

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

CARNELL SMITH, on behalf of himself
and others similarly situated,

Plaintiffs,

vs.

FIFTH THIRD BANK,

Defendant.

Case No.: 1:18-cv-00464

Judge Douglas R. Cole

Magistrate Judge Stephanie K. Bowman

LENOX MAGEE,

Plaintiff,

vs.

FIFTH THIRD BANK,

Defendant.

Case No.: 1:18-cv-00464

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release¹ is made and entered into this 1st day of February, 2020, by and among (1) Plaintiffs Carnell Smith and Lenox Magee, each individually, and on behalf of the Settlement Class, and (2) Defendant Fifth Third Bank, subject to Preliminary Approval and Final Approval as required by the Federal Rules of Civil Procedure. As provided herein, Plaintiffs, Class Counsel and Fifth Third Bank hereby stipulate and agree that, in consideration of the promises and covenants set forth in this Agreement and upon entry by the

¹ All capitalized times herein have the same meanings as those as given to them in Section II below or otherwise defined herein.

Court of a Final Order and Judgment, all claims of the Settlement Class against Fifth Third Bank in the consolidated action titled *Carnell Smith and Lenox Magee v. Fifth Third Bank*, S.D. Ohio Case No. 1:18-cv-00464, shall be settled and compromised upon the terms and conditions contained herein.

I. Recitals

1. On March 29, 2018, Plaintiff Carnell Smith filed his Complaint against Fifth Third Bank in the United States District Court for the Middle District of Florida (“*Smith*”).

2. On June 8, 2018, Fifth Third Bank moved to dismiss Plaintiff Smith’s Complaint. Concurrently with the motion to dismiss, Fifth Third Bank filed a Motion to Transfer the *Smith* action to the Southern District of Ohio, which was unopposed.

3. On July 10, 2018, *Smith* was transferred to the Southern District of Ohio.

4. On August 10, 2018, the presiding district judge, Judge Black, referred *Smith* to Magistrate Judge Bowman for disposition of all pretrial and post-judgment motions, including through a report and recommendation on any dispositive matters.

5. On September 10, 2018, Mr. Smith filed his First Amended Complaint wherein he alleged claims against Fifth Third Bank on a classwide basis for breach of contract and for breach of contract by violation of the covenant of good faith and fair dealing arising from Fifth Third’s practice of charging a fee Non-Fifth Third ATM Fee (as defined below) for balance inquiries made at ATMs outside Fifth Third Bank’s network of ATMs and for charging two Non-Fifth Third ATM Fees if a balance inquiry was undertaken during the same ATM visit as a cash withdrawal or other funds transfer, assessing an international transaction fee on foreign transactions made in U.S. Dollars, and Fifth Third Bank’s method of calculating the international transaction fee. The First Amended Complaint seeks *inter alia*, monetary damages, interest, attorneys’ fees, and costs.

6. On October 8, 2018, Fifth Third Bank moved to dismiss *Smith*.

7. On October 15, 2018, Plaintiff Lenox Magee filed a similar putative class action against Fifth Third Bank in the Southern District of Ohio, Case No. 1:18-cv-722 (“*Magee*”) also arising from Fifth Third Bank’s practice of assessing Non-Fifth Third ATM Fees for balance inquiries made at ATMs outside of Fifth Third Bank’s network of ATMs and for assessing multiple Non-Fifth Third ATM Fees if a balance inquiry was undertaken during the same ATM visit as a cash withdrawal or other funds transfer. The *Magee* Complaint alleges claims for breach of contract, violation of the Illinois Consumer Fraud and Deceptive Business Practices Act (“ICFA”), and for unjust enrichment, seeking, *inter alia*, entitlement to monetary damages, interest, attorneys’ fees, and costs. As it pertains to the Non-Fifth Third ATM Fee, Plaintiffs both asserted that a balance inquiry is not a transaction subject to the Non-Fifth Third ATM Fee.

8. On October 29, 2018, Plaintiff Smith filed his Opposition to Fifth Third Bank’s Motion to Dismiss.

9. Effective November 1, 2018, Fifth Third Bank revised its Deposit Account Rules & Regulations to expressly provide that a balance inquiry is a transaction and inform Account Holders that they could be charged a fee for a balance inquiry at an Out-of-Network ATM.

10. On November 15, 2018, *Magee* was fully consolidated into *Smith*.

11. On November 29, 2018, Fifth Third Bank filed its Reply in support of its Motion to Dismiss in *Smith*.

12. On December 31, 2018, Fifth Third Bank filed a Motion to Dismiss the *Magee* Complaint. On January 22, 2019, Plaintiff Magee filed his Opposition to Fifth Third Bank’s Motion to Dismiss, and on February 5, 2019, Fifth Third Bank filed its Reply.

13. After briefing was completed, the parties presented oral argument to Judge

Bowman on March 26, 2019 on the two motions to dismiss.

14. On April 18, 2019, Judge Bowman issued a Report and Recommendation (“Report”) granting in part and denying in part Fifth Third Bank’s motions to dismiss. More specifically, Judge Bowman recommended dismissal with respect to Plaintiff Smith’s claims for breach of contract and breach of contract by violation of the covenant of good faith and fair dealing concerning the international transaction fee claims and Plaintiff Magee’s ICFA and unjust enrichment claims concerning the Non-Fifth Third ATM Fee assessed for balance inquiries undertaken at ATMs outside Fifth Third Bank’s network of ATMs. Judge Bowman recommended denying both motions to dismiss with respect to Plaintiffs’ claims that Fifth Third Bank improperly charged fees for balance inquiries made at ATMs outside of Fifth Third Bank’s network of ATMs. Fifth Third Bank filed objections to that portion of the Report, and Plaintiffs Smith and Magee filed a joint response, as well as a notice of supplemental authority.

15. On June 19, 2019, the parties participated in a telephone conference with Magistrate Judge Bowman regarding a discovery schedule for the matter.

16. On June 24, 2019, Plaintiffs served their first set of Requests for Production and first set of Interrogatories.

17. On August 7, 2019, the parties exchanged initial disclosures.

18. On August 23, 2019, Fifth Third Bank responded to Plaintiffs’ first set of Requests for Production and first set of Interrogatories.

19. On August 28, 2019, Judge Black issued a Decision and Order adopting the Report and Recommendation of Magistrate Judge Bowman in its entirety.

20. In September of 2019, the parties met and conferred at length regarding discovery. During that same time period, the parties also met and conferred about mediating the claims.

21. Fifth Third Bank produced discovery in this Action, including but not limited to transactional data reflecting Non-Fifth Third ATM Fees charged for balance inquiries made at ATMs outside Fifth Third Bank's network of ATMs from which Plaintiffs' expert estimated class-wide damages for the class period. The Parties appeared telephonically numerous times for status conferences with Judge Bowman to aid the discovery process and to advise her of the status of settlement negotiations during 2019 and 2020.

22. In October of 2019, the Parties agreed to a mediation before Michael Ungar, Esq. The initial mediation was scheduled for November 11, 2019. The Parties submitted detailed mediation statements in connection with that mediation. The mediation was cancelled on November 10, 2019 by the mediator, but was rescheduled for December 3, 2019.

23. An in-person all day mediation occurred on December 3, 2019 with Mr. Ungar. The Action did not settle that day. The Parties continued to engage in good faith settlement discussions for several weeks thereafter but were unable to resolve the matter.

24. The Parties continued to meet and confer regarding discovery, including but not limited to Fifth Third Bank's ESI and non-ESI discovery productions and depositions, in February, March, and April of 2020. Counsel for the Parties participated in numerous meet and confer telephone conferences and exchanged several meet and confer letters and emails.

25. On or about mid-March of 2020, the Parties also began discussing the possibility of a second mediation session with Mr. Ungar. The Parties ultimately scheduled a second mediation session with Mr. Ungar for July 23, 2020.

