

**IN THE CIRCUIT COURT OF THE 17th JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA**

JOAN SIMRING,
on behalf of herself and all others
similarly situated,

Plaintiff,

CLASS CERTIFICATION REQUESTED

v.

JURY TRIAL DEMANDED

ADAM D. ZUCKERMAN, D.C.;
MELISSA EIRICH, M.D.;
ADAM D. ZUCKERMAN, D.C., P.A.
d/b/a REGENERATIVE MEDICINE
OF SOUTH FLORIDA a/k/a
CHRONIC CONDITIONS CENTER
a/k/a FUSION MEDICAL CENTER;
GREENSKY, LLC;
GREENSKY SERVICING, LLC; and
FIFTH THIRD BANK,

Defendants.

_____ /

CLASS ACTION COMPLAINT

Plaintiff Joan Simring, individually and on behalf of all other Floridians similarly situated, sues Defendants Adam D. Zuckerman, D.C.; Melissa Eirich, M.D.; Adam D. Zuckerman, D.C., P.A. d/b/a Regenerative Medicine of South Florida a/k/a Chronic Conditions Center a/k/a Fusion Medical Center (“ADZPA”); GreenSky, LLC; GreenSky Servicing, LLC; and Fifth Third Bank, and alleges:

Parties, Jurisdiction, and Venue

1. This is a class action for damages exceeding \$30,000 in the aggregate, exclusive of interest, costs, and fees.
2. Plaintiff, Joan Simring, is a resident of Broward County, Florida.
3. Adam D. Zuckerman, D.C., is a Florida resident.
4. ADZPA is a Florida professional association.



5. Melissa Eirich, M.D., is a Florida resident and an agent and employee of ADZPA.

6. Adam D. Zuckerman, Melissa Eirich, and ADZPA are referred to collectively herein as **Zuckerman**.

7. GreenSky Servicing, LLC and GreenSky Servicing, LLC are Georgia corporations referred to collectively as **GreenSky**.

8. Fifth Third Bank is a federal bank based in Cincinnati, Ohio.

9. GreenSky and Fifth Third Bank are subject to specific and general personal jurisdiction in Florida under §§ 48.193(1)(a)(1), (a)(2) & (a)(7), Fla. Stat., because the causes of action alleged herein arise from and relate to the commission of the subject tortious acts within Florida and because they operate, conduct, engage in, and carry-on extensive business activities in Florida.

10. Venue is proper in Broward County because the causes of action alleged herein accrued in this judicial circuit.

General Allegations

11. This is a class action lawsuit brought on behalf of Florida senior citizens tricked into financing “stem cell” injections to treat neuropathy with a medication that was not approved for such use by the FDA, which Defendants are not licensed to administer, and for which there is no scientific proof of effectively treating neuropathy.

A. The False Advertisement

12. Joan is an 80-year-old, widowed senior citizen living on Social Security in Tamarac.

13. Joan suffers from neuropathy in her feet.

14. On Sunday, October 6, 2019, Joan read Zuckerman’s half-page advertisement in the *Sun Sentinel* newspaper offering non-invasive, drug-free treatment for neuropathy, which is reprinted below and has been running for many consecutive months (**False Advertisement**).



Peripheral Neuropathy WARNING!

Peripheral neuropathy is a result of damage to the nerves often causing weakness, pain, numbness, tingling, and the most debilitating balance problems.

This damage is commonly caused by a lack of blood flow to the nerves in the hands and feet which causes the nerves to begin to degenerate, due to lack of nutrient flow.

As you can see in Figure 1, as the blood vessels that surround the nerves become unhealthy, they shrivel up, which causes the nerves to not receive the nutrients to continue to thrive. When these nerves begin to deteriorate they cause you to have balance problems, pain, numbness, tingling, burning, and many additional symptoms.

