

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

STEVEN FOX, Individually and on Behalf of All
Others Similarly Situated,

Plaintiff,

vs.

FIFTH THIRD BANCORP, GREG D.
CARMICHAEL, TAYFUN TUZUN, MARK D.
HAZEL, NICHOLAS K. AKINS, B. EVAN
BAYH III, JORGE L. BENITEZ, KATHERINE B.
BLACKBURN, EMERSON L. BRUMBACK,
JERRY W. BURRIS, GARY R. HEMINGER,
JEWELL D. HOOVER, EILEEN A. MALLESCHE,
MICHAEL B. MCCALLISTER, and MARSHA C.
WILLIAMS,

Defendants.

Case No. 2020CH05219

Judge: Hon. Celia G. Gamrath

**ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT, APPROVING FORM AND MANNER OF NOTICE AS REVISED
AND AMENDED ON MAY 17, 2023, AND
SETTING DATE FOR HEARING ON FINAL APPROVAL OF SETTLEMENT**

WHEREAS:

A. As of May 9, 2023, Plaintiff Steven Fox, on behalf of himself and all other members of the proposed Settlement Class, on the one hand, and Defendants Fifth Third Bancorp (“Fifth Third” or the “Company”); (iii) Greg D. Carmichael, Tayfun Tuzun, Mark D. Hazel Nicholas K. Akins, B. Evan Bayh III, Jorge L. Benitez, Katherine B. Blackburn, Emerson L. Brumback, Jerry W. Burris, Gary R. Heminger, Jewell D. Hoover, Eileen A. Mallesch, Michael B. McCallister, and

Marsha C. Williams (collectively, the “Individual Defendants” and, together with Fifth Third, the “Defendants”), on the other, entered into a Stipulation and Agreement of Settlement (the “Stipulation”) in the above-captioned litigation (the “Action”), which is subject to review under Section 2-806 of the Illinois Code of Civil Procedure and which, together with the exhibits thereto, sets forth the terms and conditions of the proposed settlement of the Action and the claims alleged in the Complaint for Violations of the Securities Act of 1933 (the “Complaint”), filed on July 31, 2020, on the merits and with prejudice (the “Settlement”);

B. This matter coming before the Court at a hearing via the Court’s standard Zoom instructions on May 17, 2023 on the unopposed Motion of Plaintiff Steven Fox for preliminary approval of the proposed Settlement, and the Court having reviewed and considered the Stipulation, the accompanying exhibits, and the memorandum of law in support, and requiring that counsel make certain changes to the documents to benefit the class and provide the class with greater notice, transparency, and remote access to the final approval hearing;

C. The Parties to the Stipulation have consented to the entry of this order; and

D. All capitalized terms used in this order that are not otherwise defined herein have the meanings defined in the Stipulation.

NOW, THEREFORE, IT IS HEREBY ORDERED, this 17 day of May, 2023 that:

1. **Preliminary Approval of Settlement.** The Court has reviewed the Stipulation and preliminarily finds the Settlement set forth therein to be fair, reasonable, and adequate, subject to further consideration at the Settlement Hearing described below, and that notice of the Settlement should be issued to the Settlement Class, as set forth below.

2. **Preliminary Certification of Settlement Class.** Pursuant to Section 2-801, *et seq.* of the Illinois Code of Civil Procedure, the Court preliminarily certifies, for purposes of the

Settlement only, the Settlement Class of: all persons and entities that purchased or otherwise acquired Fifth Third publicly traded common stock pursuant and/or traceable to the Registration Statement issued in connection with Fifth Third's March 22, 2019 acquisition of MB Financial Inc., and who were allegedly damaged thereby. Excluded from the Settlement Class are: (i) Defendants; (ii) the Individual Defendants' Immediate Family members; (iii) the officers, directors, affiliates and subsidiaries of Fifth Third, at all relevant times, including Fifth Third's employee retirement or benefits plan and their participants or beneficiaries to the extent they acquired Fifth Third common stock pursuant and/or traceable to the Registration Statement through any such plans; and (iv) any firm or entity in which any Defendant has or had a controlling interest. Also excluded from the Settlement Class are any persons or entities who or which timely and validly seek exclusion from the Settlement Class in accordance with the requirements set forth below and in the Notice.