26. The Parties also continued their meet and confer efforts regarding discovery throughout the summer of 2020.

27. The second mediation occurred on July 23, 2020, with Mr. Ungar with some of the

participants attending in person and others attending virtually. Again, the Parties engaged in good faith, hard-fought negotiations, but the Action did not settle on that day.

28. The Parties continued to meet and confer regarding discovery over the following weeks, including regarding the completion of the document production and depositions.

29. Further, the Parties continued to engage in settlement negotiations via telephone and email. On October 5, 2020, the Parties reached an agreement in principle to resolve the Action on a classwide basis.

30. On October 6, 2020, the Parties filed a Joint Notice of Settlement and Motion to Stay All Deadlines, which the Court granted on October 15, 2020. On November 20, 2020, January 4, 2020, and January 19, 2020, the Parties filed their Notices as to Timing of Filing Motion for Preliminary Approval to advise the Court that the Parties were still negotiating and preparing this Agreement.

31. The Parties now agree to settle the Action in its entirety, without any admission of liability, with respect to all Released Claims (defined below) of the Releasing Parties. The Parties intend this Agreement to bind the Plaintiffs, Fifth Third Bank, and all Settlement Class Members.

NOW, THEREFORE, in light of the foregoing, for good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, the Parties agree, subject to approval by the Court, as follows.

II. Definitions

In addition to the terms defined at various points within this Agreement, the following Defined Terms apply throughout this Agreement:

32. “Account” means any consumer checking account maintained by Fifth Third Bank.
33. “Account Holder” means any person or persons whose name is on an Account as

the sole, primary or joint user of the Account during the Class Period.

34. “Action” means the consolidated case styled *Carnell Smith and Lenox Magee v. Fifth Third Bank*, S.D. Ohio Case No. 1:18-cv-00464.

35. “Class Counsel” means:

KOPELOWITZ OSTROW P.A.
Jeff Ostrow, Esq.
Jonathan M. Streisfeld, Esq.
1 West Las Olas Blvd.
Suite 500
Fort Lauderdale, FL 33301

TYCKO & ZAVAREEI LLP
Andrea Gold, Esq.
Katherine Aizpuru, Esq.
1828 L Street Northwest
Suite 1000
Washington, DC 20036

KALIEL PLLC
Jeffrey Kaliel, Esq.
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1875 Connecticut Avenue, NW
10th Floor
Washington, DC 20009

MINNILLO LAW GROUP CO., LPA
Robb S. Stokar, Esq.
2712 Observatory Avenue
Cincinnati, OH 45208

SPANGENBERG SHIBLEY & LIBER LLP
Stuart E. Scott
1001 Lakeside Avenue East, Suite 1700
Cleveland, OH 44114

36. “Class Period” means the period from January 1, 2010 through October 31, 2018.

37. “Class Representatives” mean Lenox Magee and Carnell Smith.

38. “Court” means the United States District Court for the Southern District of Ohio.

39. “Current Account Holder(s)” means an Account Holder(s) whose Account is open as of the date that the Net Settlement Fund is distributed to Settlement Class Members pursuant to this Agreement.

40. “Effective Date” means the 5th day after which all of the following events have occurred:

a. The Court has entered without material change the Final Approval Order and Final Judgment; and

b. The time for seeking rehearing or appellate or other review has expired, and no appeal or petition for rehearing or review has been timely filed; or the Settlement is affirmed on appeal or review without material change, no other appeal or petition for rehearing or review is pending, and the time period during which further petition for hearing, review, appeal, or certiorari could be taken has finally expired and relief from a failure to file same is not available.

41. “Email Notice” means a short form of notice that shall be sent by email to Settlement Class members for whom Fifth Third Bank has email addresses.

42. “Escrow Account” means the interest-bearing account to be established by the Settlement Administrator consistent with the terms and conditions described in Section IV below and in to which Fifth Third Bank will deposit the Settlement Fund, as defined herein.

43. “Final Approval” means the date that the Court enters an order granting final approval of the Settlement and determines the amount of attorneys’ fees and costs awarded to Class Counsel and the amount of any Service Award to the Class Representatives. The proposed Final Approval Order shall be in a form agreed upon by Class Counsel and Fifth Third Bank. In the event that the Court issues separate orders addressing the foregoing matters, then Final Approval means the date of the last of such orders.

44. “Final Approval Hearing” means the hearing set by the Court to determine the fairness of the Settlement and whether to approve its terms.

45. “Final Approval Order” means the final order that the Court enters upon Final Approval, which shall be in a form agreed upon by the Parties and shall be substantially in the form attached as an exhibit to the Motion for Final Approval. In the event that the Court issues separate orders addressing the matters constituting Final Approval, then the Final Approval Order includes all such Orders.

46. “Former Account Holder(s)” means an Account Holder(s) whose Account is not open as of the date that the Net Settlement Fund is distributed to Settlement Class Members pursuant to this Agreement.

47. “Long Form Notice” means the form of notice that shall be posted on the Settlement website created by the Settlement Administrator and shall be available to Settlement Class members by mail on request made to the Settlement Administrator.

48. “Net Settlement Fund” means the Settlement Fund, minus Court-approved attorneys’ fees and costs, Settlement Administration Costs, and any Court-approved Service Awards to the Class Representatives.

49. “Non-Fifth Third ATM Fees” means the fees that Fifth Third Bank assesses against Accounts for balance inquiries, withdrawals, deposits, or transfers undertaken at ATMs outside of Fifth Third Bank’s network of ATMs.

50. “Notice” means the Email Notice, Postcard Notice and Long Form Notice that the Parties will ask the Court to approve in connection with the Motion for Preliminary Approval of the Settlement.

51. “Notice Program” means the methods provided for in this Agreement for giving the Notice and consists of Postcard Notice, Email Notice and Long Form Notice which shall be substantially in the forms as the exhibits attached to the Motion for Preliminary Approval.

52. “Opt-Out Period” means the period that begins the day after the earliest date on which the Notice is first mailed, and that ends 30 days before the Final Approval Hearing. The deadline for the Opt-Out Period will be specified in the Notice.

53. “Party” means Plaintiffs and Defendant and “Parties” means Plaintiffs and Defendant collectively.

54. “Plaintiffs” means Carnell Smith and Lenox Magee.

55. “Postcard Notice” shall mean the short form of notice that shall be sent by mail to Settlement Class members who did not agree to receive notices by email, or for whom the Settlement Administrator is unable to send Email Notice using the email address provided by Fifth Third Bank.

56. “Preliminary Approval” means the date that the Court enters, without material change, the proposed order preliminarily approving the Settlement.

57. “Preliminary Approval Order” means the Court’s order on Plaintiffs’ Motion for Preliminary Approval approving the Notice Program and authorizing Notice, which shall be substantially in the form of the exhibit attached to the Motion for Preliminary Approval.

58. “Releases” means all of the releases contained in Section XIII hereof.

59. “Released Claims” means all claims to be released as specified in Section XIII hereof.

60. “Released Parties” means Fifth Third Bank and each of its present, former and future parents, subsidiaries, divisions, affiliates, predecessors, successors, subsidiaries, assigns, assignees, departments, subdivisions, owners, partners, principals, trustees, creditors, shareholders, and the present and former officers, directors, managers, and employees (whether acting in such capacity or individually), agents (alleged, apparent, or actual), insurers, members, attorneys, advisors, consultants, accountants, representatives, partners, joint venturers, independent contractors, vendors, wholesalers, resellers, distributors, retailers, predecessors, successors and assigns of each of them and each person or entity acting or purporting to act for them or on their behalf.

61. “Releasing Parties” means Plaintiffs and each Settlement Class Member, and each

of their respective heirs, beneficiaries, successors, executors, estates, administrators, bankruptcy trustees, guardians, tenants in common, tenants by entireties, and assigns of each of them.