Boynton Beach, FL - The most common method recommended to treat your neuropathy is with prescription drugs that may temporarily reduce your symptoms. These drugs have names such as Gabapentin, Lyrica, Cymbalta, and Neurontin, and are primarily antidepressant or anti-seizure drugs. These drugs may cause you to feel uncomfortable and have a variety of harmful side effects.

The main problem is that you

have been told to just live with the problem or try the drugs which you don't like taking because they make you feel uncomfortable. There is now a facility right here in Boynton Beach that offers you new hope, naturally without taking those endless drugs with serious side effects. (see the special neuropathy severity examination at the end of this article)

The treatment to increase blood flow utilizes a specialized low-level light therapy (not to be confused with laser therapy) using light emitting diode technology.

The low level light therapy is like watering a tree. The light therapy will allow the blood vessels to improve around the peripheral nerves and provide them with the proper nutrients to heal and repair. It's like adding water to a tree and seeing the roots grow deeper and deeper.

The amount of treatment needed to allow the nerves to improve varies from person to person and can only be determined after a detailed neurological and structural evaluation.

As long as you have not sustained too much nerve degeneration, there may be hope!



Figure 2: The blood vessels can improve around the nerves much like a tree's roots grow when watered.

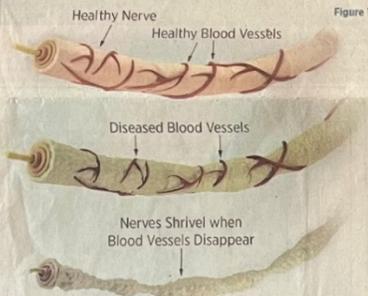


Figure 1: When these very small blood vessels become diseased, they begin to shrivel up and the nerves begin to degenerate.

In order to effectively improve your neuropathy symptoms three factors must be determined.

- 1 What is the underlying cause?
- 2 How much nerve degeneration has been sustained?*
- 3 How much treatment you may require?

Don't Hesitate to Act Now!

*Peripheral Neuropathy is a progressive condition and what we have seen clinically is that once you have sustained too much nerve degeneration, there might not be anything we can do to help.

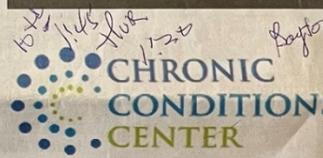
The treatment that is provided at the Chronic Conditions Center has three main goals:

- 1 Increase blood flow
- 2 Stimulate small fiber nerves
- 3 Decrease brain-based pain

Dr. Adam Zuckerman, D.C., at Chronic Conditions Center will do a neuropathy severity examination to determine the extent of your nerve condition for only \$60 (up to a \$300 value). This neuropathy severity examination will consist of a detailed sensory evaluation and a detailed analysis of the findings of your neuropathy.

Dr. Adam Zuckerman, D.C., will be offering this neuropathy severity examination from now until Friday, October 18th, 2019.

Call 561-752-4646 to make an appointment with Dr. Zuckerman to determine if your peripheral neuropathy symptoms can be helped.



CALL 561-752-4646

Chronic Conditions Center
 8280 Jog Rd, Boynton Beach, FL 33472
 Dr. Adam Zuckerman, D.C. | 561-752-4646
 www.ChronicConditionsCenterFL.com

The discounted offer does not apply toward insurance, federal insurance programs or Medicare. Our office policy is that the patient and any other person responsible for payment has the right to refuse to pay, cancel payment or be reimbursed for payment for services within 72 hours of this advertisement.



15. The False Advertisement offered to treat neuropathy using LED lights:

...they make you feel uncomfortable. There is now a facility right here in Boynton Beach that offers you new hope, naturally without taking those endless drugs with serious side effects. (see the special neuropathy severity examination at the end of this article)

The treatment to increase blood flow utilizes a specialized low-level light therapy (not to be confused with laser therapy) using light emitting diode technology.

The low level light therapy is like watering a tree. The light therapy will allow the blood vessels to improve around the peripheral nerves and provide them with the proper nutrients to heal and repair. It's like adding water to a tree and seeing the roots grow deeper and deeper.

