

12-Person Jury

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Hearing Date: 8/28/2020 10:00 AM - 10:00 AM
Courtroom Number: 2405
Location: District 1 Court
Cook County, IL

FILED
4/29/2020 5:33 PM
DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
2020CH04022

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

9167514

JOANNE ZANNI, on behalf of)
herself and all other persons similarly)
situated, known and unknown,)
)
Plaintiff,)
)
v.)
)
FIFTH THIRD BANCORP and)
FIFTH THIRD BANK, NATIONAL)
ASSOCIATION)
)
Defendants.)

Case No. 2020CH04022

Judge

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff Joanne Zanni (“Zanni” or “Plaintiff”), individually and on behalf of all others similarly situated, as class representative, hereby files this Class Action Complaint against Defendants Fifth Third Bancorp and Fifth Third Bank, National Association (collectively, “Fifth Third” or “Defendants”). Plaintiff states the following based on information and belief and investigation of counsel:

INTRODUCTION

1. Fifth Third Bancorp is a diversified financial services company headquartered in Cincinnati, Ohio and is the indirect holding company of Fifth Third Bank, National Association, a national banking association headquartered in Cincinnati, Ohio.¹

2. Fifth Third operates four main businesses: Commercial Banking, Branch Banking, Consumer Lending and Wealth & Asset Management. Fifth Third is among the largest money managers in the Midwest and, as of December 31, 2019, had \$413 billion in assets under care, of

¹ SEC filings, Fifth Third Bancorp, Annual Report (10-K), at 19 (Dec. 31, 2019).

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which it managed \$49 billion for individuals, corporations and not-for-profit organizations.²

3. As of December 31, 2019, Fifth Third had \$169 billion in assets and operates 1,149 full-service Banking Centers and 2,481 Fifth Third branded ATMs in Ohio, Kentucky, Indiana, Michigan, Illinois, Florida, Tennessee, West Virginia, Georgia and North Carolina.³

4. Fifth Third uses a “cross-sell” strategy to increase the total number of products and services it provided to existing customers. To further this cross-sell strategy, and to increase the number of products and services it provided to existing customers, Fifth Third conditioned employee-performance ratings and, in some instances, continued employment on whether managers and their subordinate employees met ambitious sales goals. Fifth Third also used an incentive-compensation program that rewarded managers and their subordinate employees for selling new products and services to existing customers.

5. The pressure to meet Fifth Third’s sales goals is well documented among its employees.

3.0

Sales, sales, sales

LICENSED PERSONAL BANKER (Former Employee) - Louisville, KY - November 5, 2019

The job was great when we were building relationships and selling the customers products they needed or would benefit them. Then it changes to a sales only job, sell every customer even if they do not need or want the product. There were customers with 10 savings accounts with the minimum deposit and no activity the customers didn't even know they had them and credit card applications they were tricked into getting

Was this review helpful?

Yes 1

No

² *Id.*

³ *Id.*

1.0**Poor Culture, Useless Management, Lacking Leadership,**Personal Banker II (Former Employee) - [Dayton, OH](#) - July 26, 2019

This place may have been great at one point, but it is currently in a swan dive. They desperately bought a Chicago area bank in a bid to expand, and then laid off half of their staff. Here on the Ohio front, Branch Managers only care when they can share gossip. Regional are so out of touch with how a branch runs that they have no clue that expectations for metrics are unreasonable. If you personally don't force loans down everyone's throat they will show you the door.

Was this review helpful?

 Yes 3
 No
3.0**Sales**Personal Banker (Former Employee) - [Mount Vernon, IL](#) - May 19, 2018

The banker role at this company is high paced selling with a great deal of management oversight. Meeting sales goals is required. Over-time is not allowed.

Was this review helpful?

 Yes 1
 No

<https://www.indeed.com/cmp/Fifth-Third-Bank/reviews?start=540>

5/10

1.0**Not good**Client Service Representative (Former Employee) - [Orlando, FL](#) - August 6, 2018

My worst job out of college. Pressure sales and no room for growth. I couldn't wait to leave. I would try to avoid this bank at any cost. Nobody that I knew works there anymore.

Was this review helpful?

 Yes 3
 No

6. As a result of this practice, Fifth Third's employees, without consumers' knowledge or consent, opened accounts in consumers' names; transferred funds from consumers' existing accounts to new, improperly opened accounts; issued credit cards; enrolled consumers in online-banking services; and opened lines of credit on consumers' accounts.

