

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

In re: Fifth Third Early Access Cash Advance
Litigation

Case No. 1:12-cv-00851-MRB

Judge Michael R. Barrett

FIRST AMENDED ANSWER

Defendant Fifth Third Bank amends its answer to the consolidated class-action complaint, with written consent from opposing counsel and pursuant to Rule 15(a)(2) of the Federal Rules of Civil Procedure, as follows:

1. Paragraph 1 of the complaint is a legal conclusion to which no response is required. To the extent a response is required, Fifth Third denies the allegations set forth in paragraph 1 of the complaint. Fifth Third further states that it complied with all applicable laws, that it properly charged Early Access customers for their cash advances, and that the Early Access Terms & Conditions clearly, accurately, and repeatedly disclosed the fee charged for each transaction and the method by which the annual percentage rate was calculated.
2. Fifth Third admits the allegations set forth in paragraph 2 of the complaint.
3. Paragraph 3 of the complaint does not contain any allegations against Fifth Third for it to admit or deny.
4. Fifth Third admits that it offered an open-end line of credit called Early Access. Fifth Third denies the remaining allegations set forth in paragraph 4 of the complaint.
5. Fifth Third admits that Early Access advances are deposited into eligible customers' checking accounts upon request, and that advances may be repaid from eligible direct deposits. Fifth Third denies the remaining allegations set forth in paragraph 5 of the complaint.

6. Fifth Third states that the Early Access Terms & Conditions speaks for itself and no response is necessary.

7. Fifth Third states that the documents referred to in paragraph 7 of the complaint speak for themselves and no response is necessary.

8. Fifth Third denies the allegations set forth in paragraph 8 of the complaint.

9. Fifth Third denies the allegations set forth in paragraph 9 of the complaint.

10. Fifth Third denies the allegations set forth in paragraph 10 of the complaint.

11. Fifth Third denies the allegations set forth in paragraph 11 of the complaint.

12. Fifth Third denies the allegations set forth in paragraph 12 of the complaint.

13. Fifth Third lacks knowledge and information sufficient to form a belief as to the truth of allegations set forth in paragraph 13 of the complaint.

14. Fifth Third lacks knowledge and information sufficient to form a belief as to the truth of allegations set forth in paragraph 14 of the complaint.

15. Fifth Third lacks knowledge and information sufficient to form a belief as to the truth of allegations set forth in paragraph 15 of the complaint.

16. Fifth Third lacks knowledge and information sufficient to form a belief as to the truth of allegations set forth in paragraph 16 of the complaint.

17. Fifth Third lacks knowledge and information sufficient to form a belief as to the truth of allegations set forth in paragraph 17 of the complaint.

18. Fifth Third lacks knowledge and information sufficient to form a belief as to the truth of allegations set forth in paragraph 18 of the complaint.

19. Fifth Third lacks knowledge and information sufficient to form a belief as to the truth of allegations set forth in paragraph 19 of the complaint.

20. Fifth Third admits the allegations set forth in paragraph 20 of the complaint.

21. Fifth Third admits that venue is proper in this district but denies the remaining allegations set forth in paragraph 21 of the complaint.

22. Fifth Third states that the allegations set forth in paragraph 22 of the complaint are legal conclusions to which no response is necessary.

23. Fifth Third states that the allegations set forth in paragraph 23 of the complaint are legal conclusions to which no response is necessary.

24. Fifth Third states that the allegations set forth in paragraph 24 of the complaint are legal conclusions to which no response is necessary.

25. Fifth Third admits that venue is proper in this district, that the Court has personal jurisdiction over it, and that it regularly conducts business in this district. Fifth Third denies the remaining allegations set forth in paragraph 25 of the complaint.

26. Fifth Third admits that customers residing in Ohio, Kentucky, Michigan, Illinois, Indiana, Tennessee, Missouri, and Florida could sign up for an Early Access open-end line of credit until January 31, 2014. Fifth Third denies the remaining allegations set forth in paragraph 26 of the complaint.

27. Fifth Third states that the document referred to in paragraph 27 of the complaint speaks for itself and no response is necessary.

28. This allegation relates only to a claim that the Court rejected in its March 30, 2015 Opinion & Order (Dkt. No. 89) and therefore no response is required. To the extent a response is required, Fifth Third denies the allegations set forth in paragraph 28 of the complaint.

29. Fifth Third states that the documents referred to in paragraph 29 of the complaint speak for themselves and no response is necessary.

30. Fifth Third states that the document referred to in paragraph 30 of the complaint speaks for itself and no response is necessary.

31. Fifth Third states that the document referred to in paragraph 31 of the complaint speaks for itself and no response is necessary.