16. The False Advertisement never mentions “stem cells.”
17. In fact, the False Advertisement promises “*new hope without taking drugs*” using “*low level light therapy*,” which is like “*watering a tree*.”
18. The False Advertisement, which is geared towards senior citizens, deceptively offers “neuropathy severity” examinations for \$60 followed by LED light treatments. Given that the price to *purchase* infrared LED boots ranges from \$159 to \$525, Joan reasonably believed, as did the Class Members, that the cost of treatment at Zuckerman’s office would be much less.
19. Joan responded to the False Advertisement by making an appointment to see Dr. Zuckerman about LED light treatment for neuropathy.
20. Because the False Advertisement never mentioned “stem cells” or any other type of injectable drug, Joan reasonably believed that the cost of her visit would be in the neighborhood of



\$60 to a \$200 hundred and that *no invasive medical treatment would be performed*, which makes sense because Adam Zuckerman is a chiropractor, not a medical doctor.

B. The Bait and Switch Scheme

21. Joan visited Zuckerman's office on October 10, 2019.

22. Instead of treating Joan with LED lights as falsely advertised, Zuckerman tricked Joan into accepting treatment using "stem cell" injections in her feet.

23. Dr. Zuckerman told Joan not to worry about the cost because he would finance the treatment for her using GreenSky.

24. The treatment, however, was a complete and total sham.

25. The drug that was injected into Joan's feet, and those of the other Class Members, under the supposed supervision of Mellissa Eirich, M.D., is marketed under the name "Accelerate GF" and is *not* approved by the FDA to treat neuropathy.

26. Neither Zuckerman nor the other Defendants disclosed to Joan or the other Class Members that Accelerate GF was not approved by the FDA to treat neuropathy.

27. Nor did the Defendants disclose to Joan or the other Class Members that Zuckerman and Eirich were *not* licensed by the FDA to administer Accelerate GF.

28. Zuckerman and the other Defendants also failed to disclose to Joan and the other Class Members that Accelerate GF had *never been tested for use in treating neuropathy in a clinical trial* and had not even been the subject of peer-reviewed scientific literature.

29. The only study that links "Accelerate GF" to any type of neuropathy is a five-page document listed on the Defendants' website, entitled, "Case Study: Novel Approach to HIV-Associated Neuropathy – Platelet Rich Plasma Successful in Treating HIV-Associated Peripheral



Neuropathy,” Journal of Therapy and Management in HIV Infection, 2013.”
<https://www.regenmedsouthflorida.com/peripheral-neuropathy/>

30. The case study is irrelevant because neither Joan nor any of the Class Members have HIV-associated neuropathy.

31. Even if the case study were somehow relevant, it is not based on a clinical trial and there was no experimental or control group involved.

32. Moreover, the case study was paid for by a pharmaceutical company, PlasmaGenix, Inc., not a neutral laboratory, and therefore is neither credible, legitimate, nor scientifically valid.

33. The treatments provided by Zuckerman to Joan and the other Class Members were thus not only unapproved and unlicensed by the FDA but also unproven, untested, and *off label*.

34. Zuckerman and the other Defendants *deliberately failed to disclose* to Joan and the other Class Members not only that Accelerate GF had not been approved or licensed by the FDA to treat neuropathy but also that no legitimate scientific literature or clinical study actually supported its off-label use to treat neuropathy.

35. The Defendants invoked the magic words “stem cells” to deceive the Class Members into *borrowing money* to pay for *experimental treatments* with *no proven record of success* and *no FDA approval or licensing*.

36. The Defendants not only sold unregulated snake oil, but also *financed* the sale of snake oil to the most economically, psychologically, and physically fragile citizens of our society.

37. This was an extremely dangerous bait and switch scheme, which is still on-going, that threatens the health and safety of senior citizens who are being given *experimental* injections not approved by the FDA or proven in any way to help their condition without any truthful disclosures.