7. After years of engaging in this practice, on January 30, 2020, Fifth Third issued a letter to customers regarding the exposure of their personal information. **Exhibit A**, Letter from Fifth Third Bank re "Important Information Regarding Your Personal Information" ("Letter"). The

Letter goes on to state that former employees misused customers' sensitive information dating back to June 2018. *Id.*

8. Due to Defendants unlawful practices described herein, Fifth Third is currently facing multiple lawsuits. In that regard, on March 9, 2020, the Bureau of Consumer Financial Protection, filed suit against Fifth Third alleging its conduct resulted in financial harm to consumers.⁴ Similarly, on April 7, 2020, Fifth Third stockholders filed a complaint alleging Fifth Third's knowing disregard for this unlawful practice resulted in a financial loss to investors.⁵

9. In response to these actions, Fifth Third's Chief Legal Officer, Susan Zaunbrecher publicly admitted that the fraudulent activities engaged in by Fifth Third's employees has resulted in improper charges to customers of the bank.⁶

10. Now, Plaintiff brings this action on behalf of herself and similarly situated consumers under 735 ILCS 5/2-801 to recover damages under the Illinois Consumer Fraud Act ("ICFA"), 815 ILCS 505/2, *et seq.*, the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. §§ 1681, *et seq.*, and other state law claims.

THE PARTIES

Plaintiff

Joanne Zanni

11. Plaintiff is an adult individual who is a resident of Lake Forest, Illinois.

12. Plaintiff was a customer of Fifth Third from in or around 2009 through February 2020. Plaintiff obtained Fifth Third products and services at the Fifth Third Banking Center located at 990 S Waukegan Rd, Lake Forest, Illinois 60045.

⁴ *Bureau of Consumer Financial Protection v. Fifth Third Bank, National Association*, No. 20 Civ. 01683, Dkt. No. 1 (N.D. Illinois).

⁵ *Christakis v. Fifth Third Bancorp, et al.*, No. 20 Civ. 02176, Dkt. No. 1, (N.D. Illinois).

⁶ *Fifth Third Bancorp Rejects Charges in CFPB's Civil Lawsuit* (March 9, 2020), <https://www.53.com/content/fifth-third/en/media-center/press-releases/2020/press-release-2020-03-09.html> (last visited April 21, 2020).

13. Plaintiff is a natural person, and at all times relevant hereto was a “consumer” as defined by the ICFA and the FCRA.

Defendants

Fifth Third Bancorp

14. Defendant Fifth Third Bancorp is a foreign business corporation organized and existing under the laws of Ohio.

15. Defendant Fifth Third Bancorp’s principal executive office is located at 38 Fountain Square Plaza, Cincinnati, Ohio 45263.

Fifth Third Bank, National Association

16. Defendant Fifth Third Bank, National Association is a foreign business corporation organized and existing under the laws of Ohio.

17. Defendant Fifth Third Bank, National Association’s principal executive office is located at 38 Fountain Square Plaza, Cincinnati, Ohio 45263.

JURISDICTION AND VENUE

18. This Court has personal jurisdiction over Defendants because, during the relevant time period, Defendants did business in Illinois, were registered to do business in Illinois, and committed the tortious acts and statutory violations alleged in this Class Action Complaint in Illinois.

19. Cook County is an appropriate venue for this litigation because Defendants are authorized to transact business in Illinois, do business in Cook County, and thus are residents of Cook County.

CLASS ACTION ALLEGATIONS

20. The Class that Plaintiff seeks to represent is defined as follows:

All persons in the United States for whom Fifth Third or a Fifth

Third employee opened a financial account or product in the person's name without that person's lawfully-obtained authorization.

21. The members of the Class are so numerous that joinder of all members would be impractical. The proposed Class likely contains thousands of members. The precise numbers of members can be ascertained through discovery, which will include Defendants' sales and other records.