62. “Service Award” means any Court ordered payment to Plaintiffs for serving as Class Representatives, which are in addition to any payment due to Plaintiffs as Settlement Class Members.

63. “Settlement” means the settlement into which the Parties have entered to fully and completely resolve the Action, the terms of which are as set forth in this Agreement.

64. “Settlement Administration Costs” means the Settlement Administrator’s hourly charges for administering the Settlement and all out-of-pocket and third-party costs and expenses of the Settlement Administrator associated with providing notice of the Settlement to the Settlement Class Members, administering and distributing the Settlement Class Member Payments to the Settlement Class Members, or otherwise administering or carrying out the terms of the Settlement, including but not limited to postage and telecommunication costs, and all costs associated with complying with the Class Action Fairness Act.

65. “Settlement Administrator” means KCC Class Action Services, LLC.

66. “Settlement Class” means all Current Account Holders and Former Account Holders of Fifth Third Bank who were assessed one or more Non-Fifth Third ATM Fees during the Class Period for making a balance inquiry at an ATM outside of Fifth Third Bank’s network of ATMs or were assessed more than one Non-Fifth Third ATM Fee for undertaking a balance inquiry during the same ATM visit as a cash withdrawal or other funds transfer. Excluded from the Settlement Class is Fifth Third Bank, its parents, subsidiaries, affiliates, current officers and directors; all customers who make a timely election to be excluded; and all judges assigned to this litigation and their immediate family members.

67. “Settlement Class Member” means any Current Account Holder or Former Account Holder included in the Settlement Class who does not opt-out of the Settlement.

68. “Settlement Class Member Payment” means the distribution that will be made from the Net Settlement Fund to the Settlement Class Members pursuant to the allocation terms of the Settlement. The Settlement Class Member Payment will be made to each unique Account assessed one or more Non-Fifth Third ATM Fees for a balance inquiry undertaken at an ATM outside of Fifth Third Bank’s network and the Account Holder(s) of each such Account will receive the same Settlement Class Member Payment irrespective of how many Non-Fifth Third ATM Fees for balance inquiries were assessed to a particular Account.

69. “Settlement Fund” means the \$5,200,000.00 common cash fund that Fifth Third Bank has agreed to pay in full and complete Settlement of this Action. The Settlement Fund must be funded into the Escrow Account by Fifth Third Bank within 7 days of the entry of the Preliminary Approval Order. The Settlement Fund will be used to pay Settlement Class Member Payments, the attorneys’ fees and litigation costs awarded by the Court, Service Awards to the Class Representatives ordered by the Court, all Settlement Administration Costs – including all costs to comply with the Class Action Fairness Act, and any *cy pres* payment required under this Agreement. In no event shall Fifth Third Bank be responsible for any payments, costs, fees or obligations other than payment of the Settlement Fund.

70. “Settlement Website” means the website that the Settlement Administrator will use as a means for Settlement Class members to obtain notice of and information about the Settlement, through and including hyperlinked access to this Agreement, the Long Form Notice, the Preliminary Approval Order approving this Settlement, and such other documents as the Parties agree to post or that the Court orders posted on the website. These documents shall remain on the

Settlement Website at least until Final Approval. The URL of the Settlement Website shall be *www.fifththirdoutofnetworkbalanceinquiryfeelitigation.com*, or such other URL as Class Counsel and Fifth Third Bank agree upon in writing.

III. Certification of the Settlement Class

71. For Settlement purposes only, Plaintiffs and Fifth Third Bank agree to ask the Court to certify the Settlement Class under the Federal Rules of Civil Procedure.

IV. Settlement Consideration and the Escrow Account

72. Subject to approval by the Court, under the Settlement, the total consideration to be provided by Fifth Third Bank shall be \$5,200,000.00, inclusive of the amount paid to Settlement Class Members, any and all attorneys' fees and costs awarded to Class Counsel, any Service Awards to the Class Representatives, all Settlement Administration Costs, and any *cy pres* payment. In no event shall Fifth Third Bank be responsible for any payment, fees, or costs other than the Settlement Fund of \$5,200,000.

73. All funds held by the Settlement Administrator shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until distributed pursuant to this Agreement.

74. All funds held by the Settlement Administrator shall be deemed a "qualified settlement fund" within the meaning of United States Treasury Reg. § 1.468B-1 at all times since creation of the Escrow Account. All taxes (including any estimated taxes, and any interest or penalties relating to them) arising with respect to the income earned by the Escrow Account or otherwise, including any taxes or tax detriments that may be imposed upon Fifth Third Bank, Fifth Third Bank's Counsel, Plaintiffs and/or Class Counsel with respect to income earned by the Escrow Account for any period during which the Escrow Account does not qualify as a "qualified

settlement fund” for the purpose of federal or state income taxes or otherwise (collectively “Taxes”), shall be paid out of the Escrow Account. Fifth Third Bank and Fifth Third Bank’s Counsel and Plaintiffs and Class Counsel shall have no liability or responsibility for any of the Taxes and make no representations as to the taxability of any portions of the Settlement Member Payments to any Settlement Class Member, including Plaintiffs. The Escrow Account shall indemnify and hold Fifth Third Bank and Fifth Third Bank’s Counsel and Plaintiffs and Class Counsel harmless for all Taxes (including, without limitation, Taxes payable by reason of any such indemnification). The Settlement Administrator shall prepare, send, file, and furnish all tax information reporting forms required for payments made from the Settlement Fund as required by the Internal Revenue Service pursuant to the Internal Revenue Code and related Treasury Regulations, including Form 1099s. The Parties agree to cooperate with the Settlement Administrator, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this paragraph. All interest on the funds in the Settlement Fund shall accrue to the benefit of the Settlement Class. Any interest shall not be subject to withholding and shall, if required, be reported appropriately to the Internal Revenue Service by the Settlement Administrator. The Settlement Administrator is responsible for payment of all taxes on interest in the Settlement Fund.

V. Settlement Approval

75. Upon execution of this Agreement by all Parties, Class Counsel shall promptly move the Court for an Order granting Preliminary Approval of this Settlement. The proposed Preliminary Approval Order that will be attached to the motion shall be in a form agreed upon by Class Counsel and Fifth Third Bank. The motion for Preliminary Approval shall, among other things, request that the Court: (1) approve the terms of the Settlement as within the range of fair,

adequate and reasonable; (2) provisionally certify the Settlement Class pursuant to the Federal Rules of Civil Procedure for settlement purposes only; (3) approve the Notice Program set forth herein and approve the form and content of the notices of the Settlement; (4) approve the procedures set forth herein below for Settlement Class members to exclude themselves from the Settlement Class or to object to the Settlement; (5) stay the Action pending Final Approval of the Settlement; and (6) schedule a Final Approval Hearing for a time and date mutually convenient for the Court, Class Counsel, and Fifth Third Bank's Counsel, at which the Court will conduct an inquiry into the fairness of the Settlement, determine whether it was made in good faith, and determine whether to approve the Settlement and Class Counsel's application for attorneys' fees and costs, and for Service Awards to the Class Representatives.

VI. Discovery and Settlement Data

76. Class Counsel and Fifth Third Bank already have engaged in discovery related to liability and damages. Within ten business days of Preliminary Approval, Fifth Third Bank shall provide the Settlement Administrator with the following information, which will be kept strictly confidential between the Settlement Administrator and Fifth Third Bank, for each Account held by a Settlement Class Member: (i) name of Account Holder(s); (ii) last known email address if available; (iii) last known mailing address; and (iv) account number, or a unique identifier that can be used to identify each separate Account held by a Settlement Class Member. The Settlement Administrator shall use the data provided by Fifth Third Bank to make the calculations required by the Settlement. The Settlement Administrator shall use this information solely for the purpose of administering the Settlement. Fifth Third Bank will bear the expense of extracting and analyzing the necessary data.