38. Unsurprisingly, the alleged “treatments” given to Joan and the other Class Members was totally ineffective and did not relieve any of their neuropathy symptoms.

39. In fact, as GreenSky and Fifth Third Bank knew from customer complaints by Joan and the other Class Members, Zuckerman has *never successfully* treated a patient for neuropathy or alleviated their painful symptoms.

40. Despite the dismal failure of his snake oil treatments, Zuckerman kept taking money from senior citizens day after day, week after week, month after month.

41. GreenSky and Fifth Third Bank kept financing the phony treatments even though they were fully aware that 100% of Dr. Zuckerman’s patients were senior citizens living on fixed incomes who could not actually afford to pay thousands of dollars for speculative, and unproven treatments.

42. Had Joan or the other Class Members been told up front in the False Advertisement that Zuckerman was going to sell them stem cell injections at a cost of thousands of dollars with no proven record of success, none of them would have even shown up in his office.

43. That is why Zuckerman uses a “bait and switch” scheme to offer \$60 evaluations in his False Advertisement – so he can get the patients in the door.

44. Once Zuckerman gets the patients in the door, however, he offers “instant” same-day financing right at his receptionist’s counter for thousands of dollars.

45. Zuckerman’s receptionist fills out the GreenSky credit card application online for the patient, as she did for Joan; prints the acceptance letter, as she did for Joan; and never informs the patient of the material terms of the contract other than the monthly payment amount.

46. Significantly, patients are not given time to read the credit card agreement before having to agree to its terms so that Zuckerman can be paid, in full, upfront, the same day.



47. Joan, who is 80 years old, walked into a chiropractor's office expecting to pay \$60 for an evaluation and maybe a few hundred dollars for treatment and walked out with a \$7,500 credit card albatross around her neck that she neither wanted, needed, nor understood and that she certainly could not afford on a fixed income.

48. Joan was totally at the mercy of Zuckerman's receptionist, who acted at GreenSky's behest to maximize Joan's credit by acting as her unlicensed financial advisor to apply for the loan and who downplayed the risk by emphasizing only the monthly payment instead of the full amount owed.

49. Critically, Defendants never advised Joan or the Class Members about the arbitration clause or class action waiver provision in paragraph 25 of the credit card agreement or even gave them a chance to read the agreement and understand what it says before being whisked away into treatment.

50. The Arbitration Clause purports to require the Plaintiff and other Class Members not only to give up their rights to access the Florida Court system to resolve this dispute against GreenSky and Fifth Third Bank but also purports to bind the Plaintiff and the other Class Members to give up their right to file suit in Court against *third parties*, including Zuckerman. The arbitration clause is unconscionable and violates public policy because senior citizens cannot be forced to give up their rights to access the courts for suits against third parties without consideration or fair disclosure.

51. The acceptance letter from GreenSky to Joan shows that Zuckerman and the other Defendants tricked Joan into agreeing to pay 9.04% interest over 60 months, for a total cost of \$7,315.80, for alleged "stem cell" treatments (read: "snake oil") that were not authorized by the FDA, that the Defendants are not licensed to administer, that have no proven effectiveness, that are not based on a peer-reviewed clinical trial, and that have never helped a single patient alleviate their pain.