22. For Plaintiff and the Class, the common legal and factual questions include, but are not limited to the following:

- A. Whether and how Fifth Third and its employees engaged in unlawful practices in order to get each customer to maintain numerous accounts with Fifth Third;
- B. Whether Fifth Third knew or should have known of its employees' unlawful practices;
- C. Whether Fifth Third omitted and concealed material facts from its customers;
- D. communications and disclosures to Plaintiff and the Class regarding the costs, benefits, and policies regarding bank accounts and other financial products;
- E. Whether Fifth Third has engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices with the sale of its financial products;
- F. Whether Fifth Third violated Illinois and/or other states' consumer protection statutes;
- G. Whether Fifth Third violated the federal statutes enumerated in the causes of action below;
- H. Whether Fifth Third has been unjustly enriched or is liable for conversion;
- I. Whether, as a result of Fifth Third's conduct, Plaintiff and the Class have

suffered damages; and if so, the appropriate amount thereof; and

J. Whether as a result of Fifth Third's misconduct, Plaintiff and the Class are entitled to equitable and declaratory relief, and, if so, the nature of such relief.

23. These common questions of law and fact predominate over the variations that may exist between members of the Class.

24. Plaintiff, the members of the Class, and Defendants have a commonality of interest in the subject matter of the lawsuit and the remedy sought.

25. If individual actions were required to be brought by each member of the Class injured or affected, the result would be a multiplicity of actions, creating a hardship to the Class, to the Court, and to Defendants.

26. A class action is an appropriate method for the fair and efficient adjudication of this lawsuit, because individual litigation of the claims of all members of the Class is economically unfeasible and procedurally impracticable. While the aggregate damages sustained by the Class are likely in the millions of dollars, the individual damages incurred by each Class member are too small to warrant the expense of individual suits. The likelihood of individual Class members prosecuting their own separate claims is remote, and even if every member of the Class could afford individual litigation, the court system would be unduly burdened by individual litigation of such cases. Further, individual members of the Class do not have a significant interest in individually controlling the prosecution of separate actions, and individualized litigation would also result in varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all of the parties and the court system because of multiple trials of the same factual and legal issues. Plaintiff knows of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action. In addition, Fifth Third has acted or refused to act on grounds generally applicable to the Class and, as such, final injunctive relief or

corresponding declaratory relief with regard to the members of the Class as a whole is appropriate.

27. Accordingly, a class action is an appropriate method for the fair and efficient adjudication of this lawsuit and distribution of the common fund to which the Class are entitled.

28. Plaintiff and her counsel will fairly and adequately protect the interests of the Class.

29. Plaintiff retained counsel experienced in complex class action litigation.

30. Plaintiff does not anticipate any difficulty in the management of this litigation.

31. Fifth Third had, or has access to, addresses and/or other contact information for the members of the Class, which may be used for the purpose of providing notice of the pendency of this action.

PLAINTIFF'S FACTUAL ALLEGATIONS

32. Consistent with their policies and patterns or practices as described herein, Defendants harmed Plaintiff as follows:

Joanne Zanni

33. Zanni first opened an account with Fifth Third bank in or around 2009. During the course of her relationship with Defendants, Zanni's only authorized Fifth Third products, services, and/or accounts were a checking account, a brokerage account, a CD and a line of credit. Starting in or around 2012 through 2019, Fifth Third opened additional accounts in Zanni's name without her knowledge or authorization.

34. In or around February 2020, Zanni received Exhibit A from Defendants which informed her that personal information may have fraudulently been used by Fifth Third employees.

35. As a result of this, Zanni obtained her account opening and closing history from Fifth Third. This information confirmed that there were additional accounts that had been opened in Zanni's name without her knowledge or authorization.

36. To fund these accounts, Fifth Third would move money from Plaintiff's line of credit and/or legitimate accounts into fraudulent accounts opened in her name. Fifth Third did this without Plaintiff's knowledge or consent.

37. Zanni believes she has been charged fees for many or all of the unauthorized accounts of which she is now aware, and that Fifth Third may still be assessing fees for those and other accounts of which she is unaware.

38. Moreover, she believes that Fifth Third unlawfully accessed her consumer credit reports when opening these fraudulent accounts. Zanni did not provide consent for Fifth Third to access this information for the accounts at issue.

39. Zanni believes that as a result of these practices, her credit score has been reduced.

40. Zanni believes that Fifth Third's practices exposed her to the risk of harm, including the risk that she would be unable to meet her financial obligations.

41. Had Zanni been informed of Fifth Third's deceptive and unfair practices, she would have opted for a different bank's products and services.

