

**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.
MALLESCH, MICHAEL B. MCCALLISTER,
and MARSHA C. WILLIAMS,

Defendants.

Case No. 2020CH05219

Judge: Hon. Celia G. Gamrath

FINAL ORDER AND JUDGMENT

WHEREAS:

A. As of May 9, 2023, Plaintiff Steven Fox (“Plaintiff”), on behalf of himself and all other members of the Settlement Class, on the one hand; 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, by and through their counsel of record, entered into a Stipulation and Agreement of Settlement (the “Stipulation”) in the above-titled litigation (the “Action”);

B. Pursuant to the 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, entered May 17, 2023 (the “Preliminary Approval Order”), the Court scheduled a hearing for September 14, 2023 (the “Settlement Hearing”) to, among other things: (i) determine whether the Court should grant final certification of the Action as a class action for purposes of the Settlement and confirm its appointment of Plaintiff and Labaton Sucharow LLP (“Lead Counsel”) as Class Representative and Class Counsel, respectively; (ii) to determine whether the Settlement should be approved as fair, reasonable, adequate, and in the best interests of the Settlement Class; (iii) to determine whether a Judgment, substantially in the form annexed as Exhibit B to the Stipulation, should be entered; (iv) to determine whether the Plan of Allocation for distribution of the Net Settlement Fund is reasonable and should be approved; (v) to rule upon Lead Counsel’s application for an award of attorneys’ fees and payment of Litigation Expenses; (vi) to consider any objections or exclusion requests; and (vii) to consider any other matters that may properly be brought before the Court in connection with the Settlement, as the Court may deem appropriate;

C. The Court ordered that the Notice of Pendency of Class Action, Proposed Settlement, and Motion for Attorneys’ Fees and Expenses (the “Notice”) and a Proof of Claim and Release form (“Claim Form”), as approved by the Court, be mailed, by first-class mail, postage prepaid, no later than ten (10) business days after the date of entry of the Preliminary Approval Order (“Notice Date”) to all potential Settlement Class Members who could be identified through reasonable effort, and that a Summary Notice of Pendency of Class Action, Proposed Settlement, and Motion for Attorneys’ Fees and Expenses (the “Summary Notice”), as approved by the Court,

be published in *The Wall Street Journal* and transmitted over *PR Newswire* within fourteen (14) calendar days of the Notice Date;

D. The Notice and the Summary Notice advised potential Settlement Class Members of the date, time, place, and purpose of the Settlement Hearing. The Notice further advised that any objections to the Settlement were required to be filed with the Court and served on counsel for the Parties such that they were received by August 24, 2023;

E. The provisions of the Preliminary Approval Order as to notice were complied with;

F. The Settlement Hearing was duly held before this Court on September 14, 2023 at which time all interested Persons were afforded the opportunity to be heard; and

G. The Court has reviewed and considered the Stipulation, all papers filed and proceedings held in connection with the Settlement, the record in the Action, and good cause appearing therefor;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. **Jurisdiction.** The Court has jurisdiction over the subject matter of the Action and all matters relating to the Settlement, as well as personal jurisdiction over all of the Parties and each of the Settlement Class Members.

2. **Incorporation of Settlement Documents.** This Judgment incorporates by reference and makes a part hereof: (i) the Stipulation filed with the Court on May 11, 2023; and (ii) the Notice, which was filed with the Court on May 17, 2023, as though fully set forth herein. Capitalized terms not defined in this Judgment shall have the meaning set forth in the Stipulation.

3. **Notice.** The Court finds that the mailing and publication of the Notice, Summary Notice, and Claim Form: (i) complied with the Preliminary Approval Order; (ii) constituted the best notice practicable under the circumstances; (iii) constituted notice that was reasonably

calculated to apprise Settlement Class Members of the effect of the Settlement, the Judgment, the proposed Plan of Allocation, Lead Counsel's request for an award of attorneys' fees and payment of Litigation Expenses incurred in connection with the prosecution of the Action, Settlement Class Members' right to object or seek exclusion from the Settlement Class, and their right to appear at the Settlement Hearing; (iv) constituted due, adequate, and sufficient notice to all Persons entitled to receive notice of the proposed Settlement; and (v) satisfied the notice requirements of Section 2-803 of the Illinois Code of Civil Procedure, the Due Process Clause of the United States Constitution, and Section 27 of the Securities Act of 1933, 15 U.S.C. §77z-1(a)(7), and the rules of this Court.