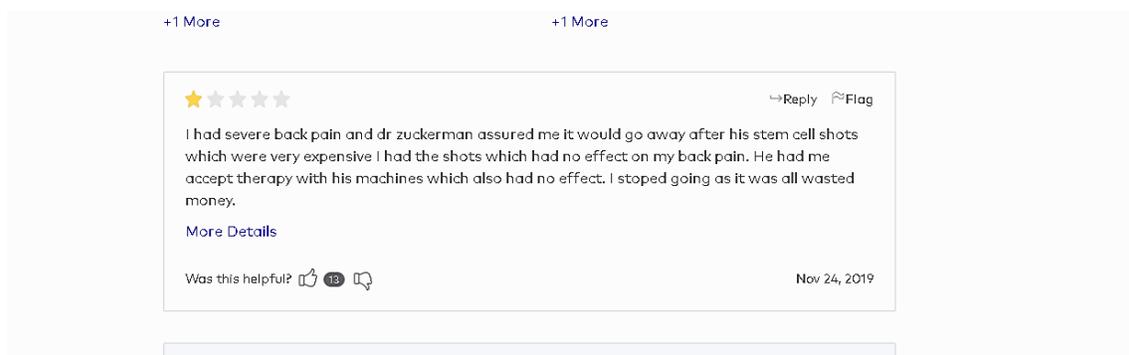


52. Worse than all the foregoing is that Zuckerman did not actually tailor the treatments to the needs of the patients but rather determined the course of treatment to *maximize the patient's credit regardless of medical necessity.*

53. GreenSky and Fifth Third Street Bank knew about the bait and switch scheme, and knew that Zuckerman was maximizing the credit for every single patient regardless of medical necessity, and despite receiving numerous complaints from Joan and the other Class Members, continued to finance the scheme and provide kickbacks in the form of vacations, gifts, and dinners to Zuckerman to continue to encourage Zuckerman to use their credit platform to sell snake oil.

54. Joan has spoken to numerous other patients of Zuckerman, all of whom are senior citizens that were ensnared in the “bait and switch” scheme and who borrowed thousands of dollars to pay for treatments that were totally useless to alleviate their symptoms.

55. One such posted a warning on Google, which is reprinted below.



56. Dr. Zuckerman took advantage of Joan and the other Class Members by tricking them into believing that they would benefit from receiving “stem cell” injections instead of LED light treatments promised by the False Advertisement and then tricking them into paying thousands of dollars for ineffective, unproven, unauthorized, and unlicensed treatments with snake oil.

57. We refer to the foregoing collectively as the “**Bait and Switch Scheme.**”



C. Nationwide Epidemic of Stem Cell Fraud

58. The Bait and Switch Scheme is part of a nationwide trend of stem cell clinics that are now actively being pursued and shut down by state attorneys' general because there is no scientific proof that "stem cells" treat neuropathy.

59. A non-exhaustive list of AG investigations is at the following hyperlinks:

- <https://www.abcactionnews.com/news/local-news/i-team-investigates/inside-the-hard-sell-for-stem-cell-therapy-in-florida>
- <https://www.stemcures.com/just-when-i-thought-i-heard-everything-about-fake-stem-cell-clinics-i-was-shocked>
- <https://www.courthousenews.com/nebraska-firm-accused-of-targeting-seniors-for-unproven-stem-cell-treatment/>
- <https://regenxx.com/blog/stem-cell-treatment-for-neuropathy/#gref>
- <https://www.consumerreports.org/medical-treatments-procedures/trouble-with-stem-cell-therapy/>
- <https://wjla.com/features/7-on-your-side/stem-cell-treatment-virginia-clinic>
- <https://www.iowaattorneygeneral.gov/newsroom/stem-cell-therapy-elder-deceptive-copd-autor>

60. All conditions precedent required to file this action have been performed or have been waived or would be futile to perform.

Class Allegations

61. Plaintiff brings this action on her own behalf and as Class Representative pursuant to Florida Rule of Civil Procedure 1.220.

62. The Class is defined as follows:

All persons over 64 years of age who visited Dr. Zuckerman after reading the False Advertisement and who received "stem cell" treatments financed by GreenSky.



63. Upon completion of discovery with respect to the scope of the Class, Plaintiff reserves the right to amend the class definition and to define sub-classes

64. Excluded from the definition of the Class are persons affiliated with any Defendant; the Court; all persons within third degree of relationship to the Court; and spouses of such persons.

65. The members of the Class are so numerous that joinder of all of them is impracticable.

66. There are questions of law and fact which are common to the Class and which predominate over questions affecting any individual Class member.

67. The common questions are, among other things, whether the Bait and Switch Scheme constituted an unfair, deceptive, or unconscionable act or practice.