FIRST CAUSE OF ACTION
Illinois Consumer Fraud Act, 815 ILCS 505/2, et seq.
(Brought on behalf of Plaintiff and members of the Class)

42. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

43. Defendants engaged in deceptive and unfair practices by opening fraudulent accounts in Plaintiff and Class Member's names without their knowledge or consent.

44. Defendants intended Plaintiff and the Class to rely on the deception.

45. The deception occurred in the course of conduct involving trade or commerce *i.e.* personal banking and other financial products.

46. Plaintiff and the Class incurred fees and other financial injury in the form of lower credit scores as a result of Defendants' deception.

47. Defendants' practices are against public policy because they violate the standard of conduct contained in existing statutes, including the FCRA and the EFTA.

48. Defendants' practices are immoral, unethical, oppressive, and/or unscrupulous.

49. Defendants' practices caused substantial harm to consumers.

50. Plaintiff and the Class suffered actual damages to be determined at trial.

51. Plaintiff and the Class are entitled to recoup attorneys' fees from Defendants as a result of Defendants' consumer fraud.

SECOND CAUSE OF ACTION

Conversion

(Brought on behalf of Plaintiff and the members of the Class)

52. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

53. Plaintiff and the Class maintained accounts with Defendants which were funded with Plaintiff's and Class Member's personal funds.

54. These funds were at all time monies which belonged to Plaintiff and the Class.

55. Defendants did not hold ownership interest in these funds. Defendants used these funds for unauthorized purposes. Without the consent of Plaintiff and Class Members, Defendants used these funds to open fraudulent accounts in Plaintiff and Class Members' names.

56. Defendants wrongfully and without authorization, maintained control, dominion or ownership over Plaintiff and Class Members' monies without consent.

57. As a direct and proximate result of Defendants' conversion of Plaintiff and Class Members' property, Plaintiff and the Class have suffered actual damages in an amount to be proven at trial.

58. Defendants performed these acts with fraud and actual malice, and Defendants acted willfully, or with such gross negligence as to indicate a wanton disregard of the rights of others, therefore entitling Plaintiff and the Class to punitive damages.

THIRD CAUSE OF ACTION

Unjust Enrichment

(Brought on behalf of Plaintiff and the members of the Class)

59. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

60. As a result of Defendants' unlawful and deceptive actions described above, Defendants were enriched at the expense of Plaintiff and the Class through the payment of fees, penalties, and other charges resulting from accounts, products, and services that First Third unlawfully and/or deceptively sold to or opened for customers.

61. Under the circumstances, it would be against equity and good conscience to permit Defendants to retain the ill-gotten benefits that they received from Plaintiff and the Class, in light of the fact that First Third used illegal, deceptive, and/or unfair practices to induce or force customers to open, purchase, and/or maintain the banking services, accounts, and products.

62. Thus, it would be unjust and inequitable for Defendants to retain the benefit without restitution to Plaintiff and the Class for the monies paid to Defendants as a result of the unfair, deceptive, and/or illegal practices.

FOURTH CAUSE OF ACTION

Fair Credit Reporting Act, 15 U.S.C. § 1681, *et seq.*

(Brought on behalf of Plaintiff and the members of the Class)

63. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

64. Each time that Fifth Third opens a new account or starts a new financial service, it obtains, reviews, and uses a “consumer report,” as that term is defined in 15 U.S.C § 1681a(d), about the consumer for whom the account is opened or the service started.

65. Fifth Third is required by 15 U.S.C. §§ 1681b, 1681n, and 1681o to refrain from obtaining or using consumer reports from CRAs under false pretenses, and without proper authorization from the consumer who is the subject of the report.

66. Obtaining and using consumer reports in the process of opening unauthorized accounts or services is not allowed pursuant to FCRA, and thus is a violation of federal law.

67. Fifth Third has a mandatory duty to use or obtain consumer reports only for permissible purposes. 15 U.S.C. § 1681b(f).

68. Despite these clear and unambiguous requirements of the FCRA, Defendants regularly pull consumer reports regarding consumers without their knowledge or consent in order to open new unauthorized accounts and services as part of its cross-selling practices, in violation of FCRA.

69. Pursuant to 15 U.S.C. §§ 1681n and 1681o, Fifth Third is liable for negligently and willfully violating FCRA by accessing the consumer reports without a permissible purpose or authorization under FCRA.