4. **Class Certification for Purposes of the Settlement.** The Court hereby affirms its determinations in the Preliminary Approval Order and finally certifies, for purposes of the Settlement only, pursuant to Section 2-801, *et seq.* of the Illinois Code of Civil Procedure, 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. There have been no requests for exclusion from the Settlement Class.

5. Pursuant Section 2-801, *et seq.*, of the Illinois Code of Civil Procedure, and for purposes of the Settlement only, the Court hereby re-affirms its determinations in the Preliminary Approval Order and finally certifies Steven Fox as Class Representative for the Settlement Class; and finally appoints the law firm of Labaton Sucharow LLP as Class Counsel for the Settlement Class.

6. **Objections.** There have been no objections to the Settlement.

7. **Final Settlement Approval and Dismissal of Claims.** The Court hereby fully and finally approves the Settlement set forth in the Stipulation in all respects, and finds that the Settlement is fair, reasonable, adequate, and in the best interest of the Settlement Class. The Court further finds that the Settlement set forth in the Stipulation is the result of good faith, arm's-length negotiations between experienced counsel. The strength of the claims compared to the relief offered in the Settlement, the complex nature of the legal and factual issues in the Action, the reaction of the Settlement Class, the judgment of Lead Counsel, and the stage of proceedings further support approval of the Settlement. The Parties are directed to implement, perform, and consummate the Settlement in accordance with the terms and provisions of the Stipulation.

8. The Complaint for Violations of the Securities Act of 1933 (the "Complaint") filed on July 31, 2020, is dismissed in its entirety, with prejudice, and without costs to any Party, except as otherwise provided in the Stipulation.

9. **Releases.** The Releases set forth in Paragraphs 4 and 5 of the Stipulation, together with the definitions contained in Paragraph 1 of the Stipulation relating thereto, are expressly incorporated herein in all respects. Accordingly, this Court orders that:

(a) Upon the Effective Date of the Settlement, Plaintiff and each and every other Plaintiff Releasor, shall be deemed to have fully, finally, and forever waived, released,

discharged, and dismissed each and every one of the Released Claims against each and every one of the Released Defendant Parties and shall forever be barred and enjoined from commencing, instituting, prosecuting, or maintaining any and all of the Released Claims against any and all of the Released Defendant Parties.

(b) Upon the Effective Date of the Settlement, Defendants, on behalf of themselves and each of their respective heirs, executors, trustees, administrators, predecessors, successors, and assigns, shall be deemed to have fully, finally, and forever waived, released, discharged, and dismissed each and every one of the Released Defendants' Claims against each and every one of the Released Plaintiff Parties and shall forever be barred and enjoined from commencing, instituting, prosecuting, or maintaining any and all of the Released Defendants' Claims against any and all of the Released Plaintiff Parties.

10. Notwithstanding Paragraph 9 above, nothing in this Judgment shall bar any action by any of the Parties to enforce or effectuate the terms of the Stipulation or this Judgment.

11. **Binding Effect.** The terms of the Stipulation and of this Judgment shall be forever binding on Defendants, Plaintiff, all other members of the Settlement Class (regardless of whether or not any individual Settlement Class Member submits a Claim Form or seeks or obtains a distribution from the Net Settlement Fund), and the Released Parties, as well as their respective heirs, executors, trustees, administrators, predecessors, successors, and assigns, in their capacities as such.

12. **Rule 137 and Rule 11 Findings.** The Court finds and concludes that, during the course of the litigation, the Parties and their respective counsel have complied fully with the requirements of Illinois Supreme Court Rule 137 and any other applicable law or rule similar to

Federal Rule of Civil Procedure 11 in connection with the commencement, maintenance, prosecution, defense, and settlement of the Action.