68. Plaintiff will fairly and adequately protect the interests of the Class.

69. The prosecution of separate actions by individual Class members could result in conflicting or incompatible standards of conduct for Defendants, may impair or impede the interests of other Class members, and would result in undue judicial waste and inefficiency.

70. This class action is superior to other available methods for the fair and efficient adjudication of this controversy and the proposed Class is manageable.

71. Plaintiff has retained undersigned counsel to represent him in this action and has agreed to pay a reasonable fee for counsel's services.

Count 1
Exploitation of Elderly Adults
(Against All Defendants)

72. Plaintiff repeats and re-alleges paragraphs 1 through 71.

73. This is an action for exploitation of an elderly adult as defined in Chapter 825, Florida Statutes, for which section 772.11, Florida Statutes, provides a civil remedy. *See* § 772.11(1), Fla. Stat. (“Any person who proves by clear and convincing evidence that he or she has been injured in any



fashion by reason of any violation of ss. 812.012-812.037 or s. 825.103(1) has a cause of action for threefold the actual damages sustained and, in any such action, is entitled to minimum damages in the amount of \$200, and reasonable attorney's fees and court costs in the trial and appellate courts.”).

74. The Bait and Switch Scheme constituted “exploitation of an elderly adult” in violation section 825.103(1), Florida Statutes, because the Defendants had a business relationship with Plaintiff and knowingly obtained or used Plaintiff's funds with the intent to permanently deprive her of their use and benefit.

75. Plaintiff and the other Class Members have damaged as a direct and proximate result of the foregoing violations of the elder exploitation statute.

Count 2
Violation of the Florida Deceptive and Unfair Trade Practices Act
(Against All Defendants except Fifth Third Bank)

76. Plaintiff repeats and re-alleges paragraphs 1 through 71.

77. This is an action for violation of Chapter 501, Florida Statutes, known as the Florida Deceptive and Unfair Trade Practices Act (FDUTPA).

78. The Bait and Switch Scheme violated section 501.204, Florida Statutes, because it constituted an unfair method of competition, unconscionable act or practice, and unfair or deceptive act or practice in the conduct of trade or commerce.

79. Consummation of the Bait and Switch Scheme would have been impossible but for the participation of GreenSky and Fifth Third Bank as the financiers.

80. Plaintiff and the other Class Members have been damaged as a direct and proximate result of the foregoing violation of FDUTPA.



Count 3
Violation of the Florida Consumer Collection Practices Act
(Against GreenSky)

81. Plaintiff repeats and re-alleges paragraphs 1 through 71

82. This is an action for violation of the Florida Consumer Collection Practices Act (FCCPA), sections 559.55 to 559.785, Florida Statutes.

83. GreenSky and Fifth Third Bank violated section 559.72(9), Florida Statutes, by virtue of Bait and Switch Scheme, because they have attempted to enforce a debt that they know is not legitimate.

84. Plaintiff and the other Class Members have been damaged as a direct and proximate result of GreenSky's misconduct.

Count 4
Battery
(Against Zuckerman)

85. Plaintiff repeats and re-alleges paragraphs 1 through 71.

86. The Bait and Switch Scheme and the corresponding injections of drugs into Joan and the other Class Members were intentional harmful and offensive bodily contacts.

87. Neither Joan nor the other Class Members gave knowing, voluntary consent to the injections because they were deprived of necessary information by virtue of the Bait and Switch Scheme, which concealed that the stem cell injections were not approved the FDA to treat neuropathy and had not been proven effective in any clinical trials.

88. Plaintiff and the other Class Members have been damaged as a direct and proximate result of the foregoing battery.



Count 5
Independent Tort of Civil Conspiracy
(Against All Defendants)

89. Plaintiff repeats and re-alleges paragraphs 1 through 71.

90. This is an action for the independent tort of conspiracy.

91. Defendants wrongfully and with full and actual knowledge, conspired, using a peculiar power of coercion created by virtue of their combined and cohesive action as a group, to commit the Bait and Switch Scheme.

