel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of October 2013, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF System. Copies will be served upon counsel of record by, and may be obtained through, the Court CM/ECF Systems.

s/ Stuart E. Scott

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Plaintiffs' Interim Class Counsel



Fifth Third Early Access SUMMARY OF KEY FEATURES and TERMS & CONDITIONS

Guide to Key Features of Fifth Third Early Access

- As a Fifth Third consumer checking customer, you may qualify for a line of credit that can be deposited immediately into your checking account for a cash advance. Fifth Third Early Access can help get you through a financial emergency by providing advance access to your next electronic direct deposit.
- **Please Note: This is an expensive form of credit. This feature is designed to help our customers meet their short-term borrowing needs and is not intended to provide a solution for longer-term financial needs. Appropriate emergencies might be a car repair, medical care for you or your family, or travel expenses in connection with your job. Alternative forms of credit may be less expensive and more suitable to your long-term financial needs. We do not recommend continued use of the service. If you decide to borrow, borrow only as much as you can afford to pay back with your next direct deposit as the amount advanced, plus the transaction fee, will be deducted from your next direct deposit. Contact a Fifth Third Banking Center for other credit options that are less expensive and may be more appropriate for your credit needs.**
- Fifth Third Early Access is a line of credit that allows eligible customers to borrow money from their next direct deposit. The borrowed funds are deposited directly into the customer's Associated Checking Account.
- Advances are automatically repaid from your next direct deposit of \$100 or more. Any automatic re-payment of your Advance from your direct deposit reduces the amount that would otherwise be available to you in your Associated Checking Account for other bills and expenses.
- Your maximum Credit Limit will be \$750 or 50% of your total eligible monthly direct deposits (based upon a 3 month average) rounded up to the next \$50 increment, whichever is lower, for average monthly direct deposits less than \$2,000. If your average monthly direct deposits total \$2,000 or more (based upon 3 month average), your maximum Credit Limit will be \$1,000.
- **The transaction fee is \$1 for every \$10 borrowed. This equates to an Annual Percentage Rate (APR) of 120%.**
- We may be able to offer you other credit options that are less expensive and more appropriate for your credit needs. If you would like more information about other possible credit options, please visit a Fifth Third Banking Center or call us at 1-800-972-3030.

Please review the **Fifth Third Early Access Frequently Asked Questions** and the **Fifth Third Early Access Agreement** for complete details online at www.53.com before you use Fifth Third Early Access.

FIFTH THIRD BANK EARLY ACCESS TERMS & CONDITIONS

Fifth Third Early Access is an open-end line of credit provided by Fifth Third Bank. This document provides the general terms and conditions that apply to your Fifth Third Early Access. Additional terms and disclosures may be provided to you separately, including the Rules and Regulations governing your Associated Checking Account (defined below), which together with these terms and conditions form the Fifth Third Early Access Agreement ("Agreement") between you and us. Please read these terms and conditions carefully and contact us with any questions. By using Fifth Third Early Access, you agree to the terms of this Agreement.

DEFINITIONS

In this Agreement, the words, "you" and "your" mean the borrower(s). If there is more than one, these words mean each borrower separately and all borrowers jointly. Your address, telephone number, and other identification information are as recorded in the Associated Checking Account records. You confirm that such checking account information is accurate, and you promise to keep it so. "We," "us," and "our" mean Fifth Third Bank. The "Associated Checking Account" is the consumer checking account to which Fifth Third Early Access is attached, and into which you receive direct deposits that meet the eligibility criteria specified in this Agreement. "Advance" means each transaction in which you access credit from Fifth Third Early Access. "Credit Limit" is the amount of credit available to you when using Fifth Third Early Access.