13. **No Admissions.** This Judgment, the Stipulation, and any discussion, negotiation, proceeding, or agreement relating to the Stipulation, the Settlement, and/or any matter arising in connection with settlement discussions or negotiations, proceedings, or agreements, shall not be offered or received against or to the prejudice of the Parties or their respective counsel, for any purpose other than in an action or any proceeding or motion to enforce the terms of the Stipulation or the Judgment, and in particular:

(a) do not constitute, and shall not be offered or received against or to the prejudice of any of the Defendants or 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 Defendants or the Released Defendant Parties with respect to the truth of any allegation by Plaintiff and the Settlement Class, or the validity of any claim that has been or could have been asserted in the Action or in any litigation, including but not limited to the Released Claims, or of any liability, damages, negligence, fault or wrongdoing of Defendants or any person or entity whatsoever, or of any infirmity in any of the Defendants' defenses;

(b) do not constitute, and shall not be offered or received against or to the prejudice of any of the Defendants or the Released Defendant Parties as evidence of a presumption, concession, or admission of any fault, misrepresentation, or omission with respect to any statement or written document approved or made by any of the Defendants, or against or to the prejudice of Plaintiff, or any other member of the Settlement Class, as evidence of any infirmity in the claims of Plaintiff, or the other members of the Settlement Class;

(c) do not constitute, and shall not be offered or received against or to the prejudice of any of the Defendants or the Released Defendant Parties, Plaintiff, any other member of the Settlement Class, or their respective counsel, as evidence of a presumption, concession, or admission with respect to any liability, damages, negligence, fault, infirmity, or wrongdoing, or in any way referred to for any other reason against or to the prejudice of any of the Defendants or the Released Defendant Parties, Plaintiff, other members of the Settlement Class, or their respective counsel, in any other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation;

(d) do not constitute, and shall not be construed against any of the Defendants or the Released Defendant Parties, Plaintiff, or any other member of the Settlement Class, as an admission or concession that the consideration to be given hereunder represents the amount that could be or would have been recovered after trial; and

(e) do not constitute and shall not be construed as or received in evidence as an admission, concession, or presumption against Plaintiff, or any other member of the Settlement Class, that any of their claims are without merit or infirm or that damages recoverable under the Complaint would not have exceeded the Settlement Amount.

14. The administration of the Settlement, and the decision of all disputed questions of law and fact with respect to the validity of any claim or right of any Person to participate in the distribution of the Net Settlement Fund, shall remain under the authority of the Court.

15. No Person shall have any claim against the Released Defendant Parties, the Released Plaintiff Parties, or the Claims Administrator based on determinations or distributions made substantially in accordance with the Stipulation and the Settlement, the Plan of Allocation, and this Judgment or order(s) of this Court.

16. **Extensions of Time.** Without further order of the Court, the Parties may agree to reasonable extensions of time to carry out any of the provisions of the Stipulation.

17. **Retention of Jurisdiction.** Without affecting the finality of this Judgment in any way, this Court retains continuing and exclusive jurisdiction over: (i) the Parties for purposes of the administration, interpretation, implementation, and enforcement of the Settlement; (ii) the implementation and administration of the Settlement; (iii) the allowance, disallowance, or adjustment of any Settlement Class Member's claim on equitable grounds; (iv) any motion for an award of attorneys' fees and/or Litigation Expenses by Lead Counsel in the Action that will be paid from the Settlement Fund; (v) any motion to approve the Plan of Allocation; and (vi) the Settlement Class Members for all matters relating to the Action.

18. **Termination.** In the event that the Settlement does not become effective in accordance with the terms of the Stipulations, then then this Judgment shall be vacated, rendered null and void, and be of no further force or effect, and without prejudice to any party, and each party shall be restored to his, her or its respective litigation positions as they existed prior to January 19, 2023, as provided for in the Stipulation.

Approval of the Plan of Allocation

19. Copies of the Notice, which included the proposed Plan of Allocation, were mailed to more than 133,000 potential Settlement Class Members and nominees. No objections to the Plan of Allocation have been received.

20. The Court hereby finds and concludes that the Plan of Allocation for the calculation of the claims of Claimants and distribution of the Net Settlement Fund, which was set forth in the Notice disseminated to Settlement Class Members, provides a fair and reasonable basis upon which to allocate the Net Settlement Fund among eligible Settlement Class Members.

