

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

DUDENHOEFFER, *et al.*,

Plaintiffs

v.

FIFTH THIRD BANCORP, *et al.*,

Defendants

Civil Action No. 1:08-CV-538-SSB

**ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION  
SETTLEMENT, PRELIMINARILY CERTIFYING A CLASS FOR  
SETTLEMENT PURPOSES, APPROVING FORM AND MANNER OF CLASS  
NOTICE, PRELIMINARILY APPROVING PLAN OF ALLOCATION AND  
SCHEDULING A DATE FOR A FINAL APPROVAL HEARING**

This Action involves claims for alleged violations of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, *et seq.* (“ERISA”), with respect to the Fifth Third Bancorp 401(k) Savings Plan, formerly known as the Fifth Third Bancorp Master Profit Sharing Plan (the “Plan”).<sup>1</sup> The terms of the Settlement are set out in the Settlement Agreement, fully executed as of January 15, 2016 (the “Settlement Agreement”), by counsel on behalf of the Named Plaintiffs and Defendants, respectively.

Pursuant to the Named Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement, Preliminary Certification of a Class for Settlement Purposes, Approving Form and Manner of Class Notice, Preliminarily Approving Plan of Allocation, and Scheduling a Date for a Final Approval Hearing filed on March 15, 2016, the Court preliminarily considered the Settlement to determine, among other things, whether the Settlement is sufficient to warrant the issuance of notice to members of the proposed Settlement Class. Upon reviewing the Settlement Agreement and the matter having come before the Court at the March 28, 2016 hearing, due notice having been given and the Court having been fully advised in the premises, it is hereby **ORDERED, ADJUDGED, AND DECREED** as follows:

1. **Preliminary Certification of the Settlement Class.** In accordance with the Settlement Agreement, and pursuant to Rules 23(a) and (b)(1) of the Federal Rules of Civil Procedure, this Court hereby conditionally certifies the following class (“Settlement Class”):

All Persons (excluding Defendants and their Immediate Family Members) who were participants in or beneficiaries (including alternate payees) of the Plan at any time between July 19, 2007 to January 15, 2016, and whose Plan account included investments in Fifth Third Stock.

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<sup>1</sup> All capitalized terms not otherwise defined in this Order shall have the same meaning as ascribed to them in the Settlement Agreement.

2. Pursuant to the Settlement Agreement, and for settlement purposes only, the Court preliminarily finds that:

- (a) as required by FED. R. CIV. P. 23(a)(1), the Settlement Class is ascertainable from records kept with respect to the Plan and from other objective criteria, and the Settlement Class is so numerous that joinder of all members is impracticable.
- (b) as required by FED. R. CIV. P. 23(a)(2), there are one or more questions of law and/or fact common to the Settlement Class.
- (c) as required by FED. R. CIV. P. 23(a)(3), the claims of the Plaintiffs are typical of the claims of the Settlement Class that Plaintiffs seek to certify.
- (d) as required by FED. R. CIV. P. 23(a)(4), that the Plaintiffs will fairly and adequately protect the interests of the Settlement Class in that: (i) the interests of the Plaintiffs and the nature of the alleged claims are consistent with those of the Settlement Class Members; and (ii) there appear to be no conflicts between or among the Plaintiffs and the Settlement Class.
- (e) as required by FED. R. CIV. P. 23(b)(1), the prosecution of separate actions by individual members of the Settlement Class would create a risk of: (i) inconsistent or varying adjudications as to individual Settlement Class Members that would establish incompatible standards of conduct for the parties opposing the claims asserted in this Action; or (ii) adjudications as to individual Settlement Class Members that, as a practical matter, would be dispositive of the interests of the other members not parties to the

individual adjudications, or substantially impair or impede the ability of such persons to protect their interests.

- (f) as required by FED. R. CIV. P. 23(g), Class Counsel are capable of fairly and adequately representing the interests of the Settlement Class, and that Class Counsel: (i) have done appropriate work identifying or investigating potential claims in the Action; (ii) are experienced in handling class actions; and (iii) have committed the necessary resources to represent the Settlement Class.

3. The Court preliminarily appoints the Plaintiffs as class representatives for the Settlement Class and Kessler Topaz Meltzer & Check, LLP and Gainey McKenna & Egleston as Class Counsel for the Settlement Class.

4. The Court preliminarily approves the proposed Plan of Allocation, finding it is fair, reasonable, and adequate.

5. **Preliminary Approval of Proposed Settlement** – The Settlement Agreement is hereby preliminarily approved as fair, reasonable, and adequate. This Court preliminarily finds that: (a) the proposed Settlement resulted from serious, informed, extensive and arms'-length negotiations with the assistance of the Settling Mediator; (b) the Settlement Agreement was executed only after Class Counsel had conducted appropriate investigation and discovery regarding the strengths and weaknesses of Named Plaintiffs' claims; (c) Class Counsel represent that they have concluded that the proposed Settlement is fair, reasonable, and adequate; and (d) the proposed Settlement is in the best interest of the Named Plaintiffs and the Settlement Class. The Court finds that those whose claims would be settled, compromised, dismissed, or released

pursuant to the Settlement should be given notice and an opportunity to be heard regarding final approval of the Settlement and other matters.

6. **Final Approval Hearing** – A hearing is scheduled for July 11, 2016 at 10:00 a.m. to make a final determination, concerning among other things:

- Whether the Settlement merits final approval as fair, reasonable, and adequate;
- Whether the Action should be dismissed with prejudice pursuant to the terms of the Settlement;
- Whether the notice method proposed by the Parties: (i) constitutes the best practicable notice; (ii) constitutes notice reasonably calculated, under the circumstances, to apprise members of the Settlement Class of the pendency of the litigation, their right to object to the Settlement, and their right to appear at the Final Approval Hearing; (iii) is reasonable and constitutes due, adequate, and sufficient notice to all persons entitled to notice; and (iv) meets all applicable requirements of the Federal Rules of Civil Procedure and any other applicable law;
- Whether Class Counsel adequately represented the Settlement Class for purposes of entering into and implementing the Settlement;
- Whether the proposed Plan of Allocation should be finally approved; and
- Whether Class Counsel's application(s) for attorneys' fees and expenses and Case Contribution Awards to the Named Plaintiffs is fair and reasonable, and should be approved.

7. **Class Notice** – The Parties have presented to the Court a proposed form of Class Notice, attached hereto as Exhibit A and a summary of the Class Notice in the form of a

Publication Notice, attached hereto as Exhibit B. The Court finds that both such forms of notice fairly and adequately: (a) describe the terms and effects of the Settlement Agreement, the Settlement, and the Plan of Allocation; (b) notify the Settlement Class that Class Counsel will seek attorneys' fees and litigation costs from the Settlement Fund, payment of the costs of administering the Settlement out of the Settlement Fund, and for a Case Contribution Award of up to \$10,000 each for the Named Plaintiffs for their service in such capacity; (c) give notice to the Settlement Class of the time and place of the Final Approval Hearing; and (d) describe how the recipients of the Class Notice may object to any of the relief requested. The Parties have proposed the following manner of communicating the notice to members of the Settlement Class, and the Court finds that such proposed manner is the best notice practicable under the circumstances. Accordingly, the Court directs that Class Counsel shall:

- By no later than May 11, 2016, cause the Class Notice, with such non-substantive modifications thereto as may be agreed upon by the Parties, to be provided by first-class mail, postage prepaid, to the last known address of each member of the Settlement Class who can be identified through reasonable effort.
- By no later than May 11, 2016, cause the Class Notice to be published on the website identified in the Class Notice, [www.FifthThirdERISAsettlement.com](http://www.FifthThirdERISAsettlement.com), which will also host and make available copies of all Settlement-related documents, including the Settlement Agreement.
- By no later than May 11, 2016, cause the Publication Notice to be published in the *Cincinnati Enquirer* and PR Newswire one time.

**8. Petition for Attorney's Fees and Litigation Costs and Case Contribution Awards** – Any petition by Class Counsel for attorney's fees, litigation costs and Case

Contribution Awards to the Named Plaintiffs, and all briefs in support thereof, shall be filed no later than 5:00 p.m. on June 9, 2016.

9. **Briefs in Support of Final Approval of the Settlement** – Briefs and other documents in support of Final Approval of the Settlement shall be filed no later than 5:00 p.m. on June 9, 2016.

10. **Objections to Settlement** – Any member of the Settlement Class or authorized recipient of any CAFA Notice may file an objection to the fairness, reasonableness, or adequacy of the Settlement, to any term of the Settlement Agreement, to the Plan of Allocation, to the proposed award of attorneys' fees and litigation costs, the payment of costs of administering the Settlement out of the Settlement Fund, or to the request for a Case Contribution Award for the Named Plaintiffs. An objector must file with the Court a statement of his, her, or its objection(s), specifying the reason(s), if any, for each such objection made, including any legal support and/or evidence that the objector wishes to bring to the Court's attention or introduce in support of the objection(s). The objector must also mail copies of the objection(s) and any supporting law and/or evidence to Class Counsel and to counsel for the Defendants. The addresses for filing objections with the Court and serving objections on counsel are as follows:

For Filing:

Clerk of the Court  
United States District Court for the Southern District of Ohio, Western Division  
Potter Stewart United States Courthouse  
Room 103  
100 East Fifth Street  
Cincinnati, Ohio 45202

Re: *Dudenhoeffer, et al. v. Fifth Third Bancorp, Inc. et al.*,  
Civil Action No. 1:08-CV-538-SSB (S.D. Ohio)

To Class Counsel:

Edward W. Ciolko  
Mark K. Gyandoh  
KESSLER TOPAZ MELTZER & CHECK, LLP  
280 King of Prussia Road  
Radnor, Pennsylvania 19087  
Telephone: (610) 667-7706  
Facsimile: (610) 667-7056

Thomas J. McKenna  
Gregory E. Egleston  
GAINEY MCKENNA & EGLESTON  
440 Park Avenue South  
5<sup>th</sup> Floor  
New York, NY 10016  
Telephone: (212) 983-1300  
Facsimile: (212) 983-0383

To Defendants' Counsel

James E. Burke  
KEATING MEUTHING & KLEKAMP PLL  
One East 4<sup>th</sup> Street  
Suite 1400  
Cincinnati, OH 45202  
Telephone: (513) 579-6428  
Facsimile: (513) 579-6457

The objector or his, her, or its counsel (if any) must serve copies of the objection(s) (together with any supporting materials) on counsel listed above and file the objection(s) and supporting materials with the Court no later than 5:00 p.m. on June 20, 2016. If an objector hires an attorney to represent him, her, or it for the purposes of making an objection pursuant to this paragraph, the attorney must also serve a notice of appearance on counsel listed above and file it with the Court no later than 5:00 p.m. on June 20, 2016. Any member of the Settlement Class or other Person who does not timely file and serve a written objection complying with the terms of this paragraph shall be deemed to have waived, and shall be foreclosed from raising, any objection to the Settlement, and any untimely objection shall be barred. Any responses to



objections shall be filed with the Court and served on opposing counsel no later than 5:00 p.m. on July 1, 2016. There shall be no reply briefs. Defendants' counsel and Class Counsel shall promptly furnish each other with copies of any and all Objections to the Settlement that come into their possession.

11. Any additional briefs the Parties may wish to file in support of the Settlement shall be filed no later than 5:00 p.m. on July 1, 2016.

12. **Appearance at Final Approval Hearing** – Any objector who files and serves a timely, written objection in accordance with paragraph 10 above may also appear at the Final Approval Hearing either in person or through qualified counsel retained at the objector's expense. Objectors or their attorneys intending to appear at the Final Approval Hearing must serve a notice of intention to appear (and, if applicable, the name, address, and telephone number of the objector's attorney) on Class Counsel and Defendants' counsel (at the addresses set out above) and file it with the Court by no later than 5:00 p.m. on June 20, 2016. Any objector who does not timely file and serve a notice of intention to appear in accordance with this paragraph shall not be permitted to appear at the Final Approval Hearing, except for good cause shown.

13. **Notice Expenses** – The expenses of printing, mailing, and publishing the Class Notice and Publication Notice required herein shall be paid exclusively from the Settlement Fund.

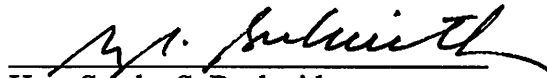
14. **Termination of Settlement** – This Order shall become null and void, *ab initio*, and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions as of January 15, 2016, the day immediately before the Parties reached agreement to settle the Action, if the Settlement is terminated in accordance with the terms of the Settlement Agreement.

15. **Use of Order** – This Order is not admissible as evidence for any purpose against Defendants in any pending or future litigation. This Order shall not be construed or used as an admission, concession, or declaration by or against Defendants of any finding of fiduciary status, fault, wrongdoing, breach, omission, violation of law, breach of duty, mistake, or liability. This Order shall not be construed or used as an admission, concession, or declaration by or against Named Plaintiffs or the Settlement Class that their claims lack merit, or that the relief requested in the Action is inappropriate, improper, or unavailable. This Order shall not be construed or used as an admission, concession, declaration, or waiver by any Party of any arguments, defenses, or claims he, she, or it may have, including, but not limited to, any objections by Defendants to class certification, in the event that the Settlement Agreement is terminated. Moreover, the Settlement Agreement and any proceedings taken pursuant to the Settlement Agreement are for settlement purposes only. Neither the fact of, nor any provision contained in, the Settlement Agreement or its exhibits, nor any actions taken thereunder, shall be construed as, offered into evidence as, received in evidence as, and/or deemed to be evidence of a presumption, concession, or admission of any kind as to the truth of any fact alleged or validity of any claim or defense that has been, could have been, or in the future might be asserted.

16. **Jurisdiction** – The Court hereby retains jurisdiction for purposes of implementing the Settlement, and reserves the power to enter additional orders to effectuate the fair and orderly administration and consummation of the Settlement as may from time to time be appropriate, and to resolve any and all disputes arising thereunder.

17. **Continuance of Final Approval Hearing** – The Court reserves the right to continue the Final Approval Hearing without further written notice.

SO ORDERED this 28th day of March, 2016.



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Hon. Sandra S. Beckwith  
United States District Judge