ELIGIBILITY

You will only be eligible to take an Advance from your Fifth Third Early Access if you meet the following eligibility criteria:

- You must have a Fifth Third Bank checking deposit account ("Associated Checking Account") that has been open for the past 90 (ninety) days and is in good standing, which does not include any of the following:
 - Fifth Third Student Checking.
 - Accounts held by minors.
 - Accounts titled as non-individual, such as trust, conservatorship/guardianship, custodial and representative payee accounts.
 - Accounts subject to legal process, such as a garnishment or levy, and accounts in a current bankruptcy proceeding.
 - Accounts in the charge-off process.
- You must be a resident of OH, KY, TN, MI, IL, FL, IN, and MO to be eligible for Fifth Third Early Access.
- The Associated Checking Account must have received at least one direct deposit of \$100 or more in two of previous four consecutive calendar months, one of which must have been received within the past 35 calendar days
- You may not have Fifth Third Early Access feature on more than one checking account.

CONTINUING ELIGIBILITY

After you have become eligible, your access to the Fifth Third Early Access may be restricted. If any of the following events occur, you may lose your ability to borrow funds using Fifth Third Early Access.

- If in each of six consecutive months you obtain Advance(s) up to the amount of your Credit Limit, you will be ineligible for an Advance for 30 days following the sixth such Advance.
- If your Associated Checking Account is continuously overdrawn for 10 consecutive days or more, you will not be eligible for an Advance for 60 days following the date your Associated Checking Account balance is brought to a zero or positive balance.
- If your Associated Checking Account is overdrawn on 20 or more occurrences in the previous two-month period, you will not be eligible for an Advance for 60 days commencing after the 20th overdraft occurrence.

- If your Associated Checking Account has 20 or more overdraft protection transfers in the current plus one previous calendar months, you will not be eligible for an Advance for 60 days after your Associated Checking Account has fewer than 20 overdraft protection transfers in the current plus one previous calendar month.
- If your available credit is less than the amount necessary to bring your Associated Checking Account balance to at least a zero balance, you will not be eligible for an additional Advance at that time.
- If your Associated Checking Account is in continuous overdraft status for more than 15 consecutive days, you will be in default of this Agreement, and we may close your Fifth Third Early Access feature. The amount of the outstanding Fifth Third Early Access balance and transaction fee will be added to the overdraft balance that you will be obligated to pay.
- If you move to a state in which Fifth Third Early Access is not offered; you will not be eligible for an Advance.
- If eligible direct deposits are terminated or for 60 days following the reestablishment of eligible direct deposits, you will not be eligible for an Advance. Failure to reestablish eligible direct deposits will result in your line of credit being blocked.
- If you are in default of this Agreement, you will not be eligible for Advances.
- If your Associated Checking Account is subject to legal process, such as a garnishment or levy, or is included in a current bankruptcy proceeding, you will not be eligible for an Advance.
- If your Associated Checking Account is in the charge-off process, you will not be eligible for an Advance.

FIFTH THIRD EARLY ACCESS AVAILABILITY

Fifth Third Early Access will become effective when this Agreement is signed by you and you comply with the criteria and the terms and conditions of this Agreement. For joint account holders, either account holder may utilize Fifth Third Early Access. If one or the other account holder wishes to make the account unavailable for Fifth Third Early Access, they may visit any Fifth Third Bank Banking Center or call us at 1-800-972-3030. If a joint holder makes Fifth Third Early Access unavailable, both joint holders must re-activate the account by visiting any Fifth Third Bank Banking Center.

ADVANCES

You may request an Advance via Internet Banking at www.53.com, by calling our automated customer service line at 1-800-972-3030, and at any Fifth Third Bank branch located in OH, KY, TN, MI, IL, FL, IN, and MO ("Eligible States"). Each Advance is deposited into your Associated Checking Account. If the Associated Checking Account has a negative available balance, the Advance will first be used to bring the available balance positive prior to any amount being available for withdrawal. Advances may be made in any amount up to your available limit, with a minimum Advance amount of \$1.00. For example, if your Associated Checking Account has a negative available balance of \$42.55, your minimum Advance amount must be \$43.00 to remove the negative balance in your Associated Checking Account. You may request multiple Advances up to your Credit Limit. If you find yourself in a situation where the funds in your checking account may be insufficient to cover checks or other items that will post to your deposit account, you may Advance on Fifth Third Early Access to avoid the overdraft. In order for an Advance to cover an overdraft item, the Advance must be completed before the item posts to your account.