VII. Settlement Administrator

77. Class Counsel, in consultation with Fifth Third Bank, has selected the Settlement Administrator. The Settlement Administrator shall administer various aspects of the Settlement as described in the paragraph immediately following and perform such other functions as are specified for the Settlement Administrator elsewhere in this Agreement, including, but not limited to, providing Notice to Settlement Class members, complying with the notice requirements of the Class Action Fairness Act, and distributing the Settlement Fund as provided herein.

78. The duties of the Settlement Administrator, in addition to other responsibilities that are described in the preceding paragraph and elsewhere in this Agreement, are as follows:

- a. Use the name, email, and postal address information for Settlement Class members provided by Fifth Third Bank in connection with the Notice Program approved by the Court, for the purpose of mailing the Postcard Notice and sending the Email Notice, and later mailing distribution checks to Former Account Holder Settlement Class Members, and to Current Account Holder Settlement Class Members where it is not feasible for Fifth Third Bank to make the payment by a credit to the Settlement Class Members' Accounts;
- b. Establish and maintain a Post Office box for the receipt of exclusion requests and objections;
- c. Establish and maintain the Settlement Website;
- d. Establish and maintain an automated toll-free telephone line for Settlement Class members to call with Settlement-related inquiries, and answer the frequently asked questions of Settlement Class members who call with or otherwise communicate such inquiries;
- e. Respond to any mailed Settlement Class member inquiries;
- f. Process all requests for exclusion from the Settlement Class;

g. Provide weekly reports to Class Counsel and Fifth Third Bank that summarize the number of requests for exclusion and/or objections received that week, the total number of exclusion requests and/or objections received to date, and other pertinent information;

h. In advance of the Final Approval Hearing, prepare an affidavit or declaration to submit to the Court confirming that the Notice Program was completed, that the Class Action Fairness Notice requirements have been met, describing how the Notice Program was completed, providing the names of each Settlement Class member who timely and properly opted-out from the Settlement Class, as well as those Settlement Class Members that timely filed objections, and other information as may be necessary to allow the Parties to seek and obtain Final Approval;

i. Provide to Fifth Third Bank the amount of the Net Settlement Fund required to make Settlement Class Member Payments to Current Account Holders by a credit to those Settlement Class Members' Accounts;

j. Perform all tax-related services for the Escrow Account as provided in the Agreement;

k. Pay invoices, expenses and costs upon approval by Class Counsel and Fifth Third Bank, as provided in this Agreement;

l. Provide notice of this Settlement as required under the Class Action Fairness Act, 28 U.S.C. § 1715; and

m. Any other Settlement-administration-related function at the instruction of Class Counsel and Fifth Third Bank, including, but not limited to, verifying that the Settlement Fund has been distributed.

VIII. Notice to Settlement Class Members

79. Within 30 days after Preliminary Approval through the time directed by the Court,

at the direction of Class Counsel and Fifth Third Bank's Counsel, the Settlement Administrator shall implement the Notice Program provided herein, using the forms of Notice approved by the Court in the Preliminary Approval Order. The Notice shall include, among other information: a description of the material terms of the Settlement; a date by which Settlement Class members may exclude themselves from, or "opt-out" of, the Settlement Class; a date by which Settlement Class Members may object to the Settlement; the date on which the Final Approval Hearing is scheduled to occur; and the address of the Settlement Website at which Settlement Class members may access this Agreement and other related documents and information. Class Counsel and Fifth Third Bank shall insert the correct dates and deadlines in the Notice before the Notice Program commences, based upon those dates and deadlines set by the Court in the Preliminary Approval Order. Notices and publications provided under or as part of the Notice Program shall not bear or include the Fifth Third Bank logo or trademarks or the return address of Fifth Third Bank, or otherwise be styled to appear to originate from Fifth Third Bank.

80. The Notice also shall include a procedure for Settlement Class members to opt-out of the Settlement Class. A Settlement Class member may opt-out of the Settlement Class at any time during the Opt-Out Period, provided the opt-out notice is postmarked no later than the last day of the Opt-Out Period. Any Settlement Class member who does not timely and validly request to opt-out shall be bound by the terms of this Agreement.

81. The Notice also shall include a procedure for Settlement Class Members to object to the Settlement and/or to Class Counsel's application for attorneys' fees and costs and/or Service Awards to the Class Representatives. Objections to the Settlement, to the application for attorneys' fees and costs, and/or to the Service Award must be mailed to the Clerk of the Court, Class Counsel, Fifth Third Bank's counsel, and the Settlement Administrator. For an objection to be

considered by the Court, the objection must be submitted no later than the last day of the Opt-Out Period, as specified in the Notice. If submitted by mail, an objection shall be deemed to have been submitted when posted if received with a postmark date indicated on the envelope if mailed first-class postage prepaid and addressed in accordance with the instructions. If submitted by private courier (*e.g.*, Federal Express), an objection shall be deemed to have been submitted on the shipping date reflected on the shipping label.

82. For an objection to be considered by the Court, the objection must also set forth:
 - a. the name of the Action;
 - b. the objector's full name, address and telephone number;
 - c. all grounds for the objection, accompanied by any legal support for the objection known to the objector or objector's counsel;
 - d. the number of times the objector has objected to a class action settlement within the five years preceding the date that the objector files the objection, the caption of each case in which the objector has made such objection, and a copy of any orders related to or ruling upon the objector's prior objections that were issued by the trial and appellate courts in each listed case;
 - e. the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement or fee application;
 - f. a copy of any orders related to or ruling upon counsel's or the counsel's law firm's prior objections that were issued by the trial and appellate courts in each listed case in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the preceding 5 years;
 - g. any and all agreements that relate to the objection or the process of objecting—

whether written or oral—between objector or objector’s counsel and any other person or entity;

h. the identity of all counsel (if any) representing the objector who will appear at the Final Approval Hearing;

i. a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection;

j. a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and

k. the objector’s signature (an attorney’s signature is not sufficient).

Class Counsel and/or Fifth Third Bank may conduct limited discovery on any objector consistent with the Federal Rules of Civil Procedure. The notices shall state that objectors may speak at the Final Approval Hearing if present regardless of whether they submitted a written objection.

83. Notice shall be provided to Settlement Class members in three different ways: Email Notice to Account Holders for whom Fifth Third Bank has provided email addresses; Postcard Notice sent by U.S. mail to Account Holders for whom Fifth Third Bank does not have valid email addresses or for whom Email Notice bounces back as undeliverable; and Long Form Notice, which will be written in both English and Spanish, and shall be available on the Settlement Website and via mail upon a Settlement Class member’s request to the Settlement Administrator. Not all Settlement Class members will receive all forms of Notice, as detailed herein.

84. As detailed above in Section VI, Fifth Third Bank will provide the Settlement Administrator with the Settlement Class membership list. Once the Settlement Administrator has the Settlement Class membership list, the Settlement Administrator shall run the physical addresses through the National Change of Address Database and shall mail the Postcard Notice to Settlement Class Members receiving that form of Notice. For jointly held Accounts, the

Postcard Notice will be addressed to all Account Holders and mailed to the primary Account Holder listed on an Account. The Settlement Administrator shall also send out Email Notice to all Settlement Class members receiving Notice by that method. The Settlement Administrator shall send the Email Notice to each such member's last known email address, in a manner that is calculated to avoid being caught and excluded by spam filters or other devices intended to block mass email. For jointly held accounts, Email Notice will be addressed to all Account Holders and sent to the primary Account Holder listed on the account.

85. The Settlement Administrator shall perform reasonable address traces for all Postcard Notices that are returned as undeliverable. A "reasonable" tracing procedure would be to run addresses of returned postcards through the Lexis/Nexis database that can be utilized for such purpose. No later than 60 days before the Final Approval Hearing, the Settlement Administrator shall complete the re-mailing of Postcard Notice to those Settlement Class members whose new addresses were identified as of that time through address traces ("Notice Re-mailing Process"). The Settlement Administrator shall also send Postcard Notice to all Settlement Class members whose emails were returned as undeliverable and complete such Notice pursuant to the deadlines described herein as they relate to the Notice Re-mailing Process.