32. Fifth Third denies the allegations set forth in paragraph 32 of the complaint.

33. Fifth Third denies the allegations set forth in paragraph 33 of the complaint.

34. Fifth Third states that the document referred to in paragraph 34 of the complaint speaks for itself and no response is necessary.

35. Fifth Third denies the allegations set forth in paragraph 35 of the complaint.

36. Fifth Third states that the documents referred to in paragraph 36 of the complaint speak for themselves and no response is necessary. Fifth Third denies the remaining allegations against it set forth in paragraph 36 of the complaint.

37. Fifth Third states that the document referred to in paragraph 37 of the complaint speaks for itself and no response is necessary.

38. Fifth Third denies the allegations set forth in paragraph 38 of the complaint.

39. Fifth Third states that the document referred to in paragraph 39 of the complaint speaks for itself and no response is necessary.

40. Fifth Third denies the allegations set forth in paragraph 40 of the complaint.

41. Fifth Third denies the allegations set forth in paragraph 41 of the complaint.

42. Fifth Third denies the allegations set forth in paragraph 42 of the complaint.

43. Fifth Third denies the allegations set forth in paragraph 43 of the complaint.

44. Fifth Third denies the allegations set forth in paragraph 44 of the complaint.

45. Fifth Third denies the allegations set forth in paragraph 45 of the complaint.

46. Fifth Third states that the document referred to in paragraph 46 of the complaint speaks for itself and no response is necessary.

47. Fifth Third states that the document referred to in paragraph 47 of the complaint speaks for itself and no response is necessary. To the extent a response is required, Fifth Third denies the allegations set forth in paragraph 47 of the complaint.

48. This allegation relates only to a claim that the Court rejected in its March 30, 2015 Opinion & Order (Dkt. No. 89) and therefore no response is required. To the extent a response is required, Fifth Third states that the Early Access Terms & Conditions speaks for itself and no response is necessary.

49. Fifth Third states that the document referred to in paragraph 49 of the complaint speaks for itself and no response is necessary.

50. Fifth Third states that the Early Access Terms & Conditions speaks for itself and no response is necessary.

51. Fifth Third denies the allegations set forth in paragraph 51 of the complaint.

52. Fifth Third states that the Early Access Terms & Conditions speaks for itself and no response is necessary.

53. Fifth Third admits that Lyn and Donald Adanich had a checking account with Fifth Third from July 2004 through August 2012. Fifth Third denies the remaining allegations set forth in paragraph 53 of the complaint.

54. Fifth Third admits that the Adaniches have repaid certain of their Early Access advances within one week, but denies the remaining allegations set forth in paragraph 54 of the complaint.

55. Fifth Third denies the allegations set forth in paragraph 55 of the complaint.

56. Fifth Third admits the allegations regarding the timing and amount of the Early Access advances alleged in paragraph 56 of the complaint, subparts (a) and (b), but denies the remaining allegations set forth in paragraph 56 of the complaint.

57. Fifth Third admits the allegations set forth in paragraph 57 of the complaint.

58. Fifth Third denies the allegations set forth in paragraph 58 of the complaint.

59. Fifth Third denies the allegations set forth in paragraph 59 of the complaint.

60. Fifth Third admits that more than 30 days did not pass between any of Ms. Fyock's Early Access advances and her next direct deposit, and that certain of her Early Access advances were repaid in less than one week, but denies the remaining allegations set forth in paragraph 60 of the complaint.

61. Fifth Third denies the allegations set forth in paragraph 61 of the complaint.

62. Fifth Third admits the allegations regarding the timing and amount of the Early Access advances alleged in paragraph 62 of the complaint, subparts (a) through (h), but denies the remaining allegations set forth in paragraph 62 of the complaint.

63. Fifth Third admits the allegations set forth in paragraph 63 of the complaint.

64. Fifth Third admits that Mr. Harrison received direct deposits bi-weekly while he participated in the Early Access program.

65. Fifth Third denies the allegations set forth in paragraph 65 of the complaint.

66. Fifth Third admits that more than 30 days did not pass between any of Mr. Harrison's Early Access advances and his next direct deposit, but denies the remaining allegations set forth in paragraph 66 of the complaint.

67. Fifth Third denies the allegations set forth in paragraph 67 of the complaint.

68. Fifth Third admits that Diana Horn had a checking account with Fifth Third from June 2002 through September 2014. Fifth Third denies the remaining allegations set forth in paragraph 68 of the complaint.

69. Fifth Third denies the allegations set forth in paragraph 69 of the complaint.

70. Fifth Third admits that Ms. Horn has repaid certain of her Early Access advances within one week, but denies the remaining allegations set forth in paragraph 70 of the complaint.