3. **Settlement Class Findings.** The Court finds and preliminarily concludes that the prerequisites of class action certification under Section 2-801, *et seq.* of the Illinois Code of Civil Procedure have been satisfied for the Settlement Class defined herein and for the purposes of the Settlement only, in that:

(a) the members of the Settlement Class are so numerous that joinder of all Settlement Class Members is impracticable;

(b) there are questions of fact or law common to the Settlement Class Members, which predominate over any questions affecting only individual members;

(c) Plaintiff and Lead Counsel will fairly and adequately protect the interests of the Settlement Class; and

(d) a class action is an appropriate method for the fair and efficient adjudication of the controversy.

4. Pursuant to Section 2-801 of the Illinois Code of Civil Procedure, and for purposes of the Settlement only, Steven Fox is preliminarily certified as Class Representative for the Settlement Class and the law firm of Labaton Sucharow LLP is preliminarily appointed Class Counsel for the Settlement Class.

5. **Settlement Hearing.** A hearing (the “Settlement Hearing”), pursuant to Section 2-806 of the Illinois Code of Civil Procedure, is hereby scheduled to be held before the Court, remotely at the Court’s discretion, on **September 14, 2023, at 9:15 a.m. CDT**, via Zoom using Meeting ID: 928 4730 2982 and Passcode: 411367 for the following purposes:

(a) to determine whether the proposed Settlement is fair, reasonable and adequate, and should be approved by the Court;

(b) to determine whether the proposed Final Order and Judgment (“Judgment”), provided for under the Stipulation, should be entered, and to determine whether the release by the Settlement Class of the Released Claims, as set forth in the Stipulation, should be provided to the Released Defendant Parties;

(c) to determine, for purposes of the Settlement only, whether the Settlement Class should be finally certified; whether Plaintiff should be finally certified as Class Representative for the Settlement Class; and whether the law firm of Labaton Sucharow LLP should be finally appointed as Class Counsel for the Settlement Class;

(d) to determine whether the proposed Plan of Allocation for the distribution of the proceeds of the Settlement is fair and reasonable and should be approved by the Court;

(e) to consider Lead Counsel’s application for an award of attorneys’ fees and Litigation Expenses limited to 33.3% of the common fund (which may include an application for a service award to Plaintiff related to its representation of the Settlement Class in an amount no greater than \$10,000); and

(f) to rule upon such other matters as the Court may deem appropriate.

6. The Court may approve the proposed Settlement with such modifications as the Parties may agree to and, if appropriate, with or without further notice to the Settlement Class of any kind. The Court further reserves the right to enter the Judgment approving the Settlement regardless of whether it has approved the Plan of Allocation or awarded attorneys’ fees and/or expenses. The Court may also adjourn the Settlement Hearing, decide to hold the hearing remotely, or modify any of the dates herein without further individual notice to members of the Settlement Class. Any such changes shall be posted on the website of the Claims Administrator.

7. **Approval of Form and Manner of Giving Notice.** The Court approves the form, substance and requirements of the Notice of Pendency of Class Action, Proposed Settlement, and Motion for Attorneys’ Fees and Expenses (the “Notice”) and the Proof of Claim and Release form (“Claim Form” and, together with the Notice, the “Notice Packet”), substantially in the forms annexed to the Stipulation as Exhibits A-1 and A-2, respectively.

8. **Retention of Claims Administrator and Notice Date.** The Court approves the retention of KCC, LLC as the Claims Administrator. The Claims Administrator shall commence the mailing of the Notice and the Claim Form by first-class mail, postage prepaid, on or before ten (10) business days after entry of this Preliminary Approval Order (“Notice Date”), to all Settlement Class Members who can be identified with reasonable effort. Defendants, to the extent they have not already done so, shall use their best efforts to obtain and provide to Lead Counsel,

or the Claims Administrator, within seven (7) business days of the entry of this Order, and at no cost to Lead Counsel, the Settlement Class or the Claims Administrator, transfer records, in electronic searchable form, to the extent reasonably available, containing the names and addresses of persons and entities that purchased or otherwise acquired Firth Third publicly traded common stock pursuant and/or traceable to the Registration Statement issued in connection with the Offering.

