

# **Exhibit A**

**NOTICE OF REMOVAL TO THE  
UNITED STATES DISTRICT COURT**

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

FIFTH JUDICIAL CIRCUIT

Michael Virzi and Natasha A. Brenchak,  
individually and on behalf of all others  
similarly situated,

Case No.

Plaintiff,

vs.

**SUMMONS**

First Citizens Bank of South Carolina, a  
wholly owned subsidiary of First Citizens  
Bancshares, Inc.,

Defendant.

TO: THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you and to serve a copy of your Answer to the said Complaint on the subscriber, David A. Maxfield, Esquire, at his office at P.O. Box 11865, Columbia, South Carolina 29211, within thirty (30) days after service hereof, exclusive of the date of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the court for the relief demanded in the Complaint. If you fail to appear and defend, judgment by default will be rendered against you for the relief demanded in the Complaint.

DAVE MAXFIELD, ATTORNEY, LLC

s/ Dave Maxfield

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DATED: September 26, 2018  
Columbia, South Carolina

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

Michael Virzi and Natasha A.  
Brenchak, individually and on behalf of  
all other similarly situated,

Plaintiffs,

vs.

First Citizens Bank of South Carolina, a  
wholly owned subsidiary of First  
Citizens Bancshares, Inc.,

Defendant.

**COMPLAINT – CLASS ACTION**

(Jury Trial Requested)

Plaintiffs, complaining of the Defendant above-named, would show this Court :

**JURISDICTION**

1. Plaintiffs are citizens and residents of the County of Richland, State of South Carolina.
2. The Defendant First Citizens Bank of South Carolina is wholly-owned subsidiary of First Citizens Bancshares, Inc., organized under the laws of the State of North Carolina with its headquarters and “nerve center” in North Carolina.
3. Defendant transacts business and owns property in Richland County, South Carolina.
4. This Court has jurisdiction over the parties and subject matter of this action and venue is proper.

**FACTUAL ALLEGATIONS**

5. On or about April 24, 2018, Plaintiffs visited Defendants’ Forest Drive branch to obtain a mortgage pre-qualification letter and open a joint checking account.
6. While there, an employee of Defendant’s offered Plaintiffs (besides the accounts requested) an overdraft credit line. Plaintiffs rejected it.

7. Defendant's employee also attempted to get Plaintiffs to apply for credit cards. Again, Plaintiffs declined .
8. Defendant's employee then offered investments services. Plaintiffs rejected these as well.

#### **Opening of Sham Accounts by First Citizens**

9. Upon information and belief, on or about April 25, 2018 Defendant unlawfully accessed Plaintiffs' credit reports, and/or initiated a fraudulent credit application for some or all the declined financial products.
10. On or about April 30, 2018, Plaintiffs received letters in the mail from Defendant "confirming" the opening of:
  - a. a First Citizens Line of Credit in the amount of \$5,000;
  - b. a First Citizens credit card with a \$15,000 limit in the name of Virzi;
  - c. a First Citizens credit card with a \$15,000 limit in the name of Brenchak;
11. After discovering Defendant's initiation of \$35,000 in Sham Accounts, Plaintiffs returned to the branch to complain, and close their joint checking account to prevent further unauthorized activities by Defendant.
12. Defendant's employee (a different person than the one who previously "assisted" Plaintiffs) represented that the line of credit / overdraft account "was not fully opened yet," and stated that the credit cards would be canceled.
13. Defendant's employee further stated that none of the four unauthorized accounts would ever be reported on Plaintiffs' credit reports, and that they would receive a letter acknowledging that the accounts were opened without their authorization.
14. Defendant's employee further stated that no additional credit inquiries were made for the new accounts (and there was no "hard" credit pull apart from an April 24, 2018 inquiry for their mortgage pre-qualification).
15. All of these representations were misleading or false.