92. In addition, Defendants wrongfully and with full and actual knowledge, conspired, using a peculiar power of coercion created by virtue of their combined and cohesive action as a group to require consumers, like Plaintiff and the other Class Members, to sign the Arbitration Clause.

93. Plaintiff and the other Class members have been directly and proximately damaged by the foregoing conspiracy, which could only have been accomplished with the full an active concert of all the Defendants.

94. Plaintiff and the other Class Members have been directly and proximately damaged by foregoing conspiracy, which could only have been accomplished with the full an active concert of all the Defendants.

Count 6
Negligence
(Against GreenSky and Fifth Third Bank)

95. Plaintiff repeats and re-alleges paragraphs 1 through 71.

96. GreenSky and Fifth Third Bank owed a duty of care to Plaintiff to ensure that merchants like Zuckerman were not using their financing platform to defraud senior citizens into paying for unlicensed, unauthorized, and 100% completely ineffective stem cell treatments.



97. GreenSky and Fifth Third Bank also owed a duty of care to make sure that merchants like Zuckerman did not systematically seek to maximize the credit available for 80-year-olds to receive unproven treatments for neuropathy.

98. At all times material, Zuckerman acted as the agent for GreenSky in trolling for senior citizens with good credit who could max out the card immediately for stem cell treatments.

99. Here, the five-year payout on \$7,500 loan to an 80-year-old woman on Social Security for fake medical treatments is unsuitable, immoral, unethical, and unconscionable.

100. GreenSky and Zuckerman targeted elderly, frail, and vulnerable senior citizens to steal their money in exchange for snake oil financed at 10% interest.

101. In the real world, this is called exploitation and although we believe it was clearly intentional and deliberate, to the extent that GreenSky and Fifth Third Bank can actually show that they did not know about the Bait and Switch Scheme, it is beyond doubt that they were negligent in not only allowing it to happen and in profiting from it but from turning a blind eye to the harm caused to senior citizens.

102. GreenSky and Fifth Third Bank breached their duties of duty of care by, among things, (i) failing to detect and prevent Zuckerman from committing the Bait and Switch Scheme; (ii) allowing the Bait and Switch Scheme to take place; (iii) approving Joan's financing application with unsuitable terms for a senior citizen; and (iv) failing to know their customer.

103. In addition, GreenSky and Fifth Third Bank breached their duties of care by failing to act commensurate with the state-of-the-art supervisory, regulatory, and compliance standards of reasonably prudent financial institutions in allowing Zuckerman to commit the Bait and Switch Scheme and to fill out applications directly for consumers.



104. As a direct and proximate result of Defendants' negligence, Plaintiff and the other Class Members have been damaged.

Count 7
Unjust Enrichment
(Against all Defendants)

105. Plaintiff repeats and re-alleges paragraphs 1 through 71.

106. By virtue of the Bait and Switch Scheme, the Defendants received and retained improper monetary benefits.

107. Under the circumstances, it would be unjust and inequitable for Defendants to retain these benefits.

108. Plaintiff and the other Class Members have been damaged as a direct and proximate result of the Defendants' inequitable misconduct.

Count 8
Declaratory Judgment That Arbitration Clause
Is Void Against Public Policy and Unconscionable
(Against All Defendants)

109. Plaintiff repeats and realleges the allegations in paragraphs 1 through 71.

110. There is an action to declare Paragraph 25 of the credit card agreement void because the Arbitration Clause is substantively and procedurally unconscionable and violates Florida's public policy of assuring free and open access to the Court system for senior citizens.

111. Unconscionability has generally been recognized to include an absence of meaningful choice on the part of one of the parties together with contract terms that are unreasonably favorable to the other party. As explained by the Florida Supreme Court:

Unconscionability is a common law doctrine that courts have used to prevent the enforcement of contractual provisions that are overreaches by one party to gain "an unjust and undeserved advantage which it would be inequitable to permit him to enforce." "Unconscionability has generally been recognized to include an *absence of meaningful choice* on



the part of one of the parties together with contract terms which are *unreasonably favorable to the other party.*” The absence of meaningful choice when entering into the contract is often referred to as procedural unconscionability, which “relates to the manner in which the contract was entered,” and the unreasonableness of the terms is often referred to as substantive unconscionability, which “focuses on the agreement itself.”