9. **Nominee Procedures.** The Claims Administrator shall use reasonable efforts to give notice to nominee purchasers, such as brokerage firms and other persons and entities, that acquired Fifth Third publicly traded common stock pursuant and/or traceable to the Registration Statement issued in connection with the Offering as record owners but not as beneficial owners. Such nominees SHALL EITHER: (a) WITHIN TEN (10) CALENDAR DAYS of receipt of the Notice Packet, provide a list of the names and addresses of all such beneficial owners to the Claims Administrator and the Claims Administrator is ordered to send the Notice Packet promptly to such identified beneficial owners; or (b) WITHIN TEN (10) CALENDAR DAYS of receipt of the Notice Packet, request from the Claims Administrator sufficient copies of the Notice Packet to forward to all such beneficial owners and WITHIN TEN (10) CALENDAR DAYS of receipt of those Notice Packets from the Claims Administrator forward them to all such beneficial owners. Nominees shall also provide email addresses for all such beneficial owners to the Claims Administrator, to the extent they are available. Nominees who elect to send the Notice Packet to their beneficial owners SHALL ALSO send a statement to the Claims Administrator confirming that the mailing was made and shall retain their mailing records for use in connection with any further notices that may be provided in the Action. Upon FULL AND TIMELY compliance with these directions, such nominees may request reimbursement from the Settlement Fund of their

reasonable out-of-pocket expenses actually incurred in connection with the foregoing of up to: \$0.10 per Notice Packet, plus postage at the current pre-sort rate used by the Claims Administrator, for Notice Packets mailed by nominees; or \$0.10 per mailing record and email address provided to the Claims Administrator. Expenses will be paid upon request and submission of appropriate supporting documentation and timely compliance with the above directives.

10. Lead Counsel shall, at or before the Settlement Hearing, file with the Court proof of mailing of the Notice and Claim Form.

11. **Approval of Summary Notice.** The Court approves the form of the Summary Notice of Pendency of Class Action, Proposed Settlement, and Motion for Attorneys' Fees and Expenses ("Summary Notice") substantially in the form annexed to the Stipulation as Exhibit A-3, and directs that Lead Counsel shall cause the Summary Notice to be published in *The Wall Street Journal* and be transmitted over *PR Newswire* within fourteen (14) calendar days of the Notice Date. Lead Counsel shall, at or before the Settlement Hearing, file with the Court proof of publication of the Summary Notice.

12. The form and content of the notice program described herein, and the methods set forth herein of notifying the Settlement Class of the Settlement and its terms and conditions, meet the requirements of Section 2-803 of the Illinois Code of Civil Procedure, Section 27 of the Securities Act of 1933, 15 U.S.C. § 77z-1(a)-4(a)(7) (to the extent applicable, if at all), and due process, constitute the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons and entities entitled thereto.

13. **Participation in Settlement.** In order to be eligible to receive a distribution from the Net Settlement Fund, in the event the Settlement is effected in accordance with the terms and

conditions set forth in the Stipulation, each Claimant shall take the following actions and be subject to the following conditions:

(a) A properly executed Claim Form, substantially in the form annexed to the Stipulation as Exhibit A-2, must be submitted to the Claims Administrator, as indicated in the Notice, postmarked or received (in the case of electronic submissions) no later than five (5) calendar days before the Settlement Hearing. Such deadline may be further extended by Court order or by Lead Counsel in its discretion. Each Claim Form shall be deemed to have been submitted when postmarked (if properly addressed and mailed by first-class or overnight mail, postage prepaid). Any Claim Form submitted in any other manner shall be deemed to have been submitted when it was actually received by the Claims Administrator.

(b) The Claim Form submitted by each Claimant must satisfy the following conditions, unless otherwise allowed pursuant to the Stipulation: (i) it must be properly completed, signed and submitted in a timely manner in accordance with the provisions of the preceding subparagraph; (ii) it must be accompanied by adequate supporting documentation for the transactions reported therein, in the form of broker confirmation slips, broker account statements, an authorized statement from the broker containing the transactional information found in a broker confirmation slip, or such other documentation as is deemed adequate by the Claims Administrator and/or Lead Counsel; (iii) if the person executing the Claim Form is acting in a representative capacity, a certification of their current authority to act on behalf of the Claimant must be included in the Claim Form; and (iv) the Claim Form must be complete and contain no material deletions or modifications of any of the printed matter contained therein and must be signed under penalty of perjury.

(c) As part of the Claim Form, each Claimant shall submit to the jurisdiction of the Court with respect to the claim submitted.

14. Any Settlement Class Member may enter an appearance in this Action, at his, her or its own expense, individually or through counsel of his, her or its own choice. If any Settlement Class Member does not enter an appearance, he, she or it will be represented by Lead Counsel.