CREDIT LIMIT

You may Advance up to your current Advance limit with a minimum Advance amount of \$1. You may make advances as often as you like; however, your total outstanding Advances may not exceed your Credit Limit. Your maximum Credit Limit will be \$750 or 50% of your total eligible monthly direct deposits (based on 3 month average) into your Associated Checking Account, rounded up to the nearest \$50 increment, whichever is lower, for monthly average direct deposits less than \$2,000. If your monthly average direct deposits total \$2,000 or more (based on 3 month average), your maximum Credit Limit will be \$1,000. If your direct deposit amounts decrease, your Credit Limit may also decrease.

The Bank reserves the right, at any time, and upon notice when required by applicable law, to modify your Credit Limit, including reducing the Credit Limit to \$0, based on your use of Fifth Third Early Access, your handling of the funds in your Associated Checking Account and other factors, at the Bank's sole discretion. You may review your Credit Limit on your monthly Associated Checking Account statement.

COOLING-OFF PERIOD DUE TO CONTINUOUS USAGE

If you Advance the maximum Credit Limit for 6 consecutive months, you will be ineligible to Advance any funds from Fifth Third Early Access for 30 days. At the expiration of this period, your Credit Limit will be recalculated based on the 3 previous months' eligible direct deposits into your Associated Checking Account.

INTEREST RATE AND FEES

Interest Rate

| | |
|---|-------------|
| Annual Percentage Rate (APR) for Cash Advances | 120% |
|---|-------------|

Fees

| | |
|-------------------------|---|
| Annual Fee | None |
| Transaction Fees | 10% of the amount of each cash Advance |
| • Cash Advance | |
| Penalty Fees | |
| • Late Payment | None |
| • Over-the-Credit Limit | None |

Billing Rights: Information on your rights to dispute transactions and how to exercise those rights is provided on page 5 of this Agreement.

Transaction (Cash Advance) Fee: A 10% transaction fee will be assessed for each dollar that you Advance through your Fifth Third Early Access account feature. For example, for every \$10 that you Advance, the transaction fee will be \$1; without regard to how long the Advance remains outstanding. This transaction fee will be reflected as an **Annual Percentage Rate (APR)** in the Fifth Third Early Access section of your checking account statement. The **APR** is a measure of the cost of credit, expressed as a yearly rate. The **Annual Percentage Rate** is calculated by dividing the transaction fee by the Advance amount and multiplying the quotient by the number of statement cycles within a year. For example, \$100 Advance with a \$10 transaction fee = $\$10/\$100 = 0.1\% \times 12 \text{ cycles} = \mathbf{120\% \text{ APR}}$.

REPAYMENT

You must repay each Advance and related transaction fee within 35 days. Any Advance and related transaction fees will automatically be deducted by the Bank from your Associated Checking Account at the time of your next direct deposit of \$100 or more. Any amount of \$100 or more that is electronically deposited directly into your Associated Checking Account (not through transfer between accounts or ATM deposits), regardless of the payment sources, will be eligible to be used as repayment of Advances and related transaction fees at the time of the deposit. If the funds from your direct deposit are not sufficient to cover your outstanding balance, the Bank will deduct as much of the balance as possible from that direct deposit at that time, resulting in an unpaid Fifth Third Early Access balance. If each Advance balance is not paid in full by the 35th day after the Advance was made, you authorize the Bank to automatically deduct this outstanding Advance balance and transaction fees from the funds in the Associated Checking Account ("automatic repayment").

If this "automatic repayment" overdraws your account or there are insufficient funds in your Associated Checking Account at that time, your account will become overdrawn when the outstanding Advance is repaid and any other transactions posting to your account that day would be subject to overdraft or insufficient fund fees. For example: If you Advance \$150 on January 1st and \$100 on January 15th and receive a direct deposit on January 20th in the amount of \$100, the amount of \$65 (\$150 Advance + \$15 transaction fee – \$100 direct deposit) will automatically be deducted from your Associated Checking Account on or about February 5th if the January 1st Advance balance is still outstanding.