21. Pursuant to the Plan of Allocation, distributions will be made to eligible Authorized Claimants after claims have been processed and after the Court has finally approved the Settlement. If there is any balance remaining in the Net Settlement Fund (whether by reason of tax refunds, uncashed checks, or otherwise) after at least six (6) months from the date of initial distribution of the Net Settlement Fund, the Claims Administrator shall, if feasible and economical after payment of Notice and Administration Expenses, Taxes, and attorneys' fees and expenses, if any, redistribute such balance among Authorized Claimants who have cashed their initial checks in an equitable and economic fashion. Any balance that still remains in the Net Settlement Fund after such re-distribution(s), which is not feasible or economical to reallocate, after payment of outstanding Notice and Administration Expenses, Taxes, and attorneys' fees and expenses, if any, shall be donated as follows: 50% to the Consumer Federation of America, a private, non-profit, non-sectarian 501(c)(3) organization, and 50% to the Legal Aid Society of Metropolitan Family Services, or as otherwise approved by the Court. At the completion of the administration, Lead Counsel shall advise the Court that the Net Settlement Fund has been distributed and of the amount donated to the *cy pres* organizations, if any.

22. The Court hereby finds and concludes that the Plan of Allocation, as set forth in the Notice, is, in all respects, fair and reasonable and the Court hereby approves the Plan of Allocation.

23. The Court's approval of the Plan of Allocation is a matter separate and distinct from approval of the Settlement and shall in no way disturb or affect the finality of the other aspects of this Judgment with respect to the Settlement.

Lead Counsel's Fee and Expense Application

24. Lead Counsel is hereby awarded, on behalf of all Plaintiff's Counsel, 33.3% of the Settlement Fund as payment for Notice and Administration Expenses, Plaintiff's Counsel's

attorneys' fees, Litigation Expenses in the amount of \$69,715.91, and a service award to Lead Plaintiff in the amount of \$10,000, which sums the Court finds to be fair and reasonable.

25. The award of attorneys' fees and Litigation Expenses may be paid to Lead Counsel from the Settlement Fund immediately upon entry of this Judgment, subject to the terms, conditions, and obligations of the Stipulation, which terms, conditions, and obligations are incorporated herein.

26. In making this award of attorneys' fees and payment of Litigation Expenses to be paid from the Settlement Fund, the Court has found that:

(f) The Settlement has created a common fund of \$5.5 million in cash and that numerous Settlement Class Members who submit acceptable Claim Forms will benefit from the Settlement created by the efforts of Plaintiff's Counsel;

(g) Plaintiff's Counsel undertook the Action on a contingent basis, and have received no compensation during the Action, and any fee and expense award has been contingent on the result achieved;

(h) The Action involves complex factual and legal issues and, in the absence of settlement, would involve lengthy proceedings whose resolution would be uncertain;

(i) Plaintiff's Counsel conducted the Action and achieved the Settlement with skillful and diligent advocacy;

(j) Plaintiff's Counsel have devoted 3,277 hours, with a lodestar value of \$2,024,603.50, to achieve the Settlement;

(k) The amount of attorneys' fees requested is fair and reasonable and consistent with fee awards approved in cases with similar recoveries;

(l) Notice was disseminated to putative Settlement Class Members stating that Lead Counsel would be submitting an application for attorneys' fees and Litigation Expenses in an amount not to exceed 33.3% of the Settlement Fund, and that such application also might include a request for a service award of no more than \$10,000 for Plaintiff related to his representation of the Settlement Class; and

(m) There were no objections to the application for attorneys' fees or expenses.

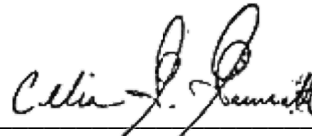
27. The Court's approval of the Fee and Expense Application is a matter separate and distinct from approval of the Settlement and shall in no way disturb or affect the finality of the Judgment with respect to the Settlement.

28. The Parties are to bear their own costs, except as otherwise provided herein or in the Stipulation.

29. **Entry of Final Judgment.** There is no just reason to delay the entry of this Judgment as a final judgment in this Action. Accordingly, the Clerk of the Court is expressly directed to immediately enter this final judgment in this Action.

IT IS SO ORDERED this 14th day of September, 2023

BY THE COURT:



HONORABLE CELIA G. GAMRATH

Judge Celia G. Gamrath

SEP 14 2023

Circuit Court-2031

Calendar 6 Contact Information:
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