15. **Exclusion from Settlement Class.** Settlement Class Members shall be bound by all orders, determinations, and judgments in this Action concerning the Settlement, whether favorable or unfavorable, unless such Persons request exclusion from the Settlement Class in a timely and proper manner, as hereinafter provided. A putative Settlement Class Member wishing to make such an exclusion request shall mail the request in written form by first-class mail to the address designated in the Notice for such exclusions, such that it is received no later than twenty-one (21) calendar days prior to the Settlement Hearing. Such request for exclusion must state the name, address, telephone number, and e-mail address of the Person seeking exclusion, must state that the Person requests to be “excluded from the Settlement Class in *Fox v. Fifth Third Bancorp, et al.*, No. 2020-CH-05219” and must be signed by such Person. Such Persons requesting exclusion are also directed to state the information requested in the Notice, including, but not limited to: the date(s), price(s) (if provided) and number(s) of shares of Fifth Third publicly traded common stock acquired pursuant and/or traceable to the Registration Statement issued in connection with Fifth Third’s acquisition of MB Financial on or about March 22, 2019; (iii) the date(s), price(s) (if provided), and number of shares of Fifth Third publicly traded common stock sold from March 22, 2019 through [day before execution of the Stipulation]. The request for exclusion shall not be effective unless it provides the required information and is made within the time stated above, or the exclusion is otherwise accepted by the Court.

16. Settlement Class Members requesting exclusion from the Settlement Class shall not be eligible to receive any payment out of the Net Settlement Fund as described in the Stipulation and Notice.

17. **Objections to Settlement and Appearance at Settlement Hearing.** Any Settlement Class Member who does not request exclusion from the Settlement Class may object to the proposed Settlement, the proposed Plan of Allocation, and/or Lead Counsel's application for attorneys' fees and Litigation Expenses. Any objections must state: (a) the name, address, telephone number, and e-mail address of the objector and must be signed by the objector; (b) that the objector is objecting to the proposed Settlement, Plan of Allocation, and/or application for attorneys' fees and Litigation Expenses in the case captioned *Fox v. Fifth Third Bancorp, et al.*, No. 2020-CH-05219; (c) the objection(s) and the specific reasons for each objection, and any legal and evidentiary support, and witnesses, the Settlement Class Member wishes to bring to the Court's attention; and (d) include documents sufficient to prove the objector's membership in the Settlement Class, such as the dates (s), price(s) (if provided), and number(s) of shares of all acquisitions of Fifth Third publicly traded common stock pursuant and/or traceable to the Registration Statement issued in connection with Fifth Third's acquisition of MB Financial Inc. on or about March 22, 2019 and shares of Fifth Third publicly traded common stock sold from March 22, 2019 through [day before execution of the Stipulation]. The Court will consider any Settlement Class Member's objection to the Settlement, the Plan of Allocation, and/or the application for an award of attorneys' fees or Litigation Expenses only if such Settlement Class Member has served by hand or by mail his, her or its written objection and supporting papers on the Court and has served copies of such objection on Lead Counsel and Defendants' Counsel at

the addresses set forth below such that the objection is received no later than twenty-one (21) calendar days before the Settlement Hearing:

Court: Circuit Court of Cook County
Chancery Division
Hon. Celia G. Gamrath
Richard J. Daley Center
50 W. Washington St., Room 2508
Chicago, IL 60602

Lead Counsel: Labaton Sucharow LLP
Attn: Alfred L. Fatale III, Esq.
140 Broadway
New York, NY 10005

Defendants' Counsel: Skadden, Arps, Slate, Meagher & Flom LLP
Attn: Charles F. Smith, Esq.
Marcella L. Lape, Esq.
155 North Wacker Drive, Suite 2700
Chicago, IL 60606

18. Any Settlement Class Member who does not make his, her, or its objection in the manner provided for in the Notice shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to any aspect of the Settlement, to the Plan of Allocation, or to the request for attorneys' fees and expenses, unless otherwise ordered by the Court, but shall otherwise be bound by the Judgment to be entered and the releases to be given, as set forth in Paragraph 15 above.