You may make a manual payment to your outstanding Fifth Third Early Access balance at any time online through Fifth Third Bank's Internet Banking, by calling our automated customer service line, or at any Fifth Third Banking Center. Making a manual payment will not decrease the cost of the transaction fees for the Advances that you have made. Manual payments may be an option if the direct deposit is not large enough to pay off an Advance prior to the 35th day an Advance is outstanding or to avoid automatic payments from your Associated Checking Account at the payment due date.

APPLICATION OF PAYMENT

All Fifth Third Early Access payments will be applied first to any unpaid transaction fees and then to the unpaid principal balance. If the funds from your payment – whether from direct deposit, manual payment, or automatic payment at the due date – are not sufficient to repay the entire Advance and related transaction fees, then we will pay transaction fees first, and then apply as much of the payment funds as available to the unpaid principal balance.

CLOSURE OF YOUR CHECKING ACCOUNT

If you close your Associated Checking Account and there is an Advance balance due, the Bank will automatically deduct the balance due from your closing checking account balance. If there are insufficient funds in the Associated Checking Account to cover the Advance at the time the account is closed, you will still be obligated to pay the Advance balance. In the event this occurs, the Bank may, in its sole discretion, refuse to close the Associated Checking Account until all amounts due under this Agreement and the Rules and Regulations governing the Associated Checking Account are paid.

STATEMENTS

Details of the Advances you made, transaction fees incurred, outstanding balances, payments, and credits, and your Credit Limit will appear on your monthly Associated Checking Account statement.

YOUR BILLING RIGHTS. KEEP THIS NOTICE FOR FUTURE USE.

This notice contains important information about your rights and our responsibilities under the Fair Credit Billing Act.

NOTIFY US IN CASE OF ERRORS OR QUESTIONS ABOUT YOUR BILL

If you have a question or think there is an error concerning your Fifth Third Early Access, you should write to us at the address on your Associated Checking Account statement as soon as possible. We must hear from you within 60 days after we sent you the first statement with the information in question. You can telephone us, but doing so will not preserve your rights.

In your letter, give us the following information:

- Your name and account number.
- The dollar amount of the suspected error.
- Describe the error and explain why you believe there is an error. If you need more information, describe the item you are unsure about.

You have authorized us to pay your Fifth Third Early Access balance automatically from your Associated Checking Account and you can stop the payment on any amount you think is wrong. To stop payment, your letter must reach us three business days before the automatic payment is scheduled to occur.

YOUR RIGHTS AND OUR RESPONSIBILITIES AFTER WE RECEIVE YOUR WRITTEN NOTICE

We must acknowledge your letter within 30 days, unless we have corrected the error by then. Within 90 days, we must either correct the error or explain why we believe the bill was correct. After we receive your letter, we cannot try to collect any amount you question, or report you as delinquent. We can continue to bill you for the amount you question, including transaction fees, and we can apply any unpaid amount against your Credit Limit. You do not have to pay any questioned amount while we are investigating, but you are still obligated to pay the parts of your bill that are not in question. If we find that we made a mistake on your bill, you will not have to pay any transaction fees related to any questioned amount. If we didn't make a mistake, you may have to pay transaction fees, and you will have to make up any missed payments on the questioned amount. In either case, we will send you a statement of the amount you owe and the date that it is due. If you fail to pay the amount that we think you owe, we may report you as delinquent. However, if our explanation does not satisfy you and you write to us within ten days telling us that you still refuse to pay, we must tell anyone we report you to that you have a question about your bill. And, we must tell you the name of anyone we reported you to. When the matter is resolved, we must tell anyone we report you to that it has been settled. If we don't follow these rules, we can't collect the first \$50 of the questioned amount, even if your bill was correct.

DEFAULT AND REMEDIES

You will be in default of the Agreement if any of the following circumstances occur:

- If you move to a state where Fifth Third does not offer Fifth Third Early Access.
- If your account is assigned to a banking center in a state where Fifth Third does not offer Fifth Third Early Access.
- If you fail to meet the eligibility criteria specified in the ELIGIBILITY section of this Agreement.
- If you violate any terms of your Associated Checking Account agreement, you will be in default of this Agreement.
- If there has been fraud or material misrepresentation by you in connection with Fifth Third Early Access or the Associated Checking Account.
- If you fail to meet the repayment terms of Fifth Third Early Access.
- Your actions or inactions have adversely affected our security interest in the Associated Checking Account.
- Your death.
- If the Associated Checking Account is closed.