86. The Notice Program shall be completed no later than 60 days before the Final Approval Hearing.

87. Within the provisions set forth in this Section VIII, further specific details of the Notice Program shall be subject to the agreement of Class Counsel and Fifth Third Bank.

IX. Final Approval Order and Judgment

88. Plaintiffs' Motion for Preliminary Approval of the Settlement will include a request to the Court for a scheduled date on which the Final Approval Hearing will occur.

Plaintiffs shall file their Motion for Final Approval of the Settlement (after review by Counsel for Fifth Third Bank), and application for attorneys' fees and costs and for Service Awards for the Class Representatives, no later than 45 days before the Final Approval Hearing. At the Final Approval Hearing, the Court will hear argument on Plaintiffs' Motion for Final Approval of the Settlement, and on Class Counsel's application for attorneys' fees and costs, and for the Service Awards for the Class Representatives. In the Court's discretion, the Court also will hear argument at the Final Approval Hearing from any Settlement Class Members (or their counsel) who object to the Settlement or to Class Counsel's application for attorneys' fees and costs, or the Service Awards, provided the objector(s) submitted timely objections that meet all of the requirements listed in the Agreement.

89. At or following the Final Approval Hearing, the Court will determine whether to enter the Final Approval Order granting Final Approval of the Settlement and entering final judgment thereon, and whether to approve Class Counsel's request for attorneys' fees and costs, and the Service Awards. The proposed Final Approval Order shall be in a form agreed upon by Class Counsel and Fifth Third Bank. Such proposed Final Approval Order shall, among other things:

- a. Determine that the Settlement is fair, adequate, and reasonable;
- b. Finally certify the Settlement Class for settlement purposes only;
- c. Determine that the Notice provided satisfies due process requirements;
- d. Enter judgment dismissing the Action with prejudice;
- e. Bar and enjoin all Releasing Parties from asserting any of the Released Claims hereof, bar and enjoin all Releasing Parties from pursuing any Released Claims against Fifth Third Bank or any of the Released Parties, including during any appeal from the Final Approval Order,

and retain jurisdiction over the enforcement of the Court's injunctions;

f. Release Fifth Third Bank and the Released Parties from the Released Claims; and

g. Reserve the Court's continuing and exclusive jurisdiction over the Parties to this Agreement, including Fifth Third Bank, all Settlement Class Members, and all objectors, to administer, supervise, construe, and enforce this Agreement in accordance with its terms.

X. Distribution of Settlement Fund

90. Payments shall be made from the Settlement Fund as follows:

a. Class Counsels' Fees and Costs. Class Counsels' reasonable attorneys' fees and costs, as determined and approved by the Court, shall be paid solely from the Settlement Fund within 5 days after entry of the Final Approval Order. Class Counsel shall apply for an award of attorneys' fees of up to 33.33% of the Settlement Fund, plus reimbursement of reasonable litigation costs, to be approved by the Court. The fees and expense award shall constitute full satisfaction of any obligation on the part of Fifth Third Bank to pay any person, attorney, or law firm for costs, litigation expenses, attorneys' fees, or any other expense incurred on behalf of Plaintiffs or the Settlement Class in this Action. Fifth Third Bank shall have no responsibility for any allocation and no liability whatsoever to any person or entity claiming any share of the funds to be distributed. The Parties agree that the Court's failure to approve, in whole or in part, any award for attorneys' fees shall not prevent the Settlement from becoming effective, nor shall it be a grounds for termination of the Settlement.

b. Service Award. Subject to Court approval, the Class Representatives shall each be entitled to receive a Service Award of up to \$5,000.00 for their roles as Class Representatives. The Service Awards shall be paid no later than 10 days after the Effective Date. The Parties agree that the Court's failure to approve, in whole or in part, any Service Award to the Plaintiffs shall not

prevent the Settlement from becoming effective, nor shall it be a ground for termination of the Settlement.

c. Settlement Administrator's Fees and Costs. The Settlement Administrator's fees and costs, including all costs associated with complying with the Class Action Fairness Act, shall be paid solely out of the Settlement Fund and shall be paid within 10 days after invoicing to and approval by the Parties. In the event the Final Approval Order is not entered or this Agreement is terminated pursuant to the termination provisions below, Fifth Third Bank agrees to cover any costs incurred and fees charged by the Settlement Administrator prior to the denial of Final Approval or the termination of this Agreement.

d. Settlement Class Member Payments. Settlement Class Member Payments from the Net Settlement Fund shall be made no later than 45 days after the Effective Date, as follows:

- i. Within ten days of Final Approval, the Settlement Administrator shall provide to Fifth Third Bank the amount determined to be due to each Account and a list of the Settlement Class Members who are entitled to receive Settlement Class Member Payments, along with the unique identifier associated with those Settlement Class Members' Accounts. The information provided by the Settlement Administrator shall be considered conclusive as to which Settlement Class Members are entitled to receive a Settlement Class Member Payment.
- ii. For those Settlement Class Members who are Current Account Holders at the time of the distribution of the Settlement Fund, a credit in the amount of the Settlement Class Member Payment each unique Account is entitled to receive shall be applied to each unique Account. The credits shall be made by Fifth Third Bank. Within 3 business days of making the credits and confirming to Class Counsel and the

Settlement Administrator the Accounts who received the credits and the total amount of the credits, the Settlement Administrator will reimburse Fifth Third Bank from the Settlement Fund the amount of the credits.

- iii. For those Settlement Class Members who are Former Account Holders at the time of the distribution of the Net Settlement Fund or for Current Account Holders where direct deposit is not feasible or successful, a check in the amount of the Settlement Class Member Payment, in a form approved by Class Counsel and Fifth Third Bank's counsel, will be mailed by the Settlement Administrator to the address used to provide the Notice, or at such other address as designated by the Settlement Class Member. For jointly held accounts, checks will be payable to all Account Holders, and will be mailed to the first/primary Account Holder listed on the Account. The Settlement Administrator will make reasonable efforts to locate the proper address for any check returned by the Postal Service as undeliverable and will re-mail it once to the updated address or, in the case of a jointly held account, and in the Settlement Administrator's discretion, to an accountholder other than the one listed first. The Settlement Class Member shall have 180 days to negotiate the check. Any checks uncashed after 180 days shall be distributed pursuant to Section XII. In the event of any complications arising in connection with the issuance or cashing of a check, the Settlement Administrator shall provide written notice to Class Counsel and Fifth Third Bank's Counsel. Absent specific instructions from Class Counsel and Fifth Third Bank's Counsel, the Settlement Administrator shall proceed to resolve the dispute using the best practices and procedures to ensure that the funds are fairly and properly distributed to Settlement Class Member entitled to receive them.

- iv. As set forth in Section XII, the Parties agree that Fifth Third Bank is entitled to receive up to \$200,000 from uncashed checks, defined herein as Residual Funds (as defined below), as reimbursement for a portion of the Settlement Administration Costs that are included in the Settlement Fund. With the exception of up to \$200,000.00 in reimburseable Settlement Administration Costs, in no event shall any portion of the Settlement Fund revert to Fifth Third Bank.

XI. Calculation of Automatic Distributions from Net Settlement Fund

91. The determination as to Fifth Third Bank customers and the number of Accounts charged a Non-Fifth Third ATM Fee for a balance inquiry during the Class Period shall be done by Fifth Third Bank. The methodology provided for herein will be applied to the data as consistently, sensibly, and conscientiously as reasonably possible, recognizing and taking into consideration the nature and completeness of the data and the purpose of the computations. Consistent with its contractual, statutory, and regulatory obligations to maintain security and protect its Account Holders' private financial information, Fifth Third Bank shall make available such additional data and information as may reasonably be needed by Class Counsel and its expert to confirm and/or effectuate the calculations and allocations contemplated by this Agreement.

92. The Settlement Class Member Payment shall be the same amount for each unique Account assessed a Non-Fifth Third ATM Fee for a balance inquiry made at an ATM outside Fifth Third Bank's network of ATMs as detailed below.

93. The amount of the Settlement Class Member Payment from the Net Settlement Fund to which Settlement Class Members are entitled (subject to the availability of data) is to be determined using the following methodology or such other methodology as would have an equivalent result:

a. All Accounts held by Settlement Class Members will be identified for which Fifth Third Bank assessed one or more Non-Fifth Third ATM Fees for balance inquiries undertaken at ATMs outside of Fifth Third Bank's network of ATMs during the Class Period.

b. The Net Settlement Fund will then be divided by the total number of unique Accounts, which shall yield the amount of each Settlement Class Member Payment. For clarification, the Settlement Class Members for jointly held accounts will receive only one Settlement Class Member Payment per unique Account and each Settlement Class Member Payment will be the same, regardless of how many Non-Fifth Third ATM Fees were assessed against a unique Account for undertaking balance inquiries at ATMs outside of Fifth Third Bank's network of ATMs.

94. The Parties agree the foregoing allocation formula is exclusively for purposes of computing, in a reasonable and efficient fashion, the amount of the Settlement Class Member Payment. The fact that this allocation formula will be used is not intended (and shall not be used) for any other purpose or objective whatsoever.

95. The total damages at stake in the litigation and other information relevant to the Court's assessment of fairness may be included in public filings on the docket, including the motions for Preliminary Approval and Final Approval and the application for attorneys' fees and costs and Service Awards.

XII. Disposition of Residual Funds

96. If the check issued to a Settlement Class Member is not deposited or cashed within 180 days after the check is mailed, (a) the check will be null and void; and (b) the Settlement Class Member will be barred from receiving a further Settlement Class Member Payment under this Settlement. Within one year after the date the Settlement Administrator mails the first Settlement

Class Member Payment, any remaining amounts resulting from uncashed checks (“Residual Funds”) shall be distributed as follows:

a. First, any Residual Funds up to \$200,000.00 shall be payable to Fifth Third Bank as reimbursement for a portion of the Settlement Administration Costs paid as part of the Settlement Fund.

b. Second, in the event that, after payment of a. above, there are still Residual Funds in the Settlement Fund Account after all the distributions required by this Agreement, at the election of Class Counsel and Counsel for Fifth Third Bank and subject to the approval of the Court, the funds may be distributed to Settlement Class Members via a secondary distribution. If the costs of preparing, transmitting and administering such subsequent payments pursuant to this Section are not feasible and practical to make secondary distributions economically viable or other specific reasons exist that would make such further distributions impossible or unfair, Class Counsel and Fifth Third Bank shall seek the Court’s approval to distribute the Residual Funds to a *cy pres* recipient. The Parties agree to seek the Court’s approval of Jump\$tart Coalition for Personal Financial Literacy (<https://www.jumpstart.org/>) as the *cy pres* recipient.

XIII. Releases

97. On the Effective Date, the Releasing Parties shall automatically be deemed to have fully and irrevocably released and forever discharged the Released Parties, of and from any and all liabilities, rights, claims, actions, causes of action, demands, damages, costs, attorneys’ fees, losses and remedies, whether known or unknown, existing or potential, suspected or unsuspected, liquidated or unliquidated, legal, statutory, or equitable, based on contract, tort or any other theory, including, but not limited to, conduct which is negligent, intentional, with or without malice or a breach of any duty, law, or rule, that result from, arise out of, are based upon, or relate to the

conduct, omissions, duties or matters alleged in the Action through the date an order preliminarily approving the Settlement Agreement is entered by the Court—specifically the practice of charging a Non-Fifth Third ATM Fee for a balance inquiry made at an ATM outside Fifth Third’s network of ATMs, or for charging multiple Non-Fifth Third ATM Fees when a balance inquiry is undertaken during the same ATM visit as a withdrawal or other funds transfer—or that were or could have been claimed, raised, or alleged in this Action to the extent they arise from or relate to charging Non-Fifth Third ATM Fees for balance inquiries made at ATMs outside Fifth Third’s network of ATMs (“Released Claims”). The Parties agree that the claims asserted in *Troy Howards v Fifth Third Bank*, Case No. 1:18-CV-00869-MRB (S.D. Ohio), are not part of the Released Claims.

98. Each Settlement Class Member is barred and permanently enjoined from bringing on behalf of themselves, or through any person purporting to act on their behalf or purporting to assert a claim under or through them, any of the Released Claims against Fifth Third Bank or any of the Released Parties in any forum, action, or proceeding of any kind.

99. With respect to all Released Claims, by operation of Final Approval of the Settlement, Plaintiffs and each of the other Settlement Class Members agree that they are expressly waiving and relinquishing to the fullest extent permitted by law (a) the provisions, rights and benefits conferred by Section 1542 of the California Civil Code, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY

and (b) any law of any state or territory of the United States, federal law or principle of common law, or of international or foreign law, that is similar, comparable or equivalent to Section 1542 of

the California Civil Code.

100. Plaintiffs or any Settlement Class Member may hereafter discover facts other than or different from those that he/she knows or believes to be true with respect to the subject matter of the claims released herein, or the law applicable to such claims may change. Nonetheless, each of those individuals expressly agrees that, as of the Effective Date, he/she shall have automatically and irrevocably waived and fully, finally, and forever settled and released any known or unknown, suspected or unsuspected, asserted or unasserted, liquidated or unliquidated, contingent or non-contingent claims with respect to all of the matters described in or subsumed by herein. Further, each of those individuals agrees and acknowledges that he/she shall be bound by this Agreement, including by the release herein and that all of their claims in the Action shall be dismissed with prejudice and released, whether or not such claims are concealed or hidden; without regard to subsequent discovery of different or additional facts and subsequent changes in the law; and even if he/she never receives actual notice of the Settlement and/or never receives a distribution of funds or credits from the Settlement.

101. Nothing in this Agreement shall operate or be construed to release any claims or rights that Fifth Third Bank has to recover any past, present or future amounts that may be owed by Plaintiffs or by any Settlement Class Member on his/her accounts, loans or any other debts with Fifth Third Bank, pursuant to the terms and conditions of such accounts, loans, or any other debts. Likewise, nothing in this Agreement shall operate or be construed to release any defenses or rights of set-off that Plaintiffs or any Settlement Class Member has, other than with respect to the Released Claims, in the event Fifth Third Bank and/or its assigns seeks to recover any past, present or future amounts that may be owed by Plaintiffs or by any Settlement Class Member on his/her accounts, loans or any other debts with Fifth Third Bank, pursuant to the terms and conditions of

such accounts, loans, or any other debts.

XIV. Payment of Attorneys' Fees, Costs, and Service Awards

102. As stated above, Fifth Third Bank agrees not to oppose Class Counsel's request for attorneys' fees of up to 33.33% of the Settlement Fund, and not to oppose Class Counsel's request for reimbursement of reasonable expenses. Any award of attorneys' fees, and expenses to Class Counsel shall be payable solely out of the Settlement Fund within five days of the Final Approval Order. The Parties agree that the Court's failure to approve, in whole or in part, any award for attorneys' fees shall not prevent the Settlement Agreement from becoming effective, nor shall it be grounds for termination.

103. The payment of attorneys' fees and expenses of Class Counsel shall be made as designated by Class Counsel. The payment of attorneys' fees, costs, and expenses of Class Counsel shall be made as unanimously designated in writing by Class Counsel, or, in failure of such designation, as determined by the Court. After the fees, costs and expenses have been paid, Class Counsel shall be solely responsible for distributing each Plaintiff's firm's allocated share of such fees, costs, and expenses to that firm as unanimously agreed by Class Counsel or as determined by the Court. Fifth Third Bank shall have no responsibility for any allocation, and no liability whatsoever to any person or entity claiming any share of the funds to be distributed for payment of attorneys' fees, costs, or expenses or any other payments from the Settlement Fund not specifically described herein.

104. In the event the Effective Date does not occur, or the attorneys' fees or the expense award is reduced following an appeal, each counsel and their law firms who have received any payment of such fees or costs shall be jointly and severally liable for the entirety of all attorneys' fees, costs and expenses of Class Counsel. If the Effective Date does not occur, Class Counsel

shall immediately repay into the Settlement Fund the entirety of all attorneys' fees, costs and expenses of Class Counsel. If the attorneys' fees or expenses award is reduced, Class Counsel shall immediately repay into the Settlement Fund the amount equal to the reduction ordered by the appellate court. Further, each counsel and their law firm consents to the jurisdiction of the Court for the enforcement of this provision.

105. As stated above, Class Counsel will apply to the Court to approve a Service Award to the Plaintiffs in the amount of \$5,000.00 each from the Settlement Fund. The Service Awards shall be paid to the Class Representatives in addition to the Settlement Class Member Payment. Fifth Third Bank agrees not to oppose Class Counsel's request for the Service Awards. The Parties agree that the Court's failure to approve the Service Awards, in whole or in part, shall not prevent the Agreement from becoming Effective, nor shall it be grounds for termination.

106. The Parties negotiated and reached agreement regarding attorneys' fees and costs, and the Service Awards, only after reaching agreement on all other material terms of this Settlement. Fifth Third agrees it does not have standing to object to an award of costs, attorneys' fees of up to 33.33% of the Settlement Fund, and Service Awards of up to \$5000 to each of the Class Representatives from the Settlement Fund.

XV. Termination of Settlement

107. This Agreement shall be subject to and is expressly conditioned on the occurrence of all of the following events:

- a. The Court has entered the Preliminary Approval Order, as required by Section V above;
- b. The Court has entered the Final Approval Order as required by Section IX, above, and all objections, if any, to such Order are overruled, and all appeals taken from such Order are

resolved in favor of approval; and

c. The Effective Date has occurred.

108. If all of the conditions specified in Paragraph 107 are not met, then this Agreement shall be cancelled and terminated

109. In the event that the Court does not enter the Final Approval Order in materially the same form as what the Parties agree to and submit to the Court, Fifth Third Bank has the right to terminate this Agreement and the Settlement and will have no further obligations under the Agreement. Fifth Third Bank shall also have the option to terminate this Agreement if 1% or more of the total Settlement Class members opt-out. Fifth Third Bank shall notify Class Counsel and the Court of its intent to terminate this Agreement pursuant to this Section XV within 10 business days after the Court fails to enter the Final Approval Order in materially the same form as to what the Parties agreed or the end of the Opt-Out Period, or the option to terminate shall be considered waived.

110. In the event this Agreement is terminated or fails to become effective, then the Parties shall be restored to their respective positions in this case as they existed as of the date of the execution of this Agreement. In such event, the terms and provisions of this Agreement shall have no further force and effect with respect to the Parties and shall not be used in this case or in any other action or proceeding for any other purpose, and any order entered by this Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*.

XVI. Effect of a Termination

111. The grounds upon which this Agreement may be terminated are set forth herein above. In the event of a termination, this Agreement shall be considered null and void; all of Plaintiffs', Class Counsel's, and Fifth Third Bank's obligations under the Settlement shall cease

to be of any force and effect; any amounts in the Escrow Account shall be returned to Fifth Third Bank; and the Parties shall return to the status *quo ante* in the Action as if the Parties had not entered into this Agreement. In addition, in the event of such a termination, all of the Parties' respective pre-Settlement rights, claims, and defenses will be retained and preserved.

112. Certification of the Settlement Class for settlement purposes shall have no bearing in deciding whether the claims asserted in the Action are or were appropriate for class treatment in the absence of settlement. If this Agreement terminates or is nullified, the provisional class certification shall be vacated by its terms, and the Action shall revert to the status that existed before execution of this Settlement Agreement. Thereafter, Plaintiffs shall be free to pursue any claims available to them, and Fifth Third Bank shall be free to assert any defenses available to it, including but not limited to, denying the suitability of this case for class treatment. Nothing in this Agreement shall be argued or deemed to estop any Party from the assertion of such claims and defenses.

113. In the event the Settlement is terminated in accordance with the provisions of this Agreement, any discussions, offers, or negotiations associated with this Settlement shall not be discoverable or offered into evidence or used in the Action or any other action or proceeding for any purpose. In such event, all Parties to the Action shall stand in the same position as if this Agreement had not been negotiated, made, or filed with the Court.

XVII. No Admission of Liability

114. Fifth Third Bank continues to dispute its liability for the claims alleged in the Action, and maintains that its Non-Fifth Third ATM Fee assessment practices and representations concerning those practices complied, at all times, with applicable laws and regulations and the terms of the Account agreements with its customers. Fifth Third Bank does not admit any liability

or wrongdoing of any kind, by this Agreement or otherwise. Fifth Third Bank has agreed to enter into this Agreement to avoid the further expense, inconvenience, and distraction of burdensome and protracted litigation, and to be completely free of any further claims that were asserted or could possibly have been asserted in the Action.

115. Class Counsel believe that the claims asserted in the Action have merit, and they have examined and considered the benefits to be obtained under the proposed Settlement set forth in this Agreement, the risks associated with the continued prosecution of this complex, costly and time-consuming litigation, and the likelihood of success on the merits of the Action. Class Counsel fully investigated the facts and law relevant to the merits of the claims, conducted significant discovery, and conducted independent investigation of the challenged practices. Class Counsel concluded that the proposed Settlement set forth in this Agreement is fair, adequate, reasonable, and in the best interests of the Settlement Class members.

116. The Parties understand and acknowledge that this Agreement constitutes a compromise and settlement of disputed claims. No action taken by the Parties either previously or in connection with the negotiations or proceedings connected with this Agreement shall be deemed or construed to be an admission of the truth or falsity of any claims or defenses heretofore made, or an acknowledgment or admission by any party of any fault, liability, or wrongdoing of any kind whatsoever.

117. Neither the Settlement, nor any act performed or document executed pursuant to or in furtherance of 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 claim made by the Plaintiffs or Settlement Class members, or of any wrongdoing or liability of the Released Parties; 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 Released Parties,

in the Action or in any proceeding in any court, administrative agency, or other tribunal.

118. In addition to any other defenses Fifth Third Bank may have at law, in equity, or otherwise, to the extent permitted by law, this Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit or other proceeding that may be instituted, prosecuted or attempted in breach of this Agreement or the Releases contained herein.

XIX. Miscellaneous Provisions

119. Gender and Plurals. As used in this Agreement, the masculine, feminine or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context so indicates.

120. Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Releasing Parties and the Released Parties.

121. No Press Releases. Neither Party shall issue any press release or shall otherwise initiate press coverage of the Settlement. If contacted, a Party may respond generally by saying that they are happy the Settlement was reached and that it is a fair and reasonable result.

122. Cooperation of Parties. The Parties to this Agreement agree to cooperate in good faith to prepare and execute all documents, to seek Court approval, uphold Court approval, and do all things reasonably necessary to complete and effectuate the Settlement described in this Agreement.

123. Obligation To Meet And Confer. Before filing any motion in the Court raising a dispute arising out of or related to this Agreement, the Parties shall consult with each other and certify to the Court that they have consulted.

124. Integration. This Agreement constitutes a single, integrated written contract expressing the entire agreement of the Parties relative to the subject matter hereof. No covenants,

agreements, representations, or warranties of any kind whatsoever have been made by any Party hereto, except as provided for herein.

125. No Conflict Intended. Any inconsistency between the headings used in this Agreement and the text of the paragraphs of this Agreement shall be resolved in favor of the text.

126. Governing Law. Except as otherwise provided herein, the Agreement shall be construed in accordance with, and be governed by, the laws of the State of Ohio, without regard to the principles thereof regarding choice of law.

127. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though all Parties do not sign the same counterparts. Original signatures are not required. Any signature or electronic signature submitted by facsimile or through email of an Adobe PDF shall be deemed an original.

128. Jurisdiction. The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding or dispute arising out of or relating to this Agreement that cannot be resolved by negotiation and agreement by counsel for the Parties. The Court shall retain jurisdiction with respect to the administration, consummation, and enforcement of the Agreement. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice Program and the Settlement Administrator. As part of the agreement to render services in connection with this Settlement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose. The Court shall retain jurisdiction over the enforcement of the Court's injunction barring and enjoining all Releasing Parties from asserting any of the Released Claims and from pursuing any Released Claims against Fifth Third Bank or any of the Released Parties at

any time, including during any appeal from the Final Approval Order.

129. Notices. All notices to Class Counsel provided for herein, shall be sent by email with a hard copy sent by overnight mail to:

KOPELOWITZ OSTROW P.A.
Jeff Ostrow
1 West Las Olas Blvd., Suite 500
Fort Lauderdale, Florida 33301
Email: ostrow@kolawyers.com
Class Counsel

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Email: agold@tzlegal.com
Class Counsel

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Ted T. Martin
Carrie Dettmer Slye
312 Walnut Street, Suite 3200

Cincinnati, OH 45202-4074
Email: tmartin@bakerlaw.com
cdettmerslye@bakerlaw.com

Counsel for Fifth Third Bank

The notice recipients and addresses designated above may be changed by written notice. Upon the request of any of the Parties, the Parties agree to promptly provide each other with copies of objections, requests for exclusion, or other filings received as a result of the Notice Program.

130. Modification and Amendment. This Agreement may not be amended or modified, except by a written instrument signed by Class Counsel and counsel for Fifth Third Bank and, if the Settlement has been approved preliminarily by the Court, approved by the Court.

131. No Waiver. The waiver by any Party of any breach of this Agreement by another Party shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement.

132. Authority. Class Counsel (for the Plaintiffs and the Settlement Class Members), and counsel for Fifth Third Bank (for Fifth Third Bank), represent and warrant that the persons signing this Agreement on their behalf have full power and authority to bind every person, partnership, corporation or entity included within the definitions of Plaintiffs and Fifth Third Bank to all terms of this Agreement. Any person executing this Agreement in a representative capacity represents and warrants that he or she is fully authorized to do so and to bind the Party on whose behalf he or she signs this Agreement to all of the terms and provisions of this Agreement.

133. Agreement Mutually Prepared. Neither Fifth Third Bank nor Plaintiffs, nor any of them, shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

134. Independent Investigation and Decision to Settle. The Parties understand and acknowledge that they: (a) have performed an independent investigation of the allegations of fact and law made in connection with this Action; and (b) that even if they may hereafter discover facts in addition to, or different from, those that they now know or believe to be true with respect to the subject matter of the Action as reflected in this Agreement, that will not affect or in any respect limit the binding nature of this Agreement. Fifth Third Bank has provided and is providing information that Plaintiffs reasonably requested to identify Settlement Class members and the alleged damages they incurred. Both Parties recognize and acknowledge that they and/or their experts reviewed and analyzed data for a subset of the time at issue and that they and/or their experts used extrapolation to make certain determinations, arguments, and settlement positions. The Parties agree that this Settlement is reasonable and will not attempt to renegotiate or otherwise void or invalidate or terminate the Settlement irrespective of what any unexamined data later shows. It is the Parties' intention to resolve their disputes in connection with this Action pursuant to the terms of this Agreement now and thus, in furtherance of their intentions, the Agreement shall remain in full force and effect notwithstanding the discovery of any additional facts or law, or changes in law, and this Agreement shall not be subject to rescission or modification by reason of any changes or differences in facts or law, subsequently occurring or otherwise.

135. Assignment; Third Party Beneficiaries. This Agreement shall not inure to the benefit of any third party, and none of the rights, commitments, or obligations recognized under this Settlement Agreement may be assigned by any member of the Settlement Class without the express written consent of the other Parties.

136. Communications. Any communications to the Parties relating to this Settlement Agreement shall be sent to all counsel signing this Agreement on behalf of the Parties.

137. Calculation of Time. All time listed in this Agreement is in calendar days. Time is calculated by (a) excluding the day of the event that triggers the period; (b) counting every day, including intermediate Saturdays, Sundays, and legal holidays; and (c) including the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

138. Receipt of Advice of Counsel. Each Party acknowledges, agrees, and specifically warrants that he, she or it has fully read this Agreement and the Release contained herein, received independent legal advice with respect to the advisability of entering into this Agreement and the Releases, and the legal effects of this Agreement and the Releases, and fully understands the effect of this Agreement and the Release.

Signature Page to Follow

Dated: Jan 28, 2021

Carnell Edward Smith

Carnell Smith
Plaintiff

Dated: _____

Lenox Magee
Plaintiff

Dated: _____

Jeff Ostrow, Esq.
KOPELOWITZ OSTROW P.A.
Class Counsel

Dated: _____

Andrea Gold, Esq.
TYCKO & ZAVAREEI LLP
Class Counsel

Dated: _____

Jeffrey Kaliel, Esq.
KALIEL PLLC
Class Counsel

Dated: _____

Stuart Scott, Esq.
SPANGENBERG SHIBEY & LIBER LLP
Class Counsel

Dated: _____

Robb S. Stokar, Esq.
MINNILLO LAW GROUP CO., LPA
Class Counsel

Dated: _____

FIFTH THIRD BANK

By: _____
ITS _____

Dated: Feb. 1, 2021

Julie Singer Brady, Esq.
BAKER & HOSTETLER LLP
Counsel for Fifth Third Bank

Dated: _____

Carnell Smith
Plaintiff

1/28/2021



Dated: _____

Lenox Magee
Plaintiff

Dated: _____

Jeff Ostrow, Esq.
KOPELOWITZ OSTROW P.A.
Class Counsel

Dated: _____

Andrea Gold, Esq.
TYCKO & ZAVAREEI LLP
Class Counsel

Dated: _____

Jeffrey Kaliel, Esq.
KALIEL PLLC
Class Counsel

Dated: _____

Stuart Scott, Esq.
SPANGENBERG SHIBEY & LIBER LLP
Class Counsel

Dated: _____

Robb S. Stokar, Esq.
MINNILLO LAW GROUP CO., LPA
Class Counsel

Dated: _____

FIFTH THIRD BANK

By: _____
ITS _____

Dated: Feb. 1, 2021 _____

Julie Singer Brady, Esq.
BAKER & HOSTETLER LLP
Counsel for Fifth Third Bank


Dated: _____

Carnell Smith
Plaintiff

Dated: _____

Lenox Magee
Plaintiff

Dated: Jan 27, 2021



Jeffrey Ostrow (Jan 27, 2021 13:17 EST)

Jeff Ostrow, Esq.
KOPELOWITZ OSTROW P.A.
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Dated: Jan 28, 2021



Andrea Gold (Jan 28, 2021 11:02 EST)

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Dated: Jan 28, 2021



Stuart Scott (Jan 28, 2021 18:39 EST)

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Dated: Jan 28, 2021



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Dated: _____

FIFTH THIRD BANK


Digitally signed by Aaron Stucky
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By: _____
ITS _____

Dated: Feb. 1, 2021

Julie Singer Brady, Esq.
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