19. Attendance at the Settlement Hearing is not necessary, however, persons wishing to be heard orally in opposition to the approval of the Settlement, the Plan of Allocation, and/or the application for an award of attorneys' fees and Litigation Expenses are required to indicate in their written objection their intention to appear at the hearing. Persons who intend to object to the Settlement, the Plan of Allocation, and/or the application for an award of attorneys' fees and Litigation Expenses and desire to present evidence at the Settlement Hearing must include in their

written objections the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the Settlement Hearing.

20. Settlement Class Members do not need to appear at the hearing or take any other action to indicate their approval.

21. Pending final determination of whether the Settlement should be approved, Plaintiff, all Settlement Class Members, and each of them, and anyone who acts or purports to act on their behalf, shall not institute, commence or prosecute any action which asserts Released Claims against the Released Defendant Parties.

22. **Settlement Administration Fees and Expenses.** As provided in the Stipulation, prior to the Effective Date, Lead Counsel may pay the Claims Administrator the reasonable fees and costs associated with giving notice to the Settlement Class and the review of claims and administration of the Settlement out of the Settlement Fund.

23. **Supporting Papers.** All papers in support of the Settlement, Plan of Allocation, and Lead Counsel's request for an award of attorneys' fees and expenses shall be filed with the Court and served on or before thirty-five (35) calendar days prior to the date set herein for the Settlement Hearing. If reply papers are necessary, they are to be filed with the Court and served no later than seven (7) calendar days prior to the Settlement Hearing.

24. **Settlement Fund.** All funds held in escrow shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court until such time as such funds shall be disbursed pursuant to the Stipulation and/or further order of the Court.

25. No person who is not a Settlement Class Member or Lead Counsel shall have any right to any portion of, or to any distribution of, the Net Settlement Fund unless otherwise ordered by the Court or otherwise provided in the Stipulation.

26. Neither Defendants nor their counsel shall have any responsibility or liability for the Plan of Allocation or for any application for attorney's fees or Litigation Expenses submitted by Lead Counsel or Plaintiff and such matters shall be considered separately from the fairness, reasonableness, and adequacy of the Settlement.

27. **Termination of Settlement.** If the Settlement fails to become effective as defined in the Stipulation or is terminated, then both the Stipulation, including any amendment(s) thereof, except as expressly provided in the Stipulation, and this Preliminary Approval Order shall be null and void, of no further force or effect, and without prejudice to any Party, and may not be introduced as evidence or used in any actions or proceedings by any person or entity against the Parties, and the Parties shall be deemed to have reverted to their respective litigation positions in the Action as of January 19, 2023, including all rights and defenses that each of the Parties held as of that date.

28. **Use of this Order.** Neither this Order, the Stipulation (whether or not finally approved or consummated, and including any exhibits thereto, any Plan of Allocation contained therein or approved by the Court, and the Supplemental Agreement), nor their negotiation, or any proceedings taken pursuant to them: (a) shall be offered against any of the Released Defendant Parties as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Released Defendant Parties with respect to the truth of any fact alleged by Plaintiff, or the validity of any claim that was or could have been asserted, or the deficiency of any defense that has been or could have been asserted in this Action or in any litigation, or of any liability, negligence, fault, or other wrongdoing of any kind by any of the Released Defendant Parties; (b) shall be offered against any of the Released Plaintiff Parties as evidence of, or construed as, or deemed to be evidence of, any presumption, concession, or

admission with respect to any liability, negligence, fault, or wrongdoing of any kind or in any way referred to for any other reason as against any of the Released Plaintiff Parties in any civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Stipulation; (c) shall be construed against any of the Released Parties as an admission, concession, or presumption that the consideration to be given represents the amount which could be or would have been recovered after trial; provided, however, that if the Stipulation is approved by the Court, the Released Parties and their respective counsel may refer to it to effectuate the protections from liability granted hereunder or otherwise to enforce the terms of the Settlement.

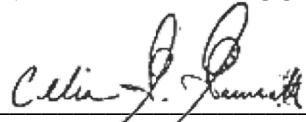
29. **Jurisdiction.** The Court retains exclusive jurisdiction over the Action to consider all further matters arising out of or connected with the Settlement.

30. **Filing of Revised Documents.** Plaintiffs' counsel shall file the revised documents submitted to and approved by the Court this afternoon with the Clerk of the Circuit Court by the end of the day today.

DATED this 17 day of May, 2023

Judge Celia G. Gamrath
MAY 17 2023
Circuit Court-2031

ENTERED BY THE COURT:


HONORABLE CELIA G. GAMRATH