Basulto v. Hiialeab Auto., 141 So. 3d 1145, 1157-58 (Fla. 2014).

112. The Florida Supreme Court explained procedural unconscionability thus:

The central question in the procedural unconscionability analysis is whether the complaining party lacked a meaningful choice when entering the contract. When determining whether a contract is procedurally unconscionable, Florida courts consider the following:

(1) the manner in which the contract was entered into; (2) the relative bargaining power of the parties and whether the complaining party had a meaningful choice at the time the contract was entered into; (3) whether the terms were merely presented on a “take-it-or-leave-it” basis; and (4) the complaining party's ability and opportunity to understand the disputed terms of the contract.

Basulto, 141 So. 3d at 1158 n.3 (citations omitted).

113. The Florida Supreme Court explained substantive unconscionability as follows:

Substantive unconscionability focuses on whether the terms are “unreasonably favorable” to the other party and “whether the terms of the contract are so unfair that enforcement should be withheld.” In other words, the reviewing court asks whether the more powerful party overreached and “gained an unjust and undeserved advantage which it would be inequitable to permit him to enforce.”

Basulto, 141 So. 3d at 1158 n.4 (citations omitted).

114. Procedurally, Plaintiff and the other class members had no meaningful choice in negotiating the Arbitration Clause because Defendants made it clear that the agreement terms were not-negotiable under any circumstances; because the arbitration clause was part of a boilerplate, “standard form” contract of adhesion (*i.e.*, it was “take it or leave it.”); and because Defendants never



permit any consumer to negotiate the terms of the credit card agreement. In short, there was a gross inequality of bargaining power between Plaintiff, on the one hand, and Defendants on the other.

115. Substantively, it is unconscionable to require senior citizens to sign an Arbitration Clause that that requires them to relinquish their constitutional right under Florida law to sue *unaffiliated third parties* in Court and to give up the right to participate in a class action *for no consideration*. It is even more unconscionable not to have disclosed that the Arbitration Clause purports to apply to claims against third parties more clearly so that it was obvious to the consumer.

116. There is an actual, genuine, and *bona fide* dispute between the parties as to whether paragraph 25 of the credit card agreement is unconscionable and/or void as against public policy.

117. Plaintiff and the other Class members have no adequate remedy at law.

Prayer for Relief

WHEREFORE, Plaintiff respectfully requests that the Court:

- a. Certify the putative Class;
- b. Award monetary damages, jointly and severally, against all Defendants;
- c. Declare the arbitration clause and class action waiver void due to their unconscionability and for violating Florida public policy;
- d. Award treble damages under § 772.11(1), Fla. Stat.;
- e. Award additional statutory damages of \$1,000 for the named plaintiff and additional statutory damages of \$500,000 for the Class Members under § 559.77(2);
- f. Award attorneys' fees to Plaintiff under §§ 772.11(1), 501.2105, and 559.77, Fla. Stat.;
- g. Award costs of suit; and
- h. Grant such further relief as the Court deems just and proper.

Plaintiff reserves the right to seek to amend this Complaint to add a claim for punitive damages



Demand For Jury Trial

Plaintiff demands trial by jury on all issues so triable.

Request for Calendar Advancement

Pursuant to sections 415.1115 and 772.11(5), Florida Statutes, undersigned counsel respectfully requests that the Court advance this case on its trial docket because the Plaintiff and the Class Members are over 65 years of age.

Respectfully submitted,

THE SIMRING LAW GROUP

Counsel for Plaintiff

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By: /s/ Matthew R. Simring

Matthew R. Simring

(Florida Bar No. 175102)