71. Fifth Third denies the allegations set forth in paragraph 71 of the complaint.

72. Fifth Third admits the allegations regarding the timing and amount of the Early Access advances alleged in paragraph 72 of the complaint, subparts (a) and (b), but denies the remaining allegations set forth in paragraph 72 of the complaint.

73. Fifth Third admits the allegations set forth in paragraph 73 of the complaint.

74. Fifth Third denies the allegations set forth in paragraph 74 of the complaint.

75. Fifth Third denies the allegations set forth in paragraph 75 of the complaint.

76. Fifth Third admits that more than 30 days did not pass between any of Mr. Klopfenstein's Early Access advances and his next direct deposit, but denies the remaining allegations set forth in paragraph 76 of the complaint.

77. Fifth Third denies the allegations set forth against it in paragraph 77 of the complaint.

78. Fifth Third admits the allegations regarding the timing and amount of the Early Access advances alleged in paragraph 78 of the complaint, subparts (a) through (f), but denies the remaining allegations set forth in paragraph 78 of the complaint.

79. Fifth Third admits the allegations set forth in paragraph 79 of the complaint.

80. Fifth Third denies the allegations set forth in paragraph 80 of the complaint.

81. Fifth Third admits that the Laskarises have taken multiple Early Access advances. Fifth Third denies the remaining allegations set forth in paragraph 81 of the complaint.

82. Fifth Third admits that more than 30 days did not pass between any of the Laskarises' Early Access advances and their next direct deposit, and that certain of their Early

Access advances were repaid in less than one week, but denies the remaining allegations set forth in paragraph 82 of the complaint.

83. Fifth Third denies the allegations set forth in paragraph 83 of the complaint.

84. Fifth Third admits the allegations regarding the timing and amount of the Early Access advances alleged in paragraph 84 of the complaint, subparts (a) through (f), but denies the remaining allegations set forth in paragraph 84 of the complaint.

85. Fifth Third admits that Adam McKinney had a checking account with Fifth Third from March 2007 through February 2014. Fifth Third denies the remaining allegations in paragraph 85 of the complaint.

86. Fifth Third denies the allegation set forth in paragraph 86 of the complaint.

87. Fifth Third admits that Mr. McKinney took approximately 20 Early Access advances but denies the remaining allegations set forth in paragraph 87 of the complaint.

88. Fifth Third admits that more than 30 days did not pass between any of Mr. McKinney's Early Access advances and his next direct deposit, but denies the remaining allegations set forth in paragraph 88 of the complaint.

89. Fifth Third denies the allegations set forth in paragraph 89 of the complaint.

90. Fifth Third admits the allegations regarding the timing and amount of the Early Access advances alleged in paragraph 90 of the complaint, subparts (a), (b), (d), and (e), but denies the remaining allegations set forth in paragraph 90 of the complaint

91. Paragraph 91 contains no allegations to admit or deny. Fifth Third further states that it denies that any class should be certified in this action.

92. Paragraph 92 contains no allegations to admit or deny. Fifth Third further states that it denies that any class should be certified in this action.

93. Paragraph 93 contains no allegations to admit or deny. Fifth Third further states that it denies that any class should be certified in this action.

94. Paragraph 94 contains no allegations to admit or deny. Fifth Third further states that it denies that any class should be certified in this action.

95. Fifth Third denies the allegations set forth in paragraph 95 of the complaint.

96. The allegations set forth in paragraph 96 of the complaint set forth a legal conclusion to which no response is required. To the extent a response is required, Fifth Third denies the allegations set forth in paragraph 96 of the complaint.

97. The allegations set forth in paragraph 97 of the complaint set forth a legal conclusion to which no response is required. To the extent a response is required, Fifth Third denies the allegations set forth in paragraph 97 of the complaint.

98. The allegations set forth in paragraph 98 of the complaint set forth a legal conclusion to which no response is required. To the extent a response is required, Fifth Third denies the allegations set forth in paragraph 98 of the complaint.

99. The allegations set forth in paragraph 99 of the complaint set forth a legal conclusion to which no response is required. To the extent a response is required, Fifth Third denies the allegations set forth in paragraph 99 of the complaint.

100. The allegations set forth in paragraph 100 of the complaint set forth a legal conclusion to which no response is required. To the extent a response is required, Fifth Third denies the allegations set forth in paragraph 100 of the complaint.

101. The allegations set forth in paragraph 101 of the complaint set forth a legal conclusion to which no response is required. To the extent a response is required, Fifth Third denies the allegations set forth in paragraph 101 of the complaint.