In the event you default under this Agreement, we have the following rights and remedies in addition to any other rights and remedies we have by law. These rights are in addition to the actions we may take based on your failure to meet the eligibility requirements, including suspending your right to obtain Advances. Our rights are subject to any applicable notice and right to cure.

- If you are in default (and subject to any applicable notice requirement and right to cure) we may:
 - Require you to pay the entire unpaid balance of principal and transaction fees before the scheduled due date.
 - Set off the debt against any account you have with us.
 - Terminate or suspend your right to further Advances under this Agreement.
 - Pursue any other method permitted by law to collect a debt.

CHANGE IN TERMS

We reserve the right to change the terms of this Agreement at any time by providing notice to you of such changes. Such changes may apply to any outstanding Advances as well as to future Advances. By continuing to use Fifth Third Early Access or keeping your Associated Checking Account open, you are accepting the change in terms, or you may decline the change in terms by no longer using Fifth Third Early Access prior to the effective date of the change or by requesting that access to the feature be discontinued.

ELECTRONIC COMMUNICATIONS

If you enroll in Fifth Third Early Access electronically, all of the disclosures related to this line of credit may be provided electronically and you will be able to review them online. In addition to downloading and printing them, you may request a paper copy of the disclosures at no cost to you. In order to complete the online account enrollment process, you must consent to receive this information electronically. Your consent to receive this information electronically applies only to the disclosures you view online in connection with enrolling in this product feature. In addition, you must have the necessary software and equipment to review, download, print and retain the electronic disclosures. If you do not agree to the disclosures electronically, you may visit your nearest Fifth Third banking center to enroll in this product feature.

ALTERNATIVE FORMS OF CREDIT

Fifth Third Early Access is designed to fulfill a short-term funding need and not for use as a continuous source of funds for basic financial maintenance. Please contact us to discuss alternative credit services that may be less expensive and more suited to your individual financial needs. By requesting an Advance, you acknowledge and agree that you have had an opportunity to consider other credit products or services and understand Fifth Third Early Access to be an appropriate service based on your needs.

APPLICABLE LAW

You understand that we are a state-chartered bank located in Ohio. The law that will apply to this Agreement as to issues related to interest and related charges will be the law of the State of Ohio.

SECURITY INTEREST IN ASSOCIATED CHECKING ACCOUNT

You acknowledge and agree that Fifth Third, for itself and as agent for any affiliate of Fifth Third Bancorp, is granted a security interest in, and may, at any time, set off, against any balance in the Associated Checking Account any debt owed to Fifth Third by any person having the right to make Advances using Fifth Third Early Access. A debt includes, but is not limited to, any unpaid Advance. This security interest is subordinate to any right of setoff we have against your Associated Checking Account.

ADDITIONAL PARTIES

You cannot add a person to your Associated Checking Account with authority to make withdrawals unless that person agrees to assume responsibility for this Agreement, including any outstanding balance at that time, unless you pay off any balance and terminate this Agreement.

FOR EXECUTIVE OFFICERS

Notwithstanding any other provision of this Agreement, we have the option to terminate Fifth Third Early Access and make the entire outstanding balance immediately due and payable if:

- You are or become an executive officer of ours, and
- Your indebtedness to any bank or number of banks, in the aggregate, exceeds the amount (in any regulated category) permitted to an executive officer under Federal law.

“Federal law” includes regulations and interpretations of federal agencies. “Your indebtedness” includes any debts attributed to you by Federal law.

COSTS OF COLLECTION

You agree to pay the costs we incur to collect this debt in the event of your default as applicable laws. In the event we have to collect this note through your bankruptcy proceeding, voluntary or otherwise, and without regard to your state of residence, these costs will include our reasonable attorney’s fees and other related collection costs to the extent allowed by applicable law, for an attorney who is not our salaried employee, in the bankruptcy proceedings.

Account Number:

Name:

Address:

Date:

Signature:

