

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JOHN DUDENHOEFFER, ALIREZA
PARTOVIPANAH, *et al.*,

Plaintiffs,

vs.

FIFTH THIRD BANCORP, *et al.*,

Defendants.

Civil Action No.: 08-cv-538

**PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT,
PRELIMINARY CERTIFICATION OF SETTLEMENT CLASS, APPROVAL OF
CLASS NOTICE, APPROVAL OF PLAN OF ALLOCATION, AND
SCHEDULING OF A FINAL APPROVAL HEARING**

Plaintiffs John Dudenhoeffer and Alireza Partovipanah (“Named Plaintiffs” or “Plaintiffs”), participants in the Fifth Third Bancorp Master Profit Sharing Plan (the “Plan”),¹ respectfully move this Court for an order (1) granting preliminary approval of the Settlement,² (2) preliminarily certifying the below-defined Settlement Class pursuant to FED. R. CIV. P. 23, (3) approving the manner of giving notice of the Settlement to the proposed Settlement Class (“Notice Plan”), and (4) approving the proposed Plan of Allocation, and (5) setting a date for a Final Approval Hearing.

The Settlement Agreement provides that the Defendants will pay \$6,000,000.00 to the Plan to be allocated to participants pursuant to the proposed Plan of Allocation. Additionally, the Settlement includes Non-Monetary Relief, a series of structural changes to the Plan, which will provide significant benefits to the Plan participants. Specifically, the Non-Monetary Relief includes:

- The freezing of the Fifth Third Stock Fund, including prohibiting new Plan Participants from investing in the Fifth Third Stock Fund;
- Continuing the current practice of matching contributions in cash, rather than in Fifth Third Stock, for a period of at least eight (8) years;
- The dissemination of an annual notice to Plan Participants who currently have more than 20% of their account(s) invested in Fifth Third regarding the benefits of asset allocation and diversification; and
- Improved fiduciary training.

¹ Now known as the Fifth Third Bancorp 401(k) Savings Plan.

² The Stipulation of Settlement (the “Settlement Agreement”), being filed concurrently as Exhibit A to the memorandum accompanying the instant motion, has several exhibits, including the proposed forms of notice of Settlement and proposed forms of the Preliminary and Final Approval Orders. All capitalized terms not

See Settlement Agreement, Exhibit A, at § 7.4. Plaintiffs have retained an expert who will provide a valuation of the structural relief obtained as part of the Settlement. The expert's report will be submitted in connection with the filing of Plaintiffs' motion for final approval of the Settlement.

For the reasons set forth in the accompanying memorandum of law, Plaintiffs submit that the proposed Settlement is fair, reasonable, and adequate. Additionally, the proposed Settlement Class satisfies the requirements of Federal Rule of Civil Procedure 23(a), 23(b)(1), and 23(b)(2), thereby warranting preliminary certification for the purposes of this Settlement. Moreover, the Notice Plan satisfies the requirements of due process and is consistent with that used in analogous actions. Further, the proposed Plan of Allocation is fair, reasonable, and adequate and should be approved by this Court. Accordingly, Plaintiffs respectfully submit that preliminary approval of the Settlement should be granted, the Settlement Class should be preliminarily certified, the Class Notice should be approved, the Plan of Allocation should be approved, and a Final Approval Hearing should be scheduled.

For the Court's convenience, a proposed Preliminary Approval Order, attached as Exhibit 1 to the Settlement Agreement, is also attached hereto.

Dated: March 15, 2016

Respectfully submitted,

By: /s/ Mark K. Gyandoh
**KESSLER TOPAZ MELTZER &
CHECK, LLP**
Edward W. Ciolko
Mark K. Gyandoh
Julie Siebert-Johnson
280 King of Prussia Road
Radnor, PA 19087
Tel: (610) 667-7706
Fax: (610) 667-7056

otherwise defined in this memorandum shall have the same meaning as ascribed to them in the Settlement Agreement.

Email: eciolko@ktmc.com
Email: mgyandoh@ktmc.com
Email: jsjohnson@ktmc.com

By: /s/ Thomas J. McKenna
GAINEY McKENNA & EGLESTON
Thomas J. McKenna
Gregory M. Egleston
440 Park Avenue South, 5th Floor
New York, NY 10016
Tel: (212) 983-1300
Fax: (212) 983-0383
Email: tjmckenna@gme-law.com
Email: gegleston@gme-law.com

Proposed Class Counsel

STRAUSS TROY
Ronald R. Parry
The Federal Reserve Building
150 East Fourth Street
Cincinnati, OH 45202-4018
Tel: (513) 621-2120
Fax: (513) 241-8259
Email: rrperry@strausstroy.com

Plaintiffs' Counsel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 15, 2016, a copy of the foregoing document was filed electronically. Notice of this filing will be sent to counsel of record by operation of the Court's electronic filing system.

/s/ Mark K. Gyandoh
Mark K. Gyandoh