102. The allegations set forth in paragraph 102 of the complaint set forth a legal conclusion to which no response is required. To the extent a response is required, Fifth Third denies the allegations set forth in paragraph 102 of the complaint.

103. The allegations set forth in paragraph 103 of the complaint set forth a legal conclusion to which no response is required. To the extent a response is required, Fifth Third denies the allegations set forth in paragraph 103 of the complaint.

104. The allegations set forth in paragraph 104 of the complaint set forth a legal conclusion to which no response is required. To the extent a response is required, Fifth Third denies the allegations set forth in paragraph 104 of the complaint.

105. The allegations set forth in paragraph 105 of the complaint set forth a legal conclusion to which no response is required. To the extent a response is required, Fifth Third denies the allegations set forth in paragraph 105 of the complaint.

FIRST CLAIM FOR RELIEF (TILA)

106. Fifth Third incorporates by reference its answers to the preceding paragraphs.

107. Fifth Third states that the documents referred to in paragraph 107 of the complaint speak for themselves and no response is necessary.

108. The allegations set forth in paragraph 108 of the complaint set forth a legal conclusion to which no response is required. Fifth Third further states that the Truth in Lending Act speaks for itself.

109. Fifth Third denies the allegations set forth in paragraph 109 of the complaint.

110. Fifth Third denies the allegations set forth in paragraph 110 of the complaint.

111. Fifth Third denies the allegations set forth in paragraph 111 of the complaint.

112. Fifth Third denies the allegations set forth in paragraph 112 of the complaint.

113. Fifth Third denies the allegations set forth in paragraph 113 of the complaint.

114. Fifth Third denies the allegations set forth in paragraph 114 of the complaint.

FOURTH CLAIM FOR RELIEF (BREACH OF CONTRACT)

129. Fifth Third incorporates by reference its answers to the preceding paragraphs.

130. Fifth Third admits that plaintiffs have entered into contracts with Fifth Third providing them access to the Early Access line of credit but denies the remaining allegations set forth in paragraph 130 of the complaint.

131. Fifth Third denies the allegations set forth in paragraph 131 of the complaint.

132. Fifth Third denies the allegations set forth in paragraph 132 of the complaint.

133. Fifth Third denies the allegations set forth in paragraph 133 of the complaint.

134. Fifth Third denies the allegations set forth in paragraph 134 of the complaint.

SECOND, THIRD, AND FIFTH THROUGH EIGHTEENTH CLAIMS FOR RELIEF

Paragraphs 115 through 128 and 135 through 282 of the complaint do not require a response because the Court dismissed these claims with prejudice in its March 30, 2015 Opinion & Order, Dkt. No. 89.

283. Fifth Third denies that plaintiffs are entitled to any of the relief requested in their prayer for relief.

284. Fifth Third denies each and every allegation in the complaint that is not specifically admitted.

AFFIRMATIVE DEFENSES

285. Plaintiffs' Truth in Lending Act claim is barred because Fifth Third's actions were taken in good faith and in conformity with the rules and regulations promulgated by and interpretations of the Federal Reserve Board of Governors and/or the Consumer Financial Protection Bureau.

286. Plaintiffs' claims are barred because any violation of the Truth in Lending Act would be a bona fide and unintentional error.

287. Plaintiffs' claims are barred by the doctrines of waiver, estoppel, and/or ratification.

288. Plaintiffs' breach of contract claim is barred by the voluntary payment doctrine.

289. Plaintiffs' breach of contract claim is barred because Fifth Third was required to disclose the APR under the Truth in Lending Act. Good faith compliance with the Truth in Lending Act provides a safe harbor to common law claims.

290. Plaintiffs' claims are barred because they failed to notify Fifth Third of any alleged errors or questions about their statements within the period allotted by the contract.

291. Plaintiffs' claims are barred in whole or in part by their failure to mitigate damages, if any.

291. Plaintiffs' claims are barred in whole or in part by the doctrine of laches.

292. Plaintiffs' claims are barred in whole or in part by the applicable statutes of limitations.

293. Fifth Third reserves the right to assert any additional defenses that might come to its attention or might be developed during this action.

* * *

Having fully answered the complaint and asserted its affirmative defenses, Fifth Third requests that this Court enter judgment for Fifth Third on plaintiffs' claims and award Fifth Third its costs for defending this action, including interest and attorney's fees, and any other relief that this Court deems just or proper.

Respectfully submitted,

/s/ Karl Fanter

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CERTIFICATE OF SERVICE

I certify that on October 16, 2019, the foregoing was filed using the Court's CM/ECF system and, therefore, that a true and correct copy of the foregoing will be delivered electronically by the CM/ECF system to all registered parties.

/s/ Karl Fanter

One of the attorneys for Fifth Third Bank