FIFTH CAUSE OF ACTION

**Violations of Electronic Funds Transfer Act, 15 U.S.C. § 1693, *et seq.*
(Brought on behalf of Plaintiff and the members of the Class)**

70. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

71. Congress created the Electronic Funds Transfers Act (“EFTA”), 15 U.S.C. § 1693, *et seq.*, in order to establish a framework to regulate electronic fund and remittance transfer systems, and to establish individual consumer rights related to electronic fund transfers.

72. Pursuant to the EFTA, “No person may issue to a consumer any card, code, or other means of access to such consumer’s account for the purpose of initiating an electronic fund transfer other than—(1) in response to a request or application therefor; or (2) as a renewal of, or in substitution for, an accepted card, code, or other means of access, whether issued by the initial issuer or a successor.” 15 U.S.C.A. § 1693i(a).

73. Fifth Third has and continues to violate this prohibition every time it opens new unauthorized accounts, issues debit and/or credit cards, and facilitates other means of access to the unauthorized accounts allowing for electronic funds transfers.

74. Plaintiff and the Class have received debit cards from Fifth Third when Plaintiff and Class members have not requested or applied for such cards.

75. Plaintiff and the Class have received other means of accessing unauthorized accounts, such as online banking access, that would allow them to initiate electronic fund transfers.

76. Pursuant to 15 U.S.C. § 1693m, Fifth Third is liable for actual damages, an amount to be determined by the Court related to the frequency, persistence, and other factors of Defendants’ violations, plus attorneys’ fees and costs.

SIXTH CAUSE OF ACTION

Declaratory Relief

(Brought on behalf of Plaintiff and the members of the Class)

77. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

78. Section 2–701 of the Code of Civil Procedure, known as the Declaratory Judgment Act provides “The court may, in cases of actual controversy, make binding declarations of rights, having the force of final judgments, whether or not any consequential relief is or could be claimed, including the determination, at the instance of anyone interested in the controversy, of the construction of any statute, municipal ordinance, or other governmental regulation, or of any deed, will, contract or other written instrument, and a declaration of the rights of the parties interested.” 735 ILCS 5/2–701(a).

79. As described above, this Court has jurisdiction over this matter, and therefore may declare the rights of Plaintiff and the Class.

80. Plaintiff and the Class therefore seek an order declaring Fifth Third’s practice of opening unauthorized accounts unlawful, and that Fifth Third is liable to Plaintiff and the Class for damages caused by that practice.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all other similarly situated persons, respectfully requests that this Court grant the following relief:

A. That an order be entered certifying the proposed Class under 735 ILCS 5/2-801 and appointing Plaintiff and her counsel to represent the Class;

B. Permanently enjoining Fifth Third from performing further unfair and unlawful acts as alleged herein;

C. For all recoverable compensatory, statutory, and other damages sustained by Plaintiff and the Class, including disgorgement, unjust enrichment, and all other relief allowed under applicable law;

D. Granting Plaintiffs and the Class awards of restitution and/or disgorgement of Fifth Third’s profits from its unfair and unlawful practices described above;

- E. For costs;
- F. For both pre-judgment and post-judgment interest on any amounts awarded;
- G. For appropriate individual relief as requested above;
- H. For payment of attorneys' fees and expert fees as may be allowable under applicable law; and
- I. For such other and further relief, including declaratory relief, as the Court may deem proper.

JURY DEMAND

Plaintiff demands a trial by jury.

Respectfully submitted,

Dated: April 29, 2020

/s/Douglas M. Werman
One of Plaintiff's Attorneys

Douglas M. Werman (dwerman@flsalaw.com)
Maureen A. Salas (msalas@flsalaw.com)
Sarah J. Arendt (sarendt@flsalaw.com)
Michael M. Tresnowski (mtresnowski@flsalaw.com)
WERMAN SALAS P.C. (Attorney Code #42031)
77 West Washington Street, Suite 1402
Chicago, Illinois 60602
(312) 419-1008

FITAPELLI & SCHAFFER, LLP
Joseph A. Fitapelli, pro hac vice forthcoming
Frank J. Mazzaferro, pro hac vice forthcoming
28 Liberty Street, 30th Floor
New York, New York 10005
(212) 300-0375

Attorneys for Plaintiff and the Putative Class