16. However, in a follow up call from the branch manager of the Forest Drive location, David Bernier, the same representations were repeated, as was the promise to provide Plaintiff's with letters stating that the account openings were unauthorized.
17. Being unable to trust Defendant, Plaintiffs also went elsewhere for a mortgage loan.

#### **Defendant's False Credit Reporting and False Promises**

18. Despite Defendant's assurances, the promised letters to the Plaintiffs never arrived.
19. After waiting nearly two months, Plaintiffs were contacted finally by Defendant's internal fraud investigator, Marie Breland.
20. Ms. Breland acknowledged that the accounts were not authorized by Plaintiffs, and assured Plaintiffs (for a third time) that they would "receive a letter" stating the above.
21. Again, for months, no such letter came.
22. On or about August 10, 2018 – now four months after the Sham Accounts were opened - Plaintiff Virzi was contacted by his new mortgage broker at Prime Lending, who questioned Plaintiffs' why their credit reports showed multiple First Citizens credit accounts opened within the last year.
23. Upon discovering that First Citizens had lied about not reporting the Sham Accounts, Plaintiffs reviewed their credit file and saw that, instead of deleting the accounts as unauthorized, First Citizens reported them as "closed by consumer."
24. On or about August 10, 2018 Plaintiff Virzi again called David Bernier to demand he advise Plaintiffs' mortgage lender that the reported accounts were unauthorized and would be deleted from Plaintiffs' credit file.
25. Plaintiff Virzi thereafter spoke with Defendant's Senior Vice President Coney Arnette, demanding that Defendant provide letters acknowledging the account openings were unauthorized, which Defendant's employee agreed he would do. However, the letters sent to Plaintiff and his mortgage lender omitted that the accounts were unauthorized entirely, stating only that Defendant would request their deletion from his credit file.

26. To date (while acknowledging verbally that the accounts were unauthorized) Defendant has failed and refused to put same in writing or, apparently, to address the larger issue of its Sham Account openings.
27. As a direct and proximate result of Defendant's wrongful acts, Plaintiffs have been damaged, including the misuse of their names and financial information, breach of their privacy, jeopardization of their home loan, damage to their credit, lost time, frustration, and emotional distress and worry, and other concrete injuries in fact.
28. As a direct and proximate result of Defendant negligent, reckless, willful, intentional, and unlawful conduct, its violations of the Plaintiffs' statutory rights under state and federal law Plaintiffs have been damaged in an amount to be determined by the trier of fact.
29. The harms caused by Defendant is likely to be redressed by a favorable judicial decision, and through both injunctive reliefs, an award of damages, and assessment of fines and punitive damages.

#### **CLASS ALLEGATIONS**

30. Plaintiffs incorporate each of the foregoing allegations as fully as if repeated verbatim.
31. Plaintiffs sue as a class action under Rule 23 of the South Carolina Rules of Civil Procedure, on behalf of themselves and all other similarly situated persons as members of classes initially defined as:
  - a. All persons for whom Defendant opened one or more unwanted or unauthorized accounts in the State of South Carolina; and
  - b. All person whom Defendants created applications for without authorization and who were not "approved" who a) had their credit accessed in violation of 1681b, below, and/or b) did not receive an adverse action notice as required by ECOA, as described below.
32. The class as defined above is so numerous that joinder of all members is impracticable.
33. Class members can be identified by records maintained by Defendant.

34. There are questions of law or fact common to the class. Common questions of law and fact include whether Defendant failed in its statutorily-imposed, common law, and other duties to prevent the disclosure of private account status, credit, and/or information, whether the Plaintiffs and the class members have suffered damages because of Defendant's negligent or wrongful actions or omissions; whether Defendant's actions violated federal or state law, and whether Plaintiffs and the class members are entitled to injunctive relief.
35. The claims or defenses of the representative parties are typical of the claims or defenses of the class. Plaintiffs' claims are typical of the claims of members of the Class because all suffered the same type of damages arising out of Defendant's wrongful conduct as described herein. Specifically, the claims of Plaintiffs and class members arise from Defendant's unauthorized application for credit.
36. The representative parties (one of whom is a licensed South Carolina attorney) will fairly and adequately protect the interests of the class. Consumer has retained counsel competent and experienced in class action lawsuits. Consumer has no interests antagonistic or in conflict with those of class members and therefore is an adequate representative for class members.
37. The damages in controversy for each member of the class exceeds \$100.00.

