

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

| | | |
|---|---|---------------------------------------|
| The Eshe Fund, individually, and on behalf of |) | Case No. 1:08-cv-421 |
| All Those Similarly Situated, |) | |
| |) | (Judge Sandra S. Beckwith) |
| Plaintiffs, |) | (Magistrate Judge Sharon L. Ovington) |
| |) | |
| vs. |) | |
| |) | |
| Fifth Third Bancorp, <i>et al.</i> , |) | |
| |) | |
| Defendants. |) | |
| <hr style="width: 35%; margin-left: 0;"/> | | |

FINAL JUDGMENT AND ORDER OF DISMISSAL WITH PREJUDICE

This matter came before the Court for hearing pursuant to the Order of this Court dated October 21, 2013, on the application of the parties for approval of the settlement set forth in the Stipulation of Settlement dated as of April 12, 2013 (the "Stipulation"). Due and adequate notice having been given to the Class as required in the Court's Order, and the Court having considered all papers filed and proceedings held herein and otherwise being fully informed in the premises and good cause appearing therefore, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. This Judgment incorporates by reference the definitions in the Stipulation, and all capitalized terms used, but not defined herein, shall have the same meanings as in the Stipulation.

2. This Court has jurisdiction over the subject matter of the Litigation and over all parties to the Litigation, including all Members of the Class.

3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court hereby finally certifies, for purposes of settlement only, a Class defined as: All persons or entities who purchased or otherwise acquired: (i) the common stock of Fifth Third Bancorp issued in connection with the merger with First Charter Corp. pursuant to Fifth Third's November 29, 2007 Registration/Proxy Statement/Prospectus ("First Charter Shares"); (ii) shares of Fifth Third Capital Trust VI, 7.25% Trust Preferred Securities pursuant or traceable to Fifth Third's October 23, 2007 Final Prospectus Supplement ("Preferred B Shares"); and/or (iii) shares of Fifth Third Capital Trust VII, 8.875% Trust Preferred Securities pursuant or traceable to Fifth Third's April 29, 2008 Final Prospectus Supplement ("Preferred C Shares") filed with the Securities and Exchange Commission and who were damaged thereby (the "Class"). Excluded from the Class are Defendants; the officers and directors of the corporate Defendants; members of their

immediate families and their legal representatives, heirs, successors or assigns; and any entity in which any Defendant has or had a majority interest.

4. For purposes of settlement only, this Court finds and concludes that: (a) the members of the Class are so numerous that joinder of all Class members in the class action is impracticable; (b) there are questions of law and fact common to the Class which predominate over any individual question; (c) the claims of Plaintiffs are typical of the claims of the Class; (d) Plaintiffs and their counsel have fairly and adequately represented and protected the interests of the Class Members; and (e) a class action is superior to other available methods for the fair and efficient adjudication of the controversy, considering: (i) the interests of the members of the Class in individually controlling the prosecution of the separate actions, (ii) the extent and nature of any litigation concerning the controversy already commenced by members of the Class, (iii) the desirability or undesirability of concentrating the litigation of these claims in this particular forum, and (iv) the difficulties likely to be encountered in the management of the class action.

5. Pursuant to Federal Rule of Civil Procedure 23, this Court hereby approves the settlement set forth in the Stipulation and finds that the settlement is, in all respects, fair, reasonable and adequate to the Settling Parties. The Court further finds that the settlement set forth in the Stipulation is the result of arm's-length negotiations between experienced counsel representing the interests of the Settling Parties. Accordingly, the settlement embodied in the Stipulation is hereby finally approved in all respects. The Settling Parties are hereby directed to perform its terms.

6. The Litigation is hereby dismissed in its entirety with prejudice and without costs. Nothing herein is intended to waive or prejudice the rights of Class members who have timely opted out of the Class, as identified on Exhibit 1 hereto.

7. The releases as set forth in ¶¶4.1-4.4 of the Stipulation together with the definitions in ¶¶1.1-1.25 relating thereto are expressly incorporated herein in all respects.

8. Upon the Effective Date, the Plaintiffs and all Class members, except for those who have timely opted out of the Class (as identified on Exhibit 1 hereto), and anyone claiming through or on behalf of any of them (“Class Releasers”), are forever barred and enjoined from commencing, instituting or continuing to prosecute any action or any proceeding in any court of law or equity, arbitration tribunal, administrative forum, or other forum of any kind (whether within the United States or not) asserting any of the Released Claims (including Unknown Claims) against any of the Released Persons.

9. Upon the Effective Date, the Class Releasers shall be deemed to have, and by operation of the Judgment shall have, fully, finally and forever released, relinquished and discharged all Released Claims (including Unknown Claims) against the Released Persons, whether or not such Class member executed and delivered a Proof of Claim.

10. Upon the Effective Date, each of the Released Persons shall be deemed to have, and by operation of the Judgment shall have, fully, finally and forever released, relinquished and discharged the Plaintiffs, any other plaintiff, Class members and Plaintiffs’ Counsel from all claims (including Unknown Claims) arising out of, relating to, or in connection with, the institution, prosecution, assertion, settlement or resolution of the Litigation.

11. The distribution of the Notice of Proposed Settlement of Class Action and the publication of the Summary Notice as provided for in the Order Preliminarily Approving

Settlement and Providing for Notice constituted the best notice practicable under the circumstances, including individual notice to all members of the Class who could be identified through reasonable effort. Said notice provided the best notice practicable under the circumstances of those proceedings and of the matters set forth therein, including the proposed settlement set forth in the Stipulation, to all Persons entitled to such notice, and said notice fully satisfied the requirements of Federal Rule of Civil Procedure 23, §27(a)(7) of the Securities Act of 1933, 15 U.S.C. §77z-1(a)(7) as amended by the Private Securities Litigation Reform Act of 1995, due process and any other applicable law.

12. Any plan of allocation submitted by Lead Counsel or any order entered regarding the attorneys' fee and expense application shall in no way disturb or affect this Judgment and shall be considered separate from this Judgment.

13. Neither the Stipulation nor the settlement contained therein, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim, or of any wrongdoing or liability of the Defendants; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any of the Defendants in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. The Stipulation may be filed in an action to enforce or interpret the terms of the Stipulation, the settlement contained therein, and any other documents executed in connection with the performance of the agreements embodied therein. Defendants and/or the other Released Persons may file the Stipulation and/or this Judgment in any action that may be brought against them in order to support a defense or counterclaim based on the principles of *res judicata*, collateral estoppel, full faith and credit, release, good faith settlement,

judgment bar, or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

14. Without affecting the finality of this Judgment in any way, this Court hereby retains continuing jurisdiction over: (a) implementation of this settlement and any award or distribution of the Settlement Fund, including interest earned thereon; (b) disposition of the Settlement Fund; (c) hearing and determining applications for attorneys' fees and expenses in the Litigation; and (d) all parties hereto for the purpose of construing, enforcing and administering the Stipulation.

15. The Court finds that during the course of the Litigation, the Settling Parties and their respective counsel at all times complied with the requirements of Federal Rule of Civil Procedure 11.

16. In the event that the Settlement does not become effective in accordance with the terms of the Stipulation, or the Stipulation is terminated pursuant to ¶7.4 of the Stipulation, ¶¶7.5-7.6 of the Stipulation shall apply, the Settling Parties shall be restored to their respective positions in the litigation as of December 18, 2012, and this Judgment shall be rendered null and void to the extent provided by and in accordance with the Stipulation and shall be vacated and, in such event, all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Stipulation.

17. Without further order of this Court, the parties may agree to reasonable extensions of time to carry out any of the provisions of the Stipulation.

18. The Defendants have provided notification to all appropriate federal and state officials regarding the Settlement as required by 28 U.S.C. §1715.

19. There is no just reason for delay in the entry of this Order and Final Judgment and immediate entry by the Clerk of the Court is hereby directed.

IT IS SO ORDERED.

DATED: November 19,
2013


THE HONORABLE SANDRA S. BECKWITH
UNITED STATES DISTRICT JUDGE

EXHIBIT 1

1. Shirley Fong
Vancouver, BC
2. Wayne A. Ridlehoover
Greenwood, SC
3. James M. Roberts
Bonita Springs, FL
4. Chae Hee Kang
Northbrook, IL
5. Patricia Duquette
Fremont, MI