**FIRST CAUSE OF ACTION**

**(Violation of FCRA, 15 USC §1681)**

38. Plaintiffs reallege and incorporate the allegations contained elsewhere herein to the extent not inconsistent with the allegations of this Cause of Action.
39. Defendant is a user and furnisher of information as defined in the Fair Credit Reporting Act, as amended.
40. Each time Defendant opens or seeks to open a new credit card or loan account, it obtains, reviews, and uses a consumer report about the consumer for whom the account is opened, to assess creditworthiness.

41. Defendant agreed and represented in its subscriber agreements with the credit reporting agencies from which it obtains consumer credit reports that Defendant would obtain and use consumer reports procured from the agencies only for purposes lawful under the FCRA as defined under 15 U.S.C. § 1681b.
42. Defendant was required by 15 U.S.C. §§ 1681b, 1681n, and 1681q to refrain from obtaining or using consumer credit reports from CRAs under false pretenses, and without proper authorization from the consumer who is the subject of the report.
43. Defendant must follow reasonable procedures, including those that would prevent the impermissible accessing of consumer credit reports. 15 U.S.C. § 1681b(f).
44. Despite these clear and unambiguous requirements of the FCRA, Defendant regularly pulled the consumer credit reports regarding consumers without their knowledge or consent to open new credit card accounts as part of its sales practices, in violation of FCRA.
45. As a direct and proximate result of Defendant's negligent and willful violations of the FCRA, Plaintiffs and the putative class members have suffered and continue to suffer actual damages, including economic loss, invasion of privacy, emotional distress and interference with normal and usual activities, for which they seek damages in an amount to be determined by the jury. 15 U.S.C. §§1681n and 1681o.
46. Plaintiffs further request attorney fees under 15 U.S.C. §1681o(a).

**SECOND CAUSE OF ACTION**

**(Violation of ECOA, 15 USC §1691)**

47. Plaintiffs reallege and incorporate the allegations contained elsewhere herein to the extent not inconsistent with the allegations of this Cause of Action.
48. Defendant, a financial institution, regularly extends, renews, or continues credit, and/or arranges for the extension, renewal, or continuation of credit.



49. Under the Equal Credit Opportunity Act, 15 U.S.C. § 1691 et seq., Defendant must provide an applicant with notice of action taken on the applicant's request for credit, whether favorable or adverse, within thirty days after receiving a completed application.
50. Defendant is further required to preserve all written or recorded information connected with an application for twenty-five months after the date on which Defendant informed the applicant of action taken on an application, or of incompleteness of an application.
51. Contrary to the above requirements, Defendant created fraudulent or shadow applications which it failed to preserve, and/or (if adverse action was taken) on which it failed to provide notice of same as required.
52. Upon information and belief Defendant has inadequate policies or procedures in place to comply with the ECOA's notice and record-keeping requirements.
53. Plaintiffs and the members of the class have suffered damages by Defendant's violations of the Equal Credit Opportunity Act, 15 U.S.C. § 1691 et seq., and are liable for actual damages, punitive damages of up to \$10,00.00 per Plaintiff and/or class member, in the total amount of \$500,000.00, and declaratory relief of the violations, injunctive relief prohibiting violative practices, and attorney's fees and costs. § 1691e.

**THIRD CAUSE OF ACTION**

**(Violation of TILA, 15 USC §1601)**

54. Plaintiffs reallege and incorporate the allegations contained elsewhere herein to the extent not inconsistent with the allegations of this Cause of Action.
55. Defendant was required, under the Truth in Lending Act, to give written disclosures on or with an application to open a credit or charge card account, or loan under 15 U.S.C. § 1638, Reg. Z § 226.5(a).
56. The disclosures had to be made in writing, in form that could be kept by the consumer at the time of the application.

57. Defendant, seeking to conceal its actions, failed to make the required disclosures in violation of the Act.
58. Defendant further gave false or inaccurate information, as prohibited by the Act. 15 U.S.C. § 1611.
59. Defendant committed multiple other violations of the Act by its failure to disclose to consumers they had “applied” for credit, by reason of the forgery of or unauthorized use of the Plaintiffs and similarly situated consumers’ names, and such other manners as shown at trial.
60. Defendants’ acts violate 15 U.S.C. § 1601 et seq. and the regulations promulgated therefor, including Regulation Z.
61. Defendants are liable to Plaintiffs twice the amount of any finance charge in connection with the transaction up to \$5,000, or such higher amount as may be appropriate with an established pattern or practice of such failures, and/or for Plaintiffs and putative class such amount as the court may allow up to and including \$1,000,000, plus attorney’s fees and costs. 15 U.S.C. § 1640.

**FOR A FOURTH CAUSE OF ACTION**

**(Unjust Enrichment)**

62. The allegations contained hereinabove are repeated as if fully alleged verbatim, to the extent not inconsistent with this cause of action.
63. Because of Defendants’ unlawful and deceptive actions described above, Defendants were enriched at the expense of Plaintiffs and the Class through the payment of fees, penalties, and other charges resulting from accounts, products, and services that Defendant unlawfully and/or deceptively sold to or opened for customers.
64. Under the circumstances, it would be against equity and good conscience to permit Defendant to retain the ill-gotten benefits.

65. As a direct and proximate result of the wrongful acts and omissions of the Defendant, judgment should be granted to the Plaintiffs and the members of the class for both actual and punitive damages.

**PRAYER FOR RELIEF**

WHEREFORE, the prayer of the Plaintiffs, individually and for other similarly situated, request judgment as follows:

- A. For an Order certifying the Class and appointed Plaintiffs as representatives of the class, and the undersigned as counsel for the Class;
- B. Declaring Defendant's actions unlawful, false, misleading and deceptive;
- C. Enjoining Defendant from such acts in the future;
- D. For all recoverable actual damages, punitive damages, statutory damages, such interest as is allowable by law, costs, attorney's fees, including disgorgement of all monies wrongfully earned by Defendant;
- E. For such other relief as is just and proper.

DAVE MAXFIELD, ATTORNEY, LLC

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September 26, 2018

**ELECTRONICALLY STORED INFORMATION REQUEST**

This notice demands that you preserve all documents, tangible things and electronically stored information (“ESI”) potentially relevant to any issues in the above entitled matter. This specifically includes, but is not limited to, all information pertaining to the above matter, including specifically all credit applications relating to Plaintiffs, and all recordings of any telephone communication between your company and Plaintiffs.

As used in this request, “you” and “your” refers to your organization, and its predecessors, successors in interest, assignees, parents, subsidiaries, divisions or affiliates, and their respective officers, directors, employees, servants, agents, attorneys, and accountants.

Much of the information subject to disclosure or responsive to discovery is stored on your current and former computer systems and other media and devices (such as: personal digital assistants, voice-messaging systems, online repositories and cell phones).

Electronically stored information (hereinafter, “ESI”) should be afforded the broadest possible definition and includes (for example and not as an exclusive list) potentially relevant information whether electronically, magnetically or optically stored.

This preservation obligation extends beyond ESI in your care, possession or custody and includes ESI in the custody of others that is subject to your direction or control. You must notify any current or former agent, attorney, employee, custodian or contractor in possession of potentially relevant ESI to preserve such ESI to the full extent of your obligation to do so, and you must take reasonable steps to secure their compliance.